

# **Improving Governance and Delivery of Services**

*(Draft for discussion for National Advisory Council)*

*by*.....

Formatted

**Dr Jayaprakash Narayan**

## **LOK SATTA**

401/408 Nirmal Towers

Dwarakapuri Colony, Punjagutta

Hyderabad – 500 082

Tel: 040 23350778/23350790; Fax: 040 23350783

E-mail: [loksatta@satyam.net.in](mailto:loksatta@satyam.net.in) ; url: [www.loksatta.org](http://www.loksatta.org).....

Formatted

Formatted

# Improving Governance and Delivery of Services

1. <u>Right to Information</u>	-	4	Formatted Formatted: Bullets and Numbering
2. <u>Citizen's Charters</u>	-	7	Formatted Formatted: Bullets and Numbering
3. <u>Anti Corruption Strategies</u>	-	8	Formatted Formatted
4. <u>Key Civil Service Placements and Transfers</u>	-	15	Formatted Formatted
5. <u>Measures for Effective Functioning of Legislatures</u>	-	17	Formatted Formatted
6. <u>Local Government Empowerment</u>	-	19	Formatted Formatted
7. <u>Judicial Reforms</u>	-	21	Formatted Formatted
8. <u>Electoral Reforms</u>	-	25	Formatted Formatted
9. <u>Facilitating Better Community Relations</u>	-	34	Formatted
10. <u>Political Reforms</u>	-	35	Formatted Formatted: Bullets and Numbering

## **Improving Governance and Delivery of Services**

This note makes an attempt to identify the procedures, laws and systemic changes that are necessary to transform the nature of politics and the governance processes, and improve delivery of services.

## Right to Information

In most developed countries, Right to Information has proven to be an effective instrument in increasing transparency in the functioning of public authorities and is a powerful tool to combat corruption. A few states like Maharashtra, Goa, Delhi, Rajasthan, Karnataka and Tamil Nadu have already enacted laws to ensure freedom of information, but in most of those states the enforcement has been quite feeble. In the meantime, the union government has recently enacted a legislation on Freedom of Information, but with the following significant defects:

- a. Second appeal to competent authority (too high a level)
- b. No compensation for delays
- c. No penalties for suppression of information
- d. Information available to legislature not made available to citizens.
- e. The time frame for obtaining information is too long.

These, and other defects should be remedied by suitable amendments.

1. The Law provides for 30 days' time limit for providing information. In cases where life and liberty of a citizen are involved, the law stipulates that information should be furnished within 2 days. The amendment should prescribe stricter time ~~limits.~~limits. ~~The~~ time frame for furnishing of routine information which is readily available ~~can~~becan be 7 days, and 15 days for information which has to be collected. The time frame for providing information which effects the life and liberty of an individual should be provided within 24 hrs
2. One omnibus provision will be of immense use to citizens. The information which is available or should be available to Parliament / State Legislative Assembly cannot be denied to citizens. Such a provision will be of great value in promoting genuine transparency. Such clear-cut enunciation will also help the courts in interpreting the law.
3. For the information law to be effective, there should be reasonable penalties for non-compliance, and fair compensation to the citizens for non-supply of information. The following may be considered:

Penalty : Rs 50 per day's delay to the officer  
 Minor punishment for willful delay  
 Major punishment for deliberate suppression of information

Compensation : Rs 50 per day's delay to the citizen

The quantum of monetary penalty and compensation can be changed by rules from time to time. In AP we have a municipal Citizens' Charter, which pays a

compensation of Rs 50 to the citizens for every day's delay. The system is working reasonably well, and those specific services have improved dramatically.

4. The Law provides for two appeals in case of rejection of application for information. The first appeal shall be to an authority to be notified by rules. But the second appeal is to the central government or state government or Competent Authority. And Competent Authority is defined as the speaker of the House, chief justice, president or governor under the law. Clearly, this is too high a level for citizens to approach for routine issues. It is necessary to incorporate a provision for an intermediate appeal before approaching the Competent Authority as the final appellate authority. Depending on the Public Authority, the intermediate appeal can lie with an appropriate functionary.
5. The law should provide for the specific items of proactive disclosure, and the periodicity (say every 6 months or annually). These items need to be listed for each Public Authority at every level – Village, Mandal, District, State head of the department and government – depending on the department/ agency and the nature of services. For instance, information about land boundaries, village map etc should be available at the village level. This pertains to the revenue department.
6. Section 9 states that information that is contained in published material and available to the public, or is likely to be so published within 30 days, can be denied to a citizen on these grounds. In such cases, the law should clearly provide for such latest published information (manual, report, publication) to be readily available to any citizen for a price, so that it can be bought across the counter instantly. The Public Authority must be obligated to have such published / priced documents readily available for sale.

Otherwise, most routine information will be denied to citizens on the ground that such information is available in published documents.

7. All procedures / rules relating to supply of information – including list of Public Authorities (department-wise, at each tier – village, mandal, district, state), PIOs, appellate authority, intermediate appeal, items for proactive disclosure, time frames for each type of information – should be codified for all departments and should be available to all citizens as one document and in one source electronically and in print. The printed document should be made available for a price in all key public offices at every level – state, district, mandal and village.

The rules must provide for such dissemination of knowledge.

8. All proactive disclosures must be put together as booklets (excluding large volumes of data pertaining to individual beneficiaries) and be available to the public with the concerned Public Authority, for purchase at a reasonable price. The proactive disclosures must be also be available to the public electronically on website and disc/ CD form for sale.

9. The law should provide for monitoring of cases of rejection of information. As the law is meant to operationalize a fundamental right, denial should be strictly in accordance with law, and subjective decisions denying information on the ground of one exemption or other under law should be firmly discouraged. For this purpose, the law should provide for all cases of rejection of requests for information to be furnished to the legislature – department-wise and district-wise in the form of an annual report, stating the reasons for denial. Such a report should be available to citizens electronically through a website, and for sale in the form of a CD/ disc.

These amendments will make the fundamental right to information real and meaningful, and will help the law to be implemented in the spirit of democracy and public accountability.

## Citizen's Charters

Citizen's Charter is an effective instrument to enhance accountability in service delivery, while at the same time ensuring uniform access to the citizens. An ideal charter should have the following components:

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

Obviously, such a charter will work only when there is no supply constraint for the particular service. Compensation for delay in service will work only under the following conditions:

- a. Delegation to the local authority/agency
- b. No scarcity of supply
- c. Flexibility to improve speed/rate of delivery
- d. User fee for service

Owing to Lok Satta's advocacy, such a charter was introduced by the government of AP in municipalities covering four such basic services:

- a. Issue of birth and death certificates (5 days)
- b. Residential water connection (30 days; 10 days under OYT)
- c. Approval of house construction plan (15 days)
- d. Property tax assessment (15 days)

For the first time in the country, the charter provided for a compensation of Rs 50 for every day's delay in service, which has radically changed the nature of relationship between the citizen and the government. The charter is working well, and studies indicate 98 % satisfaction in delivery of services. Several hundred citizens received compensation too.

Similar charters with clear entitlements, time frames and provision for compensation should be evolved for all public services.

## Anti Corruption Strategies

### *Lok Pal, CVC and CBI*

Lok Pal Bill has now been pending for over three decades. Creation of an independent and effective Lok Pal would be a positive step in the direction of combating corruption. An independent Central Vigilance Commission (CVC) and an effective Central Bureau of Investigation (CBI) to control corruption would be crucial checks for maintaining functional democracy.

The “Single Directive”(SD) policy which earlier made it mandatory for the CBI to seek prior permission of the government to prosecute senior civil servants is given a firmer footing by incorporating it in the new legislation. This was done contrary to the earlier Supreme Court (SC) ruling that the SD is illegal as it is discriminatory in nature and blurs the distinction between decision-making officers and other civil servants. The SC again sought the government’s explanation for retaining the provision in the CVC Act.

The notion of protecting civil servants from consequences of any untoward official decisions was originally intended to protect honest and upright bureaucrats from harassment. Such a policy was premised on the need to nurture an impartial, upright and independent civil service as crucial component of our democracy. However, Art 311 of the Constitution regulating the dismissal and removal of civil servants has been grossly abused over the past five decades and is being routinely interpreted as the civil servants' guarantee of tenure and protection from prosecution.

Formatted

It is common knowledge that many state governments have been sitting tight on files seeking permission to prosecute scores of civil servants for alleged corruption and other misdeeds. Owing to collusive and other factors, the civil services are largely perceived to be above law. This has created an aura of invincibility among the bureaucrats leading to an utter lack of accountability in their functioning at all levels. The governments and courts have made it impossible to remove an officer resulting in highly unprofessional and unaccountable behaviour.

The solution lies in CBI taking prior permission of an independent collegium (say CVC), instead of taking permission from government, for investigation and prosecution. Such an arrangement will give the required protection to honest civil servants. Further, the valuable recommendations made by the 161<sup>st</sup> report of the Law Commission in respect of the Vigilance Commission and CBI should be implemented speedily.

### *Anti Corruption Bureau (ACB), Vigilance Commission (VC) and Lok Ayukta at the state level:*

At present there are three organisations at the State level dealing with corruption: the Anti – corruption Bureau (ACB), the Vigilance Commission and the Lok Ayukta.



Anti Corruption Bureau (ACB) is declared as a police station under the laws of the land. It is entirely controlled by the officials of the police department. However its powers are limited, procedures are slow and levels of probity are unsatisfactory. Typically in a year, only six hundred employees (out of 1.2 million) are investigated; of whom 300 are charged with specific offences, and of them only 30 are punished or convicted. Of them only 3 or 4 are executives at any level (Gazette Officers). The State government has to approve prosecution and take disciplinary action. Very often political considerations and bureaucratic apathy make it impossible to either launch prosecution or act against erring employees. In case of All-India Services (IAS, IPS & Indian Forest Service), the ACB cannot start an enquiry or investigation without prior permission of the chief minister. In most of the cases a trap cannot be laid without the government's approval. Similarly heads of the departments cannot be investigated without prior government approval. All these make ACB ineffective and totally dependent on government.

There is a Vigilance Commission headed by a senior IAS officer (retired chief secretary or an official of the same rank) to examine the complaints of corruption against any employee at any level, to recommend ACB enquiry, to examine reports of the ACB and recommend action and to advise on the punishment to be awarded at the final stages of disciplinary action. The Vigilance Commission's recommendations are not binding on the government, but any deviation from its recommendation will go to the Legislative Assembly as part of the annual report. However, as the government at the chief minister's level has the unfettered discretion and control on all matters of investigations and disciplinary action against senior officials, the Vigilance Commission is helpless. Also ACB is completely under the political control of the government.

Vigilance Commission has been created in 1964 in the wake of Santanam Committee report at the Union level. The Central Vigilance Commission of government of India and Vigilance Commissions in states were created very swiftly by executive orders within months after Santanam Committee presented its report. Such political will is completely lacking 40 years later.

The third institution is Lok Ayukta created by State law. Lok Ayukta is headed by a former judge and is given the status and rank of the chief justice of the State high court. Every act of delay, harassment, inaction, corruption, excessive action, arbitrary action, abuse of authority by officials and ministers excluding the chief minister can be enquired into by Lok Ayukta. But Lok Ayukta has neither the machinery nor the authority to enforce its recommendations. Therefore over the years the institution has become truly ineffective and largely ornamental. Only in Karnataka, in recent years Lok Ayukta had some impact on combating corruption.

In certain states, there is also a fourth agency, the Directorate General, Vigilance and Enforcement, which also carries out some of the functions of ACB, but is largely focused on revenue leakages and tax evasion. There are also two other institutions, the Tribunal for Disciplinary proceedings to enquire into allegations of misconduct of government servants, and the Commissionerate of Enquiries conduct disciplinary proceedings against gazetted officers and All Indian Service officers.

What we need now is a single agency with full authority, autonomy, manpower and resources. Many models could be considered, but whatever be the model, the agency should be independent and effective, and its decisions should be binding on government on matters of disciplinary action, and on prosecuting agency in matters of criminal trial. We also may have to consider a law for confiscation of personal properties of those held by family members. This may involve amendments of the existing Criminal Procedure Code and Indian Penal Code, and therefore needs the President's assent under Article 200 of the Constitution. But the other provisions creating a single independent agency is a State Subject, and will require appropriate legal and administrative steps by the states. Also the jurisdiction of this agency should be extended to every public functionary, including Chief Minister. The appointment of key functionaries in this independent anti-corruption agency should be made by a collegium comprising those in government, opposition, and the judiciary.

Ideally, a Union law should be made creating a single agency to investigate corruption and act as an effective deterrence in each state.

#### ***Forfeiture of Property – Law Commission Recommendations:***

The 166<sup>th</sup> Law Commission Report observed that “merely sending corrupt holders of public office to Jail is no remedy; it is no solution. It does not really hurt them. Unless their ill gotten assets are forfeited to the state, the canker of corruption cannot be really tackled.” For this purpose the commission observed that Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act 1976 (SAFEMA) should be made applicable to the public servants. To facilitate this the Law Commission suggested enactment of The Corrupt Public Servant (Forfeiture of Property) Bill. The Commission observed that this Act will be in addition to the Provisions of Prevention of Corruption Act 1998 Criminal Law Amendment Ordinance 38 of 1944 and the Prevention of Money Laundering Act. The commission drafted a Bill with the following key features:

- The very holding of or possession of illegally acquired properties is made an offence.
- To call upon any public servant to disclose by way of an affidavit the particulars of the assets held / possessed by him, his relatives and associates.
- Any person including authority, officer, bank or other organization to disclose information with respect to a person to whom this Act applies.
- Refusal to furnish information or furnishing false information is made punishable.
- Certain relevant powers of the Civil Courts are also vested in the Competent Authority to enable him to function effectively, including the power to attach properties, to order any enquiry, investigation, search and seizure.
- Bar on courts granting injunctions.
- The definitions of “relatives”, ‘associates’ and “illegally acquired property” have been adopted from SAFEMA.

***Independent Crime Investigation and other Police Reforms:***

The combination of several functions including crime investigation, riot control, intelligence gathering, security of state properties and protection of important citizens – all in a single police force has had a devastating effect on criminal justice system. The police forces have become inefficient and increasingly partisan. As the government of the day has complete powers over the crime investigation machinery as well as the legal authority to drop criminal charges against the accused, crime investigation has become a play thing of partisan politics. It is therefore vital to create an independent wing of police force fully in charge of crime investigation and functioning under the direct control of independent prosecutors appointed as constitutional functionaries. The criminal courts should hold the prosecutors and the crime investigation police force accountable to them in their overall functioning. Only when crime investigation is thus insulated from the vagaries of politics can there be any fairness and justice to ordinary citizens. Equally important, only when crime investigation machinery is accountable to judiciary can the obnoxious and inhuman practices of torture, third degree and extra judicial executions in fake encounters be stopped

***Whistle Blower Protection Laws:***

We need statutory measures such as whistle-blower protection to effectively combat the menace of corruption. Such laws are in place in several countries. Public Interest Disclosure Act, 1998 in Britain, and Anti-retaliation protection provisions added to the False Claims Act in 1986, dozens of federal and state laws protecting whistleblowers and Paul Revere Freedom to Warn Act as an addition to the Homeland Security Act in the US are good examples of whistle-blower protection. The Law Commission in its 179<sup>th</sup> report proposed such a law, and drafted a Bill. Alternatively, whistleblower protection provisions can be incorporated in the Freedom of Information Act. For instance, LOK SATTA's draft legislation on Right to Information states:

*A public servant who is in possession of information on serious wrongdoing by any individual or agency in government which might pose a serious and imminent threat to the safety or health of an individual or the public, or severely compromise public interest or cause serious loss to the public exchequer, shall not be penalized in any way for disclosing to the public such information backed by reasonable evidence.*

Any law pertaining to whistleblower protection should ensure three things:

- The whistle-blower would get job protection and immunity against harassment,
- The identity of the whistle-blower would have been kept confidential,
- There would have been an independent mechanism to investigate the complaint.

### *False Claims Act*

Countries like the US were able to tackle collusive corruption in government agencies through instruments like Freedom of Information and the False Claims Act, which gives incentives to citizens for uncovering corruption.

The Whistle Blower or “qui tam” provisions of the False Claims Act allows individuals, known as “relators” to file suit on behalf of the United States against those who have falsely or fraudulently claimed federal funds, including Medicare, Medicaid, disaster assistance and other benefits, subsidies, grants, loans and contract payments. Persons who file qui tam suits can recover from 15 to 25 percent of any settlement or judgment reached in a case if the US intervenes in the action, or up to 30 percent if they pursue it on their own.

*Jurisdiction and Venue*<sup>\*</sup>: The Act’s jurisdictional provisions provide the Government, relators, and the courts broad discretion in determining an appropriate forum for the litigation. The False Claims Act allows a case to be brought in any federal court district in which one or more defendants can be found, resides, transacts business or in which any actions giving rise to the false claim occurred. There are often multiple federal judicial districts and divisions where a False Claims Act case can legitimately be filed—more choices than in traditional civil litigation. As a practical matter, as long as the original forum has some logical basis, the cases are seldom transferred thereafter.

### *Types of False Claims Act Cases*<sup>\*</sup>:

Traditional False Claims Act procurement cases include delivering goods of inferior quality or in violation of inspection, testing, or other technical requirements such as:

- Array of goods that government buys such as radio kits or powered milk.
- Procurement violations traditionally involve defense contracts.
- Violations of Medicare laws and the Medicare Fraud and Abuse Statute

*Conduct of the Action*<sup>\*</sup>: The False Claims Act envisions the Government and relator jointly prosecuting a case—unless the Government elects otherwise. There are no special provisions in the False Claims Act regarding trial proceedings and, therefore, a case should proceed as any other complex case involving the Government in federal district court. When the Government has intervened, the court may limit a relator's participation if the Government proves that unrestricted participation would interfere with or delay the prosecution or would be repetitious, irrelevant, or for the purpose of harassment. The Government may seek to limit the relator’s discovery by showing that the requested discovery would interfere with the Government’s investigation or prosecution of a criminal or civil matter arising out of the same facts. Similarly, the defendant can try to limit the relator’s participation, but such efforts have not often been successful. A trial of

Formatted

Formatted

a False Claims Act case will proceed as in any other case in which the Government is a party. Where a demand for a jury is made at the outset of the case, a jury will decide liability and damages. Where a trial to the judge only occurs, the judge will render all rulings.

*Dismissal or Settlement with Court and Department of Justice Approval*<sup>\*</sup>:- Under the False Claims Act, an action can be dismissed where the District Court Judge and the Attorney General give written consent and their reasons for consenting. The courts have tended to interpret this provision as requiring Attorney General consent only where the Government has intervened, but the Department of Justice normally insists upon being given time to consent to a dismissal. Thus, Government approval should be attempted and, moreover, is worth waiting for to avoid procedural disputes that could be more complex than the underlying claims being settled. Even where the Government intervenes and proceeds with the action, the case cannot be dismissed or settled if the qui tam relator objects. The Judge must then determine, after notice to the relator and a hearing, whether the proposed settlement is “fair, adequate, and reasonable under all the circumstances.”

*Impact of False Claims Act:-*

The table below demonstrates that the False Claims Act has enabled the citizens to combat corruption. It is pertinent to note that ordinary citizens account for a full two thirds of the revenue collected under the False Claims Act, which demonstrates that empowerment of citizens is an effective means to tackle corruption. Since 1986 there have been 2,200 cases filed regarding health care and the government has recovered \$5.17 billion and the relators share an additional \$851.6 million. In the defence sector there have been 1,277 cases with a total government recovery of \$1.59 billion and relators have collected \$291 million as of September 30<sup>th</sup> 2003. Since 1995, more than half the cases filed have been within the health care industry (Department of Justice, 2003b).

Fiscal Year	Number of Qui Tam Cases	Total \$ recovered in cases with DOJ involvement	Total \$ recovered in cases DOJ declined involvement
1987	33		
1988	60	355,000	35,431
1989	95	15,000,000	0
1990	82	40,000,000	75,000
1991	90	70,000,000	69,500
1992	119	134,000,000	994,456
1993	132	171,000,000	5,900,000
1994	222	379,600,000	1,800,000
1995	277	245,000,000	1,800,000
1996	363	125,000,000	14,000,000
1997	533	622,700,000	7,000,000
1998	470	432,700,000	29,200,000
1999	482	454,000,000	62,500,000
2000	367	1,200,000,000	1,800,000

2001	310	1,160,000,000	125,600,000
2002	320	1,060,000,000	26,000,000
2003	326	1,390,000,000	85,000,000
Total	4281	7,499,355,000	361,774,387

Source: (Department of Justice, 2003b).

Formatted

Enactment of law in line with the false claims act will be an effective deterrent against corruption and fraud in public procurement. Such a law will create a powerful body of citizens and independent civil society organizations which can act as effective watch dogs. By incentivising citizens anti-corruption struggle, it will unleash a powerful force against corruption. However, we must also create a mechanism for the efficient and speedy disposal of all such qui-tam litigations, in order for such a legislation to yield desired results.

## Key Civil Service Placements and Transfers

One of the most intractable problems in Indian governance is arbitrary transfer and posting of public officials. Several factors contribute to this problem – too many senior officials chasing too few worthwhile jobs (thanks to rapid and needless expansion of higher bureaucracy); corruption in transfers; acts of vendetta against uncompromising officials; and pressures from legislators to have pliable public servants in key positions. The problem is particularly severe in States. Scholars like Robert Wade have clearly established that arbitrary transfers and such transfer-sanctioning mechanism are the chief sources of corruption in States.

Short tenures have demoralized honest civil servants, and undermined the quality of governance. In addition, the monopoly of All-India Services over key jobs has harmed the country greatly. By denying lateral entry to highly competent, accomplished individuals, our governance is bereft of new ideas and competence. At the same time, serving bureaucrats have little incentive to excel in a system which more or less guarantees time-bound promotions, and does not enforce accountability. Once transfers are ordered arbitrarily, and each civil servant is regarded as a substitute to another civil servant in any position, professionalism has been severely eroded. The quality of decision making and delivery of services have been seriously affected, particularly in states.

In order to improve the quality of administration, we need to create incentives for excellence and change the transfer-sanctioning mechanism. The following model could be considered:

- Key public offices will be notified by the appropriate government.
- For each vacancy arising in such offices, the government will widen the field of choice by inviting applications from career civil servants, experts outside the government, academics and accomplished managers in private sector.
- A panel shall be prepared from among such applicants, duly citing reasons for rejecting applications in the preliminary stage.
- There shall be a selection committee for each such key office, constituted as follows:
  - One-third of the members will be incumbent legislators.
  - One-third of the members will be stake-holders in the sector.
  - One-third will be experts in the field.
- The Committee will hold public hearings and select a suitable person for a term of office based on three key criteria:
  - The person's track record
  - Suitability for the specific office
  - Vision, clarity and leadership the person can provide in the specific office.
- The Committee's selection will be final and the individual will have a guaranteed 5 -years tenure in that office.
- A clear mandate will be given at the time of appointment, specifying the anticipated outcomes, performance standards and resource allocation.

- The person so appointed will be completely free as head of the agency/department to take all decisions including transfers of subordinate officials, subject to broad policy guidelines.
- Upon completion of a term, the functionary may be eligible for another tenure – by selection, and not arbitrary choice.
- Upon completion of tenure, the person will cease to hold that office, and will revert back to civil services or academia or private sector.
- No person shall be removed/transferred before completion of term, except on grounds of proven corruption or gross in competence.

In addition, there must be mandatory specialization for all – India services after 10 years of service. They shall function in their chosen fields for the rest of their careers.

After 10 years, 20 years, 25 years or 30 years, there shall be a special assessment of all permanent public servants. Further promotions shall depend on the assessment results. Those who are found unsuitable for promotions shall be compulsorily retired. Rules can be amended in respect of all new recruits, so that over a period of time they will apply to all public servants at all stages of their career.



## Measures for Effective Functioning of Legislatures

We need to empower the legislatures by enhancing their capabilities to monitor the executive's functioning more effectively. This can be achieved by empowering Legislative Committees and empowered legislative committees is an idea whose time has come for the following reasons:

- In Westminster model, and in the way it is operated in India, legislators no longer have real legislative powers. Legislature's role is largely limited to supplying the ministers.
- After the recent amendment to the anti-defection provisions, legislators have no discretion or power to substantially influence government's legislative agenda or affect the outcome of voting on the floor of the House.
- In the absence of any positive legislative influence, individual MLAs see themselves as disguised executives who influence executive decisions. Since the government as a whole depends on the good will of legislators, their influence on executive decision is considerable.
- When people elect a legislator, they are actually choosing the next government. As stakes are high, elections have become absurdly costly (legislative election expenditure is often in the range of Rs.10 million for serious candidates). The legislator risks huge amounts of money only in anticipation of rewards of office and opportunities to influence decisions to gain pecuniary advantage.
- Decentralization and non-arbitrary functioning of the executive are the hallmarks of any meaningful reform. But if such reform is attempted seriously, legislators are bound to lose out, and will therefore severely resist real reform.
- No government in Westminster system can engineer reform if its legislative support vanishes on account of reform.
- Nevertheless legislators are politicians and individuals, and respond to risks and rewards. The ministers see fiscal compulsions or political benefits (increased popularity) and accept reform. In other words hardheaded calculations of real politic rather than moral imperatives dictate the pace and direction of reforms. Many States are now favouring reforms because of these compulsions and incentives. We should create similar incentives of political advancement (enhanced popularity), and career satisfaction (recognition and respect for promoting public interest, and genuine pride in promoting public well being).
- The answer therefore lies in making legislators genuine partners in governance. Once they have open, legitimate and significant say in public affairs, the urge for clandestine, illegitimate and substantial control of public purse and executive decisions for personal or partisan gain will be curbed to a large extent.

From the foregoing, we believe effective legislative committee system needs to be introduced and it will be both popular with legislators and effective in promoting public good. The present Committees are not suited to effective executive oversight. The legislative committee system does function effectively once it is designed and operated well. Even within the constraints of the present committee system, there are examples of outstanding successes. Woodrow Wilson commented, "Congress in session is Congress

on exhibition; Congress in Committees is Congress at work". While Westminster model cannot facilitate such effective and independent parliamentary functioning, we can devise ways of making legislative committees effective. The committee system should therefore be as follows:

- For each major subject encompassing several departments and agencies, there should be a Parliamentary/Legislative Committee. There could be about 15-20 Committees all together.
- Each MP/MLA should be a member of any one of these Committees. This will be in addition to the constitutionally prescribed Committees.
- Each Committee will be chaired by a legislator elected by the members.
- The Ministers responsible for the subject and the civil servants will be accountable to the committee.
- There shall be open public hearings in the glare of the press and television. The Ministers and civil servants will have to justify their policy, and explain their decisions and actions.
- All key appointments of civil servants (in departments and agencies) shall be cleared by the Committee through public hearings. The government will send a proposal or a panel, and the civil servant will be examined publicly and the evidence of interested parties and citizens will be obtained. The appointment will be effective once the Committee approves it.
- Once a civil servant is so appointed, he/she will have a guaranteed tenure of three years or more, unless there is proven incompetence or corruption.

Once such empowered Committees are in place, legislature will be vibrant, democratic, responsive and independent. People, the press and civil society institutions will have space to advocate policy changes or oppose corrupt civil servants. Legislators' professionalism, political skills and competence in promoting public good will be on display, and there will be incentive for better performance in their legitimate sphere of activity.

We believe the legislators will welcome this. The reform will be a hugely popular measure. It will be resisted only by the Ministers, because their actions will be scrutinized thoroughly. But a reform-oriented cabinet should accept legislative oversight in order to sell its reform agenda. I believe this reform can be engineered by careful structuring and active involvement of legislators of all parties, the media and the public. This reform has the added merit of taking the opposition parties into confidence and obtaining their cooperation and involvement.

## Local Government Empowerment

### *Making the Legislative Council, a council of local governments*

Art 171 of the Constitution provides for the formation of Legislative Councils in states. Such a Council has one-third members elected by local governments, one-third by Legislative Assembly, one-twelfth by graduates, and one-twelfth by teachers and the rest are nominated by the Governor. This is clearly a transitional and anachronistic provision, in keeping the tradition of constituting quasi-democratic legislatures in colonial era.

With the emergence of local governments as the constitutionally mandated third tier of governance, we need to emulate Rajya Sabha in the composition of Legislative Councils. Just as Rajya Sabha is the Council of States, it is appropriate that Legislative Council becomes Council of Local Governments. The Council can be given veto powers in matters pertaining to rights of local governments. Happily, the composition of the Legislative Council can be changed by a mere law of Parliament, as Art 171 (2) of the Constitution states: "Until Parliament by law or otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause(3)." Clearly, the Constitution-makers envisaged the Council composition being made more democratic in a free India. A provision can be made for any citizen above 30 years of age to be elected to the Council, by the elected members of local governments. Once such a Legislative chamber is in place, there will be continuous pressure on the state government to strengthen local governments and protect their interests.

### *District Governments*

Partly owing to our colonial legacy, there continues to be an artificial divide between urban and rural local governments. As a result there is no single, undivided government representing all sections at the district level and the people continue to view Zilla Parishad and Municipality as just another body and treat the district collector as the real symbol of government in the district. The current structure of District and Metropolitan Planning Committees is too weak and in any case they are non-starters in many states. Therefore there is a need to amend Art 243-C, to provide for a single elected district council that will function as a true government for the entire district. Once this is implemented, the District Planning Committee becomes redundant. Therefore there is need to get a law enacted to alter the composition of Legislative Councils and make them Councils of Local Governments.

### *Mandatory District Budgets*

Local governments will be true “self governments” on if they command substantial financial resources. This can be facilitated by bringing about the following changes in the fiscal devolution to the local governments.

- The state budget under each head should be divided into: 1. State wide, 2. District-wise
- Allocating 50 % of the total state government plan budget to the local governments
- Savings under non-recurring (capital) items shall not be diverted by local governments for recurring expenditure.
- Savings on recurring expenditure can and should be diverted to non-recurring expenditure. This encourages fiscal prudence and savings.

The Zilla Parishad should have the powers for re-appropriating amounts from one item to another within the budgetary allocations for the district, subject to the conditions that savings under non-recurring or capital items shall not be diverted by local governments for recurring expenditure

### ***Flexible Structure***

Even though the intent of 73<sup>rd</sup> and 74<sup>th</sup> amendments is laudable, there is a general feeling that they created over-structured and underpowered local governments. As real governance is at the state and local levels, there is perhaps a case for giving enough freedom and leeway for the states to design the structure of local governments in their own way as long as rural and urban local governments are elected democratically. Amending Art 243-C and 243-Q and empowering the state legislatures to decide the structure of local governments, subject to the overall constitutional provisions, would be step in the right direction.

## Judicial Reforms

### *Combating Judicial Corruption – Maharashtra Model*

A cultivated status-quoism marks any discussion on corruption in judiciary. Maharashtra High Court has shown refreshing courage, leadership and resolve to improve the quality of judiciary. Some years ago, a metropolitan judge was arrested after his links with mafia became public. In this backdrop, Mumbai High Court proved that it is possible to significantly improve things.

Over the past few years, over 150 judicial officers (over ten percent of the total) in Maharashtra have retired voluntarily or compulsorily on allegations of corruption, impropriety and incompetence. Special inspecting judges looked into complaints of corruption. If there are credible complaints or prima facie evidence of wrongdoing, the judge in question is given the option of retiring with full benefits including permission to practice law if he chooses to do so. The other option is to face departmental enquiry and risk dismissal with no retirement benefits and no right to practice. Most judges chose to retire without demur. A few resisted, and were dismissed.

Some went in appeal to the Supreme Court. The Court has held that the departmental authorities have unlimited powers of framing rules of conduct and rules of enquiries, freedom of action untouched by Criminal Procedure Code and Evidence Act, or even rules of natural justice in case of administrative orders, full discretion in appreciating evidence, authority of awarding any punishment after following rules of natural justice, and immunity from reappraisal of evidence and reversal of orders by judiciary. As Mr BJ Misar, a retired IPS officer from Maharashtra says, the impression that our legal system or judiciary obstructs anti-corruption measures, or that the Constitution gives undue protection to corrupt public servants is wrong.

What Maharashtra High Court accomplished is a cause for celebration. We can now say with confidence that corruption in judiciary in a large State has been completely eliminated. This is no small achievement. Maharashtra is larger than 90% of the nations. The example of judiciary in Maharashtra should open our eyes and make us look for innovative and courageous ways to improve our criminal justice system. Subsequently the High Courts in West Bengal and Rajasthan too removed dozens of judicial magistrates on grounds of corruption, and the Supreme Court upheld their decisions.

Effective action needs to be taken in all states to cleanse subordinate judiciary and remove tainted judges. The High Courts need to be proactive, and the Supreme Court can be asked to give a direction to all High Courts to act in a time-bound manner. The recent scandal of warrants for money in which a judge in Ahmedabad issued warrants of arrest against the President and Chief Justice of India shows that the time for concerted action to end judicial corruption has come.

### ***Local Courts***

We have over 20 million cases pending in subordinate courts in India. The pending caseload in High Courts is about 5,600 per judge, and over 1,660 per judge in trial courts. The government has initiated certain measures such as establishing fast track courts and Lok Adalats to improve the situation. While all these steps are necessary, they are not sufficient as they are not improving access to justice for ordinary citizens, the poor and the disadvantaged sections. The litmus test of any justice system is the access provided to average citizens, facing simple, day-to-day disputes. Given the experience in our own courts, and the successful practices in India and elsewhere, there is a need for significant increase in the number of trial courts at the lowest level, with the adoption of simple, informal procedures for adjudication.

Lok Satta has been advocating the establishment of local courts as an important mechanism through which the delay in justice system can be addressed in trial courts. Lok Satta has prepared a draft legislation for setting up local courts at the rate of one for 25,000 population in rural areas and 50,000 in urban areas headed by a honorary magistrate (Nyayadhikari). The key features of the draft legislation are:

- The local court will be an integral part of independent judiciary.
- The local court will have original jurisdiction in specified issues / offences – generally not exceeding one lakh rupees in civil cases and one year’s imprisonment in criminal cases.
- A person of high repute and legal knowledge will be appointed by the District Judge as Nyayadhikari.
- The Nyayadhikari is an honorary office with an honorarium and a secretariat and travel allowance.
- The parties have the option to appear in person or be represented through a lawyer.
- The Nyayadhikari may hold court in any village in his jurisdiction and visit any village or location to inspect a site or to record evidence.
- The proceedings of the local court will be in the local language.
- The local court will deliver a verdict within 90 days of receiving a petition/complaint.
- There will be provision for appeal against the local court’s orders.

This is a low cost initiative, and the expenditure for a major state will be of the order of Rs 300-500 million. Even a modest court fee will recover the cost in multiples.

### ***All India Judicial Service***

In the subordinate courts there have been inordinate delays and varying levels of efficiency. It is high time that the Indian Judicial Service (IJS) is created as an All India

Service under article 312 of the constitution. All the offices of the District and Sessions Judges should be held by persons recruited to such a service after adequate training and exposure. Only such a meritocratic service with a competitive recruitment, high quality uniform training and assured standards of probity and efficiency would be able to ensure speedy and impartial justice. A fair proportion of the High Court Judges could be drawn from the Indian Judicial Service.

### ***National Judicial Commission***

Most of us tend to see judiciary as a knight in shining armour fighting for our liberty in the face of executive tyranny and legislative failure. But a series of events in recent years have rudely awakened us out of this complacency. The failure of Justice Ramaswamy's impeachment proceedings in Parliament on partisan and extra-judicial considerations, for all practical purposes, proved that errant judges cannot be removed. And then in a perverse interpretation, the Supreme Court effectively held that in matters of judicial appointments, the opinion of Chief Justice is more or less final and binding. The judiciary appoints itself, and cannot be removed by anyone. This self-perpetuation and unaccountability created a Mullah Raj! Such a state of affairs is clearly unacceptable in a democracy. The consequences are predictable. A string of scandals – alleged involvement of judges in corruption in public service commission in Punjab, Shamit Mukherjee's complicity in the DDA scam, and brow beating of journalists who wrote about the Karnataka scandal – exposed and embarrassed the judiciary as never before. The contempt powers invested in judiciary, making the judge complainant, prosecutor and judge, further undermined notions of accountability.

There is clearly a need to restore the balance between executive, legislative and judiciary. The flaws of a democracy can be corrected by more and better democracy, but not by weakening democracy. Elected governments alone can be trusted with decision making because they represent the will of the people. The courts and constitutional functionaries are vital checks against abuse of authority, but cannot supplant elected governments and legislatures.

Three steps are needed to enforce judicial accountability. First, a NJC must be created as an independent body to appoint judges. The Venkatachaliah Commission recommended a five-member committee, with three senior most judges, Law Minister and one person nominated by the President in consultation with Chief Justice. The government's proposal is very similar, except the fifth member is a nominee of the Prime Minister. The committee on judicial accountability, a body of independent jurists, suggested a NJC with five retired judges - a member each nominated by the Supreme Court, High Courts, government, opposition and Bar Council.

In a democracy, we cannot completely delink the NJC from the political process. Public interest may be best served if the government has two nominees, the opposition one, and the judiciary two. Such a collective body must function independently and its decision must be final. Such a committee must notify the names for consideration and hold public

hearings, so that known corrupt or incompetent persons cannot be nominated to high judicial office through secret deals. There are far too many undesirable appointees already who do no credit to our constitutional offices.

Second, the NJC must also be empowered to remove a judge after due enquiry by a committee of peers. Given the failure to remove a single judge under articles 124 and 217, we need a simpler, transparent and effective mechanism to remove errant judges, but with adequate safeguards.

Finally, contempt powers of judges are anachronistic in this day and age. That even truth is no defence in contempt proceedings is a mockery of justice and fairness. In fact, the ordinary law of civil or criminal defamation is adequate to deal with any transgressions. Only weak institutions need crutches like contempt powers. Our judiciary is strong enough to preserve its dignity and protect its independence without draconian powers.



## Electoral Reforms ~~and Political Reforms~~

### *Electoral Reforms ~~s and~~ Political Funding – (i) Broad Casting Rules (ii) Public Funding ~~Model Model~~*

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 Act 2003, enacted in September 2003 is an important milestone in the evolution of our democracy. The law has the 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).

While the law has been enacted, rules pertaining to equitable sharing of time by the recognized political parties on the cable television network and other electronic media (public and private) are have not been framed.

The relevant section of the law (Section 39A of The RP Act) is as follows:

*'39A. Allocation of equitable sharing of time.-(1) Notwithstanding anything contained in any other law for the time being in force, the Election Commission shall, on the basis of the past performance of a political party, during elections, allocate equitable sharing of time on the cable television network and other electronic media in such manner as may be prescribed to display or propagate any election matter or to address public in connection with an election.*

*(2) The allocation of equitable sharing of time under sub-section (1), in respect of an election, shall be made after the publication of list of contesting candidates under section 38 for the election and shall be valid till forty-eight hours before the hour fixed for poll for such election.*

*(3) The allocation of equitable sharing of time under sub-section (1) shall be binding on all political parties concerned.*

*(4) The Election Commission may, for the purposes of this section, make code of conduct for cable operators and electronic media and the cable operators and every person managing or responsible for the management of the electronic media shall abide by such code of conduct.*

*Explanation.- For the purposes of this section,-*

*(i) “electronic media” includes radio and any other broadcasting media notified by the Central Government in the Official Gazette;*

*(ii) “cable television network”, and “cable operator” have the meanings respectively assigned to them under the Cable Television Networks (Regulation) Act, 1995 (7 of 1995).’.*

As can be seen, the law mandates the Election Commission to draw up suitable guidelines for implementing the above mandate. But the Commission is waiting for the Law Ministry to frame appropriate rules under the new legislation.

This legislation provides a golden opportunity to change the very nature of political campaigns in this country. For example, we at Lok Satta have successfully conducted over 300 debates between candidates, both at the assembly and parliamentary constituency level as well as at the state level during the 1999 and 2004 elections in Andhra Pradesh. The debates were largely modeled after the American Presidential debates and were very popular with the public. These debates were broadcast live by the local cable channels and provided an opportunity for the public at large to question their representatives on a variety of public policy issues.

Such an exciting debate format will not only prove to be extremely popular, but it will also change the nature of politics and electoral contests over time. Costs of electioneering will be brought down dramatically, informed choices will be encouraged, and competent candidates with leadership qualities and parties with sound ideas will have better chance of being elected.

If such a decision is taken in principle, a code of conduct can be evolved, and a suitable debate format can be designed. An appropriate set of guidelines can be framed to suit the requirements of elections at the national, state and constituency levels.

The Law Ministry/Election Commission should put in place a mechanism for the conduct of such debates on all electronic media. This will ensure that the time allocated to parties can be utilized in a manner that will be attractive and appealing to the public, which will make it easier for the channels to broadcast them during primetime. Here are a few suggestions for consideration of NAC:

1. Assuming that there are 5 major parties with a plurality of vote shared between them – let us say parties A, B, C, D and E secured 35%, 30%, 20%, 10% and 5% votes in the previous election. Let us say that the party with the least vote share

- i.e. party E is eligible for 30 minutes time. Then one way to go about is organize a 150 minute debate between all the five parties (5 x 30) on the lines of American Presidential debates.
2. The other parties A,B,C and D will still be eligible for additional time over and above the 150 minute debate. One way of utilizing that time would be to ask the parties to air commercials or infomercials propagating the party's policies or accomplishments in an attractive format which would be appealing to the public.
  3. The other alternative that could be considered is to have another round of debates between the remaining parties in multiple rounds – i.e. the 2<sup>nd</sup> round will feature debates between parties A,B,C and D and the third round could feature only parties A and B.

The above suggestions may be considered while framing rules for allocation of media time to recognized political parties. It is in the nation's best interest to further informed political debate as widely as possible and the electronic media with their wide reach are ideally placed to play a leading role in this effort.

Once such rules and procedures are in place, most of the legitimate campaign finance needs would have been met through free broadcasting time in private and public electronic media. Then, the expenditure ceiling limits currently in operation – viz: Rs 10 lakhs for Assembly constituency or Rs 25 lakhs for Lok Sabha in major states would be more than adequate to meet the legitimate electioneering costs. Honest and decent elements can then be attracted by political parties for seeking elective public office.

The second important issue which needs to be addressed is enforcing compliance of disclosure norms in respect of political funding. Transparency of all such fund transfers is at the heart of any meaningful funding reform. Such transparency should be enforced at both the donor and recipient levels. Disclosure obligations should be backed by severe, even draconian penalties for non-compliance. Only when there is a real risk, however small, of being jailed for non-disclosure will a donor insist on transparency. No donor is likely to deliberately invite a prison term after having contributed liberally (and secretly) to the political coffers.

The current law only provides for disclosure by political parties. But a non-transparent political culture has evolved over decades in India, encouraging unaccounted contributions to parties. Even if parties are ready to accept contributions only by cheque, past habits will not die soon. Corporates may be willing to forego tax exemption, and make secret, unaccounted contributions. This may be further accentuated by the pervasive black-money culture.

Penalties for non-disclosure by a party are difficult to enforce. Moreover, recipients of secret contributions have an incentive to conceal such sources. But a donor who parts with money has no real incentive to incur the wrath of law if there are stringent penalties for non-disclosure. Therefore, the burden of disclosure should fall equally on the donors. For instance, the following proposal could be considered

Both the donor and recipient shall be obliged to make full disclosure to the Election Commission and the Income Tax authorities. Penalty for non-disclosure or false disclosure shall be:

*For Donors:* fine equal to ten times the contributions and imprisonment for six months.

*For Candidates:* disqualification for six years, fine equivalent to ten times the amount not disclosed, and imprisonment for at least one year.

*For Parties:* de-recognition and de-registration for five years, fine equivalent to ten times the amount not disclosed, and imprisonment of office bearers for three years.

The third, and critical issue relates to public funding. The law enacted in September 2003 is silent on public funding. The NCMP is committed to providing public funding for elections.

Public funding should be considered only after other funding reforms are in place, and after parties are democratised and regulated. Any public funding to be successful should be limited, fair, transparent, verifiable and non-discretionary.

The following model could be considered for public funding. This model is based on a careful study of comparative international experience. The objectives of public funding are: provide parties with the necessary resources to effectively participate in normal political activity; and to provide support by way of reimbursement of costs of electioneering. However, we have a system of raising resources from private sources, and election expenditure ceilings mandated by law.

#### *Pre-Conditions for Public Funding*

- Political Party regulation to ensure internal democracy
- Party candidates to be democratically selected by secret ballot by members or their elected delegates
- Decriminalization of politics
- Rectification of defects in electoral rolls
- Elimination of voting fraud through introduction of voter identity cards and electronic voting.
- Strict disclosure and penalty norms

#### *Essential Elements of Public Funding*

- Transparent
- Verifiable
- Non-Discretionary
- Incentive for performance
- Encourage private resource mobilization
- Prevent fragmentation
- Fair to new parties and independents
- Finite cost to exchequer
- Equal treatment of all candidates

*Gist of Proposals for Public Funding*

- Rs. 10 per vote polled.=-
- Independent and party candidates to be treated on par as long as they pass the threshold of 10 % of valid votes polled in the constituency to become eligible for public funding.
- Party gets 1/3 of the eligible funding, and candidate receives 2/3 of the funding.
- Parties to receive 50 % of advance @ Rs.5 per vote based on their performance in earlier elections.
- Independents to be reimbursed after the poll.
- Stringent enforcement and strict penalties for non-compliance of disclosure norms.
- From the eligibility norm, the funds raised by the party shall be deducted.
- In order to encourage raising of private resources, public funding shall not exceed 1.5 times that raised by the party.
- The total fund availability (public funding + party expenditure + private sources) shall not exceed the expenditure ceiling limited prescribed by law.

Such a public funding pattern is simple, equitable, economical and verifiable.

*Cost of Public Funding*

Let us now calculate the cost of public funding in India.

- Population	102 crore
- Estimated no. of eligible voters	65 crore
- Actual votes polled (at 60% )	39 crore

Exclude 40% from funding on account of eligibility criteria and limits imposed: 10% voting threshold, ceiling limits, matching funds, funds raised by parties and candidates.

- Balance required for funding: for about 24 crore votes

• Funding cost at Rs.10 per vote is -Rs.240 crores for the Lok Sabha elections, to be borne by the Union government.

Formatted: Bullets and Numbering

• Funding cost for State Assemblies may be Rs. 300 crore on account of likely higher percentage of voting. This will be borne by the States.

Formatted: Bullets and Numbering

*A Public Fund for Political and Campaign Funding*

• The Union and States shall start such Public Funds.

Formatted: Bullets and Numbering

- All contributions from individuals and corporate bodies will receive the benefit of 150 % tax exemption without subject to any ceiling.
- The Public Fund shall be operated by the Election Commission, and candidates and parties will be funded from that Fund as per the norms.

#### *Miscellaneous*

- 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.

Formatted: Bullets and Numbering

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.

#### *Electoral Reforms – Anti-defection provisions*

Till recently, the provisions of the Tenth Schedule 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, two safeguards are needed to ensure healthy parliamentary debate, and curtail autocratic tendencies of party bosses.

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, 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.

**Electoral Reforms – Eliminating Voter Irregularities**

Voter registration process though impeccable on paper is inaccessible to the citizen and ineffective in correcting flaws. LOK SATTA’s massive sample survey proved this. The survey, carried out in 1999, covering 57 rural and urban polling station areas shows the problem to be 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 those with trained cadres. Moreover the massive irregularities in voter registration that have come to light during the 2004 elections reinforces Lok Satta’s argument that voter registration process requires immediate corrective measures. The 2004 sample survey covered approximately 110 rural and urban polling stations with a population of more than 100,000. The survey revealed that in electoral rolls there are 5.1% errors in rural areas and 12.5% errors in urban areas. In comparison with results of 1999 survey, this is a huge improvement. But given the sheer inaccessibility of the existing process, the voter rolls still remain deeply flawed. Maybe the magnitude of the problem can be better comprehended in the context that the 500 votes in Florida that decided the US Presidency constitute only 1 out of 200,000 votes cast (.0005%). 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 suggested to the Election Commission that the citizen friendly neighborhood post office be made nodal agency in voter registration.

Survey Area	No. of Constituencies	No. of Polling Stations	Total No. of Voters	Errors of Commission	Errors of Omission	Total No. of Errors-Omission and Commission	
						No.	As % of total Voters
RURAL	37	71	70848	1634 (2.3)	2086 (2.94)	3720	5.25
URBAN	22	41	41042	2205(5.37)	2782(6.77)	4987	12.15
TOTAL:	59	112	111890	3839 (3.43)	4868 (4.35)	8707	7.8

*Post Poll Surveys:* Lok Satta also carried out Post Poll Surveys to determine the magnitude of bogus voting. This survey was carried out in 45 polling stations and in 25 assembly constituencies. The survey results showed that of the total votes polled .9% in rural areas and 1.9% in urban areas were bogus votes. This is a significant improvement over a possible 12 – 15% bogus votes cast in Hyderabad urban area in 1999.

*Post Poll Survey:*

Location	No. of Constituencies	No. of polling Stations	Votes Polled	Bogus Votes	
				No	As % of votes polled
RURAL	16	29	18069	169	0.9
URBAN	9	16	8894	168	1.9
TOTAL:	25	45	26963	337	1.2

The central issue of voter registration is its inaccessibility to the people. The recent elections witnessed the spectacle of lakhs of voters with photo identity cards being disenfranchised, as their names disappeared from the electoral rolls. Happily, though errors in voter registration are common, they are also the most easily remediable defects in our electoral process. All that is required is to evolve a process that is a accessible, transparent and voter-friendly

There are two public offices locally accessible to all citizens - the village panchayat and the post-office. In urban areas, the municipality or corporation may not always be accessible as it caters to a much larger number of citizens. It would be ideal if the post office is made the nodal agency for supply of electoral rolls, supply and receipt of statutory forms, acknowledgement of application and communication of action taken reports. All we need is to make the process transparent, accessible and verifiable by citizens locally. A post office is available in every village, and is widely regarded as a user-friendly public institution.

There are seven services which can be offered at the Post Offices.

1. Display of electoral rolls relating to the polling station areas served by the Post Office – free of cost.
2. Sale of electoral rolls for a standard price covering costs and profit
3. Giving the individual voter an authenticated slip showing voter details – for a fee
4. Verification of addresses and other details during revision of electoral rolls – for a fee from the Election Commission
5. Sale of statutory forms 6, 7, 8, 8A and 8B for a standard price covering costs and profit
6. Receipt and verification of application for a fee from citizen, and forwarding it to the electoral registration officials for a decision
7. Registration of voters, deletion of names or corrections of entries upon application and for a fee, between two revisions of electoral rolls, with a provision for appeal.

Formatted: Bullets and Numbering



Items 1 to 6 can be taken up by the Post Offices immediately in consultation with the Election Commission. Item 7 requires amendment of electoral registration rules.

While this process of accessible and verifiable voter registration through the local post office involves simple and easy changes in procedures and rules, it will mark the most significant improvement in our electoral process at no additional cost. Even though a sizeable percentage of the voting population is illiterate, this accessible and verifiable voter registration will enable the literate population, civil society groups, voluntary organizations, and local political activists to verify the process and check irregularities. The very openness and accessibility of the voter lists and statutory forms will make a marked difference to electoral registration, and improve the quality of electoral rolls.

Post office as a nodal agency - some important functions:

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

Formatted: Bullets and Numbering

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. This simple reform will help improve voter lists, which are at the heart of the electoral process.

## Facilitating Better Community Relations

The communal tensions in various parts of the country can be addressed by creating new and innovative administrative mechanisms. The aim of such administrative mechanisms should be to initiate positive moves for better management of community relations at the local level as an antidote to manipulation by outside forces for political purposes. A model of such administrative mechanism has been enumerated below:

- First, urban centres and other areas prone to communal tensions may be identified on the basis of the past data and Community Relations Officers (CRO) appointed to make a detailed study of the communities concerned, so as to determine the flash points and the likely correctives.
- This arrangement should cover not only the major concerns viz., Hindu-Muslim tensions but also sectarian conflicts like Shia-Sunni and linguistic or regional disharmonies, although resources, human and financial, may confine the initial effort to the major concern.
- Scholars such as Prof. Ashutosh Varshney have pointed out that in cities where Hindus and Muslims participated in formal associations of civil society for their common professional and economic transactions such cities have been able to prevent the underlying communal tensions from escalating into unacceptable communal violence. Therefore it is worthwhile encouraging associational interactions across communities with appropriate policies and programmes. The CRO will have a crucial role in this exercise.
- CRO will work closely with local administration and will activate the Mohalla Committees, inter-religious groups and other such bodies that are now generally invoked by the administration only after eruption of violence.
- CRO will also be given the authority to redress grievances which may result in communal violence. The CRO has to be insulated against the pressures of local and state politics.
- A Community Relations Commission (CRC) may be constituted at the national level under a special Act of Parliament. It may be patterned after NHRC as a quasi-judicial body with additional powers to enforce its decision on the disputes that come before it. It may have an Advisory Council consisting of representatives of different communities, important religious leaders, members of parliament, Chief Ministers of concerned states and the concerned Central Ministries. It may have power to constitute Dispute Settlement Bodies in suitable cases. The CROs will be the officers of the commission and work under its control.
- As in most cases of communal violence, hard evidence is not forthcoming. Hence, it is necessary to levy collective fines which may act as disincentive for fractious leaders of communities against adopting unacceptable violent methods.

## Political Reforms

Given the 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.

The First Past the Post (FPTP) system with Westminster model of government that India adopted led to several distortions with passage of time. The distortions of political process have a direct bearing on the quality of governance and administration.

- Illegitimate money power – sometimes Rs 1 to 2 crores for an assembly constituency – has become the source of power. This has led to inexhaustible appetite for illegitimate funds, fueling corruption and misgovernance.
- As voters feel that things do not change much no matter who is elected, vote buying has become pervasive. Large spending may or may not lead to success, but failure to spend tends to lead to defeat. This further leads to greater corruption and cynicism.
- At the state level, the survival of government depends on the support of legislators who extract a price for such support. The MLAs in turn are spending vast sums to get elected, and politics has become big business. Transfers and postings, contracts and tenders and interference in crime investigation have become the essence of power. A government which does not yield to such pressures cannot survive long.
- With single-member constituencies determining electoral outcomes, candidates with money, caste, muscle and local clout have great advantage. This has given rise to political fiefdoms whose dominance cannot be challenged by parties.
- As scattered minorities are underrepresented in FPTP system, they are marginalized and ghettoized. This is leading to rise of fundamentalism, and mobilization of people on caste and communal lines, exacerbating polarization and strife.
- With electoral success demanding money power and caste clout, honest and decent elements are increasingly, excluded from politics and councils of power.
- National parties are getting marginalized in many states. Under FPTP systems, once their voting share falls below a threshold level, the party loses out badly. Therefore National parties are forced to play second-fiddle to regional parties, further undermining their viability.
- Under FPTP system, adequate representation for women and neglected sections has become an intractable issue. Constituency reservations with rotation have serious political consequences, and are fiercely resisted.

Clearly, the nature of electoral system, and the political culture it spawns have profound consequences in terms of quality of governance and delivery of services. We therefore need to seriously consider three systemic reforms

## 1. ~~1.~~ Mixed Compensatory Proportional Representation

Formatted: Bullets and Numbering

Most of the ills of the FPTP system based on single-member territorial constituencies can be effectively overcome by adopting a suitable model of proportional representation. 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.

Happily, the constitution provides space for introduction of proportional representation in multi-member constituencies. Article 81(2)(b), and 82 provide for territorial Lok Sabha constituencies, and the number of seats allocated for each such constituency is left to a law made by Parliament, as long as the number of seats and population of the state is, so far as practicable, the same for all states. Similarly Article 170 also provides for multi-member constituencies for state legislatures. In 1952 and 1957, India had two-member constituencies to accommodate reservation of seats in legislatures. Therefore a mere law of Parliament can effect the switch over to Proportional Representation, provided there is political consensus among major parties.

## 2. ~~2.~~ Political Party Regulation by Law

Formatted: Bullets and Numbering

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.

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

Formatted: Bullets and Numbering

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.

PR and direct election in states become complementary to each other. PR in isolation will not be attractive for regional parties, since they are unlikely to form stable governments in states under PR. National parties' dependence on regional parties will decline with PR, without commensurate benefits for regional parties. But direct election of the executive in states gives stability to governments, and becomes an attractive provision for regional parties. Once internal party democracy becomes real, we will have real opportunities for political rejuvenation of India.

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 our multi-ethnic and multi-religious society.

\* \* \*

\* Source: <http://whistleblowerlaws.com/law.htm#Conduct>

Formatted