

# **ELECTORAL & POLITICAL PARTY REFORMS IN INDIA**

*by*

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## Electoral Reforms in India

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### I - Introduction

Among the nations liberated after the Second World War, India has a unique record of successive elections and stable and peaceful democracy. Many countries, which emerged as nascent democracies with high hopes over the past fifty years, have fast succumbed to authoritarian impulses and army coups. The experiences of our own neighbours – Pakistan and Bangladesh – illustrate the difficulties in running a democracy. Indian democracy has shown refreshing capacity to adapt to conditions and uphold democratic institutions and practices. People have been voting in large numbers, and democracy has broadened its appeal, though it may not have struck deep enough roots. There is wider representation of various castes and social groups in legislatures. By all accounts, the bold experiment of universal adult franchise since the inception of our republic has paid off.

However, it will be useful to pause and examine the record of post-colonial India in the light of the democratic institutions and practices as commonly understood in contemporary liberal democratic world. *Myron Weiner* has listed four such institutions and practices as follows:

- i) Government leaders are chosen in competitive elections in which there are opposition political parties.
- ii) Political parties – including opponents of government – have the right to openly seek public support. They have access to press, freedom of assembly, freedom of speech and freedom from arbitrary arrest.
- iii) Governments defeated in elections step down; winners do not punish losers; defeated leaders are not punished unless in the act of governance they have broken the law; their punishment is based on due process.
- iv) Elected governments are not figureheads; they exercise power and make policies and are accountable to the electors – not to the military, the monarchy, the bureaucracy, or an oligarchy.

Judged by these yardsticks, many countries, while having elections, fail to qualify at varying periods of time as true liberal democracies. Zambia and Argentina had for sometime competitive elections for public office, but gave unlimited power to elected leaders. In Argentina for some time there was also limited electoral competition with major political forces banned. In apartheid South Africa and white-dominated Rhodesia, while there were regular elections, large sections of people were forcibly prevented from

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participating in them. In fact, even in the Southern states of the United States, the blacks, while legally permitted to vote, were in practice denied the franchise until the Civil Rights Movement of the 1960s. In countries like Mexico for decades, and in Pakistan and Bangladesh often, there was theoretical electoral competition, but massive state sponsored rigging was practiced. In Turkey, Pakistan, Bangladesh, and Philippines periods of electoral competition are interspersed with authoritarianism. In Algeria and Burma there was electoral competition but the winning parties were prevented from assuming office, and are in fact persecuted. Erstwhile Soviet Union, and most of the Eastern European countries until their adoption of democracy about a decade ago, had authoritarian communist regimes in which only one party could control government. China continues to be under an authoritarian, one-party rule. Several South East Asian countries too have witnessed limited electoral competition or outright authoritarianism for decades.

Judged by these standards, as *Myron Weiner* points out, "India is one of a handful of post-colonial countries that could be regarded as having a stable democratic regime. The list is very small and one could quarrel with the inclusion of several of the countries in it: Malaysia, Sri Lanka, Jamaica, Trinidad / Tobago, Papua New Guinea, and a variety of mini-states: Bahama Islands, Barbados, Botswana, Gambia, Mauritius and Surinam. In the main, post-colonial regimes have been one-party states, military bureaucracies and dictatorships, communist, or personalized autocracies. 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. In most post-colonial regimes, political 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."

### **Aberrations**

However, there have been several aberrations from time to time in our commitment to democratic institutions and practices. The most notorious example is the period of "internal emergency" between 1975 and 1977. Civil liberties and habeas corpus were suspended during the period and thousands were incarcerated for no other reason except that they were the opponents of the regime. Elected legislators and leaders of opposition were all detained without charges or trial. Opposition political parties had no access to media. Freedom of press was suspended and press was subjected to pre-censorship. The 42nd Amendment allowed the Parliament to suspend elections and extend its own life indefinitely – one year at a time. In fact, the life of the 5th Lok Sabha was extended thus, and elections were postponed. However, it must be said in favour of Mrs Gandhi, the architect of that emergency, that she did voluntarily call for elections, though after the expiry of the natural term of the Lok Sabha, and lifted the curbs on most freedoms. The elections in 1977 were by and large free and fair, and the transfer of power from the defeated ruling Congress Party to the newly elected Janata Party was peaceful and orderly.

There have been many other aberrations too. Flawed elections have often reduced the legitimacy of our democracy. Severely flawed electoral rolls, polling irregularities, vote-buying, unaccountable use of money in elections, criminalization of politics and the curse of defections for personal gain have undermined the sanctity of elections. For a long period, the state-owned electronic media have been rigorously controlled by the government of the day. The autocratic and unaccountable control of parties has reduced them to personal estates and private fiefdoms, undermining the political process. The well-intentioned but poorly designed Tenth Schedule of the Constitution has reduced legislators to a status of serfdom. All these undemocratic institutions and practices have severely eroded the legitimacy of governments and legislatures.

Certain recent trends have been even more disturbing. There is a perceptible and alarming decline in the quality of debate in legislatures. Much of legislative business and reviewing the work of government has become perfunctory. Legislatures have become theatres of the absurd to catch the attention of the media and the public, with little sense of purpose or dignity. Changes of governments, particularly in states, have been often divorced from the people's mandates. Midnight parleys and palace coups, but not public opinion or policy differences, have often led to change of governments. The ouster of NTR's government in Andhra Pradesh and Farooq Abdulla's government in Kashmir in 1984, and the unseating of NTR's government in Andhra Pradesh in 1995 all had nothing to do with people's mandate or policy differences. There were scores of other such changes in governments engineered by palace coups and politics of defection for personal gain. However, it must be stated that all these downfalls of governments were constitutionally and technically valid, even though their democratic legitimacy was questionable. And more importantly, peaceful transfer of power has been the norm. Even after the elections to the 6th Lok Sabha, when the first transfer of power took place in the Union government, the change was peaceful and dignified despite the heat and passion generated by the authoritarianism of the emergency period.

A more disturbing trend is in evidence in recent times. The brief episode of Jagadambica Pal government in Uttar Pradesh in February 1998 showed that even peaceful and orderly transfer of power cannot be taken for granted any longer. The television cameras brought to millions of drawing rooms the vivid images of Jagadambica Pal being forcibly evicted literally from the chief minister's official chair by a court directive. The tension, drama, and fisticuffs, which accompanied the formation of the first governments in the newly formed States of Chattisgarh and Jharkhand indicate further erosion of the democratic tradition of peaceful and dignified transfer of power.

The infamous JMM bribery case of proven acceptance of bribes to extend support to the government on the floor of the Lok Sabha is a telling illustration of this tendency to support or bring down governments for a price. Happily in India, losing politicians are not victimised, jailed or beheaded as is the unfortunate practice in many post-colonial nations, including neighboring Pakistan and Bangladesh. However, public officials are not held accountable either. The system never allowed a government leader to be punished for misdeeds or corruption while in office. The rare instances of charge sheeting, trial, or conviction have invariably been well after they lost power, and always while their opponents are in power. Launching of prosecution has always been selective, sparing the ruling parties and aimed against a rare opposition politician

## II - Recent Developments

In the recent past we have seen some furthering of the democratic reform agenda, and generating a serious debate. Not all changes are positive or flawless, but cumulatively they all certainly help improve the situation, illustrate the serious concern of political parties about the need to address the electoral and governance reform issues, and presage more fundamental, durable and far-reaching changes in the electoral system in coming years. Let me now outline a few of the recent developments briefly, and make a few remarks about their implications:

### Candidate Disclosure

The March 13 2003 Supreme Court (SC) verdict on candidate disclosures declared Section 33B of the "*Representation of the People (3rd Amendment) Act, 2002 (Amendment Act)*" illegal, null and void, and reiterated its earlier judgment on May 2, 2002. On May 2, the SC held that citizens have the fundamental right to know the antecedents of candidates for elective office, as part of freedom of expression guaranteed under Article 19(1) of the Constitution. But Section 33A of the Amendment Act provided for disclosure of only part of the criminal record. No other disclosure including assets and liabilities of candidates was required.

Section 33 (B) specifically sought to nullify the Court judgment of May 2, by declaring, "Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or another instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made there under". It is this provision whose constitutionality was challenged. The Supreme Court on March 13, 2003<sup>2</sup> declared that obtaining relevant information about

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<sup>2</sup> The key provisions of the judgement include candidate's disclosure of his/her:

1. Criminal antecedents
2. Assets and liabilities
3. Educational qualifications

the candidates is indeed a fundamental right under Article 19 (1), and as the Parliament had no power to make such a law abridging fundamental rights [Article 13 (2)], such a law is void.

With the final judgment of the Supreme Court in place, disclosures are now mandatory and irreversible. The Election Commission has issued a revised notification removing the power of Returning Officers rejecting nominations on grounds of false information.

It has been proven by Lok Satta Movement's activism that civil society groups, with media support, by publicizing information and putting pressure on the political parties, can improve candidate choice in the long-term. Experience shows that major parties will refrain from nominating new candidates with criminal record, provided people's movements are strong enough to make candidate choice a key issue.

### **The Election and Other Related Laws (Amendment Bill, 2003) (Funding Reform Bill):**

Accountable and legitimate political party expenditure and campaign finance is at the heart of the fight against corruption. A law to this effect having far-reaching consequences has seen the light of the day. The Election and Other Related Laws (Amendment Bill, 2003) (Funding Reform Bill) was a crucial change proposed in the Indian electoral process. Lok Satta Movement, CSDS and Lok Niti had been advocating funding reform and direct state funding in elections<sup>3</sup>. Except for public funding, most of the key provisions proposed by civil society groups found place in the Bill introduced first in Lok Sabha on 19<sup>th</sup> March 2002, and the revised Bill was introduced in Parliament on 13 May 2003, after incorporating changes recommended by the Parliamentary Standing Committee on Home Affairs. The Election and Other Related Laws (Amendment) Bill, 2003 (Bill No. 18 of 2003) was approved by both Houses of Parliament in August 2003, and became law in September with the assent of the President. The law has following key provisions:

- Full tax exemption to individuals and corporates on all contributions to political parties.
- Effective repeal of Explanation 1 under Section 77 of The Representation of the People Act 1951 – expenditure by third parties and political parties will now come under ceiling limits. Only travel expenditure of leaders of parties is exempt.
- Disclosure of party finances and contributions over Rs 20,000
- Indirect public funding to candidates of recognized political parties – including free supply of electoral rolls (already in vogue), and such items by the Election Commission as are decided in consultation with the Union government.
- Equitable sharing of time by the recognized political parties on the cable television network and other electronic media (public and private).

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<sup>3</sup> The May-June 2001 issue of Lok Satta Times examined the issue of political funding and detailed proposals had been put forward for reform. Presentations were made to ministers, leaders of opposition and key officials.

Impact:

- It will help bring funding into the open.
- It will help raise resources for legitimate campaign expenditure.
- The free airtime in private and public electronic media will radically transform the nature of election campaign in the medium and long term, and will cut costs.

Deficiencies:

- No penalties for donor for non-disclosure of funding.
- Auditing by a chartered accountant from a panel approved by CAG has been deleted (from the earlier draft)
- No direct public funding to candidates or parties.

**Amendments to the Tenth Schedule (Anti-defection law changes):**

Till recently, the provisions of the Tenth Schedule <sup>4</sup>essentially disqualify a member elected on a party symbol if he voluntarily gives up membership of that party, or if he votes, or abstains from voting in the legislature contrary to any direction ('whip') issued by his party. But, if one-third of the members or more stray from the party line, and claim that the legislature party has split, and they constitute a new group, then disqualification does not apply. The presiding officer of the house concerned is the final authority to determine disqualification. All disqualification proceedings are deemed to be proceedings of the legislature under Articles 122 and 212, and therefore no court shall have any jurisdiction in respect of such matters.

However, anti-defection provisions failed to prevent defections. The only novel feature of these provisions was that individual defections used to invite disqualification, while collective defection was treated as perfectly legitimate and is amply rewarded! As a result splits were engineered, and constitutional coups were planned with meticulous precision, and careful conspiracy. Several parties 'split' even in Parliament, and as the JMM case testifies, the defecting members benefited immensely.

In an effort to rectify the above distortions, the 97<sup>th</sup> Constitutional Amendment has been enacted. This amendment not only makes it mandatory for all those switching political sides – whether singly or in groups – to resign their legislative membership and seek re-election, but also bars legislators from holding, post-defection, any office of profit. Now that the tenth schedule has been amended, the opportunity must be utilized to remove the distortions in our party system. While defection by one or many should incur disqualification, three safeguards are needed to ensure healthy parliamentary debate, and curtail autocratic tendencies of party bosses.

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<sup>4</sup> Chairperson Shri. M. N. Venkatachaliah, NCRWC report from Ministry of Law, Justice and Company Affairs, was set up vide Government Resolution dated 22 February, 2000. The Commission submitted its report in two volumes to the Government on 31<sup>st</sup> March 2002. The question of defections and the Tenth Schedule was identified in the report.

First, party whip, and disqualification for violation must apply only for a vote affecting the survival of government – money bills, and confidence or no-confidence motions. On all other issues, members should have freedom of vote. Second, there should be recognition of legitimate splits in a party. If party bosses are utterly autocratic, or if their policies are blatantly unconstitutional, then the members must have an opportunity to rebel, and even split the party. On such occasions, the split should first take place in the party fora in a transparent and public manner after a statutory notice of, say at least a month, and after the members or delegates are allowed a free vote. A resultant split in the legislature wing should be recognized irrespective of the proportion the splitting members constitute.

Third, past evidence clearly suggests that a partisan presiding officer loyal to the government cannot be trusted with the power to decide on disqualification. That power rightfully belongs to the Election Commission.

### **Limiting the Size of Council of Ministers**

The 97<sup>th</sup> Constitutional Amendment Act also restricted the size of the Council of Ministers at the union and state level to 15% of the strength of the lower house. The impact of the Act will be smaller cabinets, more cohesive governance and reduction of unnecessary expenditure. This law will also have an impact on alliance politics, as the parties will now be constrained in doling out ministerial positions for assurance of support. However, this law does not address the following questions:

- Sharing of spoils for survival of government.
- Cannot prevent other forms of patronage – corporations, offices with cabinet rank etc.
- Does not prevent legislators functioning as disguised executives.

### **Changes in Rajya Sabha Election:**

The Union Parliament has also amended the laws pertaining to Rajya Sabha elections through Representation of the People (Amendment) Act, 2003. The amendment made two important changes:

- It removed the domicile requirements for election to the Upper House from a state
- The elections to the Rajya Sabha will be carried out through an open ballot system.

Critics argued that the amendment violated our federal character. Rajya Sabha is the Council of States, and permitting non-residents to represent a state in the Upper House denies the state legitimate representation. However, major parties including BJP and Congress have supported the amendment. They argued that parties need talented and respected people in Parliament and government. Election to Lok Sabha is often not dependant on the merit or competence of a candidate. The party's support base in the state, local caste and other factors, and the candidate's money power play a significant,



and very often a decisive, role. With domiciliary requirements, desirable candidates are forced to go through the farcical process of registering themselves as voters in a state where they do not reside, and resort to undignified subterfuge. The fear of parties nominating all members representing a state from outside is largely hypothetical. Political realities and local sentiments being what they are, parties will nominate only a few senior functionaries for election from another state, and such a flexibility is needed to strengthen legislature and council of ministers.

Regarding open ballot, critics argued that it violates a fundamental democratic principle. But supporters argued that secret ballot in Rajya Sabha election has only led to selling of votes to the highest bidder, and party discipline is breaking down. For over two decades, money has been changing hands in Rajya Sabha elections. Sometimes parties are paying their own MLAs to vote for the official party nominees!

All these argument favouring and opposing the Act do not address the real crisis affecting our legislatures. The problem is elsewhere our elections have become big business. Only those willing to, and capable of, spending vast and unaccounted sums illegitimately have a realistic chance of being elected to Lok Sabha or State Assemblies in most cases. Highly competent and respected citizens are repelled by this process, and turn their backs to politics. As long as competent and public-spirited candidates cannot be elected to the Lower House by fair means, the demand for Rajya Sabha nominations will continue to grow. The recently enacted act will only enhance the bargaining position of the party leaderships, and jack up the price for a party nomination! Removal of residential requirement and voting secrecy is a short-term, knee-jerk response to a complex crisis. Party leaderships will become more powerful and less accountable by these amendments. However, it cannot be denied that this law, unanimously approved by Parliament, does reflect the yearning of all parties to address the growing malaise in politics.

### **Post Office as nodal agency for voter registration:**

Voter registration process, though impeccable on paper is inaccessible to the citizen and ineffective in correcting flaws. Lok Satta Movement's massive sample survey proved this. The survey, carried out in 1999, covering 57 rural and urban polling station areas shows the problem is bigger than we had expected. The survey reveals that there are 15% errors in rural areas and 44.8% in urban areas. As a consequence false voting by personation is rampant and many decent candidates are at a disadvantage, when compared to those who muster money and muscle power, and with trained cadres. In the recent past some process improvements are being carried out in voter registration process such as publishing voter rolls with photographs of voters and internet searching in voters list. However, the benefits of such process improvements in the absence of fundamental restructuring of voter verification process are yielding minimal results. For instance, during the recent 2008 bye-elections in Andhra Pradesh many eligible voters names did not figure in the official voters' list.

Happily voter registration flaws can be corrected to a large extent by making the process open, verifiable and accessible to citizens. Keeping in mind especially the rural populace, Lok Satta movement over the years has been suggesting to the Election Commission that the citizen friendly neighborhood post office can be made nodal

agency in voter registration. This was taken up on a pilot scale in the Greater Hyderabad region in 2008-09. Currently, in the State of Andhra Pradesh, once the applicant submits the requisite forms for enrolment, they are immediately forwarded to the concerned post office. The verification of the applicant's details is performed by the Postal Department (through the friendly neighbourhood postman) and the Electoral Picture ID Card (EPIC) is handed over to the applicant at home.

Post office as a nodal agency - some important functions:

- Display of rolls
- Sale of rolls of local polling stations
- Sale of statutory forms
- Receipt and verification of applications for additions, deletions and changes for a fee (if EC accepts the procedure)
- Registration and changes at post offices with provision for appeal (if EC accepts and rules are amended)
- Assistance to the Election Commission during revision of rolls by verifying addresses etc. (if EC seeks it)

The US, Australia, New Zealand, Hong Kong and Fiji are among the countries which register voters in post offices. The post office is one government institution which is trusted, citizen friendly, accessible and generally corruption free. Institutionalizing this simple reform will help improve voter lists, which are at the heart of the electoral process.

### **Anti-Political Attitude**

If there is a section of society that is ridiculed most in this country it is the political class. We just love to hate them. We despise our politicians for their insatiable appetite for illegitimate wealth. We hate them for carrying political campaigns along religious lines and for engendering communal conflicts. We hold them responsible for lack of basic amenities and infrastructure. The anger at the political class is understandable but not justifiable. This is because, we often see corruption at an individual level and as unethical behavior of the few, and rarely do we treat corruption at the systemic level. Further we also fail to make correct assessment of the reform efforts and fail to support the politicians in their efforts, which may make a difference to the large sections of the public.

To cite an example, all the political parties and political leaders across the political spectrum displayed remarkable statesmanship on Delimitation Bill<sup>5</sup>, which went largely

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<sup>5</sup> To provide for the readjustment of the allocation of seats in the House of the People to the States, the total number of seats in the Legislative Assembly of each State, the division of each State and each Union territory having a Legislative Assembly into territorial constituencies for elections to the House of the People and Legislative Assemblies of the States and Union territories and for matters connected therewith.

unreported in national media. Many political parties that would have gained substantially from regrouping the constituencies on the basis of new population statistics also observed restraint and facilitated the passage of Delimitation Bill, which maintains the current status quo on the share of seats for each state in the Union Parliament. The failure to ensure passage of Delimitation Bill would have resulted in grave consequences for the unity of the country, with states like Tamil Nadu and Kerala losing a large number of constituencies only because of their successful efforts to control population growth. Yet the most of us did not deem it necessary to praise the political class for their statesmanship. On the economic front, all political parties have ensured continuity and stability in the reform process in the past few decades. In spite of fragmented verdicts and unstable coalition politics, political parties carried on with new economic policies. Indeed, there have been disagreements on various specificities of the new economic policy but the general thrust of the policies of various political parties at the Union and the state level has been to free the economy from unnecessary state regulation. This amazing political consensus in a fragmented polity deserves greater attention and appreciation from the public.

Similarly, a recent vital piece of legislation relating to political funding went largely unnoticed in media and political circles. The Election and Other Related Laws (Amendment) Bill, 2003 (Bill No. 18 of 2003) was approved by both Houses of Parliament in August 2003, and became law in September with the assent of the President. In any other functioning democracy, such a law would have been hailed as a major reform, and dominated public discourse for months. The deafening silence on the subject in India is a sad reflection of the quality of public discourse.

Whenever we are judging our politicians, it should be remembered that India is struggling to deepen democratic institutions over the past 50 years in a multi-ethnic, multi-linguistic and a multi-religious society characterized by wide disparities in social and economic spheres. In spite of many factors that are usually considered as not conducive for the successful functioning of democracy, Indian democracy survived for over six decades and is still going strong. True, there are many aberrations in our democracy, but the consistent efforts to reform the political process have not received sufficient attention.

### **‘The rise of the unelected’**

To vilify politicians for the prevalent state of affairs is a knee-jerk reaction to a complex crisis that our democracy is facing. Moreover, it is counterproductive because in a free society there is no substitute to politics. True politics is a noble endeavor. Politicians perform the two most complex tasks of bridging the gulf between limited resources and unlimited wants, and harmoniously reconciling the conflicting interests of fiercely contending groups in a plural society. This inability or the reluctance to understand the complexities of politics might result in misplaced faith in un-elected bodies. For instance, there is an uncritical acceptance of all the actions performed by the Election Commission

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BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows: —  
Short title -This Act may be called the Delimitation Act, 2002.

and the Supreme Court. This is in no way meant to undermine the services rendered by the Election Commission and the Supreme Court. The Election Commission and the judiciary are among the guardians of Indian democracy. The impartiality of the Election Commission has never been in doubt. Similarly, the judiciary in India has been at the forefront of expanding the domain of fundamental rights, which is a necessary pre-condition for vibrant functioning of democracy. The Supreme Court judgment mandating disclosure of candidate details is a case in point. However, one could note a growing tendency in these institutions to overstep their constitutionally mandated role. For instance the recent judgement by the Patna High Court <sup>6</sup> goes against all laws and norms for the following reasons:

- The only requirement to contest elections is for an eligible voter to file nomination papers. To disqualify undertrials goes against the presumption that one is innocent until found guilty.
- Section 8 of the Representation of People Act 1951, (RPA) refers to disqualifications, where in, a person is convicted of certain specified offences. Nowhere in the RPA was it mentioned that the undertrials should be disqualified from contesting elections. Courts have no jurisdiction to prescribe new disqualifications for contesting. That role rightfully belongs to Parliament and new qualifications must be prescribed only by law after due deliberation, not by judicial fiat.
- Former Chief Election Commissioner MS Gill in his letter to the Government of India identified the following gray areas in the provisions pertaining to disqualifications:
  - There is some confusion about the period of disqualification in relation to the length of minimum sentence for certain offences. For example the minimum sentence for rape, an offence mentioned in clause (1), is seven years and the period of disqualification under that clause is six years from the date of conviction. Similarly, the various clauses in Section 8 of the RPA Act stipulate a penalty ranging from 6 months to six years. Therefore, due to various provisions in the law a person may be in jail but is entitled to contest elections.
- When there is no law that explicitly bans undertrials from contesting elections, countermanding elections based on the report from the Returning Officer is clearly unconstitutional and an unwarranted intrusion into the election process.

All the above points refer to the fact that the Patna High Court has overstepped its constitutionally mandated role by taking up the role of law making instead of adjudicating law. Similarly, the Election Commission of India has arrogated to itself the role of deciding the timing of elections. The Election Commission is deciding the date of elections and is organizing elections over extended periods of time. This has resulted in

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<sup>6</sup> Patna High Court ruled that people “de-enfranchised by law” cannot contest the Lok Sabha elections. The court directed the commission to consider countermanding the polls in constituencies where the contestants include people in jail or people whose voting rights have been suspended under election laws. The order was passed by the Division Bench of Chief Justice Ravi S. Dhavan and Justice Shashank Kumar Singh on two PILs — filed by NGO Jan Chaukidar and JD (U) nominee for Siwan Om Prakash Yadav — seeking disqualification of those contesting the poll from behind bars.

prolonging the political uncertainty. The electoral process should be simplified and shortened with advanced technology and transport. Instead, election is more and more mystified, delayed and centralized. A time has come when Parliament should, by law, prescribe the period before which election should be held in the event of dissolution of a House.

### **III - Systemic Reforms**

#### **Reforms and Vicious Cycles**

While some of the reforms proposed and enacted could be improved, it is clear that the flurry of legislative and executive action indicates a broad awareness that status quo cannot be sustained forever. But given the complexity of our crisis, such reforms are significant milestones in our evolution, but do not really change the nature of our troubled politics. True, institutions such as Election Commission, which manages electoral process in India, are doing exemplary work by acting entirely independent of political pulls and pressures. However, the crisis that is afflicting our system cannot be resolved by merely fine-tuning the institutions that manage the election process. And what is this crisis that has resulted in troubled politics?

The distortions of our political process have significantly eroded the state's capacity for good governance<sup>7</sup>. First, the positive power to promote public good has been severely restricted; while the negative power of undermining public interest is largely unchecked. Authority is delinked from accountability at most levels, and in respect of most functions. As a result most state functionaries have realistic and plausible alibis for non-performance. Second, while the electoral system has demonstrated great propensity to change governments and politicians in power, the rules of the game remain largely unchanged. Increasingly, honesty and survival in political office are incompatible. Third, all organs of state are affected by the malaise of governance. Political executive, legislators, bureaucracy and judiciary – no class of functionaries can escape blame. For instance, 25 million cases are pending in courts, and justice is inaccessible, painfully slow and costly. Fourth, at the citizen's level there are no sufficient incentives for better behaviour. Good behaviour is not rewarded sufficiently and consistently, and bad behaviour is not only not punished consistently; it is in fact rewarded extravagantly. As a result, deviant and socially debilitating behaviour has become prevalent, and short-term individual interest has gained precedence over public good.

#### **Interlocking Vicious Cycles**

In a well-functioning democracy, the political process ought to find answers to governance problems. But the political process is locked in a vicious cycle, and has become a part of the problem. There are several factors complicating the political process, perpetuating status quo.

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<sup>7</sup> Governance in India: Vision 2020, at [planningcommission.nic.in/report](http://planningcommission.nic.in/report)

First, election expenditures are large, unaccounted and mostly illegitimate. For instance, expenditure limit for assembly elections in most major states was Rs 600,000 until recently, when it has been revised to Rs 10 lakh. In reality average expenditure in most states is several multiples of it, sometimes exceeding Rs 10 million. Most of this expenditure is incurred to buy votes, bribe officials and hire musclemen. Sadly, the Southern states which are hailed for better governance, have the dubious distinction of being the worst offenders in this regard. The expenditure in the Kanakapura by-election for Lok Sabha held in 2003 was estimated by knowledgeable people at about Rs. 20 crores! The eventual winner was reported to have been heavily outspent by his nearest rival. Curiously, the stakes in that by-election were limited: only a maximum of – months of Lok Sabha membership was at stake, and both the leading contenders would have been in opposition! Saidapet byelection in Tamil Nadu Assembly too was said to have broken records, with expenses exceeding Rs. 10 crores!

There are three features of such skyrocketing election expenses. First, large expenditure does not guarantee victory; but inability to incur huge expenses almost certainly guarantees defeat! There are a few candidates who win without large expenditure, but such constituencies are limited. Also in great waves, expenditure is irrelevant. The Lok Sabha victory of Congress in 1971, Janata in 1977, NTR's Victory in AP in 1983 – these are among the many examples when money power had no role. But in the absence of ideology, and increasing cynicism, large expenditure has become necessary to win. Desperate to win at any cost, parties are compelled to nominate mostly those candidates who can spend big money. Such large, unaccounted expenditure can be sustained only if the system is abused to enable multiple returns on investment. The economic decision-making power of the state is on the wane as part of the reform process. But as the demand for illegitimate political funds is not reduced, corruption is shifting to the core areas of state functioning, like crime investigation. Robert Wade<sup>8</sup> studied this phenomenon of corruption, and described the dangerously stable equilibrium, which operates in Indian governance. This vicious chain of corruption has created a class of political and bureaucratic 'entrepreneurs' who treat public office as big business.

Second, as the vicious cycle of money power, polling irregularities, and corruption has taken hold of the system, electoral verdicts ceased to make a difference to people. Repeated disappointments made people come to the conclusion that no matter who wins the election, they always end up losing. As incentive for discerning behaviour in voting has disappeared, people started maximizing their short-term returns. As a result, money and liquor are accepted habitually by many voters. This pattern of behaviour only converted politics and elections into big business. As illegitimate electoral expenditure skyrocketed, the vicious cycle of corruption is further strengthened. With public good delinked from voting, honesty and survival in public office are further separated.

Third, this situation bred a class of political 'entrepreneurs' who established fiefdoms. In most constituencies, money power, caste clout, bureaucratic links, and political contacts came together perpetuating politics of fiefdoms. Entry into electoral politics is restricted in real terms, as people who cannot muster these forces have little chance of getting

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elected. While there is competition for political power, it is often restricted between two or three families over a long period of time; parties are compelled to choose one of these individuals or families to enhance their chances of electoral success. Parties thus are helpless, and political process is stymied. Absence of internal democratic norms in parties and the consequent oligarchic control has denied a possibility of rejuvenation of political process through establishment of a virtuous cycle.

Fourth, in a centralized governance system, even if the vote is wisely used by people, public good cannot be promoted. As the citizen is distanced from the decision-making process, the administrative machinery has no capacity to deliver public services of high quality or low cost. Such a climate which cannot ensure better services or good governance breeds competitive populism to gain electoral advantage. Such populist politics have led to serious fiscal imbalances.

Fifth, fiscal health can be restored only by higher taxes, or reduced subsidies or wages. The total tax revenues of the union and states are of the order of only 15 percent of GDP. Higher taxation is resisted in the face of ubiquitous corruption and poor quality services. Desubsidization is always painful for the poor who do not see alternative benefits accruing from the money saved by withdrawal of subsidies. A vast bureaucracy under centralized control can neither be held to account, nor is wage reduction a realistic option.

Sixth, elected governments are helpless to change this perilous situation. As the survival of the government depends on the support of legislators, their demands have to be met. The legislator has thus become the disguised, unaccountable executive controlling all facets of government functioning. The local legislator and the bureaucrats have a vested interest in denying local governments any say in real decision making. The vicious cycle of corruption and centralized, unaccountable governance is thus perpetuated.

Seventh, the first-past-the-post (FPTP) system exacerbates our social divisions, as it tends to over represent geographically concentrated social groups and under represent the scattered minorities. This representational distortion leads to ghettoisation and marginalisation of the excluded social groups, which then indulge in strategic voting. This gives rise to vote bank politics in which obscurantist become interlocutors of the group drowning the voice of reason and modernity. For instance, religious symbolism and not education and job opportunities become dominant issues of public discourse. This pandering of fundamentalism leads to competitive mobilization of various groups based on primordial loyalties, leading to communal polarization and social strife.

Eighth, the need for money power and caste clout to win a plurality of votes in FPTP system precludes political participation of men and women of integrity and competence. With their exclusion, bad public policy and incompetent governance become endemic, deepening the crisis.

Ninth, under FPTP system, only a high threshold of voting ensures victory. Usually a party needs 35% vote or more to get reasonable representation in legislature, or social groups with local dominance get elected. As a significant but scattered support pays no electoral dividends, reform groups and parties below the threshold tend to wither away.

Voters prefer other “winnable” parties and candidates. This tends to marginalize reform parties, and national parties in many states. It is no accident that the main national parties Congress and BJP are directly competing for power in only a few major states. In most states one or two regional parties are dominant. FPTP thus tends to lead to oligopoly of parties.

Given this complex nature of our crisis, many of the reforms that have been enacted and those in the pipeline are necessary, but not sufficient. Apart from reforms in local governments, judiciary and bureaucracy and effective instruments to enforce accountability and check corruption, we need to pursue systemic reforms changing the nature of elections and process of power. In my considered judgment, there are three such reforms required.

### **Mixed Compensatory Proportional Representation**

The first-past-the-post (FPTP) system that India has adopted led to several distortions, given the passage of time and ingenuity of legislators. Politics of fiefdom at constituency level has forced the parties to rely on local strongmen. As a result, the political parties and independent candidates have astronomical election expenditure for vote buying and other illegitimate purposes. This has led to a significant weakening of the party platform and ideology, reducing elections to private power games. In many states, national parties have been marginalized where their voting percentage falls below a threshold. Following from this, regional parties have occupied center stage in several pockets, holding larger interests at ransom.

All these failings find expression in serious and long-term predicaments. The inability of all political parties to attract and nurture best talent is the primary issue. Difficulties of minority representation leading to ghetto mentality, backlash, and communal tension form another facet of the problem. Lastly, leadership is undermined by permanent reservation of constituencies (or regular rotation) in order to provide fair representation to excluded groups. The solution to this flawed system is adoption of mixed system of election combining FPTP system with proportional representation. This can be broadly based on the German model. The key features of the suggested system are as follows:

- The overall representation of parties in legislature will be based on the proportion of valid vote obtained by them.
- A party will be entitled to such a quota based on vote share only when it crosses a threshold, say 10% of vote in a major state, and more in minor states.
- 50% of legislators will be elected from territorial constituencies based on FPTP system. This will ensure the link between the legislator and the constituents
- The balance 50% will be allotted to parties to make up for their shortfall based on proportion of votes.
  - eg 1): If the party is entitled to 50 seats in legislature based on vote share, but had 30 members elected in FPTP system, 20 more will be elected based on the party list.
  - eg 2): If the party is entitled to 50 seats based on vote share, but had only 10 members elected in FPTP system, it will have 40 members elected from the list



- The party lists will be selected democratically at the State or multi-party constituency level, by the members of the party or their elected delegates through secret ballot.
- There will be two votes cast by voters - one for a candidate for FPTP election, and the other for a party to determine the vote share of the parties.

It needs to be remembered that PR system can be effective only after internal functioning of political parties is regulated by law. Otherwise, PR system will give extraordinary power to party leaders and may prove counterproductive. However, the PR system has one more advantage of ensuring better representation of women in legislatures.

### **1. Political Party regulation by law**

Political recruitment has suffered a great deal, and bright young people are no longer attracted to politics. Centralized functioning of parties is imposing enormous burden on leadership to manage the party bureaucracy, leaving little time for evolving sensible policies or governance. Party leaders are helpless in candidate selection, and the choice is often between Tweedledum and Tweedledee. An important reform to improve the quality of politics and restore credibility would be a law to regulate political parties' functioning, without in any way restricting leadership choice and policy options. A law needs to be enacted to regulate political parties in the following four key aspects:

- Free and open membership with no arbitrary expulsions
- Democratic, regular, free, secret ballot for leadership election; and opportunity to challenge and unseat leadership through formal procedures with no risk of being penalized
- Democratic choice of party candidates for elective office by members or their elected delegates through secret ballot.
- Full transparency in funding and utilization of resources

The provisions can be similar to Article 21 of German Basic Law and federal law to regulate parties.

### **2. Clear Separation of Powers at the State and Local Levels Through Direct Election of Head of Government**

The other systemic reform that is needed to isolate the executive from unwanted influences, as has been pointed out, is to ensure direct election of Head of Government in States and Local Governments.

As election costs have skyrocketed, candidates spend money in anticipation of rewards and opportunities for private gain after election. Legislators perceive themselves as disguised executive, and chief ministers are hard pressed to meet their constant demands. Postings, transfers, contracts, tenders, tollgates, parole, developmental schemes, and crime investigation - all these become sources of patronage and rent seeking. No government functioning honestly can survive under such circumstances. While the legislators never allow objective and balanced decision-making by the executive in the actual functioning of legislation, their role has become nominal and largely

inconsequential. This blurring of the lines of demarcation between the executive and legislature is one of the cardinal features of the crisis of our governance system.

Therefore, separation of powers, and direct election are necessary in States and local governments. At the national level, such a direct election is fraught with serious dangers. Our linguistic diversity demands a parliamentary executive. Any individual seen as the symbol of all authority can easily become despotic, given our political culture. But in states, separation of powers poses no such dangers. The Union government, Supreme Court, constitutional functionaries like the Election Commission, UPSC, and CAG, and the enormous powers and prestige of the Union will easily control authoritarianism in any state. This necessitates adoption of a system of direct election of the head of government in states and local governments. The fundamental changes suggested find mention as under:

The legislature will be elected separately and directly while the ministers will be drawn from outside the legislature. The legislature will have a fixed term, and cannot be dissolved prematurely except in exceptional circumstances (sedition, secession etc) by the Union government. The head of government will have a fixed term, and cannot be voted out of office by the legislature. Any vacancy of office will be filled by a due process of succession. The elected head of government will have no more than two terms of office. Even though these changes may not be panacea to all evils in the present structure of legislature and executive, they will certainly encourage more healthy and vibrant democracy and democratic processes. Further, clear and periodic delineation of functions between Union and States, and among various tiers of local governments is also a necessary condition for a vibrant democracy. It is only a true federal structure that can ensure unity in this multi-ethnic and multi-religious society.

#### **IV – Conclusion:**

The above-suggested systemic reform agenda, because of its huge scope and implications, might deter some of us from action. But the complexities of the problems should not cloud our thinking and should not deter us from advocating sensible solutions. This paper on electoral reforms and management acquires significance only when viewed within the larger discussions on political reforms that seek to make representative democracy in India more substantial. Seen in this light electoral reforms can be considered as a necessary initiative for improving the representative fiber of the political system. Any serious reform advocacy must be based on clear thinking, rational analysis, and sensible goals. Opportunities will always knock the doors, and once the goals are clear, it becomes easier to design campaigns and activities to suit the requirements. A vibrant and informed civil society, media exposure, and “political will” to enforce these governance reforms are the vital inputs. And it is only when we assert our rights that we can transform our procedural democracy into a substantive democracy. Eric Shaub’s aptly sized up the crux of the matter when he said, “Our democracy is ‘out of shape’ because we don’t ‘exercise’ our rights.” The systemic overhaul, suggested here, might not be an overnight phenomenon. Short-term gains will lead to long-lasting successes for democracy. The lights of the passing ships might prove enticing but it’s the constant

twinkle of the distant star that must navigate the course of political and governance reforms.

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