

REFORMS FOR EFFECTIVE GOVERNANCE

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Case of the Informal Sector

The industrial sector in India has been largely liberalized. The license raj has been dismantled and now there is less emphasis on this particular aspect of the larger governance structure. That the whole informal sector is not yet liberalized needs emphasis.

The license raj exists in the informal sector as badly or even worse than what it was for the industrial sector. There is a need to focus on three groups of people which are affected by this.

One is the urban informal sector, the hawkers and the cycle rickshaw pullers seen all over the Indian cities. The issue relates to the huge amounts of corruption involved in this sector, which is not getting attention since the focus has been largely on the formal structures of corruption.

According to an estimate, about Rs. 200 per hawker or per cycle rickshaw puller and others in the informal sector is being collected by the officers of the state. If this amount is multiplied by about 5 lakh hawkers in Delhi, Rs. 10 crore a month is being collected from the poorest of the poor. There is a lot of rethinking about the liberalization process because of what has happened in the financial sector. This is the sector where liberalization is still very much required and which is at the heart of what needs to be achieved for inclusive growth and to co-opt those who have not been able to participate in India's growth story until now.

That applies to the tribal population living in the forest as well as well as the the farm labourers. The Essential Commodities

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Act and Agricultural Produce Marketing Companies Act are still ruling and agriculture needs to be liberalized substantially in order to give a fair chance to the farmers to stand up on their own feet.

In terms of the overall structure of governance there are several ideas, which are being floated around.

Frequent Elections and Minor Parties

Some of the ideas in terms of the overall structural reforms are as follows.

Governance in India has become a casualty of frequent elections, and more importantly of minor parties which have been able to hold the majority in the Parliament hostage during the last four years. Under such circumstances, it is not possible to take a long-term view while restructuring some components of governance. At times there has been a situation when the Government does not call a meeting of the Parliament because it is inconvenient to it.

Experts should be allowed to become part -of the Cabinet to improve governance. Thus while the Prime Minister or the Chief Minister can be elected members, the rest of them can be from outside; thereby we can bring more expertise into the governance structure. We have emasculated the Members of Parliament. They have no say in what happens in the Parliament. They cannot vote against any of the Bills once the party whip is issued. Schedule 10 of the Anti-Defection Act prevents them from voting according to their conscience; but unless they are empowered to vote according to their conscience, it would be difficult to see the kind of democracy that is expected from Parliament.

Judiciary and the Police

Look at what is happening to the judiciary and the police, which are the sovereign functions of the state. We have enough budgets being spent for national defence and there are various lobbies which make sure that we spend enough in that area but

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there is no lobby that actually argues for more spending on judiciary or police. One way is to fix a proportion of the budget or GDP we spend on police and judiciary and thereby make sure that there are enough resources to serve the basic needs in that area.

This Seminar should debate on arbitration and systems of justice that can be thought of. One way to achieve it is to create a full price-court or self-financing courts where the fees are high enough and use it to cover the cost of running those courts. The cases of those who can afford to pay high prices and want speedier justice can be moved out of the regular court system and dealt by the full-price-court. Doing so will also make it possible for the poorer people to have speedier justice in the system. Of course, both are run by the Government. It is simply that you pay a higher price for going to those courts.

Alternative Structures

The civil society can create more participatory structures so that people will have more and more avenues to decide for themselves as opposed to being dependent on the elected representatives for everything. Another option is to resort to referendum. This can at least be tried at the local level and the third tier of the government as in the US or more commonly in Switzerland. Different kinds of structures like direct elections at least for the third tier of the government where the Mayor or the Gram Panchayat leader is directly elected by the people can also be tried. That is one way to bring about more direct accountability within the structure of governance. A small campaign called 'Mayor as CEO' can be taken up. The Municipal Commissioner in India has all the powers but not the elected Mayor of the city. It is a British anomaly that has continued unfortunately.

One idea is that citizens should be allowed to decide how much of their tax should be spent on which functions of the government - this is another way of ensuring more participatory and more direct democracy. No country has ever done this so far but at least this can be thought about as a new idea.

Subsidies versus Cash Vouchers

The idea of moving away from the large schemes of subsidies and transfers to the direct voucher system of cash transfers should be wholeheartedly supported. A national ID system is needed with a Smart Card. It is important that a sunset clause is included.

A campaign is required to talk about school vouchers where, instead of spending money on government schools, it is given as a voucher to the poor parents. This will enable them to find much better education for themselves and will also create competition within the system to a level which would enforce the schools to improve its performance.

There are a lot of ways in which the current spending of the government can be re-routed so that it becomes more effective, more efficient and of course delivers the kind of better society that we look for.

Standards of performance in the services provided by the government are almost missing. Actually many services provided by the government are exempted from the Consumer Protection Act and therefore the government cannot be sued for a bad service or a negligence in the provision of service. Similar standards should be imposed on the government as on the private providers.

Lack of Trust

Basically, there is lack of trust in our own people. If you give cash transfers to the poor, people think that they would not use it wisely. Quite often, these are the people who are the spokespersons of the poor. They themselves do not trust the constituency they speak for. This mistrust is at the heart of many of the social welfare reforms that are required. The proposition for all governments is to believe that the people are rational, responsible and self-governing. What they basically need is probably a framework of rules and laws as a guide.

QUESTIONS AND ANSWERS

Questions:

1. After the Mumbai episodes, civil society and NGOs got together to see what actions can be taken to force the Government to bring in certain desirable changes which have been pending and the Government is reluctant to do. By mid-December, we came to the conclusion that the most important aspect that requires to be attended to immediately and before the next Lok Sabha elections is the amendment to the Representation of People's Act so that the type of criminals that Dr. Krishnamurthy spoke about does not come to the legislatures. What can we do about it?
2. Do we need the right to recall parliamentarians or members from any legislature?
3. There was a mention about more spending on the police. Obviously spending more funds is only one aspect of the way the police work but the accountability issue is probably more a problem of political interference in the police affairs and the lack of a command structure. How would you address these two?
4. There are lots of cases pending. Why is the entire process not made transparent based on internet? People cannot go to the Supreme Court because they do not know the processes and they cannot afford to engage costly lawyers.
5. On elimination or reduction of corruption, why can't we follow the model of some of the countries where corruption is low? For example, not a single policeman could be seen on the roadside in Tokyo and whatever violations occur is recorded from the control room. Here in India, the policeman comes on the roads to earn his livelihood. Why cannot we have a system as in Tokyo?
6. Power leads to its misuse and can travel up to corruption of any kind and in any

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institution, society or country. One Solution is a time-bound action in governance. We talk about it but nobody wants to do it and there are a thousand reasons given for not doing it.

7. Half of the time of our judiciary is wasted in the postponement of hearing dates. Can't we give this power to lower officers so that the time of the senior judiciary is saved?
8. In management, there is a very famous question: 'Are we looking for the culprits or the causes'? We know the disease. We know the cure but nothing is happening.
9. Justice J S Verma made a reference to the post-retiral activity of the judges. My question is about the post-retiral of the bureaucrats who have been in official positions. Do you think they should accept the position of Independent Directors? Can they really be independent? They may have doled out favours while they were in power.
10. Members of Parliament should not be made ministers. Ministers should be other eminent people and those parliamentarians who think that they are good should not contest for parliamentary positions. That would reduce corruption, expenditure on election and therefore eliminate the need to recover the investment on elections.
11. The bureaucracy in India is the greatest danger to the Indian democracy because the IAS officers have amassed all the posts for themselves in the sense that even the Director of Education is an IAS Officer who does not know anything about education. Similarly, IPS officers, when they are retired, get jobs. So the younger people are deprived of the opportunities. Bureaucracy must be seen in the right perspective.
12. The Government of India created Self-Help Groups in the rural areas. These were supposed to be participative forums. When it was found that they were threatening the existing institutions of governance, politicians started forming federations to control the SHGs which in turn are now controlled by the federations. How can we overcome this?

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13. Mr Parth J. Shah said that there should be a budget allocation made for police. I am surprised because today we are asking even the Planning Commission not to talk about allocations. Talk about outcomes because outcomes depend on the efficiency of spending and not just how much you spend.
14. While the market may provide the solution to many things, it does not provide the solution to everything. By courts for first citizens and courts for second citizens, we make justice overtly marketable. If I can buy justice, I can have it today and if I do not have the money I have to wait. I would very strongly object to this and would like to hear Justice Verma's comments on this point.

Answers:

Parth J. Shah: Let me start with the question about the fixed term for the Parliament. We can also have a recall. Many countries have a system of recalling elected representatives.

I am not opposed to the idea. I was thinking of how one can do minimal interventions in the existing system in order to make it function. One can also think about fixed terms for individual members of the Parliament. For example, the President of the US cannot serve for more than two terms.

That is one way to control the permanency of the politicians and to open the system to younger people and to larger participation.

There are two questions about the police. I am not in favour of fixing allocations but what I find is that for every other function of the government, there are special interest groups, people who demand larger allocations, defence, for example.

The same thing does not happen with the judiciary.

Unfortunately, the judiciary has not been as persuasive with the Government in expanding its own allocations. The idea of the second track of courts was to create more funds for the judiciary. It is not that we will live by different rules.

Some states have appointed judges who would run the other court system as well. They will follow the same rules,

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regulations and legal precedence. So it is not that we are creating a court system where you can pay money and buy justice for yourself. We are simply creating a system where the people who can afford would be required to pay a higher price and thereby move to that system, which also opens it up for the poor because then they have better access to the existing system. It is an attempt to make the system speedier and thereby make some people pay a higher price instead of getting the free service that they get today.

What Surjit Shalla and I talked about in terms of the cash transfers and vouchers could actually be a solution to that problem because the way the politicians created these federations was by promising them a benefit from the state.

If you form a federation and work for me then you will get these benefits from the state. If the system involved direct transfers then it would not have been possible for a few people in power to grab the SHGs and make them work for their own ulterior motives.

Surjit Bhalla: Regarding China's growth rate and how they are able to do it, in my view, it is mostly through an undervalued exchange rate that is changing. That is one of the reasons why they will not be able to grow as fast as they did and we will overtake them in terms of growth rates.

I fully support the comment that the IAS has not just the power but vastly disproportionate power. This is again something we inherited from the past and 62 or 63 years later, we still have not got rid of it. We need about 100 or 500 people to rule the country. What is the solution to it?

Again, I would borrow from the US where the best and the brightest are given the jobs on the basis of merit and that is the only thing that matters.

Krishnamurthy: There are 192 countries in the United Nations, 123 are democracies, 57 parliamentary democracies, 66 president democracies. India is the largest democracy in the world. The whole world looks to India for guidance, for

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following the principles that we have adopted in our democracy to ensure governance for the welfare of the people, and in that process in 60 years, we have developed our own systems, our own Planning Commission, and our own ministries, including the Minority Ministry.

It is time to think about how to innovate new systems. We are trying to modify and implement whatever has been followed in Britain. We have to think about appropriate methodologies in various fields including economics. How do we cater to rural economies? There are 640,000 villages in our country. What happens in Delhi is not necessarily the case in every village. There are shortages, there are difficulties. We have to think about an indigenous system, appropriate to us without following what has happened in Britain. As I said, domestic governance is different in Britain from the principles of governance elsewhere. Domestic governance in France too is different when compared to extra domestic governance abroad. We had two Constitution Review Committees, one under Dr. Karan Singh Ahuja and the second under Justice Venkatachalya.

Being an Election Commissioner for six years, my comment is that in spite of the Jai Prakash Narayan Committee, the Dinesh Goswami Committee, and the periodical recommendations from the Election Commission, necessary amendments have not been made. Some amendments are necessary in the Part I and Part II in the Representation of People's Act 1950 and 1951. Part III relates to Conduct of Election Rules 1961. These three amendments must be carried by the Government.

We have done our best and thought about how best to involve all sections of the society to participate in the elections, elect the best, reject the worst and thereby ensure governance in this Land. Luckily, our statistics show that 50% of the sitting candidates get defeated in every parliamentary election because, though only 65% of the electorate are literate, they are not unwise. They know which candidate is better.

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This is the time to think about an indigenous system which is appropriate to our country, appropriate to our demands and appropriate to our rural and urban needs. It is time to think about how best we can strengthen the systems, thereby we can ensure the progress of our children and grandchildren.

Justice J. S. Verma: The first question relates to keeping criminals out of the election arena and from entering into the legislatures. We have a law settled by interpretation of the relevant Section of the Representation of the People's Act wherein it has been made clear that once there is a conviction the person is disqualified, notwithstanding a stay granted regarding the suspension of sentence. Incidentally, that law was laid down by the High Court and I happened to be the one giving that judgment in 1980 in V. C. Shukla's case. At that time the Supreme Court took a different view but now in 2005 it has taken the same view. To that may be added: if there is a charge framed by a competent court that also should be a ground for disqualification. I do not know whether the Parliament will enact that law and, therefore, probably some day if the judiciary interprets the provision in some manner that may be the only hope.

The second question is about transparency. There is a system of course and information technology has been used in a big way now. Today all courts have been linked, even up to the district level and a person who has a case in the Supreme Court or any court does not need to come to the Court to find out or engage a lawyer. He can go to the nearest district headquarters and then the information can be obtained.

There is a point about delegating the power of adjournment. I am one who believes that adjournment should not be refused for any reason because if the lawyer is not available, alternative arrangement should be made and that is why I have also emphasized the need of ensuring that there are no absentees, even of the judges, on court working days.

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There was some mention about two categories of courts. I am very doubtful if money should be allowed to play any role in choosing the forum but then the practical method is that you have people who are very much active after retirement.

With the same infrastructure, at the level of the district courts, the subordinate courts as well as the High Courts, you can have Special Magistrates appointed from among the citizenry that will take care of a lot of the burden which is there on the Magistracy. What was earlier the class of Honorary Magistrates is now called Special Magistrates. I do not know why their power is not being exercised. When I was the Chief Justice, I had written to all the Chief Justices of High Courts but till today nothing has happened.

There was a reference to post-retirement activities. My strong view on the subject relating to the legal fraternity is that, apart from the cooling off period to ensure that the continuity is not there, anything related to the work which anyone was doing earlier should be strictly prohibited.

It is really shocking to know that persons heading Commissions are getting the salary of a sitting judge or the Chief Justice and also the perquisites. Something has to be done to stop the practice.

I have just one comment to make about electoral reforms. I have been an advocate of negative vote. Very often, it is said, people do not go to vote. Of course, that is wrong but the voter may not find anyone fit enough for the role and yet he has to choose. If there is a negative vote so that if you do not find anyone good enough, you reject the panel and then they are disqualified. Only the others who are not in the panel could come up.

People who are elected are most often the true representatives of the electorate. So 50% plus should be the minimum. It could be by a single transferable vote. My own belief is that the people of the country are predominantly very good but unfortunately those who are wielding power do not represent them.