’ HOW DID INDIA BECOME A PREDATOR STATE

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On April 8, when Anna Hazare’s fast forced the government to accept the need for a Lokpal with real teeth, civil society won a battle that could change the future of the nation. But a single battle seldom decides the outcome of a war. A month after their initial success, its activists have yet to realise that what their victory has triggered off is a war. It is a war they could easily lose if they do not identify not just who they are fighting against and what they are fighting for.

That they have not done so is apparent from the way in which they are pinning all their hopes on empowering one single , still to be born institution, the Lok Pal. Hazare made this clear when he said, in his press conference of October 11, that he expected a Lokpal modelled on the Jan Lokpal bill to eliminate 90 percent of the corruption in the country. But it was the corollary to this statement that was more revealing: the remaining ten percent, he said, would be eliminated by giving the people the right to recall their representatives in parliament and the state assemblies.

The naivete of this remark reveals how little even he understands what he is up against. For whom can civil society turn to for amending the constitution but the very people whom it is seeking to impugn? Sensing the confusion behind thisand some of the other demands being voiced by the activists, the enemies of reform have begun to chip away at the credibility of its representatives on the Joint committee , including Anna Hazare himself. This is provoking the more radical activists into making demands no government can meet. They are thus playing into the hands of those want the status quo to continue, for these demands are steadily reducing the area within which a democratic consensus can evolve between the reformers and the government.

Civil society’s leaders need to avoid this trap. After the huge upsurge of popular support for reform, few in parliament and the bureaucracy will oppose a widening of the Lok Pal’s jurisdiction to cover not only politicians but also the bureaucracy. But the demand that it should also cover the prime minister and the Supreme court and High courts, is going much too far. For if it is conceded for it will endow the Lok pal with the power to bring government to a halt by asking a prime minister or a supreme court chief justice to step down while it investigates charges of corruption against them. This was the threat that made Mrs. Indira Gandhi declare an Emergency in 1975.

By the same token, to be effective the Lok Pal must have the power to carry out its own investigation of the complaints it receives and not depend, as the Central Vigilance Commission does when investigating allegations against bureaucrats , upon the departments to which they belong. But should it also have the power to pass judgement and impose punishments? Would this not lead to a fusion of executive and judicial power that is anathema in a democracy?

The obvious course is to endow the Lok Pal with *suo moto* power to initiate enquiries, equip it with its own investigative wing, widen its jurisdiction to cover the bureaucracy, but leave prosecution to the CBI and judgement to the courts. The radicals view this with distaste because they do not trust either the CBI or the courts , especially the lower ones, any longer. To them all of the pillars of Indian democracy have been hopelessly corrupted. They therefore want the Lok Pal to be a sort of headmaster ever ready to discipline an unruly class. But one has only to spell out this proposition to perceive its absurdity. If the police, the bureaucracy and the courts are all corrupt, then who will physically implement the Lok Pal’s directives? Why should they not exploit every nook and cranny of the existing laws and provisions of the constitution to procrastinate and ultimately frustrate it ? Isnt this exactly what the bureaucracy has done to the Central Vigilance Commission?

No law remains effective if the lawbreakers cease to be a minority. By the same token no institution can function if its authority is not spontaneously accepted by the vast majority of those whom it is designed to govern. Even a Lok Pal with near dictatorial powers will make no more than a small dent in corruption if these conditions are not fulfilled. Civil society will therefore win the war against corruption only if, in addition to appointing a headmaster with the power to punish, it also creates conditions that minimise the need to punish. For that its leaders need , first, to understand where the roots of corruption lie buried.

No society is naturally corrupt or extortionate, or it would not survive long. If both these evils have taken such deep root in India it is because of the sins, both of commission and omission, of our leaders during the formative stages of the Indian State. The sins of omission came first: indeed they can be traced back to the the Constitution itself. Over the 61 years the seeds sown by these initial, possibly inadvertent, omissions have sprouted into what is probably the most corrupt and predatory democracy the world has known.

Ban on company donations

The first omission was a system for meeting the cost of democratic politics in a way that preserved its freedom from vested interests. In Britain where the average constituency is 375 sq. km in size and has an electorate of 60,000, this poses no great problem: A candidate for parliament can therefore get into his car every morning, visit two or three towns and villages, and return home every night. But the Indian parliamentary constituency covers 6,000 sq. kms and, even in 1951, had 300,000 voters, a quarter of the present number. The failure of the Constituent Assembly to understand how this difference in size made it impossible to copy the British model in India, is therefore surprising, to say the least.

The oversight could have been remedied with a constitutional amendment at a later date, but instead, in 1967, Mrs. Indira Gandhi took the country in the opposite direction and choked off the only legitimate source of funds had sprung up in the intervening years. This was the donations from corporations that all parties except the communists had begun to depend upon.

Mrs. Gandhi took this decision weeks after the Congress party came close to defeat in a general election in 1967. Not only did its tally in the Lok Sabha fall from 353 to 282—only tem more than what it needed for a majority – but for the first time and lost the assembly elections in six major states. In first repealed the tax concessions on donations to political parties and followed it up three years later with a complete ban on company donations to political parties. But while choking off the political system’s main source of funds, *she deliberately did not create an alternative.*

The purpose of the ban on company donations was not, as the Congress party claimed, to reduce the influence of big business on politics, for this had already happened. It was to cripple a rising threat from the right by depriving it of funds. In 1967 the pro- market Swatantra party, formed by C. Rajagopalachari in 1961, and the Bharatiya Jana Sangh had fought the elections jointly and become a serious threat to the Congress in three states. These were Madhya Pradesh, where the BJS won 78 out of the 296 seats , Gujarat where the Swatantra won 66 out of 168 seats, and Rajasthan where, by winning 72 seats they succeeded in reducing the Congress to a minority.

More than their share of the seats, the Congress feared their much larger share of the vote, for this threatened to turn them into a magnet for the then numerous smaller parties and independents. A two party, or at least two-coalition, political system therefore seemed on the point of being born, but the threat that a second national party could pose to the Congress was too much for its leaders to stomach. It therefore knowingly passed a law designed to starve the opposition of funds that only it, by virtue of being in power , could flout with impunity.

Article 311

The Constituent Assembly was guilty of another , unpardonable, oversight. This was its failure to realise that something specific had to be changed if a bureaucracy schooled into believing that its function was to rule the people, was to become its servant. The Founding fathers no doubt considered it sufficient to replace the British Viceroy and his executive Council with an elected Indian parliament. So they saw no reason not to retain a clause from the Government of India Act 1935, which gave civil servants virtual immunity from prosecution in a court of law without the express permission of the state. This became Article 311 of the 1949 Constitution[[1]](#endnote-1).

Article 311 reads: “ No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed”. This injunction applies to not only civil, but criminal cases as well. For the central services the empowered ‘Authority’is the President of India; for the state civil services it is the Governor. In practice this has meant that no prosecution can by initiated without the permission of the central or state government. As the dismal experience of the Central Vigilance Commission has shown, in civil cases this permission is rarely given.

It would have been a miracle indeed if such blanket protection had not been abused. But the political bosses’ perennial hunt for funds placed a premium upon the abuse of bureaucratic power, and gave a novel meaning to the term ‘servants of the State’. The harm this has done is almost beyond description, for it has virtually immunised civil servants not only from prosecution for their acts of commission but also their acts of omission. Today there is no law that requires a civil servant to do his duty by the public—no law that obliges him or her to issue a license, a permit, or a waiver, once the applicant has fulfilled the conditions for its issuance. There is no law that even requires a civil servant to reply to an inquiry from a member of the public within a specified period of time. Since peoples’ plans, businesses, often their very lives, depend upon the timely issue of these permits and licenses , this lacuna has given bureaucrats virtually unlimited powers of blackmail.

Not content with this the bureaucracy , aided by a complaisant Parliament, has continuously strengthened the protection it enjoys against prosecution. Section 19 of the Prevention of Corruption Act, which was passed in 1988 also requires the police to obtain sanction from the concerned government before prosecuting public servants involved in corruption cases. In a famous ‘Hawala’ money laundering case of 1996, lodged against several senior politicians and no fewer than 37 civil servants, the sanction did not come for months andf in several cases was never given. This forced the Supreme Court to rule that the limit of three months to grant sanction, prescribed in the act must be strictly followed.

But the civil service remained unfazed, and tried to extend the scope of Section 19 to cover even retired public servants. Luckily, the amendment was not ratified by the Rajya Sabha even though it was p-assed by the Lok Sabha.[[2]](#endnote-2)

The birth of the predatory state

Like Solomon Bandaranaike’s Sinhala-only language policy of 1956, the motive behind the ban on company donations was entirely opportunistic. And, as happened in Sri Lanka, this one action has brought the Indian State too, to the brink of disaster.

The change is profound and has taken four decades to work through the Indian political system. The immediate effect of Mrs. Gandhi’s ban on company donations was to all-but- destroy the moderate centrist opposition in Indian politics, and strengthen its ideological extremes. The Swatantra, being the most dependent on the corporate sector, simply threw in the towel: most of its members merged with the Jana Sangh. The two socialist parties, the PSP and SSP fragmented further as they championed casteism and populism in their struggle to hold on to their share of the vote. Only the two most ideological, cadre-based, parties survived relatively unscathed. These were the Jana Sangh and the CP(M). By the late seventies, therefore, the dream that India would one day develop a bi-polar political system similar to that of Britain had vanished.

A second, more serious, effect has been to stifle democracy within the parties. The ban on company donations made it harder even for the Congress to raise funds, for its managers had to replace a relatively small, and stable, cadre of large donors with a much larger number of widely dispersed donors who were prepared to contribute small sums in cash. Over time, the sheer difficulty of doing this every few years, has made them extremely reluctant to disturb a financing network once it been established. In the eighty percent of the constituencies that are rural, or centred around small towns , these networks are inevitably local. All the deals that have to be made to establish them centre on gaining the favour of not only the party in power but more specifically the candidate who represents it in the legislature. The actual deals are struck by self-appointed lieutenants, who give the candidates the elbow room necessary to modify , or get out of, conflicting commitments. Once a network is established, and especially once it has succeeded in getting its candidate elected, the lieutenants have the most powerful of interests in making sure that it is not threatened by a rival. The longer a party has stayed in power the more embedded has the financial network become. The arteries of the Congress’ rivals have not hardened to the same extent because their grip on power is less sure, but in states where a two party or two coalition system has stabilised they too have established similar ‘clientelist’ networks based upon the exchange of money and local influence for privileged access to the State. Thus the more Indian democracy has matured, the more has it succeeded in shutting new people out of politics unless they too are prepared to become a part of the existing clientelist networks.

A corollary to this has been the rise of the so-called ‘princelings’—a second generation of political leaders in Indian politics who have inherited and not earned their places in Indian politics. In western democracies, when a long term member of the Parliament, National Assembly or Congress dies, the party chooses his or her successor, usually on the basis of his or her standing in the constituency. In India, the death of a senior politician , triggers a rush by party members from the constituency to Delhi or the state capital to make sure that there is no contest within the party for the vacant seat, and that the dead leader’s son or daughter is nominated to take the parent’s place. They do this because , sentiment apart, this is the best way of making sure that the network of financial and other relations upon which their personal fortunes rest, is not disturbed.

The final act in the closing of access to power within Indian democracy was taken , again by a Congress government, on the recommendation of former Maharashtra Chief minister A.R. Antulay. As the only Muslim ever to rise to such eminence in Maharashtra politics, Antulay had remained, throughout , somewhat outside the crony-criminal network that the perpetua need for money had spawned. When he became the chief minister he therefore hit upon a novel way of building up the trust fund needed to ensure freedom from financial want as he fought one election after the other. His stratagem was to create a trust of which we was the sole executor, to which any Mumbai builder who wanted an allocation of cement at the then fixed price of Rs. 12 a bag of 50 kgs, had to contribute to the trust a sum of Rs. 40 ( the black market price of cement at the time was around Rs. 60.) because this was a registered trust the scam soon came to light and Antulay was forced to resign. When , some years later the Congress resuscitated him, it was as a one man committee to propose reforms of electoral finance ! Antulay suggested that each MP should be allocated a discretionary quota of Rs. One crore worth of plan funds to disburse on projects within his constituency. On paper the power was hedged with elaborate safeguards to prevent misuse but in practice there is no effective monitoring of how the money is spent and whether the projects to which it has been allocated actually exist outside the paper on which they are described. This opened the floodgates for the consolidation of personal power and wealth through the appropriation of public funds. The state assemblies lost no time in following the lead given by the centre, and as prices (and greed) rose, the allocations were steadily raised. In March 2011 in the middle of the crisis caused by the 2G scam, the Manmohan Singh government raised the MP’s discretionary development funds from Rs. 2 to Rs, 5 crores. The state assemblies promptly followed suit and raised MLAs’ quota from Rs. 1 to Rs. 2 crores. In all this has bestowed Rs 7,000 crores a year on the MLAs and Rs. 4,500 crores on the MPs. Ina five year plan period this has diverted Rs. Rs. 57.500 crores from public agencies to wholly unaccountable private individuals . This has not only formalised economic predation, but further strengthened the feudal bonds in which India’s political elite has bound the nation.

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A third, unforeseen consequence has been the weakening of national leaderships of the main, non ideological, parties. In this too, the Congress was the first sufferer. When donations were legal the money used to come directly to the president or treasurer of the political party[[3]](#endnote-3). This ensured that the reigns of financial power remained in the hands of its leaders whom the public recognised and could hold accountable for the way it was collected and spent. But once money began to be raised clandestinely, financial power slipped into the hands of anonymous, unaccountable and, more often than not, unsavoury characters. What is more, control over these new money collectors passed more and more out of the hands of the central party leaders into those of the leaders in the states.

Over time the price that the fund raisers demanded kept growing and, with it, the power of the elected leaders to choose candidates or determine policy declined. One of the first victims of the change was Mrs. Indira Gandhi herself. Scholars have severely criticised the way in which she concentrated power within the Congress in her own hands during the Emergency, but in reality this was a defensive action to stem a weakening of her control over the party that only she fully sensed. For by the mid - seventies she had all but lost control of several charismatic Congress chief ministers, such as H.N. Bahuguna in UP and V.P.Naik in Maharashtra. Both were able administrators, and Bahuguna, in particular , had restored efficient government to UP after a lapse of several years. The main reason why Mrs. Gandhi felt obliged to withdrew her trust from them was that they were no longer obeying her diktats. In all Mrs. Gandhi changed the chief ministers in the Congress rules states no fewer that 15 times between 1975 and 1977. That she did this during the 21 months of the Emergency, showed how much she felt weakened by the changes that had occurred within the party. But her troubles continued.

To some extent the increased assertiveness of state leaders may have reflected a consolidation of ethnic identity in the major states after the linguistic reorganisation of the states in 1957. But this was not the main cause of Mrs Gandhi’s problems, for she shuffled chief ministers as frequently in the northern and western states as she did in the south, despite the fact that ethnic consolidation was much more pronounced in the latter. The more important cause was that state leaders were becoming less and less dependent upon the central leadership to raise funds[[4]](#endnote-4). In state assembly elections in Haryana, held a little over a year after her return to power in 1980, her attempt to choose the candidates to be nominated by the party met with stiff resistance from the state party bosses. When she insisted on having her way many of them encouraged their candidates to stand as ‘rebel’ congressmen. In the election a larger number of the rebels won, while the Congress lost its majority. Mrs. Gandhi was forced to allow the Haryana leaders to bring the rebel Congressmen back into the party in order to form a government.

The weakening of the central party and the strengthening of its state unit has reduced the capacity of the national leaders to take decisions in the national interest that may require immediate sacrifices from one or more of its state units. In 1967 Mrs. Indira Gandhi was able to overcome the resistance of a powerful regional chief minister in Assam, B.P. Chaliha , and separate Meghalaya from Assam. Sixteen years later her inability to carry her state unit in Punjab precipitated the Khalistani insurgency in the state.

Not only was the Punjab Congress responsible for the rise of Bhindranwale, whom it actively fostered in an attempt to break the Akali party, but, in 1983, three meetings between Mrs Gandhi and the Akali leaders failed to produce an agreement over four long standing demands of the latter that, if conceded, could have stemmed the rise of separatism in Punjab. This was because she was unable to persuade the state Congress party’s leaders in Punjab (and Haryana), to endorse anything that would give the Akalis an edge over them in the next election. The country paid the price for her failure with ten years of insurgency and 61,000 civilian lives. Two thirds of the victims were Sikhs.

The criminalisation of politics

But by far the worst consequence of the ban on company donations was the entry of criminals into politics. Since the Congress was in power at the centre and in a majority of the states at the time when the ban on company donations was enacted, it was the first to pioneer clandestine ways of funding politics. When other national parties came to power in a state, and later at the Centre, they had only to continue the systems already in place. But new political parties, with no access to funds, were compelled to find other ways of mobilising their potential vote. They did so by enrolling local musclemen to capture polling booths, intimidate rival voters and win seats. In UP, Bihar, and Madhya Pradesh in particular, this led to a virtual takeover of the new, mainly caste based, parties by dacoit gangs.

Their enrolment forced other parties to follow suit. Within a decade of the ban on company donations, the exchange of muscle power for protection from the law had become an integral part of state politics. For instance, by 1980, UP had more than a score of dreaded dacoit gangs which would descend with utter impunity upon the villages they chose to target and carry away everything of value from grain to jewellery, to cattle to, sometimes, young women. Madhya Pradesh and Bihar were not far behind. Since each of these gangs was allied to a political party that could come to power at any time, the police chose to stand impotently by.

But the criminals soon found out that the promise of protection was too tenuous to guarantee their safety. When V.P Singh was appointed chief minister of UP in 1980 he vowed that he would rid the state of its dacoit gangs within two years, and gave the police a free hand to deal with the menace. In the next two years the UP police killed or captured an estimated 2,000 dacoits including all but one or two of the leaders. But in the absence of electoral reform this, paradoxically, only made matters worse. The criminal associates of the political parties therefore learned a bitter lesson. Protection from the law was not enough to ensure their safety. They had to become the lawmakers.

Since nothing was done to legalise the funding of politics even after V.P. Singh’s valiant effort in UP, the political parties’ were in no position to resist their demands. V.P Singh’s attempt to break the nexus between politics and crime therefore proved to be the last. Fifteen years later, when Kalyan Singh, the leader of the BJP in UP, induced defections from both the Bahujan Samaj Party and the Congress to unseat the BSP leader, Mayawati, and form a BJP-led government, 19 of the 31 defectors whom he accommodated in a mammoth 98-member council of ministers were facing charges that included murder, armed robbery, kidnapping, rape and the illegal possession of arms. One of these, former Congressman Hari Shankar Tiwari , whom Kalyan Singh made his minister for science, was facing seven indictments for murder at the time of his elevation.

Tiwari is not the openly indicted criminal to have become a minister to an Indian government. In 1996, H.D. Deve Gowda appointed Taslimuddin, a known local mafia leader who dominated Kishanganj in north Bihar through sheer terror, minister of state for home affairs in the national government in Delhi. He did this inspite of there being a report by the Bihar Legislative council that had found *prima facie* evidence that Taslimuddin was involved in cases of rape, kidnapping, dacoity and several counts of murder. Gowda could be forgiven because he was from Karnataka, and did not know Taslimuddin’s antecedents. But the same could not be said of Laloo Yadav, chief minister of Bihar for 15 years , who gave Taslimuddin the ticket to fight the Lok Sabha elections. To him , Taslimuddin’s antecedents did not matter. All that mattered was the Robin Hood relationship he had built with the large Muslim community in Kishanganj.

Gowda dispensed with Taslimuddin when the Bihar Police confirmed the substance of the Legislative council’s report. But for a few weeks India had had one of its more notorious criminals in charge of the department that was tasked to hunt him down.

Today India’s criminal class is firmly ensconced in its parliament and state assemblies. 155 out of the 544 members elected to the current Lok Sabha are facing serious criminal indictments in their home states and cities. The ratio of members with criminal records is much higher in the state assemblies: 44.6 percent of the persons elected to the Bihar assembly in 2011 were facing similar criminal charges at the time of their election. In the May 2011 state elections 75 MLAs of West Bengal, 36 MLAs of Tamil Nadu, 8 of Assam and 2 of Puducherry have declared serious criminal cases pending against them including charges of murder, kidnapping and extortion[[5]](#endnote-5).

The figures for other states are all in the same ball park as the ones cited above. This criminal element has not confined itself to exploiting parliamentary immunity and hamstringing the police and the bureaucracy. It too has built clientelist networks, mainly by acting as intermediaries between the people and the organs of the State. But unlike the networks that have given birth to the princeling phenomenon, these are criminal networks, that mobilise criminal funds and protect criminal enterprises like smuggling, bootlegging, timber theft and poaching.

Over time, the two types of clientelist networks have merged. This is most clearly visible in the Shiv Sena in Mumbai, a party that raised funds through a series of Mafia –type protection racket, and whose leader, Bal Thackeray, has openly admitted that that many of Mumbai’s most notorious dons, like Arun Gawli began life as members of the party but then as he put it, ‘went the wrong way’[[6]](#endnote-6).

Four stages of its growth

The transformation of what began as a developmental state into a predatory one has taken place in four stages. In the immediate aftermath of the ban on company donations, the Congress party’s fund managers also found themselves at a loss for where to raise the money to fight elections. In the 1971 Lok Sabha and 1972 State Assembly elections they therefore went back to the same companies and trade organisations from whom they used to accept tax-deductible cheques in the past, and demanded cash. Although most of them complied, they did so unwillingly. Raising money to meet electoral and administrative expenses therefore became more difficult than it had been before. But the gap was filled by owner-managers of small and medium sized enterprises and trade associations, which had earlier played a minor in funding politics. One result of this was a diffusion of the sources of party funds, and a relative shift in the balance of financial power within the Congress party, from the national towards the e state units of the party. This came back to haunt Mrs Indira Gandhi till her untimely death in 1984.

The defeat of the Congress in the ‘post Emergency’ 1977 elections triggered the second phase of the development of the predatory state. This was the first time that it had lost control of the centre, but its state units were far less affected by the debacle. The party as a whole therefore became significantly more dependent upon the state units that remained in power its expenses. This tilted the scales of power within the Congress sharply in favour of the state units of the party. To restore its pre-eminence the central party organisation concentrated on restoring the financial pre-eminence of the centre. It did this by institutionalising a system of kickbacks and commissions on foreign and domestic government contracts, most frequently in defence and energy. State Congress leaders and the opposition parties followed suit, the latter when they returned to power in state after state from the mid-eighties.

The effect this has had on the economy is insidious but, cumulatively, disastrous. In no market economy , whether dominated by private or, as in China, by communist party ‘cadre’ investors, has it been possible to eliminate kickbacks and commissions altogether. The challenge these have posed to the State is to build a regulatory structure that maintains the accountability of the contractors for the quality of their products and the timeliness of supply, *inspite* of these kickbacks. Countries like the US and Singapore have succeeded by enacting very strong laws that impose harsh punishments on those who break them, and creating an effective system of rewards and penalties. India, however, has gone the other way. By making itself a party to skimming money off projects the State has developed a powerful motive for crippling even the legal and regulatory framework that it had inherited from the British.

Over four decades the cost borne by the people, in terms of opportunities foregone, has been astronomical. Two examples, highlighted in the media at the time when they occurred, show how it has been paid. In the late seventies , the Janata government had obtained World Bank financing for the first of a new generation of fertiliser plants based upon the natural gas from Bombay High to be set up at Thal Vaishet, south of Mumbai. Based upon international bidding, the consultants employed by the world Bank had recommended that the contract should be given to an American firm, C.F.Braun. But when the Congress returned to power in 1980, it began to negotiate independently with several firms, including Toyo engineering of Japan and Haldor Topsoe of Denmark, a subsidiary of the state-owned Italian engineering giant, Snam Progetti. When the World Bank refused to reopen the bid, and pulled out of the project, the government went ahead nonetheless, beating the nationalist drum against foreign dictation, hinting at the World bank’s subservience to the US government and hence partiality to C.F. Braun, and proclaiming that it would finance the plant from its own ( non-existent) foreign exchange resources.

Eventually it awarded the contract not only for the Thal-Vaishet plant, but for four others, to Haldor Topsoe. At the time, it was common knowledge that the government had given the contract to Haldor Topsoe in exchange for a handsome kickback. Only later did the public come to know how much the country had to pay for that deal.

CF Braun had been chosen because it had by far the most energy efficient technology and lowest overall manufacturing cost of all the bidders. Had the original project been implemented with all the safeguards of the World Bank it would have set the benchmark for the entire future generation of gas based plants. But it would, unfortunately, have made kickbacks on future projects much harder to obtain.

The award of a single contract for five plants without any international bidding lead to an inflation of the capital costs of all the plants. To make matters worse, Haldor Topsoe’s ammonia making technology used 15 percent more energy per tonne of output. These two disadvantages ensured that these plants would never be able to produce urea at internationally competitive prices.The Thal-Vaishet project therefore created a much higher benchmark for capital costs in later plants. These and its higher energy costs had to be offset by subsidies. Since subsidies were designed to ensure a minimum return on capital invested, it ensured that the cost of all future plants would be ‘gold-plated’. Indian taxpayers have been paying the resulting, inflated, subsidies till this day.

Even while the Thal Vaishet project was being renegotiated, the ministry of defence had begun a similar re-negotiation of major defence contracts entered into by the Janata government. Two that were eventually reinstated at immensely higher prices ( and much higher kickbacks) were the purchase of Jaguar ground hugging long range fighter bombers for the air force, and the Harrier vertical/short take-off aircraft for the navy, from Britain.

But the country had to wait another five years to gain its first unequivocal understanding of the direction in which the political system had evolved. It got this from an expose in the Swedish newspaper *Dagens Nyheter* in 1987 of what came to b e know as ‘The Bofors Deal’*.* And in much the same way as is happening now , the details only came to light because of prime minister Rajiv Gandhi’s determination to clean up the system he had inherited. The investigations that followed the Swedish expose revealed no fewer than three layers of kickbacks , totalling a mammoth 17 percent of the $1.3 billion contract. So great was the public indignation over the deal and its aftermath, that the revelation of yet another massive kickback, of six percent on the purchase of submarines from the German firm Howalds Deutsche-Werke (HDW) ,went virtually unnoticed.

The loss of money is, however, the least part of the harm that the institutionalisation of kickbacks has done. Kickbacks take time to negotiate. This has meant escalations in cost and a loss of invaluable time. The last is unforgivable in defence contracts because it has left the country vulnerable for long periods while the kickbacks are being struck. For instance both Pakistan and India decided to equip their armies with 155 mm howitzers at more or less the same time in the late seventies. The Pakistan army got its guns by the early eighties. The Bofors deal was only finalised in 1985.

The need to arrange the kickbacks has led to an unhealthy centralisation of even routine procurement in the hands of the civilian staff of the ministry of defence, Today, senior armed forces officers openly lament that it takes on an average three years for their requisitions to be met.

The institutionalisation of kickbacks has also meant that contracts have often not gone to the most qualified bidders because these have the least need to pay kickbacks in order to secure orders. This was the probable cause of the cancellation of the agreement with C.F Braun.

But by far its most effect has been to put the State up for sale. And in doing so, align it with the predators in society. For once it takes a bribe from a bidder, it makes itself a party to whatever the bribe-giver has to do to recover his ‘costs’. The state thus ceases to be the the peoples’ watchdog.

This is the source of all the abuses that have crept into the tendering system -- the omission of time schedules, the obfuscation of penalty clauses and, once the deal has been struck, the repeated modification of tenders to ensure that only the pre-determined bidder secures the contract. In addition, since the presence of independent consultants makes deal-making more difficult and fraught with risk, government departments have fought shy of employing them to plan and execute projects and have insisted on doing so by themselves. This has not only removed he last remaining safeguard against graft.

State governments in particular , have taken advantage of this by developing a stratagem for extracting money from projects that only Indian ingenuity could have dreamed up: they chop up large projects into numerous smaller parts in the name of preserving competition, and invite separate tenders for each part. This allows ministers and bureaucrats to award contracts to small companies without the capital base, equipment or track record required to qualify for large projects, but willing to offer almost anything in return for getting a piece of the cake. Highway projects and, more recently, a trash of tiny solar power projects are the most obvious examples of such parsing for profit. The cost , in terms of delays, inflation and shoddy work can be judged from the fact that the ‘Golden Quadrilateral’ highway project, to link Mumbai, Delhi, Calcutta and Chennai, started by Prime minister Atal Behari Vajpayee in 1999 with the express purpose of providing a fiscal stimulus to the Indian economy after two years of recession and intended to be completed by 2004, is not even half completed in 2011. What is more, it is incomplete because there were unfinished portions in each and every section of the four Highways! By contrast, Chinese companies have built 1000 kms of four lane highways that measure up to European specifications in Kenya, and another 500 kms of high grade two lane roads , in just three years.

In the three decades or more since kickbacks became the norm for financing political parties, these practices have spread to every corner of the country and every level of its government. Today there is hardly a contract, from the purchase of a new generation of Main Battle Tank to the construction of a rural road, that is not being preyed upon to extract money. Over the years bureaucrats at every level , from the secretariats in New Delhi till the Block Development offices in each sub-division, have learned that they can do with even greater impunity for themselves what their political bosses want them to do for their parties.

The cost to the nation of these practices cannot even remotely be computed. On November 23, 2009 , i.e well before the CWG, 2G and associated scams were unearthed, *Outlook* had estimated that in the 18 years after economic liberalisation, 33 major ‘Scams’ had cost the nation an estimated 73,00,000 crores ( $1.7 trillion or about $100 billion a year!) This could l be an inflated estimate, but it sums up the cost of only the most notorious scams that have taken place. There is no way of computing the cost of kickbacks in the tens of thousands of smaller contracts that central government departments , the state governments, the zilla parishads and the Rural Development Agencies sign every year. The true estimate of the sums being ‘scammed’ every year is several times larger.

Even that figure, were it available, would not give us a complete reckoning, because it would not include the inflation of capital costs; the cost of shoddy work because of contracts given to fly by night companies; cost in terms of output foregone of the long delays that accompany the striking of deals, and the increase in current operating, and life cycle capital costs because of the adoption of inferior technologies.

Economic liberalisation - by stealth after 1975 and openly after 1991—led to the third stage of development of the predatory state. When the private corporate sector ceased to be embarrassment to the State and became the spearhead for its growth, politicians ceased to be chary of flaunting their links with industrialists. But with severe limits still in place on company donations to political parties, industrialists took the easier route to influence and began to ‘take care of the expenses’ of individual MPs , and ministers. A practice that was still rare in the eighties soon became commonplace and then evolved into another of the tacitly accepted norms of Indian democracy. Thus was born the crony-capitalist state that Indians had derided in Indonesia , the Philippines and elsewhere till only a decade earlier.

The final stage was ushered in by the arrival of smaller regional parties as co-sharers of power in Delhi. None of these parties has any serious ambition to rule the nation (when the United Front came to power unexpectedly in 1996 with no recognised leader, Deve Gowda almost refused to leave the chief ministership of Karnataka to become the prime minister of India). To them the centre is a boated milch cow waiting to be milked. Power-sharing has therefore come as an answer to the perennial problem of raising funds in their home states. One has only to examine the composition of the five coalition governments that have held power in Delhi since 1996 to perceive this. While the major partner has retained the Prime ministership, the home, defence, external affairs and finance portfolios, most of the lucrative ‘economic’ portfolios --industry, commerce, energy, the railways, telecommunications and civil aviation have gone to the coalition partners.

Preying upon the poor

Since the national media are overwhelmingly urban, they have paid only sporadic attention to the corruption and extortion that exists at the state and local levels of government. But this has done infinitely more harm for it has inflicted death by a thousand cuts upon the legitimacy of the Indian State.

The need for money and muscle power to fight elections has led to a replication, with minor differences, of the predatory political system that has developed at the all-India level. If parties in power at the centre have filled their coffers by demanding kickbacks on infrastructure projects, and commissions on large defence and other purchases made abroad, parties in power in the states have done exactly the same thing same thing on projects that fall within their purview. Thus those bidding for contracts to build state highways, school buildings, bridges, small hydro-electric and thermal power projects, and any kind of urban development or improvement project, become automatic targets for the concerned ministers. The normal mode of extraction is to ask the bidder to put down a percentage of the estimated cost of the project as a token of their seriousness at the time of bidding. This money is not always refunded[[7]](#endnote-7).

As a general rule the smaller is the size of the constituency the greater is the importance of muscle power. Thus it should come as no surprise that muscle power has been deployed most frequently in the panchayat and Zilla Parishad elections. This has created a circle of predatory exploitation, that has ensured that very little of the funds intended for the rural development, health and education have filtered down to the intended beneficiaries. In 1985, a study of poverty alleviation programmes in Bihar which he had commissioned from a highly respected civil servant, Ajit Mazumdar, made Prime minister Rajiv Gandhi expostulate at the Congress’ centennial celebrations in Mumbai, that only 15 percent of the funds intended for the poorer sections of society ever got to them.

Rajiv Gandhi’s expostulation slipped off the hardened carapace of Congress party as easily as water off a duck’s back. Throughout the nineties and 2000’s, as evidence accumulated evidence that rural poverty was not declining anywhere near as fast as the sums being spent on its alleviation merited, the central government began to bypass the state administrations and inject funds directly into ‘centrally sponsored’ schemes for rural development, education , nutrition and health, and into special schemes like the National Rural Employment Guarantee Programme , which transferred the responsibility for implementation directly to the Gram Panchayats.

The seriousness of the effort can be judged from the fact that annual outlays for Rural development rose by 15 times in nominal, and almost six times in real terms between 1990 and 2011. But if the UN’s Human development index is a reliable indicator of performance , very little of the additional investment has reached the beneficiaries for India’s position on the ladder has stayed virtually unchanged at 123rd to 127th. The controversy over the real decline in poverty that erupted within the country after the results of the last National Sample survey were released also suggests that poverty has not declined by anywhere near enough to allay the doubts of the sceptics.

Instead, as the sums devolved by the centre to the states and districts have risen so have the stakes in controlling the disbursement of these funds. The competition this has unleashed between rival, and equally predatory, political parties explains the growing violence of state elections, the decision to conduct them in an ever growing number of phases, and the rising deployment of security forces during each phase.

The cooptation of the bureaucracy

Needless to say, none of the above stratagems for capturing and retaining political power would have worked without the willing or unwilling connivance of the bureaucracy and the police. Politicians have needed the connivance of State, Central and All-India services officers to facilitate the receipt of kickbacks, cite regulations and precedents where necessary, and put the gloss of public interest upon the most private of transactions . And they have needed the connivance of the police to protect the suppliers of muscle power for local and state level elections. Article 311 of the Constitution has not only removed the single main threat to their connivance with their political masters , but it has also made it fatally easy for them to go into the business of extortion on their own. Today, there is hardly a transaction between the public and the State, whether it is the collection of one’s pension, one’s income tax refund, one’s ration or BPL card, the passage of an architect’s plan or receipt of a ‘completion’ certificate after the construction is completed, the registration of a property sale, the payment of the stamp duty, and the renewal of a license, no matter what it is for, that does not require the payment of a bribe – more strictly an extorted ‘price’ – to a petty civil servant.

Posts in the bureaucracy that involve contact with the public have long been classified according to the amount they can yield by way of these ‘bribes’. Inevitably, in ministry after ministry an entire system has developed for auctioning these posts to aspirants in the department , in exchange for a private ‘fee’. Often the fee is so high that the aspirant has to take a loan to pay it. And there is no dearth of people willing to provide the money, on the understanding that it will be repaid in kind when the aspirant secures the post[[8]](#endnote-8).

But in the rural areas in particular, politicians need the help of the police even more than the bureaucracy. They have obtained this through a combination of inducement and blackmail. As pointed out in a report by the US based Human Rights Watch in 2009,

“Since the late 1970s, senior police officers have remained at the mercies of state and local politicians who, acting on ambiguously worded supervisory authority in the Police Act of 1861, intervene in everyday police operations: officers are frequently told to drop investigations against people with political connections and sometimes told to harass or file false charges against political opponents. Refusal means transfer to remote areas, and with it the loss of prestige and the hardship of removing children from good city schools.

“Senior police officers have also lost the ability to discipline their ranks as politicians patronize junior-ranking police, intervening in recruitment, appointment and promotions. Former Inspector General of Police S.R. Darapuri said: There is a flaw in the recruitment process itself. Selection is very much biased and based on recommendations or corruption. “Deserving candidates rarely get into the service. And therefore insubordination is a big problem in the force. Seniors are not able to control their juniors because these people have political connections.”

“ A superintendent of police in Uttar Pradesh explained the pervasiveness of the system of political patronage: It has become obvious that the police cannot be neutral. Either you comply with every order from the political masters, or you have some strong backing of a leader who protects you. That is how policing is done here.[[9]](#endnote-9)”

When you do your bosses dirty work, the boss does yours. It does not come as a surprise , therefore, that according to the National Crime Records Bureaus annual report *Crime in India 2007*, only a little over a quarter (28 percent) of the 282, 384 complaints filed against the police between 2003 and 2007 led to police department, magisterial or judicial inquiries. There were only 1,070 trials and 264 officers convictions[[10]](#endnote-10).[[337]](http://www.hrw.org/en/node/84624/section/8" \l "_ftn337)  This data suggests that despite high-profile and successful prosecutions of some police officers, police operate in an environment where impunity is still the norm. The balance went back and , one presumes , extracted revenge from those who had dared to complain against them.

The mature clientelist state

The two charge sheets filed by the CBI in April contain a wealth of supporting information that has exposed , for the first time the vast reach of the crony network that has been built over the last four decades to sustain the Predatory state. This stretches from Dubai and Lichtenstein, to Singapore, from Chennai to Delhi, from the metropoli to rural villages and tehsils, and from cabinet ministers to criminal Dons currently residing in Dubai and Pakistan.

The story that it is piecing together reads like the script of a Bollywood gangster movie, but its actors have been drawn from the entire power elite of the Indian State. The story begins with the rise of two dynamic young CEOs aged 37 and 38, who head ( in one case headed) the fastest growing real estate companies in Mumbai and Chennai, who owed their meteoric rise to the powerful political patronage they enjoyed. The first is DB Realty in Mumbai; the second is Greenhouse Promoters in Chennai.

DB Realty was created in 2006 by two families in Mumbai, those of A small hotelier Usman Ebrahim Balwa, and a real estate dealer Krishna Morari Goenka. In the next four years DB Realty grew at a pace never before witnessed even in Mumbai’s rambunctious real estate sector. By early 2011 it had put 21 million sq. ft of new residential and office space on the market and had another 40 million sq ft under construction. Its 37 year old managing director, Shahid Balwa ,the younger son of Usman Balwa, had assets worth 1.06 billion dollars and was listed by Forbes as the 66th richest man in India.

How did a newcomer in the real estate business become one of the largest builders in Mumbai in as little as five years? In the Maharashtra secretariat it was an open secret that DB Realty owed its dizzy growth to the complete backing it was receiving from a top politician in the state. Files concerning DB Realty, the Times of India reported, were processed, and permissions granted, within days.

Who was DB Realty’s mysterious backer? Niira Radia, the lobbyist employed by Tatas, Unitech and a score of other companies, revealed in an interrogation by the CBI that ‘As per the general perceptions in Mumbai and outside, DB Realty is controlled , directly or indirectly by Sharad Pawar and his family’. This created a sensation in the media, but most people still did not know that DB Realty may also have been a conduit for investments by its most notorious gangland don, Dawood Ibrahim.

According to Zameeruddin Ansari, an associate of Dawood’s brother Anees Ibrahim, whom the Mumbai crime branch arrested in September 2004, Pramod Goenka’s real estate company was a conduit for the ‘D’ Company’s investments in Mumbai’s skyrocketing real estate market. This disclosure had come after a far more damning accusation made six months earlier, in October 2003, by a rival Mumbai builder Rajesh Patange who accused Krishna Murari of having placed the contract on his life in a dying declaration after he had been shot by four hit-men in a typical Mumbai contract killing. But neither in 2003 nor in 2004 did the Mumbai police even interrogate, let alone charge him with either offence.

The Maharashtra police also had evidence, gleaned from arrested gangsters, that Shahid Balwa’s father Usman Ebrahim Balwa was closely associated with another notorious underworld don, Chhota Shakeel. In all it, and central security agencies, sent seven reports to the State government between 2003 and 2008 against the Goenka and Balwa families, but no one paid them the least attention. “We invest so much resources ( in the collection of this information) because there are serious issues of national security” a Delhi-based official, probably belonging to the R&AW, lamented to the Times of India, “But governments just ignore them."

It remains to be seen how much of the above information is included in the CBI’s charge-sheets against Shahid Balwa and Vinod Goenka, Krishna Murari’s other son and Balwa’s partner in DB Realty. But the media and the public are having no difficulty in joining the dots, and connecting not only the Balwas and the Goenkas with Sharad Pawar and Dawood Ibrahim, but Pawar to Ibrahim.

Greenhouse Promoters had a similar meteoric rise in Chennai, for similar reasons. Early in his career as a local lawyer in Perambalur, Tamil Nadu, A.Raja once defended a young man who had a small business in rural Karur district, buying plots of land with margin payments and completing the payment when he sold the land to someone else. His name was Sadiq Batcha. Batcha had sought legal help when some of his deals went sour. This became the foundation of an extraordinarily lucrative partnetrship. When Raja later entered politics, he seems to have begun to feed Batcha with information about where the government intended to buy land for new projects in the area, for whenever the government announced a project in the neighbourhood of Perambalur, Raja’s constituency, the land had already been bought by Batcha and had to be acquired from him at a much higher price.

In 2004 Raja first became a union minister in the NDA government, Batcha set up a real estate firm , Green House Promoters. His joint managing director in the company was A,Raja’s elder brother, A Kalaiperumal. In the next few years the company expanded at a dizzy pace, always buying land cheap and selling it to the government, or to major real estate companies, at much higher prices. Within a few years Greenhouse Promoters, which had been started with an equity capital of just one lakh of rupees, reported a revenue of Rs. 600 crores—sixty thousand times its equity base, and had offices in Bangalore and Singapore! Raja’s wife , nephew and various other relatives have also been employees and Directors of the company.

The 2G scam has conjoined the fates of these two companies with that of one of India’s largest and most iconic companies, Anil Ambani’s Reliance Telecommunications. After one intense interrogation in February, and faced with a second summons from the CBI, Batcha took his own life on March 16. The CBI was trying to track down where the presumed payments made to Raja had been salted away and had come across evidence that suggested that it had been put into accounts in six countries. At the time of his death Greenhouse was describing itself as a company engaged in exports. According to some newspaper reports, therefore, the CBI had wanted to interrogate Batcha to learn the identities of four persons from the D-company whom it suspected of having set up the Singapore account. Batcha’s suicide could not therefore have come at a more convenient tine for all concerned.

Much of what has appeared in the media is, nonetheless, still conjecture. Ambani may not have known about DB Realty’s murky origins, and the charges that the CBI has hinted at have still to be proved in court. But in the court of public opinion not only these companies and their owners and managers, but the entire Indian State stands condemned. For the 2G scam, and its attendant disclosures, has exposed a web shady transactions and a systemic abuse use of state power that stretches all the way from two of the central government’s most powerful ministers, to several of India’s most respected industrialists, managers, lobbyists and journalists, to a political party in Tamil Nadu with an otherwise enviable record for good governance, to hit-men in Mumbai’s underworld, and to two of its most detested Dons, one of whom is a self-proclaimed enemy of the Indian State who has actively aided terrorist attacks on Mumbai that have taken scores of lives.

The complete disappearance of moral values that this story reveals should be of immense concern to all Indians , because it directly threatens their future. But what is particularly troubling is the way these disclosures have reinforced the long –held suspicion that Bal Thakre’s off-the- cuff allegation that the Maharashtra Congress , headed by Sharad Pawar , had been the political patron and protector of Dawood Ibrahim in the ‘eighties and ‘early nineties. For, if DB Realty was only formed in 2006, who was the powerful patron, hinted at by the Mumbai police and central intelligence agencies, who shielded Krishna Murari Goenka from a charge of murder in 2003 and his son from interrogation for having business dealings with Dawood Ibrahim, his brother Anees Ibrahim, and a Karachi based real estate dealer known to be associated with them in 2005? And if Pawar , who has been chief minister of Maharashtra for more than a decade and is a powerful minister in Dr. Manmohan Singh’s cabinet today, has felt no qualms in dealing with, and protecting Dawood Ibrahim, a gangster alleged to have organised the 1993 serial bomb blasts in Mumbai, on behalf of Pakistan’s ISI, then is there anything sacred left in the Indian State?

The public also knows that the 2G scam is one of not hundreds but thousands that take place every year. It cannot therefore be blamed for concluding that the Indian state today bears not even a passing resemblance to the nation that Mahatma Gandhi and Pandit Nehru had tried to found, for in it nothing is sacred any more , except the relentless accumulation of money for personal and political gain. Coming on top of Bal Thakre’s remark, which was quoted earlier, Niira Radia’s casual reference to Pawar’s personal interest in DB Realty could complete the destruction of peoples’ faith in the Indian State.

Is reform even possible ?

If the network of crony capitalism and predatory extortion that Anna Hazare is fighting has grown from unnoticed roots into a giant forest; if it now embraces virtually every member of the political class, the bureaucracy, and the economic elite : if all but a few of the twenty million persons who are its beneficiaries will fight tooth and nail to protect their privileges and the sources of their wealth , and if these twenty million enjoy an absolute monopoly of political and administrative power in the country, then how can any reform not prove still- born ?

Hazare and his colleagues are pinning all their hopes on the Jan Lokpal bill, and demanding ever more draconian powers for it, as they begin to realise the awesome might of the monster they have set out to fight. But however strong its legal mandate may be, Jana Lokpal will not be able to root out ‘corruption and extortion on its own. To understand the limits of its power, one need only look across the Himalayas at China.

The Chinese state prosecutes between 100,000 and 200,000 of its party cadres for corruption and related crimes *every year*, expels tens of thousands from the communist party, imprisons thousands for long periods ,and executes the most high profile offenders as a warning to the rest. No institution we build will (or should) come even close to doing any of this. But Beijing has not been able to stop corruption from growing year by year. This is because graft , kickbacks, the exchange of favours, the expropriation of peasants and the intimidation of protesters are as integral a part of China’s version of the market economy as they are of India’s.

This is because both China and India are predatory states. The only way to fight ‘corruption’, i.e predatory exploitation, is to pull out the roots from which it has grown. In India we must start by removing the flaws in the constitution that gave birth to the predatory state. This requires creating a system of electoral finance that places political parties above the need to raise vast sums of money or rely on muscle power to win elections, and restoring accountability to the bureaucracy and the police by withdrawing their near-immunity from prosecution.

A State fund for elections

Only one reform can break the nexus between black money, crime s and politics: it is to create a state fund for meeting the electoral, and day-to-day administrative, expenses of all political parties that have gained recognition on the basis of criteria established by a vastly empowered Election Commission.

Over the years no single reform of the political system has been proposed more often; and no proposal has been more consistently rejected. There have been three commissions or committees setup over the years to examine how the system works in western European democracies and the feasibility of introducing it in India. But not one of their recommendations has been accepted. The BJP has included it in its election manifestoes more than once, including in 1998 and 1999 , when it came to power. But it has done nothing to implement its promise. The Common Minimum Programme of the first UPA government contained a promise to set up a state fund, but when Prime minister Manmohan Singh raised the issue , he received no support from within the party.

Instead , a plethora of excuses have been manufactured over the years by parties in power to justify its rejection. These range from saying that it will be too expensive and an unwarranted use of the taxpayer’s money, to asserting , with immense authority that “ Corruption is natural . People who want to make money will continue to do so. State funding will therefore only be throwing good money after bad”.

The main reason why parties have lost interest in the reform of electoral finance the moment they have come to power is that , finding themselves immediately inundated with offers of “help”, they have seen no reason to implement a reform that will only benefit their rivals. But it is the uncritical acceptance by the public that creating a state fund for financing election will not make any difference, that has made their task easy. This argument entirely fails to grasp, the main purpose of the reform. This is not to spare individual candidates the task of raising funds to fight their elections, but to spare the recognised and publicly accountable leaders of political parties from having to enter into an unending succession of dubious deals , and delegate fundraising to do an entire army of fixers and look the other way while they sell the state piecemeal to the worst elements in society.

A state fund will guarantee each recognised political party an annual revenue based upon its share of the vote. A guaranteed income will enable Its leaders of non-ideological political parties to create permanent cadres by paying them a salary or stipend. It will thus revive the political centre in Indian politics. For the youth of the country membership of a political party will once more be open and will become a prized asset in the villages and towns– a source of income and a road to power and eminence. This will bring them flocking to join and allow the party leaders to choose the best from among them.

There can be no doubt that the first candidates for paid membership of the party will be the very same ‘members’ who of the existing crony networks that service sitting MLAs and MPs. But once the party leaders have control of large funds they will l no longer be dependent upon these crony networks to raise money or deploy muscle and will become free to bring reputed and respected persons from outside the crony networks into the party and the legislatures.

A State fund will also allow them to choose their candidates for parliamentary and assembly seats, and not be constrained to accept only those who have the funds or the muscle to finance their campaigns. But will the party leaders actually do so, or will they take the money and carry on doing what they have always done?

The short answer is that while the parties will have the right , and will indeed try to carry on as before, they will soon realise that to so will be to court death by attrition. For they escape having to pay a political price only if all their rival parties also do exactly the same thing. But political competition—the desire to win – will make that impossible. On the contrary it will set off a race to select candidates who have the capacity to win. In short State funding will replace the compulsion to choose some of the least respected but most feared elements in the country, with a compulsion to choose the most respected and least feared ones. The political parties that drag their feet in doing so will be penalised by the electorate. Democracy will at last come into its own.

Removing article 311

In sixty one years since the Constitution of India came into force, many new clauses have been added to it, but to the best of my knowledge not one has been removed. This is to a large extent because of the veneration in which the founding fathers of Independence were held. But the time has come to admit to ourselves that they were not only human and therefor capable of error. No single error ( of commission) has been as egregious as the inclusion of Article 311. One of the first observations of the Group of Ministers set up by the prime minister after the 83rd plenary of the Congress was a need to amend it. But amendment will not do. This article has to be torn out of the constitution from the roots. Leaving it in, in howsoever diluted a form, will provide the bureaucracy with the wormhole through which it will find a way to preserve its immunity.

However, while necessary this will not be sufficient. What is needed in addition to this is a reform of bureaucratic procedure that will replace the patron – client relationship that currently exists between the bureaucracy and the people with a contractual one that can be enforced by law without the need to go through the cumbersome ritual of a public interest plea in a high court ( something that only the rich can afford).

The key requirement – the goal – of this reform must be the complete insulation of the applicant from the decision-making officer. This requires no great feat of innovation for it is the norm in advanced democracies, notably the US. It has also made considerable inroads nto government practice in India. Mainly through the use of computers to make online procedures of taxes, fees and bills a nd reservations in the railroads and airlines.

But computerisation is not a complete solution. In fact it can only be applied to routine transactions which do not require, or permit, the use of discretionary powers by the concerned officer. In such cases insulation is achieved in the US and Western Europe by installing a large number of reception booths in the reception halls to which the public has access. There a receptionist – usually a mid-level employee thoroughly versed in procedure -- examines the application and excepts it straightaway or advises the applicant on what remains to be done before it can be processed. When satisfied , he or she ( who may be completely different receptionist) gives the applicant a receipt with a date and time upon it for the applicant to pick up the permit or license.

The task of the receptionist ends there. The actual processing is done by someone else, whom the applicant does not even see. Even the choice of the officer who processes the application is random, for it depends upon the applicant’s place in the queue.

The receipt is an enforceable contract between the applicant and the state. Once it has been issued the onus for justifying any further delays shifts to the concerned government department. The fact that very few offices in even the central government have such arrangements, and that these are positively shunned by the state governments, speaks for itself.

Conclusion

Once article 311 has been abolished enforcing accountability within the bureaucracy will become relatively easy. Despite fifty years pressure to fall in line, there are a surprisingly large number of civil servants who have managed to remain honest, even at the expense of their careers. There is a much larger number who have complied with their political masters’ bidding only reluctantly, and there are still others who have fallen prey to temptation only once or twice, mainly to hedge the uncertainties of imminent retirement. The change will be speeded immensely if the Lokpal is given the *suo moto* powers that the civil society leaders are demanding.

But corruption will not really come down till it becomes politically insignificant until the political system is reformed , and the starting point for that is the creation of a state fund for financing elections. But how large must this fund be? The answer is as large as is needed to completely free the leaders of all recognised political parties from the need to depend upon crony networks of politicians , financiers and criminals , to win elections. Forty years ago some of us had estimated, on the basis of the cost of elections at that time, that a fund of Rs 100 crores a year—500 crores per election cycle , would have sufficed. Today, with the separation of central from state elections , Rs. 2000 crores would be a minimum requirement. Is this too large a sum? The answer is that it is one tenth of one percent – ten paise out of every hundred rupees -- of the combined revenues of the central and state governments in 2099-10. A comparison that is more relevant, because of the light it sheds upon the representatives we have chosen to govern us , is that this is one sixth of funds that MPs and MLAs have allocated *to themselves* to spend at their discretion every year on development projects in their constituency and elsewhere. In sum we have a political elite , which includes every prime minister , chief minister and party president we have ever had that feels no qualms about forcing us, the taxpayers, to give a Taslimuddin or a Hari Shankar Tiwari, and about 1,400 of their criminal colleagues, a guaranteed income of Rs. 2 to 5 crores a year to keep themselves in power, but considers spending a sixth of that amount on a measure that will break their power, too expensive to justify.

History has shown those who bother to consult it, that no State that loses its moral moorings lasts very long. The teachings of Confucius and his disciple Mencius allowed the Chinese State to develop the concept of the *Tien* – the mandate of heaven -- which rested upon the ruler only so long as he trod the path of virtue.

Chanakya’s definition of *Raj Dharma* in the Artha Shastra is uncannily similar: “**Of a king, the *religious vow* is his readiness to action; the satisfactory discharge of his duties is his performance of *sacrifice* ; paying equal attention to all is his offer of *fees and ablution* towards consecration**. **In the happiness of his subjects lies his happiness; in their welfare his welfare**; **what pleases himself he shall not consider as good, but whatever pleases his subjects he shall (consider as good)”.**

**The Indian State has failed both these tests. Anna Hazare has given it one last chance to return to the path of virtue. Woes betide us if it fails.**

1. This provision can also be traced back to British constitutional practice, albeit a highly contested one. As the British Crown is the source of legitimacy for all law in Britain it is, of necessity, above the law. But the Crown operates through its servants. Does this mean that they too are above law when carrying out the sovereign’s orders? This immunity was contested by the British Parliament with increasing vigour for nearly a hundred years from the rule of William and Mary at the end of the 17th century till that of George III a century later and ended with a typical messy British compromise. While individuals cannot bring charges against the state in a court of law, they can do so against civil servants in their personal capacity for the manner in which they perform the duties given to them by the State. [↑](#endnote-ref-1)
2. This would have completely undone a judgement of the 2006 Supreme Court in which it held that Section 19 of the Prevention of Corruption Act, 1988, did not protect former public servants. See [The web of corruption - Centre must take the bull by its horns](http://www.tribuneindia.com/2011/20110116/edit.htm#2) by G.P. Joshi & Maja Daruwala, The Tribune, 16 January 2011. [↑](#endnote-ref-2)
3. It may have been Congress party treasurer Atulya Ghosh’s moan of complaint in December 1966 that the party had till then received only a third as much in donations as five years earlier, that triggered the ban on company donations. [↑](#endnote-ref-3)
4. I Obtained this insight from a discussion with H.N. Bahuguna, at the Indian Express guest house in Chennai in the summer of 1980. Its full significance dawned upon me only after the outbreak of the KHalistani 9onsurrection in Punjab, in 1983. [↑](#endnote-ref-4)
5. National Election Watch newsletter, may 16, 2011. See ADR India [adr@adrindia.org] [↑](#endnote-ref-5)
6. Bal Thakre reportedly said “ If they have Dawood, we have Gawli”. By ‘they’ he meant the Congress. [↑](#endnote-ref-6)
7. In Tamil Nadu, for instance, a decision taken by the AIADMK government headed b y Jayalalithaa, after it came to power in 1991, not to refund the ten pwercent ‘earnest money’ that it took from prospective investors, led to a sharp fall in the rate of private investment in the state between 1991 and 1996.The indignation this caused as Tamil Nadu slipped rapidly back in the industrialisation race , was partly responsible for the AIADMK’s resounding defeat in 1996. . [↑](#endnote-ref-7)
8. This came spectacularly to light about a decade ago when an aspirant to the position of the chairman of the Vishakhapatnam Port Authority , who got the job of a deputy insisted on returning the money he had borrowed and got caught while trying to raise it. [↑](#endnote-ref-8)
9. Broken System Human Rights Watch report on Indian Police , Augsut 2009. [↑](#endnote-ref-9)
10. National Crime Records Bureau, Ministry of Home Affairs, “Crime in India 2007,” http://ncrb.nic.in/cii2007/home.htm (accessed March 28, 2009). Quoted in the Human rights report cited above: Broken System : Obstacles to Police Accountability [↑](#endnote-ref-10)