

LOK SATTA

People Power

Electoral Reforms

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“At the bottom of all the tributes paid to democracy is the little man, walking into the little booth, with a little pencil, making a little cross on a little bit of paper.....”

- *Churchill*

Macro Perspective of Indian Polity

- Disaggregate volatility
- Broadly reflective of public opinion
- Ruling parties and powerful candidates do lose
- Rejection/Negative vote pretty common

Micro Perspective of Indian Polity

- Money power dominant
- Criminalization rampant
- Voting irregularities frequent
- People take money to vote
- Caste and divisive impulses are prominent

How is Democracy Surviving?

- A system of compensatory errors (competing distortions neutralize each other)
- Strength of Election Commission
- Tradition of neutrality of officials
- Pre-Polling process scrupulously fair (nominations, ballot papers, appointment of polling officials, etc.)
- Post-polling process - completely non-partisan (transport, storage and counting of ballots, and declaration of results)

What is Wrong With Elections?

- Flawed electoral rolls
- Polling irregularities
- Unaccounted and illegitimate use of money power
- Rampant criminalization
- Autocratic political parties

Defective Electoral Rolls

- 1999 Sample Surveys: 15% errors in villages
40% errors in towns.
- 2004 Sample Surveys: 5.25% errors in villages
12.15% errors in towns.

Verification of Voters' Lists in Andhra Pradesh

Survey of Polling Stations in AP 1999

Details of electoral rolls verified		Deletions Required (Errors of Commission)						Additions Required (Errors of Omission)				Total Errors	
		District	No. of Polling Stations	No. of Voters	Moved out of the area	Death	Other	Total	% of vote	Attained 18 years of age	Moved into the area		
Rural	29											22297	1634
Urban	27	18102	4218	273	211	4702	26.00	653	2761	3414	18.9	8116	44.8
Rural+ Urban	56	40399	5852	761	395	7008	17.30	1100	3353	4453	11.0	11461	28.4

Election Watch – 2004 – Pre-Poll Survey

Location	No. of Constituencies	No. of Polling Stations	Total No. of Voters	Additions required	Deletions required	Total No. of Additions & Deletions	
						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	1,11,890	3839 (3.43)	4868(4.35)	8707	7.78

Simple Solution

- Post office as Nodal Agency for registration
 - Voters list on display
 - Sale of electoral rolls
 - Statutory forms supply and sale
 - Verification of applications
 - Registration / deletion / correction
 - Provision for appeal

Recent Developments – Post Office as Nodal Agency

- Post office
 - Display of electoral rolls
 - Receiving of applications
 - Ascertaining residential address
- Modalities
 - Designated officer in all delivery offices
 - Forms supplied
 - Forms received only from the citizen or family member
 - No bulk applications
 - Checking report by Post Office (address)

What More Needs to be Done

- Permanent mechanism at Post Offices
 - Display and Sale of Electoral Rolls
 - Voter registration on application at Post Offices
 - Assist EC in revision of electoral rolls on permanent basis
 - Access, transparency and appeal to check abuses
 - Mass communication campaign for public education

Other Polling Irregularities

- Bogus voting rampant
- Personation of voters is the commonest method.
- EVMs cannot prevent false voting
- Voter identity card is a vast improvement, but not a safeguard against collusion or coercion.
- In certain pockets, non-Indians registered as voters

Post Poll Survey – Andhra Pradesh – 1999

1999 Assembly and Parliamentary Polls, Hyderabad, AP

Assembly Constituency / Polling Booth No.,	No. of voters	No. of votes polled	No. who reported that they actually 'voted'	No. not voted or doubtful cases				Percentage of doubtful and 'not voted' votes
				Residing in the area but not voted	Left the area but residing within the city	Left the city/ country etc	Total	
1	2	3	4	5	6	7	8	9
207/173	1143	625	483	5	91	46	142	22.7
207/176	956	459	377	15	41	26	82	17.9
209/93	725	428	306	20	95	7	122	28.5
209/75	989	495	380	42	72	1	115	23.2
210/426	893	476	399	22	49	6	77	16.2
Total	4706	2483	1945	104	348	86	538	21.7

Election Watch 2004 – 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

West Bengal – 2001

Total number of voter complaints	519	%
No name specified	72	13.87
No part number	137	26.4
Complaints type		
a) Vote already cast	197	37.96
b) Long queue of voters / very slow vote	12	2.31
c) Bombs thrown / fight broke out	32	6.17
d) Others	278	53.56
Total	519	100

What Can be Done

- 100% voter identity cards
- Amend rules to ensure mandatory repoll if tendered votes exceed 1% of votes polled. (Tendered vote is proof of false voting)
- Wide publicity to tendered vote
- Citizen ID cards wherever illegal immigrants are in large numbers

Criminalization of Politics

Current situation:

- Sec 8 of RP Act provides for disqualification for certain convictions
- Sec 8(4) gives immunity to incumbent legislators until appeal is disposed of
- Many known criminals in legislatures
- Disclosure of criminal record is now mandatory (EC notification dated 27th March 2003 pursuant to Supreme Court's final judgment)
- Certain anomalies in law regarding period of disqualification corrected in RPA by amendments

Criminalization of Politics

Recent EC proposal:

- Disqualification of all those who are charged with offences punishable by imprisonment for 5 years or more
- Problems:
 - Too sweeping
 - Crime investigation under political control
 - Legitimate fears of motivated charges
 - Candidates charged with trivial offences may be disqualified

Criminalization – What Can be Done

- Disqualification for grave and heinous offences
 - The draft ordinance of July 2002 could be the basis
 - Charges of murder, abduction, rape, dacoity, waging war against India, organized crime, narcotics offences are adequate grounds
 - Fair reconciliation between the citizen's right to contest and community's right to good representation
- Sec 8(4) should be amended to give immunity only for the current term. In the next election all candidates stand on the same footing.

Criminalization – What Can be Done

- Disclosure norms should include past acquittals
 - People have a right to know all records
 - The Supreme Court judgment of 2002 provided for it
 - Empirical evidence shows that several of the worst criminals have no charges pending. Past acquittals in respect of serious charges are a better guide
 - In AP – 13 candidates of major parties with notorious criminal history have no charges pending, but were acquitted of murder – several murders in some cases – of them three were elected to legislature
 - Our conviction rate is only 6%

Unaccounted Money Power

- Recent Developments
 - The Sept 2003 amendments are far-reaching. India has one of the best funding laws.
- Key provisions
 - Full tax exemption to donors (individual or corporates)
 - Mandatory disclosure of all contributions of Rs 20,000 or more
 - Free air time on all electronic media – private or public – to recognized parties and candidates.
 - Removal of loopholes under sec 77 of RPA

Funding Law – Unfinished Agenda

- Free media time not implemented as rules are not framed
- No incentive to disclose, except tax exemption to donor. Severe penalties on donor for non-disclosure will be salutary. No donor will risk jail term for undisclosed contributions. But parties and candidates have incentive to avoid disclosure
- Compulsory statutory auditing of party accounts must be provided for
- Election Commission to be the final authority for determination of compliance

Funding Law – Unfinished Agenda

- RPA must prevail over Cable Television Network Rules, 1994, which prohibit political advertisements (Sec 39A of RP Act)
- The law must explicitly provide for political advertisements – in the light of SC directives for monitoring and pre-censorship. All such pre-censorship should cease. There can be fines for violation of broadcasting code
- Much more creative and imaginative use of media time – live party and candidate debates at all levels.
- US debates format. Law provides for free time in all electronic media including cable networks
- Rules under RPA must cover these details, while EC will decide allocation of time based on a party's past performance

Political Parties – Why Regulation?

Political Parties

- Monopoly or Oligopoly
- Represent history, memories, aspirations of millions
- Seek power over all people
- Cannot be easily formed or built
- People and members have no realistic alternatives
- Vehicles for political participation of citizens

Societies

- Free choice
- Mere organisations of convenience
- Pursue members' collective goals
- Can be formed and dissolved at will
- Members have multiple options
- Vehicles for voluntary pursuit of individual/group goals

Political Parties – What Regulation?

Membership

- Free, open and voluntary
- Uniform, objective conditions/no-restrictions
- No arbitrary expulsion
- Due process for disciplinary action

Leadership choice

- By regular, periodic, free and secret ballot
- Opportunity to challenge leadership through formal procedures with no risk of being penalised

Choice of Candidates

- By members at constituency level through secret ballot
- By elected delegates through secret ballot
- Central leadership cannot nominate candidates

Party Regulation – What Can be Done

- A law on political parties is required.
- There must be fair reconciliation between party's right to association, and citizens' right to transparency and democratization.
- The law must cover non-arbitrary membership norms, internal elections by secret ballot at every level, and candidate choice by secret ballot of members or their elected delegates.
- Over-regulation should be firmly resisted. Policies and programmes are parties' internal matters

Party Regulation – What Can be Done

- Sufficient flexibility should be allowed and wide latitude given to accommodate the needs of parties. Only broad outlines of democratic practices to be enforced
- Only parties conforming to these legal requirements should be registered
- EC will be the monitoring authority for enforcement of party regulation, conduct of elections and choice of candidates by secret ballot
- Alternatively, another independent constitutional/statutory regulatory authority could be created

Other Substantive Issues – Anti-defection Law

- After the 97th Amendment, any individual or group violating party whip is disqualified.
- Ramaswamy impeachment case, Muslim Women's Bill after Shah Bano case, etc. illustrate the need for legislative freedom
- We need to have fair reconciliation between legislators' will and party-hopping. Otherwise we do not need legislature to debate issues – party bosses will become even more autocratic, and we only need some form of 'Loya Jirga' to show strength

Anti-defection Law – Suggested Reform

- Tenth Schedule needs to be amended to make whip and disqualification applicable only to:
 - Lower House
 - Voting on money bills
 - Confidence and no-confidence motions
 - Legislation central to party manifesto

Delays in Conduct of Elections

- EC's independence under Art 324 is guaranteed
- EC has established its credibility over the years, and is probably the strongest such body in the world
- But there are certain distortions in the past decade or so
- Timing of election is now left to EC's discretion, sometimes leading to potential constitutional crisis or national security implications

Delays in Conduct of Elections

- Polling process is now staggered over several weeks, leading to uncertainty and paralysis in governance. Despite better roads, communications and technology, it takes much longer now than in 1980s. Longer polling schedule does not guarantee better outcomes
- Many countries have local counting at polling station level immediately after polling, and results are declared the same evening/night. We have excessive centralization and delays in counting despite EVMs

Delays in Conduct of Elections

Suggested reforms:

- Law to ensure that election is completed within 60 days of dissolution of a House/appropriate communication to the EC
- Law to ensure polling process spread over no more than 3 to 7 days for Lok Sabha
- Change of rules to provide for counting at polling station level immediately after polling

Election of Legislative Council

- Art 171(2) provides for change of composition of Council by a law of Parliament
- Current election is archaic
 - 1/3rd by local governments
 - 1/3rd by MLAs
 - 1/12th each by teachers and graduates
- The Council must represent local governments, just as Rajya Sabha is Council of States
- After 73rd & 74th amendments local governments have constitutional status
- All it needs is a law of Parliament to elect members by local governments

Electoral Reform Agenda in 2003 – Major Steps Forward

- Mandatory disclosure of candidate details
- Post office for voter registration accepted in principle
- Anti-defection law
- Limiting the size of Council of Ministers
- Changes in Rajya Sabha election
- Progressive law on political funding

Is This Enough?

- Some of the reforms are in the right direction, but are not enough
- Systemic deficiencies in all spheres of governance left untouched
- If they are not addressed immediately, will undermine the unity of the nation and severely cripple economic growth

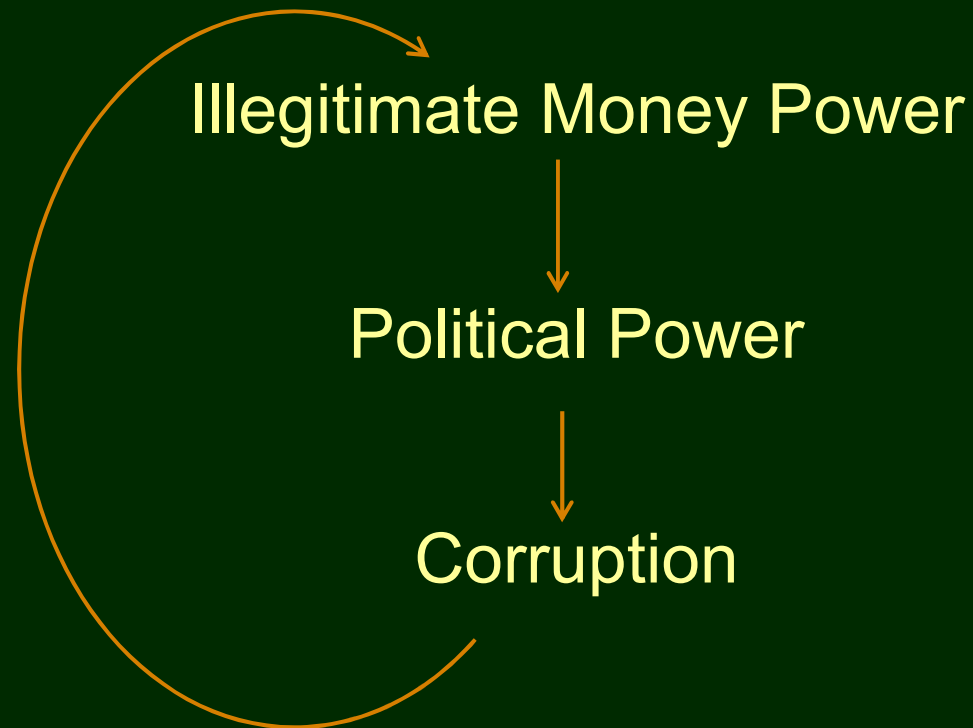
Shifting Nature of Corruption

- Inexhaustible appetite for illegitimate funds
 - Telgi stamp scam
 - Satyendra Kumar Dubey's murder
 - CAT exam papers' leak
 - Warrant against President Kalam and Chief Justice VN Khare
 - CGHS scam

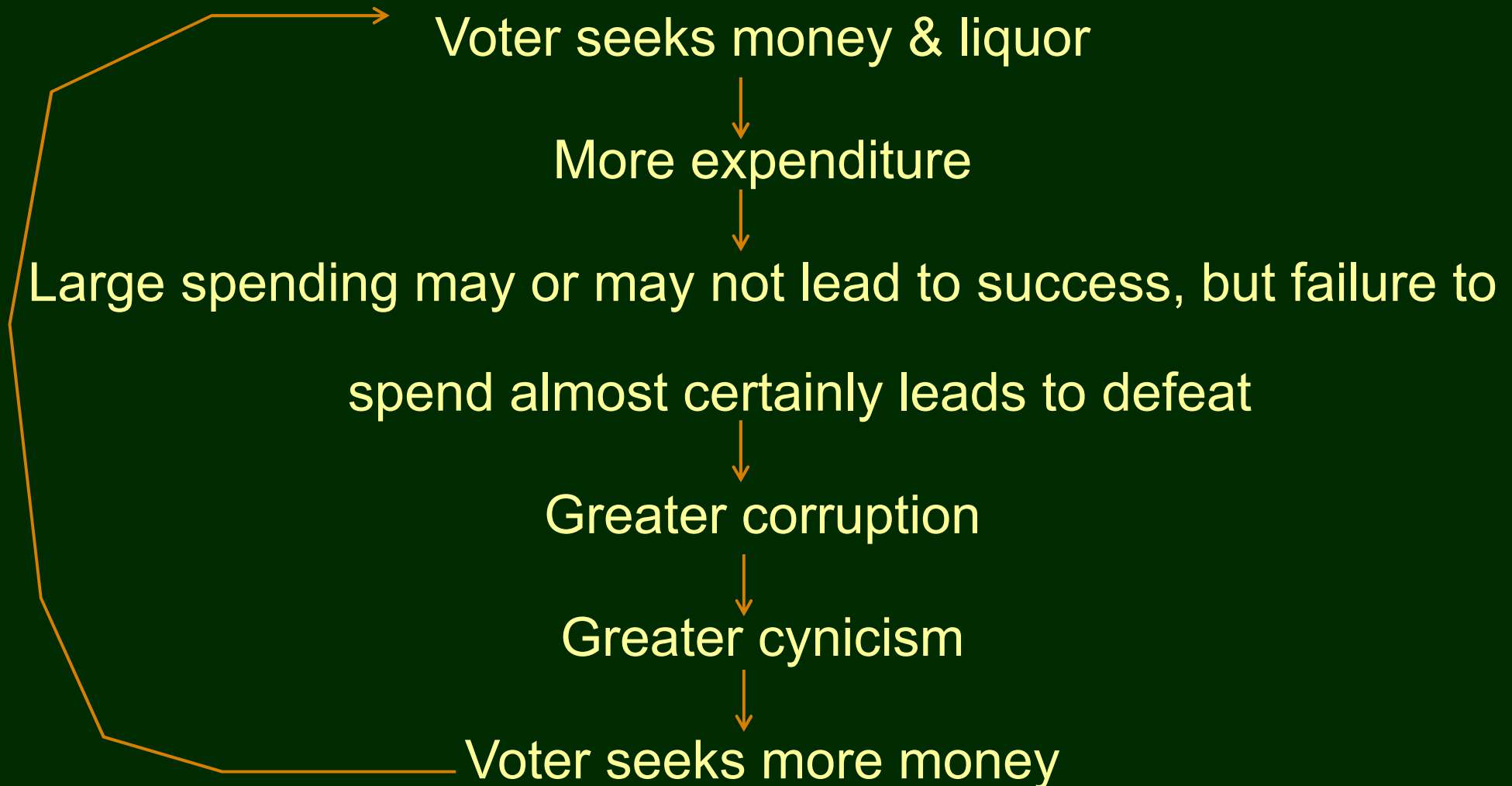
System Caught in a Vicious Cycle

- Inexhaustible demand for illegitimate funds
- Most expenditure incurred for vote buying
- Rise of political fiefdoms
- Vote delinked from public good
- Taxes delinked from services
- Political survival and honesty incompatible
- Social divisions exacerbated
- Competence and integrity excluded
- National parties marginalized

Inexhaustible Demand for Illegitimate Funds



Most Expenditure is to Buy Votes



Rise of Political Fiefdoms

Need for money, caste and local clout



Parties are helpless in choice of candidates



Rise of political fiefdoms



Absence of internal party democracy



Competition among a few families in most constituencies



Oligopoly at constituency level

Vote Delinked From Public Good



Taxes Delinked From Services

Only 16 % of GDP collected as taxes (Union & States)

Fiscal deficits and crisis

Higher Taxes

Unacceptable because
of corruption and poor
services

Desubsidization

The poor do not see
alternative benefits for
the subsidies given up

Wage Reduction

Centralization and Art
311 preclude it

Deeper fiscal crisis

Poorer services and public goods

Perpetuation of poverty and backwardness

Political Survival and Honesty Not Compatible

Parliamentary executive

Government survival depends on legislative majority

Legislators spend a lot of money to get elected

They need multiple returns to sustain the system

Corruption and misgovernance endemic

Government has to yield to legislators' demands

Corruption is perpetuated even if government has the will

Honesty not compatible with survival

Social Divisions Exacerbated

FPTP

↓
Scattered minorities unrepresented

↓
Marginalization and Ghettoization

↓
Strategic voting and vote bank politics

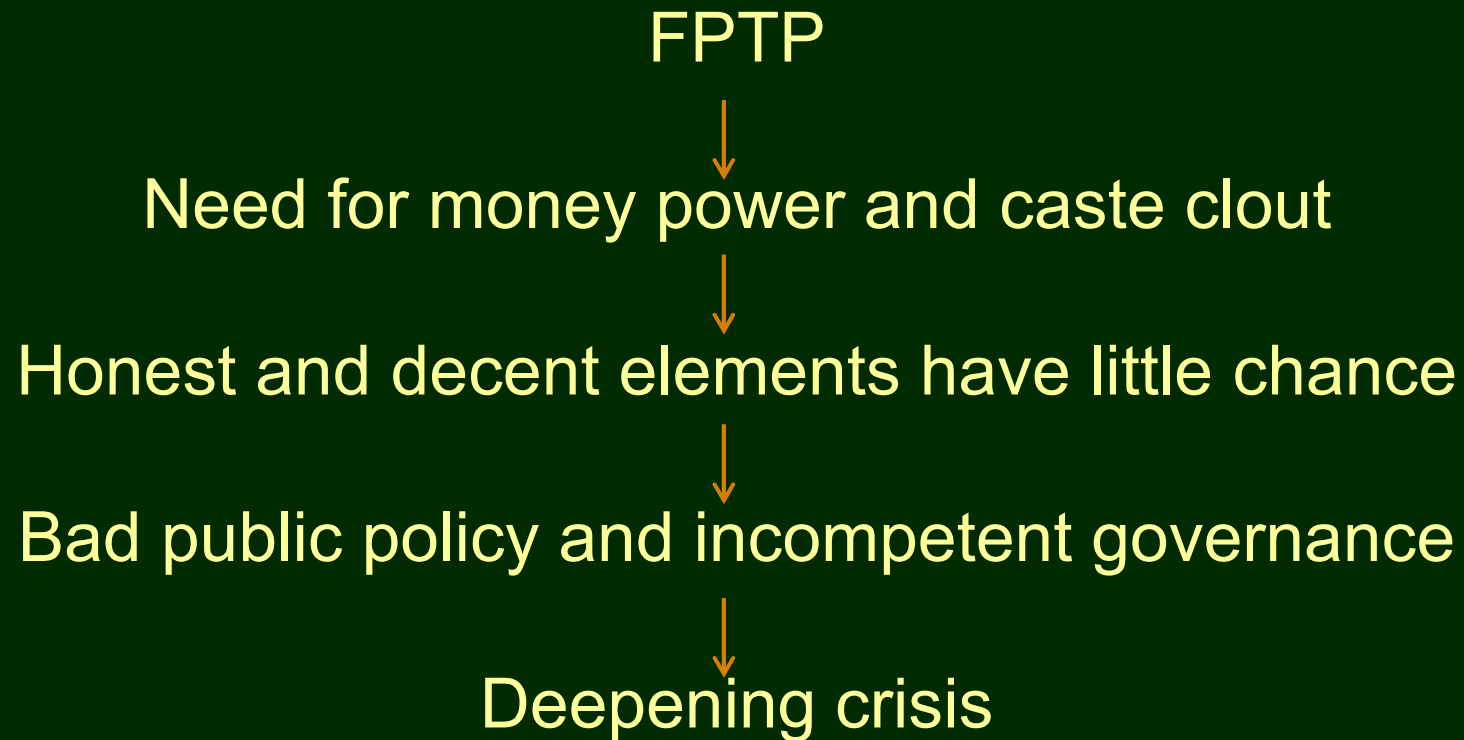
↓
Obscurantists become interlocutors drowning voices of reason
and modernity

↓
Politicians pander fundamentalists

↓
Counter mobilization of other groups based on primordial
loyalties

↓
Communal polarization and strife

Competence and Integrity Excluded



Oligopoly of Parties

FPTP

↓
Only a high threshold of voting ensures victory

↓
Parties with 35 - 50% vote, or social groups with local dominance
get elected

↓
Significant but scattered support pays no electoral dividends

↓
Reform groups below threshold have no chance of winning

↓
Voters prefer other “winnable” parties

↓
Marginalization of reformers and oligopoly of parties

↓
Status quo continues

Representational Distortions

FPTP



Women & deprived sections not represented



Reservation with rotation is arbitrary and leads to proxies



Perpetuation of dominance of traditional groups



Representational illegitimacy

Direct Election of Head of Government in States

- No one can buy a whole state electorate
- Image and agenda of leader will be decisive
- With separation of powers, there will be no incentive to overspend for legislative office
- At state level, there is no fear of authoritarianism as Union government, Election Commission, Supreme Court etc., will act as checks
- Once survival of the executive for a fixed term is guaranteed, there will be no need for compromise and corruption

Proportional Representation

- Competent and honest persons can be inducted into the cabinet
- Incentive to buy votes in a constituency will disappear
- Interests of local candidate will run counter to party's need to maximise overall vote
- Will give representation to small parties, scattered minorities and legitimate reform groups, forcing change
- Voting will be based on party image and agenda, not local expenditure
- Ignored sections will find voice and get representation
- A party's image and platform, not local clout and money power, matter
- Genuine competition among political groups and ideas

Proportional Representation

- Fair reconciliation of social and political groups
- No 'wasted' votes
- Disenchanted sections will find 'voice'
- Political fiefdoms will disappear
- Political process will get into a virtuous cycle

Problems of Proportional Representation

Problem

- Political fragmentation in a plural society
- Party bosses will be autocratic
- Link between voters and legislator is snapped

Solution

- Reasonable threshold level
- Democratization of parties and choice of candidates
- Mixed system combining Proportional Representation with FPTP

A Suggested Model for India

- Mixed, compensatory Proportional Representation
- A threshold of, say 10% votes in a major state for Proportional Representation
- State as a unit for representation

How Will Direct Election, PR and Party Democracy go Together

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

What Will the System Look Like?

- Citizens have two votes - one for a candidate in the constituency; one for the party of their choice.
- Party vote determines overall seat share. The party gets seats allocated from the list (Its seat share less seats elected in constituencies)
- In states, citizens directly elect the head of state, who forms a cabinet of his choice, and has a fixed term. There will be term limitations.
- Citizens vote for a party based on its image, platform and the slate of candidates presented in the local electoral district (say, 5-10 seats)

“Strategy without tactics is the slowest route to victory. Tactics without strategy is the noise before defeat ”

- *Sun Tzu*