Continuity and Change - Parliamentary Reforms

A Consultation Paper
For
National Commission
to Review the Working of the Constitution

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I. INTRODUCTION

A. Parliamentary Democracy in India: Impressive Record

Since its independence in 1947 India has had a unique record of successive elections and stable and peaceful democracy unlike its neighbours – Pakistan and Bangladesh – which have succumbed to authoritarian impulses and coups. Though it may not have struck deep enough roots, By all accounts, the bold experiment of universal adult franchise has paid off in India. Judging by the four criteria set up by Myron Weiner for a liberal democracy– competitive elections; free political parties; peaceful and smooth transition of power; and active governments accountable to the electorate– India fared well. He in fact concluded that in most post-colonial nations, "...the new regimes typically restrict opposition parties, limit freedom of assembly and freedom of the press, do not permit competitive elections, restrain the judiciary from performing an independent role, and limit freedoms of their citizens in a variety of ways – to speak out, to travel abroad, to criticize the regime and to change the government peacefully....(P)olitical participation is restricted and leaders are not held accountable; and, in the worst cases, governments are tyrannical. India, along with a handful of smaller countries, is a notable exception." CITE SOURCE. THE YEAR IS PARTICULARLY OF IMPORTANCE, AS WE ARE ARGUING BELOW THAT THIS IS NO MORE TRUE. SIMILAR COMPLIMENTS HAVE BEEN PAID BY PAUL APPLEBY WHO MAY HAVE A DIFFERENT OPINION NOW. CITATIONS FOLLOW THE FORMAT AS GIVEN HERE FOR MY OWN WRITING. Eg. (Tummala, 2004).

THIS PARAGRAPH STARTING WITH "Judged by the Weiner criteria....different story" IS COUNTERPRODUCTIVE AS IT SOUNDS LIKE AN APOLOGY FOR WEINER AND A DEFENSE OF THE CURRENT ROT. SO, IT IS DELETED. WE ALL KNOW THAT THERE IS NOTHING LIKE A "PERFECT" DEMOCRACY IN THE WORLD, AFTER ALL.

B. Crisis of Governance

Despite the kudos from Weiner (which are of course dated) and the progress seen in the country since independence, no objective observer today fails to notice the general political rot in India. The manifestations of this crisis the all-pervasive inefficient state; increasing lawlessness; competitive populism; criminalisation of polity; ever-growing nexus between money, crime and political power; excessive centralization; serious erosion of legitimacy of authority; and extremely tardy and inefficient justice system– are only too evident. India is facing an extraordinary crisis today. The root problem largely lies in the governance structure that was adopted and the way it is being run, and not in our people.

IT MIGHT BE OF INTEREST TO NOTE THAT NOT TOO LONG AGO THE CHAIR OF THE CANADIAN CIVIL SERVICE COMMISSION RAISED AN INTERESTING AND RELEVANT QUESTION PERTAINING TO THE CRITICISM OF INEFFICIENT BUREAUCRACY. HE ASKED, NOT NECESSARILY RHETORICALLY, HOW COULD ONE EXPLAIN SUCH INEFFICIENCY WHEN IN FACT THE CANADIAN BUREAUCRACY IS MOST REPRESENTATIVE OF THE SOCIETY, COMPRISING OF THE CREME DE LA CREME OF CANADA? COULD IT BE THAT THE CANADIAN SOCIETY ITSELF IS INEFFICIENT? THE ANSWER BEING NEGATIVE, ONE MUST

LOOK AT OTHER PLACES FOR AN ANSWER. AND HE FOUND OUT THAT THE PROBLEM IS THAT GOOD PEOPLE ARE CAUGHT UP IN A BAD SYSTEM. A SIMILAR POSITION WAS TAKEN BY VICE PRESIDENT AL GORE IN HIS "RE-INVENTING GOVERNMENT" EFFORT THE RESULTS AND CONTRIBUTIONS OF WHICH ARE BEING DEBATED NOW.

C. Political Process

An elected legislature through which people's interests are articulated and public participation in governance is facilitated, becomes critical in a parliamentary democracy. In other words, the functioning of the party system and the nature of elections determine the quality of the legislature and the efficacy of governance. In India, traditionally parties are seen as pocket boroughs of those at the helm. Often there are entry barriers to members. Those who pose a potential threat to entrenched leadership are denied access to a party, or expelled even for the faintest criticism or dissent.

Elections too , which are frequent and largely fair, have failed to ensure a high quality of the legislatures. The frequent resort to electoral irregularities, massive vote-buying and rigging, deployment of unaccountable money power, entry of criminals into politics, and serious defects in voter registration and the polling process have made elections a high-cost, high-risk gamble. The exorbitant, and not too legal, cost of elections also fed corruption on a massive scale.

Yet another serious problem plaguing the Indian polity is the serious discord often witnessed among the various organs of state, and between the three tiers of governance – Union, State and local.

In recent times due to the increasing resort to mid-term polls, and the shortening tenures of governments, some began arguing for measures to ensure political stability. However it should be remembered that India has witnessed remarkable political stability so far. Yet, while stable governments are necessary for effective governance, stability by no means is a substitute to truly inclusive democratic political process, fair elections, genuine representation, sensible policies, accountability and people's empowerment.

Given the several infirmities and distortions, it is easy to deride Indian politics and democracy. In fact it has become fashionable among some to be anti-political and wistfully suggest authoritarian, even fascist, solutions. Contempt for democratic institutions is dangerous and short-sighted. Anti-political approach is counterproductive. In a democracy there is no substitute to political process. Politics is the mechanism through which the gulf between unlimited wants and limited resources is bridged, and means are reconciled with ends in governance. The political process mediates conflicts resolving the seemingly irreconcilable differences among various groups in society, thus heralding peaceful and democratic transformation. Thus, the real solution to the problem of democracy lies in deepening democracy. To this end, four areas of critical concern are examined below. But before that a short discussion of the most important forms of democracy– the parliamentary, presidential and semi-presidential – would be useful.

D. Forms of Parliamentary Democracy

All democratic governments have representative legislatures. The difference, however, is in the origin of the political executive, which is the core of government. In the **parliamentary** form, as is the case in Britain, the executive is drawn from the legislature. While there is a symbolic head of state (the hereditary monarch in Britain, elected President in India), the Prime Minister is the head of government so long as (s)he commands the confidence of the legislature.

Cabinet colleagues are chosen by the Prime Minister, and are collectively responsible to the legislature.

The second is the **presidential** form. Here the chief executive– the President– is elected for a fixed term, independent of the legislature. The executive power is counterbalanced by other political institutions– the legislature and the judiciary. Following the theory of separation of powers, as advocated by Montesquieu, the United States typifies this form with its President elected by an electoral college, and sharing the powers of government with the Congress and judiciary. The President appoints the Cabinet Secretaries, subject to confirmation by the Senate– the popularly elected Upper House of the legislature. The President cannot dissolve the legislature, nor can the Congress remove the President except through impeachment for high crimes and treason. President can veto legislation, but his veto can be overridden by a two-thirds majority in Congress. The President can only seek to influence Congress, but not dictate to it. Presidential power is in essence the power to persuade.

In effect, the President has fewer real powers in a presidential executive, compared to the Prime Minister with a stable majority in a parliamentary executive. (Vincent Wright) THIS IS NOT QUITE RIGHT, BUT ONLY A H ALF-TRUTH. AFTER ALL, THE PRESIDENT, UNLIKE A PRIME MINISTER, CAN BRING THE NATION TO A STATE OF WAR WITH NO OPTION FOR CONGRESS EXCEPT TO COMPLY. I DO NOT KNOW WHO THIS WRIGHT FELLOW IS OR WHAT HE IS SAYING. BUT I WILL DROP THIS STATEMENT ALTOGETHER.)

The third model is **semi–presidential,** as it obtains in France. The voters elect the legislature and the President separately. The President names the Prime Minister, who chooses the Cabinet. The legislature approves the appointment of the Cabinet, and can remove it from office. The President presides over the Cabinet, but the Cabinet directly controls the Ministries and Departments. Certain areas of policy, notably defense and foreign relations, are regarded as the Presidential domain. Thus, a dual leadership is shared between President and Prime Minister. Formally the Prime Minister directs the government, which itself is accountable to Parliament. However the President is the leading figure in the political system. Even though the French President cannot ignore the need of the government to have parliamentary backing for its legislative programme, he does have substantial powers to maneuver it. This kind of arrangement of shared government is known as "cohabitation." (Rohr, 1995 and 2003).

What must be remembered however is that all these are various forms of democracy, but with different kinds of executive – parliamentary, presidential or semi-presidential. All these are perfectly legitimate democratic systems, and each has relative merits and demerits. Parliamentary executive tends to be stable and strong as long as there is a clear majority for the Prime Minister in the legislature. The Cabinet controls the legislative agenda by virtue of its majority support. Such an immense party control may have its own aberrations in that it might lead to a party dictatorship which in fact can deteriorate into a dictatorship of the Prime Minister (who is the leader of the party), as has been criticized in the case of Margaret Thatcher in England, and Indira Gandhi in India. But the Prime Minister and Cabinet can be removed by the switching of loyalties of a few legislators and fresh elections can be ordered relatively easily. If the Prime Minister does not enjoy a clear majority, the executive tends to be unstable, and cannot always control the legislative agenda. It is prone to severe pressures from small groups or individual legislators as is the case in Israel. Survival in office is often not compatible with integrity and firm policy decisions. With a bicameral legislature, the Cabinet may not control

legislation even when it enjoys a clear majority in the lower House. As there is a head of state separate from the parliamentary executive, though symbolic and ceremonial, the Prime Minister will find it more difficult to ride rough shod over his colleagues. However, the experience of India shows that the President is often a captive of a powerful Prime Minister with a stable majority.

The presidential executive on the other hand provides for stability. However, as the President cannot necessarily control the legislative agenda, even when the same party is in control of both the legislature and executive, a stalemate may (and does) occur because the legislature is invested with separate and independent powers. Thus, much of the legislation tends to be more of a compromise between the executive and legislature. It is also possible that as the President is perceived to be the fountain of all executive authority, serving both as the head of government and the head of state, there could be a greater temptation of overt authoritarianism, particularly if the armed forces connive with the President. This had not happened in the United States, though President Richard Nixon tried unsuccessfully to carve out an "imperial presidency," in the 1970s (without being in cahoots with the army, of course).

However, a particular anomaly was found by Riggs in that the presidential forms as imitated by many other nations, borrowing from the United States, saw lot more convulsions such as coups and other forms of authoritarianism than has been the case with parliamentary systems. Fred W. Riggs, "Public Administration in America: Why Our Uniqueness is Exceptional and Important," *Public Administration Review* 58, No., 1 (January-February 1998, pp. 22-31.)

E. Four Critical Concerns

Returning to the Indian parliamentary scene, the following major concerns are identified, each of which is further discussed below:

I. **Equitable representation**. As the legislature represents the will of the people, there must be mechanisms to make it a truly representative body.

II. **Quality of representation** is a function of the honesty and integrity of the people elected to represent.

III. **Functioning of the legislature** itself shall enable a robust and open debate, consensus building, sensible and timely legislation, proper monitoring of law enforcement, and review of government policy and performance.

IV. **Providing for good governance** shall promote public good through due process of law. Also, harmony should prevail among the various organs of state and the different tiers of governance – Union, State and local.

II. EQUITABLE REPRESENTATION

Parliamentary democracy in India has proved to be reasonably effective in representing various groups. Contrary to the narrow base of political recruitment 50 years ago, currently representatives are drawn from a much broader section of the society despite the fact that the agricultural sector is dominant. Constituting nearly 67% of the total population, this sector contributes nearly half the legislators. Over a third of the members of Parliament now are from rural areas. Their proportion in State legislatures is probably much higher, although over time many of them tended to move to urban areas. There is also a much greater representation of various caste groups today. While there are separate "reserved" constituencies for the Scheduled Castes (SCs) and Scheduled Tribes (STs) in proportion to their population, the participation of intermediate castes and other backward classes (OBCs) has risen significantly over the past 50years. The educational qualifications of the legislators also are much higher today, though there is no evidence that university degrees have in any way added to the quality of legislative debate or decision making. There are, however, four major issues pertaining to representation.

A. Women are poorly represented with only ten per cent nominated and elected while constituting fifty per cent of the total population. (THIS GIVES THE FALSE SENSE THAT ONE HUNDRED PERCENT OF WOMEN NOMINATED ARE ELECTED. PROVIDE CORRECT DATA REGARDING NOMINATIONS/ELECTED MEMBERS.)
B. Several minority groups are under-represented. Insofar as they are geographically dispersed enough not to constitute a large enough population in any one constituency, no party is inclined to nominate members of these groups as candidates. If nominated, they cannot get elected on their own strength.
C. Electoral distortions occur from the plurality system or first-past-the-post (FPTP) election system in which the candidate who obtains the highest number of votes polled is elected. Thus, the largest party often needs only 30-40% of votes polled to obtain a majority of seats in the legislature under the present system. Considering that only about 60% of the votes are polled, the actual voter support to obtain a majority of seats could be as low as 20%. This gives undue advantage to the dominant parties. Neither the independents, nor any other reformist groups and new political formations can mount an effective challenge
D. Given the fact that the entrenched parties are largely autocratic and unaccountable, the quality of representatives has tended to be poor. The choice available to voters has thus largely been limited and unsatisfactory.

A. Enhancing women's representation

With the exception of a few countries such as Germany, Sweden, Norway, Denmark, Finland, and now France, female presence in legislatures remains in general small and relatively insignificant in most parts of the world. In India the problem is more serious as the participation of women in politics has actually declined from the days of freedom movement, both in quantity and quality. Women's representation in Lok Sabha currently is 9% , with an average of 6.15% for all the 13 Lok Sabhas so far. In Rajya Sabha the share is 7.76% with an average of 9%. In State legislatures the average ranged from 1.8% in 1952 to 6% in 1999, with the period average being 4.1%. Increasing violence, sexual harassment and victimization at the ground level in

many of the political parties has made women's participation extremely hazardous. Given the fact that women constitute nearly half of the population, it is time to enhance their participation in politics. Yet, there is no consensus on how to do it. There are several alternative models:

i. Reservation of seats with rotation of reservation;
ii. Three member constituencies with one out of three seats reserved for women;
iii. Mandatory nomination of women as party candidates as prescribed by law; and
iv. Election by proportional representation with the required number of women being nominated in individual party lists – every third candidate, for example.

Each of the above has its own merits and demerits.

i. Reservation with Rotation : The 85th Constitutional Amendment Bill, introduced in Lok Sabha in December 1999 sought to reserve one-third of all seats in the Lok Sabha and the Vidhan Sabhas (at State lelvel) for women. Such reservation would also apply in case of seats reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs). Each seat would be rotated once in three general elections by the draw of lots.

Merits:
This Bill would ensure that at least one-third of all legislators in Lok Sabha and Vidhan Sabhas are women.

Demerits:
(1) Rotation of reserved seats in every general election will automatically result in two-thirds of incumbents automatically unseated. The remaining one-third will also be left in limbo until the last moment because of the random selection. Consequently, electoral competition becomes a chance occurrence.
(2) Voters will be forced to choose and elect only women in the reserved constituencies , and those elected will have neither the incentive nor the opportunity to nurture their constituencies and build an enduring political base because of the inevitable rotation.
(3) With constituencies rotated every time, and with no chance of re-election, politics may become even more predatory, and the political process could lose credibility.
(4) Women elected in reserved constituencies will be contesting against other women only, and will lack the legitimacy and opportunity needed to prove their ability and acceptability vis-a-vis men. Such elected representatives may become political light weights.
(5) The participation of women from backward classes (BCs) would become a contentious and unresolved issue in this model. (WHY?) Similarly there are demands for quotas for Muslim women. As parties have no role in deciding which seats are reserved, they will be unable to nominate women candidates from these under-represented sections in constituencies where they have a reasonable chance of success.
(6) This model is silent about women's representation in Rajya Sabha and Legislative Councils, although reservation of seats is much easier and more practical because no rotation would be involved. (WHY? BECAUSE THERE IS ALREADY A ROTATION HERE!)
(7) There may be a high likelihood of many women being nominated as proxies for their

male mentors and family members, keeping the seats warm to enable them to reclaim them when the constituencies are de-reserved in the next election. Women's representation thus becomes symbolic and ornamental. Such an eventuality is already prevalent in local governments.
(8)This Bill would only ensure some representation for women, but does not address the more fundamental issue of their inadequate participation in politics and the greater marginalisation within political parties.

ii. Multi-member Constituencies: This is similar to the double member constituencies adopted in the first two general elections, to provide for reservations for SCs and STs, except it envisages a cluster of three Lok Sabha or Vidhan Sabha constituencies as a single unit. In each unit three members would be elected, and one of them shall be a woman.

Merits:
(1) This model eliminates the need for reservation of constituencies, and yet guarantees one-third women's representation.
(2) With three members to be elected, there can be greater flexibility for voters who otherwise face a dilemma between a party or a candidate they prefer (WHEN THE PARTY NOMINEE IS NOT THE PREFERRED CANDIDATE!)

Demerits:
(1) Campaigning would be difficult as the constituencies which are already large, will become larger and unwieldy.
(2) With a largely uninformed and illiterate voting population, there may be confusion as each voter will have to vote for three candidates, one of whom shall be a woman.
(3) The bond between the voters and the representative will be weakened because of divided loyalties with three members representing the same constituency.

iii. Mandatory Party Quotas for Women: This model forces every recognized political party to nominate women candidates for election in one-third of the constituencies. Similar provisions apply for seats reserved for SCs and STs. Each party can choose where it wishes to nominate women candidates.

To prevent a party from nominating women candidates only in States or constituencies where the party is weak, (WHAT DOES THIS MEAN? ONLY TO LOSE AS A MATTER OF STRATEGY?) the unit in which at least one out of three party candidates shall be a woman for the Lok Sabha , a State or union territory; for the State Legislative Assembly, the unit shall be a cluster of three contiguous Lok Sabha constituencies. In the event of a recognised party failing to nominate one-third women candidates, FOR THE SHORT FALL OF EACH WOMEN CANDIDATE (?), two male candidates of the party shall lose party symbol and affiliation and all the recognition-related advantages. A law amending Articles 80 and 171 of the Constitution should be enacted providing for women's reservation of one third of seats, elected or nominated, to Rajya Sabha and Legislative councils. Corresponding amendments need to be made in the Fourth Schedule of the Constitution and the Representation of the People Act, 1950. (THIS PARAGRAPH IS NOT CLEAR AT ALL , AND THE LANGUAGE IS CONVOLUTED.)

Merits:

(1) Parties will be free to choose their women candidates and constituencies, and nurture suitable women candidates where they can offer a good fight rather than nominating women who may or may not be viable candidates in prefixed lottery-based constituencies.
(2) There will be a large pool of credible and serious women candidates as the real contest in elections is only among candidates nominated by recognised parties
(3) While there is no reservation of constituencies for women exclusively, past data indicate women will be elected in large numbers in this model. IT MAY BE EVIDENT BUT WHY? WHAT IS THE RATIONALE? From 1952 to 1998, a total of 52,806 men contested, of whom 5,450 were elected, constituting 10.32% of success rate. The success rate of women is much higher at 17.16% with 350 women elected out of 2,040 who contested. Among party candidates, the success rate of men was 26.50% with 2,366 male candidates being elected from 1984-1998, out of 8,928 total male candidates contesting. The success rate of female party candidates is significantly higher at 32.53%, with 176 women candidates being elected out of the 541 candidates nominated by parties. This data clearly show that the electorate is not discriminating against women, and in fact the chances of success of women candidate are higher if parties nominate them as candidates. DOESN'T THIS DATA MAKE THE WHOLE ARGUMENT IN FAVOR OF RESERVED WOMEN CONSTITUENCIES REDUNDANT? MOREOVER, WHAT DO THESE DATA MEAN WHEN THERE ARE NO RESERVED WOMEN CANDIDATES/CONSTITUENCIES YET?
(4)The democratic choice of voters is not restricted as women are elected in competition with other candidates.
(5) A winning woman candidate can claim legitimacy and establish a political base on her own, and will not be a mere proxy or political light weight.
(6)Parties will be able to nominate women from BCs, minorities and other communities wherever there is an electoral advantage (ASSUMING THERE IS ONE). This obviates the need for quotas within quotas– an issue which has blocked the present government-sponsored Bill.
(7)This method is most likely to find favour with political parties and incumbent legislators, as there will be no fear of being uprooted by chance draw of lots. Women will get nominated, even as men compete against themselves.
(8)Representation of women in the upper Houses also is guaranteed.
(9) As parties are free to nominate women from constituencies of their choice, it may even result in more than one-third elected members being women THOUGH NOMINATION ITSELF DOES NOT GUARANTEE ELECTION!

Demerits:
(1) As there is no reservation of constituencies, it will not be possible to predict the number of women members in legislatures. It may be more or less than the one-third seats.
(2)In areas where there is prejudice against women candidates, parties may conspire to defeat them. (However competitive politics and past record preclude this possibility in real life, and parties will be compelled to nominate women candidates to win. IF SO, WHY CONSIDER THIS AS A DEMERIT?
(3)The electorate may be prejudiced against women and defeat them. But this had not

been the record.

iv. Proportional Representation (PR): Under this scheme, each party puts up a list of candidates, and the number of candidates it can get elected will be in proportion to the number of votes it polls. Thus, all parties are represented in the legislature in proportion to their voter strength. Parties can be compelled by law to nominate a woman candidate for every third place in their lists with no need for either constituency reservations or rotation of seats. PR, however, is not an unmixed blessing, as will be seen later.

B. Minority under-representation

WHERE IS THIS DISCUSSION?

C. The first-past-the-post (FPTP) system

(1) Un-representative legislatures: Under the FPTP system, Indian legislatures turned out to be unrepresentative. To start with, only 60 percent on an average go to polls (WHICH IS NOT A BAD NUMBER, AFTER ALL. THE MODEL DEMOCRACY– THE US– REGISTERS ONLY AROUND 40 PERCENT!) The remaining 40 per cent abstain for many reasons such as ignorance, apathy or pitiful choice of candidates. Simple fear of voting for one or the other may be yet another reason. Many more people are unable to vote because of the fear or actual use of force.

Additionally, there are wide-ranging flaws in electoral rolls. Lok Satta's surveys indicate that up to 40% of the electoral rolls in urban areas are flawed in that either the names of eligible citizens are not enrolled, or the names of dead or fictitious persons and those who migrated OUT OF THE CONSTITUENCY/STATE! are included. In Hyderabad city alone over 21% of the votes polled may be illegal as either the voters did not exist, or did not live in the locality or city, or did not even have actually voted.

Syed Shahabuddin observed that to come to power a party or a coalition needs on average only about 35 percent of votes , which amounts to around 21% of the total electorate. "The popular base of the government of the day would fall even lower, if we take into account the inaccuracies in the electoral rolls and the extent of those corrupt practices like rigging and booth-capturing which pile up votes without voters!" (This excludes the corrupt practice of inciting or bribing the voters.) As C.B. Muthamma pointed out, “every single government since independence has been based on a minority of votes cast. This is true not only of parties that do not have overall majorities in the legislatures but also the governments that have had an absolute party majority in parliament.” (PROVIDE CITATION FOR THE ABOVE TWO QUOTES.)

Table 2.1

Percentage of votes and seats obtained by the largest party in Lok Sabha

Year	% of Votes Polled	Name of the Largest / Majority Party	Seats obtained /Total No. of Seats	% Votes obtained by largest / Majority Party	% votes necessary for obtaining 50% seats	% votes needed for half the seats (in total electorate)
1952	61.7	Congress	357/489	45.04	30.9	19.07
1957	63.7	Congress	359/494	47.8	32.8	20.89
1962	55.4	Congress	358/494	44.7	31.0	17.17
1967	61.3	Congress	279/520	40.7	37.9	23.20
1971	55.3	Congress	352/519	43.7	32.3	17.86
1977	60.5	Janata	295/542	41.4	38.0	22.99
1980	56.9	Congress	353/527	42.7	32.9	18.72
1984	64.1	Congress	415/543	48.1	32.6	20.89
1989	62.2	INC	197/543	39.5	54.5*	33.89*
1991	56.7	Congress	232/543	36.5	42.7	24.20
1996	57.9	BJP	169/543	20.3	32.6	18.80
1998**						
1999	60.0	BJP	182/543	23.75	35.50	21.30

Note: * Congress lost a large number of seats with small margin
** Figures not immediately available
Source: Syed Shahabuddin: *Representational Legitimacy of the Existing System*, paper presentedat the National Seminar on Electoral Reforms, Kolkata, 17-18 Nov 2000.

Similarly, to be elected, a candidate needs only more votes than any other challenger.TheNationalCommission to Review the Working of the Constitution (NCRWC, "Review of Election Law, Processes and Reform Options," YEAR) showed that in the 13th Lok Sabha election, only 40% of the members were elected with the support of over 50% of the votes polled, while over 81% of the members obtained more than 40% of the votes cast and 90% obtained over 35% of the votes polled. In the 12th Lok Sabha election, one-third of the members were elected with a majority of over 50% , 80% of the members with over 40% and 94% with over 35% of the votes polled. In the 11th Lok Sabha election, 27.4% of the members were elected with a majority support in their constituencies, where as 68.5% of the members obtained over 40% votes, and 85% members got over 35% of votes in their constituencies. In elections for State Legislative Assemblies the picture varied: Tamil Nadu elected over 90% of the members with majority support, and Andhra Pradesh elected over 72% members with majority support, and over 90% members with over 45% votes polled. At the other extreme, Uttar Pradesh in 1996 elected 11% of the members with majority support, and 42% of members with over 40% support, and 78% of members with over 35% support.

Clearly, the FPTP system exaggerates the electoral significance of large social groups, and correspondingly reduces the role of smaller groups in elections. (THE ABOVE DATA DO NOT SUSTAIN THIS CONCLUSION UNLESS IT IS SHOWN THAT THOSE WHO VOTED ARE AFTER ALL HOMOGENOUS, WHICH IS NOT TRUE IN INDIA ANY TIME.) However, there are serious flaws in this analysis. It is somewhat simplistic to assume that in the FPTP system, all the votes polled **for** other candidates are necessarily **against** the winning

candidate. In a constituency election based on plurality, the voters are merely given the choice of selecting the person they feel would best represent their interests. When there are four candidates, A, B, C and D, it does not necessarily follow that the votes cast in favour of B, C and D are against A. Therefore the assumption that the individual elected was opposed by all those who voted for other candidates is fallacious. (WHY ELSE DID THEY VOTE THE WAY THEY DID? DIDN'T THEY OPPOSE CANDIDATE A WHEN THEY CHOSE B, C, OR D! AT LEAST THEY DID NOT PREFER CANDIDATE A, BUT THE LATTER!) The remedy to this problem lies in giving voters the option of ranking their choices in an alternative voting (AV) system. Then the votes polled in favour of the candidate who obtained least support can be transferred to other candidates based on the second choices, and so on until a winner emerges with over 50% support. In the absence of such a system, true voter preferences cannot be gauged, and the representative legitimacy of the elected member can never be truly ascertained. (WHILE THE ARGUMENT TO INCLUDE MOST, IF NOT ALL, IS UNDERSTOOD, ITS PREMISE IS QUESTIONABLE INSOFAR AS DEMOCRACY IS DEFINED AS MAJORITY RULE, WHICH IS THE UNIVERSALLY ACCEPTED DEFINITION. I WOULD MUCH RATHER DELETE THIS PARAGRAPH ALTOGETHER AS IT RAISES MORE QUESTIONS THAN CAN BE, OR ARE, ANSWERED.)

In reality, this quest for determining whether those elected truly represent the constituencies from which they are elected masks a more crucial question regarding the overall composition of the legislatures. In FPTP system, as we have seen above (information in section **B** which is missing), many social groups remain underrepresented, and the winning party most often obtains only a minority support. (DOES THIS MEAN THAT ONLY ONE GROUP, THOUGH A MINORITY IS ELECTING THE REPRESENTATIVE? THAT A CANDIDATE NEEDS ONLY A SMALL MINORITY TO GET ELECTED DOES NOT NECESSARILY PROVE THAT THAT MINORITY IS A COHESIVE GROUP, DOES IT? A large body of opinion does not get represented in the legislature, leading to alienation. Entrenched parties, whose functioning is far from democratic and accountable, have no incentive to change their nature and behaviour in the absence of electoral challenge from new formations with realistic chance of success. Scattered groups, however large, are totally left out of the legislatures. (SO, IS THIS AN ARGUMENT FOR THE SCATTERED GROUPS TO COME TOGETHER TO CONSTITUTE A MINORITY– BUT LARGE ENOUGH MAJORITY– WHICH IS GOOD ENOUGH TO ELECT OWN REPRESENTATIVE?) Concentrated presence in a few pockets, rather than broad public support across society, becomes the determining factor in winning elections in a territorial constituency-based FPTP system. (THIS ARGUMENT IS DISTRACTING. I AM NOT CONVINCED THAT FPTP LEADS TO DISENFRANCHISEMENT OF GROUPS SIMPLY BECAUSE A CANDIDATE NEEDS ONLY A MAJORITY THAT COULD BE A MINORITY OF TOTAL VOTES.) THAT FPTP WILL BE DIVISIVE DOES NOT OFFSET THE MORE RIGOROUS DIVISIONS THAT MIGHT BE CAUSED BY PR WHICH IS A POINT THAT IS ADDRESSED LATER IN THE PAPER.)

One direct consequence of non-representation of the various social groups, and the rise of false elites (WHILE I CAN SYMPATHIZE WITH THIS EXPRESSION, THIS IS THE FIRST TIME I AM HEARING IT. AT LEAST IT NEEDS A DEFINITION) to accommodate these groups is the rising demand for reservations for these various groups. As the economically and socially dominant sections have perpetuated their hold on political and administrative levers, representation of scattered subgroups became an emotive issue. Exaggerated claims of numbers

and extreme postures became the norm. Even where the groups were accommodated by parties in allocation of seats, almost always the benefits accrued to individuals and not to the different social groups or the society at large. Equity and fairness suffered, and genuine long-term policies for the upliftment of the poorer sections took a back seat. Much of political management became patronage based. As sharing of spoils is the basis of sharing political power, it is virtually impossible to build honest social coalitions. Social cleavages thus were perpetuated as political divisions of a narrow kind. Exclusively constituency-based representation, instead of being a balm to heal past wounds and an adhesive to cement bonds, has actually led to seemingly irreconcilable differences and potentially explosive situations. Not surprisingly, in THIS ZERO-SUM-GAME OF POLITICS OF PATRONAGE (?), every segment of population feels victimized and discriminated against. Education, health care, economic opportunities and decentralization which are the true measure of empowerment and social, economic and political upliftment have been grievously neglected. I THINK THAT THIS HAD ALREADY BEEN SHOWN. WHY REPEAT?

There is another serious defect in the constituency-based FPTP system. As *Michael Dummett* explains, many voters have felt within themselves a conflict between the two purposes of the electoral process – electing a person, who will best represent the constituency, and determining the overall composition of the legislature by political parties. "An elector may favour a certain political party, or even be a member of it, and yet disapprove of the candidate who is standing for that party in the single-member constituency in which he has a vote. The elector may dislike or distrust the candidate personally; or he may support some particular cause or policy, not that of the party as a whole, which that candidate opposes……. He is torn how to cast his vote: he wants his party to gain most seats in Parliament, and does not want to be disloyal to it; but his loyalty may also go to the particular cause in question, or he may simply think that it would be disastrous if he were elected to Parliament. It is obviously a serious defect in an electoral system that it can place voters in such a quandary." (*Principles of Electoral Reform*, YEAR, PAGE NUMBERS)
TRUE, BUT INEVITABLE IN ANY SYSTEM.
A FURTHER PROBLEM IS HOW TO MAKE YOUR REPRESENTATIVE, REPRESENT YOU, ONCE ELECTION IS OVER. EDMUND BURKE HAD GOTTEN INTO THIS PROBLEM AND WANTED TO BE A "REPRESENTATIVE" AND NOT A "DELEGATE." AND OF COURSE HE LOST. SIMILARLY, RECALLS INITIATIVES, REFERENDA ALSO PROVED TO BE DISASTROUS, AS MAY BE SEEN FROM THE EXPERIENCE OF THE UNITED STATES, MOST RECENTLY IN CALIFORNIA.

2. Political Parties and Representation: In any representative democracy, political parties are the arbiters of politics. They try to aggregate interests of various groups, and bring them together for collective political action. They bring individuals into the fold of politics. Parties spread ideas and organize people around them. They exercise enormous influence on public discourse. The well-meaning attempts of idealists to promote party-less democracy have proved to be naive and unworkable in many countries. The heroic efforts of Lok Nayak, Jayaprakash Narayan, towards a party-less democracy in India is a case in point.

The importance of political parties may also be seen from the decline in the number of elected independents. While the average number of independent members elected to Lok Sabha between 1952 and 1967 was 34, that number is down to 8 since. Even more remarkably, 60% of all independent candidates in 1957, and 99.7% in 1996, lost their deposits. This means that only

0.3% of the independent candidates obtained more than 1/6 of the votes polled in their respective constituencies.

Table – 2.2
Independents Elected to Lok Sabha

Year	No. of seats Filled	No. of Independents Elected	Percentage of Independents Who Lost Deposit
1952	489	38	66.6
1957	494	42	60.1
1962	494	20	79.0
1967	520	35	86.2
1971	518	14	94.0
1977	542	9	97.2.
1980	529	9	98.9
1984	542	5	99.7
1989	529	12	98.9
1991	534	1	99.5
1996	542	9	99.7
1998	542	6	99.1

Source: Lok Satta Data Unit, YEAR

Even in the States, where Assembly Constituencies are much smaller and local factors play a much more prominent role in elections, the role of independents has been limited, and is declining over the years. For example, data for Andhra Pradesh Legislative Assembly show that in 1967 as many as 68 independents were elected. However, since 1978, the same number declined ranging from 17 in 1983 to 9 in 1985.

Three other relevant points need to be made pertaining to independent candidates. One, the few who manage to gather a significant share of votes to get elected occasionally are most often party rebels who were denied tickets, but are supported by a sizeable faction or caste group in the constituency. Two, they are rarely re-elected as independents. And three, most independents eventually end up being part of a major party. All this shows the importance of political parties in electoral politics.

While political parties are inevitable and important in any liberal democracy, there are other concerns that need to be noted. The individual candidate's ability is rarely an issue in the Indian electoral politics. At the same time party workers and local oligarchies may not regard election as an opportunity to affirm and propagate their policies or ideologies. Instead the effort largely is to retain control of state power and resources, to be used in a partisan way. Often times, a vote for a particular party could in fact be a vote against the other parties. In the midst of these aberrations, governance tends to be irrelevant, and often an inconvenient ritual.

3. Failure of Interest Aggregation: Given the above, it is important to develop an electoral system which indeed is representative. Needless to say, the role of political parties in this context is crucial. Thus, the function of political parties needs to be examined in the Indian FPTP electoral system.

In India, while interaction within a social group, occupation, profession or trade union is easily facilitated, collective political participation across groups is another story. Caste and other

class criteria do not promote harmony among groups. Conflict seems to be inevitable, and consequently, political parties are limited in their important function of interest aggregation. In their quest to somehow cobble together a social coalition to win elections, parties tended to resort to short-term populism or attempted to be all things to all people. In the process, even when parties obtained convincing majorities, their capacity to reconcile the interests of various groups in society has been severely limited. In effect, most parties are no longer coherent political formations with an individual ideology, vision and purpose commonly shared by the members. Parties in fact tend to be loose coalitions of warring factions, with temporary truce imposed from time to time in order to win elections.

The failure of political parties to forge inter-group interaction in its turn led to two serious consequences. Parties tended to depend on false elites (?) in caste, religious or other social groups. In order to enhance their bargaining position, these groups presented a deceptively solid picture cutting across parties. The democratic political process and universal adult franchise have thus notoriously failed in genuine political socialization and individuation. The citizen is seen as merely a part of the traditional group devoid of any particularly serious political persuasion. Inevitably, party and political competition based on policy preferences and ideological differences is stifled.

The second is the *Ghettoization* of caste and religious groups whereby emotions on ethnic and sectarian lines are aroused. Most caste leaders take up extremely narrow and popular causes and successfully mobilize their communities as a solid political group around a single issue. As each group pursues its own interest, conflict among groups became prominent. Without reconciling these differences, due to the need to form a winning coalition, political parties in their turn led to the ghettoization of politics by further accentuating the traditional social rigidities. No serious attempt to articulate an alternative inclusive approach is ever made. On the contrary, many reformist elements in various social groups are marginalized. (IT MAY BE WORTHWHILE TO NOTE THAT THE ENTIRE AMERICAN POLITICAL PROCESS IS BASED ON THIS CONFLICT BETWEEN GROUPS WHICH IS THE VERY DEFINITION OF PLURALIST POLITICS! AND IT HAS BEEN QUITE SUCCESSFUL. THE CAPACITY TO SUCCESSFULLY BARGAIN AND BUILD COALITIONS IS THE HALLMARK HERE.)

4. Possible Reforms: Considering all the above factors, the inevitable question is how to reform. There are several possible ways of going about it: Majority System; Compulsory Voting; Negative Vote; Requirement of Minimum Percentage of Polling; Multi-member Constituencies; and Proportional Representation. Each is discussed below.

(i) Majority System:
Former President R.Venkataraman made this proposal which was also endorsed by the National Commission to Review the Working of the Constitution (NCRWC, *Review of Election Law, Processes and Reform Options, YEAR)*. Under this scheme a majority vote of more than 50%, as opposed to a plurality, is required of a winning candidate. Where there is no wining candidate, there are two alternatives. One alternative is to have a **succession of indecisive ballots** until all but two candidates are eliminated, and one of them emerges as a winner. The other is **runoff** between the two top vote-getters. (This is the system used in 15 of the 25 countries with direct presidential elections: Austria, Brazil, Bulgaria, Chile, Colombia, Ecuador, France, Finland, Madagascar, Mali, Mozambique, Poland, Portugal, Russia and Ukraine (Lawrence Le Dec, Richard G. Niemi and Pippa Norris, eds., *YEAR Comparing Democracies*). Mali and Ukraine also

use the same method for legislative elections. A third variant is the **majority-plurality system,** adopted in legislative elections in France. In this system, there is no drastic reduction of candidates on the second ballot, although a threshold may be imposed for candidates to stand at the second ballot, and the winner is the candidate who gets a plurality of the vote.

As all these formulas require the holding of two or more ballots which is not only time-consuming and confusing but also costly. The **'alternative vote"** is preferred where instead of casting a vote for a single candidate, voters rank candidates in order of preference. If no candidate obtains a majority of votes based on the first preference, the candidate with the lowest number of votes is eliminated, and the second-preference votes expressed in his/her ballots are counted and 'transferred' to the other candidates. This process continues until the eliminations and transfers produce a majority for one of the remaining candidates. This method is used in Ireland for presidential elections and in Australia for legislative elections.

While these methods ensure that the elected representative enjoys a majority support, each is fraught with some grave disadvantages in the Indian context. Although the “alternative vote” method involving a single transferable vote (STV) and a single ballot is the most sensible option to prevent further ballots, it is impracticable under Indian conditions as the bulk of voters would find it complex, cumbersome and incomprehensible. Neither does a run off involving only the top two candidates guarantee the fairest representation, because the third candidate who is eliminated may as well be the most acceptable candidate, though a second preference for many voters. A second ballot with “majority-plurality” system as in France is no great improvement, because the winner is again decided on a plurality of vote on the second ballot. A second ballot also adds to the cost and complexity of the election. The NCRWC suggested the possibility of a second ballot the day immediately following the election to save the costs of mobilizing human and material resources for a second time. However, a run-off poll the second day has its own limitations as the counting and computation of results even with electronic voting machines (EVMs) cannot be guaranteed on the day of polling. Often counting has to be centralized. Even if counting is over on the same day, the EVMs have to be reprogrammed for the run-off ballot, which cannot be done instantly.

There are other major difficulties. The second run-off poll will further marginalize significant, but not dominant social subgroups. If in a constituency a caste or sub-caste is numerically dominant, a majority system will perpetuate its political dominance without a voice for the minority. Alternatively, if two or more social groups form an alliance with an unbeatable majority, the rest of the population is forever denied representation. Such permanent majorities with no floating vote will further alienate the large minorities and undermine the legitimacy of representation. Contrarily, a majority-run off system may sometimes paradoxically enhance the influence of small groups at the cost of more significant groups. If, for instance, one social group has over 40% of the population in a constituency, but is short of majority, then a much smaller group with under 10% of the population will acquire far greater clout than its numbers warrant. The other numerically larger groups with larger population will be neglected.

Another significant problem is that it fails to address the more fundamental question of the composition of a legislature. In a society with enormous diversity within and across regions, the parties' legislative presence will never be directly proportional to their electoral support. If in certain regions a party obtains large majorities, but fewer seats, and in other regions another party obtains small majorities but more seats, then a party or group of parties with minority support will still be in power in a constituency-based election. In other words, the fundamental objection to the FPTP system remains unaddressed, and the majority may remain inadequately represented.

(ii) Compulsory Voting:
By global standards, India is well ahead with its near 60 percent voting in general elections. Yet, a government elected by a majority of votes cast in fact may come to occupy office with a minority of total votes. As Syed Shahabuddin points out, ruling parties obtain power with a minority of votes polled often ranging from 18.8 to 24.2% (see Table 2.1. above).

To overcome this anomaly, one suggestion endorsed by the NCRWC is to make voting compulsory, or give added incentives like tax breaks to encourage voting. There is no doubt that greater participation in voting enhances the quality (ONLY THEORETICALLY) of democracy and legitimacy of representation. But these efforts to either penalise those who do not vote or provide incentives for voting are both impractical. THEY ARE COUNTERPRODUCTIVE AS WELL IN THAT DEMOCRACY CANNOT BE EXPECTED TO THRIVE EITHER UNDER THREATS OR BRIBES TO THE VOTER. The enhancement of voter participation should be achieved through civic education and political socialization, which are the main functions of our education system and political parties.

They are particularly counterproductive in the face of glaring deficiencies in voter registration and electoral fraud. Lok Satta's studies reveal that the electoral lists are inaccurate up to 25%, and people have no real access to registration process (Table 3.1). In select polling booths surveyed in a major city (Table 3.2) over 21% of possible bogus voting was detected.

BUT THESE PROBLEMS HAVE NO PARTICULAR BEARING ON COMPULSORY VOTING OR ANY OTHER TYPE OF VOTING! THIS IS A GENERIC/SYSTEMIC PROBLEM. THE ARGUMENT HERE PERTAINS TO REFORMING THE MAINTENANCE OF VOTER LISTS– WHICH IS A SEPARATE ISSUE, NO MATTER WHAT.
HENCE THE DELETION OF THE REST AT THE BOTTOM AS IT LEADS TO A NEW ARGUMENT.

3. Negative Vote
The increasing criminalization of politics and arbitrary nomination of candidates (WHAT DOES THIS MEAN? PERHAPS UNPRINCIPLED!) for elective office by political parties have often given people a less-than-happy choice in elections. One suggestion which has been offered is a negative vote, whereby there will be a column on the ballot paper "None of the above," and voters who do not wish to choose any of the candidates on the ballot can express their dissent. Vice President Krishan Kant and others have argued that such a negative or rejection vote must be counted as valid, and the winning candidate should obtain a majority of all valid votes polled with all the negative votes deducted. This argument contends that in such a situation the parties will be compelled to nominate worthy candidates who are acceptable to all segments of society. However, the majority requirement has all the pitfalls discussed earlier. But there is a strong case for giving the voters a choice to reject all candidates as a sound expression of dissent. A legal provision could be made to the effect that if the rejection votes exceed the highest number of votes polled by any candidate, then a reelection with a fresh slate of candidates shall be held. However, even this limited provision for reelection can have serious consequences in pockets under the grip of secessionist or extremist movements. Therefore the safest course seems to be to have a provision for a negative or rejection vote as an expression of dissent, without affecting the actual outcome of the election. (THEN WHAT IS THE POINT, AS THERE IS NO ADVERSE CONSEQUENCE TO FACE? IN FACT, A NEGATIVE VOTE IS ALREADY AVAILABLE

TO VOTERS– THEY CAN SIT OUT THE ELECTION AS MANY OFTEN DO.

4. Require a Minimum Percentage of Polling

While the actual polling percentage in India has been near 60% in most elections as already seen, there have been occasional instances in which only a small minority of votes were in fact cast in particular constituencies. In some cases, enormous leverage is given to extremist groups which often call for the boycott of elections under threat of violence thus enabling a small minority of votes electing a candidate. Such an election, it is suggested, lacks legitimacy and to make it valid there should be a minimum polling percentage. Thus, very the democratic process is held hostage. However, as the events in the Punjab and North-east amply testify, restoration of democratic electoral process even with participation of a minority of voters is the best guarantee for peaceful resolution of the crisis.

5. Multi-member Constituencies

Single-member constituencies under the FPTP system are problematic, as shown above.

(But to recapitulate: Firstly, the voter is faced with a dilemma in choosing between an undesirable candidate of a desirable party and a desirable candidate of an undesirable party. Secondly, candidates or parties with broad-based, but significant support are eliminated in preference to those with concentrated support base. Thirdly, even significant minorities will be under-represented, as they have no realistic chance of winning. Fourthly, the supporters of a party have no real choice except to vote for a nominee of their party, and therefore party leaders could be less sensitive to public opinion while nominating candidates for elective office. Fifthly, reservation of seats for SCs, STs or women in single-member constituencies is problematic in that it denies representation to any one other than the one from that reserved group. In case of rotation of reservation, there are always the attendant difficulties of proxy candidates, poor leadership development, and uncertainties of rotation. And finally rigging, booth capturing and vote-buying are rampant to get those extra votes required to ensure election of a candidate in the single-member constituency in FPTP system. THIS IS ALL REPETITIVE, AND CAN BE ELIMINATED ALTOGETHER AND CONTINUE THE PARAGRAPH AFTER, "...as shown above.)

As an alternative, election of legislators from large constituencies returning several members is suggested. Under this system of **multi-member constituencies,** voters will return two to six members. As *Michael Dummett* points out, under virtually any reasonable electoral system, the election of legislators from large constituencies returning from two to six members will result in a more representative selection of members than their election from a small constituency returning only one member each. "Suppose that, at a given time, 42 percent of the electorate in five adjacent single-member British constituencies taken together favour the Conservatives, while 39 percent favour the Labour, and the remaining 19 percent the Liberal Democrats. Then, if the support for Labour is concentrated in one of the five constituencies, they would, under plurality system, together return four Conservative MPs and one Labour MP. If the Liberal Democrat voters predominantly favoured the Labour party over the Conservatives, STV might result in the election of five Labour MPs. Plainly, such results are inequitable. If the five constituencies were amalgamated into one returning five MPs, probably two Conservative, one Liberal Democrat and two Labour candidates would be elected." (CITE, year and page number)

There are three ways of adopting the multi-member constituency system. One is each voter can vote for one candidate of choice. If, in a multi-member constituency five members are to be returned, then the first five candidates ranked in the order of votes obtained will be elected. Each party can nominate up to five candidates. The second is each voter votes for five candidates of choice. The votes are not transferable. The five candidates who obtain the highest number of votes will be returned. The third is each voter has a single transferable vote (STV) with which the candidates are ranked in the order of preference. The candidates obtaining the lowest number of votes are eliminated in the first round, and their votes are transferred to other candidates based on second preference, and so on. Obviously this is very complex. Hence the preference for a single non-transferable vote.

This system of multi-member constituencies has several obvious advantages. It forces parties to nominate acceptable candidates as the less acceptable candidates may simply not get enough votes to win, irrespective of the party's support base. This is particularly true if voters can vote for more than one candidate. Then voters can resolve their dilemma between a party and a candidate, and give votes for a party of their choice where candidates are acceptable, and punish unsatisfactory candidates by not voting for them. Reputed candidates with broad-based support, but with no concentrated political base, will be returned more easily. Scattered minority social groups will have a better chance of getting fairer representation. Parties will be forced to be less arbitrary, and more democratic and sensitive to public opinion while choosing candidates. Finally reservations of constituencies will no longer be necessary as the candidates obtaining the highest votes from the reserved categories can be returned to fulfil the reservation requirement. Consequently, rotation of reservation also will not be necessary. In fact, in the first two general elections in India in 1952 and 1957, two-member constituencies were used to elect members from Scheduled Castes (SCs) and Scheduled Tribes (STs).

There, however, are two arguments against multi-member constituencies. Firstly, the constituencies tend to be larger, and thus will make election a more difficult and expensive. Secondly, there may be no clear bond between a constituency and the member representing it. (It can however be argued that in multi-member constituencies there are several representatives instead of one, and in fact it is an advantage to the electors.) Thirdly, electoral irregularities and mal-practices such as rigging, booth capturing and vote buying are not reduced. In fact they may increase. Two strong candidates with money and muscle power competing against each other in a single-member constituency may tend to neutralise each other though one will be elected. But in a multi-member constituency they both may successfully employ muscle and money power, and both may emerge as winners at the cost of more decent candidates!

6. Proportional Representation

The final reform method is Proportional Representation (PR). Perhaps the most cogent argument in its favour is made by Michael Dummett thus: "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.

"The rationale of PR is, plainly, that each parliamentary seat should represent approximately the same proportion of the national electorate. This, the advocates of PR maintain, is the only fair principle to follow in what proclaims itself to be a representative democracy. It is unjust when six times as many votes are needed to elect each MP of one party as are needed for each MP of another. In such a case, supporters of the first party are indisputably underrepresented, and those of the second correspondingly over-represented." (CITE)

Andre Blais and Louis Massicotte (in Lawrence Le Duc, Richard G Niemi and Pippa Norris, eds. *Comparing Democracies,*1997) list 13 countries which followed plurality systems or FPTP systems of the kind that is practiced in India. Of these, 10 countries including India, Pakistan (in 1997), Bangladesh, the UK, the US, Canada, Philippines, Malawi, Nepal and Zambia follow plurality system in single-member constituencies. Four countries follow majority systems involving either run-off elections or alternative vote (STV). Of these, France follows the majority-plurality system for legislative elections, involving a run-off election in case no candidate obtains a majority on first ballot, and on the second ballot the winner is decided by plurality. Mali and Ukraine follow majority run-off system, and Australia follows the STV system or alternative vote, where by the electors give preferences to all the candidates and votes of eliminated candidates are transferred to other candidates. As opposed to this, as many as 36 countries follow some form of PR system of which 25 countries follow pure PR system. Twenty-four of them follow List system and one country, Ireland, follows the STV system. Ten countries follow mixed systems with a combination of PR and plurality system. One country, Hungary follows a combination of PR with majority system.

a) Law Commission's Proposal

The Indian Law Commission in its 170th Report recommended that the strength of Lok Sabha should be increased by 25% of the present membership, and these additional seats should be filled by PR from party lists. There shall be only one vote for territorial constituencies in the FPTP system, and the parties will get these additional seats in proportion to the votes obtained by their candidates in territorial constituencies excluding those votes polled by candidates who lost their deposits. The whole nation will be the unit for Lok Sabha, and a State will be the unit for Legislative Assembly. Only recognized political parties are eligible for getting the additional seats filled through PR. The threshold level for a recognized party to be eligible to get representation in these seats will be 5% of the national vote in case of Lok Sabha, and 5% of the State vote in case of Legislative Assembly.

These proposals, however, have certain serious flaws of their own which weaken the very democratic process which is sought to be strengthened .

Firstly, if 5% of the national vote is the threshold level for seats to be filled by PR (that too after excluding the votes polled in territorial constituencies where the party candidates forfeited security deposits), then only two parties will be eligible under the existing conditions in India in a Lok Sabha election.

Secondly, Law Commission proposes that only recognized political parties should be eligible for this pool of additional seats. This guarantees that only entrenched parties will survive. Moreover, as recognition of a party itself is based on past performance at the polls, PR freezes the status quo.

Thirdly, the twenty-five percent increase results in additional 138 Lok Sabha seats to be distributed through PR. The Commission recommended that the number of seats in each State shall be frozen in order to provide incentive for population control. This distorts the intention of

PR in that so far as the additional seats are distributed in proportion to the votes received across the country, and not State-wise, it would benefit the parties which polled more votes in the more populous States which clearly runs counter to the purpose of freezing the strength of Lok Sabha State-wise.

Fourthly, THIS POINT IS NOT CLEAR. the very objective of PR system is to correct the distortions in representations in FPTP system. In countries like Germany where such a dual system of territorial constituencies and PR is in vogue, a party's overall eligibility of representation is determined on the basis of the proportion votes obtained by it, subject to a threshold of 5% vote or 3 territorial constituencies won. Then the party's territorial seats won are deducted from this eligibility, and the balance seats are allocated through PR from the party list.

Fifthly, with the single-member constituencies in FPTP system anyone's vote then determines two things simultaneously– the election of the candidate as well as the share of seats allocated to the candidate's party in the PR pool. Obviously such a single vote will not serve the purpose, and a dual vote – one for the candidate to elect a member for the territorial constituency, and another for the party to determine the proportional vote – should be introduced.

Finally, PR system essentially depends on the party list and the order in which candidates are listed. This means two conditions should be met – the party list and the order of appearance of names shall be chosen democratically by secret ballot by the elected delegates at the local level; and the territorial unit or "district" for application of PR should be as small as possible, say a cluster of 10 Lok Sabha constituencies in case of Lok Sabha. (and a cluster of 10 Assembly constituencies in case of Legislative Assembly. As the candidates at the top will be elected first, parties acquire even greater power in determining the outcome of elections. In the absence of the above two, the oligarchic and tyrannical tendencies of party leadership will only e exacerbated. The Law Commission had not taken into account of this.

b. NCRWC Views

The NCRWC, in its consultation paper ("Review of Election Law, Process and Reform Options") has briefly discussed the Law Commission's proposal for partial PR system, and dismissed it on two grounds – that PR will lead to political instability, and it tends to divide society. Both these objections deserve critical examination

In fact the issue of stability is exaggerated. During the last 53 years, India proved to be quite stable. The few periods of political instability at the national level have actually helped bring a more stable coalition culture in our polity. There is evidence of parties coalescing towards two major political formations, and each formation attempting to broaden its appeal in order to maximise its electoral prospects. Most importantly, coalition governments have not proved any less effective in decision making than single-party governments with overwhelming majority. Some of the most radical policy initiatives (SUCH AS? PROVIDE A FEW OF EXAMPLES) were made over the past decade during which no single party obtained a majority at the national level. German experience with PR system, with a reasonable threshold level, actually shows that PR system will stabilize the party system, and slows down the creation of new parties. (WHY IS THE LATTER- NEW PARTIES- A PROBLEM IF WE ARE DEFENDING DEMOCRACY, OTHER THAN THE ARGUMENT THAT THEY MIGHT LEAD TO COALITIONS AND INSTABILITY, NEITHER OF WIHCH IS OBJECTIONABLE?)

As to the second objection of promoting divisive tendencies, the realities of Indian society cannot be ignored. As already seen, vast groups are unrepresented or under-represented, leading to alienation, resentment and *ghettoization*. But once there is a reasonable threshold for

recognition of a party, there cannot be narrow appeals to caste or religious loyalties. In fact each party will attempt to maximise its appeal in order to enhance its voting percentage and through it, the legislative presence. Block voting of large social groups will be replaced by healthy competition for their vote by different parties. Parties will actually emerge offering enough seats in their lists for various groups, and advocate policies for their upliftment. As parties honestly compete for these votes, there will be greater tendency to harmonize interests of various groups. Finally, there will be more open and honest negotiations between various social groups, and our society will be able to accommodate the competing needs of all groups and help integrate disgruntled sections with the mainstream.
(I AM NOT PERSONALLY SURE OF THESE SANGUINE PROSPECTS. I AM ALSO NOT SURE HOW THE EXPERIENCE OF OTHER COUNTRIES SUCH AS GERMANY WITH AN ALTOGETHER DIFFERENT POLITICAL CULTURE CAN APPLY IN CASE OF INDIA. BUT THAT IS A MATTER OF DIFFERENCE OF OPINION.)

c. John Stuart Mill on Proportional Representation
The issue of PR vis-à-vis FPTP system has been examined critically by the great liberal democratic thinker John Stuart Mill, and deserves to be quoted at length:

> "*Two very different ideas are usually confounded under the name democracy. The pure idea of democracy, according to its definition, is the government of the whole people by the whole people, equally represented. Democracy as commonly conceived and hitherto practiced, is the government of the whole people by a mere majority of the people, exclusively represented. The former is synonymous with the equality of all citizens; the latter, strangely confounded with it, is a government of privilege, in favor of the numerical majority, who alone possess practically any voice in the State. This is the inevitable consequence of the manner in which the votes are now taken, the complete disenfranchisement of minorities....*
>
> *"That the minority must yield to the majority, the smaller number to the greater, is a familiar idea; and accordingly men think there is no necessity for using their minds any further, and it does not occur to them that there is any medium between allowing the smaller number to be equally powerful with the greater, and blotting out the smaller number altogether. In a representative body actually deliberating, the minority must of course be overruled; and in an equal democracy (since the opinions of the constituents when they insist on them, determine those of the representative body) the majority of the people, through their representatives, will outvote and prevail over the minority and their representatives. But does it follow the minority should have no representatives at all? Because the majority ought to prevail over the minority, must the majority have all the votes, the minority none? Is it necessary that the minority should not even be heard? Nothing but habit and old association can reconcile any reasonable being to the needless injustice. In a really equal democracy, every or any section would be represented, not disproportionately but proportionately. As majority of the electors would always have a majority of the representatives; but a minority of the electors would always have a minority of the representatives. Man for man, they would be as fully represented as the majority. Unless they are, there is not equal government, but a government of inequality and*

privilege; one part of the people rule over the rest; there is a party whose fair and equal share of influence in the representation is withheld from them contrary to all just government, but above all, contrary to the principle of democracy, which professes equality as its very root and foundation.

"The injustice and violation of principle are not less flagrant because those who suffer by them are a minority; for there is not equal suffrage where every single individual does not count for as much as any other single individual in the community. But it is not only a minority who suffer. Democracy, thus constituted, does not even attain its ostensible object, that of giving the powers of government in all cases to the numerical majority. It does something every different: it gives them to a majority of the majority; who may be, and often are, but a minority of the whole. . . . If democracy means the certain ascendancy of the majority, there are no means of insuring that, but by allowing every individual figure to tell equally in the summing up. Any minority left out, either purposely or by the play of the machinery, gives the power not to the majority, but to a minority in some other part of the scale.

"And it is not solely through the votes of minorities that this system of election would raise the intellectual standard of the House of Commons. Majorities would be compelled to look out for members of a much higher calibre. When the individuals composing the majority would no longer be reduced to Hobson's choice, of either voting for the person brought forward by their local leaders, or not voting at all; when the nominees of the leaders would have to encounter the competition not solely of the candidate of the minority, but of all the men of established reputation in the country who were willing to serve; it would be impossible any longer to foist upon the electors the first person who presents himself with the catchwords of the party in his mouth, and three or four thousand pounds in his pocket. The majority would insist on having a candidate worthy of their choice, or they would carry their votes somewhere else.

"[With proportional representation] the champions of unpopular doctrines would not put forth their arguments merely in books and periodicals, read only by their own side; the opposing ranks would meet face to face to hand, and there would be a fair comparison of their intellectual strength, in the presence of the country. It would then by found out whether the opinion which prevailed by counting votes, would also prevail if the votes were weighted as well as counted. The multitude have often a true instinct for distinguishing an able man, when he has the means of displaying his ability in a fair filed before them. If such a man fails to obtain at least some portion of his just weight, it is through institutions or usages which keep him out of sight.

"[Some critics of proportional representation] are unable to reconcile themselves to the loss of what they term the local character of the representation. A nation does not seem to them to consist of persons, but of artificial units, the creation of geography and statistics. Parliament must represent towns and counties, not human beings. But no one seeks to annihilate towns and counties. Towns and counties, it may be presumed, are represented, when the human beings who inhabit them are represented. Local feelings cannot exist without somebody who feels them; nor local

interests without somebody interested in them. If the human beings whose feelings and interests these are, have their proper share of representation, these feelings and interests are represented, in common with all other feelings and interests of those persons. But I cannot see why the feelings and interests which arrange mankind according to localities, should be the only ones thought worthy of being represented; or why people who have other feelings and interests, which they value more than they do their geographical ones, should be restricted to these as the sole principle of their political classification." (*Representative Government,* 1861).

ON AN ASIDE, ALTHOUGH IT IS ABSURD TO JUDGE A NINETEENTH CENTURY WRITER BY THE TWENTY-FIRST CENTURY STANDARDS, I RECENTLY LEARNED THAT MILL IN FACT WAS A SHAREHOLDER IN SLAVE OWNING VENTURES OF THE AMERICAN COLONIAL ESTABLISHMENT! THE GREAT LIBERAL THAT HE WAS... BUT THEN, MANY OF THE FOUNDING FATHERS HERE OWNED SLAVES AND EVEN SIRED SOME ILLEGITIMATE CHILDREN.

d. Empirical Support in Favour of PR

Robert Richie and *Steven Hill* in their essay "*The case for Proportional Representation*" show empirical evidence support of PR thus:

"Mill's majoritarian argument for PR gains empirical support from a recent statistical comparison of 12 democracies in Europe. (See John Huber and G Bingham Powell, "Congruence Between Citizens and Policymakers in Two Visions of Liberal Democracy", World Politics (April 1994 - 291-326) John Huber and G. Bingham Powell contrast a "Proportionate Influence Vision" of democracy, in which "elections are designed to produce legislatures that reflect the preferences of all citizens," with the "Majority Control Vision," in which "democratic elections are designed to create strong, single-party majority governments that are essentially unconstrained by other parties in the policy-making process." They conclude that "governments in the Proportionate Influence systems are on average significantly closer to their median voter than are governments in the Majority Control and Mixed systems. . . . If voters are presented with a wide range of choices and electoral outcomes are proportional, governments tend to be closer to the median.

"In short, governance is more likely to take place at the center of the political spectrum with PR, since the electorate is fully represented and voters are able to express a wider range of preferences. At the same time, fair representation of the margins provides a mechanism to transform policy by shifting the political center. Opposition voices will be heard, and their ideas will be far more likely to be debated. If those ideas win growing support, the major parties will adjust accordingly in order to hold onto their supporters."

I AM NOT SURE OR CLEAR ABOUT THE ABOVE QUOTES. CHECK THE VERACITY AND ATTRIBUTE PROPERLY.

Richie and Hill have also succinctly argued that there are other reasons to favour PR thus:

– PR increases voter turnout, as "winning fair representation is dependent on voter turnout. Because nearly every vote will help a party win more seats, voters have more incentive to participate, and parties have incentives to mobilize their supporters. Moreover, parties and other electoral organizations have strong incentives to keep their supporters informed, and informed citizens are more likely to vote". For these reasons, voter turnout is generally estimated to be 10-12 percent higher in nations with PR than in similar nations using winner-take-all elections.
WHOSE QUOTE IS THIS, RICHIE AND HALL OR LIKPHART?
(Arend Lijphart, "Unequal Participation: Democracy's unresolved Dilemma", in *American Political Science Review*, March 1997).
– PR also provides better representation for racial minorities. "By building from a fundamental principle of political fairness, PR could secure voting rights to racial minorities, without targeting minority voters. In addition to winning a fair share of seats, minorities would have greater opportunities to negotiate for influence, because they could "swing" among parties."
– PR also increases the number of women in office. "Women win seats in significantly higher percentages in multi-seat districts (PR system) than in one-seat districts. The major reasons for this difference are that women are more likely to run and voters are more likely to seek gender balance when there is more than one seat to fill. Because PR expands options, PR systems give women additional leverage to force major parties to support more women candidates. In 1994, a threat by women supporters of major parties in Sweden to form a new women's party led to women winning 41 percent of seats because major parties recruited more women candidates. New Zealand, Italy, and Germany are among a growing number of democracies that use systems with a mix of winner-take-all districts and PR seats. It is instructive that women in all three countries are three times more likely to win seats elected by PR than to win in one-seat districts.
– PR also ends gerrymandering, or drawing constituency boundaries for political purposes. "PR makes gerrymandering of any sort far more difficult. The smaller the percentage of votes that can be 'wasted' on losing candidates – 49 percent in a winner-take-all race (more in a multi-party race), but less than 20 percent in a five-seat PR election and less than 10 percent in a 10-seat PR election, the harder it is for legislators to manipulate electoral outcomes".
I AM CONFUSED WITH THE CITATION. ARE ALL THESE QUOTES FROM LIPJHART? IF SO, THE CITATION SHOULD BE HERE.

e. President Venkataraman's Views

The PR system is not well understood by many. Consider, for example, the strong criticism of the Law Commission's recommendations from former President Venkataraman. In his address at the 119th anniversary celebrations of The Tribune, he observed thus. "The Lok Sabha is the custodian of the national finances and it is the House that has power to appoint or dismiss a government. The Lok Sabha members are answerable to the electorate. To induct into the Lower House a member who has no constituency to face and no direct obligation to the people is to dilute the primacy of the Lower House recognised in all democracies in the World." This argument is not quite valid. A member elected through PR, instead of being without constituency, has in fact a much bigger constituency.

I AM NOT SURE IF THE CONTINUED DISCUSSION OF THE PRESIDENT'S POSITION SERVES ANY GREATER PURPOSE. MOREOVER, IT DOES NOT SHED ANY MORE

LIGHT ON THE SUBJECT OF PR THAN HAS ALREADY BEEN DONE. WHILE MEETING THE PRESIDENT'S CRITICISM, ARGUMENTS THAT HAVE ALREADY BEEN MADE ARE BEING REPEATED.

f. Major Issues in PR Implementation

Indeed, there are some major concerns pertaining to PR. Five of them are discussed below (Andre Blais and Louis Massicotte: *Electoral Systems*).

The first is the **districting or territorial unit** for which PR will be applied. Given the complexity and vastness of India, the whole country as a single electoral district, as practiced in Israel and the Netherlands, is not feasible. Neither is it feasible to have a major State as a single electoral district. Thus, the country needs to be divided into several districts . It is best to apply PR for each multi-member constituency of 10 Lok Sabha seats or 10 Legislative Assembly seats. The numbers can vary marginally to suit local requirements. In case of smaller States, the whole State can be the electoral district for Lok Sabha election, and a suitable number of Assembly constituencies for State Assembly election.

The second is how to decide the **electoral formula for distribution of seats** within each district. While there are several methods such as *d'Hondt* formula, *"pure" Sainte-Lague* formula, *"modified" Saint-Lague* formula (all three are highest-averages methods), *Hare quota*, *Droop quota* (both are Largest-remainders methods) etc, the simplest and fairest method of distribution would be Hare quota adopted in Germany. In this method, the first step is to obtain a quota, which corresponds to the total number of valid votes polled, divided by the number of seats to be filled. Each party votes are then divided by the quota, and the resultant quotient gives the number of seats the party is allotted in the PR system. The un-allotted seats go to the parties with the largest remainders. The following table gives an illustration.

Table – 2.3

Distribution of seats by the LR - *Hara quota* method

Total Number of valid votes polled : 130,010
Number of seats to be allocated : 12
Votes required per seat (Quota) : 130,000 / 12 = 10834.

Party	**Votes**	**Quota**	**Quotient**	**Seats won**
Blues	57000	10834	5.260	5
Whites	26000	10834	2.400	3
Reds	25950	10834	2.395	2
Greens	12000	10834	1.110	1
Yellows	6010	10834	0.550	1
Pinks	3050	10834	0.280	0
Total	**130,010**		**10+(2) [b]**	**12**

a. Seats going to the parties with the largest remainders.
b. Total number of seats allocated through largest remainders.

Source: Andre Blais and Louis Massicotte: "Electoral Systems," in Lawrence Leduc *et al*, *Comparing Democracies Election and Voting in Global Perspective* (Sage, London 1996, Table 2.2,p.59).

The third is the **tiers for distribution of seats**. Most PR countries have a single tier of districts, but a few have adopted a second tier in order "to reduce distortions resulting from the allocation of seats in the first tier" (WHOSE QUOTE?). There are several ways of operating these tiers. The simplest way is to pool at the higher level the reminders from local districts. In the lower tier of electoral districts, party votes are divided by the quota. Seats are allocated only for whole numbers in quotient, and all the remainders are pooled at the higher level. For instance, in the example quoted in Table 2.3 above, 10 seats are filled at the lower level, and the two unallocated seats go to the higher tier and are pooled with all such seats in all the districts. These unallocated seats are then distributed among parties on the basis of the collected remainders from each district. This procedure is fairer in so far as it allows the parties to offset the wastage effect produced by the dispersion of their vote in the local districts. The appropriate second tier for distribution of unallocated seats would be the State in India for both Lok Sabha and State Assembly elections. It is also possible to have the whole country as the higher tier for Lok Sabha, and distribute the unallocated seats to a party in order of preference based on the highest remainders in all the electoral districts. But given the complexity and largeness of the country, it would be clearly desirable to make the State as the second tier for Lok Sabha also. The unallocated seats due to a party will go to those electoral districts with the highest remainder, and the next candidate in the party list in the electoral district will be elected. The table below gives an illustration.

Table 2.4

Distribution of Seats in the Second Tier
Total number of seats unallocated in all districts: 12

Party	Total of Remainders in all Districts	Seats Allocated
Blues	3.81	3 + 1[a] = 4
Whites	2.05	2 + 0 = 2
Reds	2.67	2 + 0 = 2
Greens	1.78	1 + 1[a] = 1
Yellows	0.96	0 + 1[a] = 1
Pinks	0.73	0 + 1[a] = 1
Total	**12**	**8 + 4[a] = 12**

a: Seats allocated on the basis of Largest Remainder

Table 2.5
Distribution of seats in a party among districts

Blues Party's allocation in the second tier 04.00
Number of districts 10.00

Total remainder for the second tier 03.81

District number	Remainder in the quotient	Allocation of additional seats
1	0.32	0
2	0.78[a]	1
3	0.12	0
4	0.56[a]	1
5	0.24	0
6	0.08	0
7	0.38	0
8	0.69[a]	1
9	0.16	0
10	0.48[a]	1
Total	**3.81**	**4**

[a:] *Seats allocated on the basis of the largest remainder*

The fourth is the decision on the **threshold requirement** for entitlement to seat allocation without which small parties proliferate leading to the fragmentation of the polity and the consequent instability. (BUT PREVIOUSLY, IT WAS ARGUED THT INSTABILITY IS NO PROBLEM AS HAS BEEN THE EXPERIENCE IN INDIA?! RECONCILE.) The Law Commission in its 170th report proposed 5% of national vote as the threshold for Lok Sabha and 5% in the State for Legislative Assembly. As already pointed out, such a threshold will effectively limit PR allocation of seats to only two parties in India at present. Also the purpose of freezing the Lok Sabha seat strength in each State will be defeated, as the larger number votes in more populous States will have greater weightage. Also 5% is too low a threshold for State Assembly elections. Given these circumstances, it is appropriate to fix a more realistic and uniform threshold of say, 10% of the valid votes polled. In States with less than 10 Lok Sabha seats, the threshold level can be correspondingly higher. determined by the formula: 100 divided by number of seats. Such a high, but reasonable threshold will discourage formation of marginal, sectarian and extremist parties while encouraging serious parties with broad support base and the capacity to build social coalitions to compete with entrenched parties. At the same time, entrenched parties will be forced to reform and become democratic and inclusive, failing which their support base will wither away.

Finally, and possibly most importantly, how to determine the selection of party candidates? This is crucial in that in PR seats are distributed to the parties, and the candidates of the party will be automatically elected in the order in which their names appear on the list. Thus, in PR the contest is solely between parties. The general practice is to have a "closed list" whereby voters merely vote for the party of their choice, and cannot express their preference for individual candidates. Members are elected in the order specified in the party list.

IN WHICH WAY DOES THIS OFF SET HE PRESENT SCOURGE AND LEAD PARTIES TO NOMINATE NOBLE CANDIDATES, PARTICULARLY WHEN IT IS GUARANTEED WHOEVER THEIR CANDIDATE IS WILL WIN BASED ON THE NUMBER OF VOTES POLLED FOR THE "PARTY"?

I AM NOT SURE OF THE USE OF THE FOLLOWING PARAGRAPH. MOREOVER, IT RAISES A SERIOUS ISSUE AS INDICATED BELOW. AS THIS DOES NOT SERVE ANY USEFUL PURPOSE OTHER THAN IDENTIFYING THE SEVERAL PROBLEMS THAT HAVE ALREADY BEEN DISCUSSED AT VARIOUS PLACES ABOVE, I DO NOT MIND DELETING IT. MOREOVER, THE NEXT SECTION FOLLOWS NICELY AT THE END OF THE LAST SECTION. THE FOLLOWING PARAGRAPH IS STICKING ALONE.

In India central leadership of political parties has almost absolute, unfettered control over choice of candidates for elective public office. Parties failed to create mechanisms to suit the democratic aspirations and ethos of a modern society. Selection of candidates has become the primary source of power for the often unelected and unaccountable leadership. There is crying need for reform of political party functioning, particularly in respect of choice of candidates. This is particularly critical if PR system is to be introduced. There should be institutionalized and democratic practices for selection of candidates, preferably regulated by law and monitored by the Election Commission. Introduction of PR system without accountability, internal democracy and democratic choice of candidates by parties will spell a disaster to our democracy. There should be a party conference of elected delegates in every electoral district, and the conference should select

the candidates on the party list and their rank by secret ballot, case wise. Only then can PR system be an effective instrument for fair representation. There should be other strict internal democratic norms in party functioning like open membership, democratic choice of leadership, transparent funding and accountability – all monitored strictly by the Election Commission. IF INDEED ALL THIS IS SOMEHOW ASSURED, WHY WOULD INDIA NEED THE PR SYSTEM WHICH IS COMPLEX AND ALMOST UN-UNDERSTANDABLE TO THE MULTITUDE? AND PR DOES NOT GUARANTEE SUCH A BEHAVIOR FROM THE PARTIES!

g. Mixed System

Clearly, time is ripe in India for a more-inclusive, democratic and fair representation, and the PR system is the way to it. However, to meet with the one criticism that in the PR system the link between the member and his constituency is snapped, we should explore the option of a mixed system where the advantages of a constituency-based FPTP system is combined with those of the PR system. The German method, as explained by Blais and Massicotte below, appears to be the most successful example of such a mixed system. There in fact are 11 countries, including Germany, Japan, Italy and Russia with mixed systems.

Blais and Massicotte describe three ways of mixing PR with either plurality or majority rules.

The first is **coexistence**, where PR is applied in some regions, and either plurality or majority elsewhere. In French Senate elections, the majority-plurality system is applied in *departments* having four seats or less, and PR prevails in those electing five or more senators.

The second is **combination**, whereby two sets of members are elected for the same national territory. In Japan (after 1994) and Russia such combination is in place. In Japan 300 members are elected in single-member constituencies under FPTP system. The other 200 are elected in 11 regional constituencies by PR system. In Russia half the members are elected by each method – FPTP and PR. Taiwan combines 125 members elected by the single nontransferable vote in 27 constituencies, with 36 members elected nationally by PR. In combination system, PR seats are not distributed so as to correct party distortions created by the operation of the plurality rule in single-member constituencies. Each set of members is elected independently of the other.

The third is the **corrective** method where PR seats are distributed to correct the distortions of FPTP system, and a legislature where each party gets its fair share of seats in proportion to the votes obtained is produced. Germany is the best example of this method. The allocation of the number of seats for each party is decided in proportion to the total number of votes obtained by it nationally. There are two votes for each elector, one to elect the constituency member through FPTP system, and the other the party vote. Half the seats are filled by FPTP system. The party vote determines the proportion of vote for the party and the distribution of total seats nationally. All the members elected in the local constituencies by FPTP system are retained. The parties which obtained fewer votes than the threshold (5%) or less than three seats in single-member constituencies are eliminated from allocation of PR seats. Then the entitlement of party representation based on the national vote share is compared with the actual results of the constituency based FPTP election. The PR seats are then distributed in such a manner as to ensure that the final seat tally is in proportion to the national vote. The final distribution is thus fully proportional. If a party obtains more FPTP seats than it is entitled on the basis of the overall vote share, then it retains those seats. To that extent temporarily 'overhanging seats' are created, and

the size of the legislature is enhanced. Out of the total 656 members of Bundestag, 328 members are elected by the FPTP system, and the balance 328 are distributed in a corrective system to make the final composition of the legislature fully proportional. Hungary and Ecuador also adopt some form of corrective method of PR. In some countries different methods may be applied at different levels. France adopts majority-run off for presidential elections, but applies several forms of majority-plurality in single-member or multi-member constituencies in various elections at other levels.

h. Best-suited Model for India

It is of course necessary to adopt the system to Indian conditions. Given the vastness 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 PR. To prevent fragmentation, the 5% threshold shall be increased to a minimum 10% 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 □ number of Lok Sabha seats. (THIS FORMULA IS NOT CLEAR. WHAT IS THE 100?) 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. 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 encashing the charisma of local candidates.

Actual party lists are put up for each electoral district comprising 10 seats. Choice of candidates on the list and their ranking shall be made by the elected party delegates in the electoral district. The distribution of PR seats among parties shall be by the LR – Hare method in each electoral district, as it is the simplest and fairest method. The second tier for the distribution of seats covered by the fractions in Hare method shall be the State, where the distribution of unallocated seats is decided by the totals of all unused fractions. These seats will go to candidates of the party in the electoral districts where it obtains the highest fraction. Table below gives an illustration of distribution of seats in the PR system combined with constituency elections.

Table
Distribution of Seats in the PR System Combined with Constituency Elections

Number of Seats to be distributed: 31

SL No.	Party	No. of Votes	No. Seats won in Constituencies
1	A	18,900	9
2	B	12,900	4
3	C	1,900	2
4	D	3,200	1
Total		36,900	16

Number of seats as per PR system: -

Party A: - $\frac{18,900 \times 31}{36,900} = 15.878 = 15+1 = 16$

Party B: - $\frac{12,900 \times 31}{36,900} = 10.837 = 10+1 = 11$

Party C: - $\frac{1,900 \times 31}{36,900} = 1.596 = 1+0 = 1$

Party D: - $\frac{3,200 \times 31}{36,900} = 2.688 = 2+1 = 3$

Final composition of legislature from the State

SL No.	Party	No. Eligible under PR system	No. of Seats won in Constituencies	Balance No. drawn from party lists	Total No.of Legislators
1	A	16	9	7	16
2	B	11	4	7	11

Strength of legislature (original) = 31
"Overhang Seat" added = 01
(Party "C" won 2 Constituency seats against eligibility of one) ----------

New strength of legislature = 32
======

II. QUALITY OF REPRESENTATION

The health of a democracy obviously depends on the choice of representatives and leaders, which in turn is directly linked to the way political parties function and elections are conducted. While India has some outstanding men and women in public life, flawed electoral process is increasingly alienating public-spirited citizens from the political and electoral arena. Persons best equipped to represent the people find it impossible to be elected by adhering to law and propriety. And if elected, they cannot survive for long in office without resorting to dishonest methods. Even if they survive in office, their ability to promote public good is severely restricted what with an all pervasive corruption around.

A careful examination of the past three or four decades in the country shows that most new entrants have chosen politics for the wrong reasons. Heredity and family connections, closely followed by vast wealth (inherited or acquired willy nilly) and the belief that politics is good investment are the commonest causes for entry into politics. More distressingly, in recent years, many local muscle men, whose services were earlier sought for extortion or vote-gathering, are now directly entering the political fray and gaining legitimacy. A few others have entered politics out of personal loyalty to, and close contacts with, those in high public office. People with very high visibility on account of great success in mass entertainment like sports or films have also been increasingly drawn into the political arena. Occasionally, accidents of fate (SUCH AS) are pitch forking certain individuals into elective public office.

Democracy demands constant selection, nurturing and development of capable leadership. If the best men and women society can offer were to shun the political process, politics acquires a pejorative connotation, and with it public confidence in governance collapses.

The role of political parties in enlisting citizen participation in public life is critical. But, as already seen, the functioning of the parties leaves much to be desired in India. Instead of being vehicles for political mobilization and citizen's participation in public affairs, parties have often become closed oligarchies to sustain personal power. Non-disclosure of funds collected, resource mobilization through extortion or collusion, application of funds for unsavoury and illegal purposes including personal gain, arbitrary choice of candidates for elective office, misuse of public office for private gain and for keeping the party cadres in good humour, near-absence of internal democratic processes and serous deliberations for policy formulation, and over-reliance on emotive and divisive issues rather than reasoned debate and balanced articulation of views have become the hallmarks of most political parties.

Undemocratic political parties cannot nurture a democratic society. Thus, the most critical need is to reform parties and make them open, democratic and accountable. It will be somewhat naive to expect the party leaders themselves to initiate reforms which will undermine their own unaccountable, and often illegitimate personal power. Given these circumstances, following are some key reform options available.

A. Proportional Representation (PR)

Elections under the Proportional Representation (PR) method facilitates participation of public spirited and competent citizens in legislatures. As already argued, parties can be expected to nominate capable and public-spirited candidates as the distribution seats depends on the share of the party vote. Also outstanding candidates who are not otherwise identified with any influential social group or a dominant local faction can gain entry into the legislatures through the list system

as parties will be compelled to enlist persons with talent and proven record of service and accomplishment in order to enlarge their political base. Thus PR can rejuvenate a political system.

B. Political Party Reform

Undemocratic and unaccountable parties can neither sustain nor strengthen a democracy. Hence the need for their proper regulation ensuring their accountability. *Dummett* (Principles of Electoral Reforms, 1997) observed thus:

> *"We are so used to political parties that we tend to think of them as integral to the functioning of a democratic system; some of their members feel towards them a loyalty more appropriate to a religious body. Yet, in fact their very existence infringes the ideal of democracy. They are in essence conspiracies in accordance with which their parliamentary representatives agree to vote in unison in order to make more votes go as their individual members wish than would happen if everyone voted according to his true opinions ....This function of political parties is highly institutionalized by the system of whips, and the practice of expelling from their party MPs who defy them.... Nevertheless, the existence of political parties is probably an inescapable evil. It is usually in dictatorships that all political parties, or all but one, are proscribed; a one party state is of course a form of dictatorship. In normal democracies in which political parties function, they play a larger role in electoral process than is by anyone else's standard desirable, since they select the candidates between whom the voters have to choose. Moreover, the power of a political party to dictate, influence, or interfere with the selection of candidates for parliament (legislatures) is more inimical to democracy the more centralized it is. If it is in the hands of a regional office, or, still worse, of the central office of the party, a rigid conformity to the current party line will result. A local constituency selection committee may continue over the years to nominate a deviant adherent to the party, such as Sir Winston Churchill, who disagrees fundamentally with its prevailing policy, but who would never be tolerated by the central office if it could help doing so".*

Indian experience amply demonstrates that centralized and autocratic party control is inimical to democracy. Present legal provisions relating to party are scanty and feeble. The only references to parties are found in the Election Symbols (Reservation and Allotment) order 1968, Section 77 of the Representation of the People Act, 1951 (inserted in 1974 to exclude expenditure incurred by parties from the statement of accounts provided by contesting candidates), the Tenth Schedule inserted by the 52nd Amendment to the Constitution (popularly known as the Anti-defection Act), and Section 29A of the RP Act, 1951 (inserted in 1989, making a provision for registration of political parties with the Election Commission). There is no other mechanism to make parties democratic and accountable. Nor have parties evolved a political culture in this regard. (WHAT IS MEANT BY 'INSERTING'? IS THE REFERENCE TO AMENDING? IF SO, THE LATTER IS PREFERRED.)

A successful example of effective political party regulation by law is provided in Article 21 of the German Basic Law, while leaving the leadership choices and policy options offered by the parties entirely to the will of the members and internal democratic mechanisms, thus:

"The political parties shall 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 must publicly account for the sources and use of their funds and for their assets. Parties which, by reason of their aims, or the behaviour of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany, shall be unconstitutional. The Federal Constitutional court shall decide on the question of unconstitutionality. Details shall be regulated by federal laws."

The essential functions of the political parties are listed in the Political Party Act of 1967 as follows:

1. Ensure the forming of the political will of the people from the bottom upwards;
2. Serve as the intermediary between the population and the institutions of the state;
3. Articulate and represent the wishes and interests of the population;
4. Offer political concepts and programmes;
5. Prepare and hold elections and in so doing conduct election campaign as a means of producing democratic transparency;
6. Recruit personnel for political and state offices;
7. Provide for new political blood; and
8. Assume responsibility for government and the opposition.

Clearly, this description fits the functioning of parties in any liberal democracy. Compared with these, several serious shortcomings are noted in a study conducted by Lok Satta of four major political parties in constituencies where the parties are strong. Entry into a party is often tightly and arbitrarily controlled by the leadership. (Strict, objective and uniform norms applicable to communist parties are an exception.) Party leadership denies membership to any one with the potential to mount a challenge to the hegemony of the leader. Contrarily, persons utterly opposed to a party's stated ideology are admitted as members when it suits the leadership. Disciplinary powers are invoked and expulsions are habitually resorted to only safeguard the position of the leader. Healthy debate and democratic dissent are not tolerated. Leadership itself is assumed, or anointed, at various levels. Rarely, if ever are democratic elections conducted, and when conducted, they tend to be perfunctory. Even membership rolls are often not available. Members of the highest executive body of the party themselves are often nominated by the leadership, who in turn 'elect' the leaders. Policies are rarely debated or decided in party fora thus denying any role for members in shaping policies. Manifestoes are written often in a cavalier manner, and when the party is elected to office promises are disregarded with impunity.

It is well known that major political parties raise vast sums of money for their activities and election campaigning. But contributions by cheques are rare, and almost all the cash contributions are illegal. There is neither auditing of these funds nor any enforced accountability as no records of these transactions are maintained as required by law. Under section 13A of the Income Tax Act, incorporated in 1978 parties are required to maintain accounts regularly, record and disclose the names of all donors contributing more than Rs.10,000, and have the accounts audited by a qualified accountant. Under section 139(4B), every party is bound to furnish a return of Income every year with all these details. However, every party violated this statutory requirement. In a public interest litigation filed by the Delhi-based Common Cause, the Supreme Court held in 1996 that the parties shall file the returns of income and they were violating the

Income Tax Act by not doing so. The Court also held that the Income Tax Authorities have been wholly remiss in the performance of their statutory duties by failing to take appropriate action against defaulter political parties. As President Venkataraman observed, " It is surprising that this Section (Section 13A of IT Act) remained a dead letter and the Income Tax Department under successive governments has been remiss in enforcing this revenue measure. That even the Comptroller and Auditor General of India has not commented on the lapse is surprising beyond measure…… Of what use is the law if it is not enforced?"
AL THIS SOUNDS FINE. THE PROBLEM APPEARS TO BE LACK OF ENFORCEMENT AND DERELICTION OF DUTY AND NOT THE ABSENCE OF LAW. THUS THE CLAIM MADE IN THE BEGINNING OF THIS SECTION THAT "The present legal provisions relating to party are scanty and feeble" CANNOT BE EASILY SUSTAINED. RECONCILE.

Perhaps the most unhappy feature of party functioning in India is the highly centralized, arbitrary and undemocratic choice of candidates nominated for elective office. As election in reality is a contest between party candidates, democratic choice of candidates is of critical importance in ensuring a fair quality of representation of the people in legislatures. In most mature democracies there are highly democratic, systematized procedures to select party candidates. In Britain, Germany, Norway, Sweden, Belgium, Australia, New Zealand, Canada and several other countries there are formal, inviolable democratic procedures by which party members at the constituency level, or their elected delegates at the local or regional level select candidates after an interview and by secret ballot. The central party's role is limited to endorsing these candidates selected democratically at the local level. In exceptional cases, they can veto a locally selected candidate for a serious and valid reason, but can never impose a candidate from above. In the US, this democratic choice of candidates has been taken to the logical end, with formal procedures and statutorily regulated primary elections in which registered party members, and in some states independent voters, choose a candidate by a secret ballot after a full scale public campaign.

(THIS IS NOT QUITE TRUE. FOR EXAMPLE, THE IOWA CAUCUSES WHERE THE VOTERS GO INTO A CORNER OF SOME OBSCURE BUILDING AND RAISE THEIR HANDS FOR THEIR FAVORITE CANDIDATE DOES NOT MEET THE STRICT CONFIDENTIALITY REQUIREMENT, THOUGH IT MIGHT LOOK LIKE A GRASS-ROOTS DEMOCRACY IN OPERATION. IN FACT, THIS IS CONSIDERED A MISHMASH.)
For the presidential primaries, even public funding is made available, BUT CAN BE REFUSED TO CIRCUMVENT THE LIMITATIONS ON THE EXTENT OF FUNDS AS IS THE CASE WITH GEORGE BUSH .
ON AN ASIDE, RONALD REAGAN, WHO NEVER GAVE THE ONE DOLLAR THAT CITIZENS MAY GIVE, AND NORMALLY DO, WHILE PAYING THEIR INCOME TAX, COLLECTED $40 MILLION FROM THE PUBLIC EXCHEQUER FOR HIS ELECTION. WONDER WHAT THAT MIGHT BE CALLED! HOW ETHICAL THAT MUST HAVE BEEN!
THIS EXAMPLE WITH REGARDS THE US SOUNDS GOOD ON PAPER ONLY. IN FACT THIS IS A MAJOR FIASCO AS IS SEEN FROM THE CURRENT EXPERIENCE WITH BOTH THE PARTIES, THE McCAIN/FAINGOLD CAMPAIGN FINANCE REFORM MEASURE AND THE LATEST SUPREME COURT DECISION ON CAMPAIGN FINANCING. I PERSONALLY WILL NOT LOOK TOWARDS THE US AS AN EXAMPLE, MOR SO THE EXPERIENCE WITH PRIMARIES. THERE IS A LOT OF HAND-WRINGING

GOING ON IN THIS COUNTRY, BOTH AMONG ACADEMICS AND POLITICIANS. HENCE THE SUGGESTION TO DELETE THE REFERENCE.

C. Electoral Reforms

Among the many reform suggestions the one from the NCRWC ("Review of Election Law, Processes and Reform Options") is the most recent. The recommendation was for indirect elections of legislators in a tiered system, with only panchayat members elected directly. As this is unwise, it was received extremely unfavourably from most quarters. An indirect election is devoid of legitimacy and is prone to much greater degree of corruption and manipulation. (WHY IS THIS SO? HOW ABOUT THE RAJYA SABHA WHICH IS ELECTED THUS?) Anyone who is familiar with the conduct of "camps" in panchayat elections would realize that indirect elections are a disaster. A franchise received by one group at the local level cannot be transferred to legislators at State and national levels. It is axiomatic that representatives of the people are directly elected. Given that, several organizations(for example, the Election Commission, the Law Commission, Dinesh Goswami Committee and the NCRWC itself) recommended other reform measures in three prominent areas: preventing poling irregularities; arresting and reversing criminalization of politics; and and checking abuse of unaccountable money power in elections.

1. Curb Polling Irregularities

In the actual conduct of elections, pre-polling activities including printing of ballot papers etc. are foolproof and largely free from irregularities. Similarly the post-poll activities including transport and storage of ballot boxes and counting are clean as there are effective safeguards against mischief. State-sponsored rigging has not been resorted to in India except in small pockets occasionally. Many irregularities, however, are found in voter registration and actual polling, and need to be curbed.

2. Easy and Accessible Voter Registration

Errors in voter registration are most easily remediable. Yet, such is not the case. While the electoral registration law is near perfect, procedural complexities, inaccessible electoral rolls, and voter ignorance allow serious distortions in its implementation. Lok Satta's surveys reveal that up to 40% of entries in electoral rolls in urban areas suffer from errors of omission (of eligible voters) or commission (registration of fictitious or dead or ineligible voters). In rural areas the errors are about 10 - 15%. Thus, there is a regular revision of electoral rolls by the Election Commission. Most voters are not aware of these revisions. While electoral rolls are theoretically available for inspection in select government offices during the revision process, in reality voters have no opportunity to inspect them, given the culture of secrecy in most public offices, the distance from the citizen's residence to the office where electoral rolls are available, and the lack of information about revision procedure. While the law allows addition or deletion of a name or corrections at any time before the last date for nominations in an election, in reality it is extremely difficult to take advantage of this process. Electoral rolls are often unavailable for verification. Obtaining a copy for the appropriate polling station is very cumbersome and difficult. The statutory forms for addition, deletion or correction of a name are rarely available. An acknowledgment of request for correction, though mandatory, is often not given. Neither is the voter notified about the outcome of the application, as required by law. As a remedy, the post office could be made the nodal agency for supply of electoral rolls, statutory forms, and to acknowledge the application and to communicate any action taken. The post office has a culture

of across-the-table transactions in real time. The panchayat or municipal offices too can be made nodal agencies in this regard.

Table 3.1

Random Verification of Voters Lists in Andhra Pradesh (2000)

Area Surveys	No. of Districts	No. of Polling Stations Covered	No. of Voters Surveyed	Deletions Needed	Additions Needed	Total Corrections Needed	Errors %
1	2	3	4	5	6	7	8
Urban	9	27	18102	4702	3414	8116	44.8
Rural	11	29	22297	2306	1039	3345	14.3
Total	**---**	**56**	**40399**	**7008**	**4453**	**11461**	**28.4**

Source: Lok Satta - Research and Documentation Cell (unpublished; Survey monitored by PS Bhagavanulu)

3. Voter Identity Cards

Rampant rigging, impersonation, booth capturing and bogus voting are common in elections. Lok Satta's post-poll survey in five polling station areas in Hyderabad city after the 1999 parliamentary and assembly polls revealed that up to 21% of the votes cast may have been irregular. The single most important measure to curb these polling irregularities is a photo-identity card for each voter.

In Haryana Legislative Assembly elections in 2000, voter identity cards or other means of identity have been made compulsory for the first time in the Indian electoral history. The Election Commission has already provided such cards to over two-thirds of voters in the country. The Commission also permits, in lieu of voter identity card, other suitable means of identity such as a ration card, driving license, pattadar pass book, bank pass book, credit card, employer's certificate, tax receipt etc. Political parties, voluntary organizations, civil society initiatives and citizens at large should extend all support to the Commission in this endeavor.

Table 3.2

Post-Polling Survey of Select Polling Station Areas

(1999 Assembly and Parliamentary Polls, Hyderabad, AP)

					Survey Findings	
No. of Polling Stations	**No. of Assembly Constituencies**	**Area**	**No. of Voters on The Rolls**	**No. of Votes Polled**	**No. Who Actually Voted**	**Not voted or Doubtful Votes** (residing elsewhere, migrated, dead etc.)
1	2	3	4	5	6	7
5	3	Hyderabad City areas where there are no serious complaints	4706	2483	1945 (78.3)	538 (21.7)

Note: Figures in brackets (col. 6 & 7)indicate the number as a percentage of the votes polled (col.5)

(*Source: Lok Satta - Research and Documentation Cell: unpublished; survey monitored by PS Bhagavanulu)*

4. Tendered votes

Where voter identity cards are not available, polling agents have the opportunity to question the bona fides and object to a person casting a vote. Such a challenged vote is then decided by the presiding officer at the polling station on the basis of a summary inquiry. However, often polling agents do not know all the voters. In urban areas it is impossible to have knowledge of even a fraction of the voters in the area. Sometimes the polling agents are in collusion with opponents. There are also areas where the dominance of one caste or group is so pronounced that polling agents may not even be available for candidates of certain castes/groups, and when available, are intimidated. Therefore availability of polling agents is not a sufficient safeguard against polling malpractices. Other measures to curb rigging and impersonation should be seriously considered. One way of meeting this eventuality is that the vote may seek a tendered ballot. However, this provision is not widely known. EXPLAIN WHAT IS A TENDERED VOTE. Even if such a tendered vote is cast, under the present rules it has no validity as a tendered vote is kept in a sealed cover separately, and is not counted. It is opened only in the event of a count order on an election petition. To offset this, the Election Commission may be empowered to give directions to the effect that if the tendered votes in a polling station exceed a certain percentage, for example 1% of the valid votes polled, there shall be automatic re-polling in that polling station. If the tendered votes are below 1% in a polling station, the Commission can direct that the tendered votes also shall be counted along with the ballots in the ballot box.

5. Electronic Voting Machines

The use of ballot papers in elections involves several logistical difficulties including printing of ballots and large scale personnel deployment. It is also amenable to polling irregularities like tampering with ballot papers, forcible entry into polling stations, and massive rigging by rapid unauthorized stamping of ballots and insertion in ballot boxes. Counting ballot papers is also slow and sometimes inaccurate. Electronic voting machines (EVMs) are possibly the best alternative.

6. Curb Criminalization of Politics

Sections 8, 8A and 9 of RP Act, 1951 provide for disqualification of persons convicted of specified offences for varying periods. While there is room for improvement, this list of offences is comprehensive and reasonable. These provisions, however, failed to achieve the desired result. The Election Commission pointed out that more than 700 of the 4092 legislators at the State level have criminal records against them. There are also several members of Parliament with known criminal record. (WHEN? PROVIDE THE TIME FRAME)

Section 8(4) of the RP Act, 1951 gives a grace period of three months to incumbent legislators before disqualification comes into effect in case they are convicted of an offence. If an appeal is filed within three months, they cannot be disqualified until the appeal is disposed of by the court. Obviously this provision was intended to prevent needless vacation of a seat by disqualification of a sitting member because in case of a successful appeal the membership is retained. In the interim, the vacancy occurring due to the consequent by-election would have led to needless political tension and public expenditure. Unfortunately this pragmatic legal provision was misinterpreted by election officials consistently until 1997. All candidates who were convicted but filed an appeal, were exempted from disqualification until appeals were disposed of. As the legal process is often tortuous and very time consuming, this meant that practically no person was disqualified. The Election Commission gave the correct interpretation and provided the guidelines accordingly in 1997 and thus effectively closed this loophole.

Yet, even today many persons with known criminal record run for office and several get elected. The conviction rate of the accused in our criminal courts is abysmally low at 5-6%. Disposal of criminal cases is excruciatingly slow, and many cases take years before conclusion of trial. For example, technically, the assassins of former Prime Minister Rajiv Gandhi were perfectly free to contest elections for 7 years after their dastardly crime, until they were convicted in 1998, provided they were Indian citizens and were otherwise eligible. This obviously is an unacceptable situation. Contrarily, if persons facing criminal prosecution are disqualified indiscriminately, there is a real danger of trumped up charges against political opponents. This is particularly likely in a system in which the police forces function directly under the control of the government, and the government has specific powers to withdraw prosecution, order investigation and grant parole and pardon. At the same time mafia dons and organized gangs often escape even prosecution for want of tangible evidence. There are rowdy sheets and history sheets opened by the police against individuals with criminal record.

Another lacuna is that the period of disqualification under RP Act 1951 varies with the offence, and often this variation does not have a rational basis. As both the Election Commission and the Law Commission pointed out, there are offences for which the period of disqualification ends even when the convict has not completed the jail sentence! Consequently a convict in jail can actually contest and win elections, and be even a minister! Also while the list of offences, conviction for which entails disqualification is fairly large and comprehensive, certain serious offences have been left out (SUCH AS....).

To offset some of these difficulties, the Law Commission in its 170th report made several specific recommendations to curb criminalization of politics. The most important of these is insertion of Section 8B in the Representation of the People Act 1951, providing for disqualification of persons charged with certain serious offences by a magistrate, for a period of five years from the date of framing charges or acquittal, whichever is earlier. A convicted person is disqualified under existing law. The Commission also recommended removal of certain anomalies in the periods of disqualification for various offences. It recommended a simple amendment of Section 8 of the RP Act 1951 to the effect that whoever is convicted by a court of law and sentenced for six months or more should be disqualified during the period of imprisonment, and for a further period of six years after the sentence is over.

While the proposals to rationalize the periods of disqualification and disqualification during the sentence and six years thereafter are unexceptionable and need to be acted upon without delay, the proposal to disqualify candidates on framing of charges needs to be examined more closely on two counts. First, should a candidate be disqualified merely because charges have been framed by a magistrate? The dictum in criminal law is that a person is presumed innocent until proven guilty. If a person facing charges is disqualified, is it fair to deny him/her the democratic right to contest election? This right of a citizen to contest must be weighed against the right of citizens to have fair representation. When the individual's right to contest conflicts with the society's right to have fair representation, it can be argued that the latter should prevail.

Second is whether the criminal justice system, as it exists, can be trusted to be fair, impartial and objective? Are there sufficient safeguards to protect the innocent from being framed and thus preventing them from contesting? It is true that the charges have to be framed by a magistrate after weighing the given information and evidence. However, it is common knowledge that the system is prone to enormous abuse. In reality the investigation and prosecution wings are almost entirely under partisan political control. Doctoring of evidence, and false investigation and prosecution are all too common.

There is also another class of persons (SUCH AS? IS HE REFERENCE HERE TO SHEETERS, ETC?) who might not be charged with offences, or convicted, to invite disqualification, even when they may be listed in police records as rowdy-sheeters or history-sheeters or by other names. At first sight it appears that these police records are highly subjective and arbitrary. However, closer examination reveals that there are well laid down and objective criteria for opening and maintaining such records. It is far more common to find an innocent person being charged with an offence, than being listed as a rowdy-sheeter or history-sheeter. The question then is whether such rowdy-sheeters and history-sheeters should be disqualified from contesting as long as they are listed as such.

It is rather difficult to answer these questions with absolute certainty, or to everyone’s satisfaction. However, it seems fair and reasonable to disqualify those charged with grave offences which may invite a punishment of imprisonment for ten years or more, or death penalty.

Also disqualification of those charged with electoral offences is reasonable. Regarding history-sheeters and rowdy-sheeters, disqualification of persons listed as long as such records are kept open also seems reasonable, provided there is a provision for judicial review. In order to ensure that there is no misuse of this provision to harass political opponents, a safeguard should be provided in the form of judicial scrutiny. Any person who is aggrieved by the opening of A history or rowdy sheet and who wishes to contest the election may appeal to the Sessions Judge at least two months before the date of election notification, and thereupon the Sessions Judge should hold a summary enquiry and decide within a month whether or not the opening of such a history sheet or rowdy sheet is valid. The order of the Sessions Judges should be binding on the police authorities.

AS MOST OF THIS NOW IS FAIT ACCOMPLI, YOU MIGHT LIKE TO STATE IT AS A FACT THAN AS A SUGGESTION. Another simpler, but salutory provision will be to make it mandatory for all the contesting candidates to file an affidavit revealing any criminal record including past conviction, prosecution, framing of charges and listing as history-sheeter or rowdy-sheeter. Deliberate concealment of information, or filing of false information should be a ground for disqualification. This information should be placed before the public immediately after the scrutiny of nominations. The Election Commission should be empowered to decide on disqualification for filing of false affidavits after summary enquiry within 90 days from the date of complaint. If such information is available to the public, the voters will be in the best position to judge for themselves and make informed choices. Such a mandatory public disclosure will also compel parties to refrain from nominating candidates with known criminal record.

7. Curb Unaccountable Use of Money Power

Democracy implies elections. Elections mean political parties, and parties need money. In India, however, the failure to evolve legal methods for raising campaign finance and curb unaccountable use of money has severely distorted the electoral process. Elections are expensive, but in India the expenditure in legislative elections is often 10 to 15 times the legal ceiling. The actual ceilings, revised in 1997, are Rs.6,00,000 for Assembly constituencies in major States, and Rs. 15,00,000 for Lok Sabha constituencies. While it is arguable whether these figures are realistic or not, almost every elected legislator violates this ceiling with impunity.

In 1974, Explanation “I” was added to Section 77 of the Representation of the People Act, 1951 to nullify the effect of the Supreme Court Judgement in *Kanwarlal Gupta* v.Amarnath Chawla (YEAR?). The court held in that case that the expenditure incurred by a party or friends and supporters on behalf of a candidate should be included in the candidate's election expenditure, and Section 77 (1) should be read with Section 123 (6) dealing with corrupt practices. The court declared: "If the expenditure made with the knowledge and approval of the candidates exceeds the limit or if the candidate makes a false report of the expenditure after the election, he is subject not only to criminal penalties, but also to having his election voided". Explanation “I” was inserted in Section 77 (1) (1974) to the effect that "any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be...expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of this sub-section.” This lacuna (WHAT IS THE LACUNA HERE?) has been pointed out by the Supreme Court (*C.Narayana Swamy* v. *Jaffer Sharief* 1994, and *Gadakh Yashwantrao Kankarrao* v. *Balasaheb Vikhe Patil* 1994), the Law Commission

(170th Report), the Election Commission and the Dinesh Goswani Committee (1990). (PROVIDE PROPER AND FULL CITATION OF CASES)

In effect, expenditure ceiling has become meaningless, and the spirit of the law is violated with impunity by most parties and candidates. Even the letter of the law is often violated. (HOW DOES THIS SECTION VIOLATE THE SPIRIT?) Section 13(A) of the Income Tax Act (IT Act) exempts from tax the income of a party from house property, other sources and voluntary contributions. Parties are bound by law to maintain accounts regularly, record and disclose the names of all donors contributing more than Rs.10,000 and have the accounts audited by a qualified accountant as defined in Section 288(2) of the IT Act. In 1978, Section 139(4B) was inserted in the IT Act, and this provision, read with Section 13(A) makes it mandatory for the party to furnish return of income every year. Since 1985, companies are permitted to contribute up to 5% of the profit to political parties, with full disclosure. Despite all these legal provisions, it is widely known that most major political parties have been collecting undisclosed and unaccounted corporate and individual contributions. Most parties are known to have been violating the statutory requirement of furnishing returns of income. Despite Supreme Court directions in 1996 on a petition filed by the Delhi-based Common Cause, no action has been taken against the parties and persons who have been violating the law. (WHY? ANY MOTIVES/REASONS THAT CAN BE ATTRIBUTED TO THE COURT? OR, IS IT SIMPLE INERTIA?!)

The high risk involved in election expenditure in a winner-take-all process, the long gestation period required for most politicians who aspire for legislative office, the higher cost of future elections, and the need to involve the vast bureaucracy in the web of corruption mean that this undisclosed expenditure leads to monumental corruption. To take the example of a major State, it is estimated that Rs.600 crores have been spent by the major parties and their candidates for the Assembly and Lok Sabha elections in 1999. This estimate roughly corresponds with the Centre for Media Studies estimates of Rs. 2500 crore spent by major parties in the country for Lok Sabha elections alone. Such an expenditure can be sustained only if the returns (ON WHAT? Explain!) are five to ten fold, or about Rs. 6000 crores in one state. For every elected legislator, there are over 3000 appointed public servants. If each of these bureaucrats were to retain a small sum as collection fee for each service, then the actual amount extorted (OR COLLECTED? IN WHAT WAYS IT IS AN EXTORTION?) from the public is at least ten to twenty times the amount which reaches the political class. In one major State, this amount may well be of the order of Rs.100,000 crores over a five year period. The social costs in terms of inconvenience, delay, humiliation, harassment and lost opportunities suffered by the citizens, as well as the cost of distortion of market forces probably mean that extortion is much more than the actual amount of money changing hands. The result is a distortion of democracy and retardation of economic growth.

(I WOULD DELETE THIS PARAGRAPH ALTOGETHER, GIVEN MY PREVIOUS REMARKS ON THE US SITUATION WHICH IS NOW SERIOUSLY DEBATED EVERYWHERE. MOREOVER, THE COMPARISON IS BETWEEN TWO INCOMPARABLE ENTITIES!) In recent times comparisons are sometimes drawn between the United States and India on the issue of campaign finance. In the US, in the recent election for presidency, both houses of the federal congress, gubernatorial offices and State legislatures the estimated campaign expenditure is of the order of $3 billion. Probably half of it is for issue-based advertising, and can be excluded from the actual campaign expenditure. This net cost of about $1.5 billion is a source

of endless debate and criticism in the US. However, we should remember that in the US, all the campaign financing is fully accounted for and disclosed; and all expenditure is legitimate and open, with nearly 80% spent only on television advertising. The Indian situation presents a distressing contrast. The expenditure for Lok Sabha by parties and candidates is estimated at Rs. 2,500 crores by the Centre for Media Studies. Easily double the amount is spent by candidates and parties for State legislative elections, making the total for the Union and State elections about Rs. 7,500 crores. This sum actually exceeds the total US election expenditure of $1.5 billion in rupee terms! Considering the high purchasing power of a rupee as opposed to its exchange value, the real expenditure in our elections is probably 6 times that in the US! When we consider the low income per capita in India (about one-twentieth in purchasing power terms), this leads to an absurd situation of our per capita election expenditure being 25-30 times that in the U.S, adjusting for purchasing power and income per capita differentials! And in India most of this expenditure is undisclosed and for illegitimate purposes!

It must be added however, that high election expenditure in itself does not guarantee election although all parties and candidates are dragged into a vicious cycle of high election expenditure and endemic corruption. As parties are forced to nominate candidates who can muster large quantities of money and muscle power to win, the electoral process becomes more and more murky. Given this unhappy state of affairs, many talented and public-spirited citizens are shunning the political process and electoral politics to the detriment of our democracy. Thus, far-reaching and comprehensive campaign finance reforms are needed to make election expenditure honest, open, accountable and democratic. Some measures to be taken in this regard include:

- All individual contributions to individuals or parties for political and election activity shall be exempt from income tax subject to a ceiling of, say Rs.10,000.
- All corporate contributions from companies up to a ceiling of 5% of the net profit shall be exempt from corporate tax.
- Companies may contribute subject to the following norms;
- No contribution shall be made above 5% of the profit;
- A company which receives state subsidy or has a decision or contract or license pending with government shall not contribute;
- Following are some measures that could be taken to prevent abuse of office; Government shall not issue any advertisements containing the name of a person or party or photograph of any leader;
- No government advertisement shall be issued listing any achievements of a particular government;
- Government transport or infrastructure shall not be used for political campaigning; and
- No contribution shall be received from any person or corporate body in respect of whom any decision or license or contract or claim of subsidy or concession of any nature is pending with the government.

Measures to be taken to enforce disclosure and accountability might include:

1. Every individual contribution exceeding Rs.1,000/- and every corporate contribution shall be disclosed to the Election Commission and the Income Tax authorities. Penalty for non-disclosure will be fine equal to ten times the contribution and in addition in case of corporate bodies, imprisonment for six months;
2. Every political party and candidate shall get the receipts and expenditure fully audited and

make the audited accounts for the financial year public by Sept 30;
3. The audited statement of accounts shall be submitted to the Election Commission as well as the Income Tax authorities in the prescribed pro forma. Copies shall be made available to any member of the public by the Election Commission on payment of a nominal fee;
4. Along with the audited statement of accounts, the party or candidate shall submit a complete list of all contributions exceeding Rs.1,000/- with the full identity, address and other details of the donors. These lists shall be made public and furnished to the Election Commission and Income tax authorities. Election Commission shall make available to the public this list on demand for a nominal fee;
5. Penalties for not furnishing audited accounts by a candidate will be disqualification for a period of six years or until accounts are furnished, whichever is later;
6. Penalties for non-disclosure of donations by a candidate will be disqualification and a fine equivalent to ten times the amount covered by non-disclosure, disqualification for six years and imprisonment for one year; and
7. Penalties for not furnishing audited statement of accounts shall be derecognition of the political party until accounts are furnished. Penalties for non-disclosure of donations by a party will be a fine equivalent to ten times the amount covered by non-disclosure, imprisonment of the persons responsible for a period of three years and derecognition of the party for a period of up to five years.

Campaign expenditure can be limited thus:
- There shall be a reasonable ceiling on expenditure in elections as decided by Election Commission from time to time. All expenditure including that incurred by a political party or any individual or group to further the electoral prospects of a candidate shall be included in the election expenditure.
- Penalty for violation of ceiling shall be a fine equal to five times the excess expenditure. Penalty for willful non-disclosure of any expenditure shall be disqualification of the candidate for six years, fine equal to ten times the non-disclosed amount and imprisonment for six months.
- There shall be reasonable ceilings fixed on television/radio/newspaper advertisements.

Following are some measures to be taken regarding public funding
1. Free television and radio time shall be given in state media to recognised parties as prescribed by the Election Commission
2. Private electronic media shall earmark time for recognised parties as prescribed by the Election Commission for election-related campaign
3. There shall be election debates telecast and broadcast live by all electronic media as per the directions of the Election Commission; Every candidate/party obtaining 10% of the valid votes polled in a constituency shall be entitled to receive public funding to a tune of Rs.5 per vote. The Election Commission shall receive these claims, ensure the candidates and party's compliance with all norms of auditing, disclosure, and expenditure ceilings, and award the public funds.

Other measures to curb unaccountable use of money power
1. The Election Commission shall be the final authority to determine compliance or otherwise of these norms, and to impose penalties.

2. Public funding to party candidates shall be contingent upon the party candidates being selected democratically by secret ballot by members of the party or an assembly of elected representatives of the party members in the constituency.

3.Any expenditure to give inducements to voters, distribute gifts, bribe public officials involved in conduct of election, or hire any workers or gangs for any unlawful activity shall be unlawful. Penalties for such unlawful expenditure shall be disqualification of the candidate for six years, a fine equivalent to ten times the expenditure incurred and imprisonment for three years.

4. Every candidate shall make a declaration of his/her income and property at the time of nomination, along with income and properties of the members of his family. False or incomplete declaration shall invite disqualification for six years and imprisonment for one year. Non-declaration will invite automatic disqualification. The Election Commission shall determine the compliance of this provision and make public these declarations. The EC shall be the final authority to decide on complaints of false declaration.

D. Empower Local Governments

Given the large constituencies and complexity of elections, there will always be a tendency to abuse public office or resort to vote buying. In order to address this question one must first understand why the citizens are selling their votes. As most people have realized with experience that the outcome of elections is of little consequence to their lives in the long run. Many poor citizens thus are forced to maximise their short-term gains. As a result the vote has become a purchasable commodity. This may actually be a rational response to an irrational situation.

This situation can be corrected only when citizens appreciate the link between their votes and public good. If the local elected representative has no alibis for non-performance, then vote acquires a new meaning. If the school, road, drain, water supply, traffic regulation, land records, health centre and a myriad other public services are directly the responsibility of the elected government at the local level, then people see that whom they elect has a tremendous bearing on what happens after the elections. Such a situation is possible when the local governments – panchayats or municipalities – are truly empowered, and authority is exercised as close to the citizen as possible in an accountable manner. When there is a clear link between their vote and public good, and when tax monies are directly transferred to public services, then people start using vote as an effective tool to make fine political judgements and elect suitable representatives.

The 73rd and 74th Amendments to the Constitution merely created local governments. However, in the absence of constitutionally mandated responsibilities, local governments are at the mercy of the State legislatures. The State governments are often wary of parting with powers and functions. It is therefore necessary to clearly demarcate the functions of local governments constitutionally on par with the Seventh Schedule, and to ensure that the required resources and control of public servants are also entrusted to the local governments. Only then can representative government be truly democratic, accountable and effective.

D. Choice of Ministers from Outside the Legislature

Currently, all the members of the Council of Ministers in India are drawn from both Houses of parliament. Even when a Minister is chosen from outside the legislature, (s)he shall be elected as a member of the legislature within six months. As the legislatures are no longer attracting the best talent in the country, so will be the Council of Ministers. The time and energy of most Ministers is expended in constituency affairs and politics of survival. Governance in modern world

demands an array of skills, knowledge and competence unmatched in any other enterprise. As already noted, the limitations of our parliamentary executive restrict entry of capable persons into the government.

Thus, devising a mechanism by which the collective responsibility of the Cabinet to the legislature is enforced, while at the same time competent individuals can be made Ministers without having to be elected to Parliament. There are two changes that might be useful. Firstly, the Prime Minister should continue to be an elected member of the Lok Sabha alone. This will ensure that only the effective head of a party with popular backing will lead a government, thus enhancing the legitimacy of the parliamentary executive and giving the people a more effective say in the formation of government. Secondly, the Prime Minister should be free to choose a certain number of Ministers from outside the parliament. Such a number should be limited to, say 5% of the strength of Lok Sabha, subject to the approval of Lok Sabha. Such Ministers will be ex-officio members of Parliament without the right to vote. They can participate in debates and answer questions. The Council of Ministers as a whole, following the principle of collective responsibility, will continue to be responsible to the Lok Sabha, and all other constitutional provisions and practices will remain unaltered. Such a reform will give far greater flexibility to the parliamentary executive, and help bring the best talent to government, while at the same time not diluting the responsibility of the executive to legislature.

III. STABILITY, HARMONY AND GOOD GOVERNANCE

A. Stability: Since independence, India has been remarkably stable politically. There has always been peaceful transfer of power. Regular elections, have been the norm, barring the aberration during emergency in 1975. While many States have witnessed political instability on account of defections or change of Chief Ministers by the "high command", the Union government remained sable. However, the frequent general elections in recent years gave rise to understandable concerns about our political stability. Since 1989, there have been five general elections with no single party emerging with a majority. This fluidity prompted many scholars and observers to suggest measures to promote stability. These proposals include fixed terms for the Lok Sabha, the constructive no confidence model of Germany, and the proposals for progressive elimination of small parties. Recently, the NCRWC ("Review of Election law, processes and Reform options") suggested an indirect mode of election for all legislatures except at the panchayat level (which was discussed above already). It is worthwhile evaluating all these proposals.

i. Fixed Term for Lok Sabha

The idea of a fixed term for the Lok Sabha gained clout with the political parties which are tired of facing the electorate too often and spending a great deal of time, energy and money. They have come to favour a secure term of five years. Similarly, certain sections of voters, particularly the urban middle and upper classes, like this idea as they seem to be suffering from election fatigue. On careful examination, this idea, however, appears to be neither feasible nor warranted.

In a parliamentary executive system, once a government loses majority support in Lok Sabha, it has to step aside till another government with majority support comes to office. If no government can be formed, even a coalition government, the House has to be dissolved so that the people again choose their representatives. Some times, a stable government may choose to go back to the people by dissolving Lok Sabha, either to obtain a clearer mandate at a time of its choosing, or to let people give a verdict on a momentous issue of public policy. In other words, mid term polls are integral to parliamentary executive. Fixed terms and parliamentary executive responsible to the Lok Sabha cannot go together.

It should be noted that even when a stable government controlling the Lok Sabha were to have no majority in Rajya Sabha, legislation is difficult. For example, during the life of the12th Lok Sabha, not a single legislation could be enacted as no agreement could be reached between the two Houses. If the government cannot carry even the Lok Sabha with it, then the it warrants dissolution of the House as even finance bills and budgets cannot be approved, and the government comes to a standstill and all governance will be in shambles.

There are equally weighty political reasons against fixed terms in a parliamentary executive system. If a major partner in a coalition government embarks on an adventurist course of action, then there may be no alternative for its coalition partners but to part ways. If the opposition is then unable or unwilling to form an alternative government, then dissolution of the lower House is the only realistic and legitimate solution. In fact, a fixed term of Lok Sabha may actually promote irresponsible behaviour, leading to more chaotic and unstable politics and policies. With no elections in sight, individual legislators and small parties may be tempted to change loyalties ever so often for short-term gain. With the sure knowledge that they will not have to face the electorate for a full five years no matter what happens, there may be a temptation to change the government every month and to plunder the exchequer at will, irreparably compromising public

interest. The British and Australian experience shows that the threat of dissolution of the lower House has actually kept individual legislators in check and promoted greater stability.

ii. Constructive Vote of No Confidence

The second suggestion is to adopt the German model of constructive vote of no confidence whereby a government cannot be voted out of office in a no-confidence motion unless another government with majority support can be formed. IN WHICH WAY IS THIS AN IMPROVEMENT, OR AT LEAST DIFFERENT FROM THE REGULAR NO-CONFIDENCE VOTE? I AM NOT FAMILIAR WITH THIS!

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. 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).

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 to enable the election of a new government. But it is unlikely to help in the Indian situation. Such a provision merely encourages unchecked horse-trading. When even governments with majority support in Lok Sabha are not able to get legislation through due to the lack of support in Rajya Sabha, the question of a legislative emergency resolving the impasse after losing the majority support in the lower House does not arise.

iii. Indirect Election to the Legislatures

This suggestion of the NCRWC, as already discussed above (II, C), was found wanting. As it is, there are serious concerns about the way in which the members of Rajya Sabha are indirectly elected. It is axiomatic that universal adult franchise and direct election of representatives are integral to a modern representative democracy. There cannot be popular sovereignty and fair and effective representation without direct elections through universal adult franchise. The distortions of a democracy can be corrected by more direct and better democracy, and not by delinking or distancing the citizen from his representatives and governments at any level.

iv. Elimination of small parties

Given the fact that small parties have come to play the role of a spoiler, there is the appeal for a

two-party system. Among others, former President Venkataraman supported this view when he stated in his address at the 119th anniversary celebrations of the Tribune thus: "If the present Constitution has to function satisfactorily, then a two-party system has to be adopted either by statute or by amendment of the constitution". He went on: "It may be prescribed statutorily that all political parties which secure less than 10% of the votes cast in the next general election to the Lok Sabha shall be derecognised by the Election Commission. Thereafter, the party which gets the lowest number of votes in every succeeding general election shall be derecognised until the number of recognised parties is reduced to two. Thus a two-party system can be achieved in the course of two or three general elections. This scheme is not violative of the fundamental freedom of association, as the right of the formation of political parties or groups is not taken away from the citizen. Only the right to parties to be recognised as a political party for electoral purposes is regulated. Recognised political parties have certain privileges, the most important one being the right to a common symbol for candidates contesting elections. This common symbol will be denied to unrecognised political parties under this scheme".

But a careful analysis of this proposal reveals serious flaws. As C. B. Muthamma, in her paper "Representational legitimacy of the present system" presented at the National Seminar on Electoral Reforms (Calcutta, 17th - 18th November 2000) argues, "In a country with a very large population, with a diversity unmatched anywhere in the world, it is to be expected that there will be many parties and many candidates. It is not democratic to look for ways of restricting the people's rights by trying to reduce the number of parties ...." Even small and far more homogenous countries have several political parties. In fact, a two-party system is an exception, limited largely to the United States, Canada, Australia and New Zealand. (THE US DOES NOT RESTRICT OTHER PARTIES; IT ONLY MAKES THEIR LIVES RATHER DIFFICULT UNDER LAW. IN FACT FROM TIME TO TIME THERE ARE THIRD PARTY CANDIDATES LIKE RALPH NADER, GREEN PARTY, AND INDEPENDENTS.) Even Britain has three major parties — the Labour, Conservatives and Liberal Democrats. On a more practical plane, if 10% national vote is the precondition for recognition as a political party, only two parties will remain in India today — the Congress and the BJP at the national level. (Paradoxically, these parties together enjoy the support of less than 50% of the voters.)

But it is a different story at the States level. If regional aspirations are not allowed to find political expression, there will inevitably be political strife, violence and spread of secessionist movements. Moreover, in practice, there appears to be a movement towards a bipolar system with two broad coalitions operating in most States (Uttar Pradesh is a significant exception), and also at the Centre.

B. Harmony in Governance: The first need is for harmony in the legislature. However, law-making has often become difficult in India. As the Rajya Sabha, whose members are indirectly elected by the State legislative Assemblies, shares Legislative powers with the Lok Sabha except on money maters, legislation at the Union level has become often difficult as the former is composed of different majorities than is the case with the latter. Sometimes, even enacted laws are not enforced by the simple expedient of not notifying them or not laying down procedures for their implementation. (WHY IS THIS SO?) Bills passed by the State legislature are sometimes referred to the President for assent delaying their enactment indefinitely, thus thwarting the will of the people. Thus, measures are needed to ensure a more harmonious functioning of the legislatures.

1. Reform of Rajya Sabha: Contemporary experience is that there is no single dominant party.

Then there is the Constitutional arrangement to have a third of the members of the Rajya Sabha– a permanent House that cannot be dissolved– elected indirectly by State legislators every two years. Indeed, the Rajya Sabha, like any other second chamber, was created check "hasty and ill-considered"legislation. The Constitution does provide for an effective mechanism to resolve the impasse that may result in case of disagreement between the two Houses, but only in case of money and other financial Bills. Thus, in all other matters, the Rajya Sabha has a virtual veto of the measures passed by the Lok Sabha which is elected directly elected by the people. The provision in Article 108 for a 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. And this has been the experience of late, proving that the original constitutional arrangement had not worked as it was supposed to be. 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 House of Commons was dissolved on Liberal Party's Prime Minister Asquith's recommendation. Finally, the king (THREATENED?) promised to nominate the required new members to the House of Lords' which made them relent and enact the Parliament Act in 1911. Some such provision may be the answer for the Indian crisis. The legislative powers of the Rajya Sabha (as part of that body is elected by the States) in respect of matters affecting States' powers, and constitutional amendments could be retained. But in respect to all other legislation, the Rajya Sabha may only have the power to delay or suggest a modification of a Bill, and not take it a hostage. If, after a delay of, say three months, the Lok Sabha were to pass the Bill again, that Bill should become the law. Such aan arrangement will respect the verdict of the people, ensure protection of the rights of States, give the Upper House an opportunity to give its opinion, and enable a vigorous debate in the Lok Sabha reconsidering its views the second time around. (THIS IS VERY GOOD.)

Another alternative is to change the nature of election of Rajya Sabha members. Currently, they represent the will of the States, elected as they are largely by the legislative Assemblies. But, as one-third of the members of the Rajya Sabha are elected every two years by a State Vidhan Sabha whose members may not the same as the original ones who elected the members of the Rajya Sabha. Thus, they no longer represent the State legislature. Their vote on Union legislation then represents neither the will of the people nor the will of the State legislature which elected them. (WHY SHOULD THIS BE SO? AFTER ALL, THEY ARE STILL ELECTED BY THE STATE LEGISLATORS, THOUGH THEY MAY NOT BE THE SAME!) One option is to make the term of Rajya Sabha members coterminous with the life of a Vidhan Sabha. Then, each time a new Vidhan Sabha is constituted, all the Rajya Sabha members from that State will be freshly elected. Once the composition of Rajya Sabha represents the political realities in the States, it can be expected to be more in tune with the mood of the country, and there is less likelihood of legislative deadlock between the two Houses of parliament. (BUT THERE IS NO GUARANTEE THAT THE STATES ELECT SIMILAR RAJYA SABHA MEMBERS AS THAT OF THE LOK SABHA,WHICH MEANS THE DEADLOCK MAY STILL CONTINUE!)

Yet another option is to enable a State governments to nominate members of its choice to represent the State in Rajya Sabha from time to time. Then Rajya Sabha members merely represent the will of the State governments. Germany has a similar system of State governments nominating members of the Senate (Federal upper house) from time to time. Any one of these measures might help resolve the current deadlock in the Parliament.

2. Monitor Enforcement of Laws: Duly enacted laws on occasion remain a dead letter on

account of the lack of political will of the government of the day to en force it. This not only violates the will of the people, but also in effect stalls judicial review of legislation. A law that is not en forced cannot be judged. If indeed the current government, for whatever reason, does not like the law passed by a previous government (possibly that of an opposition party), the only recourse is to repeal it or amend it but not stop enforcing it altogether. The executive part of government cannot veto a legislation duly passed by the legislature.

One good illustration is the case of the Delhi Rent Control Act, 1995 which was enacted "to provide for regulation of rents, repairs and maintenance and evictions relating to premises in the National Capital Territory of Delhi." But this had not come into effect for over five years. ANY PARTICULAR REASON?

On the other hand, there are several laws which have outlived their utility. There are provisions in several laws which even today make reference to the British crown or the Privy Council. It is estimated that there are about 3000 such laws at the Union level and about 30,000 at the States level. This is because there is neither a provision for regular legislative review of laws, nor is there a "sun-set" provision by which the law automatically lapses after a certain period unless it is reenacted. As a result, the Indian legal framework is a complex maze of either outdated or redundant laws.

As a remedy, it may be required that a law enacted shall be notified and given effect within a specified period, for example, of 90 days. Sometimes laws are not given effect because the rules and procedures have not been laid down for years which means that rules and procedures should be put in place within a definite time frame of perhaps six months. Most ordinary laws should have a sun- set provision of automatic repeal within five or ten years.

Finally, there should be provisions demanding a comprehensive, time-bound review of all the laws on the statute books, starting from the oldest laws over a period of, say three years. There should also be a permanent legislative committee to review the laws and their implementation to discharge this function effectively.

3.Timely Presidential assent of State Bills: Article 246 (3) of the Constitution gives the State legislature exclusive and unlimited power to enact laws in respect of State subjects enumerated in List II in the Seventh Schedule. But Article 200 gives the Governor of a State the power to reserve a Bill passed by the State legislature for the consent of the President of India. Under Article 246 (2), Parliament as well as the State legislatures have the power to make laws in respect of any of the matters enumerated in List III in the Seventh Schedule. According to Article 254, if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which it is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the concurrent list, then, the law made by Parliament shall prevail, and the State law shall be void to the extent of the repugnancy. But if a provision of a State law is repugnant to the provisions of an earlier law made by Parliament, then the State law shall prevail if the President had consented to it.

However, two difficulties are commonly encountered in practice. Firstly, routine Bills which pertain to matters in List II (State List) are often referred to the President on some pretext or the other JUST TO DELAY IT. This necessitates the establishment of clear and unambiguous norms, if needed by a constitutional amendment, clearly spelling out the circumstances when a Bill can be sent to the President. The second pertains to the abnormal and needless delays in obtaining President's assent, thus violating the will of a State legislature by the Union government (as the President acts only on their advice). Therefore a time limit of, such as sixty 60 days, should be fixed for the President's decision to consent or not.

3. Good Governance

1. Standards of public behaviour: Insofar as elections are expressions of popular sovereignty, every legislature should conform to ceratin standards of public behaviour. There are five issues in this regard.

i. Members elected on a party platform must adhere to it throughout the term. Equally importantly, party leadership should not be allowed to exercise control over how the members vote in the legislature as such control would make the representative function irrelevant. A fine balance has to be struck between the two competing demands of loyalty to party platform and legitimate dissent when warranted. The Tenth Schedule of the Constitution, enacted in 1985, with the objective of preventing defections has failed in fulfilling this objective, and needs to be reviewed.

ii. There is an implicit separation of powers and functions in a democracy between the legislature and executive even in a parliamentary democracy. In reality, however, the legislators in India started functioning as disguised executives. HOW AND WHY? NOT CLEAR.

iii. The parliamentary executive system is eminently suitable at the Centre but not at the States level as the needs and functions of the latter are different. Thus a clear separation between the legislative and executive powers at the State level is an imperative in order to provide a Good and accountable governance. THIS POINT IS NOT CLEAR. I PERSONALLY FAIL TO SEE THE REASONS FOR SEPARATION, OR WHAT THE SEPARATION IN THE FIRST PLACE IS. THIS SECTION DESERVES SOME BRIEF EXPLANATION, OR EXAMPLES.

iv. Democracy is meaningful only when it is closer to the citizen. The **PRINCIPLE OF SUBSIDIARITY**, whereby the citizen is the centre of the governance process, and where powers get devolved on ever enlarging concentric circles of government by the **PRINCIPLE OF EXCLUSION AND NECESSITY**, are now increasingly accepted in al liberal democracies. Effective legislation and good governance demand empowered local governments. Equally significantly, with the advent of modern technology, direct democracy has become increasingly cost-effective and viable. Where possible, representative democracy should give way to direct expression of popular will.

THE HIGHLIGHTED CONCEPTS IN THIS SECTION NEED AT LEAST A BRIEF DEFINITION/EXPLANATION. THE READER– INCLUDING MYSELF– MAY NOT KNOW WHAT THESE ENTAIL!

THE FIRST POINT IS WELL-TAKEN, BT TE LATTER TWO ARE RATHER CONVOLUTED. THE REFERENCE TO MODERN TECHNOLOGY AS AN ASSET I ALSO A REFERENCE TO MORE, CERTAINLY DIFFERENT, PROBLEMS. WHILE THE EXPERIENCE IS NOT LONG, THERE IS A LOT OF SPECULATION AND ARGUMENTATION ON THE SUBJECT WHETHER THE NEW TECHNOLOGY INDEED IS AN ASSET OR A LIABILITY. FOR EXAMPLE SEE: Elaine Ciulla Kararck and Joseph S. Nye, jr., eds, *democracy.com? Governance in a Networked World* (Hollis, NH: Hollis Publishers, 1999); Anthony G.Wilhelm, *Democrcy in a Digital Age* (Near York: Routledge, 2000). I am sending my recently edited volume, *Public Administration and Policy: An Introduction* (Paris: UNESCO, forthcoming) wherein you will find Loong Wong, "The Internet, Governance and the Issues of Governance: A New Cartography of Power?" which could also be of interest.

2. The Scourge of Defections: To end the terrible practice of jumping party affiliations because of the lure of Cabinet slots or other material benefits which often times led to the fall of governments

causing political instability, the Tenth Schedule of the Constitution, popularly known as the Anti-defection Act, was incorporated by the 52nd Amendment in 1985. Consequently, a legislator belonging to a political party shall be disqualified from membership of the legislature when one

a. Gives up voluntarily th membership in the political party; and
b. Votes or abstains from voting in the legislature contrary to any "'whip" (direction) issued by the party to which be belongs.

There, however, are certain exceptions. A member may obtain prior permission of the party not to follow the whip, or when a whip is violated, the party may condone within 15 days of violation. A member cannot be disqualified if (s)he, along with one-third of other members, claims to represent a faction which has arisen as a result of the split in the party. Also disqualification will not apply in case not less than two-thirds of the members of the legislature party have agreed to a merger. Other members who have not accepted such a merger and opted to function as a separate group will not be disqualified. An independent member or a nominated member will be disqualified after joining a party. Any question pertaining to disqualification of members under this Schedule shall be decided by the Chairman (of the Upper House) or Speaker (of the lower House) concerned.

The Anti-defection Act was obviously well-intentioned. However, it failed to prevent defections. As already seen, the law does not favour individual defections, but permits collective defections, and there have been countless of the latter since 1985. This is tantamount to saying that if an individual commits a murder, it is a crime; but if a group does it, it is perfectly legitimate! (THIS IS HYPERBOLE!) As a result collective splits are engineered with meticulous precision, and careful and calculated conspiracy.

There is one major unintended adverse consequence. Once the law provided that violation of party whip on any vote attracts disqualification, party legislators who may honestly differ on a piece of legislation are now forced to submit to the will of the leadership. The ill-conceived legislation on Muslim women's maintenance after the supreme court verdict in Shah Bano case is one sad example. An even more shameful episode is the whip issued by Congress Party to its MPs in the impeachment case of Justice Ramaswamy. Parliament sits as a court while deciding on impeachment matters, and only evidence of wrong doing and the judgement of individual MPs should matter. Party whips have no place on such issues, and are manifestly illegitimate, and are probably unconstitutional. However, once the law gives the same enforceability to all whips, the legislators have no choice but to obey, or risk disqualification. Thus, all dissent within the party is stifled, while organized defections continue systematically.

Thus, major reforms, as follow, are needed in the anti-defection provisions 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.
– All those legislators who thus form a separate group (PARTY) after the ABOVE transparent process should be prohibited from holding Ministerial office or at least one year frOm the date of such split. (THIS IS ARBITRARY AND PUNITIVE, IF INDEED THEY CREATE A NEW PARTY, PARTICULARLY IF THEY AR DOING THIS IN A TRANSPARENT WAY, IS I NOT?)
– The Election Commission, not the Speaker or the Chair of the legislature (who of late tended

to be as political as any politician), should be the competent body to decide upon the issues of disqualification.
– The party whip should be restricted to voting which might bring down a government such as a no-confidence motion, or a finance bill, thus allowing conscientious objectors and honest dissenters to vote as they please on other matters.
– There should be no whip in the Upper House. (WHY SHOULD THIS HOUSE BE TREATED DIFFERENTLY? IS IT BECAUSE OF ITS ELECTED NATURE? EXPLAIN.)

3. Code of Ethics for Legislators: Public office in India is traditionally seen as personal preserve, and abuse of power for private gain is endemic. Every legislator as a public servant should uphold high standards of probity and dignity. In the early years after independence, conscious efforts were made by the leaders to promote exemplary behaviour and to promptly punish unbecoming conduct. When a member of the provisional Parliament, H.G.Mudgal , was accused of receiving financial and business advantages in return for Rs. 2,700 from the Bombay Bullion Association for "canvassing support and making propaganda in parliament on problems like option business, stamp duty etc.," Prime Minister Nehru constitute a parliamentary committee to inquire into the allegations and based on is findings forced the member to resign. Some clear principles of conduct were also laid down consequently.

But no effort has been made to codify those principles, or institutionalize effective mechanisms for enforcement. For long legislators even argued that they cannot be classified as public servants, and thus shall not be prosecuted for corruption. The events in the JMM bribery case have amply demonstrated the unhappy state of affairs. The chronology of events (as reported by Free Press Journal, 30 Sept 2000) is revealing. On July 26, 1993 the CPI(M) member of Parliament (MP) Ajoy Mukhopadhayaya moved a no-confidence motion against P V Narasimharao's minority government (with a strength of 251 MPs in the House of 528 members) which was defeated by a narrow margin of 14 votes. On February 28, 1994 a Hindi Weekly "Jandharna Paksh" from Kota in Rajasthan published a news item alleging horse-trading and giving details of bribes given to four JMM MPs for voting in favour of the government. On February 1, 1996 Rashtriya Mukti Morcha President Ravinder Kumar filed a complaint with the Central Bureau of Investigation for investigation of the case. Since then, true to the Indian tradition of criminal justice system, the case took a very tortuous course. On April 17, 1998 the Supreme Court gave a judgment holding MPs as public servants, but declared that they are entitled to immunity from prosecution under the constitutional provisions. Article 105 (1) guarantees freedom of speech in parliament subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of parliament. According to Article 105 (2): "No member of parliament shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings." Accordingly, in a three-two verdict the Supreme Court held that the MPs who undoubtedly took bribes were immune from prosecution. Later Prime Minister Narasimha Rao and Minister... Bhuta Singh were also exonerated of mu worng-doing! (AM I CORRECT?) Obviously, the standards of behavior of the legislators traveled a great distance from expelling a member in 1951 for receiving a paltry sum of Rs.2,700 to the JMM case in which members who took up to Rs.1 crore. Parliament had not shown any enthusiasm to expel the erring members and punish the Prime Minister , or to evolve an enforceable code of ethics.

ON A MATTER OF STYLE: WHILE THESE TWO EXAMPLES ARE VERY ILLUSTRATIVE OF THE POINT BEING MADE, IN THE REST OF THE WRITING, NO EXAMPLES ARE PROVIDED TO SUSTAIN A POINT WHICH IS UNDERSTANDABLE GIVEN THE LENGTH OF THE PAPER. BUT HERE A DEPARTURE IS MADE. THUS, FOR UNIFORMITY'S SAKE, GIVE A THOUGHT WHETHER THIS DEPARTURE IS NECESSARY. CAN'T THE POINT BE MADE IN A GENERIC WAY WITHOUT RECOURSE TO EXAMPLES?

{This decline in standards of parliamentary ethics is in glaring contrast with the energetic and earnest efforts of parliaments elsewhere to enforce high ethical conduct. As Surya Prakash points out, Newt Gingrich, the powerful Speaker of the American House of Representatives was punished in 1997 for relatively minor violations of code of conduct of not disclosing the income he received from other sources. Finally he had to resign and quit politics for ethical lapses. In Britain in the 1990s MPs who took cash for raising questions in parliament were admonished and punished. Recently in January 2001 Peter Mendelson, a powerful minister, had to resign as it was disclosed that he merely enquired about the processing of the passport applications of the Hinduja brothers. In this case there was no bribe or corruption involved, and the Hindujas gave a contribution of £ 1 million for the government project, the Millennium Dome, and yet the minister had to leave for showing interest on their behalf. In Australia Senator Mal Colston, the deputy president of the Australian Senate was forced to quit office after it was found that he had budged his travel allowance bills and falsely claimed allowances for 43 overnight stays. Criminal prosecution was also launched against him in the case.

These were not merely stray cases of moral outrage and retribution. In many democracies procedures and institutions have been established over the years to keep their elected representatives in check and hold them accountable for ethical lapses. Both the houses of the US Congress have Select Committees to enforce ethical standards of conduct of members. In 1989, the US Congress enacted the Ethics Reforms Act imposing strict limitations on outside income, and exacting standards governing gifts, honoraria and travel facilities. The British Parliament passed a resolution in 1947 restraining members from misusing their office. In 1974 it was made compulsory for members to register their pecuniary interests in a Register of Members' Interests. Nolan Committee in 1994 studied in depth the standards of conduct of all office holders, including arrangements relating to financial and commercial activities. Based on Nolan Committee's report, members and their families have been barred from receiving any payment or benefit in cash or kind, directly or indirectly, to advocate or initiate any cause or matter on behalf of any outside body or individual, or to urge any other member or a minister to do so by means of any speech, question, motion, bill or other parliamentary activity. A Committee on Standards and Privileges was established by the parliament, and an independent Parliamentary Commissioner was appointed to interpret the code of conduct, advise members and investigate into complaints against them. Members are required to declare their interests and their property holdings, overseas visits and gifts in the Register of Members' Interests. This register is published soon after the beginning of a new parliament and annually thereafter, and is freely available to the public. Thus the register, the independent commissioner, and the parliamentary committee enforce high standards of conduct and probity. In Australia too similar institutions and practices are in place. }

I MIGHT DELETE ALL THE ABOVE IN PARENTHESIS FOR THE SIMPLE REASON

THAT THESE COUNTRIES PROVED TO BE NO CEASER'S WIFE. ALL REGULATIONS ARE ALMOST REGULARLY CIRCUMVENTED. BUT THEN THE OTHER CULTURES AND REASONS FOR CORRUPTION, OR LACK THEREOF, ARE DIFFERENT. FORE EXAMPLE, Jon S. T. Quah wrote a lot on the experience of the ASEAN nations. He makes three arguments: 1, Pays are good; 2, Strict laws are available; and 3. More importantly those laws are strictly enforced. I PERSONALLY DISAGREED WITH JON IN SEVERAL DISCUSSIONS ON THE FIRST POINT AS THERE IS CORRUPTION IN VERY WELL-PAYING COUNTRIES TOO WITH THE DIFFERENCE BEING THE EXTENT AND THE INTENSITY OF IT. SURELY, IN MANY OF THE SCO-CALLED DEVELOPED COUNTRIES THE CLIENT/CITIZEN IS NOT TAKEN HOSTAGE IN DAILY LIFE. CORRUPTION IS AT A HIGHER LEVEL AND ALSO MONUMENTAL, WHEN IT HAPPENS.

A few attempts have been made to evolve a code of conduct for legislators, no doubt. The Committee of Privileges of the Eleventh Lok Sabha suggested several strong measures including drawing up a code with mandatory effect through a parliamentary resolution, and the establishment of parliamentary committee to frame rules for administering the code, receive complaints and impose punishments. However, no effective measures have been taken so far. Recently a new practice is started placing large public funds at the disposal of the legislators for constituency development. In many cases these funds have been utilized in a prudent and productive manner in furtherance of public interest. But as the legislator fell short in accounting for these expenditures. Thee have been serious allegations of large scale misuse of these funds including de facto delegation of the powers of sanction to contractors and others after a commission is paid to the legislator which has aggravated an already corrupt system.

Given all this, it is imperative that effective measures are taken to enforce high standards of conduct of members on the following lines:

– Draw up a strict code of conduct for members and give it mandatory effect through parliamentary resolution;
– Open a mandatory register of members' (FINANCIAL?) interests, update it annually and make it public;
– Make it mandatory for members to declare all their assets and interests after election and every year thereafter, under pain of disqualification and criminal prosecution for non-disclosure or willful false disclosure or concealment;
– Appoint an independent commissioner to advise members and receive complaints and investigate;
– Establish a permanent legislative committee to examine all reports and recommend action to the legislature;
– Expels legislators for serious violation of ethics;
– Amend Article 105 to make any consideration for any action of a member in discharge of duties or use influence a punishable offence;
– Clearly and unequivocally declaring any elected legislator as a public servant and any consideration for his action or inaction as punishable under Prevention of Corruption Act;
– Declare behaviour unbecoming (DEFINITION) of a legislator in the house or outside as a violation of code of conduct even if there is no pecuniary interest involved; and
– Withdraw the constituency development funds placed at the disposal of legislators for utilizing at their discretion, and evolving alternative mechanisms for legislators' participation in constituency development.

UPDATE THIS IN VIEW OF THE SUPREME COURT DECISION AFFIRMING THE EC's POWERS WITH REGARDS DISCLOSURE etc.

4. Pitfalls of federalism: Besides the lack of standards of behaviour and code of ethics, the very federal setup ended to e an impediment to good governance. Although the parliamentary executive form served well at the Union level such a model is not without flaws. The Prime Minister wearing three different hats– head of the party, head of the government and a de facto head of the legislature– has far greater powers than the directly elected heads of government. This is more so when the constitutional head of state is often a titular head working at the behest of the Prime Minster. In a society which traditionally pad deference/obeisance to power, the Prime Minister emerged as a formidable, larger-than-life figure. Yet, the diversity of the nation and the decline of the single party domination ensured that the Prime Minster is under check most of the time.

Besides the exaggerated powers of the Prime Minister, there is the issue of drawing Cabinet Ministers only from the legislature. As was already discussed, this practice served so long as administratively talented were available in Parliament. Where this is no more the case, and when the political process makes it difficult for genuinely public-spirited citizens with no capacity to muster muscle and/or money power to enter the electoral arena, the quality of the executive suffers. After all, as is the legislators so is the Cabinet! This problem is more so, and glaring at the State levels. Following are some thoughts in this regard.

i. Flexible federalism: The political culture of the States if often at variance with that of the Centre, and different even among the several States. The spheres of activity of the Union and States are vastly different. Most public services which make a society truly civilized, democratic and modern are the responsibility of States. Additionally, with the increasing importance of the local governments, there is an even more pertinent question whether it is necessary to follow the same political and electoral system by the Centre, States and local governments.

There are examples where different electoral and political models exist in different tiers of government. Britain being a unitary country, has no sub-national governments (States). However, the recent devolution efforts in Scotland, Wales and Northern Ireland show that the model followed in each region is unique and different. Even a small and relatively homogenous nation found it necessary to evolved different models of devolution. (I AM VERY WARY OF THIS EXAMPLE. WITH SCOTLAND, ETC. THE REFERENCE IS TO UK, WHICH IS NOT HOMOGENOUS. ENGLAND ITSELF IS NOT, FOR THAT MATTER.) Even more significantly, the Mayor of London is now elected directly y all the voters, and not by the elected members of the London County Council (LCC) as was done historically. Thus, even in the cradle of parliamentary executive, a great deal of diversity of political institutions is noted. (WHAT HAS THIS GOT TO DO WITH THE PARLIAMENTARY EXECUTIVE? IT WOULD BE BETTER TO REFER INSTEAD TO THE LOCAL GOVERNMENTS WHICH ARE DIFFERENT AND NEED NOT BE UNIFORM.) In the United States, the national executive is elected indirectly by an electoral college whose members themselves are elected differently in different States. The election of delegates to the party conventions also varies from State to State. While in most States, the winner-take-all system prevails, in the States of Iowa and Nebraska there is a more nuanced system. (MORE CONFUSING IS A APT EXPRESSION. HOWARD DEAN HAD NOT MUCH PRAISE FOR THE IOWA CAUCUSES ALTHOUGH HE HAS BEEN SINGING A DIFFERENT TUNE NOW. NOT MANY LIKE WHAT GOES ON THERE.

THE ENTIRE PRIMARY PROCESS IS UNDER A CLOUD AS IS THE CASE WITH THE ELECTORAL COLLEGE.) In France, the President is directly elected, and there is a run-off election, if necessary, and the candidate with a majority vote becomes the head of states. But in the legislative elections, while there is a run-off in case no candidate obtains a majority vote, in such a run-off the winner is decided on plurality basis, and there is no majority requirement. In India itself, the head of state– the President– is elected by both Houses of Parliament and the State Vidhan Sabhas. The Governor is appointed in the States by the President and serves at his pleasure. But in local governments, there is no such State government nominee acting as head of the district. And yet the official appointed by the government, the District Magistrate/Collector, often has substantial powers. Local governments themselves are not uniform strength all over India. These examples show that there is no theoretical or logical reason to have identical models of government at every level in a vast and diverse nation like India. Institutions of government evolve over time and no great uniform and inviolable principles, but pragmatism, are involved in such an evolution. Often the local requirements and lessons of past experience dictate the nature and pace of change.

THE CASE IN DEFENSE OF A NEW SETUP IN THE STATES IS NOT SOUND ENOUGH WHILE THERE OS MP DOUBT ABOUT THE DIFFERENCES BETWEEN STATES AND THE CENTRE. I GUESS A STRONGER CASE NEEDS TO BE MADE.

ii. Legislator as Disguised Executive: Parliamentary executive model has in fact proved to be counterproductive in States. The legislative office is not generally perceived by the incumbents 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. Instead, legislators are seen as disguised executives. A legislator elected by dominant castes/groups is expected by those groups to not simply control the executive, but in fact serve as the executive. There is little concern for lawmaking. What a dominant group wants 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 who can be a dispenser of patronage in the form of many government welfare schemes. (COULDN'T WE THINK OF THESE AS CONSTITUENCY SERVICES AS IS THE CSE, THOUGH NOT NEFARIOUSLY!?) Where a government does not command strength and is largely dependent upon individual legislators, the government tends to be a captive the legislator.

Where legislators are elected by the dominant caste(s) or group(s), and for an ideology or a poll platform, the Council of Ministers (which is culled from the legislators) very often sis a loose collection of warring tribes, perpetually feuding for crumbs fo office or to further their own group or caste interests. All governance then is reduced to patronage, and transfers and posting 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. This "functioning anarchy," as John Kenneth Galbraith called it decades ago, is begging for solution.

I AM NOT SURE IF GALBRAITH'S CHARACTERIZATION IS SIMILAR TOW HAT IS

BEING ARGUED HERE, ALTHOUGH THE QUOTE IS TERRIFIC. I WOULD CHECK CAREFULLY WHAT THE CONTEXT OF GALBRAITH'S EXPRESSION WAS.

Given this dominance of local entrenched groups and the culture of disguised executive, three consequences follow. Firstly elections at the local level are often a test of supremacy of the local oligarchies thus exacerbating electoral irregularities. Secondly, as the political executive is busy with the day-to-day management of politics of survival, much of the executive 's times and energy are spent in retaining the legislators' support, leaving little attention to governance and policy making. Thirdly, much of policy making , except in respect to short-term populist policies, is left to the bureaucracy. This unhealthy role reversal has severely undermined democracy and made the political process increasingly self-serving and unaccountable.

iii. Reversal of Roles: 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.

iv. Nominated Governors: The Governor, as the head of the State, is appointed by the Union, but with vast powers of selecting a Chief Minister, dismissing a government, dissolving the legislature, reserving a Bill passed by the legislature for President's assent under Article 200, and even dismembering an elected government by recommending President's rule under Article 356. Often these powers are used in highly discretionary and partisan manner. Paradoxically, while the President has extremely limited power at the Centre, his nominee, the Governor, who has no democratic mandate has a vast reservoir of unaccountable powers a the expense of the elected State government.

v. State Legislators vs. Local Governments: As already noted, State legislators often act in the capacity of an executive and this further results in a severe weakening of local governments. A local legislator indulging in political patronage often sees the elected local government as a serious rival. The States showed little commitment to transfer resources, functions and control over functionaries to local governments. As the State's political executive owes its survival entirely to elected legislators' good will and support, it is but natural that local governments would not be allowed to take roots against the will of the legislators whose dominance could be

threatened by empowered local governance. This situation underwent marginal change after 1993, with the passage of the 73rd and 74th Constitutional amendments. Yet, the Amendments only ensure that local governments are constituted, elections are held regularly, panchayats and municipalities are not superceded en masse, and independent constitutional bodies are appointed to monitor elections and advise on financial devolution. Moreover, the Amendments (Eleventh and Twelfth Schedules of the Constitution) are not mandatory, and the State legislatures are free to transfer such subjects and powers as they deem fit to local governments. In fact, most States chose not to empower local governments effectively. Even the constitutional obligations of constituting local governments and holding regular and periodic elections are violated with impunity, by employing a variety of disingenuous and undemocratic devices and stratagems. CONTRARILY COULDN'T THIS SITUATION LEAD TO LOCAL AUTHORITIES CULTIVATE THE STATE LEGISLATOR WHO COULD BE A BENEFACTOR? SHOULDN'T THE LEGISLATORS BE TEMPTED TO KEEP THEM OBLIGATED AS (S)HE IS THE CONDUIT OF STATE FUNDS? THIS SHOULD LEAD TO COLLUSION RATHER THAN COMPETITION!

vi. Direct Election of the Executive in States: 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. There cannot be any serious fear of authoritarianism in States as no State government has the power to undermine the essential features of the Constitution, or the basic freedoms in a democracy. THERE IS ALSO THE FEAR OF ARTICLE 356 WHEREBY THE CENTRE MAY TAKE OVER THE STATE GOVERNMENT IN CASE OF MALA FIDE ACTIONS. (TRUE WITH THE CENTRE. BUT BOTH THE CENTER AND SOME STATES HAVE INDEED SABOTAGED THE CONSTITUTION WITH IMPUNITY AN NUMBER OF TIMES!)

Direct election of the executive and separation of powers have instead several clear and decisive advantages in States.

– 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 can 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.

– The legislator can no longer be disguised unaccountable executive. (WHY NOT? THEY STILL CONTROL THE CONSTITUENCY WHICH ELECTS THE EXECUTIVE?) 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 public-spirited citizens will aspire for, and be elected to, the legislature.

– As the executive will be rid of the 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 held together.

– At the same time, the legislature will have real control in law-making and budget approval, and thus can keep the executive in check constantly.

– As the executive's survival is independent of legislators' support, honest and unbiased action can be possible in matter of governance. Corruption can be curbed.

– As the political executive can comprise of the finest talent outside the legislature, the quality of governance can dramatically improve.

– As there will be no need for nominated Governors, federal relations can significantly improve, and States' autonomy can be strengthened.

– As the executive and legislature would be elected separately for fixed terms, the union may no longer abuse Article 356. Failure of constitutional machinery in States as commonly interpreted, viz. incapacity 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 of the elected executive.) 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. NOT NECESSARILY, AND CERTAINLY NOT EASILY AND AS A MATTER OF ROUTINE. Dismissal of a State government is not a necessary requirement to preserve the Union, except in extraordinarily grave emergencies like secession and civil war.

– Local governments can be really strong and effective once the State legislator does not perceive it as a threat. As the State legislator's position will no more entail patronage, (s)he may actually become an effective interlocutor (DEFENDER!) 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 can be expected to evolve, making good governance a reality.

THE LOGIC HERE IS IMPECCABLE. BUT STILL THEY ARE ALL SUPPOSITIONS. I DO NOT BELIEVE ANYONE CAN GUARANTEE THE OUTCOMES AS FORESEEN HERE! AND THERE WILL STILL BE THE PROBLEM OF EVOLVING A NEW POLITICAL CULTURE. HENCE THE SUGGESTION TO USE "MAY BE" OR "CAN BE" RATHER THAN "OUGHT" AND "SHOULD."

vii. Citizen Empowerment and Subsidiarity:

Only when he citizens' vote and public good are discernably and clearly linked in people's minds can vote acquire a lasting value, and people vote for better representatives disregarding temporary inducements. As the former Speaker of the United States Congress, Tip O'neil, said all politics is local. Thus, the citizen becomes the centre of political universe. However, the fundamental failure in India is the de-linking of citizen from governance due to a high degree of centralization. The primary focus of governance should be the local community of stake-holders who have a common interest in a service or institution. There are other, even more important reasons of good governance to promote citizen-centered governance.

The principle of subsidiarity should inform all our representative and democratic institutions. Not only is it a democratic necessity, but it is also a fiscal and economic imperative. Good governance in a democratic society is not possible in centralized structures. This restructuring demands a mandatory status to the 73rd and 74th Amendments (the Eleventh and Twelfth Schedules!) of the Constitution on par with the Seventh Schedule. Mechanisms for devolution of sufficient resources and effective control of employees at each level commensurate with its functions also needs to be developed.

vii. Tools of Direct Democracy: In addition to genuine empowerment of local governance,

representative institutions also need to be redesigned to suit local needs. As decentralized governance becomes more and more real and meaningful, the role of representatives correspondingly changes, and declines. Therefore we should devise tools of direct democracy and immediate accountability at the local level will be needed. (In larger tiers, direct participation by the people is mathematically, geographically and logistically impossible.) Initiatives to propose a legislation, referenda to seek popular mandate for a policy or decision, and recall of errant representatives enforcing accountability can easily be introduced at the local level, thus making popular sovereignty a reality.

WHILE THIS IS LOGICALLY CORRECT, THE EXPERIENCE IN OTHER PARTS OF THE WORLD WHERE THESE DIRECT DEMOCRATIC METHODS ARE BEING PRACTICED IS NOT SUPPORTIVE OF THE TOOLS. IN FACT, THERE IS AMPLE EVIDENCE OF MISUSE. TAKE FOE EXAMPLE, THE RECENT INITIATIVE IN CALIFORNIA, OR EVEN THAT SUPPOSED HAVEN OF DEMOCRACY, SWITZERLAND. I PERSONALLY HAVE VERY SERIOUS RESERVATIONS EVEN AT THE RISK OF BEING BRANDED AS AN ELITIST. I AM OF COURSE A COMMITTED STUDENT OF CONSTITUTIONAL AND REPRESENTATIVE GOVERNMENT.

IV. EFFECTIVE FUNCTIONING OF LEGISLATURES

While a legislature in a parliamentary from is essentially a representative body to make laws, approve the budget and monitor the executive, in India, paradoxically, all initiative for law making has been with the executive, as the legislature merely payed second fiddle. WHAT IS PROBLEM HERE? EVEN IN THE US PRESIDENTIAL SYSTEM WITH ITS SEPARATION OF POWERS, MOST LEGISLATIVE INITIATIVE COMES FROM THE EXECUTIVE BRANCH! RICHARD NIXON WAS UPBRAIDED BY THE SPEAKER OF THE HOUSE FOR HAVING NOT SENT ANY LEGISLATIVE PROPOSALS WHILE PREOCCUPIED WITH WATERGATE, ETC. As the executive inevitably enjoys the majority support in the lower House, laws are automatically enacted without real scrutiny in States with a unicameral legislature. In States with bicameral legislatures, the hurdles in legislation are somewhat mitigated by the fact that the Legislative Council can be abolished with relative ease. At the Union level laws are enacted whenever the government enjoys majority support in the Rajya Sabha or when a compromise is reached among major parties. The actual merits or demerits of a legislative proposal are rarely examined by the legislature. Similarly in budget making there is hardly any discussion of importance. But in the realm of executive decision making there is increasing desire on the part of legislators to exercise their influence informally in an unaccountable manner privately.

Needless to say, the quality of debate in legislatures also suffered over the years. The unruly scenes witnessed almost everyday in legislatures, the absence of rational discussion and deep analysis or introspection, and the often completely partisan approach to issues regardless of merits have eroded public confidence in our parliamentary democracy. The intemperate use of language, lack of decorum, order and discipline, and occasional physical violence have aggravated this legislative decline.

While equitable representation attracting the best talent into public life and promotion of harmony and good governance, as argued above, can improve the composition and quality of members of legislatures, the actual functioning of the legislatures still needs to be addressed. Several measures in tis regard can be taken such as an effective and empowered committee system, strong and capable secretarial and professional support, revision of rules of business to improve time management and conduct of sessions, oversight of appointment of government and regular monitoring of executive action as well as investigation of lapses, codification of legislative privileges, making information available to the public and certain steps to preserve the dignity of legislatures.

a. Effective and Empowered Committee System: In 1993, some efforts were made to constitute Standing Committees to enable specialization. Rules were framed entrusting certain functions to these Committees such as considering policy documents, annual reports and demands for grants of the concerned Ministries and Departments, and examining Bills if referred by the presiding officers. While these Committees and their functions have seen a vast improvement over the years, they are still too feeble and ineffective to make a real impact on the functioning of Parliament. In most States there is hardly any committee system.

Perhaps a brief review of the Congressional Committees in the United States would be useful in understanding their vital role in making the legislature effective. Woodrow Wilson's observation a century ago, "Congress in session is Congress on public exhibition, whilst Congress in its committee-rooms is Congress at work," captures the essence of committee system in the US

even today. Although committees have been in existence for over two centuries, the 1946 Legislative Reorganization Act set the foundation of today's committee system. As Carol Hardy Vincent observes:

*"Decentralization is the most distinctive characteristic of the committee system. Because of the high complexity and volume of its work Congress divides its legislative, oversight, and internal administrative tasks among approximately 250 committees and sub-committees. Within assigned areas of jurisdiction, they gather information, compare and evaluate legislative alternatives; identify policy problems and propose solutions to them; select, determine the text of, and report out measures for the full chambers to consider; monitor the executive branch's performance of its duties (**oversight**); and look into allegations of wrongdoing (**investigation**).*

"Standing committees generally have legislative jurisdiction and most operate with subcommittes that handle a committee's work in specific areas. Select and joint committees are chiefly for oversight or housekeeping tasks. Committees receive varying levels of operating funds and employ varying number of aides. Each hires and fires its own staff. Whereas most committee staff and resources are controlled by majority party members, a portion is shared with the minority. Several thousand measures are referred to committees during each Congress. Committees select a small percentage for consideration, and those not addressed often receive no further action. Determining the fate of measures and, in effect, helping to set a chamber's agenda make committees powerful.

"When a committee or subcommittee favours a measure, it usually takes four actions. First, it asks relevant executive agencies for written comments on the measure. Second, it holds hearings to gather information and views from non-committee experts. Before the committee, these witnesses summarize submitted statements, then respond to questions from members. (Other types of hearings focus on implementation and administration of programs [oversight] or allegations of wrongdoing [investigative]).

"Third, a committee meets to perfect the measure through amendments, and non-committee members sometimes attempt to influence the language.

"Fourth, when language is agreed upon, the committee sends the measure back to the chamber, usually along with a written report describing its purposes and provisions and the work of the committee thereon.

"The influence of committees over measures extends to their enactment into law. A committee that considers a measure will manage that full chamber's deliberation on it. Also, its members will be appointed to any conference committee created to reconcile the two chambers' differing versions of a measure". CITATION

Such An elaborate and highly systematized procedure of the committees gives the US Congress tremendous control over the legislative and oversight process, and enables close interaction with the public, experts, and professionals.

WHILE THIS IS TRUE, THE AMERICAN CONGRESSIONAL COMMITTEE SYSTEM IS NOT AN UNMIXED BLESSING. IT HAS SERIOUS PROBLEMS SUCH AS DEVELOPING FIEFDOMS WHERE A SINGLE CONGRESSPERSON WHO CHAIRS THE COMMITTEE CAN BROWBEAT EVERYONE ELSE, CREATE OBSTRUCTIONS BY NOT ALLOWING A BILL OR AN APPOINTMENT COMING TO VOTE, OR EVEN DISCUSSION AND SO ON. AGAIN, I WILL QUALIFY THIS EXAMPLE, THOUGH USEFUL.

While US Congressional system need not to be adopted en toto, Committees at the Union and State levels would be useful. They may be given the following responsibilities:

– Approval of demands for grants;
– Receive proposals for legislation from the public and government;
– Conduct public hearings and take expert depositions with the power of summons when necessary;
– Finalise proposals and recommend to the full House a proposal;
– Make public its meetings, deliberations and records through a variety of means including electronic transmission;
– Conduct public hearings o appointments of constitutional functionaries and key public offices;
– Monitor and review of implementation of laws, and government policies;
– Review performance of government Ministries and functionaries; and
– Investigate complaints of wrongdoing (BY WHOM? ALL PUBLIC OFFICIALS, ONLY LEGISLATORS, OR MINSTERS! WHAT HAPPENED TO PROPOSALS FOR *LOK PALs* AND *LOK AYUKTAs*, etc.

b. Efficient Conduct of Legislative Sessions: In order to restore public confidence in, and promote orderly, effective and democratic functioning of, the legislatures, the following measures could be adopted:

– Abolish Zero hour which has become a source of great disorder and noise;
– Base the legislature's work largely or wholly on the work in Committees;
– Strictly monitor the timing, and interventions and speeches made (only when they are brief, relevant and to the point– THE LATTER TWO POINTS MAKE THIS A MATTER OF PERCEPTION, SUBJECTIVE etc., AND LEAD TO GREAT MISCHIEF!
– Firmly act against erring members who undermine the functioning of the legislature; and
– Codify precisely the privileges of legislatures so that there is no room for ambiguity. (ABUSE CANNOT BE PREVENTED BY SIMPLE CODIFICATION!)

c. Enhance and Ensure the Dignity of Legislatures: Legislative dignity is severely lowered with the election of those with criminal records, and the behavior of all legislators which is often unethical and corrupt. The following measures, some of which have already been discussed at length, may be offered as a remedy:

– Reform political parties comprehensively;
– Inaugurate comprehensive electoral reforms;
– Abolish the constituency development fund of the legislators;
– Remove special patronage of members like quotas in allotment of petrol bunks, telephones, gas connections etc.;
– Prohibit members from becoming members of local government bodies or public sector

boards;
– Provide much larger secretarial assistance and professional help to members and Committees;
– Ensure complete independence of the legislative secretariat;
– Provide adequate facilities (SUCH AS? ISN'T HIS REPETITIVE OF THE PREVIOUS POINTS?) to discharge duties as legislators and constituency representatives;
– Link salaries and allowances of members to the wages and allowances of officials of an appropriate rank, so that legislators do not have the embarrassment of seeking and enhancing their own wages, OR EVEN FEEL THE INFERIORITY COMPLEX.
– Prohibit legislators from influencing purely executive actions; and
– Develop a strict and enforceable code of conduct, violations of which invite serious penalties including expulsion.

V. CONCLUSION

In conclusion, parliamentary democratic institutions in India have served well. For the first time in Indian history the ideals of rule of law, human dignity, livery to citizens, popular sovereignty, and universal adult suffrage have taken root. However,, this is no time to rest on these laurels. There in fact is the need to correct the numerous distortions that have surfaced over the years. Mahatma Gandhi's admonition should be the guiding principle in building institutions of state. "The real Swaraj will come," he said, " not by the acquisition of authority by a few, but by the acquisition of the capacity by all to resist authority when abused."

Equally importantly Indian parliamentary democracy should be judged by his talisman: "Recall the face of the poorest and the weakest man whom you have seen and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to Swaraj for the hungry and spiritually starving millions? Then you will find your doubts and yourself melting away." CITATION

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