

## Liberty and State Constitutional Values vs Colonial Instruments

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## Liberty and State Constitutional Values vs Colonial Instruments

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### *Philosophers vs Laws*

1. Historians tell us that throughout history in most cultures there were no specific rules of governance. Certainly in case of India this was largely true. Our ancestors have never really developed a theory of state. Consequently personalised despotism of the monarch was the norm. There were, of course, certain social and religious constraints. Subject to such sanctions, the affairs of state were largely unregulated by any framework of formal laws and rules of governance. In his celebrated work 'The Republic', Plato argued that Philosophers alone should be rulers, and when the rulers themselves are philosophers, there is really no need to have a system of laws and rules. As Trevor Saunders points out, "The Perfect Guardians undergo a long and rigorous training in philosophy; they, if any one, really know the moral norms that society must obey. They have absolute and untrammelled power over the rest of the state; in their hands lies the making of such rules and regulations as are necessary. The essential features of such a state are that the few who really know the absolute moral standards rule the many who do not, and that such control is willingly exercised and willingly accepted". Thus, the wise and all-knowing philosophers know what is best for all people and for the state, and their judgement at any point of time is the best guarantee of public good.

2. However, history taught us that no matter how wise and wonderful a ruler is, we cannot unreservedly trust his judgement alone in dealing with complex human and societal issues at all times. Even more importantly, no matter how all-knowing and altruistic the ruler is, we cannot for a moment assume that he will forever be invulnerable to temptations of personal gain and vanity at the cost of public good. As Lord Acton observed so wisely, power tends to corrupt, and absolute power corrupts absolutely. Even Plato recognised this truth later in his life, when he wrote 'The Laws' years after 'The Republic'. Again to quote Saunders, "Plato now sees law as the supreme, though essentially imperfect, instrument for the moral salvation of society: he calls it the 'dispensation of reason', and the entire life of the community must accordingly be governed by a detailed code of laws which will express as far as possible the philosophers' vision of the true good". In Plato's conception, however, such laws are immutable, and should never be changed even in the minutest particulars. "Change, we shall find, except in something evil, is extremely dangerous". We shall examine the validity of this assertion later.

*Note 1: The word 'state' is used in this essay in its juridical sense, and 'State' denotes a province of the Indian Union*

*Note 2: This paper draws heavily from the author's earlier articles titled "Civil Society and Governance", "A Review of the Indian Constitutional and Political System" and "Continuity and Change – Parliamentary Reforms"*

3. It is now almost universally accepted that the basis of laws is that human beings are inherently frail, and the state requires a system of laws and rules to moderate human behaviour. Even wise philosophers and rulers are bound by these laws, as the laws are greater guarantee of state's stability and public good than the unchecked will of mere mortals. It is this recognition that made us accept the need for constitution and laws as a matter of course in modern era. Even in Britain, with no written constitution, there is a recognised body of principles and rules, which is accepted as the constitution. Britain was fortunate in having at its disposal ample time to evolve a sound democracy over centuries of trial and error. Nascent democracies and new republics however have no such luxury of time. Recognizing this the American Founding Fathers adopted the first written constitution while creating the first republic in modern history. Our own freedom fighters wisely recognised the need for a written constitution to determine the building blocks and architecture of the new republic.

### ***Making of the Constitution***

4. With the transfer of power in 1947, an earnest attempt was made to radically transform the Indian state. With the adoption of a democratic system of government, universal adult franchise, republicanism and representative democracy became the corner stones of the architecture of the Indian constitution. Independent judiciary, separation of powers, accountable governance and people's sovereignty became the guiding principles which informed the making of the constitution. The turbulence and bloodshed accompanying partition in 1947 did not diminish the great excitement and expectation generated by freedom struggle and independence. Obviously there was enormous pressure on the state to fulfil these expectations in a significant measure. The constitution-makers attempted to reconcile individual liberty with the state's interventionist role in transforming society.

5. Thus the Fundamental Rights guaranteed various liberties to citizens and these liberties ensured that the state could not affect adversely the liberty and autonomy of individuals and groups. The doctrine of reasonable restrictions and the provision for judicial review effectively protected citizens from the traditional tyranny and depredations of the Indian state. At the same time, the Directive Principles of State Policy were enunciated and they were declared to be fundamental in the governance of the country and a duty was cast upon the state to apply these principles in making laws. The Directive Principles attempted to give expression to the aspirations of the people and to the ideals of the freedom struggle through control, regulation and reform of the Indian Society.

6. A Constitution is a living document, which gives a concrete structure and shape to the ideals in forming the state. Mere pious proclamations and grand declarations remain as empty rhetoric in the absence of a suitable state structure and the myriad details that support the state architecture. In building the edifice of the new India, our constitution-makers relied on time-tested principles of democratic governance and statecraft. A republican form of government based on representative democracy and universal adult suffrage came into being. Given our colonial ties with the United Kingdom and our

acquaintance with the Westminster model, a cabinet-system of government responsible to the elected legislature and which survives only as long as it can enjoy the support of the majority of legislators came to be accepted as a matter of course.

7. The holocaust accompanying partition was an extraordinary calamity by any standards, and is unprecedented during peacetime anywhere in the world. More than a million people, both Hindus and Muslims, were butchered for no fault of theirs. Hundreds of thousands of families were devastated by the widespread violence, arson, rape and looting. About eighteen million people were permanently uprooted in the largest ever mass migration in human history. Given these cataclysmic events at the time of partition, restoration of order, and preservation of the unity and integrity of the fledgling nation were of paramount importance to the new leaders of government and constitution-makers. As a result, a highly centralized state-structure, with certain quasi-federal features was built. In order to maintain peace and order, it was felt necessary to retain the inherited 'steel-frame' of bureaucracy without any serious effort to reshape it to suit the needs of a democratic India. However, in order to ensure a modicum of fairness in the functioning of the state, apart from the independent judiciary, several constitutional institutions like Union & State Public Service Commissions, Comptroller and Auditor General, Election Commission and Finance Commission were created. However, in keeping with the tradition of unchallenged power of the executive, the appointment of all these constitutional functionaries was left entirely to the executive. This vast centralization meant that the fate of a whole nation, whose vastness, diversity and durability were unparalleled in human history, was left to possibly the smallest number of final decision-makers in any modern democracy.

8. The mood prevailing at the time of transfer of power and the enunciation of Directive Principles enjoined upon the state the duty to actively legislate, supervise, monitor, regulate and control several areas of activity which were earlier regarded as the legitimate spheres of civil society. Much of it was necessary and long overdue. In many ways the British during the decades before the Revolt of the 1857 had attempted to reform Indian society and this process, which was halted on account of intervention of the 1857 Revolt was restarted after freedom. The abolition of untouchability, guaranteeing religious freedom and equality before law, several legislations to protect workers, children, women and minorities and positive discrimination in favour of the long-oppressed and disadvantaged sections of society were both necessary and welcome given the enormous hold of tradition, superstition, ignorance and prejudice over much of our society. However the frenetic activism of the Indian state had several far-reaching consequences, the impact of which is being felt in today's society.

### ***Hyperactive State and Governance Crisis***

9. The ubiquitous role of the hyperactive Indian state has made deep inroads into most people's lives. As the state started affecting the lives of a very large number of people, influence peddling, and mediation through power brokers has become all too common. The citizens' dependence on state for livelihood became very common as the state had become the biggest employer of organised workers. Even today, about 19 million

persons are employed by the Indian State (Union and State governments and public sector undertakings) out of a total organised wage-earning work force of about 27 million. Such a large and overwhelming role of government as the principal employer in organised sector is unique to only South Asia. The citizens' dependence on state for livelihood, inputs in agriculture, permits, licenses and quotas; the monopolies of public sector, the VIP quota culture for everything ranging from a railway ticket to a cricket match, needless restrictions on trade and marketing of agricultural products, state's monopoly in almost all public goods and amenities, its control and ownership of all public utilities — all these meant that civil society has become vulnerable to the depredations of state machinery as never before.

10. This spawned a centralised and feudal oligarchic culture and most state institutions became hotbeds of corruption, crime, intrigue and nepotism. Power has become an end itself, and is no longer the means to public good. Unbridled and irresponsible populism, knee-jerk opposition to those in power, unbridgeable chasm between rhetoric and action, endless opportunism, and shameless plunder of the state's resources have become the hallmarks of our governance system. All that matters is a hand in the till of state, and an opportunity to indulge in legal plunder and constitutional brigandage. Once in power by hook or by crook, principles, ideology or public opinion are of little consequence. Appointment of public servants to key offices, transfer of inconvenient employees, licensing, distribution of patronage in the form of subsidies and benefits to the poor, public distribution system, government contracts and tenders, mining licences, permission to exploit forest produce, maintenance of law and order, crime control, crime investigation and prosecution, execution of public works, toll gates — all have become the play things of state functionaries. Most players in the power game are not enthused by any idealism, but have become mercenaries who rig polls and resort to violence at the behest of 'leaders' and expect in return to partake in the plunder and share the booty. The resultant corruption and parasitism have made politics the most attractive and least risky commercial proposition. In fact the word 'politics' itself has acquired a very pejorative connotation. Given the economic power wielded by state and the deliberate efforts to prevent legitimate accumulation of individual wealth in the name of socialism have meant that no civil society group would be able to command the resources or influence to combat abuse of state power.

11. This intrusive and interventionist role of state has not only undermined individual initiative, but has also hampered social harmony and economic growth. As the state focused most of its energy in the economic sphere of license-permit-quota-raj, the legitimate and vital sphere of state activity has been ignored to the detriment of public. Public order has been a casualty with increasing lawlessness and near anarchy prevailing in many pockets of the country. Dispensing justice, which is a sovereign and critical function of state in any civilized society suffered grievously on account of state's preoccupation with the regulation and control of the economy and public ownership of means of production. More than 30 million cases are pending in various courts of law in India and most people have lost faith in the capacity of the justice system to resolve disputes amicably in time or to punish culprits. As the sanctity of contracts could not be upheld, and contractual obligations could not be enforced through courts of law,

entrepreneurship suffered and economic activity stagnated. People were forced to depend on brute muscle power for rough and ready justice. With politics occupying centre stage in society and abuse of power unchecked, criminals soon made inroads into politics. The Election Commission estimates that more than 700 of the legislators (out of the total 4072) in States have a criminal record against them.

### ***India at Crossroads***

12. Indian republic is now over fifty years old. Let us have a glimpse of the Indian State today, in order to have a better understanding of the constitution in actual operation. India today is at the crossroads. The most likely topic of conversation when any two Indians meet at leisure is the decline of civil society and the condition of the Indian state. The Indian state has become too big, all-pervasive and yet soft, inefficient, and effete. In large parts of the country there is breakdown of order. Virtual lawlessness and anarchy are prevailing. A citizen, whose dignity and self-reliance are paramount for the survival of democracy, is made more and more dependent on the state. The situation is aggravated by competitive populism, a dangerous permissiveness that tolerates criminalisation of our polity and society, ever-growing nexus between money power, muscle power, and political power, increasing centralisation in a vast and diverse polity and serious erosion of the legitimacy of authority — all of which have become characteristic of the Indian state. In the light of this, we should examine where exactly our democratic model of governance has gone wrong. We all accept that democracy is the best and humane form of government. Modern history has also taught us that democracy is the most successful form of government in terms of economic growth, national power, and human welfare.

13. Happily for us, at least superficially India has consistently upheld democratic institutions and practices. Except for the dark period of the artificially induced 'internal emergency' declared in June 1975 and concluded with the defeat of Congress Party in March 1977, we never wavered in our faith in, and allegiance to, democratic institutions and practices in the political arena. During that infamous emergency period there was partial authoritarianism; our civil liberties were suspended, opposition was jailed, and the life of legislatures was prolonged beyond the term of five years for which they were elected. 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 parliament, 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. It is true that elections have often been flawed and power has been habitually abused for personal aggrandizement. However, peaceful transfer of power, regular competitive elections, multi-party system, basic democratic freedoms and due process of law have been the norms in our political system.

### ***Standards of Democracy***

14. However, when judged by more exacting standards of democracy, Indian polity is flawed in many respects: There are five key ingredients of democratic polity viz: 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.

15. 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 between Tweedledom and Tweedledee, uninformed 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 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.

16. 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 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 amenable to political influence, 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.

### ***Role of State***

17. It is now accepted in the modern era that a civilized state has certain inescapable responsibilities. What was once an institution for defence of the realm and law and order

and Justice, has now become an instrument of serving common interests and creating conditions for expansion of liberty and promotion of happiness. State's role in providing universal school education of reasonable quality is now regarded as fundamental. That a citizen cannot exercise his rights and play his role meaningfully without minimum education is now axiomatic. Equally, there cannot be enduring economic prosperity without the productivity gains that only the skills imparted by a few years of quality education can accomplish. Similarly, the health of a people is now accepted as the legitimate business of the state. Universal access to minimum health care is the responsibility of a self-respecting state even in the most laissez faire societies.

18. In addition, the state has always been the dispenser of Justice and arbiter of disputes. Without rule of law, protection of property rights, and respect for sanctity of contracts, there cannot be a modern economy or entrepreneurship. Infrastructure building, especially transport and power are either state-driven or state-regulated. The power of new technologies has largely marginalised the state's role in telecommunications and information sector. But the other basic infrastructure cannot be built without a proactive and efficient state. Sustainable natural resources development - particularly soil, water and forestry will remain in the realm of the state in the foreseeable future. In many ways, the state's efficacy in these sectors determines the quality of life, economic growth, competitiveness in global trade, and in a fundamental sense the liberty enjoyed by citizens.

### ***Tools of Power***

19. Power is in essence the ability to influence events, resources and human behaviour, for the larger public good. In a democratic society, people elect their representatives to exercise such positive power. There are essentially three tools available to the state in its duty to provide good governance, enlarge freedoms, help citizens fulfil their potential and protect the society – money, personnel and laws. The Indian state at all levels spends about 30% of the GDP. Every single day the Indian state — all governments put together — spends about Rs.1800 crores. This astronomical sum of more than a crore of rupees every single minute — day and night — should provide us goods and services of quality. This amount is roughly equivalent to Rs. 6700 per head per annum, or about Rs.170,000 per family of five during a five-year term of an elected legislature! And yet the basic preconditions for a modern civilized society are not met.

20. It costs about 12,000 crores to provide classrooms for all children outside school, and an equal amount every year to maintain schools and pay for teachers. The state spends about Rs. 1800 crore a day, which means all we require additionally for universal literacy is a week's expenditure every year. And yet India is home to half the illiterates in the world. The total expenditure on education is a measly 3.2% of GDP. 70% of Indian households have no access to minimum sanitary facilities. In this day and age we have the technology to provide a safe, modern and hygienic toilet for every household at a one-time cost equivalent to 20 days' expenditure of state. And yet the vast majority of people suffer the indignity, inconvenience, and ill health associated with public defecation. The judge - population ratio in India is about 12 per million population, as opposed to over 100 per million in advanced countries. All it costs to provide four times the number of

judges and rural courts for speedy justice at the rate of one per 15,000 population is Rs. 1500 crore per year, or one day's expenditure by the state. Indian state's expenditure is roughly comparable to modern nation-states as a share of GDP, though there is a case for higher expenditure. But most public expenditure is misdirected. While governments in OECD countries spend about 25% of GDP on education, health care and social security, in India these three sectors account for a meagre 5% of GDP.

21. The Indian state employs about 13 million workers directly at the Union and State levels, and about 7 million indirectly in public sector enterprises. This number, as a proportion of the population, is not unusual by global standards. But the government employees constitute over 70% of all organised, monthly wage-earning workers in India. In a poor country with vast illiteracy and ignorance, being educated and employed is a rare privilege. If that employment happens to be in government, with all the association with the colonial trappings of power, then such an employee is treated with exaggerated deference. With decades of socialist mindset, the public servant has become dispenser of government patronage, and the citizen has become a mendicant seeking a license, permit, quota or subsidy. Corruption seeped in. The extraordinary degree of lifetime security given to a bureaucrat at every level, with virtually no chance of being brought to book, made it impossible for any government to enforce accountability. The roles of citizens and public servants have thus been reversed. The net result is that even the lowliest public servant - a peon in a taluk office - enjoys more influence and power economically, socially and politically than 80% of Indians.

22. Apart from this inequitous relationship, two factors made the public servants unproductive and ineffective. First there is misdeployment of human resources. We have too many clerks, peons and drivers, and too few teachers, health workers, policemen and judges. The critical public services that enlarge freedom and maintain rule of law are neglected. Over 50% of the government employees thus have no direct role in providing any meaningful public service. For instance in the State of Andhra Pradesh, out of the nearly 900,000 employees of state (excluding those working in public sector undertakings) as many as 280,000 are clerks who by definition are only support staff helping in decision making. A further 180,000 employees are attenders, peons and drivers who only serve their political and bureaucratic masters. On the other hand there is a huge shortage of teachers and health workers in the government. Many schools function with only two teachers. And even those teachers often do not provide quality service. More than 95% of the teachers engaged in government schools do not send their children to the schools where they teach. Most primary health centers exist only in name, and provide little quality service to the public. There is an increasing disjunction between the needs of the public and the interests of the employees. As a result stake-holding and power-wielding are completely divorced from each other. Bureaucracy has become a semi-feudal oligarchy whose main object is to serve itself. Second, where employees are deployed in the needed sectors, they are utterly unaccountable. Centralized government and exaggerated protection of employment have ensured that public servants are a law unto themselves. There are endless alibis for non-performance, and private gain at public cost has become the norm.

23. There are over 3000 central and about 30,000 State laws in India. Most laws are archaic and obscure. Many are never implemented. The legal system is a maze. In a patronage-based culture, rule of law is always the first casualty. Power and pelf go together, and equality before law is ignored. While the judiciary is independent, the complicated and incomprehensible procedures delay justice. Over 30 million cases are pending in courts across the country. A whole industry of rough and ready justice has emerged outside law courts, leading to criminalization. Crime investigation branch of police is entirely controlled by the elected governments, and has become highly partisan and untrustworthy. With law-breakers becoming law-makers, police forces have become helpless bystanders. The intellectual and moral resources available to the political and bureaucratic class are so limited that creative legislation to resolve national dilemmas is increasingly difficult. No attention is paid to proper drafting of legislation, and often the objective is defeated by the provisions of a law. And increasingly legislation has become very difficult at the national level. With the political process highly fractious and polarized, the consensus needed to make laws in a bicameral legislature is increasingly elusive.

### ***Follies of Omission and Commission***

24. This failure of governance process and the misuse and disuse of the tools of money, employees and legislative power resulted in a grave crisis. Most citizens have given up hope of the state acting effectively and its ability to protect their legitimate interests. In fact the state has increasingly become an obstacle to people's march to progress. The anonymous tyranny experienced by almost every citizen who encounters government machinery at any level and the legal plunder of state resources have impoverished our society and the bulk of our people. School education and primary health care, which are symbols of civilization in a modern society and without which sustained economic growth is not possible, have been woefully neglected as the state did not show the political will to provide these basic services to the public. Key physical infrastructure, entirely controlled by the state for over four decades, has languished for want of resources and managerial ability on account of state monopoly. There is an endemic shortage of power, ports, roads and railroad services. Only in telecommunications sector has there been significant improvement in the last decade, largely due to vigorous attempts to break the state monopoly and the relative ease of transplanting communications technology even in relatively backward societies. But given the predatory nature of the Indian state, even in this otherwise sensible initiative, there has been considerable plunder and bungling.

25. While the state failed to perform its essential tasks, it showed a remarkable eagerness to needlessly regulate other facets of civil society. Complete monopoly of electronic media until the advent of satellite television, prevention of the spread of television for long, sporadic attempts to muzzle free press by censorship and draconian laws, and several preventive detention laws (applied with mindless rigor in arbitrary manner during the notorious 'emergency' period between 1975-77) are some of the striking examples of the state's attempts to curtail individual liberty. The extra-legal executions in the name of encounters, the abuse of police machinery by almost all parties in government, the habitual tortures and illegal detentions despite clear legal and constitutional provisions to

the contrary are sad examples of state tyranny in an otherwise soft, ineffective governance structure.

**26.** In addition, cooperatives, which were given a legal status at the turn of century during the British Raj, were controlled rigorously after independence stifling individual and group initiative contrary to the freedom of association guaranteed under the constitution. Even formation of societies and their regulation became ever more restrictive in many pockets of India unlike during the colonial era, when a very liberal and humane societies law was enacted and enforced with clarity and fairness. Higher education was completely controlled by the state with very poor results in terms of promoting creativity, knowledge, skills and leadership in society. Clearly the state failed in discharging its obligations to the citizens and has acted as a stumbling block to the fulfillment of individual potential and group initiatives.

### *Electoral Politics ¾ Rules of the Game vs Change of Players*

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

28. In the judgement of the people, no arm of state escapes the blame – be it 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 in its case there is lifetime security irrespective of performance and therefore it is possible to be honest and yet survive. Judiciary is lost in vilification, since it is largely immune from the vagaries of politics and there is minimal 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!

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

#### ***Electoral Verdicts ¾ Macro vs Micro***

30. The election verdicts at various levels in the country have an important lesson to offer to us. At the macro level, when we examine a whole state or the country, the verdict does broadly reflect public opinion. We have already seen that, more often than not, this verdict is a reflection of people's anger and frustration and is manifested in the rejection vote. But when we go to the constituency level, we find the picture far more disturbing. At the local level, caste or sub-caste, crime, money and muscle power have become the determinants of political power. All parties are compelled to put up candidates who can muster these resources in abundance, in order to have a realistic chance of success. As a net result, irrespective of which party wins, the nature of political leadership and its quality remain largely the same and the people end up being the losers. This is followed by another rejection vote in the next election, and the vicious cycle keeps repeating. Where the candidate cannot muster money- or muscle-power, he stands little chance of getting elected irrespective of his party's electoral fortunes. Increasingly in several pockets of the country, people are spared even the bother of having to go to the polling station! Organised booth-capturing and rigging are ensuring victory without people's involvement.

31. There is much that is wrong with our elections. Flawed electoral rolls have become a menace. About 40% errors are noticed in electoral rolls in many urban areas, and bogus voting in towns exceeds 20%, making our elections a mockery. Purchase of votes through money and liquor, prevention of poorer sections from voting, large scale impersonation and bogus voting, purchase of agents of opponents, threatening and forcing agents and polling personnel to allow false voting, booth-capturing and large scale rigging, bribing of polling staff and police personnel either to get favours or to harass opponents, use of violence and criminal gangs, stealing of ballot boxes or

tampering with the ballot papers, inducing or forcing voters to reveal their voting preferences through various techniques including 'cycling' etc, illegal entering of polling stations to control the polling process — all these have become an integral part of our electoral landscape.

32. Many scholars wonder how, despite such massive irregularities the electoral verdicts still seem to largely reflect public opinion, and how parties in power often lose elections. The answers are simple. Happily for us, though parties in power are prone to abusing authority for electoral gains, there has never been any serious state-sponsored rigging in most of India. The irregularities are largely limited to the polling process alone, and most of pre-polling activity including printing and distribution of ballot papers, and post-polling activity including transport and storage of ballot boxes and counting of ballots are free from any political interference or organized manipulation. That is why parties in power have no decisive advantage in manipulating the polls, and electoral verdicts broadly reflect shifts in public opinion. However, the massive irregularities in polling process make sure that candidates who deploy abnormal money and muscle power have a distinct advantage. Sensing this, most major parties have come to nominate 'winnable' candidates without reference to their ability and integrity. Thus, the use of money power and muscle power is sanctioned by almost all the parties, and often they tend to neutralize each other. But the net result is that candidates who do not indulge in any irregularity have very little chance of being elected. Election expenditure - mostly for illegitimate vote buying, hiring of hoodlums and bribing officials - is often ten or twenty times the ceiling permitted by law. Criminals have a decisive or dominant influence on the outcome in many parts of India, and have often become party candidates and won on a large scale.

### ***Election Expenditure and Corruption***

33. The vast unaccounted expenditure in elections has a direct bearing on the governance process and the ubiquitous corruption in our administration. To take the example of a major State, it is estimated that about Rs.600 crores (6 billion) has been spent by the major political parties in the 1999 elections. Most of this expenditure is both illegal and illegitimate and was spent to induce voters through money and liquor or bribe officials involved in the polling process to connive in rigging and other malpractice and to hire hoodlums to distort the whole election through personation, rigging and booth capturing. The political process feeds on corruption, and in turn promotes it. The appetite of parties and candidates for ill-gotten unaccounted funds is legendary. This expenditure in elections is often 10-20 times the ceiling imposed by law. There is obviously a great urge to replenish this expenditure with a decent return on investment and insurance to cover the risk of failure in a winner-takes-all election and a provision for the future elections. Combined with these requirements is the Indian perception that public office is for private gain. The politician who spends an average ten years as a political worker waiting to be nominated as a candidate of major party and who forsakes most gainful employment in pursuit of politics expects that he and his family will be provided for a whole lifetime and sometimes for several generations. This makes the system exceedingly corrupt and on an investment of Rs.600 crores (6 billion) a return of at least Rs.3000 crores (30 billion) is required to sustain it. However most of this money is

routed through the vast bureaucracy in the form of rent seeking or an illegitimate fee for every conceivable public service ranging from a birth certificate to registration of a sale deed. Given the vast size of the bureaucracy, it is inevitable that about 90% of the corruption proceeds are retained by it even as the per capita receipts are much smaller than those of politicians. In effect this means for every rupee of expenditure by politicians in elections they would expect a return of five rupees, which in turn is translated into corruption of the order about Rs.50 at the grass roots level. However the citizen will not willingly pay a bribe for routine public services unless he or she is compelled to do so. Most corruption in India is extortionary. The delay, inefficiency, humiliation, indignity, inconvenience and often lost opportunity may cost ten times or more if palms are not greased. As a result most citizens submit to corruption as they conclude by their own past experience that the alternative is much worse. This makes the system exceedingly corrupt and money is siphoned off at various levels.

### ***Why do Citizens Vote Badly?***

34. We still have to answer one important question relating to election expenditure and corruption — why do citizens often vote badly in the first place? There are umpteen instances of spotless candidates being defeated at the hustings even as known criminals and corrupt persons are elected to public office. Most citizens have come to the sad conclusion after decades of experience that no matter who is elected to office, the one group that ends up as losers is the people themselves. Even if every person elected has actually lost the election and his nearest rival has in turn been elected to public office, there will be no appreciable change 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!

### ***New Entrants into Politics***

35. If we examine the new entrants into politics over the past three or four decades in the country, hardly any one 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 political inheritance is 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. Film stars, whose faces are widely known and admired, have predictably started converting their popularity and image into elective office. Occasionally, accidents of fate are pitchforking certain individuals into elective public office. If we exclude these methods of inheritance — money power, muscle power, personal contacts, stardom in films, and accidents of fate — there will hardly be a handful of persons in this vast country of ours, who have entered politics with passion for public good and survived for any length of time over the past four decades. The truth is there is no activity more vital and nobler than governance. 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.

### ***Failure of Political Parties***

36. The question then is how do we resolve this crisis speedily and peacefully, for such a resolution is critical for good governance, human happiness, economic prosperity and social harmony. In a rational polity, the problems of governance have to be addressed through participation in political process. It is the duty as well as the right of citizens to join political parties, acquire positions of leadership and influence in them, articulate an alternative vision for society and polity, seek elective public office, obtain people's mandate and bring about necessary changes. However this political process is utterly perverted in India and does not give opportunity for enlightened and public spirited citizens to participate in it. The political parties have become incestuous under the control of oligarchic coteries. Once somebody ascends to a position of leadership in a party, often for reasons other than public support or a broad vision for the future, that person controls the access of citizens to membership. He expels members at will whenever his position is threatened, does not allow a democratic electoral process within the parties to change leadership, and in general exercises absolute and arbitrary control of the party. In short the political parties have become instruments of self-aggrandizement and personal power. Parties enrich themselves with illegal, unaccounted funding and use these resources to further tighten their control over the members and the electoral process. The choice of candidates nominated by parties for elective public office is entirely at the discretion of the often-unelected authoritarian leadership. As a net result of this, political parties have become at best instruments of personal power and have ceased to be institutions of political socialization and agents of change.

37. In addition to the failure of parties as instruments of change, the increasing role of money power and muscle power in our electoral process and the distorted electoral process which lends itself to enormous manipulation through rigging, booth capturing and bogus voting make it virtually impossible for an honest citizen to successfully seek elective public office through perfectly fair and legal means. This complex scenario makes the Indian governance crisis seemingly intractable. On the one hand in a democracy the only answer to the governance crisis is more and better democracy engineered through political process. On the other hand the political process has become inaccessible to the best men and women in society unless they are willing to compromise to such an extent that they become a part of problem and not the solution. The greatest

challenge facing civil society in India today is to somehow unravel this vicious cycle and reverse the decline in governance.

38. At the same time it is unrealistic to expect people to be able to make a significant impact in the electoral arena without a party label. Throughout the world political parties are the arbiters of politics and the nation's fate in a true sense. They exercise enormous influence on public discourse. They drown all other voices literally by the noise levels they generate and occupy endless newspaper space, radio and television time. They have a direct impact on public policy affecting millions of lives. Political parties are the only effective instruments to acquire power, control the state apparatus and govern. In this backdrop it is virtually impossible for honest and well-meaning citizens to make a significant political contribution outside parties. The fact that the role of independents in legislatures is at best marginal and is consistently declining only illustrates the importance of parties in democratic governance.

39. It is unimaginable to think of a liberal democratic society without influential political parties. 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 partyless democracy have floundered in all countries, including in India. The heroic efforts and advocacy of partyless democracy by Lok Nayak Jayaprakash Narayan are a telling illustration of such an idealistic vision of a democratic society based on free will of individual citizens without the intermediation 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.

### ***Distortions of First-past-the-post (FPTP) System***

40. Therefore the only realistic option available for citizens who wish to involve themselves in political action is joining political parties. Unfortunately, given the nature of our political parties and the distortions in our electoral process, it is increasingly difficult, if not impossible, for decent citizens to acquire influence in parties and get elected to public office. Honesty and survival in politics are increasingly incompatible. As parties are functioning in an autocratic, unaccountable manner - more as private fiefdoms than as instruments of political socialisation - the best citizens in society are repelled from political activity. A party represents the aspirations, dreams and beliefs of millions of people and is a product of decades of history, emotion and tradition. It is therefore not easy for individuals to try and form new political parties overnight. In particular the first-past-of-the-post (FPTP) system makes it virtually impossible for new

political groups to make an impact on our electoral system and force change in political parties or governance process. In our present electoral system in which an individual wins by obtaining the largest number of votes, there is a tendency on the part of parties to move heaven and earth to win a particular constituency. Highly respected and credible individuals stand very little chance despite considerable public support unless they resort to the same ugly practices that have become the hallmark of politics in our country. As a result, politics remains elusive for the finest citizens who could, in a saner polity, provide great leadership.

**41.** In fact politics, which in a true sense should be a noble endeavour promoting human happiness and harmony in society, is almost always described in pejorative terms. Civil society is largely alienated from political process. One possible way out is a system of Proportional Representation (PR) in which a party can have presence in legislature on the basis of its overall popular support, irrespective of whether or not the party can win constituencies on the basis of the largest number of votes obtained. There is a realistic possibility of parties shifting their emphasis to increasing their vote share if PR system is introduced. There is evidence to suggest that the illegitimate efforts to win a few constituencies may actually run counter to the larger objective of enhancing the voting share in a whole State or nation. At present because of the local factors dominant in constituency elections, the party's overall vote share does not seem to be important. Winning every constituency at any cost by hook or crook is the aim of most mainstream parties in the FPTP system. In PR system once the overall voting share and the image of the political party become critical for the success of the party in the elections, the nature of campaigning and electoral process will undergo a radical positive transformation. Even more significantly, influential groups that have some base but no realistic chance of winning elections now will have an opportunity in the PR system to grow and become serious players in the political landscape. Effective entry of such new political groups into the electoral arena will compel parties to embrace reform agenda.

### ***Illiteracy ¾ Cause or Consequence?***

**42.** One other issue we should examine dispassionately is the impact of illiteracy and ignorance in society on the electoral and political system. Informed citizenry, active citizenship and collective assertion are critical civil society functions in a mature democracy. However the very low levels of literacy prevalent even today despite decades of rhetoric have made ordinary citizen very tiny and weak in the face of the might of the state. Many people secretly believe that universal adult franchise in a largely illiterate society is not desirable. However the reality is that the verdict of the poor and illiterate people is roughly the same as that of the literate and informed population in society. Human beings are endowed with the same amount of dignity and they have the same democratic right and freedom of choice irrespective of their origins, level of literacy, wealth, talent and accomplishments. In fact it can be argued that illiteracy is not a cause of mis-governance in society but is actually perpetuated by failure of governance. The literacy levels of many countries which had comparable human development indices some fifty years ago have dramatically improved after the second world war. The fault of perpetuation of illiteracy, if anything, lies at the doorstep of incompetent administration and dysfunctional political process. To argue that illiterate population is the cause of

failure of governance is a clever inversion of logic wholly devoid of merit. Experience everywhere clearly shows that the governance process actually improves literacy, thus helping citizens fulfill their true potential, and enjoy liberty in full measure.

43. Apart from examples like South East Asia, Sri Lanka and the State of Kerala, the experience of Tamil Nadu in recent years clearly demonstrates that a few strategic interventions by the state will make a spectacular difference to literacy in a relatively short span of time. Some time in early 1980s the MGR Government in Tamil Nadu introduced the mid-day meal programme at schools. The motives were probably to attract the votes of the poor, to enhance the image of the ruling party and the leader, and the genuine concern for the plight of the poor coupled with a desire to promote literacy. Unlike many other usual government promises and programs bureaucratically implemented, the mid-day meals scheme in Tamil Nadu was genuinely well implemented. There was a lot of political attention focused on this scheme. As a result, the poor sent their children to schools. A well-conceived programme genuinely implemented thus altered the behaviour of people. As the schools became the centre of political attention, the quality of school education went up significantly. Simultaneously greater investments were made in school education. As a result literacy levels went up and in particular female literacy made rapid strides. Today Tamil Nadu has the second highest level of literacy in India among the major States. In the past few years this higher level of literacy has translated itself into low levels of population growth. Tamil Nadu is now very close to reaching a stable population level. All this transformation has taken place in less than two decades. This change resulted in higher skill levels, greater investment, greater employment creation and rapid economic growth.

44. Let us compare this with the State of Andhra Pradesh where populist programmes of a different kind were implemented with equal sincerity and vigour. In 1983 the NTR government introduced the subsidized rice programme at Rs.2 a kilogram. The scheme was equally well-implemented and the motives were perhaps similar. However people simply consumed subsidized rice and it did not alter their behaviour in any positive way. As a consequence the poor largely remained poor and their skill levels and literacy have not gone up. In fact it is possible to argue that the savings by the poor went for alcoholic consumption and such other unproductive, and sometimes harmful activities. Andhra Pradesh today has the third lowest literacy among all States of India. Only Bihar and Orissa have lower levels of literacy. It is clear therefore that literacy level cannot be a precondition for democracy and universal adult franchise. In fact good governance and sensible strategic initiatives are the preconditions for higher literacy and the positive benefits that flow from it.

### ***Is Economic Liberalization Enough?***

45. There are many who believe that the economic liberalisation process initiated in 1991 would somehow find answers to our governance crisis. It is well recognised that such a reform process is long overdue. However economic reform, while it is necessary, is by no means sufficient to resolve our national dilemmas. Even if the role of the state is redefined with sharper role in a narrower area, an efficient and just state in a free society is a vital precondition for economic growth and human happiness. Even in a liberalised

economic environment, the state still has the duty to discharge vital responsibilities. Public order, crime investigation, speedy justice, good quality school education accessible to all children, universal primary healthcare, maintenance of minimal standards of sanitation and civic amenities, building of vital infrastructure like roads, facilitating economic growth through other infrastructure development like power and ports – all these are the legitimate functions of the state irrespective of the economic system we choose. It is this failure of the state to provide good governance and to enforce rule of law that explains in a large measure the limited success of economic reforms. In the absence of good governance, economic reform in itself will lead to modest growth at best for some period and the fruits of reform will be transient and self-limiting. Inadequate human development and the failure of our delivery systems have led to appallingly low levels of literacy and skills, poor health coverage and hopelessly inadequate infrastructure. The vast majority of Indians are thus left outside the pale of the productive process of the nation.

46. The situation is further complicated as abuse of power is now finding expression in the critical sovereign areas of state function as opposed to the earlier days when economic patronage of state was abused for personal gain. As long as license-quota-permit raj was in vogue, most players of the power game were content with distorting competition and extending patronage on selective basis for a consideration. The political class and bureaucracy have thus lined their pockets at the cost of fair competition, creating monopolies and distorting market forces and hurting the hapless citizens. However since 1991 the role of Indian state in licensing and other related economic activities has been on the decline. But in the absence of effective institutional checks against abuse of authority, the state continues to have a wide latitude in areas of sovereign functioning like public order, crime control, administration of justice, crime investigation and related matters. No matter how much we limit the role of state, there are vital areas that will always be within the state sphere. When conditions for good governance are not fulfilled, abuse of power becomes the norm. When economic decision making power is denied to the state, such abuse of power will find expression in these sovereign areas and society will be deeply hurt. Over the past several years there is mounting evidence of such a phenomenon resulting in increased criminalisation of politics, greater politicisation of crime investigation, and increasing nexus between political class, state agencies and organised criminal gangs and operators. In effect such abuse of power in the critical areas of state functioning leads to complete lawlessness and undermines the firm foundations of our society and civilisation. In any case, even with economic liberalisation the state will continue to play an important role to ensure fair competition. A rogue state whose legitimacy is in question, whose appetite for ill-gotten funds is uncontrollable, and whose actions are not accountable to the people will continue to use the limited economic decision making power under its control for private gain and personal ends at the cost of public good and economic growth. Therefore mere economic liberalisation is not a panacea to resolve our governance crisis. There is no substitute to good governance characterised by liberty to all citizens, self-governing institutions, empowerment of people and stakeholders, rule of law and institutional safeguards against abuse of authority.

47. It is clear that a flawed political process, high degree of centralization, absence of rule of law, and unaccountable use of State power have severely undermined the liberties enshrined in the Constitution. All these are institutional flaws and have nothing to do with individual morality or values. As Gladstone observed, the purpose of a government is to promote good and prevent evil. The bulk of the people respond to risks and rewards, and the law and institutional design are the mechanisms to increase risks of bad behaviour and rewards for good behaviour. Many mature democracies faced similar predicaments during early phases of their history. Abuse of state power, endemic corruption and failure of rule of law have all been witnessed in abundance.

**48.** All those societies promoted liberty by assiduously building institutions and bringing in suitable governance reforms. None of India's problems is intractable. Our governance crisis can be resolved with simple, practical, acceptable and effective institutional remedies.

49. Any governance reform process to enlarge freedoms and to create an enabling environment for their full and responsible enjoyment should encompass four vital areas. The first area of reform pertains to the political process and elections. Elections are the lifeblood of a democracy. The choice of leadership and the process of power determine the quality of governance and state's capacity to promote freedom and protect our rights. Flawed electoral and political process guarantee that no matter who wins at the polls, people always end up losing. In the current scenario, there is mere change of players and no change in the rules of the game. Electoral and political process should fulfil three criteria. First, the process must allow fair representation and encourage the participation and election of the best citizens. Second, those elected should be capable of surviving in power with honesty. Third, once in office, the elected leadership should have the authority and opportunity to make a meaningful contribution to public good. Obviously these conditions are not fulfilled now. Therefore the electoral reforms process should address the following issues:

- Curbing poll irregularities and rigging through simple, accessible and participative process of voter registration at the post office level; and effective enforcement of voter identity cards and other measures against rigging and impersonation.
- Effective measures to prevent persons with criminal records from contesting.
- Political funding reforms providing for incentives to legitimate contributions; strict disclosure norms with severe penalties for violations; and verifiable and non-discretionary norms for public funding.
- Regulation of political parties to enforce minimum standards of democracy, openness and accountability on issues of membership, leadership choice, party receipts and expenditure, and choice of candidates for elective public office.
- Improved representational models including a combination of proportional representation with constituency election.
- Clear separation of executive from legislature at State and local levels to ensure probity in administration and checks and balances through direct election of the head of government.

50. The second area of reforms pertains to decentralization of governance. In centralized governance there is no link between citizen's vote and public good; there is no relationship between taxes paid and services rendered; and there is no fusion between authority and responsibility. Civilized social order, quality public services, accountable government and informed political choices – all become illusory in centralized government, undermining citizens' liberty and promoting authoritarian exercise of power. Therefore effective empowerment of local government, genuine participation and formal constitution and empowerment of stake-holders groups, and creation of institutions of accountability at the local level are critical. Local government empowerment should include transfer of resources, authority over local subjects and control over local employees.

51. The third area of reform encompasses rule of law. Rule of law is the essence of liberty and is a precondition for both democracy and flowering of individual initiative. Without rule of law, respect for property rights and sanctity of contracts, there cannot be justice, predictability or prosperity. Reforms to enforce rule of law should address the following concerns:

- Improved appointments to higher judiciary by an Independent Judicial Commission.
- Creation of an All-India Judicial Service as a highly competent, meritocratic body through a nation-wide selection process.
- More focused writ jurisdiction covering life, liberty and equality before law.
- Complete insulation of crime investigation from political vagaries by bringing it under an independent commission in each State.
- Procedural improvements in civil and criminal justice to ensure speedy trial and disposal of cases.
- Time-bound justice guaranteed under Constitution.
- Substantial increase in the number trial judges.
- Separate tribunal for special disputes.
- Gram nyayalayas for speedy and accessible justice as per the 114th report of the Law Commission.
- Tougher disciplinary procedures for ensuring high standards of probity and competence in trial courts.

52. The fourth area of reform to promote liberty is creation of instruments of accountability. Power is always prone to abuse and unchecked power erodes freedom and dignity of citizens. As Plato said, the price paid by citizens for not taking interest in politics and governance is to suffer misgovernance, authoritarianism and corruption. The key reforms to promote accountability should include the following:

- A well defined right to information to all citizens on matters of governance, with effective provisions for enforcement.
- Citizen's Charters guaranteeing delivery of public services of prescribed standards in a given time frame, with monetary compensation for delays.
- Independent mechanism for appointment of constitutional functionaries.
- Independent crime investigation, free from political and partisan influences.

- Independent and effective anti-corruption agencies and institution of ombudsmen at various levels.
- Term limits of office at various levels.
- Regular publication of property and tax returns by public servants and elected politicians.

### *Dangers of Status Quo*

53. The status quo is not only unsustainable, but its perpetuation is dangerous to our liberty and happiness. If this governance crisis is not addressed speedily, there are three clear dangers ahead. First, there is increasing lawlessness and anarchy in most parts of the country. In a way, we are already in a state of anarchy. This anarchy is rising rapidly, and already in several pockets of the country life is never predictable. Justice, human rights, freedom and high quality of public services are all remote concepts that have no relevance to the day-to-day life of ordinary citizens.

54. The second danger ahead of us is the possibility of despotism by invitation. As the propertied and educated middle and upper classes, who have great stakes in peace and order are increasingly disenchanted with the governance process, they are coming to the dangerous conclusion that freedom and democracy are synonymous with chaos and anarchy. Most of our urban middle classes have already come to this conclusion and have become votaries of some form of authoritarianism that can bring order and peace to the society at any cost, so that they can pursue economic growth unhindered. In this milieu, the threat of dictatorship does not lie in a possible coup d'etat, but it may creep into the system by the acquiescence of the middle and upper classes - the political class, bureaucracy, armed forces, police, professions and the business class. In their desperate quest for order at any cost, they have little understanding of the nature of dictatorship, or its limitations, and the lessons of history are all too readily forgotten. Setting aside the fact that freedom and democracy are unalienable birthrights of every citizen, there is no possibility of a centralized, despotic regime succeeding any better than a dysfunctional democracy. If by some modern electronic marvel the centralized regime does find the means of governing our vast and complicated polity in a despotic manner, there is no reason why the ordinary people, who have no real stakes in order for its own sake, should give up freedom and adult franchise, which are the only elements that lend dignity to their impoverished lives. The rejection of despotism by the poor and the deprived will result soon in a massive upheaval and bloodshed, and society will face even greater chaos and disorder. As a wise man said, while the capacity of man for justice makes democracy possible, the propensity of man for injustice makes democracy necessary. Morally or pragmatically, there is no substitute to democracy. Any efforts to the contrary are not only doomed to failure, but will also drive the nation to disaster.

55. The third grave danger threatening the nation is the specter of balkanisation. As authority and order break down, and as the governance apparatus fails to serve its main purpose of maintaining public order and ensuring cohesion and harmony in society, disintegration becomes inevitable. As the centralized and inert polity proves incapable of reform, many thinking persons, daunted by the vastness of the nation, its incredible plurality, and the complexity of problems, may be compelled to conclude that the only

way of bringing about reform strengthening democracy and fulfilling people's aspirations is to break up the country. In addition, the economic liberalization process itself may exacerbate this latent tendency towards balkanisation. As some regions and States respond more positively to growth impulses, and have a better social and economic base to enlist mass participation in production process, they will be far ahead of the rest of the country. The disparity between, say 12% annual growth rate in one region and 2% growth rate in another, may not appear to be dramatic at first sight, but within a decade it will be very great. If both regions started at the same level of GDP per capita, the faster-growing region will have two and a half times the GDP per capita at stable population. If already the faster-growing region has double the GDP per capita, then the disparity will be five times. Such disparities are unsustainable among regions in a democratic society. The resultant mass migration from the poorer regions to the more prosperous areas in an already over-populated country will create untold havoc and suffering. Inevitably the social strife will lead to erection of barriers against entry and will lead to eventual balkanisation.

### ***Is Stability the Answer?***

56. Those who believe that political stability is the answer to our crisis are forgetting the lessons of the past fifty years. For about forty six years after transfer of power, we had stable single-party rule in India with only five prime ministers, with three of them from a single family presiding over our destiny for nearly forty years. Such extraordinary stability did not help us realise our potential as a nation, nor did it promote human dignity and happiness any more than the remaining period of instability. Undoubtedly stability of governments and smooth and predictable policy changes are necessary for good governance. However, mere stability of the graveyard is no substitute to good governance and accountability and people's empowerment. In fact, long periods of instability in a democracy may actually lead to major reforms, as evidenced by the collapse of the Fourth Republic in France in 1958. Indian experience shows that major policy shifts and reforms are often engineered more by compulsion than by conviction. The failure to dismantle even the more glaring, obnoxious and counter-productive elements of the licence-permit raj until the nation was in danger of default and perilous economic ruin is an example of such criminal inertia. Similarly, there is no evidence to suggest that the governing classes will herald political and governance reform in periods of stability. In fact, major reform is likely to be initiated only when status quo is unsustainable. If the average politician has the stable tenure to recover in multiples the 'investment' made in the elections, he has no real incentive to change the rules of the game.

### ***Window of Opportunity***

57. Many people wonder whether the leviathan of Indian governance structure can ever be transformed to promote human happiness to the fullest measure. It is undeniable that our society and state suffer from great inertia and seeming resistance to enduring change. However, great societies often undergo dramatic changes through the compulsion of circumstances. The increasing fiscal imbalance in governments at all levels, with the combined fiscal deficit of the Union and States exceeding 10% of the gross domestic

produce, is no longer sustainable. At the same time the situation can only be improved through wise, far-sighted and resolute action. Miracles do not happen of their own accord; they must be made to happen. Our highly centralized, unaccountable governance structure and the political culture, which militates against integrity in public life, have made status quo unsustainable. Only when the citizen becomes the centre of the democratic universe can this crisis be addressed adequately. In a way, the fiscal crisis provides the nation a priceless opportunity to reform the polity and governance and enhance the capacity of civil society to assert its sovereignty.

58. The ever-rising expectations on account of irresponsible rhetoric and competitive populism, satellite television, breakdown of rule of law and public order, rising political and social conflicts on account of rapid and uneven growth of population, and the death of ideology and conversion of political parties into cynical instruments of power game with no other higher goals - all these presage fundamental changes in civil society. If this challenge is met by civil society, and the crisis is converted into an opportunity, then fundamental governance reform is within our grasp.

### ***Conclusion***

59. In conclusion, our liberal 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."

60. Equally importantly our institutions of liberty 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".***