

The 24th IB Centenary Endowment Lecture

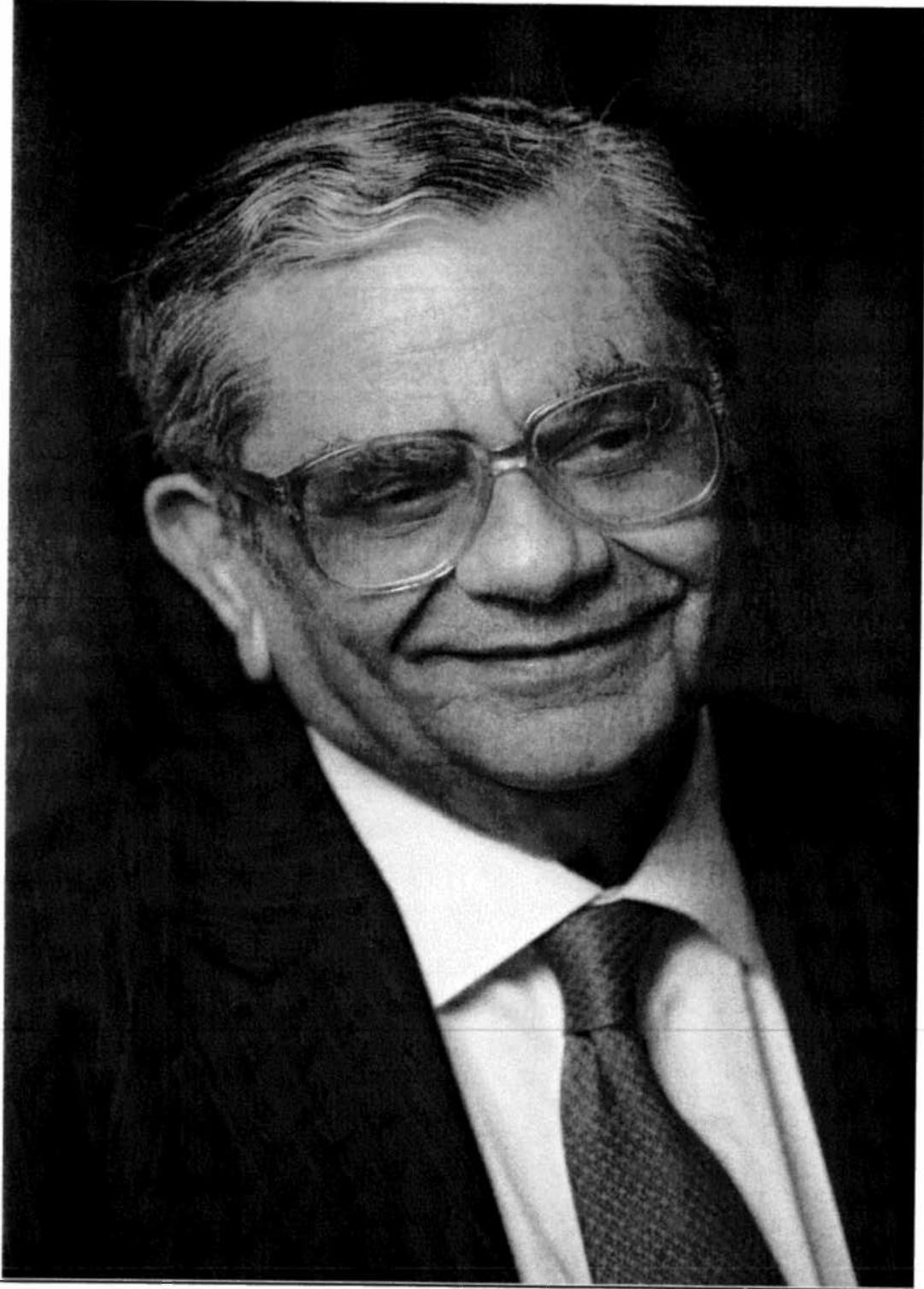
By

Professor Jagdish N. Bhagwati

on

“Designing Institutions for Governance Reform”

This is the text of the 2011 Centenary Lecture under the Home Ministry auspices, delivered on 22nd December, 2011 in New Delhi.



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Jagdish N. Bhagwati, presently Senior Fellow in International Economics at the Council on Foreign Relations, was born in Mumbai on 26 July 1934. His father was a judge of the Supreme Court and his eldest brother is a former Chief Justice of India. After graduating from the Sydenham College, he proceeded to Cambridge University where he graduated in 1956 with a first in Economics Tripos. He then continued to study at MIT and Oxford, returning to India in 1961 as Professor of International Trade at the Delhi School of Economics. He returned to MIT in 1968, leaving it 12 years later as the Ford International Professor of Economics to join Columbia University where he is now serving as the University Professor of Economics and Law.

Regarded as one of the foremost international trade economists, Professor Jagdish Bhagwati is described as the most creative international trade theorist of his generation and is a leader in the fight for free trade. He has been Economic Policy Adviser to Arthur Dunkel, Director-General of GATT (1991-93), Special Adviser to the UN on Globalization, and External Adviser to the WTO. He has served on the Expert Group appointed by the Director-General of the WTO on the Future of the WTO and the Advisory Committee to UN Secretary-General Kofi Annan on the NEPAD process in Africa, and was also a member of the Eminent Persons Group under the Chairmanship of President Fernando Henrique Cardoso on the future of UNCTAD. He was Co-Chair, with Mr. Peter Sutherland, of the High-Level Group of Experts on ways to strengthen the defense against protectionism and to liberalize trade. Currently, he is Co-Chair with President Halonen of Finland, of the Eminent Persons Group, appointed by Dr. Supachai, Secretary General of UNCTAD to examine the Role of Developing Countries in the World Economy. He was also Adviser to Dr. Manmohan Singh, presently Prime Minister, on India's economic reforms when Dr. Singh was the Finance Minister of India in the 1990s.

Professor Bhagwati has made many significant contributions to the field of migration and immigration policy over the last three decades. He has notably used insights from economics, ethics and politics in addressing these issues. Professor Bhagwati also pioneered the analysis of the growing phenomenon of international personal mobility and the problems it creates for the design of a country's tax system. His proposal to extend the source-country income tax to skilled migrants abroad gained significantly scholarly, media and public-policy attention in the 1970s. This issue is taken up extensively in several of his books: two on *Taxing the Brain Drain* (1976), *International Factor Mobility* (1983) and *International Migration and Income Taxation* (1991), jointly edited with John Wilson. This so-called "Bhagwati Tax" proposal has been revived in recent years and is currently being discussed by scholars, NGO's and policymakers.

Professor Bhagwati's early books, *India: Planning for Industrialization* (with Padma Desai, 1970) and *India* (with T.N. Srinivasan, 1975) are acknowledged to have provided the intellectual case for the economic reforms now underway in India. Another of his books, *India in Transition: Freeing the Economy*, based on the Radhakrishnan Lectures at Oxford University, was published in 1993. Among his other books are: *The Economics of Underdeveloped Countries* (1966) and *Protectionism* (1988), both international bestsellers. Professor Bhagwati's recent book *Termites in the Trading System* (2008) discusses the deleterious effects of preferential trading agreements. His previous books are *Free Trade*

Today (2002) and *In Defense of Globalization* (2004), attracted global acclaim. His forthcoming book *India's Tryst with Destiny: Debunking Myths Undermining Prosperity and Addressing New Challenges* (with Professor Arvind Panagariya) is slated for release in 2012.

Professor Bhagwati's writings on public policy have been published by MIT Press in two successive volumes: *A Stream of Windows: Unsettling Reflections on Trade, Immigration and Democracy* (1998), which won the prestigious Eccles Prize for Excellence in Economic Writing, and *The Wind of the Hundred Days: How Washington Mishandled Globalization* (2001), both volumes reviewed extensively worldwide.

Professor Bhagwati has published more than 300 articles and has authored or edited over 50 volumes. He has influenced policy through writing in leading newspapers such as *The New York Times*, *The Wall Street Journal*, *The Financial Times*, *The Guardian* and Indian newspapers such as the *Times of India* and *The Hindu*. He has also written, and reviewed, for leading magazines, including *The Times Literary Supplement*, *The Economist* and *Foreign Affairs*. He was recently chosen as one of 100 of the world's most influential policy intellectuals by *Prospect*, England's leading magazine, and *Foreign Policy* (US).

Professor Bhagwati has delivered many prestigious Lectures, among them the Frank Graham Lecture at Princeton, the Bertil Ohlin Lectures at the Stockholm School of Economics, the Harry Johnson Lecture in London, the Eyskens Lectures in Belgium, the Radhakrishnan Lectures in Oxford, and the Prebisch Lecture at UNCTAD IX in Johannesburg. He appears frequently in leading TV shows worldwide, including the Charlie Rose Show, the Lehrer News Hour, the Christiane Amanpour Show, the Fareed Zakaria GPS show, the BBC, and CNN.

Professor Bhagwati is a Fellow of the Econometric Society and has been elected a Member of the American Philosophical Society, and the American Academy of Arts and Sciences. He was a Vice-President, and has been elected Distinguished Fellow, of the American Economic Association. Earlier, he founded in 1971 the *Journal of International Economics*, the premier journal in the field today, and *Economics & Politics* in 1981. He has also taught most of the best younger international economists today, including Paul Krugman.

He has received 16 honorary degrees, including from Erasmus (Netherlands), Sussex (UK), the Indian Institute of Technology in Chennai, the Free University in Berlin (Germany), and the London School of Economics. The unique recipient of six *festschriften* in his honour, he has also received several prestigious prizes, including the Mahalanobis Memorial Medal (India), the Bernhard Harms Prize (Germany), the Kenan Prize (USA), the Freedom Prize (Switzerland), the Tjalling Koopmans Award (Netherlands), the Thomas Schelling Award at Harvard University and the Frank E. Seidman Distinguished Award in Political Economy (USA). He has also received the *Padma Vibhushan* and the *Bharatiya Pravasi Samman*, the highest civilian award of Order of the Rising Sun: Gold and Silver Star from Japan, and the Gold Medal of the Italian Parliament.

Professor Bhagwati works with several NGOs in the US and India. He is on the Academic Advisory Board of Human Rights Watch (Asia) and was a member of the Advisory Board of the Council

on Economic Priorities Accreditation Agency (which has created the SA 8000 Standard for Corporate Social Accountability). He was chosen as the first recipient of the Asian NGOs' Award, the Suh Sang Don Award.

Professor Bhagwati is married to Padma Desai, the Gladys and Roland Harriman Professor of Comparative Economic Systems at Columbia University and a leading scholar of Russian and other former socialist countries' transition problems. They have one daughter, Anuradha Kristina, who studied at Yale and Harvard, was a Captain in the US Marine Corps and is now the founder and executive director of a high-profile NGO, SWAN, on women in the armed forces.

**The 24th IB Centenary Endowment Lecture
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“Designing Institutions for Governance Reform”**

It is a great privilege for me to be giving this prestigious Centenary Lecture today. I am additionally pleased that Minister Chidambaram is presiding over the Lecture. He was a prominent member, alongside the present Prime Minister Manmohan Singh who was then the Finance Minister, of the small band of far-sighted politicians who initiated India’s reforms in 1991 and beyond.

As an intellectual proponent of these reforms since the late 1960s, I must confess that until they were seriously implemented starting 1991, they would have remained mostly on the shelf: reform has to walk on two legs, one intellectual and the other political. So, I consider Mr. Chidambaram as a fellow traveler who must be hugely credited with India’s economic success.

I might also add that, having often been complimented as an economist whose writings and lectures do not put the audience to sleep, as even the most illustrious economists effortlessly manage to do, I also admire Mr. Chidambaram’s writings. His opinion pieces in Indian newspapers, written when he was not in government, are astonishingly graceful.¹ They give one so much pleasure, and illumination, that I must confess that the thought has crossed my mind that perhaps we ought to keep him more often in opposition!

I. First, Economic Reforms; Next, Governance Reforms

Let me begin by putting the issue of Governance Reform into appropriate context. Recall that India was supposed to be a sleeping giant that would awaken with Independence. But it continued to snore because the pre-reform policies had consigned it to near-stagnation in economic prosperity. The reforms rescued India from this self-inflicted fate. This also meant that the accelerated growth rate drew more of our people above the poverty line. It is common sense, an uncommon talent indeed, that a stagnant economy will not reduce poverty while a growing economy will.² So, as many studies have documented, and as we planners in the 1950s had predicted,³ this growth turned out to be “inclusive”: or as we sometimes say, our growth indeed had a “human face”.⁴

¹ I had occasion to read them when I was the Chief Guest at a function organized by Shekhar Gupta to release a book containing several of them.

² Of course, we can produce paradoxes such as where growth harms a country in the aggregate: I have called it “immiserizing growth”. It can, less paradoxically, harm specific groups. But the question is whether these arguments have political and social salience.

³ This prediction, which was based on the view that growth had to be, and would be, the principal way to reduce poverty was widely shared at the time. My own work in the Planning Commission, where I worked on loan from the Indian Statistical Institute with Pitambar Pant in the Perspective Planning Division on how to lift the bottom 30% out of poverty, provided justification for this view at the time. For more on this, see Bhagwati and Panagariya, 2012, cited in Footnote 4.

⁴ That the inclusive nature of our growth could have been even greater, with growth giving us a bigger poverty-reduction for the buck, is not an argument for denying that the growth as we witnessed it was inclusive. In our

But even as we are poised to celebrate these successes of our developmental strategy, skepticism has grown about our governance, ranging from the issue of corruption to the question of the competence, credibility and probity of our politicians, bureaucrats and judges. It has been distressing for all thoughtful Indians to have been witness recently to the gargantuan 2G spectrum scandal, the spectacular Anna Hazare agitation that it triggered, the unedifying spectacle of even the prominent civil society leaders stooping to abuse one another, the near-paralysis in the Lok Sabha that it has accentuated, the continuing inability as of now of the government to advance the reform agenda exemplified by the inept political handling of the now-shelved Retail Sector initiative by the UPA government, and much else.

These events have brought to the forefront questions of governance and how to improve it through appropriate institutional changes if we are to safeguard and strengthen both our reform-led prosperity and our democracy which we uniquely embraced at the outset and has now become a norm among the developing countries around the world. Let me however begin by putting some of our governance problems in perspective, so that we do not rush to excessively critical judgments.

II. Some Caveats

Same Play but Different Actors: Political Paralysis?

Many today despair that government has become dysfunctional, that the Lok Sabha is witness to stubborn unwillingness to compromise and see important legislation through. Yet, this is exactly what I hear daily in the United States. The inability of President Obama to pass additional stimulus to address the obvious insufficiency of aggregate demand, even as substantial unemployment persists, betrays a political paralysis that makes our warring legislators look almost agreeable by contrast. One might say: the play is the same, only the actors are different. That politicians of different parties will not collaborate in the general interest when it is in their party's interest not to do so is exactly how democracy works. To expect otherwise is romantic and utopian.

Besides, underneath the apparently self-serving refusal to collaborate are at times genuine differences in definition of the public good. Thus, in the US, the Tea Party and their snobbish antagonists, the Coffee House elites, buy into altogether different economic philosophies; and they push their political representatives to hold up any compromise away from their beliefs. To them, President Obama's *modus operandi* to date of compromise was anathema. As a wit has remarked, they were convinced that when negotiating with a Jihadist who wanted to take us back to the 7th century, President Obama who wanted us to be in the 21st century, would compromise at the 14th!

Corruption and Culture

While I offer below institutional ideas to confront corruption, I would say again what I said in my Lok Sabha Lecture last year, that we also tend to exaggerate the prevalence of corruption in India. Culture interacts deeply with what we define as corruption. In many cultures including ours, the man in the city is supposed to find jobs for his nuclear family, and for his extended family and the kith and kin in his village. I remember traveling back by train to Mumbai from Surat where we were visiting my wife's family. A garrulous traveler in our compartment saw our foreign bags and the label that said: Professor Bhagwati. So, he asked whether I was related to Chief Justice Bhagwati of the Supreme Court. I told him that he was my brother. He turned to me and said: "you should come back to India while he is the Chief Justice, so he can get you a good job"! Alas, I did not take his advice; my brother has retired, and I do not have the prospect of an Indian job.

In fact, the growth of corruption in India, for reasons that I will discuss, has now made many believe that everyone in public life is corrupt unless he proves otherwise. Many today assume that a bureaucrat or a politician is corrupt unless she proves otherwise. In my Lok Sabha Lecture last year, I recounted the story of a distinguished bureaucrat, with unimpeachable credentials, who told me that his mother had told him: "If you were not my son, I would believe that you were corrupt"!

Yet, the fact remains that corruption has grown like the BP oil spill; and concern with it has been reflected not only by the Anna Hazare movement but also by prominent businessmen and intellectuals such as Deepak Parkeh, Azim Premji and former RBI Governor Bimal Jalan in open letters to the Government. It requires serious response.

Moreover, even as we have reason to be proud of our democracy, the institutions that define this democracy need a closer look to improve its functioning. Finally, our leadership needs to focus on essential ways in which the country needs to reinforce the class and ethnic cohesion that is increasingly fragile. Permit me now to address these three issues of governance.

III. Cutting Down Corruption

Corruption is often treated with cynicism and with a sense of its inevitability. Thus, Kautilya famously said that "Just as it is impossible not to taste honey or poison that one may find at the tip of one's tongue, so it is impossible for one dealing with government funds not to taste, at least a little bit, of the king's wealth".⁵ Or it is a source of merriment as when the famous humorist Stephen Leacock remarked: "American politicians do anything for money. English politicians take the money and won't do anything". The latter remark is reminiscent of the judge who accepted bribes from both the defendant and the plaintiff, claiming that the

⁵ I owe this quote to Professor Balbir Sihag who is a noted authority on the economics of Kautilya.

bribes were thereby neutralized and he, therefore, could give an unbiased judgment while fattening his purse.

The truth of the matter however is that corruption is a consequence of policy-induced incentives; it is equally amenable, therefore, to institutional correctives. But, in deciding on the policy initiatives that would contain corruption in our midst, we must distinguish between measures that prevent corruption from breaking out and measures that seek to reduce its adverse effects once it breaks out. This is much like the distinction in Climate Change literature between “mitigating” policies that reduce carbon emissions and the “adaptation” policies that enable you to cope with the consequences of carbon emissions.

In regard to the mitigation issue, it is useful to recall that India at Independence was a model of an efficient civil service and politicians who were not on the take. Shrewd observers wrote in 1988 that “Independent India inherited the best administrative machinery among all developing nations, along with a highly moral and dedicated public service”.⁶ Indeed, by contrast, recall Rene Dumont’s classic work on *False Start in Africa*, which records the corruption and extravagance in post-colonial French Africa.⁷ Yet, pretty soon, India had rejoined the human race. Why? The answer lies chiefly in what the great Indian politician CR, or Rajaji as he was universally called with affection and respect, christened successfully as the “license-permit raj”.⁸

This raj pretty soon turned into a Frankenstein. Bureaucrats realized that licenses meant patronage and hence power. Politicians saw that it could generate moneys --- we did not get Mr. Zardari known as Mr.10% but the licenses were indeed issued against moneys. This was corruption where the bribes were being given to get high-level bureaucrats and politicians to do what they were *not* supposed to do.

But pretty soon, corruption spilled over in the deteriorating moral climate to lower-level bureaucrats who began to charge money to do what they *were* supposed to do. That brought in the common man who had to pay bribes to get a birth certificate, a death certificate, a caste certificate, a ration card, and other certificates which are necessary for one’s well being. There is little doubt that masses of citizens who were fed up with this predatory behavior were flocking to the Hazare movement.⁹

⁶ Cf. O.P.Dwivedy and R.B.Jain “Bureaucratic Morality in India”, *International Political Science Review*, 1988, Vol.9 (3), pp. 205-214.

⁷ Cf. Rene Dumont, *False Start in Africa*, Andre Deutsch: London, 1966.

⁸ Soon enough, this license-permit raj had led to the proliferation of corruption leading to the appointment of the Santhanam Committee (which reported in 1964) which blamed bureaucrats, legislators and businessmen alike for the growth of corruption, and the creation of the Central Vigilance Commission in 1964, all aimed at corruption in the bureaucracy rather than among politicians.

⁹ The demonstrators seem to have been mostly urban though rural citizens are equally exposed to the low-level corruption of petty bureaucrats. This may be because village level demonstrations could not be on a large scale, making retribution perhaps likely.

The UPA government has responded last week to both types of corruption by introducing a blitzkrieg of legislations --- such as the protection of whistle blowers, the Lokpal Bill and the Judicial Accountability Bill --- that are of the “adaptation” variety. They have been immediately questioned as weak and inadequate. But the real problem with this response is not its problematic efficacy. Rather it lies in the fact that these measures do not provide “mitigation” which would reduce the incentives for corruption.

If this was done, we would have to start by recognizing that the two different types of corruption, high-level and low-level, require different strategies. High-level corruption requires that the incidence of the license system be minimized. The virtual removal of industrial and import licensing today has reduced the scope for such corruption.¹⁰ Interestingly, if the market-using reforms had been used in allocating the 2G spectrum by auctioning it off, the scandal would not have arisen. It would have contained the illegal mining scams in Andhra Pradesh, Orissa and Jharkhand, for sure. Insistence on tenders before the award of lucrative public sector contracts would also reduce corruption: a lesson we should have learnt from the furor over the Enron contract in Maharashtra.¹¹

As for the low-level corruption, the smart way to mitigate it instead has to be a technological one. The use of soulless machines that issue necessary certificates can replace heartless bureaucrats; married to Nandan Nilekani’s ID scheme, this can get rid of the tyranny of the low-level bribe-demanding bureaucrats. In some instances, where Luddite bureaucratic unions sabotage the machines, they may need to be confronted into compliance, perhaps with the alternative of cash compensation if they agree to withdraw their obstructionism.

Yet another idea is to turn the estimated bribe into a payment for the certificates to be issued, so that it turns into a fee-for-service charge to be put into a fund for the bureaucrats, much like the tips paid for service in restaurants. This, in fact, was what the Chinese bureaucracy in the Ming Dynasty was doing in effect, but inefficiently, with magistrates and officials whose salaries were kept low and a large fraction of whose expenses as administrators were expected to be reimbursed by the populace that was served.

Other suggested incentives include bonuses to bureaucrats that vary with the quickness of the service they provide. Conversely, penalties could be levied on the bureaucrat who delays service beyond a defined norm: though, penalties could run at times into union problems whereas bonus payments will generally not.

While these mitigation strategies could be used to minimize low-level corruption, an adaptation strategy has recently been proposed instead. Thus, it has been suggested that we

¹⁰ On this, Jagdish Bhagwati, “The Heart of the Problem”, *Times of India*, September 8, 2011.

¹¹ Although malfeasance has not been shown in the Enron case, the failure to invite a tender inevitably invited charges of corruption by the involved bureaucrats and politicians, even if they were innocent of any wrongdoing. I might add that, since the lowest tenders are not necessarily the most desirable, inviting them is a necessary, not a sufficient, condition for reducing corruption in public sector procurement.

should make the paying of a bribe legal.¹² The idea is that this would encourage the bribe payer to report the bribe taker to the authorities. But this outcome is highly unlikely. Getting caught up in litigation in India, even as a witness, can be a protracted affair. The “whistle blower” also faces retribution when he goes for yet another certificate: this is particularly so when the bribe demander is a member of a union (as is likely because many public sector employees belong to unions). Finally, the notion that bribe giving is to be legalized violates the popular notion that bribes should be illegal: what is economically rational is not always ethically acceptable.

IV. Reform of Political Institutions

That we have democracy as our overarching political institution is a matter of great satisfaction. It is a value in itself; but it is now increasingly recognized also as good for economic prosperity which, in turn, helps reduce poverty effectively. The latter was not always the case. In fact, I myself had written four decades ago about the “cruel dilemma” that democracy would make growth more difficult. This notion came from the fact that we thought at the time that growth depended primarily on the ability of governments to extract savings from people to increase investment. Here, communist and authoritarian regimes could use draconian methods, as Stalin did, to increase savings or what Marxists call “surplus”. What we missed, however, was that the growth depended on another parameter as well: on the productivity of that investment. Democracies harness people’s energies and innovativeness better. So, as I noted in my Rajiv Gandhi Golden Jubilee Memorial Lecture in New Delhi in 1994 on *Democracy and Development: New Thinking on an Old Question*, the cruel dilemma has vanished.

Besides, our democracy is not just a matter of winning elections and ensuring that the ability to vote is effective (unlike in the US where we still have problems in getting the black vote safeguarded in the South). India’s is what we now call a “liberal democracy”. It has four elements which matter: a relatively free press, a functioning judiciary, civil society and opposition parties. So, when people’s economic aspirations are aroused, as has happened with the post-1991 reforms-led inclusive growth which has created what I have called the Revolution of Perceived Possibilities, these aspirations have been translated into effective political demand: the parties and governments that do not deliver are now at risk.¹³ By contrast, China’s authoritarian regime is witness to the absence of these four institutional elements of a liberal democracy, so the economic aspirations turn into the “social disruptions” that threaten political stability and endanger future growth.

But these observations are not all there is to the issue. Within Democracy, there are many institutional features that can add to, or subtract from, its efficacy. These define the different dimensions on which we need to turn our energies as we contemplate governance reform.

¹² The Finance Ministry’s Kaushik Basu, a distinguished economist, has made this suggestion.

¹³ This hypothesis has now been formally tested and found to work by Professors Poonam Gupta and Arvind Panagariya in their paper “Growth and Election Outcomes in a Developing Country.” The results of their work are among the important findings of the Columbia Program on Indian Economic Policies.

First, we have to face up to the issue of campaign finance for politicians. Unlike the US, for example, we do not have legitimate ways of raising funds. So, politicians have no option except to turn to illegitimate ways of financing their campaigns. Corruption becomes a means of political survival. This problem needs to be frontally attacked and solved. It would help to reduce the incentives for corruption, adding another mitigating institutional innovation to the assault on corruption.

Second, we also need to address the fact that the Lok Sabha has far too many members, nearly 30%, with minor and major criminal cases pending against them. This erodes trust in the Lok Sabha's legitimacy; nor can criminals be expected to be energetic upholders of anti-graft virtue. Yet, the phenomenon is not one of convicted criminals but of people who have serious criminal cases registered against them. It is imperative therefore that there be a binding and quick fast-track procedure, as suggested by the former RBI Governor Bimal Jalan, under which a special tribunal would examine these cases and either declare the elected member innocent or convict him. The exoneration would lift a cloud from the defendant; a conviction would result in an expulsion.

Third, surprising as it may seem, Lok Sabha members enjoy a high level of education.¹⁴ Of 543 members, 260 have postgraduate, higher or technical degrees! Four in five have an undergraduate or higher degree. What is astonishing then is the ill-informed level of discourse and debate on the issues before the Lok Sabha. It has surely to do with the fact that, unlike in the US Congress, the Lok Sabha members do not have a staff of brilliant young men and women who do the spade work and analysis, which would make the members better informed.

This lacuna has been partly remedied by the NGO, PRS, founded in 2005, which provides excellent analyses of the bills that come up before the Lok Sabha and in legislative assemblies and holds workshops for these legislators. But what is needed is formal capacity on the legislator's staff to absorb and analyze the nuances of the bills before them, just like in the US. So, writing in *The Third World Quarterly* over 30 years ago, I had suggested that each legislator be assigned funds for a highly educated staff, as in the US Congress. The social returns to this institutional innovation would be very substantial: it would lead to the type of debate that an informed democracy requires.

Fourth, such an informed debate is necessary even in the public policy space. Way back in 1990, I (with Professor Padma Desai) had argued that Indians were argumentative: but we used that phrasing in describing how Indo-US tensions were exacerbated because Indians talked back to the Americans, usually winning the argument, when in fact the Americans were supplying aid and expected a more pliant set of recipients.¹⁵ My friend Amartya Sen has

¹⁴ I borrow from Poonam Gupta and Arvind Panagariya, "Rich, Educated, Criminal", Times of India, August 5, 2011 for the details in the text.

¹⁵ See our article, "Perceptions through a Prism" in Sulochana Glazer and Nathan Glazer (eds.), *Conflicting Images: India and the United States*, The Riverdale Company, USA, 1990. In particular: ""What these episodes immediately suggest is that the confluence of the fluent and the affluent societies is not productive of harmony. An essential

subsequently misused this phrase however to suggest that Indians have argued in reasoned debates, producing a society imagined by Habermas! Alas, his argumentative Indian is a figment of his patriotic imagination. For the most part, we have animated personal feuds. As the story goes: the devil is showing a prospective client around hell and there are different pits by nationality, with the Indian pit the only one without a fence. Asked why, the devil says: any time an Indian starts to climb out, others will pull him down. Or, as I put it, we Indians are so ingenious that we multiply by dividing. Alternatively, many lie prostrate at the feet of the people with credentials or power. The younger Indians are fortunately breaking out of these moulds; but we need to strengthen the habit of informed debate which does not come naturally to us in a culture that emphasizes reverence for the teacher and obedience to the family.

Fifth, the public have come to rely on using institutions like the judiciary or civil society, to correct for what might be called “political failure”, e.g. the failure of legislatures to address compelling problems. But this raises two sets of issues. In Economics, we confront market failures, which imply that the Invisible Hand in the market place was crippled and therefore the State should intervene to assist it. But we have also come now to confront the fact that such intervention might make matters worse. In the same vein, we must ask whether the judiciary or the civil society can be trusted to correct for political failure. If we were to take this issue seriously, as we must, then we have to examine whether these institutions are working in a manner which gives them a sporting chance of being efficient in this corrective role.

Take the judiciary. Quite aside from the question of how judicial corruption must be handled, some critical correctives are necessary. As the judiciary extends its scope to all sorts of political market failure, its understanding of the issues they adjudicate and often pronounce on has become a matter of great importance. Thus, to take a disturbing example of illiteracy in economic analysis invoked in the judgment being rendered, a recent Supreme Court bench, composed of judges Sudarshan Reddy and Surinder Singh, in a judgment in a case involving unaccounted moneys, attacked “neoliberal” reforms as the cause of corruption. Of course, the word “neoliberal” is frequently invoked by the populists on the Left. Confronted by them in a debate, I say: “If you call me a “neoliberal”, I will call you a Neanderthal and I will proceed to wipe the floor with you anyway. But I would rather debate you, not on pejorative epithets, but on specific policy differences of substance”. If the learned judges had done this, they would have realized, as I have already argued, that these reforms actually *reduced* corruption.

Judicial reform then must proceed on at least three dimensions, if the judiciary is to improve, rather than worsen, political market failure. (i) The judges must be exposed to training in the major fields like Economics and Human Rights that they invoke repeatedly. If they lack it, they must be brought up to snuff through special training courses. (ii) A corrective can also be

source of the sparks that fly too often when the two societies interact is the *simultaneity* of the unequal relationship between the two countries *and* the rejection of the muted manners and modalities of behavior, unwittingly expected by the elites and representatives of the United States (the stronger power), by an assertive and *argumentative* [italics inserted] elite.”

provided through public criticism of the judgments. Conventionally, such critiques elicit contempt of court citations. But there is absolutely no justification for doing so. My brother, the former Chief Justice, has never issued such notices. How else is one to subject the judges to the opprobrium that ill-informed judgments deserve, without which they will not reform? (iii) Finally, a corrective that is in place and increasingly becoming important, is that (exactly as I suggested for legislators), young law clerks can improve the reasoning of the judges. This reform was also the brain child of my brother and has now taken root. It is also becoming more effective with law clerks increasingly drawn from institutions such as the National Law School in Bangalore that are now producing, not just practicing lawyers, but also splendid graduates trained in a juristic approach to the Law and exposed to other disciplines.¹⁶

What about the civil society, often called the NGOs instead? They are an important supplement to the parliamentary democracy which we have. But *caveats* must be added if they are to play a creative, rather than a destructive, role. At minimum, they also need to learn the value of dialogue instead of diatribe. The Anna Hazare movement was startling in the way that the NGOs fell out, often with high-decibel denunciations directed at their own kind, turning into uncivil society instead. Differences broke out between the anti-large-dam comrades like Medha Patkar and Arundhati Roy, and Aruna Roy parted company with Arvind Kejriwal. But this paled before the vicious diatribes directed by Arundhati Roy against Kejriwal and Manish Sisodia as receiving moneys and Prizes such as the Magsaysay Award (which is admittedly a creature of the Rockefeller Brothers Fund: I wonder however who finances the Booker Prize which Arundhati Roy does not allow anyone to forget) from foreign agencies and being the front men for the agenda of the World Bank (which, I daresay, should not be in India after 60 years of Independence and should be asked respectfully to withdraw forthwith) and the Ford Foundation. Kiran Bedi's financial integrity has been attacked. The mayhem among these activists reminds one of American free-style wrestling where there are no rules or, more cynically, the only rule is that you must hit below the belt.

But even if civility was to be restored --- and I must say that there *are* splendid examples of workmanlike and remarkable NGOs like Elaben Bhatt's SEWA in Ahmedabad, which indulges in no melodramatics: she predated Mohammed Yunus by two years but did not have the PR machine to get the Nobel Prize she deserved instead for helping finance very small self-employed women --- the sad reality is that the more prominent NGO activists like Arundhati Roy and Vandana Shiva subtract from the public debate by refusing to respect reasoned argument. As I have once remarked, their conclusions are more obvious than their arguments. Writing recently about Vandana Shiva's impassioned denunciation of the Retail reform that is on hold now, I pointed out how all the objections voiced by Vandana Shiva in an Interview were totally wrong:¹⁷ she simply had not bothered to read anything on the subject. Unfortunately, that was my experience also when I debated her on the Christiane Amanpour (TV) show on

¹⁶ Having co-taught Indian Constitutional Law at Columbia Law School last year, under the Ambedkar Chair in Indian Constitutional Law endowed by the Government of India, I have come into contact with splendid new graduates like Madhav Khosla from these institutions and senior jurists like Professor Sudhir Krishnaswamy with whom I plan to co-teach Indian Constitutional Law in Fall 2012.

¹⁷ Cf. my article in the *Times of India*, December 12, 2011.

agricultural suicides: she was simply unaware that agricultural suicides were long-standing in India and that GM cotton seeds had been absorbed in places like Punjab without any suicides. She had also featured with me in a Public Television documentary on the subject, where a suicide had been presented in depth as an “agricultural” suicide. I must say that the producer eventually confessed honestly at a Panel I was on in New York that the suicide had turned out to be *not* an agricultural suicide! But I wonder if Vandana Shiva has revised her opinions on the subject.

Perhaps the greatest disappointment with our civil society activists is their presumption that they can supplant the democratic process. The UPA government has been exactly right: civil society can agitate, it can make suggestions, but it cannot be allowed to impose solutions. They are good at flagging an issue; they are not good at flogging it.

V. The Overarching Challenges Today before the Indian Society and Economy

Much of what I have suggested tonight will strengthen our governance. But I should like to end on two overarching issues that will affect the future of our society and of our economy and for which we need creative leadership.

Positive Freedom of Religion

The first concerns the management of religious freedom in a multi-religious society that has witnessed strife, particularly in the years during and in the aftermath of Independence when Gandhiji virtually sacrificed his life trying to bring the Muslim and Hindu communities together, starting with the massacres and rapes -- for modern feminists who are repelled by his personal life, it would be a useful corrective to read his comments about the assaults on women --- in Noakhali in Bengal. While nothing today compares with the conflagrations at the time, the notion of religious freedom and tolerance needs to be revisited in a sense that Gandhiji made familiar. What was it?

Indian secularism cannot be founded on banishing religion from public space. Equal disdain for all religions characterizes the thinking of some conventional secularists and was probably Prime Minister Nehru’s thinking as well; but this will not work in a country where religion is an integral part of life. Gandhiji’s version was better: he read at his meetings a verse or a paragraph from the sacred books of different religions: the Old Testament, the New Testament, the Koran, the Gita, the Granth Sahib, the Zoroastrian holy text. This equal treatment of religion in public space assured everyone that all religions were being treated equally.

This has led me to distinguish between what I call (the conventional) “negative” freedom of religion, which leaves everyone to practice his religion freely; and the “positive”

freedom of religion where all religions are offered equal public space.¹⁸ If only we were to return to Gandhiji's ways, we would be striking a big blow for the religious amity that we badly need to cement.

Less Excess and More Access

But we also need to ensure that we do not discount potential strife between the rich and the poor. As wealth of the successful at the top has grown, and so have the aspirations of the poor for a larger share in this outcome, we face the prospect of political instability. This is likely to happen when there is ostentatious display of wealth and the pathway of the poor to riches is not easy.

What we need today from the rich is the Jain and Calvinist ethic that believes in wealth accumulation but *not* public display of it (and preferably even use of it in what I call *Personal Social Responsibility*). One cannot but be distressed by displays like the Mukesh Ambani home in Mumbai, or extravagantly expensive weddings (I must say that such unseemly extravagance is not just an Indian affliction: the three million dollars allegedly spent by the Clintons on their daughter Chelsea's wedding when there was huge unemployment and distress was deplorable).

Equally, we need to double our efforts to ensure that the poor can partake more effectively of the opportunities for economic improvement that our reformed economy provides. This means, most of all, making education possible for them. Here, we can do no better than recall Prime Minister Jawaharlal Nehru's profound observation: "The future belongs to science and those who make friends with science". The invention of cheap laptops and the use of IT technology to exploit scale economies to bring education at low cost to the many poor who are still in our midst, are scientific innovations that we badly need. Minister Sibal needs, most of all, an ambitious program to bring educational access to the poor.

Maybe the Prime Minister, whose simple ways mean that he would not even know how to spend money on himself if he came by it, and who comes from a poor family where he was the first child to be educated, can be the one to launch the campaign whose slogan, to be put on a sticker at the back of every Nano, the "people's car", should be: Less Excess and More Access.

¹⁸ Cf. my article "Secularism in India: Why is it Imperiled?" published in T.N. Srinivasan (ed.)'s *Secularism in India* (Oxford, 2006).