

CHAPTER
TWO

**Democracy, Development and
Functional Differentiation**

When India became independent in 1947, it was expected to serve as the leading example in the worldwide drive for decolonization (Rudolph, and Rudolph, 1987; Bhagwati, 1993; Rothermund, 1998). After five decades of elected government, democracy is understood to be India's most significant achievement (Dréze, and Sen, 1996).

The decisiveness with which Indira Gandhi's emergency rule was rejected in the 1977 general election is seen as proof of the resilience of this democracy. In spite of recurring regional unrest, India's democracy overall seems surprisingly stable (Kohli, 1990, Rothermund, 1991; Manor, 1996). Democratic institutions have proved resilient (S.K. Mitra, 1990).

Nevertheless, India's democracy is troubled. A sense of gloom emanates from much recent literature on India. The distinction between formal and substantive democracy is highly relevant (Soerensen, 1993; Jalal, 1995; Bandyopadhyay, 1996). There have been regular elections, and fundamental rights are in principle (but not always) safeguarded. In spite of all this, citizens do not have much

influence on the course of policy-making. Administrative practices often amount to the abuse of public office.

The Indian republic is besieged by complaints about governmental lawlessness (Baxi, 1982, 1985), deficient administration of official policies (Wade, 1989; Gupta 1992) and very little democratic control (Kothari, 1989, 1995; Kohli, 1990). Even Atal Behari Vajpayee, as Prime Minister, has stated that this democracy ‘appears to be moth-eaten from within’ (*Statesman*, 1.2.1999). A modern constitution with both liberal and socialist aspirations coexists with more informal, if not illegal, power structures (Kaviraj, 1991; Gadgil and Guha, 1995; Bandyopadhyay, 1996).

On the local level, official plans and programmes are said to serve as mere propaganda and to be rarely implemented (Shaw, 1996). Principles spelled out in India’s legislation are not necessarily applied in reality. Post-colonial and semi-feudal attitudes towards power undermine democratic principles.¹ Those in positions of power—whether legal or illegitimate—tend to be accepted as patrons on whose benevolence one depends. Lack of transparency and inaccessibility of administrative bodies reinforce such attitudes. Pre-1991 economic policy contributed to the emergence of what is today seen as a cartel of vested interests comprising politicians, state bureaucrats and the owners of businesses and large-scale farms (Bhagwati, 1993; Soerensen, 1993; Gadgil and Guha, 1995).

With economic liberalization, these relationships are changing. Most economists welcome deregulation (Bhagwati, 1993; Joshi and Little, 1997). To a certain extent, even the normally left-leaning *Economic and Political Weekly* appreciates beneficial consequences of liberalization (Virmani, 1997; S.L. Rao, 1998). New high-technology industries such as engineering and software are taking advantage of world market opportunities and do not need favours from the State apart from reliable telecommunications and power supply (Pedersen, 1992). Such changes, of course, affect the balance of power.

However, these new trends have not completely remodelled the Indian State. It still suffers from malfunctions in providing important infrastructure along with health care and education (Dréze and Sen,

¹ These terms are to be understood in a very literal sense: ‘Post colonial’ means after colonialism but still appropriate to alien rule. ‘Semi-feudal’ describes attitudes according to which a powerful individual is not seen as a citizen democratically equal to others but rather as an unaccountable executor of personal whims.

1996). Shalendra Sharma (1993:904) calls this an irony in the sense that 'for governments to reduce their role in the economy and expand the arena of market forces, the state itself must first be strengthened'.

There is no doubt that the State is all too often not functioning well. In scholarship, there even is a widespread notion of institutional 'erosion' (Rudolph and Rudolph 1987; Kothari, 1989, 1995; Kohli, 1990; Sudarshan, 1990, Kaviraj, 1991; Haragopal, 1995). These complaints concern the civil service, the political process and the rule of law. However, the term 'erosion' implies that things were at some point better, which is not consistent with the idea of Indian democracy being resilient. In the light of the empirical data presented in this book, it appears more appropriate to speak of the malfunctioning of various state institutions than of their erosion.

This question touches on the relationship of State and society. In a theoretical perspective, symptoms of governmental crisis in India are often explained by recurring to characteristics of 'civil society' (Chatterjee, 1990, 1995, 1997a; Kaviraj, 1991, D. Kumar, 1991; Rothermund, 1991, 1992; Bêteille, 1997a). In a nutshell, this is about the social fabric and cultural conventions predominant in a former colony being unable to support a representative democracy according to the example of the former colonial power. Such a perspective places the blame for grievances with society rather than with the State.

In the light of empirical data on public interest litigation, I will argue that the set-up of the State apparatus is of at least equal relevance. India is not simply a parliamentary democracy troubled by an unruly, heterogeneous populace. Rather, the State structures have maintained some arrogant and almost absolutist powers more typical of colonial rule than of representative democracy. In order to redirect attention to governmental actors, it is, therefore, useful to draw a distinction between the terms 'civil society' and 'public sphere', with the latter being meant to include government agencies in the multiple discourse networks of the former.

In order to discuss such questions, a wider sociological theory framework of governance, modernity and development will be laid out in this chapter. It will first consider conditions of democratic governance in principle. These concerns are not about development in the sense of the 'Third World' catching up with 'advanced nations'.

Rather, these concepts derive from the studies of societal evolution as it occurred in Western Europe and North America.²

The conditions of democratic governance to be discussed here result from the exigencies of functional differentiation and the continuing pressures of modernization to which all societies, rich and poor, are exposed. Dynamism and specialization of interdependent social fields of action typically pose problems of integration and coordination. It becomes the task of governments to mediate solutions without stalling the beneficial effects of functional differentiation. This is, of course, a more challenging vision of the state than that of monopolizing the means of legitimate coercion and the consequent extraction of revenue. In turn, the legal system is necessary for safeguarding the requisite trust in the enforceability of legal entitlements and binding contracts in such a functionally differentiated society.

The first section of this chapter elaborates the distinction between ‘civil society’ and ‘public sphere’. For those fond of reasoning along the lines of social philosophy, the second section traces historical and ideological connotations of these ideas to their roots. The third section looks at how, in recent development debate, neoliberal and leftist positions have been converging in their concern for democratization. Even if the recommended policies are not necessarily identical, there clearly is a shared interest in ‘civil society’ and government accountability. The fourth section deals with problems of governance after colonialism. The fifth section of this chapter returns to a discussion of the particular and unique case of India.

2.1 Why Democratic Governance Depends on the ‘Public Sphere’

The notions of ‘public sphere’ and ‘civil society’ are so closely related that the terms are often considered to be interchangeable (Calhoun, 1993; Chandhoke, 1995). In order to assess the relevance of public interest litigation for governance in India, however, it is useful to draw a distinction. In this view, the judiciary is playing an

² It is acknowledged that such an imposition of Western or, more precisely, German standards to Indian reality is risky. However, results sometimes justify means and it will be seen that these theoretical considerations make sense in the context of public interest litigating in India.

important role by making government agents respond to queries and demands of non-government activists who belong to civil society. The courts are thus strengthening the sense of public sphere, which is not yet firmly established in India.

In this understanding, the public sphere includes government agents and institutions, whereas civil society is a societal space independent of the state. To put it another way, the public sphere, for our purposes, is conceptualized as the arena in which State agencies are exposed to the demands of non-State actors who, in turn, constitute civil society. The public sphere rests upon the discursive networks of civil society but also on publicly scrutable deliberations of government—for instance, in courtrooms or legislative bodies.

This distinction is not so much an expression of long-standing theoretical discussions. ‘Public sphere’, for our purposes, is related to but not entirely derived from fine-toned elaborations à la Habermas (1994). Similarly, ‘civil society’ for our purposes does not carry all the connotations it does in the tradition of Marx or Hegel. If such notions are to be of empirical relevance, they need to be more crudely made use of.

Following Craig Calhoun (1993:273), ‘public sphere’ is here understood as ‘an arena of deliberate exchange in which rational-critical arguments rather than mere inherited ideals or personal status could determine agreements and actions’.³ The public sphere must include State institutions such as parliaments, courtrooms and to a certain extent even cabinets and ministerial bureaucracies. After all, these are the agents that make collectively binding decisions (Luhmann, 1984). If they are to meet democratic aspirations and express the wishes of the majority, they must be made accountable to the general public. In other words, a minimum of transparency and responsibility (in the literal sense of having to respond) is necessary to expose state powers to any kind of public sphere worthy of the term.

‘Civil society’, on the other hand, is an indispensable concept to explain how any kind of ‘general public’ might be put into a position to express itself. This term has lately inspired social research,

³ The emphasis is on *mere*. The concept does not exclude the influence of inherited ideals and personal status. Rather, it limits their impact on the outcome of societal disputes. Public sphere is not an ideal, perfect democracy but a social context that sets limits to un- or pre-democratic attitudes by providing scope for rational and critical debate.

despite—or maybe because of—the fact that it is ‘more suggestive than precise’ as Ralf Dahrendorf (1996:237) puts it. However, as Dahrendorf continues, the core meaning is quite precise:

Civil society describes the associations in which we conduct our lives, and which owe their existence to our needs and initiatives rather than to the State. Some of these associations are highly deliberate and sometimes short-lived like sports clubs or political parties. Others are founded in history and have a very long life, like churches or universities. Still others are the places in which we work and live—enterprises, local communities. The family is an element of civil society. The criss-crossing network of such associations—their creative chaos as one might be tempted to say—makes up the reality of civil society. It is a precious reality, far from universal, itself the result of a long civilizing process.

The independence and freedom of civil society is the basis for a democratic public sphere in which matters of policy can be openly and critically debated—not only in parliaments and legislative assemblies, but also in the media, academia, non-governmental organizations, clubs, neighbourhood get-togethers, marketplaces and even bar-rooms. Civil society is what arises once people begin to systematically make use of constitutionally guaranteed liberties (such as those of expression, assembly, or association). In so far as it becomes politically relevant and interferes with government agencies, it gives rise to the public sphere. Both a vibrant civil society and an operational public sphere are pre-conditions for and consequences of the democratic nation state.

In the recent discourse of social sciences, the terms ‘civil society’ and ‘public sphere’ have become blurred because the distinction is no longer of practical relevance in most OECD nations. The reason is that government bodies have been integrated into the discourses waged in civil society for so long that this is taken for granted. To have the State and its coercive powers domesticized in such a context, in turn, has the effect of making discursive relations in civil society more stable, reliable and trustworthy because the rule of law has made contracts and fundamental rights enforceable.

For most empirical purposes in the OECD, therefore, ‘civil society’ and ‘public sphere’ blend into one another. Nevertheless, the distinction made above can be applied to rich nations as well as to developing nations. In this book the distinction will be consistently emphasized.

If one accepts functional differentiation as the essential aspect of modernity (Luhmann 1984, 1986), it will become obvious why civil

society and public sphere are indispensable for democracy. Functional differentiation means that society becomes polycentric. Politics, economics, religion, law, science and other fields of specialized activity become self-organizing social realms, operating according to their own exigencies. Central to this argument is the idea that neither market competition nor government hierarchies on their own can run complex societies efficiently. Modern societies need intermediary structures to function well (Willke, 1983, 1992, 1997). In order to integrate and coordinate complex and interdependent systems, civil society and public sphere are indispensable assets.

The basic notion of functional differentiation is deeply rooted in the history of sociological theory—from Emile Durkheim's focus on the division of labour to Max Weber's concept of result-oriented rationalization of distinct social fields of action. Building upon Talcott Parsons' system theory, Niklas Luhmann (1984, 1997) has elaborated the most sophisticated theoretical conception of functional differentiation to date. However, one need not adhere to systems theory to emphasize the systemic differentiation of politics and economy as the crucial aspect of modernity (Habermas, 1988; Giddens, 1996).

Functional differentiation has many consequences. Paramount among these is the increased efficiency and dynamism of most fields of human activity. This is true of economic productivity as well as of the capacities of the educational system or the development of technology. Functional differentiation has made unprecedented prosperity possible in the OECD, and not entirely so on the back of the less advantaged nations. After all, the latter are mostly better off today than at earlier times, in spite of ever-growing populations.

Modernization in the sense of functional differentiation implies result-oriented streamlining of social practices rather than the legitimization of social behaviour by accordance to tradition. It is a never-ending process, submitting inherited attitudes to the scrutiny of rational, goal-oriented reasoning. It is a reflexive process in which anticipations of future possibilities affect social reality (Willke, 1983, 1997; Giddens, 1996; Beck, 1986).

The increased potential of specialized fields of action is by no means without risk. Modernization may yet prove a mixed blessing as advanced technology, mass consumerism, and high-level military procurements place mankind at risk to an extent never known before. The possibility of environmental self-destruction looms darkly over

our species' future (Luhmann, 1986, 1996). The United Nations Conference on Environment and Development in 1992 highlighted the fact that the industrialized life style of the OECD nations is most likely unsustainable. Moreover, it was then recognized that the ecological balance of this planet would tip should all of humankind rather than a mere fifth enjoy the consumption standards of the OECD (Reid, 1995).

Such risks trigger legitimate criticism. While this does challenge the current life style in the rich countries, it does not put the principle of modernization in question. Rather, functional differentiation has developed such a dynamism that there is no turning back (Willke, 1983). An ever-increasing world population will not be fed by means of traditional agriculture but will depend on the dynamism of improved technologies for its very survival.

Many people in developing countries eye modernization theory with suspicion. Such writing is often understood to imply that former colonies should now emulate their former masters. Thus, modernization theory can even be read as retrospective legitimization of brutal imperialist rule (Washbrook, 1981).⁴ However, this view overlooks that OECD nations are themselves constantly exposed to modernization pressures.⁵

It is beyond the scope of this book to discuss the controversial issue of globalization. However, it is worth pointing out that globalization is not only a question of competition in the world market. It is a more complex phenomenon and not driven by just a single dynamic. Globalization can be defined as the expansion of functional systems beyond the nation state (Willke, 1997). This means that modernization pressures are felt on an international level (Beck, 1997a, 1997b). Converging expectations and aspirations due to

⁴ Washbrook not only submitted interesting material concerning the relationship of law and society in colonial India, but also claimed to sound the death knell of modernization theory by clearly spelling out that the colonial power had not been able to shape Indian society according to its own liberal ideology. However, there is more to modernization theory than a futile attempt to legitimize imperialism. Moreover, the Marxist foundations for declaring functionalist approaches obsolete are no longer as firmly in place as they may have seemed to be in the early 1980s.

⁵ For instance, the new centre-left governments of both Britain and Germany do not tire of emphasizing their concern for modernization of these two countries and, indeed, of the European Union as a whole. This shows that a demand for modernization is not a means to look down on disadvantaged nations but rather expresses a desire to find viable solutions to societal problems. The emphasis is predominantly on making them operational in a functional sense rather than on ideological correctness.

satellite television, the internet and other media play a role that should not be underestimated. Such convergence is also fostered by mass travel, in the sense of both migration and tourism (Korff, 1995).

Modernization along similar lines seems the only viable course of development for former colonies (Huntington, 1971; Eisenstadt, 1987; P.L. Berger, 1997, Giddens, 1996). The downfall of the Soviet empire and the success of developmental states particularly in East and South-East Asia strongly reinforce the notion of this kind of 'modernization' as the single realistic route of development (J. Berger, 1996; Dahrendorf, 1996; Tetzlaff, 1996).

Ernst Gellner (1995) sees liberal democracy based on a web of intermediary agents as the only social setting that grants freedom from both the tyranny of despots and the tyranny of cousins in rigidly segmented traditional communities. He argues that the first establishment of civil society structures depended on the destruction of a generalized truth monopoly. This made space for the scientific revolution and in turn for systematic technological development alongside growing material wealth. Gellner stresses the need to separate of the realms of economics and politics. The result is a wider spread of the forces necessary to shape society.

If businesses are run according to market demands, new sources of wealth and influence are generated. That, in itself, checks and balances the government's influence on society. On the other hand, government regulations for market operations are necessary, because some economic choices have far-reaching consequences for society as a whole, for instance when different technological options are involved. Once politics and economics are separated, their balanced interaction becomes delicate and begins to rely on complex bargaining and negotiating networks that include, for instance, trade unions, employers and government agents.

One consequence of functional differentiation comprises ever-changing forms of the division of labour. Unlike under the condition of segmentary differentiation in feudal societies, individuals both gain the advantages of high mobility and are exposed to the cold winds of permanent social change. Personal biographies are no longer determined merely by one's parents' social status and individual security no longer guaranteed by extended family and community relations. Educational curricula, career opportunities, personal relationships and loyalties, and systems of belief all become matters of individual choice to an extent never known before. New freedoms

go along with keenly perceived risks of failure (Beck, 1986; Beck and Beck-Gernsheim, 1990; Giddens, 1997). From a sociological perspective, this explains why compulsory primary education and a minimum of government welfare policies go along with functional differentiation in Europe or the United States.⁶ Similarly, it explains why both are essential for all developmental aspirations (Drèze and Sen, 1996).

A fully operational civil society must thus grant all individuals various opportunities to pursue their interests through a vast web of independent organizations and interest groups. Such intermediary institutions of civil society link households, market and state. They are the foundation of the public sphere that allows democratic participation in policy-making by obliging governmental actors to become responsibly involved in manifold bargaining and negotiating processes.

Through the emergence of the public sphere, the coercive powers of the state become domesticized and accountable to the various agents of civil society. This also has an inclusive effect: state institutions become accessible to all those who make use of their fundamental democratic rights. In turn, the domesticized coercive powers of the state, in a reflexive process, change the networks of civil society. Individuals no longer exclusively depend on their original communities. Relations within communities and families become subjected to the rule of law to the extent of making domestic violence illegal.

On a more systemic level, functional differentiation requires sophisticated mediation of diversified social realms. Whereas feudal societies are based on strict segmentary segregation in a functionally differentiated setting, highly specialized functional systems such as politics, economy, law and science do not exist in atomized spheres of their own. Rather such systems, though autonomous to a historically unknown degree, are interdependent. Each system thrives on the efficiency of the others. Again, the evolution of bargaining and negotiating networks is a consequence of this challenge (Willke, 1983, 1997; Mayntz, 1993). In the advanced societies, round tables,

⁶ Cuts in welfare spending in OECD nations do not imply that welfare policies are abandoned altogether. A short mind game will prove this case. A single, unemployed mother living in post-Thatcher London would have good reasons not to change places with another single unemployed mother in New Delhi, while her Indian counterpart would have good reasons to do so—if, hypothetically, they were both given the choice.

trilateral committees (representing labour, capital and government) and similar structures make it possible to combine the systemic advantages of both market and government. They depend on the organized representation of vital social interests and their articulation in a public sphere including responsive government agencies.

Such conditions give rise to another specific trait of modernity—that of trust being vested not only in personal acquaintance, but also in the systemic operations of institutionalized social life (Giddens, 1996a). Trust is indispensable for the cohesion of a functionally differentiated society (Luhmann, 1997; Willke, 1997). Reliable compromise, spelt out in publicly available documents, inspires trust and further cooperation. The State, rather than being the mastermind of all decisions, will increasingly have to serve as the supervisor of a highly differentiated society (Willke, 1997). This also implies pressures of decentralization and devolution of government powers to regional and local levels.

In the context of public rather than personal trust, the legal system is of particular relevance. If it is generally perceived to be fair and independent, it will enhance the essential sense of trust. It has to ensure the enforceability of law and contracts, binding both private and governmental actors.⁷

To repeat, government ceases to be the paramount regulator of social life in this perspective. Rather, it becomes the obligation of the political system to ensure that such negotiating networks do not become too restricted, giving only particular interest a say in decision-making instead of brokering viable compromise of all relevant interests (Mayntz, 1992; Messner, 1994). Whenever such mediation fails, crisis, social protest and other frictions will disturb the ability of society to function (P.L. Berger, 1997). Challenges must be met in a pluralistic attempt to experiment with different options, probing for an adequate, satisfying result (Lindblom, 1990). Pluralism can only be safeguarded through civil society and public sphere.

⁷ In recent Italian history, in this respect quite similar to that of India, the courts have played an important role of breaking up illegitimate power cartels in administration and legislature. While it is beyond the scope of our book to discuss this in detail, it is again worth pointing out that the pressures of modernization act not only on developing countries but also on OECD nations. Most recently, the European Union as a whole has been exposed as suffering from leaders' inadequate distinction of public and private interests leading to the resignation of the European Commission.

In this perspective, democracy and modernization are interdependent and mutually reinforcing in the advanced nation states of the OECD. Development necessarily leads to functional differentiation which, in turn, depends on and fosters democracy. This does not imply that conflict resolution under the conditions of functional differentiation is easy or that those conditions are free of conflict. Disputes in civil society and public sphere can be rough and noisy. There is academic concern whether they are functioning well in the United States (Etzioni, 1995) as well as in the European Union (Marks et al., 1996). However, it is worth emphasizing that growing disillusionment with democracy has nowhere in the OECD put its principles at risk in recent years.

2.2 Historical Connotations of ‘Civil Society’

While discussions of civil society go a long way back in English-language social science literature, the German translation ‘Zivilgesellschaft’ has only been in use since the 1980s. Before, the equivalent of civil society was normally the term ‘bürgerliche Gesellschaft’.

The distinction between ‘Zivilgesellschaft’, based on the idea of the ‘citoyen’ (the citizen of a democratic state with a given set of political rights and duties), and ‘bürgerliche Gesellschaft’, based on the idea of the ‘bourgeois’ (the utility-maximizing individual in a market economy) is significant. The main connotation of ‘bürgerliche Gesellschaft’ is capitalism, the main connotation of ‘Zivilgesellschaft’ is that of representative democracy and civil liberties. This, of course, again reflects the fundamental aspect of modernity, the differentiation of market and state. In the light of contemporary systems theory it is clear that we cannot have one without the other.

This also helps to explain the new interest in civil society in connection with the collapse of the Soviet bloc (Keane, 1988a, 1988b; Taylor, 1990; Michalski, 1991; Kössler, 1992). So-called real socialism had monopolized both the access to information and the freedom to formally organize as means of the State party. Dissident organizations and initiatives (such as Solidarnosc in Poland or Charta 77 in Czechoslovakia) recognized the relevance of civil liberties. They applied the term ‘civil society’ as an alternative to monopolized

party power (Arato, 1982; Michnik, 1985; Keane, 1988a; Geremek, 1991; Langenohl, 1996).

The totalitarian communist regimes in Central and Eastern Europe collapsed almost immediately after having lost the ability enforce their party monopolies over information and organization. It was recognized that lack of communication and lack of competition had stalemated both economy and polity. Civil liberties proved indispensable elements of the efficient self-organization of society.

Charles Taylor (1990) distinguishes two traditions in the civil society debate. In the tradition of John Locke, civil society is a sphere outside the government's reach. Taylor does not consider this a viable solution to the complex challenge of societal integration. He therefore favours the tradition of Montesquieu in which civil society consists of 'cross intermediaries' of an 'amphibious' nature (Taylor, 1990:114). Such institutions have a 'life outside the political structure' but it is 'crucial to the health of the polity that they also play a role within it'.⁸

Taylor sees both traditions of the civil society debate blend in the work of G.W.F. Hegel. Hegel saw society as a product of history that was to be both conserved and transcended by the State. 'Bürgerliche Gesellschaft' in this context was the most advanced society. For Karl Marx, 'bürgerliche Gesellschaft' was the social structure that was the basis for the establishment of the bourgeoisie-dominated capitalist State.

In the Marxist tradition, government institutions and actions were understood as epiphenomena of ongoing class struggle. Social changes and shifting power resources were not attributed to government action or politically motivated processes in general. They were interpreted as economically determined results of the production needs of the ruling class and of technological progress.

Up to the 1970s, many scholars even in the West understood civil liberties to follow from socio-economic necessities in the context of a particular stage of class struggle rather than to be social achievements in their own right. Representative democracy and personal freedoms were interpreted as deceptive instruments of the bourgeoisie, granted only so long as its class dominance was not seriously threatened. This attitude, however, withered away after the collapse of the Soviet

⁸ In the terminology suggested in this book, these 'amphibious' beings are, of course, part of the public sphere in so far as and in as much as they actually do play a role in the polity.

Union had proved that fundamental democratic rights were indeed a relevant source of political legitimacy and social stability.

Even within the communist tradition, however, there has long since been a more sophisticated line. Antonio Gramsci considered the capitalist nation states in Western Europe to be so far advanced that they no longer relied solely on the instruments of coercion and repression (Gramsci, 1967; Bobbio, 1988; Kebir, 1991). Gramsci saw 'società civile' as a non-governmental extension of the repressive bourgeois powers securing leadership and hegemony by establishing a national consensus. He understood this consensus to be little more than a voluntary subordination of the exploited masses enchanted by the bourgeoisie's cunning persuasion.

Civil society in his sense penetrates the national culture of everyday interaction in many spheres of social life. It comprises every social setting in which manners, values and meanings are established, debated, contested and changed. For Gramsci, such an entrenched position of the bourgeois state behind the civil society meant that Marxist organizations could not simply conquer power before having established what he called working class hegemony. He expected the Italian Communist Party, of which he had been a co-founder, to engage in this endeavour. Gramsci defined civil society as the arena in which the disputes over hegemony take place—the complex web of interaction and decision-making framed by formal and informal organizations.

This concept is maintained in the current debate that sees 'civil society' as a prerequisite of democracy and thus as a normative goal (Keane, 1988a; Neubert, 1992; Kössler and Melber, 1993). In this context, it has been stripped of the Marxist vision of class struggle being historically directed towards the establishment of a socialist state dominated by the working class.

Civil society thus becomes, in other words, a vision of a perfected liberal democracy in which the French Revolution's promises of 'liberté, égalité, fraternité' have come true. In this reading, the term 'civil society' is no longer distinct from 'public sphere', 'democracy' or indeed, 'good society'. Sometimes an element of socialist visionary thinking is included. For instance, welfare state instruments are meant to guarantee a minimum level of subsistence to all members of society in the name of 'civil solidarity' (Kössler and Melber, 1993: 82ff). Otherwise, societal inclusiveness would not be safeguarded.

But even if one focuses on the core meaning of civil society as the web of independently organized groups, associations and institutions, the modified Gramscian approach remains fascinating. Civil society has a twofold, almost ambiguous nature. It is an instrument to enforce social order and thus an asset of governance. Yet it also involves all social strata and provides space for the articulation of discontent and opposition.⁹ ‘Civil society’ implies that compromise and even national consensus are constantly renegotiated in manifold bargaining processes. This stretches down to the micro-levels of social life, to plain face-to-face interaction.

Ideally, this would lead to the general acceptance of a dynamically adaptive social order in which all vital interests were taken into account. Civil society (in its core meaning of institutions independent of the state) would be the basis for a democratic public sphere including the government. Violence should be expected to be minimized as a consequence of reduced social frustrations that might lead to either crime or political uprising. More likely, civil society as the basis of an effective public sphere would evoke a sense of loyalty and maybe even commitment to the State. A vibrant civil society is thus at once a condition of an expression of good governance (Etzioni, 1995).

For the normative-utopian line of thought, such a social order is somewhat similar to the holy grail—always to be aspired for, never quite to be achieved. Civil society is the basic element of an ‘open-minded, uncompromisingly pluralist, cosmopolitan and historically informed conception of democracy’ (Keane, 1988a: X). For other authors (e.g. Shils, 1991a, 1991b), civil society has been established in the industrial democracies of the West to an extent that Western European nations and the United States appear as model cases. This view, however, conceals that societal consensus and compromises are constantly in dispute in these countries and that the democratic principles of constitutions have to be used actively to be of any practical value.

We have again passed the point where the concept of ‘civil society’ blurs with others, such as ‘democracy’ or ‘public sphere’. Both Keane and Shils are stretching the term ‘civil society’ beyond its

⁹ This again implies that civil society is not an affair of particular harmony. Conflicts can become rough and rowdy. However, their destructive impact may be expected to be contained in a framework of pluralism created by constitutional democratic rights.

core meaning—that of criss-crossing formal and informal organizations that serve as intermediary institutions.

Krishan Kumar (1993) therefore has some reason to raise the question whether it would not be more useful to stick with clearer conceptual approaches. Kumar suggests key words such as ‘democracy’, ‘constitutionalism’ or ‘citizenship’. For our purpose, however, the emphasis is on the interaction of State and society and not so much on any particular constitutional framework. In other words, the civil society discourse is about the conditions for the above-mentioned desirable qualities of State affairs.

To summarize again, modern democracy is not imaginable without civil society giving rise to an operational public sphere that also includes agents of governance in an open and reliable discourse. In turn, this social fabric in the developed capitalist societies depends on democratic freedoms. In the light of this theoretical outline, it will become obvious why neoliberal and leftist positions converge in their concern for civil society in recent development debate.

2.3 Neoliberal ‘Good Governance’ and Leftist ‘Democratization’

The World Bank (1997) links ‘civil society’ to its concept of ‘good governance’. On the other hand, critics of the Bretton Woods Institutions, generally more at home on the political left, also use the term ‘civil society’ in connection with demands for more and deeper democracy, involving the people as a whole in decision-making (Friedmann, 1992; Kössler and Melber, 1993; Chandhoke, 1995; Haynes, 1997). The approaches are not identical and, as far as specific policies are concerned, they may actually be in conflict. However, their concern for civil society is similar and, as discussed above, relation to modernity in the sense of functional differentiation.

In the neoliberal case, the interest in ‘civil society’ is linked to a positive vision of government performance meant to lay the foundations for development in the sense of economic success and social prosperity. The emphasis is clearly on market efficiency. The following caption from the report of the Task Force on Multilateral Development Banks (1996:8) is typical of such proclamations:

Efforts to promote reduction, private enterprise and a better natural environment require more effective government and the emergence of a strong civil society ... Good policy includes the rule of law, protection of legitimate economic activities and interests, a government's accountability to its citizens, effective measures against corruption, a participatory approach to development, easy access to important information and services.

In a nutshell, this list comprises typical traits of modernity understood as functional differentiation: an economy based on market competition rather than political directives and distinct from a state run by a representative government with both State agents and private businesses bound by the rule of law. It would be wrong to interpret this notion simply as 'capitalism' defined by unrestrained market forces. Rather, the market must be embedded in institutions of democratic, responsible and efficient government. This includes a reliable and sufficiently independent judiciary to safeguard the enforceability of legislations and contracts.

Even the World Bank (1989, 1997) admits that the fruits of economic development are unlikely to be reaped simply from the application of 'structural adjustment' along the lines of market-oriented deregulation. Poor results of such policies in Africa led to the World Bank's re-assessment of the 'Role of the State in a Changing World' (1997). Corruption and general administrative slack had drained sub-Saharan societies, leaving hardly any scope for socio-economic development. The World Bank (1992:2) therefore conceptualized 'good governance'. 'Governance' stands for 'the manner in which power is exercised in the management of a country's economic and social resources for development'.

The World Bank (1997) considers free elections to be important, but not enough, to ensure good governance, Key elements of this concepts are:

- capacity and efficiency of public sector management,
- accountability of government agencies,
- rule of law,
- transparency and reliable information,
- macroeconomic stability,
- protection of poor people and of the environment,
- division of powers with an independent judiciary, and
- reliance on self-regulating systems such as markets.

In the view of the World Bank, there are also typical failure symptoms due to 'bad governance', including the following:

- poor distinction between private interests and public office,
- erratic legal situations
- excessive regulations impeding official markets and thereby spawning black markets,
- corruption, nepotism and patronage,
- misallocation of resources, and
- untransparent decision-making.

The World Bank (1999: 46) has, in its own words, acknowledged the relevance of trust made possible through democratic participation in the public sphere:

By providing citizens with the opportunity to express their views, encouraging them to monitor the workings of local government and calling on them to participate, an effective system of governance creates a willingness to obey laws and to pay taxes. Over time, sound governance builds trust and social capital.

The World Bank's recourse to the argument of 'good governance' has been criticized as a mere detraction from the failure of its own policies and as an illegitimate attempt to introduce an option of political conditionality into its scope of action (George and Sabelli, 1994; Jayal, 1997; Harris, 1997). Indeed, the idea of imposing democracy from outside a country's borders seems a contradiction in itself (Soerensen, 1993; Jayal, 1997). Similarly, it is ironic, to say the least, that the World Bank simultaneously calls for good governance and dictates strict measures of monetary and budgetary policy without much democratic deliberation in the countries subjected to structural adjustment (George and Sabelli, 1994).

However, such criticism casts more doubt on the World Bank as responsible agent of development than on the concept of good governance itself. The phenomena of failure listed above are too common in developing countries, including India, for us to dismiss the argument as self-serving World Bank propaganda.¹⁰ Moreover, the same principles are central to demands for more deep or more substantial democracy (Friedmann, 1992; Kössler, 1992; Neubert, 1992; Kössler and Melber, 1993; Wignaraja, 1993; Haynes, 1997).

¹⁰ They are not without relevance in supposedly advanced nations, where, of course, corruption does occur.

Many of these authors are among the critics of the Bretton Woods Institutions. In their line of thought, interest in civil society puts less stress on business efficiency than on political fairness and socio-economic justice. Social movements and non-governmental organizations are seen as motors of development that would be more in tune with the needs of poor people.

In this context, the term ‘civil society’ again serves to define a normative political goal as much as it is used as a scientific category of analysis (Neubert, 1992). In this normative capacity, the term would imply the spread of virtues such as civic sense or responsible pursuit of the common good. However, this normative dimension is confusing because it again blurs the core meaning of the term. The argument would be clearer if it emphasized the public sphere, thus involving the State as a proponent of the necessary spread of democratic values.

Indeed, ‘civil society’ is sometimes even understood to be a web of progressive, developmental non-governmental organizations (Bundesministerium für wirtschaftliche Zusammenarbeit, 1996; Nuscheler, 1996; Khilnani, 1997). This is a misconception. Civil society also includes other actors in the realm provided by constitutional freedoms who do not pursue progressive or even democratic goals, for instance exclusive elitist circles or religious fundamentalists (Rodan, 1997; Haynes, 1997). They also have formal and informal organizations of their own and make use of fundamental democratic rights. To exclude them, by definition, from civil society would be a choice inspired more by concerns of political correctness than by sober-minded analysis.¹¹

Similarly, it makes little sense to (academically) set an agenda of progressive democratization for civil society as a whole (Chandhoke,

¹¹ According to Rodan, under conditions of mass illiteracy and other kinds of deprivation, civil society will be totally dominated by the educated elite, leaving no scope for poorer sections of society to pursue their needs. With regard to India, Dietmar Rothermund (1992) makes a similar point, arguing that the institutions of civil society as known in Western Europe or North America reach only the upper 10 per cent of the population. Such reasoning shows that it would be wrong to expect an explicit strategy of democratic inclusiveness and progress of civil society as a whole. More fundamentally, however, it casts doubt on the applicability of concepts of civil society and public sphere to developing countries. With respect to India’s recent history, I would argue that over the longer run civil society has slowly become more inclusive. Increased levels of literacy, social movements and progressive political parties have contributed to greater inclusiveness and have added to democracy’s resilience in India. We will return to this subject in the last section of this chapter.

1995). If it is understood to be the totality of self-organized, non-governmental social life, civil society cannot be expected to have any such agenda. How democratic values and civic norms are to be enhanced within civil society is an altogether different question. Most likely making governments accessible and accountable in a democratic public sphere would work in this direction by enhancing a sense of societal trust.

In a related normative vein, strengthening civil society has been cited as a specific means to tackle corruption (Leiken, 1996; Kaufmann, 1997). However, that would again have to be done by making government bureaucracies accountable in public. This, once more, shows how useful it is to distinguish civil society from public sphere. After all, one must always expect members of civil society to try and bypass public discourse and secretly influence the government, for example through collusion and corruption. Civil society based on the rights of assembly, expression, association and other democratic liberties does not by itself serve as a protective means against such abuse of public office.

To 'empower' or 'strengthen' civil society means to establish a public sphere that makes government and administration accountable to more than a selected few, but to all legitimately organized interests. In turn, government agencies supported by the legitimacy provided by an operational public sphere can be expected to limit anti-social and mafia-type networking, thus enhancing the sense of reliability in civil society.¹²

The institutional set-up of state and government are not simply reflections of the social fabric. They are relevant in their own right. Good governance, therefore, not only requires an interactive, vibrant civil society, it also depends on more technical issues such as adequate payment of civil servants and a realistic scope of legislations and administration. As the World Bank (1997) argues, unattainable aspirations must lead to unimplementable regulations. This, in turn, impedes efficiency and invites corruption.

To cling to unviable regulations in the long run must be seen as the conscious provision and maintenance of bribe-seeking

¹² Of course, government agencies can never eliminate such networking, but it does make a difference whether one can rely on the rule of law so as to be able to do business with people other than one's own kindred. If not, freedom of choice and opportunities of action will be severely hampered. According to Hernando de Soto (1989), this is one aspect that keeps people who depend on the informal slum economy of Peru poor.

opportunities (Krueger, 1974). In spite of conditions of poverty, official agencies in developing countries can be shaped by work cultures promoting efficiency and responsibility towards the public sphere (Grindle, 1997). This suggests that a development policy along the lines of democratization and official accountability makes sense. This is exactly the point at which World Bank and its critics conceptually converge.

This convergence will come as little surprise to anyone who has accepted that market competition and representative democracy are two different aspects of a single modernity. They do not exist independently of one another. Rather, they are mutually reinforcing (Huntington, 1971; J. Berger, 1996).

This is particularly so if one keeps in mind that processes of successful development are also processes of urbanization (World Bank, 1999). Life in cities tends to imply increased social mobility, a more diverse setting of societal organizations, higher rates of literacy, and more sophisticated information and communication infrastructures. It also implies a constant clash of interests, for instance over space, and thus a constant need for compromise and mediation. While metropolitan centres the world over are becoming similar, their internal and multicultural diversity is growing. This makes cross-community networking indispensable (Korff, 1993; Berner and Korff, 1995).

That said, the question does arise whether the conditions of democratic rule can be expected to exist in post-colonial contexts. After all, a modern liberal constitution does not, by itself, lead to good governance. Rather, social life must reflect the principles outlined in such a body of law (Walzer, 1983). It is understood that legal principles will never be an inch-to-inch map of social reality (Habermas, 1994). But undoubtedly gaps between constitutional aspirations and ground reality can be narrower or wider.

We will now turn to the problematic of trying to establish democracy after colonial rule in countries in which neither civil society based on constitutional freedoms, nor a public sphere thriving on pluralistic tolerance, is to be taken for granted. The trouble is, if these are simultaneously conditions for the consequences of democratic governance, how are they to be established in the first place? It is beyond the scope of our project to answer that daunting question. However, the remainder of this chapter will discuss difficulties that are not the same in every post-colonial context. A

society with strong feudal characteristics, as was typical of colonial India, is an altogether different setting than a pre-literacy, predominantly tribal world, as was typical of post-colonial Africa.

2.4 Governance Problems after Colonial Rule

Studies of post-colonial states in Africa (Sandbrook, 1985, 1986) have concluded that there is a distinct pattern of institutional failure due to the lack of 'civil society'. This line of thought suggests an almost inevitable downward spiral of exaggerated hopes, poor economic performance and disintegrating institutions of governance.

Welfare states in advanced capitalist economies redistribute wealth in order to mitigate conflicts stemming from social cleavage. They provide legitimacy for the social order by various forms of entitlement legislation. Such complex social arrangements are based on an equally complex interaction of manifold associations, trade and employer unions, political parties and state agencies in the public sphere.

According to Richard Sandbrook, this was not immediately possible in post-colonial states because governments faced more than the challenge of coordinating the redistribution of wealth. The leaders of independence movements and the masses following them expected the state to produce wealth in the first place. It was therefore expected not only to perform the functions of government according to the Western model, but also to become the main supplier and controller of capital. Resources for development were channelled through government institutions and bureaucracies. Public office thus became the main opportunity for the appropriation of wealth as the fruitful separation of government and market had not occurred.

The immediate consequence was that the struggle for access to material wealth and economic prosperity took place within the state itself. Political and business activities in government enterprises were not distinct. Anybody aspiring for material wealth would have to gain positions of power within the state. Corruption, nepotism and patronage spread wide.

Charismatic leaders of independence movements turned into populist, increasingly authoritarian heads of government and state. Their rhetoric concealed the exploitation of national assets by the cliques surrounding them. Their propaganda no longer conveyed

serious development strategies geared to increase the welfare of the entire population. Regimes gravitating around an exploitive, despotic 'strongman' (Sandbrook, 1986: 323ff) became the norm.

Briefly stated, the lack of modern attitudes, based on an operational separation of politics and economics, led to a downward spiral of false populist promises along with high popular expectations and a consequent loss of trust in the government. This led to an increasing recourse to violence and oppression, camouflaged by more extravagant and even less trustworthy promises by the national leadership. Such downward spirals were accelerated by the fact that ethnic groups are the principal point of reference for social identities in the African context. Autocratic regimes would manipulate such social frictions for their own purposes.

In other words, post-colonial societies did not have a web of independent, overlapping organizations and institutions that could be understood as civil society. Therefore, there could also be no public sphere, in which compromise or even consensus could have been achieved through inclusive societal discourse. Predominantly ethnically defined identities did not give scope for such arrangements but were more likely than not to play into the hands of strongmen.

The challenge to all recent aspirations both of 'good governance' and 'democratization' is whether such pattern can be reversed. Adrian Leftwich (1994, 1995) contends that it can, and indeed that it would be desirable. He argues that strong governments can (and should) put in place the social conditions for functional differentiation to take off—and to thus escape from the downward spiral described above. After maybe a generation or so of rather authoritarian rule in such a 'developmental state', Leftwich expects the issues of civil society, public sphere and democracy to return to the agenda, as happened in South Korea, Taiwan and Thailand in the 1990s.

It is beyond the scope of this book to discuss Leftwich's idea in depth. Suffice it to say that a central problem with his approach is simply that dictators do not tend to be benign. Most authoritarian regimes do not serve the function of developmental states but remain purely exploitive versions of Sandbrook's strongman model (Soerensen, 1993). This debate does not apply to India, where it is unlikely that an authoritarian, one-party developmental regime will be imposed in the foreseeable future.

In India, there are, however, strong incidences of the governmental malfunctions that, according to Richard Sandbrook, are

to be expected in post-colonial contexts. But the formally democratic framework did not disintegrate. Moreover, independent India has become richer, not poorer. Its economy has grown faster than its population. Poverty rates have fallen, even though they remain intolerably high. Apparently, the specific social fabric of India is such that this vast developing country deserves some particular considerations.

2.5 Governance in India

Had Indira Gandhi's 'emergency' dictatorship prevailed, it would be easy to apply the downward spiral theory of the last section to India.¹³ Even though this strongwoman did not establish autocratic rule over the longer run, there is a strong tendency in recent scholarship on India to argue along lines similar to those of Richard Sandbrook, emphasizing the difficulty—but, in this case, not the impossibility—of liberal democracy in a post-colonial setting. However, there are many differences between India and Africa that deserve to be taken into account.

While mass illiteracy is a problem for both, Indian illiteracy coexists with a tradition of scholarly writing which go back millennia. While it is true that Nehru's government had strong centralist aspirations pursuing socialist policies, it cannot be said that, at independence, the State was the only source of capital. There was a local business elite in banking, trade and industry.

India, like African countries, is multicultural. But the common cultural traits are strong enough to inspire a sense of coherence in a subcontinent of one billion people, twice the population of sub-Saharan Africa which has over forty sovereign states, many of them on the verge of total disintegration. Unlike in Africa, Indian identities are shaped by various, partly overlapping, factors such as language, region, religion and caste. It is impossible to polarize all of society along any one such line (Manor, 1996).

In the context of Indian governance problems, the term 'civil society' appears remarkably often (Chatterjee, 1990, 1995, 1997a;

¹³ There is a certain trend in public discourse to blame 'erosion symptoms' on Indira Gandhi. This is, perhaps, an easy cop-out. After all, she was operating under constraints. The polity conditions led her to both personalize politics and deinstitutionalize the Congress Party, with considerable success (Kohli, 1990).

Kaviraj, 1991, D. Kumar, 1991, Rothermund, 1991, 1992; Bêteille, 1997a). Unfortunately, the authors who use it do not have a precise common understanding of the term. It may stand interchangeably for ‘capitalist society’ or ‘political conventions’ or of course, ‘intermediary institutions’. Nevertheless, it is possible to expose those problems to empirical scrutiny by using Dahrendorf’s civil society concept of a web of non-state interactions. In light of experiences with public interest litigation, I will argue that focusing on civil society (in whatever meaning of the term) obscures dysfunctional aspects in the set-up of the State.

Before looking at social science assessments of state-society relations along such lines in India, it will be necessary to pay some attention to the trials and tribulations of India’s democracy. The following subsection therefore juxtaposes the notions of ‘erosion of the State’ and ‘resilience of democracy’. The second sub-section then returns to the more theoretical discussion of civil society and public sphere.

2.5.1 *‘Erosion of the State’ versus ‘Resilience of Democracy’*

Academic writing knows of many crisis symptoms concerning governance in independent India. Complaints about malfunctions are common to both the political process and bureaucratic procedures. They often deviate strongly from what would be desirable according to democratic norms and principles.

It must be emphasized that this does not imply that such norms and principles would be perfectly established in OECD nations. However, while reasons for frustration also exist in many rich countries, the level and public acknowledgement of poor governance in India exceeds by far what would be considered acceptable in most rich countries. Problems cases such as Italy or Belgium are exceptions.¹⁴ Public outrage proves that many of the citizens of these

¹⁴ To judge by the annual Corruption Perceptions Index published on the internet home page of Transparency International, a non-governmental campaign fighting corruption after the model of Amnesty International, the situation is worse in India. An index of 10 stands for ‘absolutely clean’ and an index of 0 stands for ‘absolutely corrupt’. In 1998, the index for Belgium was 5.4, the index for Italy 4.6 and the index for India 2.9. However, this index is not a truly reliable measurement. It is based on surveys of how people doing international business perceive particular countries. There is no accurate assessment of how bad corruption ‘really’ is in any given country.

countries find poor governance unbearable—as do many citizens of India.

A brief summary of typical assessments would render an exaggerated picture, as is, nonetheless, quite stereotypically reproduced by the press in India. Politicians are widely perceived as self-serving careerists, exploiting public office for their personal benefit. They rely on inscrutable support networks in which gangsters play a role to intimidate opponents within and outside one's party (Kohli, 1990; Kothari, 1989). Election campaigns are expensive and depend on black money. Contributions to campaign funds are often seen as advance payments for future favours (Wade, 1989; Gupta, 1992).¹⁵

Populist agitation and mass mobilization rather than programmatic discourse are typical of Indian election campaigns. Gaining office is what matters, not what publicly expressed promises one will be able to keep once in office (Kothari, 1989, 1995).¹⁶ Lately, this has been exacerbated by shaky coalition and even minority governments. India's version of federalism has further enhanced the gridlocks and malfunctions of the political process (Rothermund, 1991; Rajashekara, 1997). Maybe even more than on the central level, political power in the states lends itself more readily to the pursuit of personal gains than to devising and implementing policies to improve the people's well being (Kohli, 1990; Khator, 1991).

This sorry perception of politics, of course, goes hand in hand with a poor reputation of government bureaucracies. Administrative bodies are also generally expected to be corrupt and inefficient (Schenk, 1989). Frequent transfers cause many officials to feel hardly any ties with the area under their jurisdiction (Wade, 1989). Remuneration of civil servants is rather low and thus provides an important incentive for seeking bribes (Gupta, 1992). Rises in pay seem to have done little so far to improve this image.

Along the lines of rational choice theory, government agencies have ample reason not to perform well. If what they are meant to deliver is scarce, they can charge their clients on a personal basis for

¹⁵ The problem of campaign finance serving as an inroad for corruption is again not at all special to India. Amitai Etzioni's assessment (1995) of US politics is quite similar. The degree of the problem is probably greater in India, where, in spite of reform proposals, it has for long been inconceivable to run an election campaign by entirely legal means. The strict regulation of party finances does not permit the accumulation of enough money for all the expenditure needed.

¹⁶ Exaggerated campaign promises, again, are not a specifically Indian problem.

its delivery (Gadgil and Guha, 1995). In this context, bureaucracies are interpreted as distinct groups interested in acquiring as many regulatory powers as possible. This puts them in a position to grant personal favours. Similarly, there appear to be virtual markets within the bureaucracy for the sale of attractive positions with access to modern amenities and ample chances to extract additional income. This kind of illicit bargaining allows those higher up in the hierarchy to participate in the revenue sharing (Wade, 1989).

Bribery and corruption are believed to abound (Lewis, 1995). Administrations therefore are not primarily considered as tools for the implementation of government policies. They are seen as an infighting network of self-serving gangs in severe competition with one another (Gadgil and Guha, 1995). In the words of (Renu Khator 1991:213), officials are 'allowed to use their state authority to gain personal benefits, but they are not permitted to use the same authority to obtain policy compliance'.

If not even those holding elected office or positions in the civil service are generally expected to be playing by the official rules, it is obvious that India must also be suffering from a strong sense of lawlessness. In a country with poor infrastructure, the reach of the judiciary is likely to be limited to urban agglomerations. The suspicion that judges are corrupt and serve elitist interests cannot be ruled out anywhere, and it is particularly common in poor countries (Betz, 1996).

In all liberal democracies, financially potent persons have better access to qualified legal representation before the courts. In India, this has encouraged powerful members of elite groups to resort to violence and crime to coerce those depending on them. They know that the probability of their being taken to court is minimal and that of their actually being convicted practically nil. On the other hand, there is evidence that members of Scheduled Castes and Tribes are repeatedly arrested without warrant, tortured, kept in jail for years without legal aid, and killed in custody (Kothari, 1989; Baxi 1994a, 1994b; Kannabiran, 1996). Chapter 3 of this book deals extensively with the Indian judiciary. It will suffice, at this point, to state that the courts are themselves struggling with accusation of inefficiency, corruption and the abuse of power.

Terrorism is another symptom of troubled statehood (e.g. S.K. Mitra, 1990; Brass, 1994). Militancy follows the loss of governmental legitimacy and adds to worries about the viability of democracy in

India even if large-scale, violent strife is regionally confined and does not seem to threaten India as a whole for the time being (Manor, 1996). Indeed, West Bengal, where my empirical data were gathered, was one of the most troubled Indian states in the 1960s and 1970s. However, the Left Front government's ability to re-establish the political order and to implement some reform measures from 1977 on has been regarded favourably by several scholars (Kohli, 1987, 1990; Webster, 1992, 1995; Lieten, 1994, 1996).

Nonetheless, evidence for bad rather than good governance in India has been summed up in a theory of 'State erosion' (Rudolph and Rudolph, 1987; Kothari, 1989, 1995; Kohli, 1990; Sudarshan, 1990, Kaviraj, 1991; Haragopal, 1995). This would imply that matters were once decidedly better, which seems improbable. After all, the growth of mafia-type power cartels driven by corruption and patronage are typical of colonial rule, particularly in the case of absentee landlordism (Gambetta, 1988b; Pagden, 1988).

In other words, there is reason to trace such phenomena back to before 1947. Bernard Cohn (1990) has extensively dealt with problems of the colonial judiciary. Some of the symptoms are so similar to what is happening in Indian courts today that the sense of continuity appears stronger than that of 'erosion'.¹⁷

Such assessments fit in well with the more general notion that India has known vast formal empires of mainly ceremonial impact that went along with less formal, locally prevalent power structures (Kaviraj, 1991; similarly, S.K. Mitra, 1990; Khilnani, 1997). As long as a certain revenue from any given area was guaranteed, the larger political structure did not interfere in everyday life regionally. This was controlled instead by local tyrants and various forms of community self-regulation.

These power structures were difficult to discern and would normally be based on varying coalitions of the upper strata of society. Up to today, locally prevalent arrangements of influence and coercion appear to vary. They do not necessarily reflect the principles laid out in the constitution. Instead, informal and illegal power cartels prevail in the guise of modern liberal democracy. Sudipta Kaviraj (1991) implies, but does not explicitly state, that the constitution with its

¹⁷ For our purpose, it is more relevant to look at Cohn's empirical data than to subscribe to his theoretical explanations. From a functionalist perspective, it is more interesting to see in what context the courts were operating than to explain some kind of supposedly inherent and unchangeable characteristics of the Indian psyche such as 'litigiousness'.

rhetoric of modernity and egalitarianism today fulfils the largely ceremonial role of former Indian empires.

Strategic groups (Evers and Schiel, 1988) of influential local politicians, bureaucrats, landlords, businessmen and members of the underworld dominate such power structures. According to Kuldeep Mathur (1992: 347f), the 'liberal democratic character of the Indian political system tends to disappear at the local level'. Rather vested interests rely on elaborate systems of corruption and patronage (Gupta, 1992). They keep the vast majority of deprived Indians in place through a threefold strategy. The poor are given a small trickle of charitable handouts, they are kept uneducated and assetless, and they are exposed to violent coercion if they actively resist (Gadgil and Guha, 1995).

In this context, India is said to be exploited by vested interests of small sections of society in various ways behind the mask of a formally functioning democracy (e.g. Baxi, 1982, 1994a, 1994b; Kothari, 1989, 1995; Jalal, 1995). To go by the erosion theory, such exploitation is increasing and has been made possibly by a continuously deteriorating performance of both politicians and civil service.

However, with such structures deeply rooted in colonial and feudal history, it does appear doubtful that matters were so much better in 1947. Most likely, social reality in India was never as pleasant as the nostalgic memories of the Nehru era suggest. Indeed, eulogies of that time have been criticized as 'unresearched and uncritical' (Jalal, 1995: 6). What if the shortcomings of the Indian democracy became apparent to scholarly debate only when social change was actually beginning to take root and more oppressed people began to demand their rights? As James Manor points out (1988: 79, emphasis added), 'ethics *seemed* more clearly defined and more commonly applied during the fifties, when disadvantaged social groups were just awakening, and Nehru's reformism appeared sufficient to meet their demands'.

Only at first glance will it seem paradoxical that the success of policies meant to uplift disadvantaged strata of society is evident in their growing assertiveness. Given that social settings are still unfair in many ways, it is not surprising that those victimized will use any improvement of their situation to demand more improvements. Such successes, in turn, would not have been possible had all government

institutions indeed eroded and served only the vested interests of the elites.

To a certain extent, the sense of disappointment with governance in contemporary India may also stem from unrealistic, exaggerated and idealistic expectations in 1947 (Lewis, 1995). Similarly, it has been stated that the Indian public tends to expect saintly self-denial of leading politicians and bureaucrats and is then prone to contempt if they turn out to be merely human (Desai, 1995).¹⁸

This, however, also has a rather healthy aspect. Outspoken contempt for leaders who have disappointed the electorate is a clear token of democracy. And indeed the most obvious indicator of democratic resilience in India is the recent anti-incumbent trend in elections, not unlike that witnessed in the United States. Clearly the electorate is prepared to kick out those who have been perceived as unreliable and inefficient. Governments that have excessively abused the public good have repeatedly been driven out of office. The most spectacular case was the defeat of the Congress Party after emergency rule in 1977. Since then, voters have repeatedly affirmed their readiness to deny re-election to those who have disappointed them in office.

In 1996, an opinion poll was carried out for the magazine *India Today* (31.8.1996) by the Indian Council of Social Science Research and the Centre for Studies of Developing Societies. Under the headline 'Sustaining the Faith', Ashis Nandy (1996: 41) commented on the results of this national survey of almost 9500 respondents in 108 parliamentary constituencies as follows: 'The appeal of democracy has not faded in India. Indeed, it has deepened over the years. It now cuts across parties, educational levels, classes, castes, religions, gender, regional and ethnic divisions.'

The survey showed that, unlike in many OECD countries, the poor are more keenly aware of their right to vote than the rich. Nandy rates this as evidence that the weaker sections of society cherish anything that gives them an opportunity to influence their country's fate. Similarly, it has been noted (Kannabiran, 1996) that the poor in

¹⁸ The mockery of modesty expressed by rewarding politicians and top bureaucrats in kind rather than cash is to a certain extent reminiscent of feudal arrangements. Free (and comfortable) housing, transport and other facilities, rather than decent pay, go with public office. This also constantly blurs the line between what is public and private in the lives of political leaders and civil servants.

India are generally more aware of the potentially beneficial role of courts, police and other State institutions than those more privileged.

The detailed results of the *India Today* survey (Yadav, 1996) show that, generally speaking, relatively autonomous institutions of government enjoyed a greater legitimacy than the political parties, their leaders and the agencies directly under their control. The Election Commission and the judiciary gained the highest indices of popular trust. Both had been known for anti-corruption activism in the immediate past.

All summed up, the picture of governance in India remains ambiguous. Corruption, nepotism, violence and governmental lawlessness coexist with a fundamental democratic awareness of the people and a marked tendency to remove governments from office. India is, in the words of Rajni Kothari (1989: 290), 'neither a functioning democracy nor a functioning dictatorship but a tottering state structure controlled and exploited by parasites'.

Even a scholar of such deeply pessimist attitudes claims there is an alternative to what are perceived as downward-spiralling public affairs. Kothari bases hope on the emergence of genuine social movements (1984). Such initiatives, while not being linked to partisan politics in the narrow sense, tackle political issues just as new social movements in Western nations have begun to change political arenas. This, of course, is an expression of civil society becoming more assertive in confrontation with the State and can be read as a demand for rational debate and fair compromise in the public sphere.

Kothari points out that there are some inspired and well-meaning individuals within the State sector and the political parties (1989). He includes an activist judiciary among the assets of India's democracy. The most striking evidence for this trend so far has been the anti-corruption investigation led by the Supreme Court in the Jain Hawala, Jharkand Mukti Morcha, St. Kitts and similar cases (Ganguly, 1997). Criminal investigations into the activities of former chief ministers have had similar spectacular effects on state politics in Bihar and Tamil Nadu.

The assessment of governance in India reveals a mixed picture. There are symptoms of failure and signs of success. India is a case of rather pronounced dualism (Boeke, 1966) in which constitutional arrangements coexist uncomfortably with illegitimate power cartels prone to violent coercion. Democratic aspirations similarly go along

with traditional subaltern attitudes.¹⁹

India's democratic future is neither assured nor hopeless. Indeed, some of the current frictions can be read as phenomena that go along with a deepening of democracy. In other words, modernization might simply make India's dualism more apparent, which, of course, would not necessarily imply an erosion of the State structure. Malfunctions may thus be an expression of quasi-colonial continuity and not so much symptoms of deteriorating democratic institutions.

This distinction is highly relevant. The notion of eroding State institutions is dangerous as society-wide expectations of poor performance are likely to be self-fulfilling. After all, institutions are basically what people expect as day-to-day normality. Social activity within institutions is shaped by what is considered to be appropriate from past experience more than by ethical concerns or rational considerations (March and Olsen, 1984). In this sense, it seems advisable to warn against a depressing view of India's democracy that would blur the spectacular success of maintaining at least formal democracy in a multi-cultural and multi-lingual entity of one billion people.

An attitude of generalized suspicion tends to be reinforced to a large extent by day-to-day experience of the gaps between reality and constitutionally professed aspirations. The vast literature on government deficiencies, corruption and implementation deficits supplies ample evidence for mistrust. It must be spelled out, however, that similar malfunction symptoms are known in all representative democracies. India is not fundamentally different in this sense. Rather, the challenges in India tend to be more daunting.

This discourse concerning governance quality is ambivalent by its very nature. It can lead to higher expectations, but also to more profound disappointment. The debate about civic norms is at once a positive element in the struggle for a democratic public sphere and a worrying sign of the people's loss of faith. It needs to be handled with care.

With this in mind, the last section of this chapter shows that the theory of Indian communitarianism is problematic not only in an academic sense. Spreading skepticism in times of crisis might, after

¹⁹ Such attitudes are traditional in the sense of having been learned from one's elders. The school of subaltern studies has sufficiently made clear that these attitudes are products of colonial and feudal history. They are by no means to be considered unchanging or, even worse, unchangeable characteristics of Indian mentality.

all, exacerbate the crisis. In a nutshell, the theory emphasizes that representative democracy does not function well in India because of characteristics of its civil society. As will be elaborated, this theory misses some points of high sociological relevance.

2.5.2 *A Critique of Indian Communitarianism*

There have been attempts to explain symptoms of bad governance in India as consequences of the incompatibility of liberal democracy with prevalent attitudes among its people. Sarah Joseph (1997) calls this approach ‘Indian communitarianism’. She explicitly mentions Partha Chatterjee, Sudipta Kaviraj and T.N. Madan as representatives.

The concern these authors share with Western communitarians (e.g. Etzioni, 1995, 1996), according to Joseph (1997: 2517), is the attempt to counter ‘individualism and alienation of modern life by rebuilding community networks and restoring to people the sense of a shared moral universe’. The emphasis is on identities and, accordingly, solidarities being shaped by communities. However, there is a notable difference between Indian communitarians and the Western variety, who consider various communities to be indispensable for representative democracy rather than an obstacle to it (Etzioni, 1995, 1996).

In India, traditional, pre-modern allegiances are often considered the main problem plaguing the performance of the contemporary State. The argument is that ‘primordial loyalties which are woven around caste, religion, language and ethnic ties have badly affected the process of national integration, secularization and democratization’ (Gehlot, 1996: 11).

André Béteille (1997a, 1997b), who is not a communitarian, emphasizes fundamental ambiguities in the Indian constitution. The notions of ‘equality’ and ‘secularism’ do not conform with the Western concept of liberal individualism. Rather, in the name of group equality there is a reservation policy similar to affirmative action in the United States. It grants privileges to traditionally oppressed strata of society. Similarly, ‘secularism’ does not stand for government equidistance from all creeds and beliefs but rather for a guaranteed non-interference in the traditional practices of religious minorities. In this sense, the concepts of ‘equality’ and ‘secularism’ conform to a segmentally differentiated society but not necessarily to a functionally differentiated society.

Madan (1997) also distinguishes between different notions of secularism. He sees the anti-religious ideology favoured for instance by Jawaharlal Nehru as doomed to failure. This ideology in the long run resulted in the Congress Party granting the Muslim minority special rights, not out of special respect for this religion, but rather to appeal to the Muslim vote in election campaigns and to undermine the legitimacy of Pakistan's claim to be the exclusive nation state of all South Asian Muslims. Religious Hindu sentiments did not figure in such calculations and were resented as pre-modern by the governing elites of the Congress Party.

Such politics, indeed, did not reflect the idea of governmental equidistance from all religions. Rather, it manipulated communal feelings for supposedly secular policies. Madan points out that this attitude, in the long run, had to alienate those to whom religion is a core value in life. However, he sees a future for secularism in the sense of governmental equidistance from all religions in India. It would need 'rigorous rethinking and concerted action'. The gist of his argument is, however, not optimistic. Madan continues (1997: 263):

What is at stake is the very survival of the Indian State. Social backwardness in the form of a weakly developed sense of civic ties—the bond of responsible citizenship—that would moderate if not replace the divisive primordial loyalties of religion, language and caste, is indeed a severe handicap.

Madan (1997) and Kaviraj (1995) agree that fundamentalism is not an expression of traditional religious feelings. Both view fundamentalism as a politically motivated abuse of religiously defined identities. Their point is, however, that in the Indian context of dualism and weakly developed national identity, such abuse is very likely. Similarly, mobilization along linguistic or caste lines is expected to undermine responsive, democratic discourse.

Kaviraj (1991) points out a paradox: If the democratic state is expected to represent society, it cannot be an agent of revolutionary change transforming and reshaping society in a radical attempt to modernize, as was expected by many in 1947. The Nehruvian solution to this unacknowledged problem was centralized, top-down politics. Mahatma Gandhi's grassroots campaigns had opened up new channels of power. However, his approach of micro-level modernization, reforming the traditional fabric of Indian society from within, was not followed up in independent India (Parekh, 1995). The growing elites in Nehru's day planned to develop India according to

their line of thought. Mass participation in ongoing essential debates was not heard of. Instead, a small intellectual elite planned progress.

Consequently, the modernist discourse of the Indian elite was, and is, detached from the discourse of the lower strata of society, whose world view was shaped basically by exploitation, poverty and caste relations even after independence.²⁰ The conflict is exacerbated by the fact that the discourse of democratic modernization is held in English, the exclusive language of the urban elite. The discourse of traditional, irresponsible power structures, on the other hand, is held in the local languages (Kaviraj, 1995).

Kaviraj sees these two discourses as distinct and in constant conflict. His outlook for the future of India's institutional life is doubly bleak. On the one hand, he complains that 'the actual conduct of those in authority has tended in recent years to slide backwards towards a more historically "familiar" style of "irresponsible power"' (1991: 91). On the other hand, this comes as no surprise in a society where the vast majority of people have a stronger sense of belonging to their respective communal background than a sense of citizenship in general (1991: 33f):

If Indian politics becomes genuinely more democratic in the sense of coming into line with what the majority of ordinary Indians would consider reasonable, it will become less democratic in the sense of conforming to the principles of secular, democratic state acceptable to the early nationalist elite.

This perspective is, perhaps unwittingly, unfair. The blame is on the increasingly assertive lower strata of society. Power, however, still is largely with the elites who have dominated politics and the constitutional discourse. The upwardly mobile strata are behaving according to what they have experienced as governmental practice rather than to the official rhetoric. Kaviraj is expressing contempt for both aspects of India's dualism.

He dislikes the double standards of the elites and the apparently somewhat uncivilized assertiveness of the former outcastes. It does not become clear who would be the agents of positive change, nor why the oppressed strata of society are now in a position to raise

²⁰ Urban, English-speaking professionals do not necessarily share the world view of members of the same caste who live in the rural areas and whose prosperity depends on their land holdings (D.L. Seth, 1995). The discourse divide may thus cut clearly across community lines.

demands. This suggests a general frustration with representative democracy in India without, however, offering any viable alternative.

Partha Chatterjee (1990, 1995, 1997a, 1997c) argues along similar lines, but more radically so. In his view, a sense of solidarity stems from adherence to a particular community and not from citizenship of a nation state in India. The great conflict, as he sees it, is between communities and capital, not between State and civil society. Western-type democracy, according to his line of thought, is not possible in India. Rather, a new type of democracy suitable for communities should evolve. In Chatterjee's view, individual rights according to liberal constitutions undermine communities, making way for the unhindered sway of capitalism. Chatterjee's line of argument is problematic in several senses: It ignores the fact that communities are not only sources of solidarity but also sources of repression, of what Gellner (1995) calls tyranny of the cousins. Issues such as dowry deaths and domestic violence (Jethmalani, 1995) show that the issue of individual rights may be of great relevance within traditional communities.

Second, Chatterjee's argument is conventionally Marxist in the sense that the economic system is understood to control and dominate all spheres of social life. If, as systems theory suggests, modern society is the ensemble of several, interdependent but autonomous systems, then an overemphasis on the economic sphere is bound to distort social analysis.

Finally, the concept of democracy based on communities rather than individual rights does not seem pragmatic in any implementable sense. Its meaning remains unclear. Sarah Joseph (1997: 2523), therefore, criticizes Indian communitarianism:

To give importance to communities without at the same time confronting the need for greater democratization of communities and state and without expressing commitment to egalitarian ideals could send all the wrong messages about what is needed to strengthen inter-group tolerance in our society.

While this argument is one of political correctness, Sarah Joseph also points out correctly in terms of scholarship that Chatterjee's reasoning goes against the grain of western communitarian theory as expressed by Michael Walzer or Charles Taylor. According to them, strong, self-reliant and responsive communities are indeed the lifeblood of liberal democracy.

Etzioni (1996) challenges the neoliberal notion of individual citizens maximizing their personal benefits, rationally choosing those options that serve them best without concern for others. Instead, he stresses the fundamental human need to adhere to communities such as family, neighbourhood, religious group and profession. Such communities are seen as instances of support for the individual on the one hand, but also as enforcing a sense of responsibility and moral integrity. Communities both protect and oblige their members.

If such communities adhere to modern concepts of liberal democracy, they should be in a position to safeguard the normative framework and sustainability of the public sphere. Etzioni (1995) suggests that such communities must be the backbone of democratic problem solving, under the condition that they respect the fundamental rights of one another and of their respective members. Western communitarian discourse focuses slightly more on informal than on formal organizations. As participants in the public sphere, of course, the latter are considered important expressions of professional, religious, regional, linguistic and other communities. Active adherence to particular communities is open to choice, but adherence to some communities is indispensable, according to Etzioni.

The big question one faces when applying this concept to India is whether Indian communities can be termed 'responsive' in Etzioni's sense. It is undisputed that communities put considerably more pressure on their members in India than in more individualized Western countries. Also, it appears doubtful whether these communities principally respect the rights and existential demands of other communities. In many ways, the Indian polity seems to resemble more an all-out war of all against all. Indeed, Etzioni states that while Western democracies need less individualism, Asian societies may need more emphasis on personal freedoms.

Communities in Etzioni's sense are less strictly segmented than they are in Chatterjee's. Also, they are not seen as opposed to liberal democracy or to the rule of law based on individual rights. Rather, responsiveness of the State is seen in relation to responsiveness of communitarian structures. This implies a circular reasoning: State structures need to be controlled and balanced by a vibrant civil society in an interactive public sphere. In turn, power differentials within the community must be mitigated by the rule of law.

Under the condition of adequately responsive government, there is no apparent reason why Indian communities should not be able to adapt in the course of modernization. Indeed, during my research, I have not come upon traditional communitarian sentiments obstructing liberal democracy. Rather, in the particular context of Calcutta, it is the institutional set-up of governance that does not allow coalitions of various interest groups, associations and community organizations to thrive. The polity is not based on a critical public sphere and a sense of democratic, deliberative, trustworthy discourse.

In principle, this should be possible, particularly in view of the fact that Indian community divides were originally fuzzy. They hardened only with British enumeration, imposed by the colonial decennial censuses (Kaviraj, 1991). Strict segmentation is thus seen as a result of foreign divide-and-rule strategies. Indeed, even today there are authors who consider communal riots in India to be the expression of modern manipulative politics at least as much as the expression of irreconcilable rifts in Indian's social fabric (Brass, 1997; Nandy, 1997).

In general, not even the respective monopolies of competing religious truths are argued to be that rigid. All Indian religions have traditions of tolerance (Madan, 1997; Nandy, 1997). Moreover, Hinduism is not a single, monolithic, codified religion. Rather, the term itself is a residual category, originally covering all the religions east of the Indus river, such as Shaivism and Vaishnavism (Kaviraj, 1995). Such arguments suggest that, at least theoretically, greater responsiveness in Etzioni's sense is imaginable among India's many communities.

There are also benefits derived from the fact that socio-political identities in India are grounded on several, often overlapping factors. James Manor (1996) adds the general divide between North and South as well as regional, class, educational and occupational characteristics to the conventional categories of caste, religion and language. He stresses that 'tensions do not become concentrated along a single fault-line in society' (p. 463), as many of these categories cut across one another. Accordingly, the multiplicity of identities lends itself to mainstream accommodationist politics. There is, thus, a potentially sound basis for a network of overlapping, responsive civil society organizations.

It must also be emphasized that the arguments of Indian communitarians revolve around patterns of cultural understanding of

oneself and of one's social surroundings. Unlike in Sandbrook's theory of the downward spiral because of a functionally overburdened State that allows strongmen to play the ethnic card in Africa, in the Indian context there always seem to be alternative possibilities for the definition of politically relevant identities.

It is also worth stressing that the literature of Indian communitarianism does not have to be read as an expression of an irreconcilable clash of communities with Western-type individualism. Rather, it can be seen as an assessment of the difficulties stemming from the difference between functional and segmental differentiation. The concern is typical of a dualist society. There is a tension between inherited attitudes and functional requirements defined by market economy and representative government.²¹

This tension does not have to lead to a collapse of the political system if communitarian attitudes were to change in an evolutionary process of adaptation. In the words of T.N. Madan (1997: 275), 'whatever is difficult is not impossible, but it is important to recognize the difficulties as far as possible in advance'. Indeed, to a certain extent Indian communitarians are running the risk of throwing out the baby with the bathwater by aggravating the crisis discourse without indicating any clear strategy of alleviation.²²

If my findings can be generalized, a healthy adaptive process is made less likely by a governmental set-up that is unresponsive and does not allow trust to evolve in a democratic public sphere. Indeed, as the scrutiny of cases of public interest litigation in the rest of this book will show, administrative bodies are a serious impediment to a democratic public sphere. The reason is that they do not allow actors of civil society much scope for responsive interaction, neither among one another nor with the State.

This chapter has introduced a distinction between the terms 'civil society' and 'public sphere'. It has elaborated why both are indispensable for democratic governance and in what sense neoliberal and leftist positions are converging in this respect in recent

²¹ To a great extent the tension exists in all liberal democracies. As has been discussed above, all nation states are under constant modernization pressure. Again, the challenges are plainly more daunting in India.

²² The related subaltern studies school does something similar; by emphasizing undeniably destructive historical roots of subaltern, un-democratic attitudes, this paradigm unwittingly becomes a source of legitimating an unsatisfying present as a presumably inevitable consequence of a dark past.

development debate. In India, we have seen that there is a potential basis for a vibrant civil society in the form of a multitude of different but overlapping dimensions providing identity (e.g. language, region, religion, caste, profession). However, the undeniable existence of illegitimate and irresponsible power cartels shows that by no means is all well with the public sphere. Democracy in India is neither totally eroded nor firmly established beyond any doubt.

The issue of the public sphere will be further debated in the remainder of this book. Chapters 3 and 4 examine the changing role of India's judiciary and the emergence of environmental policies. This discussion will set the stage for the empirical findings.