

Electoral reform goals

(A Lok Satta discussion paper)

The health of a democracy 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 we have outstanding men and women in public life, flawed electoral process is increasingly alienating public-spirited citizens from the political and electoral arena. The persons best equipped to represent the people find it impossible to be elected by adhering to law and propriety. If elected, decent citizens cannot survive for long in elective public office without resorting to, or conniving in, dishonest methods. Even if they survive in office, their ability to promote public good is severely restricted.

Indian people have often been changing governments and elected representatives. However, this change of players has little real impact on the nature of governance. Even if all those elected lose, and all losers are elected, the outcome is not substantially altered. This sad situation calls for a change in the rules of the game, and citizens cannot be content with mere change of players.

Election expenditure - root cause of corruption

Excessive, illegal and illegitimate expenditure in elections is the root cause of corruption. Often the expenditure is 10 to 15 times the legal ceiling prescribed. Among elected representatives, almost everyone violates expenditure ceiling laws. Most election expenditure is illegitimate and is incurred in buying votes, hiring hoodlums or bribing officials. Abnormal election expenditure has to be recouped in multiples to sustain the system. The high risk involved in election expenditure (winner-take-all process), the long gestation period required for most politicians who aspire for legislative office, the higher cost of future elections, the need to involve the vast bureaucracy in the web of corruption (with 90% shared by the large number of employees) - all these mean that for every rupee of expenditure, fifty to hundred rupees has to be recovered to sustain the system. One rupee election expenditure normally entails at least a five-fold return to the politician. To share five rupees with the political class, the rent-seeking bureaucracy has to recover about Rs.50. In order to extort Rs.50 from the public, there should be delay, inefficiency, harassment, humiliation and indignity worth Rs.500 heaped on the innocent citizens! To take the example of a major State, it is estimated that about Rs.600 crores (6 billion) has been spent by the major political parties in the recent general elections for Parliament and Legislative Assembly in 1999. This expenditure can be sustained only when the returns are of the order of at least Rs.3000 crores (30 billion), which in turn is translated as extortion of Rs.30,000 crores (300 billion) from the public by the vast bureaucracy. The inconvenience, humiliation, the lost opportunities and the distortion of market forces are often worth ten times the actual corruption. Unaccounted and illegitimate election expenditure is thus translated into huge corruption siphoning off money at every level. In addition, this ubiquitous corruption alters the nature of political and administrative power, and undermines market forces, efficiency and trust on a much larger scale, retarding economic growth and distorting democracy. Cleansing elections is the most important route through which corruption and maladministration can be curbed.

Failure of political process

The behavior of the electorate is increasingly plebiscitary in nature. However, the Westminster model adopted by us recognises only power by acquiring legislative majority by means fair or foul, without reference to public opinion or people's mandate. As people's mandate and power are easily divorced, the rulers are increasingly obsessed with survival in power at any cost. As a result, it is now axiomatic that integrity in public life and survival in public office are no longer compatible. In this milieu, the vote, instead of being an unifying, cleansing and energising tool, has become a divisive force, or at best a means for expression of anger and frustration. The electoral behaviour in most parts of the country over the past twenty five years clearly shows that the dominant mood of the electorate is to reject the party in power. Often this rejection is despite the perception of the elite that the government has performed creditably, and the alternative chosen by the people is even less attractive on careful analysis. Obviously the voter perceives the issue differently. As far as he is concerned, the government of the day failed to fulfil his expectations. Even populist governments, which successfully transferred assets and resources to the people through direct subsidies and welfare schemes, incurred the wrath of the people, as much as those governments that had long-term perspective. This only shows that people are disgusted with the political process itself, and there is deep-seated resentment and unrest about the imbalance between the exercise of positive and negative power and their own marginalisation and disempowerment.

This rejection of the governing class by the voter can be construed to be both positive and negative. The positive significance is the demonstration of the voter's yearning for a comprehensive reform and rejection of status quo. The negative impact is the increasing instability and fear of the ruling classes to face the electorate. All these maladies constitute a first class recipe for corruption, greed, and shortsightedness on the part of those in authority. Corruption has become endemic and is widely perceived to be an ubiquitous feature of our governance. No class of public servants is exempt from this. People who are victims of this day-to-day corruption do not have effective institutional mechanisms for resisting it, and therefore succumb to it. Those who have the will to resist do not dare to do so for fear of greater personal loss than the potential gain resulting from resistance. As a result, it is more convenient and less cumbersome to become a part of the process, than to fight against it. Every individual in this vicious cycle therefore prefers the status quo either to maximise personal gain or minimise personal pain, even as the society at large loses more than individual gain, and is increasingly debilitated. To explain this phenomenon, Robert Wade coined the expression, 'dangerously stable equilibrium'.

Perceptions — macro level vs. micro level

The elections are largely plebiscitary and the people vote for a platform or a leader or a promise or, as is seen more often, vote to reject the incumbent government or party in power. The individual candidate's ability is rarely an issue in our electoral politics. At the same time party workers and local oligarchies do not regard election as an opportunity to vindicate their policies or ideologies. In most cases, election of their chosen candidate is merely an opportunity to have control of state power and resources, to extend patronage selectively to people of their

choice, to get pliant local bureaucrats appointed in plum postings, to humiliate and harass the inconvenient employees who would not do their bidding, and increasingly to interfere in crime investigation and prosecution by doctoring evidence, influencing investigation and letting criminals loyal to them go scot free and implicating people opposed to them in criminal cases. In the midst of this, governance is an irrelevant, and often inconvenient ritual without any meaning to those in power and without any positive impact on the people.

At the macro level when we examine a whole state or the country, the electoral verdict does broadly reflect public opinion. More often than not this verdict is a reflection of the people's anger and frustration and is manifested in the rejection vote, or their support to a leader, promise or platform. However, at the local level, caste or sub-caste, crime, money and muscle power have become the determinants of political power. All parties are compelled to put up candidates who can muster these resources in abundance in order to have a realistic chance of success. While political waves are perceived around the time of election or afterwards, at the time of nomination of candidates all parties are uncertain about their success and would naturally try to maximize their chances of success at the polls by choosing those candidates who can somehow manipulate or coerce the voters. As a net result, irrespective of which party wins, the nature of political leadership and quality remain largely the same, and the people end up being losers. This is then followed by another rejection vote in the next election and the vicious cycle keeps repeating. Where the candidate cannot muster money or muscle power, he stands little chance of getting elected irrespective of his party's electoral fortunes. Increasingly in several pockets of the country, people are spared even the bother of having to go to the polling station. Organized booth-capturing and rigging are ensuring victory without people's involvement.

There is much that is wrong with our elections. Flawed electoral rolls have become a menace. About 40% errors are noticed in electoral rolls in many urban areas, and bogus voting in towns exceeds 20%, making our elections a mockery. Purchase of votes through money and liquor, preventing poorer sections from voting, large scale impersonation and bogus voting, purchase of agents of opponents, threatening and forcing agents and polling personnel to allow false voting, booth-capturing and large scale rigging, bribing polling staff and police personnel to get favours and to harass opponents, use of violence and criminal gangs, stealing ballot boxes or tampering with the ballot papers, inducing or forcing voters to reveal their voting preferences through various techniques including 'cycling' etc, illegally entering the polling stations and controlling polling process — all these are an integral part of our electoral landscape. No wonder the Election Commission estimate that more than 700 of the 4072 legislators in States have some criminal record against them!

Many scholars wonder how despite massive irregularities the electoral verdicts still seem to largely reflect public opinion, and how parties in power often lose elections. The answers are simple. Happily for us, though parties in power are prone to abusing authority for electoral gains, there has never been any serious state-sponsored rigging in most of India. The irregularities are largely limited to the polling process alone, and most of the pre-polling activities including printing and distribution of ballot papers, and post-polling activities including transport and storage of ballot boxes and counting of ballots are free from any political interference or

organized manipulation. That is why parties in power have no decisive advantage in manipulating the polls, and electoral verdicts broadly reflect shifts in public opinion. However, the massive irregularities in polling process make sure that candidates who deploy abnormal money and muscle power have a distinct advantage. Sensing this, most major parties have come to nominate 'winnable' candidates without reference to their ability and integrity. Thus, the use of money power and muscle power are sanctioned by almost all the parties, and often they tend to neutralize each other. The net result is that candidates who do not indulge in any irregularity have very little chance of being elected. Election expenditure - mostly for illegitimate vote buying, hiring of hoodlums and bribing officials - is often ten or twenty times the ceiling permitted by law. Criminals have a decisive or dominant influence on the outcome in many parts of India, and have often become party candidates and won on a large scale.

New entrants into politics

If we examine the new entrants into politics over the past three or four decades in the country, very few with intellect, integrity, commitment to public service and passion for improvement of the situation could enter the political arena and survive. Almost every new entrant has chosen politics exactly for the wrong reasons. A careful analysis shows that heredity and family connections are the commonest cause for entry into politics. This is closely followed by those who have large inherited or acquired wealth and have decided that investment in politics is good business. In recent years, many local muscle men, whose services were earlier sought for extortion or vote-gathering, are now directly entering the fray and gaining political legitimacy. A few persons 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 vortex of politics. Occasionally, accidents of fate are pitch forking certain individuals into elective public office. If we exclude these methods of heredity, money power, muscle power, personal contacts, high visibility, and accidents of fate, there will not be even a handful of persons in this vast country of ours, who have entered politics with deep understanding of public affairs and passion for public good and survived for any length of time over the past four decades. There is no activity more vital and nobler than governance. In the true sense, politics is about promotion of happiness and public good. But if the best men and women that society can boast of are either prevented or repelled or rendered incapable of surviving in the political arena, then that governance is bound to be in shambles. Over the past forty seven years of our republic, the unsuitable constitutional and legal mechanisms that we evolved landed the Indian republic in an extraordinary crisis of governability.

Democracy is the only system, which demands constant selection, nurturing and development of capable leadership. If the best men and women society can offer are repelled by the political process and politics acquires a pejorative connotation, the result is collapse of ethics in public life, and with it public confidence in governance. With the most competent and qualified persons eschewing politics, paralysis of governance is the inevitable consequence. With all decisions geared towards somehow winning elections and retaining power or to amass individual wealth at the cost of the public, the people are swindled. This legal plunder ensures that public goods and services are of appalling quality and wholly insufficient to meet the requirements of a civilized

society or growing economy. Public exchequer will soon be depleted and fiscal collapse will be imminent. Sadly, all these ugly features of a dysfunctional democracy are evident in contemporary India.

Compulsions of first-past-the-post system

In addition to the electoral irregularities, use of unaccounted money power and criminalisation of politics, the first-past-the-post (FPTP) system in a plural society added to the decline in political culture. On the one hand the largest party is likely to obtain disproportionate presence in legislature, with consequent marginalisation of large segments of public opinion. In a plural society such a majoritarianism has evidently led to ghettoization of numerically important groups like minorities and dalits.

On the other hand, in the FPTP system, there is desperation to somehow win the election in a constituency by all means fair or foul, as each seat becomes critical in the legislative numbers game to form government or acquire influence in the Westminster model. The ugly practices adopted by a party at the constituency level becomes somehow acceptable in this quest for electoral success. Once a candidate obtains party nomination, he and his caste or group often make it an issue of personal prestige to be elected in the winner-take-all electoral and power game. As election in each constituency runs on similar lines, the parties and candidates are not inhibited by the fear that their illegitimate efforts to win a few constituencies might undermine the larger objective of enhancing the voting share in a whole state or the nation.

Another feature of the FPTP system is that reform of the polity becomes more and more difficult. Genuinely reformist groups with significant but limited resources and influence have no realistic chance of success in the FPTP system and they tend to wither away. In a system in which winning the seat by attracting the largest number of votes is all-important, honest individuals or reformist parties fighting against the electoral malpractices and corruption have very little chance of success. This tends to perpetuate the status quo, and people will have to live with the unhappy choices among parties, which are more like Tweedledom and Tweedledee. Political process becomes increasingly incestuous, and even as power alternates between parties, the nature of the power game and the quality of governance remain unaltered. The political system has thus become fossilized over the years and is self-perpetuating. Fresh breeze of electoral reforms, is vital to rejuvenate the political process and to inject institutional self-correcting mechanisms to revitalize our democracy.

Role of political parties

In India, traditionally parties have been seen as pocket boroughs of those at the helm. Often there are entry barriers to members. Communist parties have always had a somewhat strict membership admission procedure, which is generally uniform in its application. The mainstream parties which are mass-based and have no rigid membership norms, however, have been erecting barriers of entry to all persons who are potential threats to the current leadership. While ordinary, faceless members are admitted as cannon-fodder with ease, the potentially influential

members are not always welcomed with open arms. Similarly, even the faintest criticism of party bosses on any issue is taken as an act of indiscipline, often leading to suspension or expulsion. Again, when leadership changes in the party, the same member who was earlier punished for rebellion is welcomed back with alacrity. There are countless instances of such disgraceful autocracy in all major political parties in India.

The political parties, which exhibit such authoritarian tendencies in protecting the privileges of those in power and nipping in the bud any potential threat to individual dominance have not shown the slightest sense of shame or remorse in assiduously cultivating and recruiting known criminals, corrupt persons and charlatans and rogues. Such shady elements are courted and welcomed, while decent and dignified citizens are shunned and often rejected. No major mainstream party has any published membership rolls. Spurious membership and disputes arising out of it are only too well known to all of us in respect of major political parties. As a net result, parties have often become a collection of greedy, corrupt and unscrupulous persons, who are willing to use any method, however ugly, immoral, violent or brutal, to perpetuate their hold on state power. By virtue of entry barriers and expulsion powers in the hands of party bosses, no real rejuvenation of parties with injection of fresh blood is possible. All idealistic, talented youngsters are often repelled by the parties, and undesirable elements find a haven in them.

As a perceptive political observer commented some years ago, in Indian political parties, ‘the man who wears the crown is the king’. Leadership is often acquired through undemocratic means and retained by the power of patronage, nomination and expulsion, rather than the support of members. This paved way for oligarchies and unaccountable and unelected coterie dominating and manipulating the political process. Party leadership, however illegitimate the ascent to it may be, gives total control of the party apparatus and resources. Through total monopoly over candidates’ choice, the leadership’s access to, and control over, levers of state power is complete and unchallenged. Given the fact that most parties are dominated by only one leader, and not even a small group, ‘monarchy’ is the correct description of party leadership. Once in office, the power of leadership is absolute, and control of resources is awesome. Any potential dissidence or principled opposition is instantly snuffed out. Suspension, expulsion, instant removal from office, denial of party tickets, all these and more weapons are fully available to leadership if there is any whiff of opposition. If the party is in power, state machinery is used for party ends, and more often to perpetuate absolute control over the party and state, with cynical disregard to propriety and public good. All positions in the regional and local units are nominated by the party leader. Every party functionary owes his or her position to the grace and good will of the ‘High Command’. Myths and images are assiduously propagated to perpetuate personal power. No other party functionary or leader is allowed to share the limelight. The moment a local or rival national leader is gaining in popularity, he is immediately cut to size, removed from office, and if necessary expelled from the party to deny him a political base, and force him into political wilderness.

Membership rolls are not available, and when prepared are often spurious. Elections are not held, and if held are rigged. Musclemen often take over party meeting and conferences at various levels, and fisticuffs and violence are quite common. All parties, without exception, nominate candidates for public office through the dictates of the leadership or high command.

All funds are collected clandestinely and spent at will to further augment personal power. State level 'leaders' are nominated by the 'high command'. When a party is elected to office in any State, the legislature party leader, who will be Chief Minister, is nominated by the central leadership, and formally anointed in a farcical 'election'. Often sealed covers are sent indicating the name of the person chosen as Chief Minister by the party leadership. There are instances in which persons who did not command the support of even a handful of legislators became Chief Ministers. Even candidates for public office in local government elections and cooperatives are decided by the party's central leadership. When the party obtains a majority in a local election, again the zilla parishad chairman or other functionaries are decided by the party bosses far removed from the scene. In short, political party functioning has become totally autocratic, oligarchic, unaccountable and undemocratic. The whole political process and all democratic institutions are systematically subverted. Party leaders have become medieval potentates, with the sole intent of survival in power, and bequeathing their office to their family members or chosen successors.

Public scrutiny and regulation

It does not require any great analysis or insight to understand that undemocratic political parties cannot nurture, sustain or strengthen a democratic society. The most critical need is to reform parties and make them open, democratic and accountable. Basic democratic principles of member control, elected representatives from lower tier electing leadership at higher levels, open membership rolls, fair and free elections, no power to central party over regional and local units, easy and effective challenge to incumbents, no recourse to expulsion or removal of potential rivals, and no nominated office holders at any level, should be integral to the functioning of any political party. The question then is, can the political parties be left to manage their own affairs democratically? Past experience shows that it is futile to expect parties to become democratic on their own. Through long years of neglect, democratic processes have become fragile. The coteries, individuals and families controlling parties are so firmly entrenched, that there is no realistic hope of members being allowed to organize themselves and challenge the leadership and procedures. It will be somewhat naïve to expect the party leaders themselves initiating the process of party reform, which will undermine their own unaccountable, and often illegitimate personal power. Nor is there hope that democratic elections for public offices will automatically force reform on parties. As the choices offered to the public are between Tweedledom and Tweedledee, no matter which party wins, the picture remains unchanged and immutable.

We as a people have an abiding and legitimate interest in the affairs of parties. As we have seen, parties are by no means private clubs looking after their personal interest. They are the engines of democracy and instruments of governance in society. They seek and acquire power over us, and in reality have effective, and unbreakable monopoly over power. The power of the party cartels cannot be checked by forming new parties. Experience everywhere shows that the hope of new parties emerging and spawning a new culture rejuvenating the political process is a pipe dream. The emergence of a successful new political party itself is a rare phenomenon in modern world. The emergence Telugu Desam Party in Andhra Pradesh was one such rare example. A combination of unusual circumstances – a strong-willed, extremely popular leader who became

an idol to millions as a successful film star, absence of a viable political alternative to the dominant ruling party, people's disgust with misgovernance and corruption, and a strong anti-establishment sentiment have brought about a major political change in 1983 in Andhra Pradesh. However, as events have shown, the same new party has become a replica of Congress, and has conformed to the iron law of Indian politics – 'all mainstream, centrist parties imitate Congress and become its clones'. This fate is seen in varying degrees in many parties. The Janata of 1977, which took birth from the anger of people, and its various progeny; BJP, which claimed indigenous cultural roots and promised a brave new world, and yet lost its sheen in office within a few months; the regional parties like the two Dravidian parties, whose origin was based on cultural regionalism; the Shiv Sena, which rose out of urban middle class frustration; the many other religious, tribal, caste, and regional ethnic parties with bases all over India – all these have proved to be no different from Congress in organizational ethos and internal functioning. Of the three truly ideology-driven parties, Swatantra party and Socialists disappeared, and Communists continue their policy of splendid isolation and democratic centralism, unmindful of the tectonic shifts in global and Indian politics.

From this bird's eye view of Indian political parties, it is clear that we, as a people, have stakes in their functioning and future. The moment they seek power over us, and control over state apparatus, they forfeit their claim to immunity from public scrutiny and state regulation based on reasonable restraints. This is particularly true in a climate in which they have proved to be utterly irresponsible, unaccountable and autocratic, perpetuating individual control over levers of power and political organization, entirely for personal aggrandizement, self and privilege. Therefore, in a deep sense, the crisis in political parties is a national crisis, and has to be resolved by a national effort. This leads us to the inescapable conclusion that there should be internal democracy in parties, regulated by law, and monitored and supervised by statutory authorities. Every party, by law, should be obligated to practice internal democracy in all respects. The details of functioning can be left to the party's own constitution, but it should conform to the broad principles of democracy stated clearly in law. The actual practice of internal democracy should be verifiable by an external agency, say the Election Commission. Mandatory publication of membership rolls of political parties at local level, election of leadership at every level by secret ballot supervised by the Election Commission, a comprehensive prohibition on nominations of office bearers or expulsion of rivals, a well-established system to challenge the leadership of incumbents at every level, and justiciability of these internal democratic processes through special tribunals – all these measures could form the basis of any meaningful reform and regulation of political parties. Extreme care and caution should, however, be exercised to ensure that a party's democratic choices of leadership or its espousal of policies are not in any way directly or indirectly influenced by law or external monitoring agencies. The party leaders and its policies should be judged only by the public, in the market place of ideas and in elections.

Systemic inertia

As a net result of these distortions, elections have lost their real meaning as far as the people are concerned. It is often tempting to blame the illiterate and poor citizens for this plight of our democracy. But in reality it is the democratic vigor and enthusiastic participation of the countless poor and illiterate voters, which has sustained our democracy so far. However, most people have

realized with experience that the outcome of elections is of little consequence to their lives in the long run. If, by a miracle, all winners in an election lose, and all their immediate rivals are elected instead, there will still be no real improvement in the quality of governance. This remarkable inertia and the seeming intractability of the governance process have convinced citizens that there is no real long-term stake involved in electoral politics. Therefore many poor citizens are forced to take a rational decision to maximise their short-term gains. As a result the vote has become a purchasable commodity for money or liquor. More often it is a sign of assertion of primordial loyalties of caste, religion, group, ethnicity, region or language. Very often without even any material inducement or emotional outburst based on prejudices, the sheer anger against the dysfunctional governance process makes most voters reject the status quo. Often this rejection of the government of the day is indiscriminate and there are no rational evaluation of the alternatives offered. In short, even the illiterate, ordinary voter is making a rational assumption that the vote has no serious long-term consequences and the choice is between Tweedledom and Tweedledee. Therefore he is attempting to maximise his short-term material or emotional gain!

The curse of defections

People also have come to realize that their vote has no sanctity after the election. Even if a candidate gets elected on a platform, there is no guarantee that their representative will not defect to a party with an entirely different agenda and ideology and betray the people's verdict purely for personal gain. Public office is seen as private property and in handling it the trust reposed by voters is of little consequence. Personal honour and commitment to a cause are at a premium in a system which rewards defections and does little to penalize political malfeasance.

Let us now briefly examine the Tenth Schedule of the constitution, incorporated by 52nd Amendment popularly known as the Anti-defection Act. These provisions have a major bearing on parties, public discourse and legislative and parliamentary voting. The Anti-defection Act was obviously well-intentioned, and was meant to ensure that the people's mandate is respected, and elected legislators do not violate the trust reposed in them by the public. Candidates are generally elected on the basis of the platform and a party, and their defection, often in return for money or favours, is a gross insult to democracy. However, the Anti-defection Act completely failed to prevent defections. There are countless instances of defections in Parliament and State legislatures since 1985, after the law came into effect. The only novel feature now is that individual defections invite disqualification for legislative office, and therefore there is no incentive for such defection. However, collective defection is now legitimate and amply rewarded. The provision that if 1/3 legislators defect, it is a split in the party and is permissible is a classic case of missing the wood for the trees. It 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! As a result splits are engineered, and constitutional coups are planned with meticulous precision, and careful conspiracy. Politics is reduced to the ugly numbers game in the legislature, without any sense of fairness, principle or obligation to the electorate. At the same time, as the Uttar Pradesh case of defections by Bahujan Samaj Party legislators showed, partisan Speakers can actually create new arithmetic, hither to unknown to man! In effect, the anti-defection provisions have completely failed in achieving the intended result.

There is, however, one major unintended result of the Anti-defection Act. 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 of such a case. 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. We cannot allow such a conspiracy of a group of individuals in the name of a party to distort all public debate and legislation. By throttling legislators and preventing them from giving concrete expression to their legitimate views, Anti-defection Act made them captives to irresponsible party leaderships in an already authoritarian and unaccountable party hierarchy. Thus all dissent is stifled and smothered, whereas collective plunder of the state goes on merrily unchecked. At the same time defections continue in a systematic and organised manner, thwarting people's will.

Obviously, this situation calls for urgent and practical electoral reforms along with fundamental governance reforms to enhance people's empowerment and participation. These electoral reforms should address the following concerns:

- 1. Criminalisation of politics.**
- 2. Abuse of unaccounted money power.**
- 3. Electoral irregularities of flawed electoral rolls, personation, false-voting, rigging and booth capturing.**
- 4. Autocratic, unaccountable political parties.**
- 5. Electoral reforms in local governments**
- 6. Elections to Rajya Sabha**
- 7. The curse of defections for personal gain**
- 8. The deficiencies of FPTP system.**

1. Decriminalization of politics

Present Status :

- 1) Sections 8, 8A and 9 of RP Act, 1951 provide for disqualification of persons convicted of specified offences. The list is comprehensive and reasonable.
- 2) The provisions obviously failed to achieve the desired result. The Election Commission pointed out that more than 700 of the 4092 legislators at state level have criminal record against them.
- 3) Lok Satta released a list of 45 candidates, most of them nominated by major parties in Andhra Pradesh in the general election for Lok Sabha and Vidhan Sabha in 1999. The names of about 20 more persons with suspected criminal record could not be revealed for want of verifiable evidence. With the backing of major political parties, several of them were elected. Several citizens' initiatives made similar efforts elsewhere.
- 4) Section 8(4) of 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, or if an appeal is filed within three months, until the appeal is disposed of by the court. Unfortunately this provision was misinterpreted by election officials consistently until 1997, and any candidate, who had been convicted but filed an appeal, was exempted from disqualification until the appeal was disposed of. The Election Commission gave guidelines in 1997 effectively closing this loophole.

Problems :

- 1) Many known criminals are still in the electoral fray and often get elected. The problem is getting worse with successive elections.
- 2) The conviction rate in criminal cases is a pitiful 5-6%
- 3) Disposal of criminal cases is excruciatingly slow, and most cases take years to dispose of. Technically, the murderers of Rajiv Gandhi were perfectly free to contest elections in India for 7 years after the dastardly crime until 1998 when they were convicted, provided they are Indian citizens and are otherwise eligible. This obviously is an unacceptable situation.
- 4) If the 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 police function directly under the control of the government, and the government has specific powers to withdraw prosecution, order investigation and grant parole and pardon.
- 5) Mafia dons and organised gangs often escape even prosecution for want of tangible evidence.
- 6) There are rowdy sheets and history sheets opened by the police against certain individuals with criminal record. **Annexure - I** gives the criteria applicable in one State. However, if they are solely relied upon to disqualify a candidate, there is danger of misuse of such powers.
- 7) The period of disqualification under RP Act 1951 for conviction varies with the offence, and this variation does not always seem to have a rational basis. **Annexure -II** gives a table indicating the offence and the period of disqualification.

- 8) While the list of offences under Sections 8,8A and 9 of RP Act 1951 is fairly large and comprehensive, certain offences seem to have been left out. **Annexure-III** gives an illustrative list of offences conviction for which should incur disqualification as recommended by the Law Commission.

Possible proposals for electoral reform :

- 1) The anomalies in respect of period of disqualification may be corrected broadly in line with the recommendations of the Law Commission.
- 2) The punishments for certain offences should be altered, and certain new offences should be included, so that there are more rational criteria for disqualification of candidates as proposed by the Law Commission. The list should include conviction for corrupt electoral practices under section 99 of RP Act, 1951
- 3) Any person against whom criminal charges are framed by a magistrate for any offence listed under section 8 of RP Act 1951 or any warrant case should be disqualified to contest in elections as long as charges are pending against him/her.
- 4) Any person in respect of whom a History sheet or a Rowdy sheet or a similar record by whatever name it is called, has been opened and is kept open in any police station within the Indian union in accordance with the provisions of the appropriate laws or police standing orders, should be disqualified as long as such History sheet or Rowdy sheet is kept open.

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 History sheet 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 shall hold a summary enquiry and decide within a month whether or not the opening of such History sheet or Rowdy sheet is valid. The order of the Sessions Judge shall be binding on the police authorities.

- 5) Every candidate for an elective office shall file at the time of nomination before the Returning Officer an Affidavit in **Annexure IV**. The nomination of those persons who do not file such an Affidavit shall be rejected.

If any misleading or incorrect information is furnished in the Affidavit, or if any facts are concealed, such a person shall be disqualified for a period of, say twelve years. In case such a person has been already elected, his election stands nullified and he shall be disqualified for twelve years. In such cases a complaint shall be filed before the Election Commission, whereupon the Commission shall issue notices to the compliant and the candidate and after summary enquiry give its decision within 90 days from the date of complaint. The decision of the Election Commission shall be final and binding.

- 6) Similar disqualification provisions should be incorporated in respect of elections to local governments.

Note: A few critics have expressed the concern that decriminalization efforts might inadvertently hurt the interests of the dalits and backward classes. Given the power-centered

nature of our society and the iniquitous nature of our polity, there is always the danger of influential sections manipulating the system in their favour and marginalising disadvantaged sections. Also often the so called upper castes may remain in the back ground and use the dalits and OBCs as canon fodder to execute crimes, thus escaping disqualification.

However, empirical evidence shows that criminalization of politics is not the monopoly of any caste group. In fact, there are more organised criminal gangs with political connections among the so called upper castes. When criminal record of candidates is carefully compiled, there are more upper caste candidates with such a record. Also once disqualification is applicable to all crime — violent as well as white-collared, — there is greater probability of the provisions being applicable to all sections equitably. For instance if wilful defaulters of bank loans are disqualified, there is greater chance of influential sections being made accountable.

There are other concerns expressed about the fairness of disqualification of candidates facing criminal charges or those listed as rowdy sheeters etc. Firstly only charges framed by a magistrate in warrant cases after prima facie enquiry are included. Once there is judicial application of mind, it acts as a reasonable safeguard to protect individual interest. Secondly, there have to be certain reasonable standards with uniform and objective application, and there can never be absolute certainty about a person's guilt. There are cases of conviction which are set aside on appeal. There are known cases of innocent persons having been found guilty of capital offences and executed. If we wish to apply exacting standards, we should wait until the final appeal is heard, which obviously defeats the objective of decriminalization of politics. Thirdly, there are fears that police records about rowdy sheeters etc could be highly subjective and arbitrary. In fact, the criteria for opening such records are well laid down and are objective. To eliminate the risk of political manipulation, a provision is made for judicial determination of the fairness of the police records at the level of the Sessions Judge.

Fourthly, when there is a clash between the society's right to have fair and proper representation in legislatures and the individual's right to represent the people, clearly society's rights take precedence over individual right. The right to contest elections is not a fundamental right. The harm done by denying an occasional innocent person a chance to contest is much less than allowing a criminal to be elected. In fact the balance today has swung against decent citizens in elections, and this distortion ought to be corrected.

Fifthly, these proposals are meant to reduce the role of criminals in politics, and cannot in themselves be adequate to eliminate the flaws and distortions in the criminal justice system. That requires a different, and far-reaching reform effort. However, the failure to reform, the criminal justice system cannot militate against reform of the electoral system. Electoral reform is central to the fairness of representation and health of a democracy.

Finally, when there is overwhelming distortion in electoral politics and money power and criminal involvement have come to dominate elections, effective and far-reaching reforms are required to safeguard public interest. Tentative and half-hearted reforms will fail to cleanse our political and electoral system.

2. Curbing unaccountable use of money power :

Present Status :

- 1) Expenditure ceilings: A candidate is allowed to spend a maximum of Rs.6,00,000 in an Assembly election Rs.15,00,000 for Lok Sabha (in Andhra Pradesh). These new ceilings came into effect in December 1997 in place of the earlier ceilings of Rs.1,50,000 and Rs.4,50,000 respectively. In reality, the actual expenditure is often 15 to 20 times the present ceiling.
- 2) Prior to 1969, Section 293 of the Indian Companies Act permitted contributions to political parties. Such contributions could be upto 5% of the profit with the approval of the Board of Directors and unlimited with the approval of the shareholders.
In 1969, corporate contributions were banned.
In 1985, again companies were permitted to contribute upto 5% of the profit.
In reality, there are believed to be huge undisclosed and unaccounted corporate contributions to political parties and candidates.
- 3) Section 13A of the Income Tax Act (IT Act) exempts from tax the income of a party from house property, other sources and voluntary contributions.
- 4) 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.
- 5) In 1978, Section 139(4B) was added to the IT Act by the Janata Government. This provision, read with Section 13A, makes it mandatory for the political party to furnish return of income every year.
Every major party is said to have violated this statutory requirement of furnishing returns if its income exceeded the normal taxable limit.
- 6) In general, no party is believed to insist on accepting contributions only by cheque. Some time ago, BJP made an announcement that they would like to accept contributions by cheque. But it is believed that most contributions after that were undisclosed.
Obviously contributions to parties by cheque are exceptional, and the bulk of the funding is undisclosed.
- 7) The press reported that on Supreme Court's directives in a public interest litigation filed by the Delhi-based Common Cause, the income tax officials have sent notice to all political parties to file tax returns disclosing the receipts and sources of contributions. So far there is no evidence of parties having submitted these returns. Nothing further is known of the outcome of this initiative.
- 8) The uncorroborated Jain Hawala scandal reports suggest that large amounts of tainted money from highly questionable sources is flowing into party coffers.
- 9) Legal penalty for not filing election expenditure returns is disqualification for three years. If the expenditure exceeds the ceiling prescribed, the penalty is six years' disqualification.
- 10) By an ordinance in 1969, later made into law in 1974, the expenditure incurred by the party or an association or a friend is exempt from expenditure ceilings.
- 11) Candidate should report the expenses to the District Election Officer within 30 days of completion of elections. The accounts have to cover the period from the date of notification to the conclusion of election.

Problems:

- 1) It is generally acknowledged that the expenditure in elections is astronomical. In some States, the expenditure of Rs.1 crore for Assembly election and Rs.3 - 4 crores for Lok Sabha is common.
- 2) The expenditure is not only above the ceilings prescribed, but most of it is for illegitimate purposes and is illegal. Often such undisclosed expenditure is incurred in inducing voters through money and alcohol, bribing election officials, polling staff or police personnel for favours and partisan conduct, and hiring hoodlums and 'workers' to indulge in large scale personation, booth capturing and rigging. Often criminal gangs are hired to browbeat the voters or prevent them from voting.
- 3) The expenditure of major parties in the general election for Lok Sabha and Legislative Assembly in Andhra Pradesh in 1999 has been estimated (anecdotal evidence) at about Rs.600 crores.
- 4) The expenditure of candidates for the municipal elections in AP in 2000 is estimated at Rs.100 crores (anecdotal evidence). The total annual income of the 107 municipalities (excluding municipal corporations) probably does not exceed Rs.100 crores!
- 5) In the absence of strong legislative framework, the Election Commission's efforts to curb expenditure have merely pushed most expenditure underground. The ostentatious expenditure for visible campaigning is on the decline, whereas the illegitimate expenditure has been on the rise.
- 6) In the absence of strict disclosure norms, parties are not inclined to receive contributions openly. Almost always political contributions are obtained through extortion, or received as a consideration for past or future favours out of turn.
- 7) The Tatas groups made a genuine effort to create a fund for campaign contributions. However, in the absence of an enabling climate, and the difficulty in providing corporate funding to all parties on objective criteria, the initiative did not make any progress.
- 8) Unaccounted election expenditure has become the root cause of corruption. Political funding and corruption are inextricably linked.
- 9) The entry of honest citizens into political and electoral arena is rendered almost impossible on account of the inexhaustible appetite of the political system for unaccounted funding.
- 10) Honest citizens and corporate groups have no incentive to fund political activity.
- 11) Candidates are often chosen on the basis of their capacity to spend in elections, rather than their ability to serve the public. Good candidates with limited means are discouraged from seeking public office. Disparities in campaign resources have reduced electoral competition.
- 12) Parties in power use public money with impurity for personal aggrandizement and for publicity to individuals and the parties.
- 13) Large scale mass mobilization is the norm, involving huge expenditure and little political education or public awareness. A large political rally involving about 100, 000 people typically costs Rs.3-4 cores.
- 14) Abuse of power is common in raising resources or organizing political rallies and meetings.
- 15) Party finances are neither regulated nor transparent.
- 16) Party workers are no longer volunteers inspired by ideology, great leaders or good goals, but hired supporters

Proposals for campaign funding reform

A) Measures to encourage political funding:

- 1) 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
- 2) All corporate contributions from companies upto a ceiling of 5% of the net profit shall be exempt from corporate tax
- 3) Companies may contribute subject to the following norms
 - a) No contribution shall be made above 5% of the profit
 - b) A company which receives state subsidy or has a decision or contract or license pending with government shall not contribute

B) Measures to prevent abuse of office

- 4) Government shall not issue any advertisements containing the name of a person or party or photograph of any leader
- 5) No government advertisement shall be issued listing any achievements of a particular government.
- 6) Government transport or infrastructure shall not be used for political campaigning
- 7) 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.

C) Measures to enforce disclosure and accountability

- 8) Every individual contribution exceeding Rs.1000/- 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 case of corporate bodies, imprisonment for six months.
- 9) 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.
- 10) The audited statement of accounts shall be submitted to the Election Commission as well as the Income Tax authorities in the prescribed proforma. **(Annexure V)** Copies shall be made available to any member of the public by the Election Commission on payment of a nominal fee.
- 11) Along with the audited statement of accounts, the party or candidate shall submit a complete list of all contributions exceeding Rs.1000/- 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.
- 12) 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.
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.

- 13) 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 upto five years.

D) Measures to limit campaign expenditure

- 14) 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.
- 15) Penalty for violation of ceiling shall be a fine equal to five times the excess expenditure. Penalty for wilful 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.
- 16) There shall be reasonable ceilings fixed on television/radio/newspaper advertisements.
- 17) During election time, rallies held under covered roofs alone shall be permitted, and outdoor public rallies shall be prohibited. However, there shall be no restrictions on all other campaign related individual or group activities.

E) Measures for public funding

- 18) Free television and radio time shall be given in state media to recognised parties as prescribed by the Election Commission
- 19) Private electronic media shall earmark time for recognised parties as prescribed by the Election Commission for election-related campaign
- 20) There shall be election debates telecast and broadcast live by all electronic media as per the directions of the Election Commission
- 21) Every candidate/party obtaining 2% 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.

Miscellaneous

- 22) The Election Commission shall be the final authority to determine compliance or otherwise of these norms, and to impose penalties.
- 23) 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.
- 24) 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.

- 25) 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. The proposed form of declaration is given in **Annexure VI**. 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.

3 Measure for curbing polling irregularities

Present status

- 1) In the actual conduct of elections, the pre-polling activities including printing of ballot papers etc are fool-proof and largely free from any irregularities.
- 2) Similarly the post-poll activities including transport and storage of ballot boxes and counting are fool proof and there are effective safeguards against mischief.
- 3) The irregularities are largely limited to the polling process itself. In fact most electoral politics is now reduced to manipulating the polling process including influencing appointment of election and polling officials in certain states.
- 4) Electoral registration law is near-perfect. However, the procedural flaws allow for serious distortions.
- 5) Prior identification of the voter by verifiable means is not insisted upon as a precondition for voting. Therefore false voting by impersonation is unchecked.
The only check is the opportunity for the polling agent of a candidate to object (challenged vote). 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. Sometimes the polling agents are in conclusion with opponents. There are areas where the dominance of one caste or group is so pronounced that polling agents may not even be available for certain candidates, or when available, are intimidated.
- 6) Tendered ballots are given to those voters in whose name a vote was cast earlier by impersonation, and who can establish their identity. However, the provision is not widely known. Even if a tendered vote is cast, under the present law it has no validity. In fact the false vote already cast and inserted in the ballot box is counted, and the legitimate vote cast as tendered vote is kept in a sealed cover separately, and is not counted. This sealed cover is opened only in the event of a court order on an election petition. In effect, impersonation is rewarded in elections.
- 7) A tendered vote is indisputable proof of rigging. No matter what form rigging takes, its one inevitable manifestation is a false vote being cast in the name of another person. Tendered vote is thus the surest means of proving personation and rigging, provided there is great publicity and voters attach value to tendered vote.
- 8) Use of ballot papers involves several logistical difficulties including printing of ballots, large scale personnel deployment, tampering with ballot papers, forcible entry into a polling station and at times massive rigging by rapid unauthorised stamping of ballots and insertion in ballot box.
- 9) Voter identity cards are introduced, and the law and rules have been amended. However, though Rs.1000 crores have been spent, identity cards have not been made mandatory for polling. Only in Haryana in the recent Assembly elections, voter identity cards have been made mandatory along with other means of identification, and the experiment has been successful.
- 10) Electronic voting machines (EVM) can now be used, and the law has been amended. EVM technology is available, and they have been used successfully on pilot basis in select constituencies. They can be manufactured on large scale and their introduction actually reduces election expenditure in the medium and long-term. EVMs also reduce the scope for rigging, and make polling simpler and counting faster.

Problem

- 1) There are large scale errors in electoral rolls. Lok Satta conducted sample household survey of five urban polling booths. The survey reveals 40-50% or more errors in electoral rolls. Either the names of eligible persons residing in the locality are omitted, or the names of ineligible, or fictitious persons, or those not residing in the locality find place. **Annexure 7** gives the results.
- 2) Similar surveys in other urban areas reveal equally glaring irregularities in electoral rolls. These are corroborated by anecdotal evidence.
- 3) In the rural areas, the errors may be fewer, probably to a tune of 5-10%
- 4) Lok Satta is now undertaking a scientifically designed random sample survey in the State of Andhra Pradesh, covering every district, to establish the degree of inaccuracy.
- 5) Errors in electoral rolls disenfranchise many eligible voters, while allowing organised personation on a large scale.
- 6) Often the margin of victory in an election is no more than 5-10% of the valid votes polled.
- 7) Lok Satta conducted a sample house-to-house survey of five polling station areas after the 1999 general election. The survey revealed that upto 22% of the votes cast might have been by personation. A large number of persons who are supposed to have voted have either migrated to other areas, cities or countries, or cannot be traced, or have not actually voted. This survey was based on the electoral rolls in which the names of those who voted had been marked by polling agents of candidates. **Annexure 8** gives the findings.
- 8) Lok Satta offered to conduct a more scientific survey of polling stations on random sampling basis and sought the official lists of voters who actually voted in the last election. However, the Election Commission officials denied us access to these electoral rolls indicating those who have actually voted, for fear of litigation in the event serious irregularities in polling are proved.
- 9) Electoral rolls are in theory available to citizens for a price. However, in reality the process is difficult and rarely if ever citizens have actually been able to obtain copies of electoral rolls. The process involves fixation of a price by the CEO of the state, a head of account, payment through a government challan, and prior knowledge of simple data like the constituency number, polling station number etc. Even for well-informed and influential citizens access is in effect denied. Lok Satta could obtain electoral rolls officially only after several weeks of relentless effort.
- 10) Citizens are supposed to have access to electoral rolls at the time of revision. However, in reality it is a cumbersome and ineffective process.
- 11) Revision of electoral rolls is supposed to be done with public knowledge. However, the process is obscure, and citizens have little access and no real opportunity to correct errors.
- 12) Applications for addition and deletion of names are long and difficult for ordinary voters to fill out.
- 13) These applications are often not available to voters. When available, the filled out applications have to be handed in personally, or sent by post, a costly and difficult process for most citizens.
- 14) There is an acknowledgement printed with these applications (Forms 6,7,8, 8A and 8B). The acknowledgment is rarely if ever given to citizens on application.
- 15) Anecdotal evidence shows that in many cases applications for addition and deletion of names are ignored and no action has been taken. There is a section in the application indicating

action taken, which is supposed to be sent to the applicant. However there is almost no known instance of such communication.

- 16) Even a casual glance at electoral rolls in urban areas shows the obvious discrepancies and inaccuracies. Taking advantage of these defects, political parties and influential persons ensure large scale registration of bogus voters, or large scale deletion of names of voters who might have favoured their opponents.
- 17) There is overwhelming anecdotal evidence at the time of election suggesting serious irregularities in electoral rolls or polling. Many citizens find that their names are missing, though they voted in the earlier election or they applied for voters enrolment.
- 18) Equally commonly many voters are disappointed to learn that someone else has already cast the vote in their name. Often these disappointed voters are not even advised about the 'tendered vote' , and are sometimes actively discouraged by the polling personnel from seeking it (to avoid additional work or for fear of having to report and explain large scale personation).

Proposals for reform

- 1) The local post office shall be made the nodal agency for electoral registration
 - a) Electoral rolls for the polling stations covered by the post office shall be made available to citizens across the counter for a price. They can be purchased like any postal stamps or stationery.
 - b) Copies of electoral rolls shall be displayed and made available for scrutiny when asked.
 - c) The forms of registration, deletion of names and correction (in English and local language) shall be made available to citizens free of cost or for a nominal price of say, 10 paise.
 - d) All such forms shall be received by the post office and acknowledgement given to the applicant. They shall then be forwarded to the electoral registration officials.
 - e) The post office shall maintain a register showing details of applications, and shall receive action taken reports from electoral registration officials. This register shall be open to public for scrutiny.
- 2) Voter identity cards shall be mandatory in any election. The exercise of distribution of these voter identity cards shall be completed within one year. All other suitable means of identity—ration card, driving license, pattadar pass book, bank pass book, passport, credit card, employer's certificate, tax receipt etc shall be permitted in lieu of voter identity card.
- 3) Electronic voting machines shall be introduced in every polling station.
- 4) Ballot papers shall be limited to those on official election duty or members of the armed forces. Measures should be evolved to facilitate voting of such persons in time. Proxy voting for soldiers on duty by their relations with prior authorization is one such method.
- 5) If the tendered votes in a polling station exceed 1% of the valid votes polled, there shall be automatic re-polling in that polling station.
- 6) If the tendered ballot papers are below 1% in a polling station, they shall be counted as normal ballot papers. (The vote polled by a legitimate voter is thus counted. Tendered ballots may not be relevant if voter identity cards are universally implemented and identification is made mandatory. Rules need to be framed regarding tendered votes in case of Electronic Voting Machines).

4. Internal democracy in Political Parties

Present status:

1. Art 19 of the constitution accords citizens the right to form associations, thus implicitly recognizing the right to form political parties.
2. Election symbols (Reservation and Allotment) order, 1968, issued by the Election Commission under Art 324 of the constitution, read with the provisions of RP Act, 1951 and conduct of Election Rules 1961 provides for recognition of political parties.
3. A party will be recognized by the Election Commission as a State-level party and allotted a common symbol for its candidates if it has been engaged in political activity continuously for five years, and had obtained at least one out of 25 members of Lok Sabha or one out of thirty members of State Legislative Assembly or 4% of the total valid votes cast at the election in the State.
4. A party satisfying these conditions in four or more states is recognized as a national party.
5. The symbols allotment order, 1968 has been recognised by the Supreme Court as a self-contained code and can be treated as one of the important land marks in the evolution of regulation of political parties. (RP Bhalla). The Court upheld the order in the Sadique Ali Vs Election Commission of India, case.
6. Section 77 of RP Act, 1951, amended in 1974 mentions a political party for the first time in a statute. This amendment excludes expenditure incurred by a party from the statement of accounts lodged by a contesting candidate.
7. Tenth Schedule was added to the constitution in 1985 through 52nd amendment. This is the only reference to political parties in the constitution. Tenth Schedule provides for disqualification of members for voluntarily giving up membership of a political party or violating party whip.
8. Section 29A was inserted in the RP Act 1951 making provision for registration of political parties with the Election Commission.

Problems:

- 1) Parties have become arbitrary, autocratic and unaccountable.
- 2) As parties are integral to democratic politics, their undemocratic functioning has weakened Indian democracy and politics.
- 3) The choice of candidates for the voters is essentially limited to parties. Non-party candidates have very little say in elections. (**Annexure - 9**)
- 4) As a party represents decades of effort, dreams, aspirations, history, nostalgia and emotions, new parties cannot be easily formed. The only effective way of improving the quality of a democracy is by improving the functioning of political parties.
- 5) Entry into a party is often tightly and arbitrarily controlled by the leadership. Strict, but objective and uniform norms as applicable to communist parties are welcome. But in most mainstream parties the leadership denies membership to those with the potential to challenge their position. Similarly persons utterly opposed to party's stated ideology are admitted as members when it suits the leadership.
- 6) Disciplinary powers are invoked and expulsions are resorted to habitually only to safeguard the position of leadership of a party. No healthy debate and democratic dissent are tolerated.

- 7) Leadership choices at various levels are rarely made by democratic voting. In most parties, internal elections are rarely held, or when held, are perfunctory. Even membership rolls are not available.
- 8) Party leadership is utterly unaccountable to its members as well as the public regarding contributions made and expenditure incurred.
- 9) Choice of candidates is left to the discretion of the party bosses. There are no democratic procedures of member choice and secret ballot for candidate selection.
- 10) Party policies are rarely debated or decided in party fora. Members have no role in shaping party's policies. Manifestoes are written in a cavalier manner, and if the party is elected to office, promises are disregarded with impunity.
- 11) Lok Satta conducted a survey of leading political parties at the grassroots level. This survey was initiated by Sri LC Jain's idea of a Political Party Development Index to act as a pressure point for parties to reform. Constituencies for study of each party were short-listed based on the party's consistent good performance over the past four general elections, and the final choice was made by the party concerned. In effect these constituencies represented the best face that the parties could offer. The findings of the study confirmed all the ills of our party system outlined above.

Proposals

1. Membership of a party should be open to all citizens of India, subject to their subscribing to the party philosophy, and uniform membership norms and barriers of entry.
2. Rules governing membership of the party and registers of current members should be available and open to inspection by any member of the party or the representatives of Election Commission.
3. There shall be internal mechanisms for adjudicating disputes within the party, including those concerning the interpretation of the party constitution.
4. Disciplinary action shall not be initiated on the grounds that a member has opposed the leadership or espoused a view contrary to the leadership's view.
5. The party constitution should contain provisions on:
 - a) The name, register office and activities of the party,
 - b) The admission and resignation of members,
 - c) The rights and duties of members
 - d) Admissible disciplinary measures against members and their exclusion from the party,
 - e) The general organisation of the party,
 - f) Composition and powers of the executive committees and other organisations
 - g) The preconditions, form and time limits for convening meetings of members and representatives and the official recording of resolutions.
 - h) Matters which may only be decided upon by a meeting of members and representatives.
 - i) An overall vote by members and the procedures to be adopted when the party convention has passed a resolution to dissolve a party or merge with another party. The result of the overall vote determines whether the resolution is confirmed, amended or rescinded.

- j) The form and content of a financial structure which satisfies the rules of financial accountability
6. A member may only be expelled from the party if he or she deliberately infringes the statutes or acts in a manner contrary to the principles or discipline of the party and thus seriously impairs its standing.
 7. The Election Commission decides upon appeals on expulsion from the party. The rights to appeal to a higher court is guaranteed. Decisions must be justified in writing.
 8. There shall be democratic election by members through secret ballot for filling all vacancies of office bearers and the highest executive body. The executive committees at various levels shall be elected at least every second calendar year.
 9. All decision making in party organs shall be by majority vote, and the ballots shall be secret at the executive committee, delegates' and representatives' assemblies. Voting at other levels shall be secret if the members ask for it.
 10. Party's assets, receipts, income and expenditure shall be audited and the audited statements shall be furnished to the Election Commission by September 30 next. Public shall have access to there records and may obtain copies from EC on payment of a nominal fee.
(Annexure 5)
 11. All contributions more than Rs. 1000 shall be disclosed to the public and the Election Commission. The commission shall make available copies to the public on payment of a nominal fee. Any violation of disclosure norms shall invite de-recognition and imprisonment of members of executive committee for three years.
 12. Candidates for election to any public office must be chosen by secret ballot. The nomination procedure shall be governed by the party statutes. A person may only be named as party candidate in a constituency if he or she has been selected in an assembly of party members in the constituency or in a special general assembly of representatives elected for this purpose. The candidates and the representatives for the assemblies of representatives shall be selected by secret ballot.
Selection of candidates for other public offices shall be by secret ballot at the appropriate level.
 13. A provision similar to Article 21 of the German Basic Law should be incorporated in the constitution to facilitate effective regulation of parties.
"21(1) political parties shall participate in the formation 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 their assets and for the sources and use of their funds.
21 (3) Details shall be regulated by federal laws."

5. Elections to Local Governments

Article 243 K and 243 ZA provide for a State Election Commission to supervise, direct and control elections to local governments.

The following lacunae exist in elections to local governments:

- a) For each stage separate law needs to be enacted to implement these reforms.
- b)** Electoral rolls have to be prepared separately for local governments.
- c)** Political parties registration and symbols allotment may have to be separately taken up by the State Election Commission in each State.

All these are redundant. A simple constitutional amendment providing for common electoral rolls, common Union electoral law for all the elections and common registration of parties and allotment of symbols would be necessary to improve local government elections.

6. Elections to Rajya Sabha

Present Status

Under Article 80 (4) of the constitution the representatives, of each State in the Council of States shall be elected by the elected members of the Legislative Assembly. Under Article 83 (1), the council of states shall not be subject to dissolution, but as nearly as possible one third of the members thereof shall retire as soon as may be on the expiration of every second year.

Problem:

This resulted in three difficulties:

- 1.) As the Rajya Sabha membership gives almost equal powers and privileges compared to Lok Sabha, and it is for six years without fear of termination of membership upon dissolution, the demand for it has gone up. State Legislators are wooed assiduously and money is often paid to purchase votes in Rajya Sabha election.
- 2.) Though Rajya Sabha is the Council of States, and is supposed to represent the will of the States at the Union level, in reality Rajya Sabha often represents the composition of the dissolved State legislature and not the current one.
- 3.) Rajya Sabha has coequal powers of legislation with Lok Sabha (except on Finance Bills). The government formed with majority support in the House of the People (Lok Sabha) often finds that though Lok Sabha represents the will of the people at a point of time, Rajya Sabha is at loggerheads with Lok Sabha. Almost no legislation can be enacted in the Parliament without the willing cooperation of Rajya Sabha despite people's mandate for a government. This leads to legislative impasse and compels unhealthy back room deals.

Proposal:

One simple way of remedying the situation is by electing all the representatives of a State in Rajya Sabha at one time immediately after the constitution of the State Legislative Assembly. The Rajya Sabha members so elected from a State will be conterminous with the State Legislative Assembly. The Rajya Sabha will thus reflect the will of the people of the State at all times. There will be greater likelihood of its composition being closer to Lok Sabha, facilitating easier passage of legislation.

As the election is held for all members of Rajya Sabha from the State simultaneously immediately after the constitution of the Assembly, there will be reduced chance of money being paid for voting in Rajya Sabha election. Legislators freshly elected by the people are more likely to respect the people's mandate.

7. Changes in the Tenth Schedule

Problem:

The present provisions of Tenth Schedule under Article 102 (2) and 191 (2) of the constitution gave rise to several anomalies

1. These provisions incorporated in 1985 failed to prevent defections. Countless defections took place subsequently without incurring disqualification.
2. Individual defections invite disqualification, whereas collective defections are amply rewarded.
3. Speakers have tended to act in a partisan manner often. Even when defecting members did not constitute one-third of the party members in the legislature, Speakers sometimes did not disqualify members. The case of defection of members of BSP in UP Assembly is a classic example.
4. Since Tenth Schedule applies to any vote in the legislature, legislators who may honestly differ on a piece of legislation are forced to submit to the will of the leadership. Muslim Women's Bill brought in to nullify Supreme Court's verdict in Shah Bano case, the whip issued by congress party in Justice Rama Swamy's impeachment case are two telling examples.
5. 'Splits' are engineered in legislature parties without any real split in the party.
6. As whip applies to Rajya Sabha, the party with people's mandate in Lok Sabha has no opportunity to persuade Rajya Sabha to approve any legislation on merits. Only backroom deals with party leaders can facilitate Union legislation.

Proposals:

1. Any voting on a finance bill or confidence motion or no-confidence motion against party whip shall invite automatic disqualification irrespective of the number of members defying party whip.
2. A 'split' in a party shall be recognized only after due process in the actual party fora with one month's notice to the Election Commission. A split in a legislature party shall be recognized only in the event of a split in the party after following due procedure.
3. In case of such a legitimate and recognized split, the persons who form the splinter group shall not be disqualified for violation of the whip issued by the original party.
4. In the event of such a legitimate split, the persons who form the splinter group shall not be eligible for ministerial office for at least one year.
5. Whip shall not be issued to members of Rajya Sabha or legislative council.
6. Whip does not apply to ordinary Bills or on impeachment motion to remove constitutional functionaries.
7. Violation of party whip on matters other than finance bill and confidence or no confidence motion shall not invite disqualification, through it may entail disciplinary action by the party.
8. The Election Commission shall be the competent body to determine whether or not a member is disqualified and to recognize a split.

8. Fairer representation in legislatures

Problems of First–Past–the–Post (FPTP) System:

1. Winning in a constituency is the only source of legitimacy in FPTP system.
2. Broad based Public support is not recognised if a party cannot win in a constituency. Local electoral irregularities are encouraged to win at any cost. There is incentive to resort to irregularities locally to win as broad public support without winning in a constituency is no use. Conversely, parties have no desire to appeal to broader constituency. Nor is there desire to identify candidates worthy of public office.
3. The gains in a constituency on account of irregularities are not offset by the risk of losing public support elsewhere.
4. A high proportion of winning candidates obtain less than 50% vote. (**Annexure 10** gives the percentage of votes obtained by winning candidates).
5. New political groups cannot make an impact in the absence of the capacity to muster money and muscle power.
6. The system favours entrenched parties and individuals and stifles reform impulses.
7. The finest citizens are repelled by the ugly electoral practices, and choose to stay away from politics, leaving the field open to the entrenched politicians.
8. Local dynasties perpetuate family power for generations.
9. Complete change to proportional representation may lead to weakening of the bond between people and their elected representatives.
10. In FPTP System, the party with the largest vote may have disproportionate presence in legislature. This may promote majoritarianism stifling dissent or a party which has concentrated presence in a few pockets may fare better than a party with widespread popular base, thus distorting verdicts.

Proposal:

Proportional representation combined with constituency – based election for 50% of the seats.

- a. The overall composition of the legislature will depend on the proportion of votes obtained by the parties.
- b. 50% seats are filled by constituency – election.
- c. There shall be two votes; one for the constituency election and the other for the party of choice.
Party vote determines the number of seats a party gets. After excluding the constituency seats won by the party, the remain seats will be filled from the party lists.
- d. A State shall be the unit for proportional representation or lists. All union territories together will constitute a unit.
- e. A party shall be eligible for allotment of seats on PR basis only if it obtains at least 10% of the valid votes in States with 10 or more seats. If the number of seats is less, a party shall have to cross a threshold limit as per the formula.

$$\frac{\text{No. of Valid Votes}}{\text{No. of Seats to be filled}}$$

- f. As a party or parties are eliminated for obtaining votes below the threshold, the seats shall be divided among the remaining eligible parties as per the following formula:

$$\frac{\text{No. of Valid Votes obtained by the party}}{\text{Total No. of Valid Votes obtained by all eligible parties}} \times \text{No. of Seats}$$

- g. First, each party receives one seat for each whole number resulting from this calculation. The remaining seats are allocated in the descending sequence of decimal fractions.
- h. Any seats which a party has won directly in the constituencies are deducted from this number, so that the balance number to be drawn from the lists is decided.
- i. The existing reservation provisions will continue for the constituencies as well as party lists as per a roster of reservation.
- j. If a party wins more constituency seats than it is entitled to get by proportional representation, it will retain all constituency seats. The additional number will be added to the strength of the legislature on a temporary basis.

(**Annexure 11** gives the sample calculation showing distribution of seats in the proposed PR system combined with constituency elections).

9. Miscellaneous issues

1. Redelimitation based on census data should be restored in respect of constituencies within a State or union territory.
2. The number of seats allotted to States in Lok Sabha / Rajya Sabha should be frozen at the present level (except where State boundaries are altered) in order not to penalize the States with a good population control record. Any redelimitation should be within the States.
3. Rotation of seats should be resorted to in case of SC seats and non-scheduled areas ST seats.
4. Certain qualifying criteria may be imposed on independent (unrecognized party or non-party candidates) candidates to dissuade non-serious candidates - higher deposit, endorsement by a prescribed number of voters (say at least 100 for the Assembly and 1000 for Lok Sabha).
5. The law relating to registration of parties (Sec 29 A of RP Act, 1951) should be amended to give the Election Commission the authority to deregister parties which do not adhere to essential requirements prescribed in the proposals relating to political parties.
6. Section on 29 A(5) should be amended to read:
"..... that the association or body shall bear true faith and allegiance to the Constitution of India by law established, and to democratic principles, and would uphold the sovereignty, unity and integrity of India."
This will make it possible for any democratic party committed to constitutional principles to be registered without having to resort to dissimulation.
7. An independent auditing authority should be established for auditing annual statements of income and expenditure of political parties and the statement of assets. Alternatively, the accounts should be audited by an auditor approved by the Election Commission.
8. An election should be treated as void if the percentage of polling in a constituency is below 40%. If the polling percentage is lower, there should be a re-election.
9. The practices described as corrupt practices must be penalized and prevented by the Election Commission before the election, and must not be left to election petitions later. An appropriate amendment should be made to RP Act to this effect.
10. Election Commission should be the final authority to decide on all election petitions. The Commission shall dispose of election petitions within 6 months from the date of polling.
11. Election Commission should have the rule making power on its own in matters relating to supervision and conduct of elections.
12. Bye-elections should be held only in the first three years of the life of the legislature. Other vacancies must remain unfilled. Bye-elections should not be held at random times, but only in February or November. Alternatively, there shall be no bye-election in the event of a

vacancy. In case of Lok Sabha, the members of Legislative Assembly in the area will elect a member to fill the vacancy. In case of the Legislative Assembly, the local governments in the district / area will elect a member to fill the vacancy.

13. The Election Commission should be made truly autonomous. For this purpose the following are necessary:
 - (a) Selection of the CEC by a collegium consisting of the Prime Minister, leader of the Opposition, the Chief Justice, Speaker of Lok Sabha and Chairman, Rajya Sabha.
 - (b) Selection on of the other ECs by the above Collegium and the CEC.
 - (c) Making expenditure on the Election Commission charged to the consolidated fund of India.
 - (d) Making the EC secretariat independent of the government.
 - (e) Delegating all rule-making power to the EC.
 - (f) Prohibiting any non-elective public office for CEC / EC after retirement.
14. For enhancing Women's representation, the party-quota model proposed by the Election Commission and endorsed by various groups including the Forum for Democratic Reforms should be adopted.

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