

Continuity and Change - Parliamentary Reforms

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

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Chapter – 1

Our Parliamentary Democracy in Perspective

1.1 Impressive Record

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

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

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

1.1.3 Judged by these yardsticks, many countries, while having elections, fail to qualify at varying periods of time as true liberal democracies (Alan Ware). Zambia and Argentina had for sometime competitive elections for public office, but gave unlimited power to elected leaders. In Argentina for some time there was also limited electoral competition with major political forces banned. In apartheid South Africa and white-dominated Rhodesia, while there were regular elections, large sections of people were forcibly prevented from participating in them. In fact, even in the Southern states of the United States, the blacks, while legally permitted to vote, were in practice denied the franchise until the Civil Rights Movement of the 1960s. In countries like Mexico for decades, and in Pakistan and Bangladesh often, there was theoretical electoral competition, but massive state sponsored rigging was practiced. In Turkey, Pakistan, Bangladesh, and Philippines periods of electoral competition are interspersed with authoritarianism. In Algeria and Burma there was electoral competition but the winning parties were prevented from assuming office, and are in fact persecuted. In countries like Iraq some parties exist, with no electoral competition. Erstwhile Soviet Union, and most of the Eastern European countries until their adoption of democracy about a decade ago, had authoritarian communist regimes in which only one party could control government. China continues to be under an authoritarian, one-party rule. Several South East Asian countries too have witnessed limited electoral competition or outright authoritarianism for decades.

1.1.4 Judged by these standards, as *Myron Weiner* points out, "India is one of a handful of post-colonial countries that could be regarded as having a stable democratic regime. The list is very small and one could quarrel with the inclusion of several of the countries in it: Malaysia, Sri Lanka, Jamaica, Trinidad / Tobago, Papua New Guinea, and a variety of mini-states: Bahama Islands, Barbados, Botswana, Gambia, Mauritius and Surinam. In the main, post-colonial regimes have been one-party states, military bureaucracies and dictatorships, communist, or personalized autocracies. The new regimes typically restrict opposition parties, limit freedom of assembly and freedom of the press, do not permit competitive elections, restrain the judiciary from performing an independent role, and limit freedoms of their citizens in a variety of ways – to speak out, to travel abroad, to criticize the regime and to change the government peacefully. In most post-colonial regimes, political participation is restricted and leaders are not held accountable; and, in the worst cases, governments are tyrannical. India, along with a handful of smaller countries, is a notable exception."

1.2 Aberrations

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

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

1.2.3 Certain recent trends have been even more disturbing. There is a perceptible and alarming decline in the quality of debate in legislatures. Much of legislative business and reviewing the work of government has become perfunctory. Legislatures have become theatres of the absurd to catch the attention of the media and the public, with little sense of purpose or dignity. Changes of governments, particularly in States, have been often divorced from the people's mandates. Midnight parleys and palace coups, but not public opinion or policy differences, have often led to change of governments. The ouster of NTR's government in Andhra Pradesh and Farooq Abdulla's government in Kashmir in 1984, and the unseating of NTR's government in Andhra

Pradesh in 1995 all had nothing to do with people's mandate or policy differences. There were scores of other such changes in governments engineered by palace coups and politics of defection for personal gain. However, it must be stated that all these downfalls of governments were constitutionally and technically valid, even though their democratic legitimacy was questionable. And more importantly, peaceful transfer of power has been the norm. Even after the elections to the 6th Lok Sabha, when the first transfer of power took place in the Union government, the change was peaceful and dignified despite the heat and passion generated by the authoritarianism of the emergency period.

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

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

1.2.6 The most important infirmity of the elected governments is in the realm of governance. While elected governments in India are not figureheads, their capacity to really make a difference has proved to be marginal at best. If we play a mind game and assume that all the legislators who have won a general election have actually lost, and instead their immediate rivals won, the reality is that the quality of governance would be virtually unchanged, and the change of government would go totally unnoticed. The only visible difference with change of government is the new set of faces in public office, and the improved fortunes of individuals playing the power game! This woodenness in our governance process means that no matter who wins or loses in the election, the people always end up as losers. The institutional rigidities in our parliamentary democracy have thus ensured that real governance reform, bureaucratic accountability or significant shifts of public expenditure are virtually impossible. The room for maneuvering of any government is extraordinarily limited, and the system is locked in a vicious cycle. The incapacity of the governments to address the deepening fiscal crisis is a case in point. The fight against corruption, the struggle for electoral reform, the measures for speedy and efficient justice, the efforts to decentralize power, and the attempts to enforce bureaucratic accountability have all been stymied by these institutional rigidities and consequent governance failure.

1.3. Key Ingredients of Democracy

1.3.1 While the record of our parliamentary democracy has been fair when judged by Myron Weiner's postulates, our polity emerges poorly when judged by more exacting standards of

democracy. There are five key ingredients of democratic polity: freedom, self-governance, empowerment of citizens, rule of law and self-correcting institutions of state. Let us briefly examine the performance of Indian polity in the light of these standards.

- **Freedom**, in an elementary sense, is the right of an individual to do as he or she pleases, as long as his actions do not impinge on the freedom of others. While the constitution and law have guaranteed these freedoms in a fair measure to citizens, in reality freedom is undermined by the unchecked power of parties and state functionaries to paralyze society at will, to appropriate resources, and to blackmail or bully citizens and groups. Institutional maladies including inaccessible school education and primary health care, delayed justice, unaccountable police, unchecked crime, secrecy in government and inefficient public services have severely eroded our freedoms despite constitutional guarantees.
- **Self-governance** is the right of citizens to govern themselves directly or indirectly. Representative democracy means that the elected legislators and governments should be fully accountable to citizens. However, autocratic political parties, flawed electoral process, limited and often unhappy choice of candidates, uninformed and distorted public discourse, criminalisation of politics, marginalization of citizens and over-centralization have all reduced our self-governance to a mockery.
- **Empowerment** is the ability of citizens to influence the course of events on a sustained basis and to make meaningful decisions on matters of governance having impact on their own lives. In effect, people should always continue to remain sovereigns. However, rampant corruption, hostility to public participation in governance, centralization, secrecy, red tape, and a culture of touts and middlemen with the backing of powerful party organizations have denied people any meaningful degree of empowerment.
- **Rule of law** is the concept of people being governed by law, and all citizens, irrespective of station and rank, being subject to the same laws to the same extent. However, centralized and autocratic political party functioning, flawed electoral system, highly opaque and secretive functioning, habitual abuse of executive authority, ubiquitous patronage system, VIP culture in every public service, gross failure of public order, primacy of political agents, influence-peddlers, touts and rabble rousers in government decision making at the cost of non-partisan citizens, political control of crime investigation and the tardy and inefficient justice system all make rule of law virtually non-existent in our society.
- **Self-correcting mechanisms** give institutions of state and polity the capacity to learn from past experience and to constantly improve themselves in order to serve the people better. Our incapacity to design and operate the institutional correctives, constitutional functionaries being amenable to political influence, the secrecy in government, tardy and inefficient justice system, a political system dependent on uncontrolled corruption, and the moribund party structure incapable of attracting the best elements of society have made sure that the decline of the Indian state is progressive. This impairment of self-correcting mechanisms contributed to near-collapse of our governance structure, and made reversal of the trend within the existing framework a Herculean task.

1.4 Primacy of Politics

1.4.1 Given these infirmities and distortions of our political process, it is easy to deride politics and democracy. In fact it has become fashionable among the upper echelons of society to be anti-political, and to wistfully suggest authoritarian, even fascist, solutions. It therefore needs to be emphasized that true politics is about promotion of human happiness. In a democracy there is no substitute to political process. Politics is the mechanism through which the gulf between

unlimited wants and limited resources is bridged, and means are reconciled with ends in governance. Political process mediates conflicts in society, and resolves seemingly irreconcilable differences among various groups in society. Finally, politics is the only means of peaceful, democratic transformation in a free society. Contempt for democratic institutions is dangerous and short-sighted. Anti-political approach is both undemocratic and counterproductive. The real solution to the problem of democracy lies in deepening democracy. In order to preserve and strengthen liberty and democracy, we should constantly seek to improve the democratic institutions and practices based on lessons of past experience.

1.5 Forms of Parliamentary Democracy

1.5.1 In order to identify and correct the infirmities in our parliamentary democracy, we should first clear some of the misconceptions prevalent in our political discourse. We often confuse between parliamentary democracy with parliamentary executive. The reality, however, is that almost all forms of democratic governments have representative legislatures and would fit the description of parliamentary democracies. The difference, however, is in the origin of political executive, which is the core of government. In the **parliamentary executive** which we borrowed from Britain, the executive is chosen by, and drawn from the legislature. Traditionally, while the prime minister is the head of the government chosen by, or enjoys the majority support of, the legislature, he in turn chooses from the legislature his ministerial colleagues in the cabinet, and collectively the cabinet holds office as long as it enjoys the support of the legislature. There is a largely symbolic and ceremonial head of state who formally appoints the prime minister, and he may be hereditary as in Britain or elected as in India.

1.5.2 The other model of executive in representative parliamentary democracy is that of the **presidential executive**. The essence of the presidential executive is that the responsibilities of leadership are vested in a chief executive, elected for a fixed term and independent of the legislature, but counterbalanced by other political institutions. (Comparative Government and Politics: editor: Vincent Wright). The United States represents the purest form of executive presidency and separation of powers among the three organs of state – executive, legislature, and judiciary. The president is elected popularly for a fixed term by an electoral college, and he appoints the cabinet subject to confirmation of the popularly elected upper house (Senate) of the legislature. The president cannot dissolve the legislature, nor can legislature remove the president except through impeachment for high crimes and treason. President can veto legislation, but his veto can be overridden by a two-thirds majority in Congress (legislature). In reality, there is a separation of institutions rather than of legislative and executive powers. This means president and Congress share the powers of government in the U.S: the president seeks to influence congress, but cannot dictate to it. Presidential power is in essence the power to persuade. Only one person can be president, but the presidency is not a one-person job. A variety of supporting bodies, together known as the executive office of the presidency, has evolved to discharge the functions of the executive. Voters elect both the legislature and executive separately, and each keeps the other in constant check. In effect, the president has fewer real powers in a presidential executive, compared to the prime minister with a stable majority in a parliamentary executive. (Vincent Wright)

1.5.3 A third model of executive in a parliamentary democracy is that of a **semi-presidential executive** as in France. The voters elect the legislature and the president separately. The president names the prime minister, who chooses the cabinet. The legislature approves the appointment of, and can remove, the cabinet. The president presides over the cabinet, but the cabinet directly controls the ministries and departments. Certain areas of policy, notably defense

and foreign relations, are regarded as presidential domain. A dual leadership is shared between president and prime minister. Formally the prime minister directs the government, which is itself accountable to parliament. However the president is the leading figure in the political system. Even though the French president cannot ignore the need for the government to have parliamentary backing for its legislative programme, he does have substantial powers of maneuver, including dissolution of the legislature.

1.5.4 What must be remembered however is that all these are various forms of parliamentary democracy, but with different kinds of executive – parliamentary, presidential or semi-presidential. All these are perfectly legitimate and democratic systems, and each has relative merits and demerits. Parliamentary executive tends to be stable and strong as long as there is a clear majority for the prime minister in the legislature. The cabinet controls the legislative agenda by virtue of its majority support. But the prime minister and cabinet can be removed by switching of loyalties of a few legislators and fresh elections can be ordered relatively easily. If the prime minister does not enjoy a clear majority, the executive tends to be unstable, and cannot always control the legislative agenda. It is prone to severe pressures from small groups or individual legislators. Survival in office is often not compatible with integrity and firm policy decisions. With a bicameral legislature, the cabinet may not control legislation even when it enjoys a clear majority in the lower house. Since there is a head of state separate from the parliamentary executive, though symbolic and ceremonial, the prime minister will find it more difficult to ride rough shod over his colleagues. However, the experience of India shows that the president is often captive in the hands of a powerful prime minister with stable majority. The head of government (prime minister or chief minister) has often been a powerful, authoritarian figure. However, the need to carry the legislators with him, the fact that the executive is part of the legislature, and the presence of a separate constitutional head of state, though ceremonial, tend to keep the head of government in check.

1.5.5 The presidential executive has the merit of stability of tenure and independent and decisive executive action when warranted without having to worry about the pressures from legislators. However, the president does not control the legislative agenda, particularly if his party does not command a majority in the legislature. He has to carry the legislature with him in matters of cabinet and judicial appointments. He has the power of veto, which can be used as a bargaining tool with the legislature. Much of legislation and budget-making is a compromise between the executive and legislature. The president can directly appeal to the people, and use his popularity and public support as a bargaining tool in dealing with the legislature. Stalemate in legislation is much more likely than in parliamentary executive. In real terms the president in a presidential executive is weaker than a prime minister of a parliamentary executive. But the ceremonial functions as head of state, and his visibility and role as commander-in-chief give the president significant leverage in a presidential executive. As the president is perceived to be the fountain of all executive authority, there could be greater temptations of overt authoritarianism in the presidential executive, particularly if the armed forces connive with it at the national level. Any serious analysis of our parliamentary democracy should keep in mind these nuances of various models of political executive. In our federal polity, we should also keep in mind the requirements of the Union and States separately. There is no reason to have the same form of executive in all tiers of governance, as the needs and risks vary at different levels.

1.6 Crisis of Governance

1.6.1 India is facing an extraordinary crisis today. The manifestations of this crisis – the all-pervasive, inefficient state, increasing lawlessness, competitive populism, criminalisation of polity, ever-growing nexus between money power, crime and political power, excessive centralization, serious erosion of legitimacy of authority and extremely tardy and inefficient justice system – are only too evident to all of us.

1.6.2 In the judgement of the people, no arm of state escapes the blame – whether the political class or the bureaucracy or judiciary. The politicians are much more reviled and blamed, because in their case the imbalance in exercise of power as well as the incompatibility between honesty and survival are far more clearly evident. In this demonology, the bureaucracy comes next because it enjoys life-time security irrespective of performance and therefore it can be honest and yet survive. Judiciary is last in vilification, since it is largely immune from the vagaries of politics and there is less interface with the general public on a day-to-day basis. However, judiciary is no less culpable, to the extent that there is gross inefficiency, delay and inaccessibility, almost amounting to miscarriage of justice in most cases. As the old adage goes, the loser in a civil suit laments publicly in court, and the winner sheds tears privately at home. In the first two decades after independence, we reposed enormous confidence in the political class, which had been associated with the freedom struggle. As they had failed to deliver the goods to our satisfaction, for the next two decades we thought that the bureaucracy – particularly the higher civil services – was the answer to every problem. By mid-eighties the nation came to realize that bureaucracy cannot be a substitute to fair, competent and effective leadership of the political executive. For over a decade now, most sections of the population have been tempted to rely on the judiciary excessively to fill the vacuum created by a faltering executive and perpetual misgovernance and corruption. However, there are already signs of recognition that judiciary cannot do the job of the executive either. The root of the problem, in a large measure, lies in the governance structure we adopted and the way we are operating it, and not in our people and politicians or officials or judges. It is easy and fashionable to blame the political class or bureaucracy or judiciary for all our ills. This demonising may find scapegoats but will not help in retrieving the situation, unless we identify the root causes and eliminate them.

1.6.3 While the legislature-cum-parliamentary executive is no more guilty of failing in discharge of its functions, it certainly has greater responsibility in resolving the crisis for two important reasons. Firstly the legislature and executive are more or less indistinguishable in the parliamentary executive system we have adopted. The executive is drawn from the legislature, and depends for its survival on the support of the legislative majority. The legislature is the only body elected directly by the people and therefore represents the will of the people. The legislature, at least in principle, has the responsibility of overseeing the functioning of the executive, though in reality the survival of, and support to, the executive is often determined by a combination of the degree of majority party support, power sharing, bargaining and patronage. Given this complex interplay of forces, and the primacy of the legislature constitutionally as the only elected body, the legislature's role is critical in determining the quality and efficacy of governance. Secondly, in any form of parliamentary democracy, whether the executive is parliamentary or presidential, the resolution of governance crisis has to come from the political process through legislative measures and evolution of proper political culture. Bureaucracy can at best enforce the law and implement policy, but cannot give direction or engineer reform. Judiciary can at best adjudicate and interpret law and goad the legislature and executive into action by the persuasive logic and the weight of its pronouncements, but cannot itself legislate or

reform. Therefore, in the final analysis in matters of governance the buck stops with the political executive, and in matters of legislation with the legislature. In a legislature-cum-executive of the Westminster model we have adopted, the responsibility for good governance and reform is fully borne by the legislature.

1.7 Political Process

1.7.1 Given the primacy of the elected legislature, the political process through which people's interests are articulated, public participation in governance is facilitated, and representatives are elected, becomes critical. In other words, the functioning of the party system and the nature of elections determine the quality of the legislature and the efficacy of governance. In India, traditionally parties have been seen as pocket boroughs of those at the helm. Often there are entry barriers to members. Those who pose a potential threat to entrenched leadership are denied access to a party, or expelled even for faintest criticism or dissent. The parties, which exhibit such authoritarian tendencies in protecting the privilege of those in power and nipping in the bud any potential threat to individual dominance have not shown the slightest sense of shame or remorse in assiduously cultivating and recruiting known criminals, corrupt persons and those with a dubious record. Such shady elements are courted and welcomed, while decent and dignified citizens are shunned and often rejected. There are no published membership rolls, and spurious membership has become a common feature. There are no internal democratic norms and procedures in leadership choices at various levels. There are no mechanisms for open debate or dissent, and for influencing the views of members. At the same time there is no realistic possibility of meaningful political action outside political parties in any democracy. For instance the number of independents elected to legislatures has been steadily declining, and most of those elected are in fact party rebels who will not last long as independents. In the Lok Sabha elections over 99% of the independents are losing the deposits. A party is a creature of history, struggles and sacrifices of thousands of people, and represents enormous investment of energy, effort, passion and hopes of millions. Stifling of internal democracy in parties has thus severely undermined the health of our parliamentary democracy. There is no transparency in the collection of party funds and their utilization. Large amounts of unaccounted money are raised illegally and spent illegitimately for buying votes, bribing officials and hiring hoodlums. There is neither statutory auditing, nor transparency in funding, and often there is a nexus between political contributions and arbitrary decisions and favours doled out to the chosen ones. In fact unaccounted and exorbitant election expenditure is the root cause of corruption. Finally, the choice of candidates nominated by a party for elective public office is left entirely to the discretion of the party bosses with members having little say. With this the control of party bosses and coteries is complete – they are often unelected, and unaccountable, and they perpetuate themselves with illegal funding and a culture of nominations to all party posts and elective offices. This absence of democratic culture in political parties is the root cause of the increasing failure of parliamentary democracy.

1.7.2 Elections too have largely failed to ensure high quality of the legislatures or good governance. The frequent resort to electoral irregularities, massive vote-buying and rigging, deployment of unaccountable money power, entry of criminals into politics, and serious defects in voter registration and polling process have made elections a high-cost, high-risk gamble. The exorbitant and illegitimate cost of elections also fed corruption on a massive scale. In addition to electoral irregularities, the plurality system we adopted has led to skewed representation. While some sections are over-represented, several scattered groups are denied fair representation. Given the nature of political parties and elections, many fine and public-spirited citizens are

repelled by the political process. The electoral arena has increasingly become the preserve of those with family connections, unaccounted money, criminal contacts and caste support. Our electoral system has thus alienated large sections of the public. Leadership development has suffered, and this in turn resulted in poor quality of governance.

1.7.3 One other serious problem plaguing our polity is the serious discord often witnessed between various organs of state, and between the three tiers of governance – Union, State and local. There is needless overlap of jurisdiction under the Seventh Schedule of the Constitution. The Union is helpless in acting in time to preserve unity and integrity, even as the extreme powers under Art 356 have been often abused. State legislation reserved for President's assent is often delayed indefinitely and mindlessly. Even at the Union level, there is often a deadlock between the two houses of Parliament, delaying or preventing legislation. The indiscriminate use of whip has made the discussion in legislature perfunctory, redundant and predictable. Frequent defections for personal gain have often undermined people's verdicts and affected stability of governments. Despite the parliamentary executive model, the legislature has little real control over executive actions, and even laws made are ignored and unimplemented. Bureaucracy has become largely unaccountable, and there is no legislative oversight of key appointments and functioning of various ministries and departments.

1.8 Is Stability All-important?

1.8.1 In recent times the issue of political stability is agitating the minds of many political analysts and legislators in India. The increasing resort to mid-term polls, and the shortening tenures of governments have naturally led to calls for measures to promote political stability. However we should remember that India has witnessed remarkable political stability after independence. While stable governments are necessary for effective governance, stability is by no means sufficient for good governance. Mere stability of the governments is no substitute to truly inclusive and democratic political process, fair elections, genuine representation, sensible policies, accountability and people's empowerment. In fact periods of instability may sometimes help focus on the crisis afflicting our polity and economy. Indian experience shows that major policy shifts and reforms are often engineered more by compulsion than by conviction. Only the danger of default and the foreign exchange crisis forced India to liberalise the economy and to dismantle the more glaring, obnoxious and counterproductive elements of license-permit-quota raj. The evidence of the past decade actually shows that political instability has had no major impact on the economic fortunes of the nation. In fact, major reforms are likely to be initiated only when status quo is unsustainable. Therefore while the need for greater stability and predictable and smooth policy initiatives is recognized, excessive obsession with stability of governments at any cost can be counterproductive. In the absence of overall strengthening of democratic institutions, and injecting transparency and accountability into the system, mere stability of tenure may actually make the governments more recalcitrant and irresponsible. If an average politician has the stable tenure to recover in multiples the 'investment' made in elections, he has no real incentive to change the rules of the game. Therefore stability cannot be a mantra without institutional strengthening and accountability.

1.9 Four Critical Concerns

1.9.1 There are four major issues of concern in relation to parliamentary democracy.

- The first issue concerns representation. The purpose of legislature is to truthfully and effectively represent various shades of public opinion. The legislature represents the will of the people, and is but the servant of the people, the true sovereigns. Therefore the

mechanisms evolved to make the legislature truly representative of the people are vital for the strength, legitimacy and sustenance of parliamentary democracy.

- The second issue is the quality of representation. Governance and public affairs are complex and difficult issues, and demand the involvement of the most suitable citizens. The persons best equipped to represent the people should find it possible and attractive to be in councils of government. They should have the opportunity to represent the people by adhering to law and propriety, without having to compromise their integrity or public good. Once in public office, decent citizens should be able to survive without resorting to, or conniving in, dishonest methods.
- The third issue is good governance. There should be effective governance, and those in public office must have the ability to promote public good through due process of law. There should be harmony among various organs of state, as well as the different tiers of governance – Union, State and local.
- The fourth issue of concern is the functioning of the legislature. There should be effective mechanisms for robust and open debate, consensus building, sensible and timely legislation, proper monitoring of law enforcement, and review of government policy and performance.

The political process must be capable of addressing the above four concerns. The way parties function, the quality of elections, the political culture evolved in a society, the institutional framework facilitating respect for people's verdict and the instruments of accountability are all critical in ensuring democratic and effective functioning of parliamentary democracy.

Chapter – 2

Equitable Representation

2.1 Four Major Concerns

2.1.1 Our parliamentary democracy has proved to be reasonably effective in representing various groups. There is now a much broader class of persons from whom the representation is drawn, as opposed to the narrow base of political recruitment 50 years ago. Agricultural sector, which accounts for about 67% of the population has now nearly half the representatives drawn from it. Over a third of the legislators at the Union level are residents of rural areas. Their proportion in State legislatures is probably much higher, and in any case a much higher proportion of legislators have rural origins, though in time and with greater political role they naturally tended to move to towns and cities. There is much greater representation of various caste groups today. While there are constitutional reservation of constituencies for SCs and STs in proportion to their population, the participation of intermediate castes and other backward classes (OBCs) has risen significantly over the past 50 years. The educational qualifications of the legislators also are much better today, though there is no evidence that university degrees have added to the quality of debate or decision making.

2.1.2 There are however four major areas of concern in terms of representation.

- Women, who constitute nearly 50% of the population are represented poorly in legislatures. While women candidates are being elected more often than their male counterparts, the actual proportion of women candidates nominated by parties and elected has been under 10%.
- The second area of concern is that several important minority groups which are well-spread out geographically tend to be underrepresented. This is because while their vote may be important in many constituencies, they are not concentrated in large enough numbers in many constituencies either to induce parties to nominate members of those groups as candidates or to be elected if nominated in the territorial constituencies.
- The third problem has been the frequency of distortions resulting from the plurality system or first-past-the-post (FPTP) election system in which the candidate who obtains the highest number of votes is elected irrespective of his support base. The largest party often needs only 30-40% of the votes polled to obtain a majority of seats in the legislature under our present system. Considering that only about 60% of the votes are polled, the actual voter support to obtain a majority of seats could be as low as 20%. The system clearly tended to exaggerate the representation of the dominant parties as the requirement to win is not a majority of votes cast in a constituency, but a plurality of the vote. In a fragmented polity, in the absence of a two-party political system, a candidate with well under 50% vote is often elected. Large and important groups often feel that their voice is not heard, and their vote has no value.
- The fourth problem pertains to the power of the entrenched parties. As the number of votes obtained by a losing party or candidate is of little value in the winner-take-all system, and as the only way of getting legislative presence is to obtain the largest number of votes in the constituencies, the system heavily favoured the dominant parties or groups or parties with concentrated presence in certain pockets. Entrenched parties therefore acquired enormous power. This is by no means uncommon in most democracies. However, as the parties in India

are largely autocratic and unaccountable, the quality of members has tended to be poor, and legislators are often unrepresentative. Neither can independents mount an effective challenge to the arbitrariness of parties, nor can reformist groups and new political formations with high credibility and broad support base across a wide geographic area have any real chance of success. Therefore such groups are either marginalised in our polity, or are forced to join the dominant parties whose functioning leaves much to be desired. The choice available to voters has thus largely been limited and unsatisfactory.

2.1.3 In addition to these problems of fair representation, special problems have cropped up in recent years with the advent of coalition governments at the Union level and in many States. Even as the FPTP system does not reward the sub-optimal strength of a party in a State or region, the power of small parties with concentrated pockets of influence has become more pronounced. While parties and candidates are theoretically compelled to appeal to the widest possible base to get elected in the FPTP system, in reality the appeal is getting narrower and narrower. Typically parties tend to recruit the dominant false elites in each caste or social group, and parade them before voters to demonstrate their ostensible concern for those groups. In reality such candidates once elected no longer represent either their social groups or the larger public. In the FPTP system, parties anyway nominate a certain number of candidates from an influential caste and there is no incentive for the candidates to enlarge their appeal beyond their social group as the party backing will ensure victory in a constituency. In a coalition government too such elected legislators and parties rarely represent the legitimate interests of the social groups constituting their political base or those of the larger public. As a result dishonest and secret deals, and not honest and open negotiations and policy affinity, tend to be the basis of coalition partnerships. Another problem stems from our society's cultural traits in dealings between various social groups. Traditionally Indian society has evolved reasonably predictable and harmonious methods for dealing with relations between individuals within a social group. However, across social groups such interaction often fails, and there is neither trust nor harmony. Therefore there is a tendency to form caste cliques with the participation of the bureaucrat, politician, businessman and contractor. Often even criminals are protected by the cliques on caste considerations. In the process, formation of honest social coalitions has become increasingly difficult.

2.1.4 Given these problems of representation in our parliamentary democracy, we need to evolve methods to enhance women's representation, promote equitable representation and encourage honest dealings across groups and in coalitions. We also need to promote an electoral system which penalizes local electoral malpractices and gives incentive for broadening of appeal across groups. Let us examine closely some of the reform proposals.

2.2 Enhancing Women's Representation

2.2.1 That there is need for greater representation of women in legislatures is undeniable. Politics has proven to be very inhospitable to women in independent India. With the exception of a handful of countries such as Germany, Sweden, Norway, Denmark, Finland, and now France, female presence in legislatures remains small and relatively insignificant in most parts of the world. In India the problem is more serious as the participation of women in politics has actually declined from the days of freedom movement, both in quantity and quality. Government and politics are more important factors in the economic, social, and power structures in India than in most other countries with stronger civil societies, and so, the effect of women's marginalization

in politics is even more detrimental here. The increasing violence, sexual harassment and victimization of women at the ground level in many of our political parties has made their participation extremely hazardous now. Women's representation in Lok Sabha now stands at 9% and it averaged 6.15% in all the 13 Lok Sabhas so far. In Rajya Sabha their share now is 7.76% and the average so far is 9%. In State legislatures their average presence ranged from 1.8% in 1952 to 6% in 1999, with the period average being 4.1%. Given this worrisome scenario, the national debate and efforts to provide constitutional and legal mechanisms to enhance women's participation in legislatures are welcome and long-overdue. However there is no consensus yet on the best method of enhancing women's representation.

2.2.2 There are several alternative models for enhancing women's participation in politics and representation in legislatures.

- Reservation of seats with rotation of reservation
- Three member constituencies with one out of three seats reserved for women
- Mandatory nomination of women as party candidates as prescribed by law
- Election by proportional representation with the required number of women being nominated in their party lists – say every third candidate

Each of these methods has merits and demerits, and they are briefly analysed below.

2.2.3 Reservation with Rotation: The 85th Constitutional Amendment Bill, introduced in Lok Sabha in December 1999 provides for reservation of one-third of all seats in the Lok Sabha and the Vidhan Sabhas for women. Such reservation shall also apply in case of seats reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs). There shall be rotation of seats so reserved for women, and such rotation shall be determined by draw of lots, in such a manner that a seat shall be reserved only once in a block of three general elections.

Merits:

This Bill, if it becomes law, will ensure that one-third of all legislators in Lok Sabha and Vidhan Sabhas are women, and will thus substantially enhance women's representation in legislatures.

Demerits:

- (i) Rotation of reserved seats in every general election will automatically result in two-thirds of incumbent members being forcibly unseated every time. The remaining one-third will also be left in limbo until the last moment, not knowing if their constituency will form part of the one-third randomly reserved seats. Electoral competition becomes a chance occurrence determined by draw of lots.
- (ii) There will be inevitable, vociferous and justified demands for rotation of seats reserved for SCs and in some cases STs also. This will trigger off further instability, as the total reservation of seats will be 49.4% from 2001, or nearly half of the seats, which means that every single incumbent will be unseated in every general election.
- (iii) Such compulsory unseating violates the very basic principles of democratic representation and jeopardizes sensible planning to contest and nurture a constituency for both male and female candidates. Voters will be forced to choose and elect only women when the constituencies are reserved, and elected women and men will have neither the incentive nor the opportunity to nurture their constituencies and build an enduring political base.

- (iv) With constituencies rotated every time, and with no chance of reelection, politics may become even more predatory, and political process will lose all credibility.
- (v) Women elected in reserved constituencies will be contesting against other women only, and will lack the legitimacy and opportunity needed to prove their ability and acceptability. Such elected representatives may become light weights in politics.
- (vi) The participation of women from backward classes (BCs) has become a contentious and unresolved issue in this model. Similarly there are demands for quotas for Muslim women. As parties have no choice about the seats reserved, they will be unable to nominate women candidates from these underrepresented sections in constituencies where they have a reasonable chance of success.
- (vii) This model is silent about women's representation in Rajya Sabha and Legislative Councils, where reservation of seats is much more easy and practical, as no rotation would be involved.
- (viii) This Bill does not address the more fundamental issue of inadequate participation of women in politics and their much greater marginalisation within the political parties.
- (ix) With reservation and rotation, there is a high likelihood of many women being nominated as proxies for their male mentors and family members, keeping the seats warm to enable them to reclaim them when the constituencies are de-reserved in the next election. Women's representation thus becomes symbolic and ornamental. This situation is already prevalent in local governments where such reservation and rotation of constituencies is applicable.

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

Merits:

- (i) There will be guaranteed presence of one-third women in legislatures.
- (ii) This model eliminates the need for reservation of constituencies, and yet enhances women's representation.
- (iii) With three members elected, there can be greater flexibility for voters who are tormented between a party or a candidate they prefer.

Demerits:

- (i) The constituencies which are already large, will become larger and unwieldy, making campaigning difficult.
- (ii) There will be confusion as each voter will have to vote for three candidates, one of whom shall be a woman. With a largely uninformed and illiterate voting population, this may become very complicated.
- (iii) The bond between the voters and the representative will be weakened as three members represent the same constituency.

2.2.5 Compulsory Party Quotas for Women: This model makes it mandatory for every recognized political party to nominate women candidates for election in one-third of the constituencies. Similar provisions apply for seats reserved for SCs and STs. Each party can choose where it wishes to nominate women candidates, duly taking local political and social factors into account. To prevent a party from nominating women candidates only in States or constituencies where the party is weak, the unit in which at least one out of three party

candidates shall be a woman for the Lok Sabha shall be a State or union territory; for the State Legislative Assembly, the unit shall be a cluster of three contiguous Lok Sabha constituencies. In the event of a recognised party failing to nominate one-third women candidates, for the short fall of each women candidate, two male candidates of the party shall lose party symbol and affiliation and all the recognition-related advantages. A law amending Articles 80 and 171 of the Constitution should be enacted providing for women's reservation of one third of seats, elected or nominated, to Rajya Sabha and Legislative councils. Corresponding amendments need to be made in the Fourth Schedule of the Constitution and the Representation of the People Act, 1950.

Merits:

- (i) Parties will be free to choose their female candidates and constituencies depending on local political and social factors. Parties will nurture suitable women candidates where they can offer a good fight rather than nominating women in prefixed lottery based constituencies, where they may or may not have viable women candidates. Thus there is flexibility and promotion of natural leadership.
- (ii) Though seats are not reserved there will be a large pool of credible and serious women candidates in the fray. This is so because the real contest in elections is only among candidates nominated by recognised parties. Past data clearly shows that only party candidates matter in elections, and the number of independents is marginal and declining over time. Over 99% of the independent candidates are actually losing their caution deposits.
- (iii) While there is no reservation of constituencies for women exclusively, past data indicates women will be elected in large numbers in this model. From 1952 to 1998, a total of 52806 men contested, of whom 5450 were elected, constituting 10.32% of success rate. The success rate of women is much higher at 17.16% with 350 women elected out of 2040 who contested. Among party candidates, the success rate of men was 26.50% with 2366 male candidates being elected from 1984-1998, out of 8928 total male candidates contesting. The success rate of female party candidates is significantly higher at 32.53%, with 176 women candidates being elected out of the 541 candidates nominated by parties. This data clearly shows that the electorate is not discriminating against women, and in fact the chances of success of women candidate are higher if parties nominate them as candidates.
- (iv) The democratic choice of voters is not restricted to compulsory electing only women candidates. As women members are elected in competition with other candidates, they will be seen as legitimate representatives in the eyes of the public and not just beneficiaries of charitable measures.
- (v) A winning woman candidate will not be a mere proxy or political light weight. She would have won on her own strength, backed by party support, and can nurture the constituency and establish a political base.
- (vi) Parties will be able to nominate women from BCs, minorities and other communities for elective office in areas where there is electoral advantage to them. This obviates the need for quotas within quotas – an issue which has blocked the government-sponsored Bill.
- (vii) This method is most likely to find favour with political parties and incumbent legislators, as there will be no fear of being uprooted by draw of lots. Women will get nominations, even as competition with men is fierce in any constituency.
- (viii) This model also provides for reservation of seats for women in the upper houses.

- (ix) Since parties are free to nominate women from constituencies of their choice, and since there will be many more than one-third constituencies with serious women candidates in the electoral fray, it may result in more than one-third elected members being women.

Demerits:

- (i) Since there is no reservation of constituencies for women, it will not be possible to exactly predict the number of women members in legislatures. It may be more or may be less than the one-third seats.
- (ii) There is fear that in some areas due to prejudice against women candidates, parties may conspire to defeat them. However competitive politics and past record preclude this possibility in real life, and parties will be compelled to nominate women candidates to win.
- (iii) The electorate may be theoretically prejudiced against women in certain areas and defeat them. However, past record suggests that the electorate has not been discriminating against women.

2.2.6 Proportional Representation (PR) with Party Lists: If legislators are elected on the basis of party lists, with the number of party candidates getting elected depending on the proportion of votes obtained by the party, then representation of women becomes simple. Parties can be compelled by law to nominate a woman candidate for every third place in their lists. There will be no need for either constituency reservation or rotation of seats. In fact PR itself will force parties to take into account the political aspirations of women and other social groups. PR will induce parties to nominate sufficient number of candidates for those categories which constitute their social base, so that they have a realistic chance of retaining the support of those social groups. All social groups will have the leverage of compelling parties to be inclusive in their approach merely by threatening to form new political parties representing their interests, or switching their loyalties to other parties which might be more sensitive to their aspirations. However, proportional representation is a much larger issue linked to the ideal method of representative election, and therefore is analysed in greater detail in a latter section.

From the foregoing analysis, it seems clear that the most effective, harmonious natural and least complicated way of enhancing women's representation in legislatures is through amendment of the RP Act providing for compulsory nomination of one-third women candidates by recognized parties, with certain checks and safeguards to ensure satisfactory results.

2.3 Problems with First-past-the-post (FPTP) System

2.3.1 Unrepresentative Legislatures

2.3.1.1 Many analysts have commented on the unrepresentative nature of our legislatures. This is a result of several deficiencies. Firstly the average polling has been around 60%, with 40% of the votes not cast. Many people choose not to vote because of ignorance, apathy or pitiful choice of candidates. Many more people are unable to vote because of fear or use of force. In addition, there are wide-ranging flaws in electoral rolls. Lok Satta's surveys indicate that up to 40% of the electoral rolls in urban areas are flawed – either the names of eligible citizens are not enrolled, or the names of dead or fictitious persons and those who migrated find place in voters' list. In rural

areas these errors are of the order of about 10%, making the overall error margin in electoral rolls about 18-20%. Random post-polling surveys of Lok Satta in Hyderabad city indicate that over 21% of the votes polled may be bogus – either the voters do not exist, or do not live in the locality or city or have not actually voted. Any meaningful analysis must take these serious flaws into account, and the remedies for enhancing representative legitimacy should be practical, effective and fair.

2.3.1.2 Syed Shahabuddin observed that on an average the ruling party or combine needs only about 35% of the votes polled. This in itself forms only around 21% of the total electorate. "The popular base of the government of the day would fall even lower, if we take into account the inaccuracies in the electoral rolls and the extent of those corrupt practices like-rigging and booth-capturing which pile up votes without voters!" This excludes the corrupt practices which incite or bribe a voter into casting his vote the way he does. As Shahabuddin further points out, "The above macro analysis assumes a homogenous electorate with no variation in caste, religion, race, language, and domicile

Table 2.1

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

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

Note: * Congress lost a large number of seats with small margin

** Figures not immediately available

Source: Syed Shahabuddin: 'Representational Legitimacy of the Existing System' – paper presented at the National Seminar on Electoral Reforms, Kolkata, 17-18 Nov 2000

so that it is equally responsive to the ideology and programmes of all political parties. This is an ideal picture. In fact, the plurality of the Indian society is writ large on its face, and directly or indirectly every political party has over the years developed a well-defined social constituency, discarded a national appeal and adopted sectional appeal which would at least keep its flock together. In fact, even if it works for votes from outside its social constituency, this is primarily

to safeguard or strengthen the representation of that social constituency or to neutralize / erode to the extent possible the support base of its main adversary".

2.3.1.3 These distortions of electoral roll irregularities and the first-past-the-post (FPTP) system of elections based on West minister model in a plural society resulted in several serious consequences. On the one hand the winning party takes power on a minority of the votes cast. As C.B.Muthamma pointed out, 'every single government since independence has been based on a minority of votes cast. This is true not only of parties that do not have overall majorities in the legislatures but also the governments that have had an absolute party majority in parliament.' On the other hand, a large number of social groups which may not have sufficient presence in constituencies to secure election of their candidates remain unrepresented and underrepresented, thus seriously undermining the representative legitimacy of the democratic system. This would be a severe flaw in any democracy, but is particularly debilitating in a vast, plural democracy with unmatched diversity.

2.3.1.4 The other problem of the FPTP system is that many candidates are elected with the support of a minority of votes polled. To be elected, a candidate needs simply to have more votes than any challenger. The National Commission to Review the Working of the Constitution (NCRWC), in its consultation paper "Review of Election Law, Processes and Reform Options" presented data showing that in the 13th Lok Sabha election, only 40% of the members were elected with the support of over 50% of the votes polled. Data also shows that over 81% of the members obtained more than 40% of the votes cast, and 90% of the members obtaining over 35% of the votes polled. In the 12th Lok Sabha election, one-third of the members were elected with a majority of votes polled, 80% of the members were elected with over 40% of votes polled, and 94% of members with over 35% of the votes polled. In the 11th Lok Sabha election, 27.44% of the members were elected with a majority support in their constituencies, where as 68.5% of the members obtained over 40% votes, and 85% members were elected with over 35% of votes in their constituencies. In elections for State Legislative Assemblies the picture varies; Tamil Nadu has elected over 90% of the members with the majority support, and Andhra Pradesh has elected over 72% members with majority support, and over 90% members with over 45% votes polled. At the other extreme, Uttar Pradesh in 1996 elected 11% of the members with majority support, and 42% of members with over 40% support, and 78% of members with over 35% support. Clearly, the FPTP system exaggerates the electoral significance of large social groups, and correspondingly reduces the role of smaller groups in elections.

2.3.1.5 The above analysis raises two questions. FPTP system has significantly distorted the composition of legislatures, and favoured large parties at the expense of sizeable social groups which are underrepresented. At the constituency level, many candidates have been winning with a minority support. In many ways, both these issues are linked. We have to evolve methods to enhance representational legitimacy of members, and improve the composition of legislatures to reflect the various shades of opinion and the social groups.

2.3.1.6 However, it must be recognized that there are serious flaws in this analysis too. It is somewhat simplistic to assume that in the FPTP system, all the votes polled **for** the other candidates are necessarily **against** the winning candidate. In a constituency election based on plurality, the voters are merely given the choice of selecting the person they feel would best

represent their interests. When there are four candidates, A, B, C and D, it does not necessarily follow that the votes cast in favour of B, C and D are against A. Therefore the assumption that the individual elected was opposed by all those who voted for other candidates is fallacious. The remedy to this problem lies in giving voters the option of ranking their choices in an alternative voting (AV) system. Then the votes polled in favour of the candidate who obtained least support can be transferred to other candidates based on the second choices, and so on until a winner emerges with over 50% support. In the absence of such a system, true voter preferences cannot be gauged, and the representative legitimacy of the elected member can never be truly ascertained.

2.3.1.7 In reality, this quest for determining whether those elected for the constituencies truly represent the constituencies that elected them masks a more crucial question of the overall composition of the legislatures. In FPTP system, as we have seen above, many social groups remain underrepresented, and the winning party most often obtains only a minority support. A large body of opinion does not get represented in the legislature, leading to alienation. Entrenched parties, whose functioning is far from democratic and accountable, have no incentive to change their nature and behaviour in the absence of electoral challenge from new formations with realistic chance of success. Scattered groups, however large, are totally left out of the legislatures. Concentrated presence in a few pockets, rather than broad public support across society, becomes the determining factor in winning elections in a territorial constituency-based FPTP system.

2.3.1.8 One direct consequence of non-representation of the various social groups, and the rise of false elites to accommodate these groups is the rising demand for reservations for various groups for elective office. As the economically and socially dominant sections have perpetuated their hold on political and administrative levers, representation of scattered subgroups became an emotive issue. Exaggerated claims of numbers and extreme postures became the norm. Even where the groups were accommodated by parties in allocation of seats, almost always the benefits accrued to individuals and not to the different social groups or the society at large. Equity and fairness suffered, and genuine long-term policies for the upliftment of the poorer sections took a back seat. Much of political management became patronage based. As sharing of spoils is the basis of sharing political power, honest building of social coalitions has become virtually impossible. Social cleavages thus were perpetuated as political divisions of a narrow kind. Exclusively constituency-based representation, instead of being a balm to heal the past wounds, and an adhesive to cement bonds, has actually lead to seemingly irreconcilable differences, and potentially explosive situations. Not surprisingly, in this zero-sum-game of politics of patronage, every segment of population feels victimized and discriminated against. Education, health care, economic opportunities and decentralization which are the true measure of empowerment and social, economic and political upliftment have been grievously neglected.

2.3.1.9 There is another serious defect in the constituency-based FPTP system. As *Michael Dummett* in his *Principles of Electoral Reform* explains, many voters have felt within themselves a conflict between the two purposes of the electoral process – electing a person, who will best represent the constituency, and determining the overall composition of the legislature by political parties. "An elector may favour a certain political party, or even be a member of it, and yet disapprove of the candidate who is standing for that party in the single-member constituency in

which he has a vote. The elector may dislike or distrust the candidate personally; or he may support some particular cause or policy, not that of the party as a whole, which that candidate opposes..... He is torn how to cast his vote: he wants his party to gain most seats in Parliament, and does not want to be disloyal to it; but his loyalty may also go to the particular cause in question, or he may simply think that it would be disastrous if he were elected to Parliament. It is obviously a serious defect in an electoral system that it can place voters in such a quandary".

2.3.2 Political Parties and Representation

2.3.2.1 In any study of legislatures and representative legitimacy, the vital role of political parties should be kept in mind. Political parties are the arbiters of politics and the nation's fate in a true sense. They aggregate interests of various groups, and bring them together for collective political action. They bring individuals into the fold of politics. Parties spread ideas and organize people around them. They exercise enormous influence on public discourse. They drown all other voices literally by the noise levels they generate. They occupy endless newspaper space and radio and television time. They have a direct impact on public policy affecting millions of lives. Their espousal of causes, and their opposition to policies affects almost all state actions. Their agitations on real or contrived issues paralyse all economic and social life. Politics in many countries is therefore inseparable from political parties. It is unimaginable to think of a liberal democratic society without influential political parties.

2.3.2.2 There is no genuine democracy in which parties do not play a dominant and decisive role in both elections and governance. The well-meaning but somewhat naive attempts of idealists to promote party-less democracy have floundered in all countries, including in India. The heroic efforts and advocacy of Lok Nayak Jayaprakash Narayan for party-less democracy are a telling illustration of such an idealistic vision of a democratic society based on free will of individual citizens without the inter-mediation of political parties. However, such unalloyed idealism could not withstand the power of organized political parties, and ultimately failed to take off. Many scholars believe that apart from competitive elections, the existence of a whole series of intermediate institutions in society espousing particular political values is critical for the survival of a liberal democracy. In practice, it is well recognized that electoral political action outside political parties is almost always doomed to failure. This applies equally to countries like the United Kingdom with strong and well-organized political parties and to nations like the United States with very loosely organized political parties with enormous accent on individual liberty. Even in the US, an occasional independent like Ross Perot may significantly influence public attitudes on certain crucial issues for a time, but cannot realistically hope to capture the levers of power.

2.3.2.3 In India, the number of independents elected to Lok Sabha from 1952 to date shows their marginal and declining role in our political process over time. While the average number of independent Members elected to Lok Sabha between 1952 and 1967 was 34, their numbers dwindled to 8 since then. Even more remarkably, while 60% of all independent candidates lost their deposits in 1957, 99.7% of them lost the deposits in 1996. That means, only 0.3% of the independent candidates have obtained more than 1/6 of the votes polled in their respective constituencies. The few who manage to gather a significant vote share, and occasionally get

elected, are most often party rebels who are denied tickets, but are supported by a sizeable faction or caste group in the constituency. Rarely are they reelected as independents.

Table – 2.2
Independents Elected to Lok Sabha

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

Source: Lok Satta Data Unit

2.3.2.4 Even in the States, where Assembly Constituencies are much smaller and local factors play a much more prominent role in elections, the role of independents has been limited, and is declining over the years. The data for Andhra Pradesh Legislative Assembly shows that 1967 saw as many as 68 independents elected. However, since 1978, the independents are getting elected in much smaller numbers ranging from 17(1983) to 9(1985). It is well known that almost always the independent candidates elected to the Assembly are party rebels denied party ticket. Eventually most independents find themselves in a major party. Rarely did an independent member manage to get reelected again as an independent candidate. This shows the power and dominance and control of political parties in electoral politics and competition for elective public office.

2.3.2.5 The elections are largely plebiscitary and the people vote for a platform or a leader or a promise or, as is seen more often, vote to reject the incumbent government or party in power. The individual candidate's ability is rarely an issue in our electoral politics. At the same time party workers and local oligarchies do not regard election as an opportunity to vindicate their policies or ideologies. In most cases, election of their chosen candidate is merely an opportunity to have control of state power and resources, to extend patronage selectively to people of their choice, to get pliant local bureaucrats appointed in plum postings, to humiliate and harass the inconvenient employees who would not do their bidding, and increasingly to interfere in crime investigation and prosecution by doctoring evidence, influencing investigation and letting criminals loyal to them go scot free and implicating people opposed to them in criminal cases. In the midst of these skewed objectives, governance is an irrelevant, and often an inconvenient ritual without any meaning to those in power and having no positive impact on the people.

2.3.3 Failure of Interest Aggregation

2.3.3.1 From the forgoing analysis, three things are clear. Firstly we should endeavour to ensure that individual members elected do represent their constituents. Secondly, the composition of the legislature should broadly reflect all segments of public opinion fairly. Finally, electoral system and equitable representation cannot be de-linked from political parties and their chosen candidates. We should therefore opt for an electoral system which takes into account all these realities and requirements. Once we accept the party system as a necessary and integral part of our electoral process, the question then arises whether the parties are geared to representing society equitably. The main function of political parties is building social coalitions through aggregation of interests of various groups, and welding them into a cohesive political force. Let us examine how this function is discharged by parties in our FPTP electoral system.

2.3.3.2 Given the complexity of Indian society, collective political participation of social groups has always been beset with serious problems. Our society, over the years has evolved reasonably effective methods of interaction within a social group, occupation, profession or trade union. Collective social or economic interest ensured certain amount of fairness, harmony and predictability in relations between individuals within a group. But across groups this predictability often fails, leading to conflict. It is much more socially acceptable to resort to deviant behaviour in dealing with other social or professional groups. This situation has led to serious distortions and mutual suspicion and bickering. Inevitably, the interest aggregation function of political parties suffered grievously on account of these distortions. Political parties tended to gloss over these difficulties in interest aggregation. In their quest to somehow cobble together a social coalition to win elections, parties tended to resort to short-term populism or attempted to be all things to all people. In the process, even when parties obtained convincing majorities, their capacity to reconcile the interests of various groups in society has been severely limited. In effect, most parties are no longer coherent political formations with common ideology, vision and purpose. Parties in fact tended to be loose coalitions of warring factions, with temporary truce imposed from time to time in order to win elections.

2.3.3.3 The failure of interest aggregation function, coupled with the difficulties in inter-group interaction led to two serious consequences. Parties tended to depend on false elites in castes, or religious and other social groups. In order to enhance their collective bargaining position, these castes and religious groups presented a deceptively solid picture cutting across party barriers. In elections across India it is extremely common to find people voting for candidates of their caste, irrespective of their party affiliation. A party has merely become a label to win elections. Manifesto and ideology have become increasingly irrelevant in elections and political process. Parties were forced to enlist the support of prominent members of the traditional social groups, in effect perpetuating social rigidities. The democratic political process and universal adult franchise have thus notoriously failed in genuine political socialization and individuation. The citizen no longer sees himself as an individual with certain interests, but is merely a part of the traditional group. The political competition based on policy preferences and ideological differences is stifled within a caste or religion or other social group.

2.3.3.4 The second consequence of this failure of genuine political participation of individuals across traditional social groups is the tendency to rouse emotions on ethnic and sectarian lines. *Ghettoization* of caste and religious groups has become the norm. Each party or individual

leaders of social groups tended to play upon the fears of these groups and consolidate them as a voting block. Unbridled populism and zero-sum-game politics became the norm. Several caste leaders took up extremely narrow and popular causes in support of their group and successfully mobilized their communities as a solid political group around one issue. Often this brought them into conflict with other groups. Parties attempted to accommodate all such groups with conflicting interests, without a genuine attempt at reconciliation. As there is no attempt at honest coalition building based on long-term policies for the advancement of all such deprived social groups, bitterness persisted or deepened, resulting in more isolation and *ghettoization*. Political process thus tended to further accentuate the traditional social rigidities. As political competition within a social group is diminished, there is no serious attempt to articulate an alternative inclusive approach. Many reformist elements in various social groups were marginalized because of this peculiar tendency of intra-group consolidation and inter-group conflict. The painful consequences of this political and social behaviour on our polity and society are evident everywhere. Given these factors, obviously there is need to encourage political participation and interest aggregation across a State or the nation as a whole, instead of consolidation of narrow social groups in a small geographic area. Political competition within traditional social groups, and interest aggregation across groups are both vital to the health of our polity and society.

2.3.4 Possible Reforms

Considering all these factors, there are several possible reforms to enhance the representative legitimacy of our parliamentary democracy.

1. Majority System
2. Compulsory Voting
3. Negative Vote
4. Requirement of Minimum Percentage of Polling
5. Multi-member Constituencies
6. Proportional Representation

Each of the main reform options is discussed below:

2.4 Majority System

2.4.1 One proposal made by several people including former President Mr R.Venkataraman, and endorsed in the National Commission to Review the Working of the Constitution (NCRWC) consultation paper 'Review of Election Law, Processes and Reform Options', is introduction of the requirement of obtaining a majority vote of more than 50% (as opposed to a plurality or the largest number of votes among contesting candidates as at present) for winning a constituency election. One alternative in case there is no winner in an election is to have a **succession of indecisive ballots** until all but two candidates are eliminated, and one of them emerges as a winner. A second alternative adopted in '**majority-runoff**' systems is in case no candidate obtain the majority vote in the first ballot, a second and final ballot, known as a run-off, is held between the two candidates who secured the highest number of votes in the first round. This is the system used in 15 of the 25 countries with direct presidential elections. (Austria, Brazil, Bulgaria, Chile, Colombia, Ecuador, France, Finland, Madagascar, Mali, Mozambique, Poland, Portugal, Russia and Ukraine. — Source: Comparing Democracies – ed. Lawrence Le Dec, Richard G. Niemi and Pippa Norris). Mali and Ukraine also use the same method for legislative elections. A third variant is the **majority-plurality system**, adopted in legislative elections in France. In this system, there is no drastic reduction of candidates on the second ballot, although a threshold may

be imposed for candidates to stand at the second ballot, and the winner is the candidate who gets a plurality of the vote. As all these formulae require the holding of two or more ballots if no majority is reached on the first one, the '**alternative vote**' is preferred as a less costly option, whereby voters, instead of casting a vote for a single candidate, rank candidates in order of preference. If no candidate obtains a majority of votes based on the first preference, the candidate with the lowest number of votes is eliminated, and the second-preference votes expressed in his ballots are counted and 'transferred' to the other candidates. This process continues until the eliminations and transfers produce a majority for one of the remaining candidates. This method is used in Ireland for presidential elections and in Australia for legislative elections.

2.4.2 These methods have the benefit of ensuring that the elected representative enjoys a majority support. Obviously the 'alternative vote' method involving a single transferable vote (STV) and a single ballot is the most sensible option to prevent further ballots. However, such a transferable vote can be ruled out under Indian conditions, as it is impractical for the bulk of our voters who may find it complex, cumbersome and incomprehensible. Any run off involving only the top two candidates does not necessarily guarantee the fairest representation, because the third candidate who is eliminated may as well be the most acceptable candidate, though a second preference for many voters. A second ballot with 'majority-plurality' system as in France is no great improvement, because the winner is again decided on a plurality of vote on the second ballot. A second ballot also adds to the cost and complexity of the election. The NCRWC consultation paper broached the possibility of a second ballot the next day, saving costs of mobilizing men and material for the second time. However, a run-off poll the next day is impossible as the counting and computation of results even with electronic voting machines (EVMs) cannot be guaranteed on the day of polling. Often counting has to be centralized. Even if counting is over on the same day, the EVMs have to be reprogrammed for the run-off ballot, which cannot be completed instantly. All these practical difficulties mean that the run off poll will have to be held several days' later, with attendant costs and complexity, making the process cumbersome.

2.4.3 But the real difficulties of majoritarian systems based on a second ballot are much deeper. Firstly, in the absence of STV, a second ballot can never guarantee the election of the most acceptable candidate. In the second ballot, the voters are offered only two candidates, and they have to choose between these two, though the third candidate might have been the preferred second option to most. If more candidates are added to the ballot, we will have to revert back to the plurality system as in France. A succession of ballots eliminating each is never a realistic option. In other words, in the absence of STV, run-off polls do not guarantee fairer representation. The second objection to run-off polls is that it will further marginalize significant, but not dominant social subgroups. If in a constituency a caste or sub-caste is dominant in numbers, a majority system will perpetuate its political dominance without a voice for the minority. Alternatively if two or more social groups form an unbeatable majority, the rest of the population is forever denied representation. Such permanent majorities with no floating vote will further alienate the large minorities and undermine the legitimacy of representation. The third difficulty with a majority-run off system is that it may sometimes paradoxically enhance the political influence of small groups at the cost of more significant groups. If, for instance, one social group has over 40% of the population in a constituency, but is

short of majority, then a much smaller group with under 10% of the population will acquire far greater clout than its numbers indicate. The other numerically larger groups with larger population will be neglected.

2.4.4 Another important problem with the majority-run off system is that while it attempts (somewhat ineffectually, as we have seen) to enhance the legitimacy of a representation at the constituency level, it fails to address the more fundamental question of the composition of a legislature. In a plural society with enormous diversity within and across region, the parties' legislative presence will never be directly proportional to their electoral support. If in certain regions a party obtains large majorities, but fewer seats, and in other regions another party obtains small majorities but more seats, then a party or group of parties with minority support will still be in power in a constituency-based election. In other words, the fundamental objection to the FPTP system remains unaddressed, and the majority may remain inadequately represented.

2.4.5 The greatest difficulty with majority-run off system is that scattered social groups, though significant in number, may not get any representation at all in legislature, as their numbers are well below the majority in each constituency. This leads to a sense of alienation and *ghettoization*, and will eventually lead to irresistible demands for political reservation of constituencies. But such constituency-reservation will accentuate the problem in two ways. On the one hand political proxies tend to be nominated by dominant groups, and there will be no real effective political representation to the neglected and scattered groups. On the other hand, it leads to resentment and bitterness among the more numerical and influential sections in the constituency, as they are permanently denied an opportunity for political leadership on account of reservation. Rotation of reserved seats is sometimes suggested as a remedy to such a situation. But rotation leads to uncertainty, more nomination of figureheads as 'proxies', incapacity to nurse a constituency and build an enduring political base, artificial and foisted leadership, and erosion of legitimacy of an election which is based on rotation (by draw of lots or population). In any case reservation of seats for one sub-group fuels demands for such reservation for other groups, and the whole society tends to be fragmented. The electoral system, which should aggregate interests and bring people together through honest negotiation and coalition-building, degenerates into a no-holds-barred struggle for patronage and share in the spoils. False elites will rule and real social, economic and political progress would remain as distant as ever.

2.5 Compulsory Voting

2.5.1 The voting percentages in India range between 50-60% in parliamentary elections, and higher in State and local elections. Though this is by no means a low percentage by global standards a 60% vote still means that a government, even if it obtains majority of votes polled, has the mandate of only a minority of voters. As Syed Shahabuddin pointed out, the picture is much more asymmetrical in India, with the ruling parties obtaining power with a minority of votes polled. No government was ever formed at the Union level with the support of a majority of votes polled. Typically, we have 60% voting, and 35% of polled votes for winning a majority of seats. If we assess the government's mandate in terms of the total voting strength of the population, it often ranges from 18.8 to 24.2% (*refer to Table 2.1. on page 18*).

2.5.2 To overcome this anomaly, one suggestion sometimes made, and endorsed in the NCRWC consultation paper, is making voting compulsory, or give added incentives like tax

breaks to encourage voting. There is no doubt that greater participation in voting enhances the quality of democracy and legitimacy of representation. But these efforts to either penalise those who do not vote or provide incentives for voting are both impractical in real terms in Indian conditions. They are particularly counterproductive in the face of glaring deficiencies in voter registration. Lok Satta's studies reveal that up to 25% of the votes registered may be flawed, and people have no real access to registration process (*please refer to Table 3.1 on page 59*). Already huge electoral fraud exists on account of deficiencies in voter registration and polling, with over 21% of possible bogus voting in select polling booths surveyed in a major city (*refer to Table 3.2 on page 61*)

2.5.3 There are umpteen instances of voting percentage reaching 100% or even exceeding the voter strength through massive rigging and electoral fraud. Therefore the real answer lies in making the voter registration and verification much simpler and more accessible, in order to eliminate distortions in enrollment. One way is making the user-friendly and accessible post-offices as nodal agencies for supply of electoral rolls and registration of voters. This transparent, simplified and accessible voter registration and verification, coupled with mandatory voter identity for voting will significantly enhance the legitimacy of elections. The enhancement of voter participation should then be achieved through civic education and political socialization, which are the main functions of our education system and political parties. Any other measures to make voting compulsory will only increase electoral fraud and lead to harassment of innocent citizens. Measures to provide tax and other incentives for voting will be impractical, costly and cumbersome.

2.6 Negative Vote

2.6.1 The increasing criminalization of our politics and arbitrary nomination of candidates for elective office by political parties have often given people a less-than-happy choice in elections. One suggestion which has been offered is a negative vote, whereby there is a column on the ballot paper 'None of the above', and voters who do not wish to choose any of the candidates on the ballot can express their dissent. Vice President Krishan Kant and others have argued that such a negative or rejection vote must be counted as valid, and the winning candidate should obtain a majority of all valid votes polled, including the negative votes. This argument contends that in such a situation the parties will be compelled to nominate worthy candidates who are acceptable to all segments of society. However, the majority requirement has all the pitfalls discussed earlier, and can be ruled out as an option. But there is a strong case for giving the voters a choice to reject all candidates even if such a rejection vote has no bearing on the outcome of election. A rejection vote is a positive expression of dissent, and many persons who stay away from the polls as they feel that the choice of serious candidates is unsatisfactory may then have an option of rejecting all candidates. Such rejection votes, if counted, will act as a powerful signal to the parties and unite the dissenters into a strong political force to persuade parties to reform. It will also give a creative expression to dissent, which is now either unexpressed or takes a violent and destructive form in many parts of the country. There can be a provision by law to the effect that if the rejection votes exceed the highest number of votes polled by any candidate, then a reelection with a fresh slate of candidates shall be held. However, even this limited provision for reelection can have serious consequences in pockets under the grip of secessionist or extremist movements. Therefore the safest course seems to be to have a

provision for a negative or rejection vote as an expression of dissent, without affecting the actual outcome of the election.

2.7 Requirement of Minimum Percentage of Polling

2.7.1 While the actual polling percentage in India has been over 50% in most elections, there have been rare instances in which only a small minority of votes has been cast. There have been suggestions that such an election lacks legitimacy and for an election to be valid, there should be a minimum polling percentage. However, experience shows that in the face of extremist calls for boycott and threat of force, the polling percentage can be very low. If such an election is held void, then enormous leverage is given to extremist groups, and the democratic process is held hostage to the gun. Also as the events in the Punjab and North-east amply testify, restoration of democratic electoral process even with participation of a minority of voters is the best guarantee for peaceful resolution of the crisis. Therefore it is not desirable to fix a minimum percentage of polling by statute for an election to be valid.

2.8 Multi-member Constituencies

2.8.1 There are serious and valid criticisms of the present single-member constituencies under the FPTP system.

- Firstly the voter is in great dilemma when there is a divergence in his preference between a party with a desirable candidate and a candidate with undesirable party.
- Secondly, candidates or parties with broad-based, but significant support are eliminated in preference to those with concentrated support base.
- Thirdly even significant minorities will be underrepresented, as in any single-member constituency they have no realistic chance of winning.
- Fourthly, the supporters of a party have no real choice except to vote for a nominee of their party, and therefore party leaderships are less sensitive to public opinion while nominating candidates for elective office.
- Fifthly, reservation of seats for SCs, STs or women in single-member constituencies is problematic. A constituency is reserved for a longtime for a community, denying others an opportunity to contest, and forcing voters to choose only members of one community to represent them. Or there is regular rotation of reservation with all the attendant difficulties of proxy candidates, poor leadership development, and uncertainties of rotation.
- Finally rigging, booth capturing and vote-buying are rampant to get those extra votes required to ensure election of a candidate in the single-member constituency in FPTP system.

2.8.2 The election of legislators from large constituencies returning several members will significantly reduce the flaws in elections based on the single-member constituencies. Under this system of **multi-member constituencies**, voters will return two to six members. There are three ways of adopting this system. One method is each voter can vote for one candidate of his choice. If, in a multi-member constituency five members are to be returned, then the first five candidates ranked in the order of votes they obtained will be elected. Each party can nominate up to five candidates. The second method is each voter votes for five candidates of his choice. The votes are not transferable. The five candidates who obtain the highest number of votes will be returned. The third method is each voter has a single transferable vote (STV), and he or she ranks the

candidates in the order of preference. The candidates obtaining the lowest number of votes are eliminated in the first round, and their votes are transferred to other candidates based on second preference, and so on. Obviously under Indian conditions STV is a complicated and cumbersome method, and only a single non-transferable vote is practical.

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

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

2.8.5 The criticisms against multi-member constituencies are two fold. Firstly, the constituencies will be larger, and will make election a more difficult and expensive exercise. Secondly, there is no clear bond between a constituency and the member representing it. It can be argued however, that in multi-member constituencies there are several representatives instead of one, and in fact it is an advantage to the electors. Another serious defect in the multi-member constituencies is that the incentive or propensity for rigging, booth capturing and vote buying is not reduced. In fact electoral irregularities and malpractices may increase. Two strong candidates with money and muscle power competing against each other in a single-member constituency may neutralise each other, and in any case only one will be elected. But in a multi-member constituency they both may successfully employ muscle and money power, and both may emerge as winners at the cost of more decent candidates!

2.9 Proportional Representation

2.9.1 Problems of Single-member Constituencies

2.9.1.1 FPTP system has the propensity to exaggerate the importance of larger parties and undermining the influence of the majority of voters. As seen in Table no.2.1 on page18 no single party at the national level ever obtained the support of the majority of voters who went to polls, and yet governments have been formed with overwhelming majorities in Lok Sabha several times. Large, but scattered social groups are always underrepresented. The consequent marginalization of large segments of public opinion in a plural society has evidently led to *ghettoization* of numerically important groups like minorities and dalits. In order to overcome the problem, demands for reservation of constituencies have been raised from time to time. Even such reservation failed to ensure justice to Scheduled Castes. As the seats are reserved almost always in areas where SCs are in a numerical minority, the candidates put up by major parties do not enjoy independent political base, and often have no real political clout. Reservation is often reduced to tokenism. In any case, the political system cannot extend such constituency reservation on a large scale for fear of reducing elections to a quirk of fate by draw of lots as rotation of seats becomes inevitable with large scale reservation. Large scale reservation will also undermine the legitimacy of democratic process and may invite backlash from the other segments of the population, thus proving counter productive.

2.9.1.2 Also in FPTP system, a party is desperate to somehow win the election in the constituency by all means fair or foul, as each seat becomes critical in the legislative numbers game to form government. For the local candidate, who is often a symbol of dominance of a local caste or social group or faction, victory at the hustings is of critical importance to acquire influence and extend patronage. Thus, both the candidate and the party have a great stake in the constituency election, unmindful of consequences in other constituencies across the region or the country. The ugly practices adopted by a party or candidate at the constituency level become somehow acceptable in the quest for electoral success. Once a candidate obtains nomination of a major party, he and his caste or group often make it an issue of personal prestige to be elected in the winner-take-all electoral and power game. Use of exorbitant amounts of unaccounted money, vote-buying, bribing officials, hiring hoodlums, criminalization of politics, deployment of muscle power to brow beat voters and rigging of polls – all become the norm in most constituencies. As election in each constituency runs on similar lines, the parties and candidates are not inhibited by the fear that their illegitimate efforts to win a few constituencies might undermine the larger objective of enhancing the voting share in a whole State or the nation.

2.9.1.3 Another feature of the FPTP system is that reform of the polity becomes more and more difficult. Genuinely reformist groups with significant public support scattered across the State or the country, but with limited resources and no will resort to illegitimate practices have no realistic chances of success in the FPTP system. As a result, truly public-spirited groups tend to wither away. Only entrenched parties willing to raise resources illegally, and deploy muscle power and money power in abundance can remain in the fray. Also extremist fringe elements which can raise money and resort to violent methods can gain political influence in pockets where they are strong. In system in which winning the seat by somehow obtaining the largest number of votes is all-important, honest individuals or reform parties fighting against electoral

malpractices and corruption have very little chance of success. This tends to perpetuate the status quo, and people have to live with the often unhappy choice offered between candidates and parties resorting to the same ugly practices and misgovernance. Political process in India has thus become increasingly incestuous. Even as power alternates between parties, the nature of the power game and the quality of governance remain unaltered, undermining the legitimacy of representation and faith in democratic system.

2.9.2 Rationale for PR

2.9.2.1 With a view to correct many of these distortions and encourage equitable representation and inclusion of marginalized groups in the political process, several scholars, activists and opinion makers have been arguing in favour of proportional representation (PR). As *Michael Dummett* explains, "The rationale of PR is obvious. The principle is that the seats in Parliament (legislature) should be allotted to the political parties in the same proportion – or as near to it as is feasible – as support for those parties is divided among the national electorate. PR is often applied with a threshold. If a party has failed to obtain a certain minimum percentage of support – often fixed at 5 percent – it will get no representation in Parliament, at least unless it has succeeded in getting one or more candidates elected to represent constituencies; parliamentary seats are then divided among the other political parties in the same proportion as their national support. The principal purpose of threshold is to deny representation to extremist parties.

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

2.9.2.3 PR is by far the most popular form of representation in democracies all over the world. In 1997, *Andre Blais* and *Louis Massicotte* (Chapter 2 Electoral Systems – ‘*Comparing Democracies*’ ed: Lawrence Le Duc, Richard G Niemi and Pippa Norris) listed 13 countries which followed plurality systems or FPTP systems of the kind we practice in India. Of these, 10 countries including India, Pakistan (in 1997), Bangladesh, the UK, the US, Canada, Philippines, Malawi, Nepal and Zambia follow plurality system in single-member constituencies. Only four countries follow majority systems involving either run-off elections or alternative vote (STV). Of these, France follows the majority-plurality system for legislative elections, involving a run-off election in case no candidate obtains a majority on first ballot, and on the second ballot the winner is decided by plurality. Mali and Ukraine follow majority run-off system, and Australia follows the STV system or alternative vote, where by the electors give preferences to all the candidates and votes of eliminated candidates are transferred to other candidates. As opposed to this, as many as 36 countries follow some form of PR system. 25 countries follow pure PR system. 24 of them follow List system and one country, Ireland follows the STV system. Ten countries follow mixed systems with a combination of PR and plurality system. One country, Hungary follows a combination of PR with majority system.

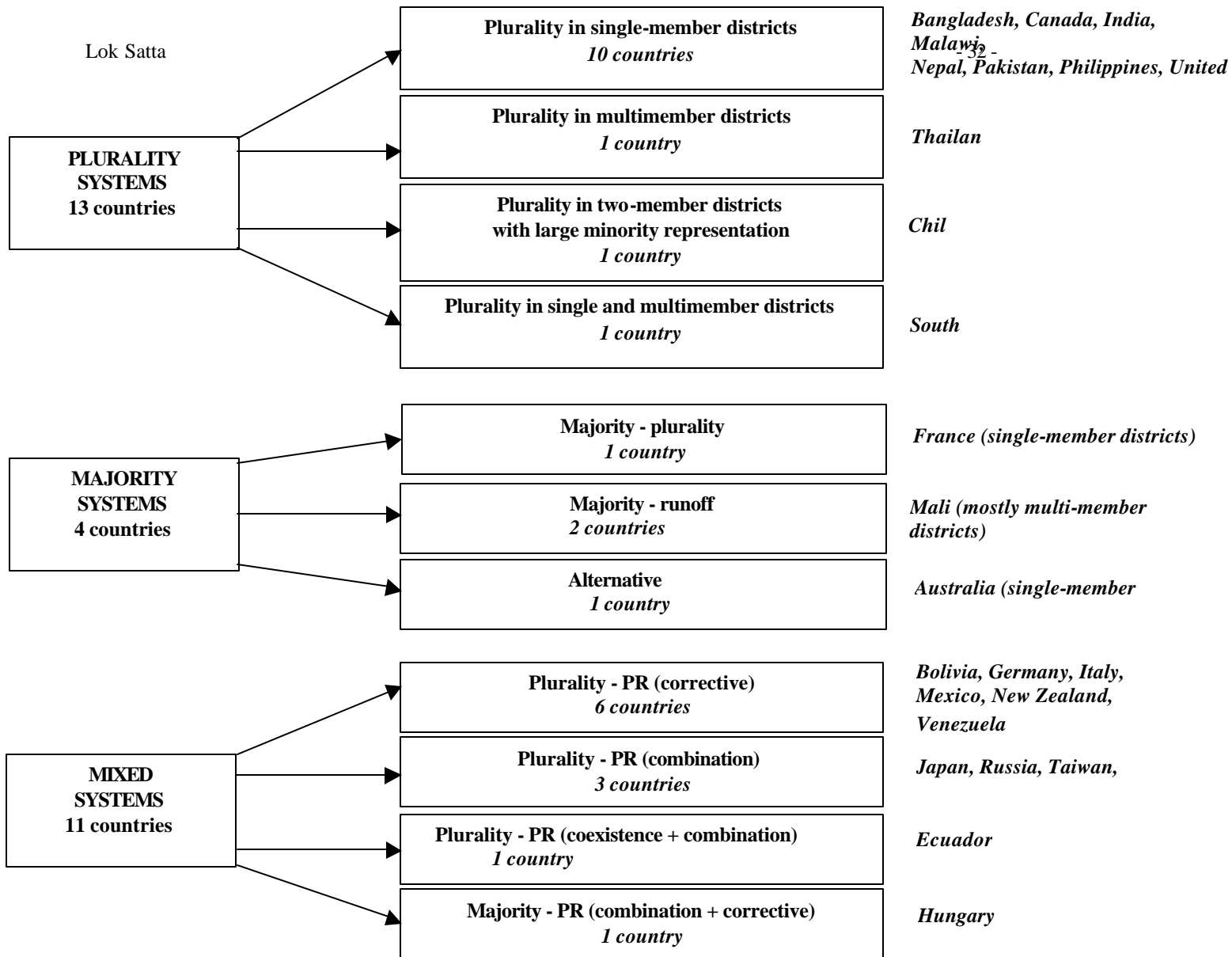


Figure 2.1. A Typology of Electoral Systems (legislative)

Note: PR = proportional representation; STV = single transferable vote.

Source: Lawrence LeDuc et al (ed) *Comparing Democracies – Elections and Voting in Global perspective*, Sage, London, 1996, pg 54 -55

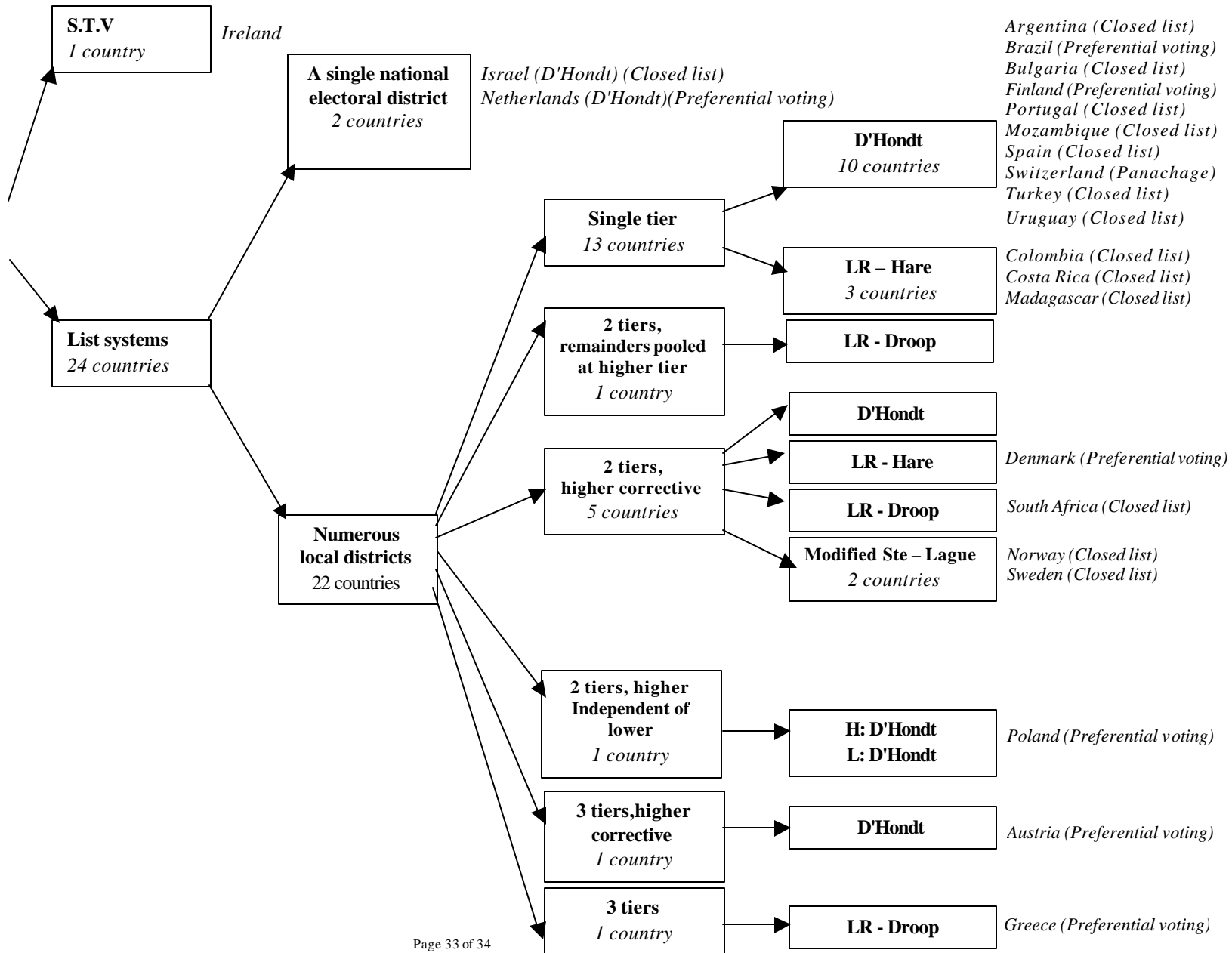


Figure 2.1.Continued

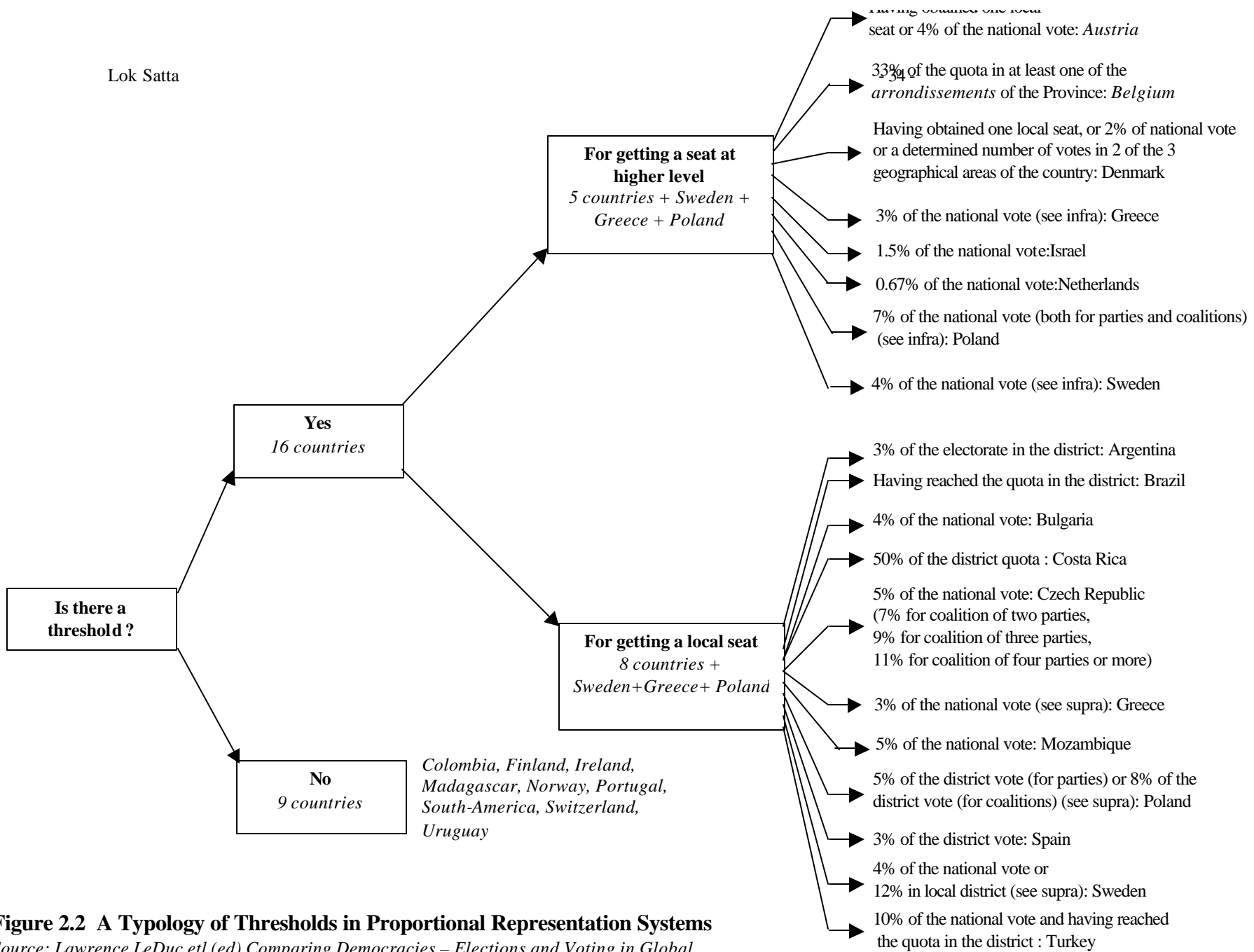


Figure 2.2 A Typology of Thresholds in Proportional Representation Systems

Source: Lawrence LeDuc et al (ed) *Comparing Democracies – Elections and Voting in Global Perspective*, Sage, London, 1996, pg 63

2.9.3 Law Commission's Proposal - an Analysis

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

2.9.3.2 The advocacy of partial PR system by the Law Commission is eminently justified. However, the specific proposals have certain serious defects.

- Firstly, if 5% of the national vote is the threshold level for eligibility to get representation in the additional seats through PR, that too after excluding the votes polled in territorial constituencies where the party candidates forfeited security deposits, then it is certain that only two parties will be eligible in India in a Lok Sabha election. This certainly is not in keeping with the need for equitable representation based on votes obtained.
- Secondly, Law Commission proposes that only recognized political parties should be eligible for this pool of additional seats. This guarantees that only entrenched parties will survive, no matter how inadequate their role is. Once there is a threshold level of voting percentage below which a party shall not be entitled to obtain seats through PR, it is both unjust and arbitrary to limit representation only to recognized parties. Recognition of a party itself is based on past performance at the polls, and any attempt to directly or indirectly freeze this recognition process by erecting entry barriers is clearly undemocratic and unfair.
- Thirdly, the Law Commission suggested a single national pool of 138 additional Lok Sabha seats to be distributed through PR. At the same time the number of seat in each State is proposed to be frozen in order to provide incentive for population control. Once the additional seats are distributed in proportion to the votes received across the country, and not State-wise, it would benefit the parties which polled more votes in the more populous States. Clearly it runs counter to the purpose of freezing the strength of Lok Sabha State-wise.
- Fourthly, the very objective of PR system is to correct the distortions in representations in FPTP system. In countries like Germany where such a dual system of territorial constituencies and PR is in vogue, a party's overall eligibility of representation is determined on the basis of the proportion votes obtained by it, subject to a threshold of 5% vote or 3 territorial constituencies won. Then the party's territorial seats won are deducted from this eligibility, and the balance seats are allocated through PR from the party list.
- Fifthly, one of the problems of the single-member constituencies in FPTP system is the dilemma often faced by voters between a candidate they may prefer, and a party whose goals they are most in agreement with. If a single vote for the candidate is the basis for PR seat allocation, then the dilemma of voters is even more acute. The vote then determine two things at the same time, the election of the candidate as well as the share of seats allocated to the candidate's party in the PR pool. Obviously such a single vote will not serve the purpose,

and a dual vote – one for the candidate to elect a member for the territorial constituency, and another for the party to determine the proportional vote – should be introduced.

- Finally, in any PR system the parties acquire even greater power in determining the outcome of elections. Unless selection of candidates, particularly in the party lists to fill the quota under PR system, is through a democratic process at the territorial unit level, PR system will further exacerbate the oligarchic and tyrannical tendencies of party leaderships. PR system essentially depends on the party list and the order in which candidates are listed, since the candidates at the top will be elected first. In a large and complex country like ours, such lists have to be prepared democratically by party members or their local elected delegates at the territorial unit level. Each position in the list will have to be voted by the delegates. All this means two conditions should be met – the party list and the order of appearance of names shall be chosen democratically by secret ballot by the elected delegates at the local level; and the territorial unit or 'district' for application of PR should be as small as possible, say a cluster of 10 Lok Sabha constituencies in case of Lok Sabha, and a cluster of 10 Assembly constituencies in case of Legislative Assembly. The Law Commission has not taken into account this requirement of democratic choice of candidates.

2.9.4 NCRWC Views – An Analysis

2.9.4.1 The NCRWC consultation paper, "Review of Election Law, Process and Reform Options" has briefly discussed the Law Commission's proposal for partial PR system, and dismissed it on two grounds – that PR will lead to political instability, and it tends to divide society. Both these objections require to be examined critically before evaluating PR system. Once there is a reasonable threshold of vote percentage for a party to be eligible for PR seats allocation, the fear of further fragmentation of our polity, and greater political instability are unfounded. As pointed out earlier, if 5% of the national vote excluding the votes obtained by candidates who lost their deposits is the threshold level adopted as per the Law Commission's proposal, in fact it will lead to artificial consolidation of only the two main national parties! Even with a more realistic threshold level of, say 10% vote in each State, with the State as unit for consideration, there cannot be any proliferation of parties. Already we have a large number of recognized parties with a very narrow electoral base in just a few constituencies. In fact, the FPTP system in our plural and complex society leads to proliferation of parties and splits, because all that is required for an ambitious politician is the ability to win one or two seats based on caste, money or muscle power in his stronghold. PR system based on a fairly high threshold of, say 10% vote in major States, and higher threshold in States with fewer than 10 parliament seats, will actually force parties to consolidate. Any stability based on artificial and disproportional verdicts in the FPRP system is illusory, as experience proves it. In fact the whole emphasis on stability is exaggerated, as our polity has been remarkably stable over the past 53 years. The few periods of political instability at the national level have actually helped bring a more stable coalition culture in our polity. There is evidence of parties coalescing towards two major political formations, and each formation attempting to broaden its appeal in order to maximise its electoral prospects. Most importantly, coalition governments have not proved any less effective in decision making than single-party governments with overwhelming majority. Some of the most radical policy initiatives have been taken over the past decade, during which no single party obtained a majority in any election at the national level. All these clearly show that the contention that FPTP system guarantees stability and PR system will inevitably lead to instability is misplaced. German experience with PR system actually shows that PR system will

stabilize the party system, and creation of new parties is both slow and difficult with a reasonable threshold level. If anything, given the current political realities, introduction of partial PR system will significantly improve the health of the polity, force parties to appeal to a broader State and national platform, encourage cleaner elections, attract better elements into legislatures, and ensure fairer representation.

2.9.4.2 The second objection raised in NCRWC consultation paper is that PR system will aid divisive tendencies. The realities of Indian society cannot be ignored in a democratic polity. In the FPTP system, these realities are glossed over, and vast groups are unrepresented or underrepresented, leading to alienation, resentment and *ghettoization*. Once there is a reasonable threshold of, say 10% in each major State and more in smaller States, then there cannot be narrow appeals to caste or religious loyalties. At present there is a culture of appeasing these groups for electoral gains. Each small group tends to behave in an exclusive manner as a voting block to gain advantage in FPTP system. Often tactical voting of a negative kind is resorted to, not to elect the best representative, but to prevent whom they consider to be a more unacceptable candidate from being elected. These negative tendencies are actually adding to political uncertainty and social schism. At the same time, as FPTP does not allow fair representation of large groups, there are increasing demands for reservation of territorial constituencies. Any large scale reservation of territorial constituencies is beset with serious problems of choice to electors, proxy candidates, rotation, erosion of legitimacy of democracy, resentment and backlash from other sections of society and reducing the electoral process to chance. In a PR system, there is more of positive vote and fair representation, and there will be no need for fragmentation through political reservations. In fact each party will attempt to maximise its appeal in order to enhance its voting percentage and through it, the legislative presence. Another consequence of PR system is, the block voting and *ghettoization* of large social groups will be replaced by healthy competition for their vote by different parties. Parties will actually emerge offering enough seats in their lists for various groups, and advocate policies for their upliftment. As parties honestly compete for these votes, there will be greater tendency to harmonize interests of various groups. Finally, there will be more open and honest negotiations between various social groups, and our society will be able to accommodate the competing needs of all groups and help integrate disgruntled sections with the mainstream.

2.9.5 John Stuart Mill on Proportional Representation

The issue of proportional representation vis-à-vis FPTP system has been examined critically by the great liberal democratic thinker John Stuart Mill. It would be extremely useful to quote *J S Mill* at some length from Chapter VII of *Representative Government* (1861).

“Two very different ideas are usually confounded under the name democracy. The pure idea of democracy, according to its definition, is the government of the whole people by the whole people, equally represented. Democracy as commonly conceived and hitherto practiced, is the government of the whole people by a mere majority of the people, exclusively represented. The former is synonymous with the equality of all citizens; the latter, strangely confounded with it, is a government of privilege, in favor of the numerical majority, who alone possess practically any voice in the State. This is the inevitable consequence of the manner in which the votes are now taken, the complete disenfranchisement of minorities.....”

“.....That the minority must yield to the majority, the smaller number to the greater, is a familiar idea; and accordingly men think there is no necessity for using their minds any further, and it does not occur to them that there is any medium between allowing the smaller number to be equally powerful with the greater, and blotting out the smaller number altogether. In a representative body actually deliberating, the minority must of course be overruled; and in an equal democracy (since the opinions of the constituents when they insist on them, determine those of the representative body) the majority of the people, through their representatives, will outvote and prevail over the minority and their representatives. But does it follow the minority should have no representatives at all? Because the majority ought to prevail over the minority, must the majority have all the votes, the minority none? Is it necessary that the minority should not even be heard? Nothing but habit and old association can reconcile any reasonable being to the needless injustice. In a really equal democracy, every or any section would be represented, not disproportionately but proportionately. As majority of the electors would always have a majority of the representatives; but a minority of the electors would always have a minority of the representatives. Man for man, they would be as fully represented as the majority. Unless they are, there is not equal government, but a government of inequality and privilege; one part of the people rule over the rest; there is a party whose fair and equal share of influence in the representation is withheld from them contrary to all just government, but above all, contrary to the principle of democracy, which professes equality as its very root and foundation.

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

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

“[With proportional representation] the champions of unpopular doctrines would not put forth their arguments merely in books and periodicals, read only by their own side; the

opposing ranks would meet face to face to hand, and there would be a fair comparison of their intellectual strength, in the presence of the country. It would then be found out whether the opinion which prevailed by counting votes, would also prevail if the votes were weighted as well as counted. The multitude have often a true instinct for distinguishing an able man, when he has the means of displaying his ability in a fair field before them. If such a man fails to obtain at least some portion of his just weight, it is through institutions or usages which keep him out of sight.

“[Some critics of proportional representation] are unable to reconcile themselves to the loss of what they term the local character of the representation. A nation does not seem to them to consist of persons, but of artificial units, the creation of geography and statistics. Parliament must represent towns and counties, not human beings. But no one seeks to annihilate towns and counties. Towns and counties, it may be presumed, are represented, when the human beings who inhabit them are represented. Local feelings cannot exist without somebody who feels them; nor local interests without somebody interested in them. If the human beings whose feelings and interests these are, have their proper share of representation, these feelings and interests are represented, in common with all other feelings and interests of those persons. But I cannot see why the feelings and interests which arrange mankind according to localities, should be the only ones thought worthy of being represented; or why people who have other feelings and interests, which they value more than they do their geographical ones, should be restricted to these as the sole principle of their political classification.”

2.9.6 Empirical Support in Favour of PR

Robert Richie and Steven Hill in their essay “*The case for Proportional Representation*” pointed out that there is empirical support for arguments in favour of PR.

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

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

Richie and Hill have also succinctly argued that there are other reasons to favour proportional representation.

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

2.9.7 President Venkataraman's Views – An Analysis

2.9.7.1 The elder statesman, former President Venkataraman criticised the PR model and the Law Commission's proposal very strongly. In his address at the 119th anniversary celebrations of The Tribune, he made several observations, which deserve to be examined closely. He observed, "The Lok Sabha is the custodian of the national finances and it is the House that has power to appoint or dismiss a government. The Lok Sabha members are answerable to the electorate. To induct into the Lower House a member who has no constituency to face and no direct obligation to the people is to dilute the primacy of the Lower House recognised in all democracies in the World. Obviously these remarks cannot be validated by reality. As we have seen, as many as 36 democratic countries have PR system, 25 of them electing all the members of the legislature through proportional representation. Only 13 countries (now 12, with Pakistan excluded) adopt a plurality system (FPTP) while choosing representatives. A member elected through PR

represents the whole electoral district from which he has been chosen. Instead of being without constituency, he has a much bigger constituency.

2.9.7.2 President Venkataraman attacked PR system on another factually incorrect ground. He quoted the German system incorrectly while saying, "As part of the reform, the Law Commission has suggested the adoption of the rule in the German constitution that if a party secures less than 5% of the votes cast or does not win three seats in the territorial constituencies in a general election, the said votes shall be transferred to other parties which are qualified and distributed in proportion to the votes secured by them." He went on to analyse this incorrect proposition, "I paused and tried to imagine the situation and the consequences. I am a radical and got elected to a seat from a constituency. My party did not secure 5% of the votes cast. So my vote was pooled with others and distributed to the conservative party in accordance with the proportion of votes it got. The result: a vote cast in favour of a radical manifesto goes to strengthen an opponent in political ideology!" Having thus wrongly interpreted the German model, he went on to chide, "How can a radical's vote go to strengthen the conservative party? A vote is the symbol of the political affinity of the citizen. It is not a chattel to be transferred with or without his consent. In a single transferable vote, the voter expresses his next preference. Whereas in the scheme envisaged the votes of one party are transferred to other parties without its knowledge or consent."

2.9.7.3 The German system has obviously been misunderstood completely. In PR, when there is a threshold level, the parties which get votes below the threshold are simply disqualified, and do not get any PR seats. The PR seats are then distributed among the parties qualifying in proportion to the votes they have obtained. Again in the German mixed system, all parties and candidates winning constituency elections retain those seats irrespective of their performance in terms of the national vote. In fact, if a party's seat tally in constituency-based FPTP elections exceeds its eligibility as determined by the percentage of national vote obtained by it, even then the party retains all the constituency seats, and the strength of the parliament is enhanced temporarily by creating the so-called "overhang" seats. Thus 328 members of the German Bundestag are elected by plurality in single-member constituencies. In addition 328 PR seats are allocated on the basis of votes obtained by parties in a single national constituency. Electors cast two votes, first for a candidate in their territorial constituency, and the second for a party. The allocation of the total 656 seats is first determined by the proportionality principle among parties on the basis of the second, or "party" votes secured by them. The results of this computation are then compared with the results of the constituency-based election in 328 single-member territorial constituencies. The balance 328 seats are then distributed among the parties in such a manner that the final tally is in proportion to their vote. If a party wins more territorial seats than its overall proportion of votes, then to that extent new seats are created to meet the requirements of other parties.

2.9.7.4 President Venkataraman erroneously interpreted the Law Commission proposal again when he said, "Another suggestion of the Law Commission is that if a party does not secure 5% of the votes polled or win three seats in the territorial constituency system, then the member of that party elected in a territorial constituency will forfeit his seat and it will be taken over by the candidate who polled the next largest number of votes. This provision appears neither

theoretically sound nor practically wise." As explained above, obviously this criticism is based on wrong interpretation of the German model.

2.9.7.5 President Venkataraman's observations have been dealt with in some detail given the importance of any proposal which attempts to change the nature of representation in legislatures, and the seriousness the observations of an elder statesman deserve in order to promote rational public discourse. From the foregoing analysis, it is clear that introduction of PR system has great merits of deepening our democracy, promoting inclusive politics, ensuring fairer representation, encouraging honest negotiations between groups, strengthening forces of harmony, and enhancing representation of women and minorities, attracting the best talent into political process, forcing parties to reform and discouraging electoral malpractices.

2.9.8 Five Major Issues in PR Implementation

2.9.8.1 There are however, five major issues to be decided before introducing any form of proportional representation (*Andre Blais and Louis Massicotte: Electoral Systems*).

— Districting or territorial unit for PR application

¾ Electoral formula for distribution of seats

¾ Tiers for distribution of seats

¾ Threshold requirement for seat allocation

¾ Method of selection of party candidates

2.9.8.2 The first issue is the districting or territorial unit for which PR will be applied. Given the complexity, largeness, the need for democratic selection of party candidates as explained in *Section 2.9.3* (critique of Law Commission's proposal), it is not possible to have the whole nation or a major State as a single electoral district. The whole country as a single electoral district, as practiced in Israel and the Netherlands, is not feasible in India for reasons already explained. The vast majority (22) of PR countries have opted for smaller districts, the boundaries of which generally correspond to administrative subdivisions. It is best to apply PR for each multi-member constituency of 10 Lok Sabha seats or 10 Legislative Assembly seats. The numbers can vary marginally to suit local requirements. In case of smaller States, the whole State can be the electoral district for Lok Sabha election, and a suitable number of Assembly constituencies for State Assembly election.

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

Table – 2.3

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

Total Number of valid votes polled : 130,010

Number of seats to be allocated : 12

Votes required per seat (Quota) : $130,000 / 12 = 10834$.

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

a. Seats going to the parties with the largest remainders.

b. Total number of seats allocated through largest remainders.

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

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

Table 2.4**Distribution of Seats in the Second Tier***Total number of seats unallocated in all districts: 12*

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

*a: Seats allocated on the basis of Largest Remainder***Table 2.5****Distribution of seats in a party among districts**

Blues Party's allocation in the second tier	04.00
Number of districts	10.00
Total remainder for the second tier	03.81

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

^a *Seats allocated on the basis of the largest remainder*

2.9.8.5 The fourth issue to be decided in PR system is the threshold requirement for entitlement to seat allocation. It is obvious that there should be a legal requirement that the parties have to cross a threshold level of public support in the PR system in order to get seats allocated. Otherwise, there will be proliferation of small parties leading to fragmentation of the polity and instability. The Law Commission in its 170th report proposed 5% of national vote as the threshold for Lok Sabha and 5% in the State for Legislative Assembly. As pointed out earlier,

5% of national vote in India, that too excluding votes obtained by party candidates who lost the deposit, will effectively limit PR allocation of seats to only two parties in India at present. Also the purpose of freezing the Lok Sabha seat strength in each State will be defeated, as the larger number votes in more populous States will have greater weightage. Also 5% is too low a threshold for State Assembly elections. Given these circumstances, it is appropriate to fix a more realistic and uniform threshold of say, 10% of the valid votes polled in a major State, applicable to both Lok Sabha and Legislative Assembly election. In States with less than 10 Lok Sabha seats, the threshold level can be correspondingly higher, determined by the formula: $100 / \text{number of seats}$. Such a high, but reasonable threshold will discourage formation of marginal, sectarian and extremist parties. At the same time serious parties with broad support base and the capacity to build social coalitions can be formed to challenge the status quo and compete with entrenched parties. Entrenched parties will be forced to either reform and become democratic and inclusive, or their support base will wither away.

2.9.8.6 The fifth, and possibly the most important issue to be determined in PR system is the method of selection of party candidates. In most mature democracies, there are highly systematized procedures to select the party candidates for elective public office. Fair, democratic and participative selection at the local level by the constituency members or by the elected delegates through secret ballot for the party lists in the electoral districts is the norm. In FPTP system selection of candidates by the party is important, but is not vital because the electors still have to make a final choice in respect of the individual candidate. However, in PR the seats are distributed to the parties and the candidates of the party will be automatically elected in the order in which their names appear on the list. All election contests in modern democracies are essentially between competing parties. But in PR the contest is solely between parties. The practice in 14 PR countries is to adopt a closed list, whereby voters merely vote for the party of their choice, and cannot express their preference for individual candidates. Members are elected in the order specified in the party list. In 9 countries there are various methods of voter preference exercised. However, in a multi-member PR electoral district, voter preference of several candidates is not feasible under Indian conditions. The only practical approach is adopting the German practice of closed lists.

2.9.8.7 In India central leadership of political parties has almost absolute, unfettered control over choice of candidates for elective public office. Parties failed to create mechanisms to suit the democratic aspirations and ethos of a modern society. Selection of candidates has become the primary source of power for the often unelected and unaccountable leaderships. There is crying need for reform of political party functioning, particularly in respect of choice of candidates. This is particularly critical if PR system is to be introduced. There should be institutionalized and democratic practices for selection of candidates, preferably regulated by law and monitored by the Election Commission. Introduction of PR system without accountability, internal democracy and democratic choice of candidates by parties will spell a disaster to our democracy. There should be a party conference of elected delegates in every electoral district, and the conference should select the candidates on the party list and their rank by secret ballot, case wise. Only then can PR system be an effective instrument for fair representation. There should be other strict internal democratic norms in party functioning like open membership, democratic choice of leadership, transparent funding and accountability – all monitored strictly by the Election Commission.

2.10 Mixed System

2.10.1 Clearly the time is ripe in India for a more-inclusive, democratic and fair representation through PR system. However, certain checks and safeguards are necessary to ensure stability and continuity. Apart from a reasonable threshold level of votes for qualifying for allocation of seats, the system should be designed to suit our requirements, and parties should be strictly monitored and regulated. One criticism of the PR system is that the link between the member and his constituency is snapped. We should therefore explore the option of a mixed system in which the constituency-based FPTP system coexists with the PR system.

2.10.2 Despite all the drawbacks, FPTP system has certain advantages. Firstly it builds a rapport between the voters in a clearly defined, relatively small territory and their representative. Secondly, it compels candidates to try and enlarge their appeal in the constituency, in order to enhance the chances of winning an election. Given these benefits it would be best if we adopt a mixed system combining the plurality system of FPTP election with the PR system. The German method is the best known and most successful example of such a mixed system. There are 11 countries, including Germany, Japan, Italy and Russia with mixed systems.

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

- The first is **coexistence**, in which PR is applied in some regions, and either plurality or majority elsewhere. In French Senate elections, the majority-plurality system is applied in departments having four seats or less, and PR prevails in departments electing five or more senators.
- The second type of mixed system is **combination**, whereby two sets of members are elected for the same national territory. In Japan (after 1994) and Russia such combination is in place. In Japan 300 members are elected in single-member constituencies under FPTP system. The other 200 are elected in 11 regional constituencies by PR system. In Russia half the members are elected by each method – FPTP and PR. Taiwan combines 125 members elected by the single nontransferable vote in 27 constituencies, with 36 members elected nationally by PR. In combination system, PR seats are not distributed so as to correct party distortions created by the operation of the plurality rule in single-member constituencies. Each set of members is elected independently of the other.
- The third type of mixed system is **corrective** method, where PR seats are distributed to correct the distortions of FPTP system, and a legislature where each party gets its fair share of seats in proportion to the votes obtained is produced. Germany is the best example of this method. The allocation of the number of seats for each party is decided in proportion to the total number of votes obtained by it nationally. There are two votes for each elector, one to elect the constituency member through FPTP system, and the other the party vote. Half the seats are filled by FPTP system. The party vote determines the proportion of vote for the party and the distribution of total seats nationally. All the members elected in the local constituencies by FPTP system are retained. The parties which obtained fewer votes than the threshold (5%) or less than three seats in single-member constituencies are eliminated from allocation of PR seats. Then the entitlement of party representation based on the national vote

share is compared with the actual results of the constituency based FPTP election. The PR seats are then distributed in such a manner as to ensure that the final seat tally is in proportion to the national vote. The final distribution is thus fully proportional. If a party obtains more FPTP seats than it is entitled on the basis of the overall vote share, then it retains those seats. To that extent temporarily 'overhanging seats' are created, and the size of the legislature is enhanced. Out of the total 656 members of Bundestag, 328 members are elected by the FPTP system, and the balance 328 are distributed in a corrective system to make the final composition of the legislature fully proportional. Hungary and Ecuador also adopt some form of corrective method of PR. In some countries different methods may be applied at different levels. France adopts majority-run off for presidential elections, but applies several forms of majority-plurality in single-member or multi-member constituencies in various elections at other levels.

2.11 Best-suited Model for India

2.11.1 The German system is the simplest one combining the best features of FPTP system with PR distribution in a corrective way, and is therefore ideally suited for Indian conditions. As explained in the chapter on proportional representation above, we need to adopt it to Indian conditions to suit our special requirements. Given the largeness of the country, the need to freeze the seats in Lok Sabha State-wise, and the imperatives of democratic choice of candidates on the party list, it is best to make the State the territorial unit for proportional representation and determining the voting threshold. As 5% is too low a threshold, and is likely to lead to fragmentation of parties, a minimum 10% threshold is desirable in large States with 10 or more members of Lok Sabha, and a higher percentage of vote in smaller states determined by the formula: $100 \div \text{number of Lok Sabha seats}$. Parties with fewer votes are disqualified while distributing the PR seats. All registered parties may offer their lists for PR distribution. This is the only fair and practical method, since prior disqualification on the basis of past record or absence of earlier record would be discriminatory, undemocratic and plainly unjust if the party does cross the threshold in the current election. The threshold of 10% in large States and more in smaller States is a sufficient safeguard against proliferation of parties in the legislatures. If a recognized party fails to cross the threshold, and unrecognized party does cross it, and if both are disqualified for different reasons, it would be a recipe for political strife. Therefore there should be fair and uniform standards applicable to all registered parties. Recognised parties may however get other recognition-related benefits including state-funding, if any. Half of the Lok Sabha seats may be filled by the present method of FPTP election in single-member territorial constituencies. For this purpose, the Lok Sabha constituencies in each State may be reorganized. All such seats won by FPTP system shall be retained by the parties, irrespective of whether the party crossed the threshold of votes for PR distribution of seats in those States or not. There shall be only one threshold for PR distribution, and that is the percentage of votes obtained in the State, and not the minimum number of, say 3 seats, won in FPTP system. This is necessary to prevent proliferation of parties in large, plural society. If a small party wins a few seats in a local area on the basis of its sectarian appeal to a caste or religion, it will still be unable to get the proportional representation in the State unless it crosses a high threshold of 10% of the valid votes or more. The PR seats, which constitute 50% of the total strength of the legislature, shall be distributed among parties which cross the threshold. To determine the party's voting percentage, all votes cast in the second vote (party ballot) are counted. Two votes, one for the candidate, and other for the party will give voters a genuine choice to select a desirable candidate and an

acceptable party. Candidates in constituencies should then strive to appeal to all sections, without merely relying on the party, and the party should broaden its appeal without merely encasing the charisma of local candidates.

2.11.2 The actual party lists are put up for each electoral district comprising 10 seats. Choice of candidates on the list and their ranking shall be democratic, and by secret ballot by the elected party delegates in the electoral district. The distribution of PR seats among parties shall be by the LR – Hare method in each electoral district, as it is the simplest and fairest method. The second tier for the distribution of seats covered by the fractions in Hare method shall be the State, where the distribution of unallocated seats is decided by the totals of all unused fractions. These seats will go to candidates of the party in the electoral districts where it obtains the highest fraction. (Please see Table in Section 2.9.8.4 for an illustration of distribution in this corrective system). The Table below (2.6) gives an illustration of distribution of seats in the PR system combined with constituency elections.

Table 2.6
Distribution of Seats in the PR System Combined with Constituency Elections

Number of Seats to be distributed: 31

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

Number of seats as per PR system: -

$$\begin{aligned} \text{Party A: - } & \frac{18,900 \times 31}{36,900} = 15.878 = 15+1 = 16 \\ \text{Party B: - } & \frac{12,900 \times 31}{36,900} = 10.837 = 10+1 = 11 \\ \text{Party C: - } & \frac{1,900 \times 31}{36,900} = 1.596 = 1+0 = 1 \\ \text{Party D: - } & \frac{3,200 \times 31}{36,900} = 2.688 = 2+1 = 3 \end{aligned}$$

Final composition of legislature from the State

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

$$\begin{aligned} \text{Strength of legislature (original)} & = 31 \\ \text{"Overhang Seat" added} & = 01 \\ \text{(Party "C" won 2 Constituency seats against eligibility of one)} & \text{-----} \\ \text{New strength of legislature} & = 32 \\ & \text{=====} \end{aligned}$$

2.11.3 In conclusion, the requirements of fair representation can be met by a corrective method of PR combined with constituency based FPTP system of election to retain the best features of both systems. The majority-run off system is probably too cumbersome and impractical to be applied in India, and may lead to further marginalization of scattered groups. Election in multi-member constituencies is a feasible proposition and is much fairer than FPTP system, and offers a greater choice to voters, and forces competition among candidates of the same party, and between parties. But when it is based on plurality and not proportionality, there is a danger that the candidates with greater muscle and money power will eliminate all other candidates. Therefore multi-member electoral districts with party lists chosen democratically, and seats distributed by PR system is the ideal combination. This is exactly what PR system with manageable electoral districts (of say 10 seats) and party lists is. In other words PR system combines all the best features of both. And when this is combined with half the seats filled by FPTP, the best of every system is retained. Alternative vote, by which the last candidate is eliminated and votes are transferred to other candidates based on second preference and so on, is fair but impractical, given the low level of literacy and very complicated counting. Similarly the single transferable vote system, by which the surplus votes of the winning candidates in multi-member candidates are transferred to others based on second preferences and so on, until all the seats are filled, is again impractical and cumbersome on account of voters' illiteracy and very complicated and delayed counting methods. Given all these circumstances, corrective PR combined with FPTP system, with 50% seats filled by each method, and two votes for each voter, one for a candidate, and the other for a party, with party lists chosen democratically in electoral districts is the most appropriate model for adoption in India. There may be a negative vote column provided for FPTP election to apply moral pressure on parties to nominate acceptable candidates and to draw more voters to polling. If the negative votes exceed votes of every candidate, then there can be a fresh election with new candidates.

Chapter - 3

Attracting the Best Talent to Legislatures

3.1 Alienation of Public-spirited Citizens

3.1.1 Increasingly in India, the finest talent is no longer attracted to public life. Given the nature of our political parties and the severe distortions and irregularities in elections, many sensitive, honest and capable persons are repelled by the political process. The health of a democracy obviously depends on the choice of representatives and leaders, which in turn is directly linked to the way political parties function and elections are conducted. While we have outstanding men and women in public life, flawed electoral process is increasingly alienating public-spirited citizens from the political and electoral arena. The persons best equipped to represent the people find it impossible to be elected by adhering to law and propriety. If elected, decent citizens cannot survive for long in elective public office without resorting to, or conniving in, dishonest methods. Even if they survive in office, their ability to promote public good is severely restricted. Indian people have often been changing governments and elected representatives. However, this change of players has little real impact on the nature of governance.

3.1.2 If we examine the new entrants into politics over the past three or four decades in the country, very few with intellect, integrity, commitment to public service and passion for improvement of the situation could enter the political arena and survive. Almost every new entrant has chosen politics exactly for the wrong reasons. A careful analysis shows that heredity and family connections are the commonest cause for entry into politics. This is closely followed by those who have large inherited or acquired wealth and have decided that investment in politics is good business. In recent years, many local muscle men, whose services were earlier sought for extortion or vote-gathering, are now directly entering the fray and gaining political legitimacy. A few persons have entered politics out of personal loyalty to, and close contacts with those in high public office. People with very high visibility on account of great success in mass entertainment like sports or films have also been increasingly drawn into the vortex of politics. Occasionally, accidents of fate are pitch forking certain individuals into elective public office. If we exclude these methods of heredity, money power, muscle power, personal contacts, high visibility, and accidents of fate, there will not be even a handful of persons in this vast country of ours, who have entered politics with deep understanding of public affairs and passion for public good and survived for any length of time over the past four decades.

3.1.3 There is no activity more vital and nobler than governance. In the true sense, politics is about promotion of happiness and public good. But if the best men and women that society can boast of are either prevented or repelled or rendered incapable of surviving in the political arena, then that governance is bound to be in shambles. Democracy is the only system, which demands constant selection, nurturing and development of capable leadership. If the best men and women society can offer shun by the political process and politics acquires a pejorative connotation, the result is collapse of ethics in public life, and with it public confidence in governance. With the most competent and qualified persons eschewing politics, paralysis of governance is the inevitable consequence. With all decisions geared towards somehow winning elections and

retaining power or to amass individual wealth at the cost of the public, the people are swindled. This legal plunder ensures that public goods and services are of appalling quality and wholly insufficient to meet the requirements of a civilized society or growing economy. Public exchequer will soon be depleted and fiscal collapse will be imminent. Sadly, all these ugly features of a dysfunctional democracy are evident in contemporary India.

3.2 Role of Political Parties

3.2.1 The role of political parties in enlisting participation of citizens in public life is critical. As we have seen (para 1.7.1), the functioning of the parties leaves much to be desired. Instead of being vehicles for political mobilization and citizen's participation in public affairs, parties have often become closed oligarchies to sustain personal power. Their functioning is autocratic and unaccountable in a variety of ways. Barriers to entry, spurious membership rolls, undemocratic procedures for leadership selection, absolute powers in the hands of the often unelected leaders, ruthless suppression of all dissent, easy resort to arbitrary expulsion of potential rivals, non-disclosure of funds collected, resource mobilization through extortion or collusion, application of funds for unsavoury and illegal purposes including personal gain, arbitrary choice of candidates for elective office, misuse of public office for private gain and for keeping the party cadres in good humour, near-absence of internal democratic processes and serious deliberations for policy formulation, and over-reliance on emotive and divisive issues rather than reasoned debate and balanced articulation of views have become the hallmarks of functioning of most political parties.

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

3.2.3 Parties are by no means private clubs looking after their personal interest. They are the engines of democracy and instruments of governance in society. They seek and acquire power over us, and in reality have effective, and unbreakable monopoly over power. The power of the party cartels cannot be checked by forming new parties. Experience everywhere shows that the hope of new parties emerging and spawning a new culture rejuvenating the political process is a

pipe dream. The emergence of a successful new political party itself is a rare phenomenon in modern world. From this bird's eye view of Indian political parties, it is clear that we, as a people, have stakes in their functioning and future. The moment they seek power over us, and control over state apparatus, they forfeit their claim to immunity from public scrutiny and state regulation based on reasonable restraints. This is particularly true in a climate in which they have proved to be largely irresponsible, unaccountable and autocratic, perpetuating individual control over levers of power and political organization. Therefore, in a deep sense, the crisis in political parties is a national crisis, and has to be resolved by a national effort. This leads us to the inescapable conclusion that there should be internal democracy in parties, regulated by law, and monitored and supervised by statutory authorities.

3.3 Key Reform Options

Given these circumstances, we should devise methods of attracting the finest citizens into public life. These involve encouraging them to participate in elections without having to appeal to narrow sectional loyalties locally or buying votes. In a parliamentary executive model of the kind we have, all the members of the council of ministers are drawn from the legislature. The Rajya Sabha, which was meant to encourage participation of wise and knowledgeable citizens in public affairs proved to be no different from the Lok Sabha in its composition and the background of members. It is generally recognized that the professionalism, competence, knowledge and skills required to run a modern government are often absent in many ministers who came through the rough and tumble of the present distorted political and electoral process. We should therefore consider creating mechanisms to ensure better representation and effective functioning of the legislatures and the parliamentary executive through a variety of methods. Some of the key reform options are discussed and evaluated below.

¾ Proportional Representation

¾ Political Party Reform

¾ Electoral Reforms

¾ Empowered Local Governments

¾ Choice of Ministers from Outside the Legislature

3.4 Proportional Representation (PR)

3.4.1 PR method of election undoubtedly facilitates participation of public spirited and competent citizens in our legislatures. This happens in two ways. The parties can nominate capable and public-spirited candidates in their lists. As the distribution of PR seats depends on the share of the party vote across a whole State, desirable candidates will be elected without having to resort to the innumerable malpractices and high election expenditure as in the FPTP election. Also outstanding candidates who are not identified with any influential social group or a dominant local faction can gain entry into the legislatures through the list system in PR method. PR system also forces parties to reform in order to broaden their appeal. In order to enlarge their political base, parties will be compelled to enlist persons with talent and proven record of service and accomplishment and project them as candidates and major political figures. If parties fail to respond, then persons with credibility and innovative and practical ideas can get together to form new political formations challenging the oligopoly of entrenched parties. Since concentrated pockets of influence and strength based on local sectarian or caste appeal are not needed for success in PR elections, such political formations can appeal to a broader

constituency cutting across sectarian differences. The educated middle classes, who are increasingly alienated from the democratic process and have effectively disenfranchised themselves, will be drawn back into the political process. The strength and vitality of a democracy largely depends on the intelligent participation of the educated middle classes. Thus PR will rejuvenate the political system by enabling parties to nominate suitable candidates, by forcing parties to broaden their appeal, by creating opportunities for the enlightened citizens to form political parties, and by drawing the educated middle classes into the political process.

3.5 Political Party Reform

3.5.1 That there is need to regulate the conduct of political parties and ensure their democratic and accountable functioning is by now well-recognized. Parties are central to politics and democracy. A party is the medium through which citizens can effectively participate in the political process. Parties mobilize people, shape policies, influence public attitudes, seek public office, acquire power and participate in governance. A party is different from any other voluntary association of people, in the sense that it actively seeks power, influences public policies and directly or indirectly participates in governance. If its members get elected to legislature, then they make laws, monitor government's performance and approve public expenditure. A party in government directly controls public money, enforces laws, makes rules and ensures their compliance, directs all actions of public servants and punishes erring employees. In other words, popular sovereignty in a democracy is exercised through the political parties. Undemocratic and unaccountable parties cannot sustain or strengthen a democracy. Nor can people form a new political party at will. A party is often a product of long years of effort, emotion, aspirations, sentiments and history. Though parties can be freely formed by any group of citizens, in reality successful political parties exercise an oligopoly preventing entry of other citizens and groups.

3.5.2 Given these facts, it is obvious that there is need for proper regulation and accountability of political parties in any mature and well-functioning democracy. If parties are not accountable to people by legal instruments and accountable practices, they become inimical to democracy. As *Michael Dummett*, in his *'Principles of Electoral Reforms'* (1997) observes, "We are so used to political parties that we tend to think of them as integral to the functioning of a democratic system; some of their members feel towards them a loyalty more appropriate to a religious body. Yet, in fact their very existence infringes the ideal of democracy. They are in essence conspiracies in accordance with which their parliamentary representatives agree to vote in unison in order to make more votes go as their individual members wish than would happen if everyone voted according to his true opinions This function of political parties is highly institutionalized by the system of whips, and the practice of expelling from their party MPs who defy them." *Dummett* goes on to add, "Nevertheless, the existence of political parties is probably an inescapable evil. It is usually in dictatorships that all political parties, or all but one, are proscribed; a one party state is of course a form of dictatorship. In normal democracies in which political parties function, they play a larger role in electoral process than is by anyone else's standard desirable, since they select the candidates between whom the voters have to choose. Moreover, the power of a political party to dictate, influence, or interfere with the selection of candidates for parliament (legislatures) is more inimical to democracy the more centralized it is. If it is in the hands of a regional office, or, still worse, of the central office of the party, a rigid conformity to the current party line will result. A local constituency selection committee may continue over the years to nominate a deviant adherent to the party, such as Sir Winston

Churchill, who disagrees fundamentally with its prevailing policy, but who would never be tolerated by the central office if it could help doing so".

3.5.3 It is clear from the Indian experience that centralized and autocratic party control is inimical to democracy. The present legal provisions relating to party are scanty and feeble. The only references to parties in our legal framework are found in the Election Symbols (Reservation and Allotment) order 1968, Section 77 of the Representation of the People Act, 1951 (inserted in 1974 to exclude expenditure incurred by parties from the statement of accounts lodged by contesting candidates), the Tenth Schedule inserted by the 52nd Amendment to the Constitution (popularly known as the Anti-defection Act), and Section 29A of the RP Act, 1951 (inserted in 1989, making a provision for registration of political parties with the Election Commission). As can be seen, all these make incidental references to the political parties. There is neither an effective, legally enforceable mechanism to make parties democratic and accountable, nor have parties evolved a political culture suitable to a modern liberal democracy.

Political Party Regulation

3.5.4 A good and successful example of effective political party regulation by law is provided by Germany. The German Basic Law, and the federal law regulating parties have made sure that parties act as instruments of people for democratic political action. At the same time the leadership choices and policy options offered by the parties are left entirely to the will of the members and internal democratic mechanisms, without any interference from the law. German Basic specifically provides for limited regulation political parties. Article 21 states as follows:

"The political parties shall participate in the forming of the political will of the people. They may be freely established. Their internal organization must conform to democratic principles. They must publicly account for the sources and use of their funds and for their assets. Parties which, by reason of their aims, or the behaviour of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany, shall be unconstitutional. The Federal Constitutional court shall decide on the question of unconstitutionality. Details shall be regulated by federal laws."

3.5.5 This simple and practical provision, and the federal laws based on that have helped in the growth parties in Germany as healthy, democratic instruments for free and continuing participation in forming the political will of the people. The essential functions of the political parties are listed in the Political Party Act of 1967 as follows:

- to ensure the forming of the political will of the people from the bottom upwards;
- to serve as the intermediary between the population and the institutions of the state;
- to articulate and represent the wishes and interests of the population;
- to offer political concepts and programmes;
- to prepare and hold elections and in so doing conduct election campaign as a means of producing democratic transparency;
- to recruit personnel for political and state offices;
- in other words provide for new political blood;
- and to assume responsibility for government and the opposition.

3.5.6 Clearly, this description fits the functioning of parties in any liberal democracy; and obviously political parties in India have fallen far short of these expectations in many respects.

An analysis of the functioning of our political parties reveals several serious shortcomings. Entry into a party is often tightly and arbitrarily controlled by the leadership. Strict, but objective and uniform norms as applicable to communist parties are unexceptionable. But in most mainstream parties the leadership denies membership to those with the potential to challenge their position. Similarly, persons utterly opposed to parties stated ideology are admitted as members when it suits the leadership. Disciplinary powers are invoked and expulsions are resorted to habitually only to safeguard the position of a party leader. No healthy debate and democratic dissent are tolerated. Leadership itself is assumed at various levels rarely by democratic voting. In most parties, internal elections are rarely held, and when held, are perfunctory. Even membership rolls are often not available. The voters for the highest executive body themselves are often nominated by the leadership, and the leadership itself is 'elected' by such nominees, thus lacking democratic legitimacy. Party policies are rarely debated or decided in party fora. Members have no role in shaping policies Manifestoes are written often in a cavalier manner, and if the party is elected to office, promises are disregarded with impunity. Lok Satta's study of four major political parties in constituencies where they are strong has confirmed these weaknesses of our party structure.

3.5.7 It is well known that major political parties raise vast sums of money for their activities and election campaigning. Almost all these resources are raised illegally by cash and there is no auditing or accountability of these funds. Neither the donors, nor the parties maintain records of these transactions as required by the law. Under section 13A of the Income Tax Act, incorporated in 1978 parties are bound to maintain accounts regularly, record and disclose the name of all donors contributing more than Rs.10,000, and have the accounts audited by a qualified accountant. Under section 139(4B), every party is bound to furnish a return of Income every year with all these details. However, every party violated this statutory requirement. Contributions by cheques are rare, and do not contribute even a small fraction of the 'donations' to parties. This non-disclosure is an invitation to extortion, corruption and illegitimate election expenditure. In a public interest litigation filed by the Delhi-based Common Cause, the supreme court held in 1996 that the parties are bound to file returns of income and they were violating the Income Tax Act by not doing so. The court also held that the Income Tax Authorities have been wholly remiss in the performance of their statutory duties by failing to take appropriate action against defaulter political parties. The parties obviously regard themselves above law. As President Venkataraman observed, " It is surprising that this Section (Section 13A of IT Act) remained a dead letter and the Income Tax Department under successive governments has been remiss in enforcing this revenue measure. That even the Comptroller and Auditor General of India has not commented on the lapse is surprising beyond measure..... Of what use is the law if it is not enforced?"

3.5.8 Perhaps the most unhappy feature of party functioning in India is the highly centralized, arbitrary and undemocratic choice of candidates nominated for elective public office. As the election in reality is a contest between party candidates, democratic choice of candidates is of critical importance in ensuring a fair quality of representation of the people in legislatures. In most mature democracies there are highly democratic, systematized procedures to select party candidates. In Britain, Germany, Norway, Sweden, Belgium, Australia, New Zealand, Canada and several other countries there are formal, inviolable democratic procedures by which party members at the constituency level, or their elected delegates at the local or regional level select

candidates after an interview and by secret ballot. The central party's role is limited to endorsing these candidates selected democratically at the local level. In exceptional case, they can veto a locally selected candidate for a serious and valid reason, but can never impose a candidate from above. In the US, this democratic choice of candidates has been taken to the logical end, with formal procedures and statutory regulated primary elections in which registered party members and in some states independent voters choose a candidate by a secret ballot after a full scale public campaign. For the presidential primaries, even public funding is made available. In India central leadership of political parties has absolute and unfettered control over choice of candidates. People with unaccounted money, persons with criminal record or those with close family or personal ties with influential office bearers are often nominated as candidates and foisted upon the people.

3.5.9 Clearly this situation calls for urgent reforms. Only democratic, transparent and accountable parties can encourage effective citizen participation in our political process, and attract the best talent into public life. There is need for a legislation on the same lines as the Political Parties Act in Germany. This law should govern among others, the matters relating to membership entry, register of members and disciplinary procedures, democratic processes, regular election of office bearers by secret ballot, right of dissent, democratic decision making and full and open debate on policy options, regular maintenance and filing of true and accurate of receipts and disbursements, full disclosure of all contributions, severe penalties for non-disclose or other violations, public auditing of accounts, right to information to the public, and fair and democratic choice of candidates by members or their elected delegates through formal procedures and secret ballot. The Election Commission of India or any other independent body specially created for this purpose should be entrusted with the responsibility of enforcing the law, penalizing parties or individuals for violations and adjudicating on disputes.

3.6 Electoral Reforms

3.6.1 Key Areas of Electoral Reform

3.6.1.1 In modern democracies, direct elections to the legislatures based on universal adult franchise, and secret ballot have become the norm. It is axiomatic that representatives are directly elected by the voters. The NCRWC consultation paper on 'Review of Election Law, Processes and Reform Options' threw up the suggestion of indirect elections of legislators in a tiered system, with only panchayat members being elected directly; Understandably, this suggestion has received extremely unfavourable comment from most quarters, including president Narayanan. An indirect election is devoid of legitimacy and is prone to much greater degree of corruption and manipulation. Anyone who is familiar with the conduct of 'camps' in panchayat elections would realize that indirect elections are a disaster. A franchise received by one group at the local level cannot be transferred to legislators at State and national levels. The issues debated and decided at each level are different, as the jurisdiction varies. There is in fact a case to have direct elections to the head of panchayat at each level, instead of his (her) being elected indirectly by the elected members. Any movement in the opposite direction is clearly undesirable and unwelcome.

3.6.1.2 That there is need for far reaching electoral reforms in India is undisputed. The finest citizens who have high credibility and ability to provide leadership can no longer be elected in most of our elections through honest and legal means. The Election Commission, the Law

Commission, Dinesh Goswami Committee and the NCRWC consultation paper have made several suggestions for electoral reform. Several eminent individuals and reputed organizations put forward proposals for reform. Essentially electoral reform is required in three areas:

- preventing polling irregularities,
- arresting and reversing criminalization of politics,
- and checking abuse of unaccountable money power in elections.

Let us examine each of these three areas in some detail.

3.6.2 Measures for Curbing Polling Irregularities

3.6.2.1 In the actual conduct of elections, the pre-polling activities including printing of ballot papers etc. are foolproof and largely free from irregularities. Similarly the post-poll activities including transport and storage of ballot boxes and counting are foolproof and there are effective safeguards against mischief. That is the reason why Indian elections are rightly regarded as by and large fair. State-sponsored rigging has not been resorted to in India except in small pockets occasionally. As all major parties and candidates resort to irregularities in polling, they are often neutralized and the net result is close to what one would expect in a fair election. This is because the irregularities are mostly limited to voter registration and actual polling. Therefore at the mano level the outcome of elections is largely fair and reflects public opinion. However the prevalence of large scale local polling and other irregularities makes it virtually impossible for decent candidates to be elected by fair means. Therefore all parties are compelled to nominate 'winnable' candidates who can muster muscle and money power and resort to polling irregularities to enhance their electoral prospects.

Accessible Voter Registration

3.6.2.2 Electoral registration law is near perfect. However procedural complexities, inaccessible electoral rolls, and voter ignorance allow serious distortions. Lok Satta's surveys reveal that up to 40% of entries in electoral rolls in urban areas suffer from errors of omission (of eligible voters) or commission (registration of fictitious or dead or ineligible voters). In rural areas the errors are about 10 - 15%. Such large scale errors in voter registration disenfranchise a sizeable section of voters even before the polling, and give opportunity for massive impersonation and bogus voting. There is regular revision of electoral rolls undertaken by the Election Commission. While the procedure prescribed is fair, it is far from transparent and is inaccessible. Most voters are not aware of the revision, and they have no access to electoral rolls. They are therefore not in a position to verify whether they are registered as voters or not. While electoral rolls are theoretically available for inspection in select government offices during the revision process, in reality voters have no opportunity to inspect them, given the culture of most public offices, the distance from the citizen's residence to the office where electoral rolls are available, and the lack of information about revision procedure. There are umpteen instances of highly enlightened and influential citizens not being able to avail voter registration facilities, as they are not aware of the location of appropriate office. While the law allows addition or deletion of a name or corrections at any time before the last date for nominations in an election, in reality it is extremely difficult

Table 3.1**Random Verification of Voters Lists in Andhra Pradesh (2000)**

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

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

to take advantage of this process. Electoral rolls are often unavailable for verification. Obtaining a copy for the appropriate polling station is very cumbersome and difficult. The statutory forms for addition, deletion or correction of a name are rarely available. The acknowledgement, though mandatory, is often not given. The voter is not notified about the outcome of the application, though it is prescribed that he shall be informed. Many voters who had applied for addition of names often were dismayed to find their names missing on the polling day. Large number of names without addresses sometimes make sudden appearance in voters' lists, and equally commonly hundreds of names disappear overnight. All these make voter registration the most flawed process in our elections.

3.6.2.3 Happily, errors in voter registration are also the most easily remediable of defects in our electoral process. All that is required is to evolve a process which is voter-friendly. If electoral rolls can be made accessible to citizens at all times for easy inspection in a neighbourhood facility, and are available for sale at a nominal price, then much of the problem can be corrected. The local citizens can verify from time to time and take steps to correct electoral rolls by applying for addition or deletion of names. If the appropriate statutory forms are also locally available, then the voter can make the application, obtain acknowledgement and await communication of a written decision on his application. The local public office can be made responsible for acknowledging application and communicating action taken. All these changes can be brought about by mere revision of rules and procedures, and no amendment of law is involved.

3.6.2.4 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. The revenue or municipal office can be the actual decision making authority in respect of such applications, as in the present practice.

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 an user-friendly public institution. In post office there is a culture of across-the-table transactions in real time. Any citizen can be given access to the voters' list pertaining to the local polling stations) for inspection, so that he can verify the accuracy of entries. Copies can be made available to citizens for a price, and they can purchase them just as they would buy postal stationery and stamps. The statutory forms in English and local language can be made available free of cost, or at a nominal price of, say 10 paise to cover the printing cost. All such applications can be received at the post office and an acknowledgement given to the applicant. The post office will then transmit them to the revenue or municipal or panchayat office, as decided by the Election Commission, for enquiry and determination as to whether or not to accept the application. The action taken can be communicated within a period of, say one month, to the post office, and through it the citizen. In order to save public money on postage, there can be bulk transfer of applications and action taken reports, and the citizen can be asked to verify at the post office action taken. The post office can maintain a register showing details of application from citizens, and the action taken reports received from the electoral registration officials. Such a register can be kept open for public scrutiny during office hours. There can be common electoral rolls for all elections – legislative assembly and panchayat or municipality. The panchayat or municipal offices too can be made nodal agencies for display or supply of electoral rolls, supply of statutory forms, receipt of applications and communication of action taken reports. There can even be change of rules to make panchayat or municipality responsible for revision of electoral rolls, addition or deletion of names, and correction of entries. In such a case, the process will be much simpler, as the post office and panchayat will be located in the same village. In case the decision of panchayat is unsatisfactory, there can be an appeal provision to the appropriate revenue officials. Display of electoral rolls on interest, supply of soft copies of electoral rolls in C D ROMs and availability of statutory forms on interest for down-loading are other means by which the process can be made more accessible and verifiable.

3.6.2.5 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 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.

Voter Identity Cards

3.6.2.6 Rampant rigging, impersonation, booth capturing and bogus voting are common in our elections. These practices distort the mandate, deny legitimate voters their democratic rights, discourage the best elements in society from participating in the political process, and repel many voters from the polling booths. Lok Satta's post-poll survey in five polling station areas in Hyderabad city after the 1999 parliamentary and assembly polls showed that up to 21% of the votes cast may have been bogus! This survey was based on the list of polled votes provided by the polling agents of candidates, and each household pertaining to votes cast was covered. Where voters live in the locality, they were asked whether they actually voted or not, and where voters

do not live in the area, or do not exist, the facts are recorded. The Election Commission declined to give the official list of voters who cast their votes, as they rightly anticipated election petitions based on such post-polling surveys proving polling irregularities. This survey clearly establishes that the single most important measure to curb these polling irregularities is making a photo-identity card mandatory for casting the vote.

Table 3.2

Post-Polling Survey of Select Polling Station Areas

(1999 Assembly and Parliamentary Polls, Hyderabad, AP)

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

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

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

3.6.2.7 The Election Commission has taken very positive steps to prepare and distribute photo-identity cards to voters. Over two-thirds of voters in the country have been covered so far. In Haryana Legislative Assembly elections in 2000, voter identity cards or other means of identity have been made compulsory for the first time in our electoral history. By all accounts the Commission's effort was highly successful. The innovation of the Election Commission permitting in lieu of voter identity card other suitable means of identity — ration card, driving license, pattadar pass book, bank pass book, credit card, employer's certificate, tax receipt etc. has made this effort acceptable and successful. The Election Commission has publicly declared its resolve to make voter identity cards mandatory in all future elections everywhere. Once voter registration is improved to eliminate electoral roll irregularities, compulsory use of voter identity cards will significantly curb polling malpractices. Political parties, voluntary organizations, civil society initiatives and citizens at large should extend all support to the Election Commission in making voter identity cards mandatory.

Tendered votes

3.6.2.8 There may still be regions in the country in which voter identity cards cannot be made mandatory immediately for a variety of reasons. Means must be evolved to prevent large scale impersonation and bogus voting in such areas until the identity cards are introduced. Where prior

identification of voter by verifiable means is not a precondition for voting, there are measures to check false voting and impersonation. In such cases, the polling agent has the opportunity to object to a person casting a vote on grounds of false identity. Such a challenged vote is then decided by the presiding officer at the polling station on the basis of a summary enquiry. However, often polling agents do not know all the voters. In urban areas it is impossible to have knowledge of even a fraction of the voters in the area. Sometimes the polling agents are in collusion with opponents. There are also areas where the dominance of one caste or group is so pronounced that polling agents may not even be available for certain candidates, or when available, are intimidated. Therefore availability of polling agents is not a sufficient safeguard against polling malpractices. Other measures to curb rigging and impersonation should be seriously considered.

3.6.2.9 It is common knowledge that several voters go to polling booths and return disappointed on finding that their votes were already cast by others impersonating them. In such cases, the voter can establish his identity by some means or other, and seek a tendered ballot. However, this provision is not widely known. Even if such a tendered vote is cast, under the present rules it has no validity. In fact the false vote already cast by impersonation or rigging and inserted in the ballot box is counted, and the legitimate vote casts as tendered vote is kept in a sealed cover separately, and is not counted. The sealed cover is opened only in the event of a count order on an election petition. In effect, impersonation is rewarded in elections.

3.6.2.10 The tendered vote is the indisputable proof of rigging and false voting. No matter what form rigging takes, its one inevitable manifestation is a false vote being cast in the name of another person. Tendered vote is thus the surest means of proving impersonation and rigging, provided there is great publicity and voters are made aware of the provisions regarding tendered vote, and attach value to it. The Election Commission can give directions to the effect that if the tendered votes in a polling station exceed, say 1% of the valid votes polled, there shall be automatic repolling in that polling station. If the tendered ballot papers are below 1% in a polling station, the Commission can direct that the tendered votes also shall be counted along with the ballots in the ballot box. The votes polled by legitimate voters are thus counted. If these provisions are highly publicized, then voters will avail the facility of tendered vote and check the malpractices.

3.6.2.11 If false voting is high, then tendered votes will exceed 1%, and there will be automatic repolling. Once it is known that large scale impersonation and rigging, proved through tendered vote percentage, will inevitably lead to a repoll, there will be a disincentive to resort to polling irregularities. Rigging and false voting by impersonation can be curbed to a significant extent. Such tendered ballot papers may not be relevant if voter identity cards are universally implemented and identification is made mandatory. Appropriate rules and procedures also need to be evolved to apply these measures in respect of electronic voting machines (EVMs). Happily, these provisions for re-polling also do not need change of law, and can be incorporated through rules and guidelines. It should be remembered however, that improved and accessible voter registration methods are a necessary precondition for fair polling.

Electronic Voting Machines

3.6.2.12 The use of ballot papers in elections involves several logistical difficulties including printing of ballots and large scale personnel deployment. Use of ballot papers is also amenable to polling irregularities like tampering with ballot papers, forcible entry into polling stations, and massive rigging by rapid unauthorized stamping of ballots and insertion in ballot box. Counting with ballot papers is also slow and sometimes inaccurate. Electronic voting machines (EVMs) can significantly reduce the logistical difficulties in conduct of elections, make counting faster and error-free. They will also reduce large scale rigging and stuffing of ballot boxes, and the problem of tampering with ballot boxes will be eliminated. But the problem of impersonation will still remain in the absence of voter identity cards. However introduction of EVMs is an important step forward in simplifying polling process and eliminating polling irregularities. Upon introduction of EVMs, ballot papers can be limited only to postal ballots for those on official election duty or members of armed forces. Measures can be evolved to facilitate their voting in time.

3.6.3 Measures to Curb Criminalization of Politics

3.6.3.1 Sections 8, 8A and 9 of RP Act, 1951 provide for disqualification of persons convicted of specified offences for varying periods. While there is room for improvements, this list of offences is comprehensive and reasonable. These provisions obviously failed to achieve the desired result. the Election Commission pointed out that more than 700 of the 4092 legislators at the State level have criminal records against them. There are also several members of parliament with known criminal record. One lacuna in the implementation of law was rectified by the Election Commission in 1997. Section 8(4) of the RP Act, 1951 gives a grace period of three months to incumbent legislators before disqualification comes into effect in case they are convicted of an offence. If an appeal is filed within three months, they cannot be disqualified until the appeal is disposed of by the court. Obviously this provision was intended to prevent needless vacation of a seat by disqualification of a sitting member. If the member is successful in the appellate court he would retain membership. Meanwhile the vacancy and the consequent by-election would have triggered needless political tension and public expenditure. Unfortunately this pragmatic provision under Section 8(4) was misinterpreted by election officials consistently until 1997. All candidates who had been convicted but filed an appeal, were exempted from disqualification until appeals were disposed of. As the legal process is often tortuous and cases took long before all avenues of appeal are closed, this meant that practically no person was disqualified. Happily the Election Commission gave guidelines in 1997 properly interpreting this provision, thus effectively closing this loophole.

Inadequacy of the Present Law

3.6.3.2 The fact is that even today many persons with known criminal record are in the electoral fray, and several of them get elected. The conviction rate of the accused in our criminal courts is abysmally low, at 5-6%. Disposal of criminal cases is excruciatingly slow, and many cases take years before conclusion of trial. Technically, the murderers of former prime minister Rajiv Gandhi were perfectly free to contest elections in India for 7 years after their dastardly crime, until they were convicted in 1998, provided they were Indian citizens and were otherwise eligible. This obviously is an unacceptable situation. At the same time there are problems in evolving legal measures for decriminalization of politics. If persons facing criminal prosecution are disqualified indiscriminately, there is a real danger of trumped up charges against political

opponents. This is particularly likely in a system in which the police forces function directly under the control of the government, and the government has specific powers to withdraw prosecution, order investigation and grant parole and pardon. At the same time mafia dons and organized gangs often escape even prosecution for want of tangible evidence. There are rowdy sheets and history sheets opened by the police against individuals with criminal record. Though the criteria are clearly defined in police manuals in various States, if they are solely relied upon to disqualify a candidate, there is danger of misuse of such powers. Another lacuna is that the period of disqualification under RP Act 1951 varies with the offence, and often this variation does not have a rational basis. As the Election Commission and the Law Commission pointed out, there are offences for which the period of disqualification ends even as the convict has not completed the jail sentence! Consequently a convict in jail can actually contest and win elections, and be even a minister! Also while the list of offences conviction for which entails disqualification is fairly large and comprehensive, certain serious offences have been left out.

Analysis of Certain Proposals

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

3.6.3.4 The proposals to rationalize the periods of disqualification, and to disqualify during the sentence and six years thereafter are unexceptionable and need to be acted upon without delay. However, the proposal to disqualify candidates on framing of charges needs to be examined more closely. Two questions need to be addressed in relation to this proposal. The first is whether a candidate can be disqualified merely on the ground that charges have been framed by a magistrate. The dictum in criminal law is that a person is presumed innocent until he is proven guilty. If a person facing charges is disqualified, is it fair to deny him the democratic right to contest election? This right of a citizen to contest must be weighed against the right of all citizens to have fair representation. The right to contest elections is unquestionably a democratic right of every citizen in a free society. However, this is by no means a fundamental right. Even fundamental rights guaranteed under the constitution are subject to reasonable restrictions. Given the degree of criminalization of politics, it is obvious that certain rigorous but reasonable restrictions are called for in regard to the right to contest elections. When the individual's right to contest conflicts with the society's right to have fair representation, then the latter should prevail.

3.6.3.5 The second question which arises out of this proposal is whether the criminal justice system as it exists can be trusted to be fair, impartial and objective. Are there sufficient safeguards to protect the innocent persons from being framed for malafide political purposes in order to prevent them from contesting? It is true that the charges have to be framed by a

magistrate after weighing the information and evidence placed before him. However, it is common knowledge that the system is prone to enormous abuse of authority. In reality the crime investigation and prosecution wings are almost entirely under partisan political control, and doctoring of evidence and false investigation and prosecution with a corrupt motive are all too common. Given these circumstances, it is entirely likely that the magistrate is deliberately misled in order to get charges framed against certain individuals. In a climate of uncontrolled corruption and political vendetta this question cannot be dismissed lightly. At the same time, if exacting standards are sought to be applied, criminalization of politics may continue unabated. Strictly speaking, even conviction by a lower court cannot be relied upon, and we will have to wait until the final appeal is disposed of. Even then, there are known cases of innocent persons having been found guilty of capital offences and executed. We can never be absolutely certain that absolute justice has been rendered in every case.

3.6.3.6 There is also another class of persons who might not be convicted or charged with offences to invite disqualification at the time of elections. However, they may be variously listed in police records as rowdy-sheeters or history-sheeters or by other names. Generally, persons who habitually commit offences involving breach of peace or those who are bound over under the preventive sections of the code of criminal procedure, persons who have been convicted more than once in successive years for minor offences, eve-teasers, and known rowdies who habitually resort to violence, intimidation and extortion are listed as rowdy-sheeters. Similarly history sheets are maintained against persons who were actually convicted earlier, and are believed to be habituated to crime. At first sight it appears that these police records are highly subjective and arbitrary since they are maintained by the police. However, closer examination reveals that there are well laid down and objective criteria for opening and maintaining such records. It is far more common to find an innocent person being charged with an offence, than being listed as a rowdy-sheeter or history-sheeter. The question then arises whether such rowdy-sheeters and history-sheeters should be disqualified from contesting as long as they are listed as such.

Reasonable Restrictions

3.6.3.7 It is very difficult to answer these questions with absolute certainty, or to the complete satisfaction of every segment of public opinion. When there is overwhelming distortion in electoral politics and criminal involvement has come to dominate elections, we have to strike a fair balance between the needs of society to have fair representation through the cleansing of electoral process, and the dangers of false incrimination with political or corrupt motives. The Law Commission recommended that persons charged with certain offences should be disqualified. But the list is still too large. It seems fair and reasonable to disqualify only those persons who are charged with grave offences which may invite a punishment of imprisonment for ten years or more, or death penalty. Also disqualification of those charged with electoral offences seems reasonable. Regarding history-sheeters and rowdy-sheeters, disqualification of persons listed as long as such records are kept open seems reasonable, provided there is a provision for judicial review. In order to ensure that there is no misuse of this provision to harass political opponents, a safeguard should be provided in the form of judicial scrutiny. Any person who is aggrieved by the opening of history sheet or rowdy sheet and who wishes to contest the election may appeal to the Sessions Judge at least two months before the date of election notification, and there upon the Sessions Judge should hold a summary enquiry and decide

within a month whether or not the opening of such a history sheet or rowdy sheet is valid. The order of the Sessions Judges should be binding on the police authorities.

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

3.6.4 Measures to Curb Unaccountable Use of Money Power

Excessive and Illegitimate Expenditure

3.6.4.1 Elections involve organization of political parties, mobilizing public opinion and campaigning to convey the message to the voters. Parties need money for organization and mobilizing public opinion and to compete in the market place of ideas. Candidates need money to get themselves known and to reach the voters to communicate effectively. Our failure to evolve rational methods for raising campaign finance and curb unaccountable use of money in elections has severely distorted the electoral process. Excessive, illegal and illegitimate expenditure in elections is the root cause of corruption. In India the expenditure in legislative elections is often 10 to 15 times the legal ceiling prescribed. The actual ceilings, revised in 1997, are Rs.6,00,000 for Assembly constituencies in major States, and Rs. 15,00,000 for Lok Sabha constituencies. Almost every elected legislator violates this ceiling with impunity.

3.6.4.2 Explanation I was added to Section 77 of the Representation of the People Act, 1951 in 1974 to nullify the effect of the Supreme Court Judgement in Kanwarlal Gupta V.Amarnath Chawla case. The court held in that case that the expenditure incurred by a party or friends and supporters on behalf of a candidate should be included in the candidate's election expenditure, and Section 77 (1) should be read with Section 123 (6) dealing with corrupt practices. The court declared, "If the expenditure made with the knowledge and approval of the candidates exceeds the limit or if the candidate makes a false report of the expenditure after the election, he is subject not only to criminal penalties, but also to having his election voided". Explanation I was inserted in Section 77 (1) (1974) to the effect that "any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of this sub-section." This lacuna has been pointed out by the Supreme Court (C.Narayana Swamy V.Jaffer Sharief 1994, and Gadakh Yashwantrao Kankarrao V.Balasaheb Vikhe Patil 1994), the Law Commission (170th Report), the Election Commission and the Dinesh Goswami Committee (1990).

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

Unaccounted Expenditure - Root Cause of Corruption

3.6.4.4 From the foregoing, it is easy to appreciate that much of the election campaign finance is unaccounted and illegal. Even more importantly, this expenditure in most cases is illegitimate and excessive. Most expenditure is incurred not for legitimate campaign purposes, but for buying votes, bribing officials and hiring hoodlums. Often the actual expenditure is several times the ceiling limit, and sometimes it exceeds 10 to 15 times the ceiling prescribed. Abnormal and unaccountable expenditure on this scale is unsustainable without huge corruption, and has grave consequences to society and governance. Such expenditure needs to be recouped in multiples to sustain the corrupt system. The high risk involved in election expenditure in a winner-take-all process, the long gestation period required for most politicians who aspire for legislative office, the higher cost of future elections, and the need to involve the vast bureaucracy in the web of corruption mean that this undisclosed expenditure leads to monumental corruption. To take the example of a major State, it is estimated that Rs.600 crores has been spent by the major parties and their candidates for the Assembly and Lok Sabha elections in 1999. This estimate roughly corresponds with the Centre for Media Studies estimates of Rs. 2500 crore spent by major parties in the country for Lok Sabha elections alone. Such an expenditure can be sustained only if the returns are five to ten fold, or about Rs. 6000 crores in one state. The vast bureaucracy is involved in extortion of money for providing myriad public services. For every elected legislator, there are over 3000 appointed public servants. If each of them retains a small sum as collection fee for each service, then the actual amount extorted from the public is at least ten to twenty times the amount which reaches the political class. In one major State, this amount may well be of the order of Rs.100,000 crores over a five year period. The inconvenience, delay, humiliation, harassment and lost opportunities suffered by the citizens, as well as the cost of distortion of market forces on account of corruption probably mean that the social cost of this extortion is much more than the actual amount of money changing hands. Unaccounted and illegitimate election expenditure is thus translated into huge corruption siphoning off money at every level. In addition, this ubiquitous corruption alters the nature of political and administrative power and undermines market forces, efficiency and trust on a much larger scale. The results are distortion of democracy and retardation of economic growth.

Campaign Finance - US, India Comparison

3.6.4.5 In recent times comparisons are sometimes drawn between the United States and India on the issue of campaign finance. In the US, in the recent election for presidency, both houses of the federal congress, gubernatorial offices and State legislatures the estimated campaign expenditure is of the order of \$3 billion. Probably half of it is for issue-based advertising, and can be excluded from the actual campaign expenditure. This net cost of about \$1.5 billion is a source of endless debate and criticism in the US. However, we should remember that in the US, all the campaign financing is fully accounted for and disclosed; and all expenditure is legitimate and open, with nearly 80% spent only on television advertising. The Indian situation presents a distressing contrast. The expenditure for Lok Sabha by parties and candidates is estimated at Rs. 2500 crores by the Centre for Media Studies. Easily double the amount is spent by candidates and parties for State legislative elections, making the total for the Union and State elections about Rs. 7500 crores. This sum actually exceeds the total US election expenditure of \$1.5 billion in rupee terms! Considering the high purchasing power of a rupee as opposed to its exchange value, the real expenditure in our elections is probably 6 times that in the US! When we consider the low income per capita in India (about one-twentieth in purchasing power terms), this leads to an absurd situation of our per capita election expenditure being 25-30 times that in the U.S, adjusting for purchasing power and income per capita differentials! And in India most of this expenditure is undisclosed and for illegitimate purposes!

3.6.4.6 It must be added however, that high election expenditure in itself does not guarantee election. In most elections there is no sharp contrast between parties or candidates. When no moral or emotional issues are involved, the candidates who do not incur high and illegal expenditure are almost certain to lose the election. Thus all parties and candidates are dragged into a vicious cycle of high election expenditure and endemic corruption. As parties are forced to nominate candidates who can muster large quantities of money and muscle power to win, the electoral process becomes more and more murky. The overall outcome at the macro level seems unaffected because the parties and candidate often neutralize each other's efforts. The net result is that genuinely public-spirited and credible candidates often have little chance of being elected without deploying illegal money power and muscle men. In the process, no matter which candidate or party wins the people end up losing always!

3.6.4.7 Given this unhappy state of affairs, many talented and public-spirited citizens are shunning the political process and electoral politics to the detriment of our democracy. Far-reaching and comprehensive campaign finance reforms are needed to make election expenditure honest, open, accountable and democratic. These reform measures should encourage legitimate political funding, help prevent abuse of office for electioneering advantage or raising finances, enforce disclosure and accountability, limit campaign expenditure, provide for limited public funding directly or indirectly subject to strict conformity with internal democratic norms in parties and full disclosure and auditing, and give the Election Commission the responsibility to strictly enforce these provisions.

Measures to Encourage Political Funding

3.6.4.8 Following are some measures to be taken to encourage political funding.

- All individual contributions to individuals or parties for political and election activity shall be exempt from income tax subject to a ceiling of, say Rs.10,000.

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

Measures to Prevent Abuse of Office

3.6.4.9 Following are some measures to be taken to prevent abuse of office.

- Government shall not issue any advertisements containing the name of a person or party or photograph of any leader
- No government advertisement shall be issued listing any achievements of a particular government.
- Government transport or infrastructure shall not be used for political campaigning
- No contribution shall be received from any person or corporate body in respect of whom any decision or license or contract or claim of subsidy or concession of any nature is pending with the government.

Measures to Enforce Disclosure and Accountability

3.6.4.10 Following are some measures to be taken to enforce disclosure and accountability

- Every individual contribution exceeding Rs.1000/- and every corporate contribution shall be disclosed to the Election Commission and the Income Tax authorities. Penalty for non-disclosure will be fine equal to ten times the contribution and in addition in case of corporate bodies, imprisonment for six months.
- Every political party and candidate shall get the receipts and expenditure fully audited and make the audited accounts for the financial year public by Sept 30.
- The audited statement of accounts shall be submitted to the Election Commission as well as the Income Tax authorities in the prescribed proforma. Copies shall be made available to any member of the public by the Election Commission on payment of a nominal fee.
- Along with the audited statement of accounts, the party or candidate shall submit a complete list of all contributions exceeding Rs.1000/- with the full identity, address and other details of the donors. These lists shall be made public and furnished to the Election Commission and Income tax authorities. Election Commission shall make available to the public this list on demand for a nominal fee.
- Penalties for not furnishing audited accounts by a candidate will be disqualification for a period of six years or until accounts are furnished, whichever is later.
- Penalties for non-disclosure of donations by a candidate will be disqualification and a fine equivalent to ten times the amount covered by non-disclosure, disqualification for six years and imprisonment for one year.
- Penalties for not furnishing audited statement of accounts shall be derecognition of the political party until accounts are furnished. Penalties for non-disclosure of donations by a party will be a fine equivalent to ten times the amount covered by non-disclosure, imprisonment of the persons responsible for a period of three years and derecognition of the party for a period of up to five years.

Measures to Limit Campaign Expenditure

3.6.4.11 Following are some measures to be taken to limit campaign expenditure

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

Measures for Public Funding

3.6.4.12 Following are some measures to be taken regarding public funding

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

Miscellaneous

3.6.4.13 Other measures to curb unaccountable use of money power

- The Election Commission shall be the final authority to determine compliance or otherwise of these norms, and to impose penalties.
- Public funding to party candidates shall be contingent upon the party candidates being selected democratically by secret ballot by members of the party or an assembly of elected representatives of the party members in the constituency.
- 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.
- Every candidate shall make a declaration of his/her income and property at the time of nomination, along with income and properties of the members of his family. False or incomplete declaration shall invite disqualification for six years and imprisonment for one year. Non-declaration will invite automatic disqualification. The Election Commission shall determine the compliance of this provision and make public these declarations. The EC shall be the final authority to decide on complaints of false declaration.

3.7 Empowered Local Governments

Why do People Take Money to Vote?

3.7.1 In a large and complex country like India, it is impossible for the national or State legislatures to fairly or effectively represent the people and all shades of public opinion. Given the largeness of constituencies and complexity of elections, there will always be a tendency to abuse public office or resort to vote buying. Even with the best will, and the most comprehensive electoral reforms, in a poor country many voters are often swayed by the inducement of money and liquor. The most credible citizens are discouraged from contesting as long as voters expect money to exercise their franchise. In order to address this question we should first understand why the citizens are selling their vote for money.

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

Link Between Vote and Public Good

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

3.7.4 The 73rd and 74th Amendments to the Constitution merely created local governments. It is now mandatory to create panchayats and municipalities, to hold regular elections, to have a State Election Commission and State Finance Commission. However, in the absence of constitutionally mandated entrustment of responsibilities, local governments are at the mercy of the State legislatures. The State governments are often wary of parting with powers and functions. The Eleventh and Twelfth Schedules of the Constitution are merely recommendatory and many State Laws have violated the spirit of the Constitution. These provisions do not have the force of the Seventh Schedule, which clearly demarcates the functional jurisdiction of the Union and States. It is therefore necessary to clearly demarcate the functions of local governments constitutionally on par with the Seventh Schedule, and to ensure that the required resources and control of public servants are entrusted to the local governments. Only then can representative government be truly democratic, accountable and effective.

3.8 Choice of Ministers from Outside the Legislature

3.8.1 In our parliamentary executive, all the members of the council of ministers are drawn from both houses of parliament. Even if a minister is chosen from outside the legislature, he shall have to be elected as a member of either house within six months. As the legislatures are no longer attracting the best talent in the country, the council of ministers is far from capable of handling the complex challenges of managing the affairs of a large and diverse nation facing innumerable problems. The time and energy of most ministers is expended in constituency affairs and politics of survival. Governance in modern world demands an array of skills, knowledge and competence unmatched in any other enterprise. The limitations of our parliamentary executive restrict entry of capable persons into the government. The essence of parliamentary executive is collective responsibility of the council of ministers to the lower house of parliament elected directly by the people. There is no reason why this should be necessarily linked to every minister being an elected member of parliament. In any case, the principle of elected members alone being ministers is diluted once any member of both houses is eligible to be in the council of ministers.

3.8.2 Given these circumstances, we should consider devising a mechanism by which the collective responsibility of the cabinet to the Lok Sabha is enforced, while at the same time competent individuals can be made ministers without having to be elected to parliament. In the absence of such a mechanism, parties and governments from time to time had to resort to subterfuge. Distinguished citizens had to face the embarrassment of being elected to Rajya Sabha from States in which they are not ordinarily residents, by filing patently false declarations. The provision to choose ministers from Rajya Sabha has thus proved to be less than satisfactory. We also have the spectacle of prime ministers being drawn from Rajya Sabha, or unelected persons heading the Union government, and later being elected to Rajya Sabha. Given these distortions, certain reforms are necessary to enhance the legitimacy of parliamentary executive, and to promote competence in government.

3.8.3 There are two changes, which may be salutary in this regard.

- Firstly, should be a norm that the prime minister should be an elected member of the Lok Sabha. This will ensure that only the effective head of a party with popular backing will lead a government, thus enhancing the legitimacy of the parliamentary executive and giving the people a more effective say in the formation of government.

- Secondly, the prime minister should be free to choose a certain number of ministers from outside the parliament. Such a number should be limited to, say 5% of the strength of Lok Sabha. Any citizen of India can be chosen by the prime minister, subject to the approval of Lok Sabha. Such ministers will be ex-officio members of parliament without the right to vote in either house. They can participate in debates and answer questions. The council of ministers as a whole will continue to be responsible to the Lok Sabha, and all other constitutional provisions and practices will remain unaltered. Such a reform will give far greater flexibility to the parliamentary executive, and help bring the best talent to government, while at the same time not diluting the responsibility of the executive to legislature.

Chapter - 4

Stability Harmony and Good Governance

4.1 Evaluation of Proposals for Stability

4.1.1 India has had remarkable political stability over the past 53 years since independence. There has always been peaceful transfer of power. Regular elections, have been the norm, barring the aberration during emergency. While many States have witnessed political instability on account of defections or change of chief ministers by the 'high command', the Union government has been very stable through most of the past 53 years. However, the frequent general elections in recent years gave rise to understandable concerns about our political stability. Since 1989, there have been five general elections. In all these elections, no single party emerged with a majority of seats in Lok Sabha. This situation prompted many scholars and observers to give calls for certain measures to promote stability. These proposals include fixed terms for the Lok Sabha, the constructive no confidence model of Germany, and the proposals for progressive elimination of small parties. Recently, the consultation paper of the NCRWC "Review of Election law, processes and Reform options" suggested an indirect mode of election for all legislatures except at the panchayat level. It is worthwhile evaluating all these proposals.

4.1.2 Fixed Term for Lok Sabha

4.1.2.1 One idea which has been gaining currency to promote stability and prevent frequent mid-term polls is fixed term for Lok Sabha. Parties which are tired of facing the electorate too often, particularly after three general elections since 1996 find it an attractive option. Elected members, having expended a great deal of time, energy and money in facing the general election, seem to favour a secure term of five years. Certain sections of voters, particularly the urban middle and upper classes, are showing signs of election fatigue, and find fixed term an attractive proposition. However, on careful examination, fixed term of Lok Sabha is neither feasible nor warranted.

4.1.2.2 In a parliamentary executive system, once a government loses majority support in Lok Sabha, it has to resign and give way to another government with majority support. If no government can be formed, the house has to be dissolved so that the people again choose their representatives. Some times, a stable government may choose to go back to the people by dissolving Lok Sabha, either to obtain a clearer mandate at a time of its choosing, or to let people give a verdict on a momentous issue of public policy. In other words, mid term polls are integral to parliamentary executive. Fixed terms and parliamentary executive responsible to the Lok Sabha cannot go together. Only when the executive is independently elected and when there is clear separation of powers between the legislature and executive can fixed terms be possible. In the parliamentary executive, once the government loses majority support in the house, it becomes a lame duck government with no ability to push legislation through parliament. If a stable government cannot be formed, the stalemate inflicts far greater damage to the nation than another general election. Even now, when a stable government has no majority in Rajya Sabha, legislation is difficult. During the life of the 12th Lok Sabha, not a single legislation could be enacted. If the government cannot carry even Lok Sabha with it, then there is no remedy. Even finance bills and budgets cannot be approved, and all governance will be in shambles.

4.1.2.3 There are equally weighty political reasons against fixed terms in a parliamentary executive system. If a major partner in a coalition government embarks on an adventurist course of action, then there may be no alternative for its coalition partners but to part ways. If the opposition is then unable or unwilling to form an alternative government, then dissolution of the lower house to seek a fresh mandate from the people is the only realistic and legitimate solution. In fact, if a fixed term of Lok Sabha is guaranteed, then it may actually promote irresponsible behaviour, and lead to more chaotic and unstable politics and policies. With no elections in sight, individual legislators and small parties may be tempted to change loyalties ever so often for short-term gain. With the sure knowledge that they will not have to face the electorate for a full five years no matter what happens, there may be a temptation to change the government every month and to plunder the exchequer at will, irreparably compromising public interest. The British and Australian experience shows that the threat of dissolution of the lower house has actually kept individual legislators in check and promoted greater stability. In a parliamentary executive system, dissolution of the house when sought is the norm, and denial of the opportunity to go to the people ought to be the exception.

4.1.3 Constructive Vote of No Confidence

4.1.3.1 In the face of repeated general elections and political stability, several suggestions have been made to adopt the German model of constructive vote of no confidence. According to this model, a government cannot be voted out of office in a no-confidence motion unless another government with majority support can be formed.

4.1.3.2 It is true that the German constitution provides for a constructive vote of no confidence (Art 67), whereby "the House of Representatives can express its lack of confidence in the Chancellor only by electing a successor with the majority of its members and by requesting the President to dismiss the Chancellor." But it is also true that Article 68 provides for dissolution of the house if a motion of the Chancellor for a vote of confidence is not carried by the majority in the House, and if the chancellor proposes dissolution. The check against casual dissolution is two fold : the dissolution takes place within 21 days and not immediately; and the right of dissolution shall lapse as soon as the house elects another chancellor with the majority of its members. The German constitution also provides for legislation in case of impasse — when the chancellor no longer enjoys majority support, but a new chancellor could not be elected by the majority, and house is not dissolved. In such a situation, "the President may at the request of the Government, and with the consent of the Senate (Upper House), declare a state of legislative emergency with respect to a bill, where the House of Representatives rejects the bill although the Government has declared it to be urgent.Where, after a state of legislative emergency has been declared, the House again rejects the bill or adopts it in a version stated to be unacceptable to the Government, the bill is deemed to have become a statute to the extent that the Senate consents to it. The same applies to the bill not passed by the House within four weeks of its introduction." (Article 81).

4.1.3.3 Therefore, a close reading of the German constitution shows that these provisions merely make it necessary for the opposition to form an alternative government before voting out a chancellor. There is a gap of 21 days between the chancellor's recommendation and dissolution of the house, so that the house has an opportunity to elect a new government. It is unlikely to help in the Indian situation. Such a provision merely encourages unchecked horse-trading. When

even governments with majority support are not able to get legislation through on account of the Rajya Sabha, the question of a legislative emergency resolving the impasse after losing the majority support in the lower house does not arise. For all these reasons, fixed term of Lok Sabha is unlikely to bring greater political stability, and may in fact undermine our democracy greatly. In a way, fixed term of parliament amounts to sustaining an unaccountable government in the guise of Westminster model. A fixed term is possible only when the legislature and executive are clearly separated, both are independently elected, and each does not depend on the other for survival.

4.1.4 Indirect Election to the Legislatures

The NCRWC consultation paper, "Review of Election Law, Processes and Reform Options" suggested the possibility of "building multi-tiers of government from below in a bottom-up instead of the present top down approach." The paper added, "It is stated by those advocating this approach that the only way to conduct a meaningful electoral exercise in this country is to have direct elections only at local levels with the upper tiers filled by representatives indirectly elected by an electoral college consisting of the representatives manning the lower levels". This suggestion has received widespread attention and severe criticism. President Narayanan himself stoutly opposed it in public. This suggestion is clearly unacceptable in a modern democracy. After centuries of trial and error, modern democracies have evolved. It is now axiomatic that universal adult franchise and direct election of representatives are integral to a modern representative democracy. Even a cursory examination of indirect elections to the larger tiers of panchayats with 'camps' of members held captive before voting, or the large scale vote buying will foreclose any serious consideration of the proposal for indirect elections to any representative body. In fact there are serious concerns about the way in which the upper houses are elected, based on indirect election or limited franchise. If anything, there is a strong case to move away from such limited franchise and indirect election. There cannot be popular sovereignty and fair and effective representation without direct election of representatives through universal adult franchise. The distortions of a democracy can be corrected by more direct and better democracy, but not by delinking or distancing the citizen from his representatives and governments at any level.

4.1.5 Measures for a Bipolar Parliament

4.1.5.1 Former president R Venkataraman has strongly argued in favour of adopting a two-party system. In his address at the 119th anniversary celebrations of the Tribune, Sri Venkataraman argued, "if the present Constitution has to function satisfactorily, then a two-party system has to be adopted either by statute or by amendment of the constitution". He proceeded to suggest, "It may be prescribed statutorily that all political parties which secure less than 10% of the votes cast in the next general election to the Lok Sabha shall be derecognised by the Election Commission. Thereafter, the party which gets the lowest number of votes in every succeeding general election shall be derecognised until the number of recognised parties is reduced to two. Thus a two-party system can be achieved in the course of two or three general elections. This scheme is not violative of the fundamental freedom of association, as the right of the formation of political parties or groups is not taken away from the citizen. Only the right to parties to be recognised as a political party for electoral purposes is regulated. Recognised political parties have certain privileges, the most important one being the right to a common symbol for

candidates contesting elections. This common symbol will be denied to unrecognised political parties under this scheme".

4.1.5.2 This suggestion finds favour with many advocates of a two-party system. However, careful analysis of this proposal reveals serious flaws. As CB Muthamma, in her paper "Representational legitimacy of the present system" presented at the National Seminar on Electoral Reforms (Calcutta, 17th - 18th November 2000) argues, "In a country with a very large population, with a diversity unmatched anywhere in the world, it is to be expected that there will be many parties and many candidates. It is not democratic to look for ways of restricting the people's rights by trying to reduce the number of parties". Even small and far more homogenous countries have several political parties. In fact, a two-party system is an exception, limited largely to the United States, Canada, Australia and New Zealand. Even Britain has three major parties — the Labour, Conservatives and Liberal Democrats. On a more practical plane, if 10% national vote is the precondition for recognition as a political party, only two parties will remain in India today — the Congress and the BJP. The political consequences of derecognising all the other parties, including major parties in important States, will be unacceptable to a majority of people. Judging by the share of these two major parties, they together enjoy the support of less than 50% of the voters. In a large and diverse nation with several languages, it is almost impossible for another party to emerge with 10% of the national vote. If regional aspirations are not allowed to find political expression, there will inevitably be political strife, violence and spread of secessionist movements. Drastic suggestions like mandating a two-party system also seem to be unnecessary from a practical point of view. In most States there is either an effective two-party system, or a bipolar system with two broad coalitions operating. Uttar Pradesh is the most significant and important exception to this rule. Similarly at the national level, there are clear signs of emergence of bipolar parliament. While there may not be a two-party system, there are two political formations, each centered round a major national party. Despite the turbulence of recent years, the political party system is moving towards a more stable equilibrium. Given these circumstances, any attempt to forcibly impose a two-party system will be futile, unrepresentative, and undemocratic.

4.2 Promotion of Harmony in Governance

4.2.1 Harmony in Legislation

The main function of the legislatures is to make laws and to ensure their enforcement. The will of the people should be reflected in the functioning of the legislature. Once a government is in office with popular support, the parliamentary executive should have the ability to get a bill passed by the legislature. Once the will of the legislature is expressed, and a law is enacted, then there should be effective implementation of the law by the executive. If the law made by the legislature is disregarded by the executive, then law making becomes meaningless, and rule of law ceases. Finally, in a federal polity, the State legislature should have the ability to make laws without a tortuous and delayed process. However, law making has often become difficult in India. As Rajya Sabha, whose members are indirectly elected by the State legislative Assemblies, has the same powers of legislation on par with Lok Sabha except on money bills, legislation at the Union level has become often difficult. Even laws enacted by the legislature are some times not enforced by the simple expedient of not notifying them or not laying down procedures for their implementation. The bills passed by the State legislature are sometimes referred to the president for assent delaying their enactment indefinitely, thus thwarting the will of the people.

The following proposals therefore need to be considered seriously for more harmonious functioning of the legislatures.

4.2.2 Reform of Rajya Sabha

4.2.2.1 In the light of contemporary experience, one issue that should cause concern to all is the incapacity of both houses of parliament to agree on legislation. As the single-party dominance is a thing of the past, and as a third of Rajya Sabha members are elected indirectly by State legislators every two years and as the upper house is a permanent house which cannot be dissolved, we have the anomaly of the two houses in a bicameral legislature almost never concurring. The constitution provides for an effective mechanism to resolve the impasse in case of disagreement between both houses only in respect of money bills and other financial bills. In all other cases, both the houses have co-equal powers of legislation. In effect, the Rajya Sabha, which is indirectly elected over a period of six years, and does not reflect public opinion at any point of time, has the power to veto any bill other than a money bill passed by Lok Sabha, which is directly elected by the people. The provision in Article 108 for joint sitting of both houses is not helpful in most cases as the numerical superiority of a government in Lok Sabha is often not large enough to overcome the shortfall in support in Rajya Sabha. In such a situation, it is likely that any popularly elected government will find it very difficult to implement its legislative agenda despite popular support. Obviously such a crisis undermines the very foundation of parliamentary democracy. A similar crisis in Britain was resolved by a series of elections following the Lords' rejection of Lloyd George's budget. During 1909-1911, twice the commons was dissolved on Liberal Party's prime minister Asquith's recommendation on this issue. Finally, the king promised to nominate the required new members to Lords' and the upper house had to relent by enacting the Parliament Act in 1911. We need to incorporate similar provisions in our constitution. The legislative powers of Rajya Sabha in respect of matters affecting States' powers, and constitutional amendments could be retained. In respect of all other legislations, Rajya Sabha should have the power to delay a bill or suggest a modification. If, after a delay of, say 3 months, the Lok Sabha again passes the bill, then such a bill should become the law. Such a provision will respect the verdict of the people; ensure protection of the rights of States, which is the primary objective of Rajya Sabha; and give the upper house an opportunity to give its opinion and to delay a bill before it becomes law, so that vigorous public debate can be generated and Lok Sabha can reconsider its views.

4.2.2.2 Another alternative is to change the nature of election of Rajya Sabha members. The upper house is meant to be the Council of States, representing the will of the States at any point of time. However, as the members of Rajya Sabha are elected one-third every two years, several members elected by a State Vidhan Sabha outlive the term of that Vidhan Sabha, and no longer represent the State legislature. Their vote on Union legislation then represents neither the will of the people nor the will of the State legislature which elected them. This is patently undemocratic and unrepresentative. Therefore two possible options could be considered in electing members of Rajya Sabha. One option is to make the term of Rajya Sabha members coterminous with the life of a Vidhan Sabha. Then, each time a new Vidhan Sabha is constituted, all the Rajya Sabha members from the State will be freshly elected. Thus, at any given point of time, the Rajya Sabha represents the will of the State legislatures. Once the composition of Rajya Sabha represents the political realities in the states, it is more in tune with the mood of the country, and there is less likelihood of legislative deadlock between the two houses of parliament.

4.2.2.3 The other option is to enable a State government to nominate members of its choice to represent the State in Rajya Sabha from time to time. Then Rajya Sabha members merely represent the will of the State governments. Germany has a similar system of State governments nominating members of the senate (Federal upper house) from time to time. Any one of these measures is critical to ensure that there is no deadlock in union legislature. Either the legislative powers of Rajya Sabha should be suitably amended, or the composition of the house should be altered so that it represents the will of the State legislatures at any point of time. In any case, the provision of party whip, giving the party leadership control over members' vote, is antithetical to the needs of harmony between the two houses. When Rajya Sabha cannot determine the life of a government, then its members should not make legislation difficult by using their numerical strength in the upper house.

4.2.3 Measures for Monitoring Enforcement of Laws

4.2.3.1 There are occasions when a law duly enacted by the legislature remained a dead letter on account of the lack of political will of the government of the day. The very logic of election of a legislature is to enact suitable laws to promote public good. Once the law is duly enacted, the only forum before which it can be challenged is the Supreme Court or High Court. These courts can declare a law void on the ground that they violate the explicit provisions of the Constitution, and on no other ground. If a law is made by a legislature, and if the Supreme Court or High Court has not held it unconstitutional, then the government of the day shall have the duty to enforce the law. If it is felt that the law needs to be amended or repealed, then a suitable bill should be placed before the legislature, and it should be duly enacted. If, however the law is on statute books, but the government refuses to enact the law, it leads to breakdown of rule of law and undermines the Constitution and democratic governance.

4.2.3.2 One good illustration of such a failure of rule of law is the case of the Delhi Rent Control Act 1995. This law was enacted on August 23, 1995 with the purpose "to provide for regulation of rents, repairs and maintenance and evictions relating to premises in the National Capital Territory of Delhi" However, despite the bill being passed by both houses of parliament, and president's assent being obtained, the law has not come into effect for over five years now. This extraordinary situation of a law being enacted but not enforced was possible by the simple but effective expedient of the executive refusing to notify it in the official Gazette! Thus the will of the legislature has been thwarted by mere executive inaction. That such a situation is possible in a cabinet system based on parliamentary executive responsible to the Lok Sabha is unusual and undemocratic, to say the least. If, for some reason, the law is felt to be undesirable, the only course open to government is to introduce another bill repealing the Act. If, however, the executive determines to effectively veto a law which has been enacted, then the very rationale of democratic functioning and rule of law collapses.

4.2.3.3 Similarly, there are several laws which have outlined their utility. There are provisions in several laws which even today make reference to the British crown or the Privy Council. It is estimated that there are about 3000 Union laws and probably about 30,000 State laws. There is neither a provision for regular legislative review of laws, nor is there a 'sun set' provision by which the law automatically lapses after a certain period unless it is reenacted. As a result, our legal framework has become a complex maze.

4.2.3.4 Given these circumstances, there should be a mechanism by which a law enacted shall be notified and given effect within a specified period of, say 90 days. Sometimes laws are not given effect because the rules and procedures have not been laid down for years. Therefore rules and procedures should be put in place within a definite time frame of, say 6 months. Also most ordinary laws should have a sun set provision of automatic repeal within five or ten years. Then the executive and a legislative committee can review the functioning of the law, and decide whether or not the law should be reenacted, and if any amendments are required to suit the changed conditions. Finally, there should be a comprehensive, time-bound review of all the laws on the statute books, starting from the oldest laws – over a period of, say three years. The needless laws should be repealed, or where needed amendments enacted to suit the requirements of today. There should also be a permanent legislative committee to review the laws and their implementation to discharge this function effectively.

4.2.4 Time-bound Decision on State Bills Referred to the President

4.2.4.1 Article 200 gives the Governor of a State the power to reserve a Bill passed by the State legislature for president's assent. Article 246 (3) of the Constitution gives the State legislature exclusive and unlimited power to enact laws in respect of State subjects enumerated in List II in the Seventh Schedule. Under Article 246 (2), parliament as well as the State legislature have the power to make laws in respect of any of the matters enumerated in List III in the Seventh Schedule. According to Article 254, if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by parliament which parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the concurrent list, then, the law made by parliament shall prevail, and the State law shall be void to the extent of the repugnancy. But if a provision of a State law is repugnant to the provisions of an earlier law made by parliament, then the State law shall prevail if it has been reserved for the consideration of the president, and has received his assent. This is the obvious rationale of Article 200 empowering the Governor to reserve a bill for the assent of the president.

4.2.4.2 However, two difficulties are commonly encountered in practice. Firstly routine bills which pertain to matters in List II (State List) are often referred to the president for assent on some pretext or the other. The wording in Article 200, as well as the loose and liberal interpretation of the constitutional provisions make reservation of a Bill for president's assent far more common than necessary. It is necessary to establish clear and unambiguous norms, if needed by a constitutional amendment, clearly spelling out the circumstances when a Bill needs to be reserved for president's assent. Otherwise, the legislative jurisdiction of the State is needlessly curtailed. The second difficulty arises on account of the abnormal and needless delays in obtaining president's assent. It is violative of the federal spirit of the Constitution if a bill referred to the president does not get any response for years. The will of the State legislature ought not to be thwarted by the Union government with such impunity. Therefore a time limit of, say 60 days, should be fixed for the president's assent or otherwise once a Bill is passed by the State legislature and referred to the president for his assent.

4.3 Promotion of Good Governance and Probity

4.3.1 Issues of Good Governance

The legislature represents the will of the people. Election is a method by which popular sovereignty is transferred partially for sometime to the chosen representatives of the people.

Every elected representative is therefore a public servant. Effective and democratic exercise of the functions of a legislature should therefore conform to certain standards of behaviour. There are five issues to be considered in this respect.

- Firstly the member elected on a certain platform should not violate the trust imposed in him. When political parties are the true and effective medium of politics and elections, then members elected on a party platform must adhere to it throughout the term. Equally importantly, party leadership should not be allowed to exercise complete control over the member's vote in the legislature, making the representative function of the legislator irrelevant. A fine balance has to be struck between these two competing demands of loyalty to party platform and legitimate dissent when warranted. The Tenth Schedule of the Constitution, enacted in 1985 with the objective of preventing defections has failed in fulfilling that objective, and needs to be reviewed.
- Secondly, a legislator, being a public servant and people's representative, should uphold high standards of probity and dignity. Legislative office is a sacred trust, and it imposes the obligations of faithful and honest discharge of duties. If legislative office is used as a means of private gain and legal plunder, then elections lose sanctity and democracy is reduced to constitutional brigandage. Our legislatures have not yet evolved an enforceable and effective code of conduct for members. The judgement of the Supreme Court in 1998 in JMM MPs bribery case has raised several questions about the ethical standards of legislators, and the courts' interpretation of the Constitutional and legal provisions. These questions need to be resolved satisfactorily to enforce an acceptable standard of behaviour and performance of legislators.
- Thirdly, there is an implicit separation of powers and functions in a democracy between the legislature and executive. Even in a parliamentary executive system, this separation is necessary. While the parliamentary executive is collectively responsible to the legislature, it is nevertheless independent in day-to-day functioning. In reality the legislators started functioning as disguised executives, undermining the very concept of separation of powers and democratic accountability.
- Fourthly, the parliamentary executive system we adopted is eminently suitable to fulfil the needs of the Union government in a vast, complex and diverse country. The overlapping roles of executive and legislature are the necessary price the nation has to pay for this parliamentary executive model. But the needs of States are different and the arguments in favour of parliamentary executive do not have the same force at the State level. Also the dangers, if any, of clear separation of powers between the executive and legislature in States are significantly reduced. We therefore need to examine the feasibility of clear separation of powers in States in order to provide good and accountable governance.
- Finally, it is increasingly recognised that democracy is truly meaningful only when it is close to the citizen. The principle of subsidiarity, whereby the citizen is the centre of the governance process, and powers get devolved on ever enlarging concentric circles of government only by the principle of exclusion and necessity, is now increasingly accepted in all liberal democracies. Therefore effective legislation and good governance demand empowered local governments. Equally significantly, with the advent of modern technology, direct democracy has become increasingly cost-effective and viable. Where possible, representative democracy should give way to direct expression of popular will. We should

examine the measures to effectively empower local governance and promote direct democracy.

4.3.2 Proposals to Eliminate the Scourge of Defections

4.3.2.1 The Tenth Schedule of the Constitution, popularly known as the Anti-defection Act, was incorporated by the 52nd Amendment in 1985. According to these provisions, a member of a legislature belonging to a political party shall be disqualified from membership

- a) if he has voluntarily given up his membership of such political party; or
- b) if he votes or abstains from voting in the legislature contrary to any direction ('whip') issued by the political party to which he belongs.

There are certain exemptions from disqualification. Thus, if the member obtains prior permission of the party to violate party whip, or if such violation is condoned by the party within 15 days, then he will not be disqualified. An independent member or a nominated member will be disqualified if he joins a political party. Similarly a member elected as a candidate of a party loses membership if he joins another party. This disqualification however shall not apply in case the member claims that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of the split in his original party, and such group consists of not less than one-third of the members of such legislature party. Also disqualification will not apply in case not less than two-thirds of the members of the legislature party have agreed to a merger. Also those members who have not accepted such a merger and opted to function as a separate group will not be disqualified. The question of disqualification in all cases under the Tenth Schedule shall be decided by the chairman or speaker of the house concerned.

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

4.3.2.4 There is, however, one major unintended result of the Anti-defection Act. Once the law provided that violation of party whip on any vote attracts disqualification, party legislators who may honestly differ on a piece of legislation are now forced to submit to the will of the leadership. The ill-conceived legislation on Muslim women's maintenance after the supreme court verdict in Shah Bano case is one sad example of such a case. An even more shameful episode is the whip issued by Congress Party to its MPs in the impeachment case of Justice Ramaswamy. Parliament sits as a court while deciding on impeachment matters, and only evidence of wrong doing and the judgement of individual MPs should matter. Party whips have no place on such issues, and are manifestly illegitimate, and are probably unconstitutional. However, once the law gives the same enforceability to all whips, the legislators have no choice but to obey, or risk disqualification. As the passage from Dummett points out earlier we cannot allow such a conspiracy of a group of individuals in the name of a party to distort all public debate and legislation. By throttling legislators and preventing them from giving concrete expression to their legitimate views, Anti-defection Act made them captives to irresponsible party leaderships in an already authoritarian and unaccountable party hierarchy. Thus all dissent is stifled and smothered, whereas collective plunder of the state goes on merrily unchecked. At the same time defections continue in a systematic and organised manner, thwarting people's will.

4.3.2.5 Obviously major reforms are needed in the anti-defection provisions if we are to preserve even the limited sanctity of electoral verdicts.

- All defections, by individuals or groups, should incur automatic disqualification.
- If there is indeed a legitimate split of a party, it should first take place in the formal party organization with adequate public notice and through voting. Only after a party splits in a transparent and public manner after a statutory public notice of, say at least one month, and after the members of the party are allowed to vote on that at every level, can the legislature party reflect such a split. A sudden overnight change of heart by a group of legislators and midnight meetings with the president or governors cannot be recognised as split of a party, no matter what proportion the 'splitting' members constitute.
- All such legislators who split from a party and form a separate group after the transparent party process should be prohibited from holding ministerial office for at least one year from the date of such split.
- Any other defection or leaving a party to join another party during the legislative term should incur automatic disqualification irrespective of the number of members resorting to such defection.
- The Election Commission should be the competent body to decide on disqualification, instead of the speaker.
- The other major reform required is limiting the scope of whip under Anti-defection Act to only such issues, voting on which might bring down a government. Only on a no-confidence motion, or a finance bill, the defeat of which will force a government to resign, should party whip be operative. A whip in all other circumstances should be prohibited by law. Fears of large scale indiscipline in legislative matters other than those affecting the fate of a government are highly misplaced. The party leadership has several inducements to offer, and penalties to impose on dissenting members. Therefore only conscientious objectors and honest dissenters on a specific issue will usually vote against the party position. Such freedom of voting is the essence of representative democracy.
- There should be no whip in the upper house.

4.3.3 Enforcement of Ethical Standards of Behaviour of Legislators

4.3.3.1 Public office in India is traditionally seen as personal preserve. Therefore abuse of power for private gain is endemic. Given this milieu, operation of a representative democracy demands high standards of behaviour on the part of elected legislators. If legislative office is seen as a source of personal gain and as a shield for irresponsible conduct, then politics tends to attract the undesirable elements in society. Once the conduct of legislators is perceived to be loose and unethical, it becomes impossible to enforce high standards of morality among the appointed public servants. Nor can unethical behaviour of legislators promote respect for law or encourage respect for law among the citizenry. Politics then acquires a pejorative connotation, and all political process becomes an object of trenchant criticism and public ridicule. Once political process is treated with contempt, representative democracy itself loses its moral authority and freedom will be in peril.

4.3.3.2 Sadly, the unbecoming conduct of several legislators has undermined the functioning and moral authority of the legislatures in India. In the early years after independence, conscious efforts were made by the political leadership to promote exemplary behaviour and to promptly punish unbecoming conduct. Prime Minister Nehru acted with clarity, speed and resolve to uphold the dignity of parliament when a member of the provisional parliament H.G.Mudgal was accused of receiving financial and business advantages from the Bombay Bullion Association for "canvassing support and making propaganda in parliament on problems like option business, stamp duty etc." (A. Surya Prakash, Parliamentary Reforms - paper presented at the National Workshop on Constitution of India: A Case of Rethinking - New Delhi - 11-13 Dec 1999). A parliamentary committee headed by T T Krishnamachary enquired into the conduct of the member and indicted him for receiving Rs.2700 for tabling questions in parliament and canvassing with the government taking advantage of his position as a member of parliament. For this relatively minor indiscretion by contemporary standards, Nehru moved a motion in parliament to expel Mudgal, and the erring member was forced to resign before the motion was put to vote. Ms.Durgabai, one of the members of the parliamentary committee which investigated the case, laid down clear principles of conduct for members.

4.3.3.3 Subsequently there was no effort to codify those principles of behaviour or institutionalize effective mechanisms for enforcing a satisfactory code of ethics for members. The result is a rapid decline in the standards of behaviour and increase in corruption. Legislative office is now commonly seen as the fastest route to individual prosperity. For long legislators argued that they cannot even be classified as public servants, and therefore cannot be prosecuted for corruption. The events in the JMM bribery case have amply demonstrated the unhappy state of affairs. The chronology of events (as reported by Free Press Journal, 30 Sept 2000) is revealing. On July 26, 1993 the CPI(M) M P Ajoy Mukhopadhyaya moved a no-confidence motion against P V Narasimharao's minority government which had a strength of 251 MPs in the house of 528 members. On July 28, 1993 the no-confidence motion was put to vote and defeated by a narrow margin of 14 votes. On February 28, 1994 a Hindi Weekly "Jandharna Paksh" from Kota in Rajasthan published a news item alleging horse-trading and giving details of bribes given to four JMM MPs for voting in favour of the government in the no-confidence motion. On February 1, 1996 Rashtriya Mukti Morcha President Ravinder Kumar filed a complaint in the Central Bureau of Investigation for investigation of the case. Since then the case, in the tradition

of Indian criminal justice system, took a very tortuous course. On April 17, 1998 the Supreme Court gave a judgment holding MPs as public servants, but declared that they are entitled to immunity from prosecution under the constitutional provisions. Article 105 (1) guarantees freedom of speech in parliament subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of parliament. According to Article 105 (2): "No member of parliament shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings".

4.3.3.4 In the light of this constitutional provision, the supreme court, in a three-two verdict held that the MPs who undoubtedly took bribes for voting against the no-confidence motion were immune from prosecution. Obviously we have traveled a great distance from expelling a member in 1951 for receiving Rs.2700 to influence government to the JMM case in which members who took up to Rs.1 crore for voting in a certain manner in Lok Sabha were declared immune from prosecution. Ultimately in the JMM case all the MPs who took bribes were discharged from prosecution. On September 29, 2000 former prime minister Mr P V Narasimharao and Mr Buta Singh were convicted by the trial court for abetting in bribery. The case is now being heard in appeal. The bribe-takers walked away with no punishment, and technically no MP can be punished for taking money to say anything or to vote in any manner in parliament! And the parliament has not shown any anxiety to expel the erring members, or to evolve an enforceable code of ethics for members.

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

4.3.3.6 These were not merely stray cases of moral outrage and retribution. In many democracies procedures and institutions have been established over the years to keep their elected representatives in check and hold them accountable for ethical lapses. Both the houses of the US Congress have Select Committees to enforce ethical standards of conduct of members. In 1989, the US Congress enacted the Ethics Reforms Act imposing strict limitations on outside income, and exacting standards governing gifts, honoraria and travel facilities. The British Parliament passed a resolution in 1947 restraining members from misusing their office. In 1974 it was made compulsory for members to register their pecuniary interests in a Register of Members' Interests.

Nolan Committee in 1994 studied in depth the standards of conduct of all office holders, including arrangements relating to financial and commercial activities. Based on Nolan Committee's report, members and their families have been barred from receiving any payment or benefit in cash or kind, directly or indirectly, to advocate or initiate any cause or matter on behalf of any outside body or individual, or to urge any other member or a minister to do so by means of any speech, question, motion, bill or other parliamentary activity. A Committee on Standards and Privileges was established by the parliament, and an independent Parliamentary Commissioner was appointed to interpret the code of conduct, advise members and investigate into complaints against them. Members are required to declare their interests and their property holdings, overseas visits and gifts in the Register of Members' Interests. This register is published soon after the beginning of a new parliament and annually thereafter, and is freely available to the public. Thus the register, the independent commissioner, and the parliamentary committee enforce high standards of conduct and probity. In Australia too similar institutions and practices are in place.

4.3.3.7 In India, a few attempts were made to evolve a code of conduct for legislature with legal force. The Mudgal case was an excellent example of effective parliamentary action to enforce high ethical standards. However, subsequently no serious efforts were made to institutionalise practices to enforce a code of conduct. Ms.Durgabais's 12 injunctions to MPs remained a dead letter. The Committee of Privileges of the Eleventh Lok Sabha examined the issue of ethics and suggested several strong measures including drawing up of a code of conduct, giving it mandatory effect through a parliamentary resolution, establishing a parliamentary committee to enforce it and to frame rules for administering the code, receiving complaints and impose punishments. However no effective measures have been taken so far. Recently a new practice has been started placing large public funds at the disposal of the legislators for constituency development. In many cases these funds are being utilized in a prudent and productive manner in furtherance of public interest. However, a legislator has no executive jurisdiction, and any decision of his to sanction projects or otherwise utilize funds is not fully accountable. In view of this lacuna, there are serious allegations of large scale misuse of such funds including de facto delegation of these powers of sanction to contractors and others after a commission is paid to the legislator. This practice needs to be curbed.

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

- Drawing up a strict code of conduct for members and giving it mandatory effect through parliamentary resolution
- Opening of a mandatory register of members' interests and updating annually, and making the register public
- Making it mandatory for members to declare all their assets and interests after election and every year thereafter, under pain of disqualification and criminal prosecution for non-disclosure or willful false disclosure or concealment.
- Appointment of an independent commissioner to monitor, advise members and receive complaints and investigate
- Establishment of a permanent legislative committee for examining all reports and recommending action to the legislature
- Expulsion for serious violation of ethics

- Amendment of Article 105 to make any consideration for any action of a member in discharge of his duties or use of his influence a punishable offence
- Clearly and unequivocally declaring any elected legislator as a public servant and any consideration for his action or inaction as punishable under Prevention of Corruption Act
- Declaring behaviour unbecoming of a legislator in the house or outside as a violation of code of conduct even if there is no pecuniary interest involved
- Withdrawing the constituency development funds placed at the disposal of legislators for utilizing at their discretion, and evolving alternative mechanisms for legislators' participation in constituency development.

4.3.4 Executive in States and Local Governments

Our Parliamentary Executive in Perspective

4.3.4.1 Ever since powers have been transferred to elected governments in India, we have been accustomed to parliamentary executive. In provinces substantial powers were transferred to elected governments even under the Government of India Act, 1935. The partial transfer of powers to a responsible government at the central level as envisaged never materialized. With the formation of the interim governments in 1946, and with the adoption of the Constitution, it was accepted as axiomatic that the executive at every level would be drawn from the legislature. There were good reasons for adopting parliamentary executive at the Union level. Apart from familiarity with the Westminster model and our own constitutional evolution, the vast size, unmatched diversity and breathtaking complexity of the nation demanded an executive collegium. Given our history and diversity it was necessary to give a sense of sharing of power to all groups and regions. Our parliamentary executive was the natural consequence of these impulses.

4.3.4.2 History proved that it was a wise decision. Our parliamentary democracy has withstood the test of time and provided us remarkable stability in the midst of myriad problems and many travails. Even more importantly, parliamentary executive protected the nation from authoritarian tendencies. True, the period of emergency witnessed state tyranny and severe curtailment of individual liberty. Also from time to time, whenever the ruling party enjoyed a comfortable majority and the prime minister enjoyed unchallenged supremacy within the party, the executive was more presidential than parliamentary in its style of functioning. This is by no means uncommon in modern democracies with a parliamentary executive system. Britain, Germany, Australia and Canada have witnessed a similar phenomenon of centralization of power, with the prime minister emerging as the unchallenged leader and becoming the symbol as well as substance of the government. Elections too have largely become plebiscitary, and the party platform and the leader seem to matter much more than individual candidates. Despite these trends, parliamentary executive is less likely to become overtly authoritarian. The presence of a constitutional, though often titular head of state acts as a bulwark against authoritarianism. The collective decision making in the cabinet, though often subordinated to prime ministerial authority, acts as a check against individual arbitrariness and tyranny. In addition, the fact that the prime minister has to literally rub shoulders with other colleagues and legislators on the floor of the parliament made him less remote and more earthy and human, diminishing authoritarian tendencies. Finally the knowledge that the government could be brought down by a vote of no-confidence at any time, or that Lok Sabha could be dissolved to pave way for a mid-term poll acted as effective safeguards against authoritarianism.

4.3.4.3 While parliamentary executive model of government served our democracy reasonably well at the Union level, such a model is not without its flaws. In fact a prime minister with an unchallenged majority in parliament often has far greater powers than the directly elected head of government. The prime minister combines in himself the roles of head of government, and de facto head of legislature with a captive majority. The constitutional head of state is often a titular head with no powers or discretion of his own, and is duty bound to assent to any bill, ordinance, proclamation or order recommended by the council of ministers at the prime minister's behest. In a society which traditionally showed exaggerated deference to power, the prime minister emerged as a formidable, larger-than-life figure. Despite these trends, the diversity of the nation and the decline of the singly party domination ensured that prime ministerial power is under check.

4.3.4.4 The other problem with parliamentary executive is the need to draw ministers only from the legislature. When the finest talent is available in parliament, this requirement adds to the strength of the executive by allowing collective leadership. When the political process makes it difficult for genuinely public-spirited citizens with no capacity to muster muscle or money power to enter electoral arena, the legislature no longer has the talent and experience to nurture a high-quality executive. This is increasingly a problem in India. Elections have become extraordinary gambles with large amounts of money at stake. Vote buying and deployment of money power, arousal of caste and other divisive primordial loyalties, short-term populism and ruthless domination of the local oligarchies have come to be the more unsavoury features of elections in our parliamentary system. As a result most individuals best suited for governance are excluded from the political process. Election verdicts also tended to be distorted on account of these malpractices. But the vast size of the nation, the political complexity with several parties controlling the levers of power in several States, and the diversity ensure that the electoral verdicts broadly reflect public opinion across the whole nation. Once a government is elected to office with majority support in the legislature, its survival depends on the continued support of the legislature. This makes its existence precarious, and the executive is often captive to the whims of individual legislators or the caprices of small groups. This unaccountable exercise of influence over executive functioning by the legislators has grievous consequences in day-to-day governance. Any dissatisfaction with the executive's inability to yield to legislators' demands unrelated to policy may lead to collapse of the government. However, at the national level these tendencies to bring down a government on such personal and flimsy grounds are largely under check. The power of public opinion, the limited choices on offer for national leadership, the increasing tendency of parties to coalesce around two broad political formations and the fear of rejection at the polls in case of a mid-term election have brought a degree of cohesion and stability at the national level despite some occasional aberrations. Happily, the culture of ayarams and gayarams is not very pronounced at the national level. Therefore, on balance, the difficulties of a parliamentary executive are outweighed by the advantages of collective leadership, sense of power sharing among all regions and less proneness to overt authoritarianism.

Flexibility in a Federal System

4.3.4.5 However, we need to closely examine whether the same logic holds good at the State level also. In a federal polity, the Union and States have different cultures of governance. The

political culture of the States is often completely at variance with that in the States. The spheres of activity of the Union and States too are vastly different. Despite the impressive number of subjects entrusted to the Union in the Seventh Schedule, much of what matters to a citizen in day-to-day life is decided in States. Maintenance of public order, crime investigation, school education, public health, health care, public distribution system, roads, electricity, irrigation, basic amenities like drinking water and sanitation, land revenue and land records, regulation of motor vehicles and traffic, anti-poverty schemes, agriculture, industrial infrastructure, welfare of the vulnerable sections of the population, and a host of other public services are the responsibility of the States. However weighty the Union subjects seem, national defense, external affairs and currency regulation do not touch most people in their daily lives. While railways, national highways and ports are important, there are established systems and they are generally unaffected by political vagaries. In fact national highways are largely managed by the State-level agencies, though with the Union's support. Broadcasting and telecommunications are unquestionably of great day-to-day relevance to people. But with the advent of powerful new technologies and the increasing deregulation and competition, the Union's role is more that of an impartial umpire to ensure fair competition and to protect the public interest. Given these trends, the nature of issues governments deal with at the Union and State levels, and their impact on peoples' daily lives are radically different. Most public services which make a society truly civilized, democratic and modern are the responsibility of the States. It is obvious therefore that the same uniform model of political executive need not be suitable at the Union and State levels.

4.3.4.6 With the increasing importance of the local governments, there is an even greater need to reexamine whether State and local governments need to follow the same pattern of parliamentary executive in this rapidly changing governance and political environment. There are examples of different electoral and political models in different tiers of government. Britain being a unitary country, has no States. However, the recent devolution efforts in Scotland, Wales and Northern Ireland show that the model followed in each region is unique and different. Even a small and relatively homogenous nation found it necessary to evolve different models of devolution. Even more significantly, for a nation which is the model of parliamentary executive, the mayor of London city is now elected directly by all the voters, and not by the elected members of the city council. Thus even in the cradle of parliamentary executive, we see great diversity of political institutions, and evolution of directly elected executive in London city. In the United States, the executive earlier was elected indirectly by the electoral college members elected differently in different States. Over the years, the election become more or less direct by all voters of the nation. Even then, as the recent presidential election amply demonstrated, the electoral college determines the outcome, and the manner of election of the electoral college varies in some States. While in most States the winner-take-all system prevails, in the States of Iowa and Nebraska, there is a more nuanced system in operation. In France, the president is directly elected, and there is a run-off election if necessary, and the candidate with a majority vote becomes head of state. But in the legislative elections, while there is a run-off in case no candidate obtains a majority of votes, in such a run-off election the winner is decided on plurality basis, and there is no majority requirement. In India itself, we have adopted a constitutional presidency, with the head of State elected by both houses of parliament and the State Vidhan Sabhas. But the governor of a State is appointed by the president and serves office at his pleasure. In local governments, we have no such State government nominee acting as head of the district. And yet the official appointed by the government, the district magistrate, often has

substantial authority. Local governments themselves are not of uniform strength all over India. All these examples show that there is no theoretical or logical reason to have identical models of government at every level in a vast and diverse nation. Political and governance institutions evolve with time and no great uniform and inviolable principles are involved in such evolution. Often the local requirements and lessons of past experience dictate the nature and pace of changes. While the model of parliamentary executive which is best suited at the Union level, and around which there is a broad measure of consensus across the nation, it need not be regarded as inviolable in States and local governments.

Legislator as Disguised Executive

4.3.4.7 There is ample evidence to show that the parliamentary executive model which served to unite India has actually proved to be counterproductive in States. One of the main causes of this decline in politics and political discourse is the fact that the legislative office is not perceived by the candidates as well as the general public as one of law making and keeping the executive under check. Legislators are seen by the people, and themselves, as the disguised executive. The Indian Union and even States are too large for any social group to gain complete dominance or decisive influence. The sheer diversity of our society ensures that no group can really exercise control over a whole State or nation. When we come to the constituency level, it is an altogether different proposition. The local dominant castes or groups can, and do, exercise near-total control. When these groups elect the disguised executive in the form of a legislator, what they are looking for is control of the executive branch of government through that legislator. There is little concern for law making. Those few people's representatives who discharge their legitimate public duties fairly and diligently are likely to either lose support of dominant groups, or fall prey to the rejection vote in the election. What the dominant groups want is a legislator who can get a local police or revenue official transferred, who can intervene on behalf of the accused in a criminal case, or at best one who can be a dispenser of patronage in the form of many government welfare schemes. In our constitutional scheme of things, these legislators' support is critical for the survival of the government. Rarely is this support given on the basis of principles or ideology or public opinion. Invariably, there is a price extracted for such support, which can be in many forms. The executive is then at the mercy of the legislators, on whose continued good will and support its survival depends. As a consequence, integrity and survival in power are not compatible any longer.

4.3.4.8 In addition, as the local legislator is elected more as a representative of the dominant castes or groups, he doesn't stand for an ideology or a mandate or poll platform. His main purpose is to further the interests of the dominant groups or castes as a legislator, or as a minister, if he can muster enough support to become one. As the people have to choose between two or three contenders of similar unsavory background, the choice is often very unsatisfactory. As the political executive is drawn from those elected in this process, it is almost always certain that we have ministers, who have neither common purpose, nor larger vision, nor deep understanding of public affairs. The council of ministers is very often a loose collection of warring tribes, perpetually feuding for crumbs of office or to further their own group or caste interests. This situation, coupled with the public anger and frustration with the political process as evidenced by the rejection vote, makes it impossible to have any honest or far-sighted governance.

4.3.4.9 All governance is then reduced to patronage, and transfers and postings of bureaucrats. As Robert Wade pointed out, there is a well-developed market for public office in India. Money habitually changes hands for placement and continuity of public servants at various levels. These public servants in turn have to collect 'rent' from the public. The hafta paid to a policeman, the mamool charged by the excise official, the bribe collected by the revenue functionary or the corruption of a transport officer are all part of a well-integrated, well-organised structure. This vicious cycle of money power, bureaucratic placements, political power, muscle power and election battles based on dominance of local factions is extremely well-entrenched and resilient and cannot be dismantled by a few good deeds of a few good people or by incremental reform or tinkering with the system. It is this vicious cycle that leads to the pervasive corruption that large sections of citizenry in all walks of life are disenchanted with, and which is enfeebling ordinary citizens. With the exclusion of the people from the political process or governance, except for voting once in a while in favour of a candidate who is imposed on them, most people are sullen, resentful, angry and frustrated. No matter how many times they reject a government or party, no matter how often they give vent to their anger and frustration through public protests, demonstrations, and at times violence, the real character of governance does not seem to change; the local public servant behaves in the same manner as always — corrupt, greedy, arrogant and arbitrary.

4.3.4.10 Often the fear of rejection compels governments to adopt highly short-sighted and populist measures. However, as a general rule they do not help, as the exchequer is soon depleted, and the people have no respect for a government that is venal irrespective of the direct subsidies. In any case, they realise that even when a government makes earnest attempts to improve their lot, its power to do good is extremely limited, while its capacity for harming public interest is enormous. A large and important part of people's lives is neither touched by the government, nor are the people given control over it to guide their own destinies. Many perceptive observers noted this extraordinary crisis of the Indian polity over the years and commented on the ungovernability of India. Galbraith, for instance characterised India as a "functioning anarchy" decades ago.

Captive Parliamentary Executive in States

4.3.4.11 Given this dominance of local entrenched groups and the culture of disguised executive, two consequences follow. Firstly elections at the local level are often a test of supremacy of the local oligarchies, and public opinion and popular sovereignty are a far cry given the dominance of the local elites. As the legislative office is key to executive power at the State level, getting elected as a MLA is of crucial importance for political survival. Therefore all means – money, muscle power, other inducements, threats, brute force – are liberally employed to get elected locally. Party affiliation and ideologies have no real meaning to these local oligarchies, and what matters is supremacy in faction struggle. Thus the parliamentary executive system has exacerbated electoral irregularities, voting fraud and vote buying at the assembly constituency level. Secondly, the legislator is elected not to legislate and monitor the government's functioning, but to exercise executive authority in legislator's garb. As a result, the legislator's role in routine executive sphere is awesome. Even in a directly elected executive with separation of powers, the legislator does exercise enormous influence. But that influence is in the legislative sphere and in budget allocations. The executive is forced to negotiate with the legislators to get

their support for the enactment of key legislations and for budgetary appropriation. The legislators often use this leverage skillfully to help promote investment and job creation in their constituencies, hence the so-called pork-barreling. But this power of legislators where separation of powers is in vogue is inevitable and salutary. It is a part of the negotiation of spheres of influence between the executive and legislature, and is addressed by the institutional checks and balances. While the legislators press for a favoured policy or allocation of resources to a particular sector or location of projects in a State or region, they cannot influence day-to-day executive functioning and specific decisions and transfers and postings of officials. Legislators' interference in executive functioning is thus self-limiting. In the ultimate analysis a group of legislators cannot threaten to withdraw support to the executive and affect its continued survival. As the executive is directly elected by the people, and owes its mandate to the voters and not to the capricious majority in the legislature, the executive cannot be browbeaten beyond a point. But in a parliamentary executive model, every decision is captive to the whims or self-interest of individual legislators.

Reversal of Roles

4.3.4.12 In fact in States, parliamentary executive system has led to a curious reversal of roles. The legislator's real concern is to function as the disguised and unaccounted executive. Therefore he has little concern for legislation. Laws are often enacted perfunctorily, without the serious attention they deserve. Budgets are approved with utmost casualness, all the legislative bluff and bluster ultimately signifying nothing. A strong chief minister with comfortable majority in the legislature, particularly with a commanding role in his party, can ride roughshod over both his cabinet colleagues and the legislature. With complete control of the legislature and executive, the chief minister can be a highly authoritarian figure. The executive thus completely controls the legislative agenda, and the legislators in turn control the local executive decisions in an unaccountable manner. This development has led to another reversal of roles in day-to-day administration. The elected political executive is busy with day-to-day management of politics of survival. Therefore much of the executive's time and energy are spent in retaining the legislators' support, leaving little attention to governance and policy making. Therefore much of the policy making, except in respect of short-term populist policies, is left to the bureaucracy. Thus, the politician is content to pay attention to day-to-day policy implementation, patronage and transfers and postings, and the bureaucracy is fulfilling the task of policy formulation. This unhealthy tendency has severely undermined our democracy and made our political process increasingly self-serving and unaccountable.

4.3.4.13 With this confusion of roles, blame-throwing and finding alibis for non-performance have become endemic. As authority is often divorced from accountability, and de facto power is delinked from *de jure* authority, accountability suffered. While things deteriorate, there is no one to assume responsibility. This again resulted in short-term populism and high centralization of power through patronage-distribution. In view of the systemic nature of the problem, electoral verdicts and change of governments do not necessarily improve the situation. As high and illegitimate expenditure is the necessary accompaniment of the constituency-based election of the legislator as disguised political executive, power is bound to be abused for private gain. Corruption is thus ubiquitous as most public services are controlled by rent-seekers in this vicious cycle of 'dangerously stable equilibrium', as described by Robert Wade. Elections often change the players, but the rules of the game are unchanged.

4.3.4.14 As explained earlier, given the compulsions of the patronage-based political culture dominated by local oligarchies, the talent available in State legislatures for executive office is extremely inadequate. As the parliamentary executive can be drawn only from the legislature, the quality of the cabinet suffered grievously over a period of time. This led to significant decline in the quality of governance and decision making. Even when a party has a clear mandate and there is clarity in goals, and even if legislators' interference in day-to-day executive decisions is kept under check, the quality of ministers is often less than adequate to meet the complex requirements of modern democratic governance. As a result, even sound policies have failed to yield dividends for want of the ability to translate ideas into effective action. School education, health care, police reform, population control, employment generation, investment promotion, sustainable natural resource development, anti-poverty measures, policies for promotion of equity and social justice have all suffered even when the governments have recognised the need to pursue sound policies for their own political gains. For a complex country with myriad problems of great magnitude, the political talent available in State legislatures is woefully inadequate.

Nominated Governors – Skewed Federalism

4.3.4.15 The parliamentary executive model in States has also led to severe distortions in our federal relations. As the governor is nominated as head of State by the Union, we have an unaccountable constitutional functionary with vast powers of selecting a chief minister, dismissing a government, dissolving the legislature, recommending president's rule under Article 356 and reserving a bill passed by the legislature for president's assent under Article 200. Often these powers are used in a highly discretionary and partisan manner. While the elected president with a wide mandate from the parliament and State legislatures has extremely limited powers, the nominated governor with no democratic mandate has a vast reservoir of unaccountable powers at the expense of the elected government in the State. As the traditional parliamentary executive necessitates a constitutional head of state, this anomaly in States has become inevitable. When the State government does not enjoy the political support of the party in power at the Union level, this anomaly has led to several undemocratic actions. The frequent abuse of Article 356, the failure to assent to bills passed by the State assemblies, and the use of governor's office for blatantly partisan political games are too well-known to require elaboration. The Union has thus tended to exercise a high degree of needless control over the States, leading to centralization, inefficiency and unaccountable governance. This has actually proved counterproductive, as the Union's political games through the nominated governor's institution and Article 356 have weakened our federal structure and at times led to serious sense of alienation of the people, promoting strife and discord, and undermining national unity and integrity.

State Legislators vs Local Governments

4.3.4.16 Another important and unhappy consequence of a parliamentary executive and unaccountable executive power in the hands of State legislators is severe weakening of local governments. A local legislator whose sole preoccupation is local political patronage often sees the elected local government as a serious rival encroaching into his territory. As local governments have been at the mercy of State legislatures until 1993, in most States local governments either did not exist, or when constituted, they tended to be feeble and ineffective.

The States rarely showed any degree of commitment to transfer resources, functions and control over functionaries to local governments. As the State's political executive owes its survival entirely to elected legislators' good will and support, it is but natural that local governments would not be allowed to take roots against the will of the legislators whose dominance is threatened by empowered local governance. This situation underwent marginal change after 1993, with the advent of the 73rd and 74th Constitutional amendments. However, given the reluctance of the States, these amendments did not result in truly empowered and effective local governments. The Constitution now only ensures that local governments are constituted, elections are held regularly, panchayats and municipalities are not superceded en masse, and independent constitutional bodies are appointed to monitor elections and advise on financial devolution. However, the Eleventh and Twelfth Schedules of the Constitution have no mandatory force and the State legislatures are free to transfer such subjects and powers as they deem fit to local governments. Given the political realities of legislators' unaccountable and disguised executive powers, most States chose not to empower local governments effectively. Even the constitutional obligations of constituting local governments and holding regular and periodic elections are violated with impunity, by employing a variety of disingenuous and undemocratic devices and stratagems.

Direct Election of the Executive in States

4.3.4.17 These unhappy circumstances lead us to the conclusion that the cabinet drawn from the legislature, and surviving at the behest of the legislators is not necessarily the most suitable model of political executive in States. There is a strong and compelling case for a directly elected political executive and separation of powers in States. The arguments against separation of powers and direct election of the executive which are valid at the Union level do not hold good in States. There cannot be any serious fear of authoritarianism in States. The Union is the ultimate repository of sovereignty and guarantor of the constitution and our democratic governance. The armed forces are controlled by the Union. The supreme court, a strong parliament, election commission, finance commission and union executive are effective safeguards against authoritarianism in States. No elected State government has the power to undermine the essential features of the Constitution, or the basic freedoms in a democracy. The need for a sense of participation and sharing of power among all regions and linguistic groups is a unique requirement of the Union, necessitating a parliamentary executive. In States, these imperatives no longer operate. Given these features of governance in States, there are no genuine reasons against clear separation of powers and direct election of executive in States.

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

- The legislator can no longer be disguised unaccountable executive. Therefore, the local legislative election ceases to be a symbol of oligarchic domination. As legislative office is largely meant for law making and checking the abuse of executive authority, the power of patronage will not be available to legislators.
- Serious-minded, public-spirited citizens will aspire for, and be elected to legislature.
- As constituency legislative election does not determine executive office, the incentive for vote-buying and local electoral irregularities disappears. At the same time, as the executive is directly elected for the whole State, no group or oligarchy will have sufficient dominance or

incentive to resort to vote-buying and electoral malpractices across a whole State. The very nature of elections will be transformed.

- As the executive will be untrammelled by day-to-day interference of the legislators in local executive decisions, there can be effective governance. The alibis for non-performance will no longer be available, and authority and accountability will be together.
- At the same time, the legislature will have real control in law-making and budget approval. Therefore, the executive is kept constantly in check in institutionalized manner, and it will have to carry the legislature with it in carrying out its legislative agenda and policies.
- As the executive's survival is independent of legislators' support, honest and unbiased action will be possible in matter of governance. Corruption can then be curbed, as honesty and political survival become compatible.
- As the political executive can recruit the finest talent outside the legislature for executive responsibilities, the quality of governance will dramatically improve.
- As there will be no need for nominated governors, federal relations will significantly improve, and democracy and States' autonomy will be strengthened.
- As the executive and legislature would be elected separately for fixed terms, the union can no longer abuse Article 356. Failure of constitutional machinery in States as commonly interpreted, viz. in capacity to form a stable, majority government, will no longer be an issue. However, new mechanisms may have to be evolved to deal with other constitutional failures. Many federal countries have such mechanisms. In the US, the federal government can send its troops or marshals to enforce the constitution, maintain order or implement a court directive. Dismissal of a State government is not a necessary requirement to preserve the Union, except in extraordinarily grave emergencies like secession and civil war.
- Finally local governments can be really strong and effective once the State legislator does not perceive a threat to his position from the local government executive. As the State legislator's position is not based on patronage, he often becomes the effective interlocutor for local government's powers and initiatives, instead of being an adversary.
- A similar separation of powers in local governments, and a directly elected executive at the local level would be appropriate for the same reasons. Thus the authority and accountability will fuse at State and local levels and a new political culture will be evolved, making good governance a reality.

4.3.5 Citizen -centered Representation and Governance:

4.3.5.1 In an earlier section (chapter 3) relating to the need for attracting the best talent into legislatures, the question of empowerment of local governments has been discussed. As has been pointed out, only when the citizen's vote and public good are discernibly and clearly linked in people's minds can vote acquire a lasting value, and people vote for better representatives disregarding temporary inducements. There are other, even more important reasons of good governance to promote citizen-centered governance.

Fiscal Responsibility and Local Governance

4.3.5.2 It is now common knowledge that India is in the grip of a severe fiscal crisis. The combined fiscal deficit of the Union and State governments is of the order of about 10% of the GDP. As borrowings are diverted to meet the revenue deficits, and as interest burden on the exchequer keeps increasing, the crisis is deepening. While the economic dimensions of the crisis are well-understood, it is often not recognized that this is largely a governance crisis. Fiscal

deficits can only be addressed by significant increase in revenues or reduction in costs. Revenues can be raised painlessly only by very high, sustained growth rates. As our infrastructure is weak and inadequate, and as the productive potential of the bulk of the population is shackled on account of low levels of literacy and poor health care, there cannot be rapid growth on sustained basis. To overcome these obstacles we need both resources and governance reform to effectively implement policies. The more painful way of increasing revenues is higher taxation. As much of the tax revenue and public expenditure do not result in realizable public goods and services, citizens resist and evade high taxation. With rampant corruption in a centralized governance structure, there cannot be tax compliance in high-tax regime, nor is high taxation politically feasible in a liberal democracy without tangible improvement in public services and community assets. Another way of raising resources is privatizing public undertakings, but our record and the difficulties encountered indicate that it is unlikely that significant revenues can be raised from public sector sales.

4.3.5.3 There are two ways of reducing public expenditure – reduction of wage bill and elimination of subsidies. Savings through wage reduction or retrenchment of employees are very hard to accomplish. In a centralized governance structure, no government has the power or will to antagonise the vast army of employees. In any case, the problems with public employment are not the excessive number of workers and high wages, but the wrong deployment and lack of accountability. We have too many support staff and too few teachers and health workers, and where public employment is in the right sectors, there is hardly any effective delivery of services. Subsidies cannot be eliminated unless the beneficiaries are satisfied that the money so saved is improving the quality of their lives in some other manner. In centralized structures where such a link is not visible, desubsidization is difficult. All these factors make our fiscal crisis a highly intractable problem in our centralized governance model.

4.3.5.4 This fiscal crisis can be addressed only through effective and far-reaching decentralization of power and citizen-centered governance. People would elect better representatives and attach value to the vote in a mature and responsible way when their vote is directly and locally linked to public good. We accept tax burden voluntarily only when we see the link between the taxes we pay and the public services we receive locally. Finally the vast army of employees can be redeployed from areas where they are redundant to sectors where they are needed only in local governance. Once employees are available in the needed sectors and institutions, they perform satisfactorily only when they are accountable to the local people, and when authority and accountability are together.

Citizen Empowerment and Subsidiarity

4.3.5.5 All this clearly establishes the need for effective local representation and empowered local governments. We should recognise that all politics is ultimately local, and the citizen is the centre of our political universe. In our democracy the spirit of the Constitution envisages that true sovereignty vests in the citizens. Therefore citizen-centered governance based on the principle of subsidiarity should be the norm. The fundamental failure of our representation and governance so far has been because of the high degree of centralization delinking the citizen from governance. In a rational and democratic model of representative democracy, it should be recognised that the citizen and his family occupy centre-stage. Most decisions which affect the happiness and well-being of individuals are taken by the citizens and their families. The state

comes into picture only when the citizens' actions have a bearing on others' lives, or when common goods and services need to be provided for economies of scale or to harmonize relations between individuals and groups. The first focus of governance in such matters should be the local community of stake-holders who have a common interest in a service or institution. For instance, the parents of children who attend the same school, the farmers whose lands are irrigated by the same source, the consumers who obtain essential commodities from a ration shop, or the producers who sell their product in a market constitute such stake-holders' groups. To the extent feasible, the responsibility for organising and managing these services should be entrusted to these and other stake-holders' groups.

4.3.5.6 Many public goods and services do not have clearly defined stake-holders. The people at large would be needing such services from time-to-time. Therefore such tasks should be entrusted to the local governments. Such local governments should have adequate functions entrusted to them, and commensurate resources should be devolved on them. All the public servants dealing with those functions should be clearly and fully accountable to such local governments. The State government should be responsible for limited tasks which necessitate economies of scale, or coordination and sharing among several local governments, or involve complex technical or managerial issues. Finally, the Union should be entrusted with those national tasks which cannot be fulfilled at State and local levels.

4.3.5.7 This principle of subsidiarity should inform all our representative and democratic institutions. Not only is it a democratic necessity, but it is also a fiscal and economic imperative. Good governance in a democratic society is not possible in centralized structures. Therefore our representative democracy needs to be reorganized facilitating the growth and empowerment of local governments and stake-holders. The insipid uniformity and stultifying central control are inimical to democracy, economic prosperity, release of human potential, social justice and good governance. This restructuring demands giving mandatory status to the Eleventh and Twelfth Schedules of the Constitution on par with the Seventh Schedule. We should also evolve mechanisms for devolution of sufficient resources and effective control of employees at each level commensurate with their functions.

Tools of Direct Democracy

4.3.5.8 In addition to genuine empowerment of local governance, we should also redesign representative institutions to suit local needs. Representative democracy, by which elected representatives take decisions on behalf of the people, is a necessity imposed by vast territories and large numbers of people. As decentralized governance becomes more and more real and meaningful, the role of representatives correspondingly changes, and declines. Therefore we should devise tools of direct democracy and immediate accountability at the local level. In larger tiers, the people cannot participate in direct decision making except expressing their will in elections. But locally, people can play a more direct role in governing their affairs. Stake-holder empowerment is in fact a form of direct democracy. In addition, the tools of initiative to propose a legislation, and referendum to seek popular mandate for a policy or decision can be easily introduced at the local level. Such direct democracy keeps the representatives in check and makes popular sovereignty a reality. With improving tools of communication and rapid spread of technology, such direct democracy is now being practiced in many modern societies. In addition, recall of representatives, a direct tool of enforcing accountability of elected persons, and keeping

them under check, is a feasible and desirable proposition at the local level. At State and national level, such provisions for recall and direct democratic tools of initiative and referendum are impractical and prohibitively expensive, though desirable in theory. But in local governments they are inexpensive, practical and democratic tools which deepen self-governance and promote public good accountability.

Chapter - 5

Measures for Effective Functioning of Legislatures

5.1 Deficiencies in Legislatures

5.1.1 A legislature is essentially a representative body to make laws, approve the budget and monitor the executive's functioning. Paradoxically, in our country these two functions have been increasingly relegated to relative insignificance. Given the parliamentary executive model, all initiative for law making has been with the executive, with the legislature merely playing second fiddle. As the executive inevitably enjoys the majority support in the lower house, laws are automatically enacted without real scrutiny in States with unicameral legislature. In States with bicameral legislature, the hurdles in legislation are somewhat mitigated by the fact that the Legislative Council can be abolished with relative ease. At the Union level laws are enacted whenever the government enjoys majority support in the Rajya Sabha or when a compromise is reached among major parties. The actual merits or demerits of a legislative proposal are rarely examined by the legislature. With strong party organizations and the provision for party whip with constitutional sanction in the Tenth Schedule, the legislature has merely become a rubber stamp of parties. Similarly in budget making or approval, there is hardly any application of mind. A lot of speculation precedes the budget, and discussion follows it, but to no avail. The government's proposals are approved as long as it enjoys the support of the lower house, and the assumptions and estimates are never questioned, and the policies are rarely examined closely. Experience shows that the budget estimates have become increasingly unreliable, and budget promises are often unimplemented. The executive's enforcement of laws, implementation of declared policies and appointment of key officials are almost never scrutinised by the legislature in India. In effect the legislatures are content to allow themselves to be subordinated to executive will. But in the realm of executive decision making there is increasing desire on the part of legislators to exercise their influence informally in an unaccountable manner privately.

5.1.2 As a result of these developments, the quality of debate in legislatures suffered over the years. The unruly scenes witnessed almost everyday in legislatures, the absence of rational discussion and deep analysis or introspection, and the often completely partisan approach to issues irrespective of merits have eroded public confidence in our parliamentary democracy. The intemperate use of language, lack of decorum, order and discipline, and occasional physical violence have aggravated this decline in legislatures. Members have tended to go through their tasks in a monotonous way without enriching public debate. The people are increasingly alienated from the legislatures. Much of the time in legislatures is spent on 'meaningless debates on non-issues' (A Surya Prakash) and political posturing. Clearheaded, professional, insightful functioning is conspicuously absent in most legislatures.

5.1.3 These serious deficiencies can be remedied by the measures suggested for equitable representation in legislatures, reforms to attract the best talent into public life, and steps to promote harmony and good governance. However all those can improve the composition and quality of members of legislatures executives. The actual functioning of the legislatures still needs to be addressed to make them effective instruments of law making, oversight of government, people's representation and promoting public good. These measures for such improved functioning include an effective and empowered committee system, strong and capable secretarial and professional support, revision of rules of business to vastly improve time

management and conduct of sessions, oversight of appointment of government and regular monitoring of executive action as well as investigation of lapses, codification of legislative privileges, making information available to the public and certain steps to preserve the dignity of legislatures and the separate identity of each tier of government.

5.2 Effective and Empowered Committee System

5.2.1 Some efforts were made to constitute standing committees of parliament in 1993. Rules were framed entrusting certain functions to these standing committees, including considering demands for grants of the concerned ministries and departments, examining bills if referred to the committee by the presiding officers, considering the annual reports of the ministries and considering the policy documents of the ministries if referred to the committee by the presiding officers. While these committees and their functions are a vast improvement over the past, they are still too feeble and ineffective to make a real impact on the functioning of the parliament. In most States there is hardly any committee system.

5.2.2 US Congressional Committees

The US congress has by far the most effective and empowered committee system. A brief review of the congressional committees would be useful to understand how they can play a vital role in making the legislature truly effective. Woodrow Wilson's observation a century ago, "Congress in session is Congress on public exhibition, whilst Congress in its committee-rooms is Congress at work", captures the essence of committee system in the US even today. Although committees have been in existence for over two centuries, the 1946 Legislative Reorganization Act set the foundation of today's committee system. As Carol Hardy Vincent observes, "Decentralization is the most distinctive characteristic of the committee system. Because of the high complexity and volume of its work Congress divides its legislative, oversight, and internal administrative tasks among approximately 250 committees and sub-committees. Within assigned areas of jurisdiction, they gather information, compare and evaluate legislative alternatives; identify policy problems and propose solutions to them; select, determine the text of, and report out measures for the full chambers to consider; monitor the executive branch's performance of its duties (**oversight**); and look into allegations of wrongdoing (**investigation**).

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

"When a committee or subcommittee favours a measure, it usually takes four actions.

First, it asks relevant executive agencies for written comments on the measure.

Second, it holds hearings to gather information and views from non-committee experts. Before the committee, these witnesses summarize submitted statements, then respond to questions from

members. (Other types of hearings focus on implementation and administration of programs [oversight] or allegations of wrongdoing [investigative]).

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

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

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

5.2.3 Proposals for Effective Committee System

This elaborate and highly systematized procedure of the committees gives the US Congress tremendous control over the legislative and oversight process, and enables close interaction with the public, experts, and professionals. Obviously our committee system in parliament and State legislatures is far from adequate. A similar committee system as in the US Congress needs to be adopted in our legislatures both at the Union and State levels. Such a committee system could have the following features and functions:

- approval of demands for grants
- receiving proposals from the public and government proposals for legislation
- obtaining government's views on measures proposed
- public hearings and expert depositions with the power of summons when necessary
- finalising the proposal
- recommending to the full house a proposal
- making public its meetings, deliberations and records through a variety of means including electronically
- consideration of proposals for appointments of constitutional functionaries and key public offices through public hearings
- monitoring and review of implementation of laws
- monitoring and review of government policies
- review of performance of government ministries and functionaries
- investigation into complaints of wrongdoing

5.3 Efficient Conduct of Sessions

The conduct of business in legislatures has become chaotic and ineffective. In order to restore public confidence and promote orderly, effective and democratic functioning, the following measures should be adopted.

- Zero hour, which has become a source of great disorder and noise should be abolished.
- Legislature's work should be largely or wholly based on the work in committees. Committees' recommendations should form the basis of the legislature's work.
- There should be strict monitoring of timing, and interventions and speeches should be permitted only when they are brief, relevant and to the point.

- Firm action should be taken against erring members who undermine the functioning of the legislature.
- Privileges of legislatures should be clearly and precisely codified so that there is no room for ambiguity or abuse of such privileges

5.4 Measures to Enhance the Dignity of Legislatures

Legislative dignity is severely lowered by persons with criminal record getting elected to the house, members behaving in an unethical or corrupt manner and legislators acting as disguised executives. In order to enhance the dignity of the house, the following measures should be adopted.

- Comprehensive political party reforms (covered in Chapter 3)
- Comprehensive electoral reforms (covered in Chapter 3)
- Abolition of the constituency development fund of the legislators
- Removal of special patronage of members like quotas in allotment of petrol bunks, telephones, gas connections etc.
- Prohibition of members from becoming members of local government bodies or public sector boards
- Providing much larger secretarial assistance and professional help to members and committees
- Ensuring complete independence of the legislature secretariat
- Providing adequate facilities to discharge duties as legislators and constituency representatives
- Linking the salaries and allowances of members to the wages and allowances of officials of an appropriate rank, so that legislators do not have the embarrassment of seeking and enhancing their own wages
- Prohibiting legislators from influencing purely executive actions
- A strict and enforceable code of conduct, violations of which invite serious penalties including expulsion.

Chapter - 6 Quest for Swaraj and Empowerment

6.1 Continuity and Change

6.1.1 Undoubtedly India has an enviable record of democratic institutions among the newly independent nations after the Second World War. There is wider representation in legislatures, public awareness is greater and democratic consciousness is deeper today than ever before. Periodic elections, peaceful and orderly transfer of power, and respect for liberty have been the norms barring certain aberrations, the most notable of which is the emergency period between 1975-77. However, there are clearly several flaws in our parliamentary democracy. A severe crisis of governance has gripped the country. While individual liberty is largely guaranteed, the other facets of a true democracy, viz. genuine self-governance, true empowerment of citizens, unfailing application of rule of law and instruments of accountability have not taken deep roots. While elections are held, the representational legitimacy of our legislatures is questionable. Vast sections remain unrepresented or underrepresented, and many voters feel alienated. The best men and women that the country can boast of have been shunning political process and public life. Politics has acquired a pejorative connotation. The basic roles of legislatures in a parliamentary executive system, viz. legislation, harmonious relations between various organs and tiers of governance, and providing a competent and honest political executive are not fulfilled satisfactorily. Finally the noisy and chaotic functioning of the legislatures and its ineffective oversight of the executive branch of government have become sources of concern.

6.1.2 Given these concerns and based on past experience in India and elsewhere, the following reforms need to be taken up with clarity, conviction and credibility. The time for a national debate is overdue, and a consensus needs to be built on specific reforms to improve our parliamentary institutions, even as we build on the solid democratic foundations laid over the past fifty four years.

6.2 Measures to Enhance Proportional Legitimacy

- Effective legislative steps are needed to enhance women's representation in legislatures. The most practical, flexible, effective and democratic model appears to be mandatory party quotas for women candidates with sufficient safeguards to ensure adequate representation of women.
- Certain proposals like majority vote system with run-off polls, compulsory voting, negative vote, requirement of minimum percentage of polling are unlikely to achieve the desired results. They attempt to artificially impart legitimacy to representation without altering either the outcome or democratizing the process. Negative vote can be introduced as a positive expression of dissent to force parties to reform.
- Representation based on the proportion of vote obtained by the parties in multi-member constituencies, with State as the unit for allocation of seats seems to be best suited to ensure fair representation and improve the political process qualitatively. However, given the importance of representation based on territorial constituencies, half the seats may be filled by constituency-based election under the plurality (FPTP) system, while the overall composition of legislature reflects the proportion of vote obtained. There can be a requirement of a minimum of 10% vote in a state for parties to be eligible for seat allocation, while all territorially elected members will retain their seats irrespective of their parties'

overall performance. Such a PR system should be contingent upon democratic choice of candidates by members and mandatory observance of internal democratic norms.

6.3 Measures to Attract the Best Men and Women into Legislatures

- Proportional representation itself will enhance the quality of representation in legislatures.
- Political parties are legitimate and vital vehicles for democratic action and electoral participation. Autocratic parties and parliamentary democracy cannot coexist. Parties should be reformed by law providing for internal democracy and accountability in respect of open membership, choice of leadership through periodic and fair elections by secret ballot, democratic choice of candidates for elective office by party members or their elected delegates through fair and secret ballot, and transparent and accountable funding and expenditure with full disclosure and strict penalties for violations. Article 21 of the German Basic Law and the German federal law on political parties will form a suitable basis for this purpose.
- While electoral verdicts at the macro level do broadly reflect the public opinion, at the constituency level vote-buying through money power, coercion through muscle power and polling irregularities have become all-too-common. Elections thus tended to attract only those who can manipulate the process on a large scale. Corruption, abuse of authority and maladministration became endemic, the roots of which can be traced to electoral irregularities. Therefore comprehensive and well advised measures should be taken to cleanse the electoral process. These electoral reforms should include transparent and accessible voter registration process, compulsory use of voter identity cards, electronic voting and giving value to tendered votes to prevent polling irregularities; disqualification of persons with criminal record including charges framed by a magistrate and those listed as rowdy sheeters and history sheeters (with judicial scrutiny as safeguard) to curb criminalization; and transparent collection of campaign funds and their accountable utilization with full disclosure, compulsory auditing, independent monitoring and strict penalties for non-compliance.
- Voters have come to realize that in centralized governance vote can at best change the players in the power game, but the nature of the political game is unaltered and misgovernance and corruption continue unchecked. Only when local governance is effective and empowered can there be a link between a citizen's vote and public good. And only then can people use vote as a fine tool for effective improvement in governance. In order to achieve this, local governments should be genuinely empowered, and local government list in the Eleventh and Twelfth Schedules should have mandatory application on par with the Seventh Schedule. In addition, there should be commensurate devolution of funds to match local responsibilities, and complete control over the functionaries responsible for local subjects.
- Parliamentary executive is drawn only from the legislature. Given the limited political recruitment in the current climate, legislatures are devoid of the required talent to provide effective governance. Therefore there should be a constitutional provision allowing induction of any suitable citizen as a minister (subject to legislature's ratification), with such ministers having ex-officio member status without voting rights in legislature, and with a cap of 5% of the strength of the lower house for such induction.

6.4 Measures to Promote Good Governance, Harmony and Stability

The dangers of political instability are greatly exaggerated in recent times. In fact Indian polity has been remarkably stable and our system has the resilience to withstand crises from time to time. Therefore certain proposals to impose stability seem to be both infeasible and undesirable. There cannot be fixed terms for legislature in a parliamentary executive model, as it may lead to a culture of perpetual defections and rootless and transient governments without legitimacy. Proposals to forcibly impose a two-party system will seriously undermine our democracy and federal system, and will be fiercely resisted in a vast and diverse polity. Indirect elections to legislatures are unacceptable in an age when it is axiomatic that democracy is synonymous with universal franchise, secret ballot and direct election. The German model of constructive no-confidence whereby a new government with majority support should be in place before a government is voted out can at best have limited application. If a government does not enjoy the confidence of the legislature, and if no new government can be formed, it will only lead to a lame duck government with no capacity to legislate or obtain budget approval. However, there seems to be no great cause for alarm on account of instability, because there is already a growing trend of most political parties gravitating towards two political formations at the Union and in most States.

However, there is greater need for effective measures for promoting harmony in law making, improving coordination between the various tiers of government, promoting ethical standards in public life, preventing defections, and separating executive from legislature at State and local levels.

- The composition of Rajya Sabha does not reflect either the public opinion or the will of the States at a point of time. Therefore, there is often discord between the two houses of parliament, and even a government with clear popular mandate is unable to get legislation through. Rajya Sabha needs to be reformed either by changing the mode of election to reflect the will of the States or by limiting its powers of legislation to delaying and proposing amendments, but not vetoing.
- The power of governors under Article 200 to refer State bills to the president for his assent has often been needlessly invoked, and president's assent takes interminably long time thus defeating the will of the State legislature. The power of reserving a bill for president's assent should be severely curtailed, and when a bill is referred, it should be made mandatory to approve or reject it within a limited period of, say 60 days.
- The Tenth Schedule has failed to prevent defections, and in fact tended to reward mass defections while stifling legitimate dissent and perpetuating party tyranny. All defections, individual or collective, should entail disqualification, with an independent body like the Election Commission determining such cases. If there are irrevocable differences on principle, there should be well-defined criteria with transparent procedures and public notice for effecting a legitimate split, with the Election Commission monitoring the events. Only when such a split is recognised can members be allowed to deviate from party whip without incurring disqualification. Whip should be limited to the lower house and to matters which affect the survival of the government, viz. confidence and no-confidence motions, budget and money bills.
- There should be a well-defined code of conduct for members with compulsory declaration of assets, income and interests, full public disclosure, a independent parliamentary

commissioner to advise members and investigate complaints and an ethics committee to punish erring members.

- The parliamentary executive model is well-suited at the Union level given our vast size, diversity and the tendency to defer to authority excessively. But these arguments do not hold good at the State and local level. A directly elected executive with clear separation of powers at State and local level is likely to promote cleaner elections, allow honesty to coexist with survival in office, improve federal relations, combine authority with accountability, permit induction of the best talent into the executive, promote stability and encourage independent functioning of the executive. There is no possibility of a directly elected executive with fixed term at State or local level turning authoritarian or undermining liberty. Therefore direct election of the executive with separation of powers should be introduced at State and local levels.
- The demands of good governance and the need to address the growing fiscal crisis call for effective and empowered local governments in which there is a direct link between taxes collected and services delivered, and authority and accountability coexist. Also tools of direct democracy and expressions of popular sovereignty like initiative, recall and referendum should be adopted at the local government level.

6.5 Measures to Promote Effective Functioning of Legislatures

There is deep concern at the decline in the quality of parliamentary debate, disorder and chaos in sessions, the perfunctory scrutiny of legislative proposals and the inability to monitor the functioning of the executive. Remedial steps are required to make legislatures effective in their legislative and watchdog functions.

- The committee system should be strengthened by giving powers and exclusive authority to initiate legislative proposals or scrutinise government bills, effectively monitor executive decisions and implementation and investigate into wrongdoing.
- Reforms should be initiated to make the conduct of the sessions more purposive, time-bound and productive.
- Steps should be taken to enhance the dignity of, and confidence in, the legislatures and promote ethical conduct and professional discharge of functions.

Conclusion

In conclusion, our parliamentary democratic institutions have served us well. For the first time in our history the ideals of rule of law, human dignity, liberty of citizens, people's sovereignty, and universal adult suffrage have taken root in our society. However, there is need for correcting the distortions which have surfaced over the years. Gandhiji's admonition should be the guiding principle in building institutions of state. "The real Swaraj will come, not by the acquisition of authority by a few, but by the acquisition of the capacity by all to resist authority when abused."

Equally importantly our parliamentary democracy should be judged by Gandhiji's talisman:

"Recall the face of the poorest and the weakest man whom you have seen and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to Swaraj for the

hungry and spiritually starving millions? Then you will find your doubts and yourself melting away".

There is much we can be proud of in our record as a democracy. There is also much that needs to be corrected based on past experience. People want a genuine democracy which represents and empowers them. If we make an earnest attempt to design institutions wisely, we can then ensure that Swaraj is real and meaningful, and the poorest and marginalised Indians have something to celebrate and cherish. We will then succeed in building a nation of peace, freedom and unity, a nation that will play its rightful role globally in keeping with its size, history and civilization, and will promote happiness of our citizens internally.

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