THE STRUCTURE OF GOVERNMENT IN INDIA

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PART I: THE HISTORICAL PERSPECTIVE

Preamble

This paper is written not only on the assumption but in the firm belief that the structure of government in all its arms will be within the framework of the Indian Constitution. It is also written in the belief that the Constitution is basically sound, is flexible enough to give room to different thoughts and ideologies and has space within itself to accommodate administrative and legal structures which, though lying within a national whole, are still designed to take care of regional differences and variations. In other words, one is accepting the soundness of the Constitution, the viability of administrative structures and a willingness to identify deviations, even perversions which have crept into the system, with a view to correcting them. It also recognises the fact that the state and its apparatus cannot become static and, therefore, stagnant and that systems have to change under changing circumstances. Such change, however, would be evolutionary as envisaged in the Constitution and not revolutionary as is advocated by many forces which are not necessarily benign or friendly towards India.

The Constitutional Framework

The Constitution of India, unlike the Constitution of the United States of America, is not something which was drafted either in a vacuum or in a state of revolt against the imperial power. In terms of increasing democratisation of the Indian polity the Morley-Minto Reforms, the Montague-Chelmsford Reforms and the Government of India Act 1935 are all in a series in the process of decentralisation of powers and transfer of greater authority from the imperial power to the Indian State. Under the British India was a unitary state, though for the sake of convenience it was divided into Presidencies and Provinces whose Governors enjoyed a great deal of power. Of course originally the Presidencies of Madras, Bombay and Bengal were autonomous in themselves, but with the appointment of the Governor General the Presidencies did come within his overall superintendence and control.

The Montague–Chelmsford Reforms pushed provincial government in the direction of autonomy and the Government of India Act 1935 for the first time formally recognised Presidencies and Provinces as units of administration to whom specific constitutional powers were devolved. It is at this level that elected government was introduced and the legislators elected the leader of the House, who was then appointed by the Governor as Premier, now Chief Minister. Except for the right to dismiss the Legislature and the Cabinet under section 93 of the Government of India Act 1935, the Governor did not rule directly because the powers of governance were transferred to the elected representatives and the Council of Ministers. The Government of India Act 1935 is the basic frame around which the Constitution of India has been built and the institutions of government, the Legislature, the Executive and the Judiciary which we have today and such organisations as the Comptroller and Auditor General, the Public Service Commission, etc., are all to be found in the 1935 Act. Of course the Constitution evolved much further. It adopted the Chapter on Fundamental Rights from the Bill of Rights of the United States, as also the concept of separation of powers, the independence of the judiciary and of such constitutional authorities as CAG, the Election Commission, the Public Service Commission, etc. In this the Indian Constitution goes well beyond the unwritten British Constitution.

One significant departure from other federal constitutions is that the Indian Constitution is strongly centripetal and gives the federal government over-riding powers aimed at ensuring that the unity of India is maintained. Our founding fathers, especially Sardar Vallabhbhai Patel, were aware of the centrifugal and fissiparous forces which existed and, therefore, many of the features of the Constitution reinforced the authority of the Centre to maintain the integrity of the country. These include Article 248 which vests residuary powers in Parliament, Part XI of the Constitution which gives the legislative and administrative relations between the Union and the States, Article 312 which creates the All India Services, the hierarchical judiciary ranging from the court of first instance to the Supreme Court, in which every judicial officer can adjudicate on both federal and state laws, the powers of the President in the matter of appointment and removal of Members of Public Service Commissions, both Union and State, the Election Commission itself and Part XVIII of the Constitution whereby the Federal Government can intervene in State affairs and, in particular, Article 356 whereby the President can dismiss a State Government and take unto himself the powers of the State Government so long as the proclamation is in force under Article 356. Even Part XII of the Constitution gives the Union Government certain overriding powers over the States, which all point to the supremacy of the Federal Government vis-à-vis the States. This is emphasised because even today, in order to maintain the integrity of India, we do need a strong Centre.

The Organs Of The State

The constitutional structure of the State calls for three equal, separate but interconnected organs, the Executive, the Legislature and the Judiciary. It is important to remember that the order stated by me is that which is given in the Constitution and, therefore, it need not be read as a hierarchy in which the relationship between the three wings is anything but equal. From time to time it is touted that the Legislature is supreme as is the case in Britain. Britain has no written constitution and, therefore, ever since the time of the Magna Carta the Legislature has been trying to impose its supremacy on the sovereign and on the other wings of government. In India our Constitution is not given to us by Parliament. The first words of the Preamble of the Constitution are: "We The People Of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular Democratic Republic…" It is the people who are supreme and not any organ of the State, even the Legislature, which is supreme. Whatever is stated herein relates to the Union but applies mutatis mutandis to the States also because there, too, the three organs of the State are the Executive, the Legislature and the Judiciary.

The Executive

The Executive consists of the President in whom vests the executive power of the Union and is exercised by him through officers subordinate to him. This provision is important because when it is read with Chapter XIV of the Constitution it raises a question whether the Executive is monolithic or consists of two parts, the officers subordinate to the President as one part and the Council of Ministers which advises the President as the second part. The President appoints the Prime Minister and on his advice Members of the Council of Ministers. Under Article 74 of the Constitution the Council of Ministers advises the President on how he should exercise his executive power and the President is bound to accept such advice, except in those very rare cases where conflict arises between the President's duty to go by the advice of his Council of Ministers and the oath of office sworn by him under Article 60 in which he is required to "preserve, protect and defend the Constitution and law …" The issue is raised but not discussed further at this stage because it should be taken for granted that the

Council of Ministers will not give advice to the President which causes him to breach his own oath and work against the interests of the Constitution.

The Business of the Government of India is conducted not at the whims of the ministers but as per Rules framed under Article 77 of the Constitution. The Rules are in two parts. Part I allocates business amongst ministers, which means that the jurisdiction, powers and functions of each ministry are prescribed by Rules. The second part of the Rules lays down how the allocated business will be conducted and what would be the powers and functions of the minister incharge and the civil service secretary of the ministry. This is important because the Business Rules lay it down as the duty of the secretary of the ministry to ensure that the business of government is conducted strictly in accordance with the Business Rules. This should act as a brake on whimsicality, though the fact that it does not always do so has come to light in a number of scandals which have recently emerged.

The executive government is required to be conducted according to law, rules and regulations, standing orders, precedents and policy decisions taken by the departmental minister or Council of Ministers. The average citizen has a right to expect government to follow the law and the rules and give remedy to a citizen who feels that his rights have either been infringed or have not been made available to him. Remedy of the grievances of the citizens, the fulfillment of their expectations and the organisation of good government are the basic fundamental duty of the Executive. It is only when the Executive fails in its duty that the matter goes to courts for adjudication. In a well run government the need for such adjudication should be minimalised.

Regardless of party affiliations every government is required to secure for the citizens social, economic and political Justice; Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity and the promotion of Fraternity and the unity and integrity of the nation. The Executive Government is required to ensure that Part III of the Constitution, the fundamental rights, is enforced and implemented and that in the framing of policy Part IV of the Constitution, the Directive Principles of State Policy, is the guiding light. In other words, the welfare of citizens is the duty of the State, though the manner in which such welfare is maximised will depend upon the ruling party's ideology and programme.

Because the Constitution in Article 77 (166 for the States) provides for government's business being conducted according to Rules framed by the President in this behalf and because the Rules state that orders and other instruments made in the name of the President shall be authenticated as provided by the Rules, because the Rules provide for such authentication by a Secretary to government, which includes Additional, Joint, Deputy, Under and Assistant Secretary and because under Article 53 the executive power is to be exercised by the President through officers appointed by and subordinate to him, therefore, in the execution and implementation of the orders of a minister or the Council of Ministers it is these officers who are required to act. The minister is not expected to implement policy in the field, nor will an order issued by him be valid unless it is authenticated by the Secretary. The minister has the duty to oversee implementation and to call his officers to account for non-performance. Actual implementation, however, is the job of the civil service. All policy will naturally be framed keeping in mind the political ideology and programme of the ruling party. Giving effect to the policy, however, will be done with complete impartiality and without fear or favour. In other words, political party supporters need not expect any particular consideration on account of their belonging to the ruling party.

In order that the civil service may be able to perform its functions impartially and without prejudice the Constitution gives it the protection contained in Part XIV of the Constitution. In Article

311 a person cannot be dismissed from service or otherwise punished arbitrarily and in all cases the rules of natural justice apply. So far as senior posts are concerned, because they are held by officers of All India Services which come under the ultimate rule making control of the Central Government, there is the double protection of Article 311 which prohibits arbitrary punishment and Article 312 which makes the Centre the final arbiter in matters relating to the All India Service officers. When we read this with Chapter 2 of Part XIV, which provides for Public Service Commissions for the Union and States, we find that in the selection of Civil Service officers there is a constitutional, independent organisation, which does the selection and which is expected to function without fear or favour because its members have constitutional protection. This means that officers would be selected according to merit and not on account of nepotism or corruption. Because the Public Service Commission has to be consulted in all disciplinary matters concerning a civil servant, this is another level of protection given to the Civil Services. As far as one knows this is the only Constitution in the world which not only specifically provides for Civil Services but gives them constitutional protection against arbitrariness which is unique to our Civil Services. In India if the Civil Services fail to perform, become partial and biased in favour of a political party or are corrupt, then this is a betrayal of trust which one could state amounts to treason. Treating civil servants who betray the trust reposed in them as traitors and giving them the treatment that traitors deserve would be but mete and proper. One could be justified in stating that the Executive in India is powerful, is divided in functions between the elected element and the permanently appointed element and in the matter of approval of policy and implementation of policy the Council of Ministers is adequately empowered and the permanent civil servants are adequately protected. The structure of executive government is sound and all the perversions, aberrations and deviations that have crept in are the fault of the individuals concerned and not of the system.

The Legislature

Chapter 2 of Part IV of the Constitution for the Union and Chapter 3 of Part IV of the Constitution for the States provides for the Legislature. India being a federal state the Constitution has provided for specific jurisdiction of Parliament and State Legislatures in the Seventh Schedule. List 1 is the list of subjects on which Parliament has exclusive jurisdiction, List 2 gives the subjects on which the State Legislature has exclusive jurisdiction, whereas List 3 gives the subjects on which Parliament and State Legislatures have concurrent jurisdiction, with parliamentary legislation prevailing in case of conflict. Article 248 gives residuary powers of legislation to Parliament in matters not enumerated in the State List or Concurrent List. That Parliament is the supreme legislative body is further proved by Article 249 which gives Parliament the power to legislate with respect to matter in the State List in the national interest if the Council of States so resolves by a two-third majority. Under Article 250 the Parliament may also legislate on a matter in the State List if there is a Proclamation of Emergency. Under Article 356 if the President has taken over the governance of a State he may, under Article 356 (1) (c), empower Parliament to legislate in lieu of the State Legislature on any matter given in the Seventh Schedule.

Under Article 1 of the Constitution India is a Federal State because the Article says, “India, that is Bharat, shall be a Union of States”. Without the States there can be no Union and the sovereignty of the States is provided for by List 2 of the Seventh Schedule. It is the function of Parliament and the State Legislatures to legislate, that is, create laws and the legislators, therefore, are the lawgivers. In financial matters the Legislature enjoys sweeping powers because the budget, or the annual estimate of income and expenditure, has to be approved by the Legislature and spending monies can be begun by government only after the Legislature approves the Appropriation Bill. Article 114 (3) categorically

states that no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law. Article 204, which pertains to the States, is similar to Article 114. In other words, the business of government which requires the appropriation and expenditure of funds can only be conducted if the Legislature so approves. Legislation and controlling the finances of government are, therefore, the main functions of the parliamentarians and state legislators. Another very important function is the calling of the executive government to account. This is done by asking questions in the House, by debating during zero hour, by moving adjournment motions and no confidence motions, by debate on Bills and on the budget, by resolutions, by call attention motions and through various committees of the Legislature before which the government has to render account. The Public Account Committee, Estimates Committee and Assurances Committee are three major committees of the Legislature. There are standing committees for each ministry or department and there are special committees that the Legislature may set up from time to time to examine the working of government. In the scheme of separation of powers it is by these means that the Legislature determines the collective and individual responsibility of the Council of Ministers and its members and it is through them that the legislators protect and promote the interests of their constituents.

A legislature functioning as it should and the legislators functioning honestly and earnestly would be very busy indeed throughout the year. Unfortunately our legislators prefer executive functions to their own legislative functions. That is why they are eager to become office holders in public sector corporations, extend patronage through the local area development fund, constantly interfere in postings, transfers and other administrative matters and intervene in individual cases, including criminal cases, which should be of no concern to an MP or MLA. Somehow our legislators have come to the conclusion that executive posts carry more influence and power and, therefore, they would prefer to administer rather than legislate. This has very serious consequences for the administration and needs to be checked.

What is the relationship between the Executive and the Legislature? There is separation of powers, but in the Westminster form of government the Executive and Legislature come together at the level of the Prime Minister and the Council of Ministers. Under Article 75(3) the Council of Ministers is collectively responsible to the House of the People. This means that the Prime Minister must enjoy the confidence of the House. Since government is the main source of moving legislation and because the Prime Minister enjoys the confidence of the House, if the ruling party's majority is absolute and the party is immune to any advice or interest aired by the opposition, the Prime Minister can legislate his way almost to the point of despotism. If the majority is slender the legislative competence of government can be reduced to almost zero, unless the Prime Minister is a person with an open mind, who is prepared to listen to the opposition and carry it with him on all matters of importance. If this happens, then legislation would be by consent rather than by arm-twisting and in such an environment some very positive legislation can be brought on the statute book. A point being made is that under our system the political executive is in a strong position to influence legislation.

The question has been raised whether the Westminster model, in which the Legislature can unseat the government, is appropriate for India or would it be better if we adopt the United States model of an executive presidency in which the government cannot be unseated by Parliament, but its working can be neutralised by the Legislature not sanctioning legislation and withholding the budget. This has happened in the United States fairly recently when Bill Clinton was President and now when Barack Obama is President. However, the Americans seem to be more pragmatic than us and when they realised that a deadlock had developed the ruling and opposition parties came to an understanding and Congress then made available the budgetary grants for government to function. Considering the total

disconnect between parties in India and the general environment of hostility between political parties, if parliament is given the power to deadlock government, would it ultimately arrive at an accommodation in which government can begin to function once again? One has doubt about this.

The Judiciary

An independent, impartial and fearless judiciary is an absolute necessity in a democratic society where there is separation of powers. In this behalf the Indian Constitution is extremely strong in that it has set up a judicial hierarchy which is completely beyond the control of the executive government. In most federal states there is a division of the judiciary between federal and state judiciary, with each segment being empowered to adjudicate exclusively in matters which lie within federal or state legislative competence respectively. In India, however, this is not the scheme of things. In the United States the judicial power of the United States vests in the Supreme Court and such other courts as may be established by an Act of Congress. Whereas the Supreme Court has judicial power with regard to all cases in law and equity arising out of the Constitution, basically federal courts have jurisdiction in matters which come under federal jurisdiction. All other matters would be adjudicated upon by the courts to be set up by the State Legislature concerned. In India, on the other hand, under the apex court whose orders would be deemed to be the law declared by it and are binding on all courts under Article 141 of the Constitution, all other courts and tribunals in India are subordinate to it. There are no separate federal courts because under Articles 233, 234 and 235 of the Constitution courts at the level of district and sessions court and the courts of the magistrates are all created by the State High Court and the judges and magistrates thereof are subordinate to the High Court. These subordinate court can adjudicate on all laws, whether federal or state. All courts and tribunals located within the state, even if created under Part XIV (A) of the Constitution, are under the superintendence of the State High Court under Article 227 of the Constitution. The Supreme Court, of course, has sweeping powers of appeal and review, it has complete writ jurisdiction under Article 139, it can transfer cases from any High Court to itself and the law declared by it is binding. Under Article 144 all authorities in the territory of India are required to act in aid of the Supreme Court.

Should India have a separate judicial hierarchy in the States and for the Centre? The present system is tried and tested and places the courts under the jurisdiction of the High Court or Supreme Court to the exclusion of any other authority in India, Executive or Legislative, which makes the courts completely independent. This independence has been proved on so many occasions, with the Himmat case in Gujarat, the Bhimsen Sachar Case in Delhi during the Emergency, the Keshvanand Bharti case, all being examples of how the courts have upheld the independence of the judiciary. During the Emergency strong efforts were made to clip the wings of the judiciary, including through Article 226A which tried to take away powers of the High Courts and State Courts to pronounce on the constitutional validity of central laws and the amendment of Article 227 in 1976 by the Forty-second Amendment Act which took away the powers of the High Court of superintendence over tribunals constituted by the Central Government. Fortunately the Forty-fourth Amendment undid these mischievous provisions, but it took the Supreme Court in the Keshvanand Bharti case to lay down the principle of "basic features" of the Constitution and to state that the powers of Parliament to amend the Constitution did not extend to altering the basic features. This is a landmark judgement which stands even today as a shield against the excesses of majorityism in case the ruling party has a brute majority in Parliament. The Supreme Court did signal service in laying down the limits of parliamentary jurisdiction, especially in the amendment of the Constitution, notwithstanding the provisions of Part XX, Article 368 of the Constitution. This judgement nullifies the provisions of Article 368 (5) which states that there is no limitations to the

powers of Parliament to amend the Constitution. The strength of the Indian Constitution, therefore, lies in the strength of the judiciary to protect the Constitution and, therefore, the rights of the citizens.

PART II - THE GROUND REALITY:

What the Constitution mandates and the Founding Fathers dreamt of ultimately has to be operated by the elected representatives of the people and the officials appointed by them. The question is often asked whether India was not better off under British because social conflict was under control, there was good law and order and society seemed to be at peace. Well, a stagnant pond will always be still whereas a water body in which there is movement by flow, by wind and tidal action will always seem disturbed on the surface. The difference is that stillness can be sign of extreme stagnation and xerification, whereas a dynamic water body is relatively pure and full of life. The present day India is like that dynamic water body in which there is ferment, there is movement, there are occasional storms and very often apparent danger of shipwreck. But at least society is alive and active and this can never be a negative sign.

This is basically a paper on the structure of government and not an omnibus review of what India is. Therefore, in looking at the ground reality the emphasis would be on the administration, with the Legislature and the Judiciary being commented on only to the extent of their impact on the Executive. Deliberately in this and the next Part the order of the organs of the State has been changed to the Legislature, Executive and Judiciary, thus making a departure from Part I.

The Legislative Reality

For the first twenty years of independence elections threw up single party governments at the Centre and in the States, with the Congress dominating. The political leaders had come through the crucible of the freedom movement and were still under Gandhian influence of public service, personal austerity and simple living. This was reflected in all areas of government. However, 1967 changed all that when the purchase of power by bribing legislators became endemic. One needed money to buy power and this came by subverting and misusing the machinery of the State. In order to do so it is was necessary to subjugate the civil servants so that they acted as handmaidens rather than as independent public servants. In a way the Legislature also was subverted because increasingly the legislators tried to take on executive functions to the detriment to their legislative functions. The deleterious effect of this calls for a completely separate paper, but what it did give rise to is a growing nexus between politicians and bureaucrats in the process of subverting the State and getting personal gain by way of power, position and pelf. This has virtually destroyed the normal administrative structures and ethos.

More serious, however, was the damage caused to the body politic. As new permutations and combinations were formed within the Legislature in order to form coalitions, the single party system broke and with it came the demise of ideology, programmes and the welfare goals which formed the backbone of governance in the past. The new coalitions were based on mutual self-interest, which was bound to be short-term and wholly divorced from any ideals of public welfare. The whole legislative system was thus corrupted and the Shibu Soren phenomenon became so widespread as to almost become the norm.

The coalitions of mutual self-interest naturally were based on selfishness and greed, which had to be fed with more and more sacrificial offerings of illegally collected money. The Harshad Mehta scam and the 2G scam are but symptomatic of what we have done to our polity.

Another legislative ground reality relates to the cost of elections. A parliamentary constituency has between eight to ten assembly segments and may cover an area of about 10,000 square kilometres. Even the most honest of candidates would need about ten jeep type vehicles in order that he and his campaign managers may tour the constituency for at least one month. Such candidates would need about six thousand to ten thousand polling agents at the rate of two per polling station at least for the day of the poll and even if the agent were to be given a pittance of rupees one hundred per day for refreshments for the day of poll and the day of counting, the candidate would need between rupees ten and twelve lakhs for this purpose. He would need another rupees fifteen lakhs for jeeps, provided he does not have to buy them. There would be some miscellaneous expenditure involved also, which means that it would cost between rupees thirty-five and fifty lakhs for him to contest a parliamentary election. One is aware that candidates incur several crores rupees of expenditure on elections, but this includes the bribery factor. In order that an honest man may be able to fight an election there will have to be public spending on his behalf so that he can afford not to be corrupt. As things stand today we have built corruption into the electoral process and this completely rules out the possibility of an honest political system.

The Ground Reality For The Administration

For the sake of convenience we can divide the administration into certain components. Broadly speaking, these would be:

1. Officers at the level of secretaries and heads of departments whose main job is to help in framing policy, in preparing projects and having them approved, in giving directions to field staff and monitoring the manner in which government is functioning.
2. The field executive, which is required to implement the orders and policies of government. The field executive could be divided between regulatory, fiscal including tax collection, law and order and development segments or wings. At present all are under stress.
3. The cutting edge level which directly interacts with people and which represents the public face of government. These would include the Tahsildar, the Thanedar, the Ranger, the BDO, the Income Tax Officer, various inspectorate level officers of field departments, etc. The manner in which this level of officials behaves determines how the people perceive government because the average citizen comes in contact with the administration at this level.

Obviously this review cannot cover the entire spectrum of government and, therefore, it will be restricted to a small sample only.

One can make a start with the traditional departments of government at the Secretariat and the heads of department level. At this level framing of policy and superintendence over the field organisations is the main function. Secretaries to government and heads of departments are not clerks to merely transmit the orders of the ministers to field organisations. Naturally in all matters of policy officers at this level will take orders from the ministers, but they are also required to guide, advise and help ministers on issues on which the ministers pass orders. Are they doing so? Let us take a vital department of government, the Home Department. The two major functionaries here are the Home Secretary and the DG Police. The police is the principal regulatory arm of government whose job is maintenance of law and order, prevention, detection and prosecution of offences, gathering of intelligence with a view to combat anti social and anti national activities and constantly honing up the

skills of the police force to be able to handle various new types of criminal activities which emerge in a fast developing modern society.

The job of the police is highly professional and, therefore, the Constitution provides for the Indian Police Service, an All India Service, to man the senior posts in the police department. IPS officers have dual protection, the first being protection under Article 311 of the Constitution. The second protection is provided both by the Police Act and, more important still, the Code of Criminal Procedure. Under section 158 Cr.P.C. an empowered superior officer can give instructions to an officer incharge of a police station in an investigation as he thinks fit, which means that a superior police officer may either himself take over the investigation of an offence or give suitable directions on how the investigation is to be conducted. No other authority has any powers in this behalf and certainly government or any other officer cannot in any way influence the investigation of an offence. The law as it stands today fully empowers the police to investigate offences. This point is laboured because one often hears the complaint that government or the politicians influence investigation of offences. Certainly the opposition targets CBI as an agency which does selective investigation of offences. It is the job of the DG Police to ensure that this does not happen, to protect his officers when they do their duty and to advise government on how the police force needs to be strengthened in its ability to handle crime and maintain order. It is the job of the Home Secretary, on the advice of the DG Police, to counsel his own minister about police problems and to support the DG Police in building up an efficient police force.

For the police to function efficiently it has to be a professional force, which means that in terms of administration, deployment, postings, transfers, promotions and disciplinary action the DG Police must have a free hand. In exercise of its powers of superintendence government should lay down the rules, the guidelines and the policy frame within which the police is required to function and to monitor police functioning in order to call the DG Police to account from time to time. Micro management of the police, interference in postings and transfers, informal or formal directions to the police to act in a partisan manner are strictly prohibited and should not be indulged in. Thereby the Home Department weakens its own role of superintendence and the police loses out in competence, efficiency and credibility. The need to immunise the police from outside influences, therefore, becomes a critical function of the Home Department.

The ground reality is that police forces throughout India have been thoroughly politicised, tampered with and rendered ineffective in maintenance of order and control of crime. The Governors and Chief Ministers of insurgency-hit States entrust their security to CRPF and not to the State Police. This speaks volumes for the morale of our police forces, for which the politicians, bureaucrats and the senior police officers are to blame.

The police in India is facing a whole multiplicity of problems which can be, broadly speaking, enumerated as under:

1. **Strength**: Even if one accepts the norm of one policeman for every two hundred and fifty heads of population Madhya Pradesh should have a police force numbering about three lakhs. The present strength of the Madhya Pradesh Police is less than ninety thousand. This is true of almost all the States and the more backward the State and the larger its geographical area the more critical is the shortage of manpower. These just are not enough boots on the ground to be able to provide an adequate police coverage throughout the country.

2. **Lack of mobility**: In foreign countries police mobility is of vital importance and there is no social pecking order in the make of vehicle available to individual police officers. In an

urban environment or on highways where speed is essential to be able to catch up with criminals using high-powered vehicles, the police patrols are given high-powered fast cars which in India would be considered in the luxury segment. We need to build police mobility, including air mobility in insurgency areas. Without adequate mobility police reaction time is slow and, therefore, crimes remain unsolved because the police arrives too late. The popular perception of the police as slow and lumbering is not far off the mark.

3. **Equipment:** The police is not the army, but fire power has to at least match that of the criminals. The 26.11.2008 attacks on different targets in Bombay proved that police firepower could not match that of the terrorists and, therefore, it took so long to overpower them. This is one area where the police has to do a great deal of introspection and the Home Ministry at the Centre has to ensure that the police is equipped to deal with criminals who are well armed. The reality is that the police is under equipped to deal with urban crime and highly deficient regarding insurgency areas.

4. **Communications**: The police communication system has improved but not enough. In the modern day and age information is king and if the police force is properly equipped with means of communication the police reaction time would substantially improve.

5. **Training:** The police requires to radically improve police training in terms of forensics, use of weapons, field tactics, methods of interrogation, intelligence collection, collation and analysis, public relations and norms of social behaviour. The object of training should be not only to improve the professional skills of a policeman but also provide for qualitative improvement in the individual policeman in terms of social behaviour. There is a woeful lack of training facilities and, therefore, the police is poorly trained.

6. **Intelligence:** There are various levels of intelligence and there is a high degree of specialisation in the kind of intelligence which is relevant, the method of collection of information of intelligence and ultimately the use of intelligence for the purpose of action. The main function of the police is to maintain law and order and public peace, prevent, investigate, detect and prosecute offences, gather information about possible threats to internal security and forecast future trends in crime, social tension, law and order and internal security. Obviously the police station and the beat officer are the two primary sources of intelligence, especially in terms of crime control and any developing law and order situation. This task has become increasingly difficult for two reasons:

   (a) We have consistently down graded the police station as the primary unit of policing. This is partly because more glamorous levels and units of policing have received more attention, whereas the police station is treated increasingly with indifference and even contempt.

   (b) In urban areas there is so much mobility of the population that within a police station area there is both a static and transient population, with the latter bring difficult to monitor. Police mobility is much less than that of the citizens. Moreover, being under-strength and over worked the average police station staff just does not have time for that level of public contact whereby people pass on information to the police. This is one area where a great deal of thinking has to be done by senior police officers on how to strengthen the police station so that both as a primary strike force and as an intelligence gathering machine the police station becomes effective.

Besides normal crime there is a great deal of specialised crime which is now increasingly coming to the fore. Many of these offences are not the traditional person or property crimes but are high level financial crimes which take the form of commercial fraud, forgery, falsification of documents, bank frauds, illegal land deals and electronic or cyber crime. For this purpose criminals now use IT and ICT as major tools for committing offences. Both in terms of intelligence gathering and in terms of investigation the police requires highly specialised units of scientists, forensic experts, auditors, cyber specialists, psychoanalysts, cryptographers, etc., who can collect information and then use it for action. The police hierarchy and the pay structures would inhibit the employment of such experts with appropriate remuneration, which is why the forensic science wing of the police is so weak.

A great deal of violent crime is the result of homegrown militancy and externally sponsored terrorism. Even here a well-organised police station would be able to gather information at grassroots which could becomes actionable. Taking the 26/11/2008 attack on Bombay as an example, had the Colaba Police Station been adequately equipped, manned and trained, once the terrorists actually landed actionable intelligence should have reached the police station and if the police had reacted immediately perhaps the terrorists could have been contained at the place of landing. That would have avoided the unnecessarily high number of casualties which ensued. From the thana to the district and the State the specialised intelligence wing of the police should have the capacity to collect information about terrorism, militancy and anti national activities because, regardless of the size of our Central Intelligence Agencies, the largest number of men in the field would always be from the State Police. The ground reality is that intelligence is the least favoured of all the police wings and, perhaps, an executive posting is preferred to a posting in the Special Branch.

At the central level there is a plethora of agencies meant to collect information. The National Crime Record Bureau should be a repository of every single type of crime which can occur or has occurred in the country. Once again NCRB and Bureau of Police Research and Development are the least preferred postings in the police. The Intelligence Bureau is the principal agency for intelligence collection, counter intelligence and gathering of information about matters relating to internal security. It is different from FBI in the sense that whereas in India we have two federal units, the Delhi Special Police Establishment (CBI) and the National Investigation Agency which do the investigation of specified offences, FBI combines the functions of IB and CBI. Regarding external intelligence, including espionage, this is assigned to R&AW. R&AW and IB are supposed to work in close coordination, though indications are that they both jealously guard their own turf and hide more than they share. The intelligence community has a number of other members also, including JIC, the national counter terrorism centre, NTRO, the intelligence networks of the three armed forces, the Department of Revenue Intelligence, the Narcotic Bureau, the Department of Enforcement, Custom Intelligence and intelligence wings of BSF, CRP, ITBP, etc.,

The National Security Advisor is supposed to coordinate the working of the various intelligence outfits, duly assisted by his secretariat. It is questionable whether he is adequately equipped for the job. Post Kargil there was a major review of the intelligence network, which found many gaps and faults in the system and made suggestions for improving the networking, intelligence sharing and the identification and use of actionable intelligence for the purpose of preemptive and proactive action for safeguarding our national security. The 20.11.2008 attack on Bombay

showed that the intelligence network is in tatters and that even now we do not have a culture of focussed intelligence gathering and sharing of intelligence in a sensible manner so that national security is safeguarded. The enormous casualties the police has been taking in the Naxalite affected areas show that even within the country and amongst our own people our intelligence networking has failed. This is a very serious matter and what we need is an objective, high-level review of the entire intelligence system, with a view to putting in place a system which will serve our intelligence requirements satisfactorily. The matter brooks no delay.

7. **The Armed Police**: Each State maintains the armed police which is, broadly speaking, organised in battalions, each the strength of an army infantry unit. The Central Government also maintains a number of armed police forces such as CRP, BSF, ITBP, SSB, CISF, RPSF, etc. The armed police was initially meant to deal with anti government agitations, communal violence, widespread disorder, dacoity, etc., where the normal district police was found to be inadequate. The armed police is required to be deployed in not less than section or platoon strength, never in an unarmed role and certainly not for ordinary crowd control and police bandobast. It was the tactical strike force and the strategic reserve of the IG Police of the State and was meant to be used on that role. Unfortunately one now find the armed police, including Central Armed Police Forces, being used in a civil police role for street lining, crowd control, static guards at the residences of VIPs, etc. One still remembers how when the Provincial Armed Constabulary (PAC) was formed in U.P. its very presence was as effective in controlling a riot as the intervention of the army.

Today the armed police forces are almost a joke. If Naxalism is to be contained, if Maoist terror is to be overcome, if militancy and insurgency in Jammu & Kashmir, Nagaland, Manipur, etc., are to be combated the armed police forces must be brought back to their original role and only used where armed intervention is necessary. At present the training schedule of the armed police forces is completely disrupted because of continuous deployment in an unsuitable role and this has affected their efficacy. This is a harsh reality. It has led to the army being called out frequently and there is resentment in the army on its being called upon to play a police role in the matter of law and order.

There are two other departments at the State level which can be taken up for comment as illustrative of what is happening to the administration. One is a regulatory department of the traditional kind and the other is a development department. We can begin with the Revenue Department which has always been of utmost importance in a largely agricultural small land holding country. The Revenue Department is the custodian of land records which give the position on the ground of occupancy on every field and ownership of land. Contrary to popular belief even urban land comes under the jurisdiction of the Revenue Department and urban land records are of as great an importance as rural land records.

The hierarchy of the Revenue Department goes back to the Mauryan Empire, though in it is the present form one can trace it to Raja Todar Mal, the Revenue Minister of Emperor Akbar. Revenue Survey and Settlement, that is, the survey and mapping of every inch of land in India, together with details of subdivision, the actual use of every survey number and its ownership was designed by Raja Todar Mal and the land records of Moghul days and those of today are virtually the same. The farmer does not have to go through a lengthy process of civil registration and litigation in matters of land holdings because of the system of land records.

To complement the survey and settlement staff is a hierarchy of revenue courts ranging from the Tahsil court all the way up to the Board of Revenue.

The key functionaries of the Revenue Department would be the Patwari at the village level, his immediate supervisor, the Revenue Inspector or Kanungo, the Assistant Superintendent of Land Records at subdivision level and Superintendent of Land Records at the district level on the survey and settlements side; and the Naib Tahsildar, Tahsildar, Sub Divisional officer, Collector and Commissioner on the judicial and administrative side, but under whom survey and settlement also functions. This administration is an amalgam of executive authority and judicial authority in matters relating to land and land revenue.

The importance of the Revenue Department is that if the Patwari keeps the land records properly there would be very few disputes relating to land in rural India. It is, however, a well known fact that the annual inspection of fields and updating of records by the Patwari is quite often an exercise performed from the comfort of the Patwari's home, with few field visit (It is popularly called Khatia Girdawari or bed room survey), changes in land ownership are not properly recorded and mutation not done in time, mischief done in survey of individual holdings, leading to disputes and there is unnecessary litigation because of the Patwari's failure in the matter of land records.

Another important role of the Patwari is to collect agricultural statistics, field-wise and village-wise. The aggregate statistics at tahsil, district and state level are then made available to the Government of India, where the National Sample Survey validates the statistics by field trials. The Ministry of Statistics and Plan Implementation feeds the statistics to the Planning Commission and they form the basis of all plan formulation in India. If the statistics are collected through Khatia Girdawari obviously they would be fudged and the entire basis of planning would rest on false premises.

Besides all these duties and Patwari is also the government functionary who reacts in the field to natural calamities, disasters, etc. He is a key functionary in elections, in the census of India and in almost every other issue or matter concerning executive government at field level. It is for this reason that the Revenue Department has a strong hierarchical system which, if it functions efficiently, leads to peace in the villages, prevents agrarian unrest and enables the executive government to function at grass-root levels. Unfortunately the present days administrators have completely downgraded the Revenue Department and this is one of the main reasons why there is so much dispute and unrest in rural areas. The Collector of the district and the Superintendent of Police are both key figures in the administration. If the Tahsil and the Patwari circle, together with the Thana do not function as effective instruments of governance, neither the Collector nor the Superintendent of Police can succeed and the entire administrative fabric is damaged.

In the States, of the many departments concerned with development and the welfare of the people we may take the example of the Rural Development Department, which also deals with panchayats. Jawaharlal Nehru at the instance of S.K. Dey created a parallel development administration by creating Community Development Blocks, coterminus with small Tahsils but with more than one Block in a large Tahsil. Each Block had a Block Development Officer (BDO), who ranked with the Tahsildar. He had a whole hierarchy of extension officers from departments such as Agriculture, Social Welfare, Engineering, Education, etc., and he also had the Block medical staff to take care of health problem. The concept behind the Development Department was to use the village as a unit of development, assess the felt needs of the people

and take up development progammes with the participation of the people, who were required to contribute fifty percent of the cost of the project in the form of materials, labour, transportation, money, etc. For twenty years the programme worked well and because of the participative approach the people ensured that whatever works were undertaken conformed to quality norms and many of the schools, panchayat ghars, roads, ponds and wells built in the fifties and sixties of the last century still survive. Unfortunately this programme was given up from about 1965, people's participation was replaced by government grants and the programme became totally bureaucratic. Finally, with the Seventy-third and Seventy-fourth Amendments of the Constitution the programme has become a part of the process of democratic decentralisation, with panchayats at village, block and district levels being increasingly made responsible for the development administration. Unfortunately there is no genuine devolution because decentralised powers do not create a true people's movement. Funds are made available without any people's participation in material terms because the theory is that a programme run by institutions of the people would automatically become participative. The ground reality is that electoral politics has made the system divisive rather than participative, people no longer take an interest in the quality of the work because they have invested nothing in it and by and large levels of corruption have risen because there is authority without accountability. That which should have transformed rural India because of devolution of powers to the people has in fact failed to live up to its promise largely because of politicisation, partisanship and lack of accountability. This is one area where strong intervention is indeed to bring the system back on the rail and to ensure genuine devolution of power to institutions of local government.

The Government of India functions in a more rarified atmosphere because field implementation is largely the responsibility of the State Governments and not of the Centre. Because of this some of the executive agencies of the Central Government are perhaps under less pressure than the field units of the State Government. But the sums of the money involved are infinitely higher than what the States spend and, therefore, there is greater high-level corruption in the Central Government. Because of the vital role played by the Centre in controlling industry, the financial market, the telecommunications sector, etc., the players in the field have far greater resources, can offer bigger bribes and make greater profits. A patwari deals with Ramu Chaudhary, a cultivator of limited means. A Central Minister, Secretary, Income Tax Commissioner, Customs Commissioner, etc., all deal with Anil Ambani. Corruption in the States at field level hurts the common man, but the amounts are manageable. Corruption in the 2 G scam runs into thousands of crores of rupees, bankrupts the country but still does not directly impact the ordinary citizen living in a village or a small town. This difference needs to be clearly understood because the administrative measures needed to combat field level corruption in a State would be very different from the measures needed to prevent another Commonwealth Games fiasco or the loot of the country in the telecommunication sector. Even here we need to develop a sense of perspective and objectivity. For example, in the 2G scam the CAG has taken the difference between the price available at auction today and the price at which the original spectrum allocation was made, and then multiplied the difference by the number of consumers of telecommunication services at the present day and then derived a figure of loss. Government has failed to explain that India started with a very small mobile telephony base and that it is only because government encouraged service providers that mobile telephony has had a phenomenal geometrical expansion. Perhaps one could view this as an initial seeding of the sector by concessions, nurturing its growth till it achieved a critical mass and only thereafter applying commercial norms. One makes this point because in a growing economy certain imbalances will

occur from time to time and not everyone of them should be taken as evidence of corruption. In other words, whereas there has to be transparent, visible and apparent accountability, the discharging of this accountability should not become mired in an environment of suspicion in which every decision is looked upon as being driven by corruption.

Having said that the fact remains that in the working of the major departments of the Government of India there seems to be a collective paralysis in which decision making has become slow and, therefore, ad hoc, genuine decisions are not taken because of fear of allegations of corruption and the popular perception is that nothing is ever done in government. A fine example of such paralysis is the acquisition of weaponry by the armed forces. There is a very real threat of conflict in the region in which we live, with India as the target. The three armed forces need to substantially upgrade their weapons systems, mobility, communication capabilities and the capacity to wage a high technology war if we are forced into one. Every weapon deal carries the stigma of corruption, with the result that even such a fine 155 mm gun, the Bofors, is not even considered for further induction into the Army because of the constant and carping speculations about corruption. Why can we not have a system whereby the armed forces convince the Ministry of Defence of the need for certain weapons systems, electronic warfare equipment, aircraft and ships and all the other paraphernalia of war and after the Ministry's clearance, the armed forces are able to acquire the necessary equipment without delay? There is less likelihood of corruption if the armed forces first do their homework on what they need, complete all the field trials and then come to government with a purchase proposal. Thereafter the purchase should be done expeditiously. One of the greatest weaknesses of our system is that it is totally unable to set up such a procurement procedure, largely because we trust no one, not even the three Service Chiefs. There is urgent need to address this problem unless, of course, we want to fight our future wars with bows and arrows and sling shots.

The cases and departments mentioned are only illustrations for the making of certain points and are by no means exhaustive. They are also indicative of the ground reality for the administration and should result in a fruitful search for solutions.

The Ground Reality For The Judiciary

Chapter 4 of Part V of the Constitution and Chapter 5 of Part VI guarantee the independence of the Judiciary from the Executive and the Legislature and firmly install it as the third organ or pillar of the Indian State. By making the Supreme Court and High Courts judges immune to any action by the Executive or the Legislature, except through impeachment, the Constitution gives them the freedom to do justice without fear or favour. It gives complete security to the subordinate judiciary because it places the subordinate judges and magistrates under the complete control of the High Court. Neither the Executive nor the Legislature has any control over the subordinate courts.

The reverse of the coin of the independence is accountability and responsibility. The subordinate judiciary is certainly accountable to the High Court, both administratively and judicially. Article 233 makes it mandatory for the Governor to consult the High Court in the appointments, postings, promotion of district judges and Article 234 states that the Governor shall consult both the State Public Service Commission and the High Court in appointing judicial officers below the rank of district judge. Under Article 235 it is the High Court which has complete control over the subordinate courts, including the district courts. The question which remains is to whom are High Court judges and Supreme Court judges accountable administratively? One answer to this is that the judges of the Supreme Court are

administratively accountable to the Chief Justice of India and the Judges of a High Court are similarly accountable to the Chief Justice of that High Court. The extent of this administrative accountability, however, is not spelt out because basically in all administrative matters it is either the collegiums established by the Supreme Court or High Court which decide, or it is the entire court sitting in an administrative capacity which takes such decisions. The Chief Justice is a first amongst equals but not necessarily anything more than that.

The manner of appointment of Supreme Court and High Court judges and the establishment of a National Judicial Commission which would ensure accountability of the judges has been under debate for years. On a reading of the Constitution there is some doubt as to whether such a Commission can in fact be created by law. Under Article 124 a judge of the Supreme Court and, mutatis mutandis, of a High Court may be appointed by the President after consultation with such judges of the Supreme Court and High Courts as the President may deem fit, with the Constitution mandating that in the case of the Supreme Court the Chief Justice will always be consulted and in the case of a High Court the Chief Justice of India, the Governor of the State and the Chief Justice of the State shall be consulted. One does not find any provision of the Constitution in which Parliament can legislate either on the form of consultation or by way of creating a Judicial Commission which will replace or supplement this process of consultation. Under Article 124 (4) and Article 218 Parliament may, however, legislate on the procedure for presenting an address for removal of a judge and the investigation and proof of misbehaviour or incapacity of a judge. Here perhaps there is scope for a National Judicial Commission.

In the Ramaswamy case Justice Ramaswamy was found guilty by the court of enquiry of several charges of financial and administrative misconduct and the matter was moved before Parliament under Article 124 (4) of the Constitution. For its own political reasons the Congress Party abstained from voting and, therefore, the absolute majority of the total membership of the House required to pass the motion could not be mustered. Justice Ramaswamy continued as a judge of the Supreme Court though found guilty of misconduct by the court of enquiry. Let us carry this matter further. Suppose a judge of a High Court and the Supreme Court is convicted for a heinous offence in which he receives a long sentence of imprisonment, may be even a life sentence. Because of the political equation in Parliament impeachment proceedings against him fail. This means that he would continue in office as a convict sitting in jail because constitutionally he cannot be removed from office. The makers of the Constitution never anticipated such a contingency in our judicial establishment, but the fact is that there is a great deal of venality in our superior judiciary and the present arrangement not only immunises judges in the matter of interference in their judicial work but it, arguably, even immunises them from action against criminal misdeeds. This is untenable and unacceptable in a country governed by the rule of law. The question of judicial accountability without in anyway compromising judicial independence will have to be addressed very seriously.

Our courts at all levels are choking to death because of the sheer volume of cases pending before them. Obviously at the level of the Judicial Magistrates, Civil Courts of First Instance and the District and Sessions Courts there is a paucity of judicial officers, subordinate staff and office equipment. This means that too few judges are called upon to handle too many cases. Our legal fraternity, on the other hand, seems to have a plethora of lawyers, each looking for work. Many lawyers indulge in questionable tactics in order to delay cases and there are too many adjournments, far too many instances of non-service of process and a reluctance on the part of the judges to push for early completion of cases lest the lawyer denied the opportunity of delay complains against the judge to the High Court. Ethically, also, the time has come to question the right of lawyers to strike work at will because this causes undue delay in the judicial process.

If criminal justice is slow civil courts are even slower and civil suits keep pending for years. At every stage interlocutory orders are sought, revisions are filed on one excuse or the other and the case drags on. Because the judicial process is slow some people prefer shortcuts, which can include the bribing of judges, use of strong arm methods to settle matters out of court and a generally increasing lack of confidence in the courts and their ability to give justice. This is an extremely unhealthy trend.

With due respect to the High Courts and Supreme Court, at least part of their problem of pendency is of their own doing. Every conceivable writ petition, often in the guise of Public Interest Litigation, is admitted by the Supreme Court and High Courts. Article 32 and 139 confer writ jurisdiction on the Supreme Court and Article 226 on the High Courts. The purpose of writ jurisdiction is, basically, in the words of Article 32, " the enforcement of any of the rights conferred by this Part (Part III)". This is true of Article 226 also. It is realised that both under Article 139 and Article 226 writs may be issued by the Supreme Court and High Courts other than for the enforcement of fundamental rights, but this power has to be used sparingly and only after all other remedies fail. How does one explain the entertainment of a writ petition by the Indore Bench of the Madhya Pradesh High Court against the compulsory wearing of helmets by riders of motorised two wheelers despite the fact that The Motor Vehicles Act has made it compulsory? What fundamental right is violated if the police enforces this law? The Delhi High Court entertained a writ petition by a cinema owner who had done illegal construction which was ordered to be demolished by the competent authority. If an injunction was needed to stay the demolition surely this lay within the competence of the civil court. High Courts entertain applications against postings, in relation to appointments and in fact a whole gamut of trivia where the authorities to be approached should have been the district administration, the local body or some such organisations which had jurisdiction. By not being strict about the admission of writ petitions the High Courts and Supreme Court have unnecessarily increased their own burden, delayed justice in cases which should enjoy higher priority and generally increased their work load unnecessarily, besides encouraging uncalled for litigation. This is a harsh ground reality in judicial matters.

One of the causes of judicial activism by writ jurisdiction is the increasing reluctance of the Executive to perform its own legitimate function of governing. This has created an administrative vacuum into which the judiciary has stepped. If the Executive begins to function effectively and in a manner which engenders trust, the people would resort to court action much less because executive remedies are available and the work load of the courts would reduce. In fact one of the surest signs of misgovernment or inefficient government is the increase in litigation and the tendency of the courts to enter into areas which are strictly within the domain of the Executive. To sum up, the ground reality for the judiciary is that there are not enough judges, there are some corrupt judges, the machinery for dealing with such corruption is weak or ineffective, there is an immense backlog of cases which calls for complete rethinking on the part of judges about how to deal with cases and there is an excessive eagerness to admit frivolous and unnecessary writ petitions. How to remedy this situation is a major challenge which faces the judiciary.

PART III - REFORMING THE SYSTEM

The Legislature

In looking at the ground reality relating to the Legislature one of the points made was how expensive are our elections. Our parliamentary constituencies are huge and a candidate would probably have to cover approximately 10,000 square kilometres of his constituency to be able to cover all of it. Road connectivity in rural India, though better than before, is still very unsatisfactory in large parts of the country, especially in those States where there is high forest cover, the terrain is hilly and the population is sparse. The physical cost of movement in itself is substantial because large numbers of off-road vehicles have to be deployed. Most political parties do not select their candidate till the very last moment, which means that all electioneering is compressed into just about one month. In this Mamata Banerjee has been an exception because she conducted her 2011 election campaign even before the 2006 elections in West Bengal were fully completed. As a result of this she and her party workers had done the ground work for the candidates who ultimately stood for elections from her party. However, because this is not so in the majority of constituencies in India, money flows like water (in a good monsoon year) for the campaign to be completed within thirty days. For a candidate who does not have party support, unless he is himself very rich, electioneering becomes almost impossible on account of the cost of travel itself. In addition, there are a number of legitimate items of expenditure which have to be covered. If there is a bribery factor also involved, then the cost of the election can be astronomical. This cost is obviously met by present and future corruption, one of the major factors for the prevalence of corruption on the scale we now see in India.

Both as a measure of legislative reform and as a means of curbing corruption we shall have to rethink our system of financing elections. There is no unanimity in this behalf but a suggestion could be made that there should be State funding of the candidates whose nominations have been accepted by the Returning Officer. One suggested formula is that every candidate for a parliamentary constituency be given, at State cost and for a period of, may be, four to six weeks, one vehicle per assembly constituency, one vehicle for the candidate, one vehicle for his election agent and, perhaps, one spare vehicle. Cost of rental of the vehicles, salary and allowances of the drivers, PDOL (petrol, diesel, oil and lubricants) within prescribed limits, which would have to be generous, cost of normal repairs, etc., should be meet by government. In addition to this government may also provide a reasonable amount for legitimate miscellaneous expenditure, including some allowance for polling agents on the day of poll and the day of counting and to meet contingent expenditure. Depending on the size of the constituency government would have to provide a sum of between rupees 35 lakhs and 50 lakhs per candidate. However, there must be concomitant restrictions on the candidate spending any other amount from his own pocket or the party funds. The upper limit of expenditure per constituency should be prescribed, rigidly adhered to and the cost of the visits of leaders from outside using aircraft and other similar modes of transport must also be charged pro rata to the constituency. Hopefully this would curb overall expenditure on elections and would permit a good candidate who cannot otherwise afford to stand for election to try his luck at the polls without bankrupting himself. Consequently this would also reduce the need or incentive for post election corruption, now indulged in at least partially to cover the cost of the election.

The above mentioned formula may apply to the state assembly constituencies also, with the ryder that here the candidate would be entitled to three vehicles for his constituency on the same terms as for a

parliamentary constituency. Because the constituency is relatively small miscellaneous and contingent expenditure would also reduce.

A few other electoral reforms might also help. If we can make it mandatory for an independent candidate for the State Legislature to have the pre-qualification of having won at least one election to a local body, that is a municipality or panchayat and if we could further provide that an independent may not stand for Parliament unless he has won a local government election and has then won an assembly seat, this would leave only serious independent candidates in the fray and reduce the number of candidates who stand for election. Similarly, no political party should be allowed to contest a parliamentary election unless it has won at least five seats each in the legislative assemblies of at least three States. This would rule out most regional parties, or else force them either to join a larger national party or else spread their own influence beyond the narrow regional level and develop interests in at least three States. Either way the present blackmailing by small regional parties at the time of formation of a coalition government would end.

We need to remind our legislators that under the Constitution their function is to legislate, give government the authority to spend money and to raise taxes by approving the grants and the budget, call the government to account through questions, adjournment motions, debates, resolutions, etc., and generally ensure that government functions according to the mandate given by the Legislature. Members of Parliament and State Legislatures should have no executive functions at all and should not be allowed to interfere in postings, transfers, approval of projects, etc. The present Chief Minister of Bihar, Nitish Kumar, has taken the bold step of abolishing the MsLA Local Area Development Fund on the ground that they have no business to spend government money, but as members of the District Planning Committee they are expected to guide the district administration in designing development projects, approving them and then ensuring that the panchayats at all levels spend the money on the approved projects. Similarly, the MP's Local Area Development fund should also be abolished because it has become a major source both of patronage and of corruption.

We need to tighten up our anti defection laws. This means that any person elected on a particular ticket or as an independent candidate who changes his loyalty, joins another party, or gives up his independent status, will automatically stand removed from the Legislature. The final arbiter of this should be the Election Commission and not the Speaker. Furthermore, such a person should be debarred from standing for any election from panchayat level to Parliament for the next six years. If defections cannot help in forming a government or in removing it, then the bribery of MsP and MsLA would sharply reduce because power would no longer be a purchasable commodity. If enforcement of this provision may result in more frequent elections initially, the fact that it would also reduce corruption would be beneficial to the system. If defection cannot lead to a new government being formed, then automatically defections would sharply reduce and the purchasing of legislators would also cease.

The most important reform of all would be that of the parties themselves. If political parties encourage internal democracy, if they move from opportunism based politics to ideology and programme based politics our system of parliamentary democracy would be greatly strengthened.

The Executive

The Executive, by its very nature, is that wing of the State which delivers governance to the people. The efficiency, attitudes and integrity of the Executive, therefore, become vitally important because an inefficient, corrupt and anti people government cannot deliver good governance. Governance would be the responsibility of two separate but equal wings of the Executive, the elected component consisting of the Council of Ministers and the appointed component consisting of the permanent Civil Service branch of the Executive. Good governance demands first and foremost that the political wing of the Executive functions on the following lines:

The Council of Minister must be clear that its political programmes are in consonence with the mandate given to it by the ruling party. However, in the framing of policy which leads to action, it is the Council of Ministers, suitably aided and advised by the permanent civil servants, which will draw up programmes, action plans and schedules for completion of projects. This is purely the function of the Council of Ministers appointed by the President or Governor as the case may be and no political party or its workers have the right to try and micro manage government. Unfortunately this shade of difference between the party dictating ideology and the government preparing programmes is not fully understood in India, with the result that party functionaries interfere in the day to day affairs of government right down to field level. This has to stop.

In the framing of policy it is ideology rather than immediate expediency which must be the decisive factor. One fine example of this is Mrs. Margaret Thatcher, Conservative Prime Minister of Britain for over eleven years. She came to power on a platform of dismantling the Socialist State in Britain and she proceeded to fulfill her electoral promise with great firmness and consistency. She faced a nine hundred days strike by Arthur Scargill and when it became necessary to use force against striking miners who took to violence she did not hesitate. The landscape of government changed so drastically under her leadership that the Labour Government of Tony Blair which followed the defeat of the Conservative Party under John Major, virtually adopted Margaret Thatcher's language, formulation and substance of government, including in the economic field. The threat of losing an election, the possibility of revolt within the Conservative Party did not deter Mrs. Thatcher because to her policy was more important than office. One gives this example because what is lacking in our political system is adherence to policy. So long as our politicians continue to pander to populism the political executive will not reform itself.

The political executive is bound to be corrupt if the system of election is corrupt. We proudly acclaim that democracy has taken deep roots in India. What has taken roots is a process of elections, but if the elections entail expenditure which cannot be met except by illegal means, democracy cannot be said to have taken roots. Therefore, the reform of the political executive and of the system of elections go hand in hand. As things stand today, unless the Chief Minister or the Prime Minister and his party and government are corrupt, they cannot run the party. On another level we have reached a stage where there are governments no longer interested in governing. No civil servant minds being overruled by a minister, provided he is confident that the minister has taken a decision honestly, even if it is politics based. It is whimsicality and arbitrariness which upsets a civil servant. If our ministers understand this correctly, then the political executive will function in a rational manner. The reform that is essential here is that the Council of Ministers behaves rationally rather than like a bunch of monkeys whose every act is unpredictable and whimsical.

If the proper functioning of the Council of Ministers can call civil servants to account, unpredictability in a Chief Minister and a Prime Minister leaves the Civil Services bewildered and it certainly reduces their efficacy to deliver good governance to the people. Being realistic, we must take into account the fact that unless the political system reforms itself a degree of whimsicality, arbitrariness, self-centered and self beneficial decision making would be normal. How do we restore rationality, discipline and efficiency to the Civil Service under these circumstances? It is in this behalf that the rule of law becomes of paramount importance and rules framed under Articles 77 and 166 of the Constitution become the guiding light. Rules and regulations may lead to red-tapism, but they also provide a level play field for everyone. If there are rules within which government has to function and every citizen is confident that rules will be followed, then the question of favouritism, nepotism, even decision-making based on corruption will not arise. A person's application will be accepted or rejected on the basis of rules only and this certainly would reduce the discretion of the political and permanent executive to take arbitrary decisions. So far as Rules of Business of the Executive Government framed under Articles 77 for the Centre and 166 for the States are concerned, they are the sheet anchors of every civil servant performing his duty. Rules apply to everyone, including the Prime Minister, Chief Minister, M.P. and MLA. The political executive can change the rules, but so long as they are in force they apply to everyone.

To return to the specifics of the Business Rules, it is totally prohibited for a line department of government to overrule Finance. The rules also state that it is the personal responsibility of the Secretary of the department to ensure compliance with the rules. If in the 2 G scam case the Secretary of the Ministry had stood firm, politely told the minister that the case needed to be formally submitted to the Cabinet because the Finance Ministry had raised an objection and had told the minister that he would not issue orders till the Cabinet gives its decision, the scam would never have taken place. We need to go back to a system in which officers work according to rules and refuse to accept any attempt to bypass them .

On reforming the permanent executive whole books can be written, but basically what we need are two specific measures to make the Executive function properly. The first is that all rules, regulations and standing orders which create an interface between citizens and government officers must be reviewed so that this interface is reduced to a minimum. Where a person has a specific request or problem and a government officer is required to give a decision thereon, the process must be transparent, time bound and open to inspection by the citizen concerned. If all cases of delay are treated as a potential source of corruption and scotched in the very beginning, levels of corruption would drop drastically. The second measure is to build in to the system interlocking accountability. The duties and functions of every official must be prescribed and both he and his immediate superior should be made equally accountable for default on the part of the junior office. If an officer incharge of a police station functions otherwise than according to the rules, is inefficient, corrupt, anti people, it is his SDO Police who must also pay the price. Interlocking accountability actually creates a vigilance hierarchy within the system because if the superior officer knows that he will have to pay for the sins of his subordinates, he will be vigilant in supervising his subordinates and ensure that they function properly. In a Public Works Department if the quality of work is bad everyone in the hierarchy who was involved in that work, directly or at supervisory level, must pay the price for bad work. It goes without saying, of course, that this system demands empowerment of supervisory officers to take action against their subordinates, which today they are not. It also means that default by government servants will inevitably lead to penalty, because fear of punishment for bad workmanship is a strong deterrent to default and a strong incentive for working diligently, honestly and efficiently.

Our reaction to any crisis is to look for new systems, new laws and new rules. Why do we not go back to old system of expecting civil servants to do their duty at all levels and then ensure that they work conscientiously on the task assigned to them? From Prime Minister down to patwari, we all need to emphasise that ultimately government is meant for the people. When government becomes the predator and the people the prey, the nation is in trouble. In the final analysis it is good purposive government, in which everyone is accountable not because of fear of the big bad wolf, the Lokpal, but because this is built into the genetic code of the system, which will truly reform the Executive. For this we need the will to govern and this no amount of systemic tinkering can generate.

The Civil Services which man executive posts in government have to be brought to a realisation that they are servants of the people. The best way of ensuring this is by training. We do have initial training at the time of entrance into the Service, but thereafter if there is any training at all it is proforma. Rajiv Gandhi as Prime Minister had directed that there should be continuous in service training, but because we neither carefully select areas of training, nor institution, nor instructors, we go through the motion without providing any substance. The purpose of training has to be:

1. To make the Services at all levels professionally competent.
2. To refresh from time to time the skills needed at different levels to perform effectively.
3. To orient the Civil Services to an environment of democracy so that at all times the Civil Services are people friendly, which means they are also honest.
4. To prepare civil servants at all levels for higher responsibility.
5. To constantly review the need to balance the generalist administrator and the specialist and to prepare, from time to time, cadres which can cater for specialised tasks such as economic administration, urban management, etc. One useful suggestion would be the setting up of a high powered Bureau of Administrative Research and Development, perhaps in the National Academy of Administration, which could be our think tank on public administration and governance

When an IAS officer is selected, and this applies mutatis mutandis to the IPS and IFS also, and to other Services under the Union and the States, he must undergo the following schedule of training:

1. A year in the Academy where induction training is given and knowledge of rules, regulations and procedures is imparted. Also by exposure to the culture and civilisational base of India the all India nature of the Service is emphasised. It is at this stage that a sense of duty is inculcated.
2. After the induction training for one year the officer should go into the field and work at sub-divisional level. In the fifth year the officer should be pulled back to the Academy for a six months intensive course in which he shares his experiences at sub-divisional level, has access to a large collection of case studies which would enable him to understand how different people have found solutions to similar problems in different States and is generally prepared for a district charge.
3. He then goes back to the field where, for the next five years, he holds a district charge and probably also a junior post at headquarters. During this period he is carefully observed by his seniors and his strengths, weaknesses, special interests, etc., are gauged.
4. At the end of ten years the officer is pulled out of the field and sent to carefully selected institutions where his special strengths and aptitude are nurtured and he is increasingly prepared for some form of specialisation. This course could be three to six months in duration.

5. After training he goes back into the field and for the next five years he is given charge of or is made second-in-command of a department or holds similar office at headquarters. In these assignments he would start moving into areas where he participates both in implementation of policy and in the process of policy formulation. Once again he would be under careful watch of his superiors.

6. After fifteen years of service the officer is due to move to levels of higher command. By then his special aptitude should have become known. At this stage he should be pulled out for intensive training in an institution, carefully selected, where his special skills should be fine honed. He would then be sent back to the field and his posting carefully designed.

7. After twenty years of service the officer must be put to a final and exacting test. He should be sent on a two years sabbatical to an institution of higher learning either selected by him and approved by government, or chosen for him by government in India or abroad. On a subject to be approved by government the officer should be required to conduct a research study for two years, at the end of which his work and his thesis would be judged by a highly qualified team of experts. If the work is found upto the expected standard the officer would be given a doctorate in public administration. If the work does not qualify the officer would be immediately retired from Service as being unfit for higher command and responsibilities. In other words, after twenty years of service the dead wood should be ruthlessly culled out.

Our system is so obsessed with corruption that we look for it under the carpet, around the corner or hanging like a cobweb from the ceiling. In the matter of judging performance we have no system in place, except the ACR. By and large this is dishonestly written, partly because officers are reluctant to write the truth about their subordinates and partly because they are afraid to earn their resentment. There has to be a system whereby there is peer evaluation and also an evaluation by superiors or a committee of superiors, whereby performance is judged. The armed forces are ruthless in removing officers from service at different levels if they fail to perform. We have to introduce a similar system in the Civil Service.

There is one branch of the Civil Service, the police, which calls for special comment. It is both the coercive arm of government and the protective shield which ensures that the rights of the citizens are enforced. Unless we have an effective force which protects the citizens, maintains order, deters crime and brings offenders to book we cannot have a security environment in which government can function. If we take post independence India, starting with the Dharma Vira headed National Police Commission and going upto the PIL filed before the Supreme Court by Prakash Singh IPS (Retired) the effort has been to make the police no longer accountable to the District Magistrate but to make it independent as it were of the entire executive, permanent or political. There is strong resistance to this, largely from the political executive, but excluding the bureaucracy.

If we divide police functions between prevention and detection and prosecution of offences and the function of maintaining law and order, then even today in its function relating to crime the police enjoys total independence under Chapter XII, Cr.P.C. Police officers claim that because they are subject to arbitrary transfer and action by government, they are afraid to act independently even in the matter of crime control. It is claimed that resistance to interference leads to problems for the police officer concerned. Therefore, the police wants complete autonomy in the matter of its own administration. If the Police Act of 1861 is read carefully one would find that such administrative autonomy is already enjoyed by the police because section 4 reads, “The administration of the police throughout a general police district shall be vested in an officer to be styled the Inspector General of Police…”. Under

section 3 of the Act superintendence over the police vests in government. Nothing could be more clear than this provision of law because whereas in the matter of general directions, rules, regulations, etc., it is the government which will decide, in the matter of administration, which includes postings and transfers, deployment, etc., it is the Inspector General who legally has the last say. This is not a power delegated to him, it is a power vested in him by law. If he does not have the courage to stand up to government and state that he will not permit interference in administration, is it the law which is to blame, or is it the individual? The worst example of this is the Delhi Special Police Establishment (CBI), which, under D.P. Kohli, was the best investigative agency in the world and under D.Sen became a political harlot It has not fully recovered even today.

The Soli Sorabjee Committee set up on the directives of the Supreme Court drafted a model Police Bill in 2006. The author of this paper was a member of the committee who signed the report, but separately gave certain notes on the areas where he felt there is room for rethinking. Basically what the committee sought to achieve was a system in which appointments to various posts in the police had to pass through Establishment Boards at different levels and security of tenure was assured. It is believed that this would eliminate arbitrariness in postings and transfers and shield the police from unwanted pressure. In the selection of Vice Chancellors there is a search committee in which there is a representative each of the Chancellor, UGC and the Executive Council of the university. The three members are, therefore, independent of each other. Despite this the committees are manipulated, with the result that some of the most atrocious appointments are made to the post of Vice Chancellor. This does not mean we should not formalise the procedure for selection of the DG Police of a State, but does not mean that ultimately it is the character and behaviour of the DG which will determine his own independence and, therefore, the autonomous functioning of the Force commanded by him. All officers of the IPS should fundamentally have the same attitude of working according to law, with honesty, properly supervising their subordinates and ensuring that the police functions according to the mandate given to it. Theoretically one IPS officer is as good as another. This is the ideal towards which the Service must move because that is the only way in which we can ensure that the police is the creature of the law and not the personal servant of a politician.

In the matter of maintenance of law and order government will always have a say because it has to lay down the policy of police reaction to different kinds of agitations and law and order situations In the case of communal violence the police must strike hard and with all the force at its disposal. In the case of agitation by students and women the police has to be patient, willing to accept some casualties and at all times restrained in its reaction. Government can certainly give instructions in this behalf. Even in the matter of discipline or calling the police to account for acts of individual officer, whereas arbitrariness has to be eliminated, no Chief Minister or Home Minister can stand up in the Legislature when police conduct is under question and state that he has no control over the police. The legislators will force an amendment of the Act if they find that government is helpless even in the matter of ensuring that the police does not commit excesses and functions according to law. There has to be a fine balance between police autonomy and government authority.

India is a very complex country in which the police has to face situations which most police forces of a developed country never face. Banditry in rural areas, which is called dacoity, agitations which start out as non-violent but soon become violent, disruption of transport and public agitation to push a sectarian agenda, such as the Gujar and Jat agitations, campus unrest are some of the law and order problems on the streets that the police has to face. Then there is militancy, insurgency, violent movements such as Naxalism and even terrorist attacks from abroad which the police has to face. This Force has to work as an unarmed civil police, an armed police which faces agitations and a paramilitary

force which actually has to fight pitched battles. There are no simple solutions to policing in India and, therefore, every wing of the police and its special requirements will have to be met. For that a completely separate paper is required, but we should be aware of the problem. In this behalf the Bureau of Police Research and Development must be strengthened so that it become a think tank which keeps planning and advising, on a continuous basis, on the structures and methodologies which must develop if the police is to have the capability of maintaining order.

There are three areas in which the police has to be substantially improved. The first is in its strength. We must try and have at least one policeman for every two hundred and fifty people, whether in an urban or in a rural environment. Today the police is woefully short of manpower. The second area relates to attitudes. The police should be feared by criminals, but liked by the normal law abiding citizens. Today the role is reversed. Senior police officers have to ensure that by training, orientation and, when necessary, by resort to disciplinary action, the police becomes genuinely people friendly and a citizen visiting a police station is welcomed. It must be ingrained in all senior police officers that defending a corrupt or tyrannical subordinate actually causes police morale to fall and brings the police into disrepute.

The third area is urban policing. Rural people are not necessarily more honest than their town counterparts, but rural life is better knit and relatively simple. Everyone knows everyone. In an urban environment life is complex. There is greater mobility and people are more likely to be strangers than known faces. Crime is more complex, technology based and it is easier for a criminal to hide in an urban housing estate or slum than it is in a village. The forensic skills of the policeman, his mobility, his access to technology, therefore, have to be of a higher level than that of a rural police unit. Urban policing is as much a function of science as it is of coercion. We pay lip service to this, but basically scientific expertise is still a matter in which the police has much ground to cover. The BPR&D has to enable this to happen.

One final word. In building up the armed police the civil police has been neglected. The District Reserve Police has no reserves, the police station is undermanned, ill equipped and generally given a low priority. Yet it is the civil police in the thana which is the police interface with citizens. If the civil police is strengthened, properly equipped, trained and oriented, treated with respect by senior officers, about eighty percent of the problems of policing will disappear because the community will look on the police as its own and cooperate with it. If policing is consistent, fair, objective and sensitive to community needs, then a respect for law will be engendered and India will be a safer country.

Judiciary

Suggesting judicial reforms is the most difficult task which this paper attempts to address. Articles 124 to 147 of the Constitution govern the Supreme Court and Articles 214 to 237 govern the High Courts and the subordinate judiciary. In the Keshvanand Bharti case the Supreme Court has already ruled that the provisions of the Constitution relating to the judiciary form one of the basic features of the Constitution which Parliament is not competent to amend, nothwithstanding the provisions of Article 368 of the Constitution. In the matter of appointment of judges, therefore, there is no way in which Article 124 (2) or 217 can be amended. The proposed National Judicial Commission cannot substitute for consultation by the President with such judges of the Supreme Court and High Courts as he deems fit, as also the Chief Justice of India in the matter of appointment of Supreme Court Judges, or consultation by the President with the Chief Justice of India, the Governor of the State and the Chief Justice of the State High Court in the matter of appointment of High Court Judges.

What Parliament can do is to legislate under Article 124 (5) in the matter of the procedure for impeaching a judge and presentation of an address for investigation and proof of misbehaviour or incapacity of a judge as a part of impeachment proceedings. For this purpose perhaps a National Judicial Commission can be constituted. The demand, however, is to widen the consultation, etc., in the matter of appointment of judges, the stated objective of which is to ensure that a wider spectrum of opinion has a say in this matter rather than restricting the appointment of judges to the judges alone. This brings one to the question of the collegium which the Supreme Court has mandated, whereby the collegium of judges would advise on the appointment of Supreme Court and High Court Judges. It is constituted by the Chief Justice of India and it is only on the advice of this collegium that judges may be appointed by the President. The wording of Articles 124 (2) and 217 (1) of the Constitution is very clear. Article 124 (2) reads, "Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose ... Provided that in the case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted". Article 217 (1) reads, "Every judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, Governor of the State and, in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court…". The discretion of consultation with judges other than CJI is given by the Constitution to the President. Where is the room for a collegium in this, whereby the CJI decides who will advise the President and whom the President will consult? It is in this context that perhaps there could be a dialogue with the Supreme Court whereby the Supreme Court permits a widening of the consultation by the President to include eminent persons. This could be prescribed by a mutually agreed amendment of the Constitution. For this the Supreme Court would have to allow such amendment and not treat it as an interference with the basic features of the Constitution.

What is a cause of worry is not so much the appointment of a judge but his removal. When the Constitution was framed it was presumed that a judge of the Supreme Court and the High Court would not commit a misdemeanour amounting to misbehaviour and, therefore, there would never be any need to impeach him. It was further presumed that in case it was necessary to inquire into the conduct of a judge, then the inquiry would be fair because it would be conducted by a committee or court of peers of impeccable integrity. It was further presumed that if the charges as framed were proved, Parliament would be objective enough to pass an impeachment resolution with the requisite constitutional majority so that a judge not fit for continuation would be removed. However, in the Justice Ramaswamy case it was proved that a judge can commit a misdemeanour or a series of misdemeanours, that he can be found guilty on enquiry, that the Members of Parliament would behave irresponsibly, or a particular political party would behave irresponsibly so that the judge is not removed. Carrying this argument further, theoretically a judge could commit a heinous offence for which he is prosecuted, convicted and jailed. If the political equations in parliament are such that the impeachment proceedings fail, then the judge would continue to hold office even as a convict, which is a totally untenable and ridiculous situation. The Constitution must provide for such a contingency to ensure that such a judge cannot continue in office. Once again, if a constitutional amendment is needed for this purpose the Supreme Court should be persuaded not to treat this as a breach of the basic features of the Constitution.

Judicial accountability is as important as political or executive accountability. This does not mean that the judges should be accountable to the Executive or Legislature, but the principle of interlocking accountability must apply to the judiciary also. There is a hierarchy in the judicial system and, therefore, a judge at every level must be accountable to his superior who, in turn, would be held accountable for the shortcomings of his subordinate. In purely judicial matters accountability would

come through judicial review, appeal, revision, etc. If, however, in the judicial work misdemeanour is noted, then the accountability has to be administrative and may require penalising the judge. How does one penalise a High Court or a Supreme Court Judge without compromising his independence from the Executive? Unfortunately this aspect of judicial reform is not very seriously considered even by the Supreme Court. From time to time successive Chief Justices of India have bemoaned lack of integrity, competence, etc., on part of judges. It is now for the Supreme Court to come up with the procedure on how to penalise bad work by judges.

The judiciary has a huge backlog of cases. So far as minor offences are concerned, we should increasingly either unload the work onto Executive Magistrates or else increase the power of departmental officers to compound an offence. The Forest Department, under the Forest Act, has given such powers to its officers. Every law enforcement agency, with suitable safeguards, should be given such powers. This would include the police also. Certainly the compounding of offences by administrative officers would reduce the workload of the magisterial courts.

The use of technology in order to expedite the judicial process must be increased. For example, we can certainly digitise case studies so that if anyone is looking for precedents he can access the digitised records through a designated search engine, thus enabling the judge to study case law, precedents and relevant judgements of superior courts. There could be greater use of IT enabled recording of evidence of witnesses without their actual presence in courts. If the counsel cannot be present physically he may be made a part of court proceedings through video or teleconferencing. The use of IT and ICT as tools for expediting court proceedings is both feasible and desirable. Delay is one of biggest enemies of justice. There is a shortage of judges at all levels, though there does not seem to be any shortage of lawyers. The Supreme Court and High Courts must ensure that the judicial vacancies are filled expeditiously and as a continuing process. The Executive must make available the budgetary support for increasing the number of judicial posts to match workload.

The High Courts in the case of the subordinate judiciary must give judges a workable schedule to which the subordinate judiciary must adhere. This would include guidelines on when and how to give adjournments, the procedure whereby timely service of process is ensured and trials, both criminal and civil, are conducted on a continuing day-to-day basis so that the trial is completed within as short a timeframe as is possible. In particular the courts must be strict in ensuring that lawyers do not unnecessarily prolong cases and delaying tactics must be firmly suppressed. At the level of High Courts appeals must be expeditiously heard. At present miscellaneous petitions often get a higher priority than appeals. In the admission of miscellaneous petitions the High Courts must be ruthless in rejecting that which is trivial, frivolous or amenable to settlement in some other forum. In particular in admitting writ petitions the High Courts must be very selective and only admit those petitions where there is a substantive question of law or protection of fundamental rights involved. Any petition which smacks of civil litigation must be rejected and the petitioners advised to approach an appropriate court or authority. Without denying justice to the citizens the High Courts must ensure that only critical writ petitions are heard and the rest are left to the competent lower judiciary or executive authority. This would apply equally to the Supreme Court. In any case the courts must totally eschew populism and a desire for publicity and instead concentrate on laying down the law or the principles which guide good governance. Fortunately the people have faith in the judiciary and, therefore, a little effort by the Judiciary would restore the credibility of our courts.

General Remarks

Whether it is the Legislature, Executive or the Judiciary government needs to modernise itself. The procedures are rooted in what was prescribed a century ago. The tools of governance are also obsolete. There is a whole new information highway available to us though the IT revolution and the communication revolution. There are villages where there is no electricity, but very few where there is no mobile telephone. There can be no excuse for government not to be able to reach down upto the most remote village and communicate its programmes, its plans and its ideas to the people. There is no excuse for feedback not being available to government because a mobile telephone enables one to talk even to the President of the United States. If two-way communication is established between government and the people, government itself would become more transparent and, therefore, more responsive to the needs of the people. Technology can supplement manpower and make it more efficient. As a tool of planning and of decision-making IT is irreplaceable. Unfortunately our system of government, whilst adopting modern tools, is still not organised to use those tools for actual governance. A tool is only as good as its actual use makes it. If IT is used as the major tool in decision-making it would transform the working of government. Video games are fine but IT as a means of gaming as a part of a process of planning and governing is better. Our real challenge is how we can modernise government through IT and ICT so that the felt needs of the people are communicated to the decision makers, decision-making is rational because of its database and analysis and meaningfully operational in implementation. In the implementation of decisions there would be both speed and efficiency because IT is the tool through which performance would be monitored and judged. Slipshod work, nonperformance and wilful neglect of duty would not be able to evade notice. The real reform of government, whether Legislative, Executive or Judiciary would come when IT becomes a major factor which enables government to function efficiently and honestly.

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