

# The Journal of Governance

Volume 3

July 2011



IC Centre for Governance  
NEW DELHI

## **The Journal of Governance**

IC Centre for Governance

Niryat Bhawan, Rao Tula Ram Marg, New Delhi-110057

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The IC Centre for Governance has been set up in with the objective of collective thinking and acting, on important issues of governance. It believes that public governance is too serious a matter to be left entirely to the state and that the involvement of the Civil Society is not only desirable but also essential. The centre seeks to strengthen the capacity of Civil Society and government for ensuring good governance.

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The Journal of Governance is printed and published by Mahesh Kapoor on behalf of the IC Centre for Governance. New Delhi-110 0057

Printed at Rakmo Press Pvt. Ltd. C-59, Okhla Industrial Area, Phase I, New Delhi-110020

This issue of the Journal has been sponsored by **BENANI METALS LTD.**

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## EDITORIAL

*Laws are like sausages, it is better not to see them  
being made.*

*Otto von Bismarck*

These days there is much confusion in public discourse about the nature and role of the civil society vis-à-vis governance. Since there is no formally accepted definition of civil society, each commentator assumes the liberty of airing his/her views to the great delight or bewilderment of the common man.

The civil society they say occupies the space between the state and the market. It relocates the discourse on public issues and demands accountability of the state apparatus and responsiveness of the market forces.

It is also said that while the logic of politics is power and while the logic of the market is profit, the logic of civil society follows the collective consciousness of the people. It is not static, but continuously reinvents itself and finds new agenda. Unfortunately, the detachments of civil society one sees here generally follow either the logic of politics or that of the market.

We intend to stay away from definitions. And from accusations. What is perhaps more relevant in the current controversy is to think about the means to end corruption rather than to score brawny points. That a beginning has been made in this direction thanks to the movement led by Anna Hazare is clearly laudable. The wishes of the civil society have been well articulated in the form of Jan Lokpal Bill. But it goes without saying that laws are made by the State following constitutional norms. It is not job of the Civil Society to make laws. Therefore, from here it should be the responsibility of the government to give legal shape to the wishes of the people, and it is equally legitimate for people to agitate if their wishes are not carried out. The respective roles should not be muddled.

There are serious allegations and counter allegations between the representatives of the government and those of the 'civil society' on each other's intentions. Calling names was never so vicious in our memory. It is hilarious to label one side as 'cheats and liars' and the other as 'unelected and unelectable tyrants'. In the resulting cacophony, the issue is likely to be lost.

The IC Centre does not concur in all the provisions of the Jan Lokpal Bill. Having participated in deliberations with Hazare Group and National advisory Council, we are of the view that Judiciary must be kept out of the purview of the Act. Its actions should be subject to judicial review. Otherwise there would be a possibility of the Lokpal morphing into an unbridled monster. There should, however, be a separate stringent Judicial Accountability Act to provide for corruption in the judiciary.

Since it would be a very sensitive and far reaching legislation, we believe that Lokpal should remain focused on corruption. It should not get involved in the business of running the government or to remove inefficiencies of the government. There are other institutions and structures, which may also need reforms, to deal with grievances and misconduct against those in authority.

The two vital functions of the Lokpal viz. prevention of corruption and education of the people regarding corruption have not been given the importance they deserve in the scheme of the Jan Lokpal Bill. The Lokpal should have a three fold strategy; enforcement of laws relating to corruption, corruption prevention and community relations.

It should be the statutory duty of the Lokpal to examine the practices and procedures of government departments and to secure revision of methods of work. It should prepare Best Practice Tool Kits for public sector organizations. Even for the private sector organizations, it should provide practical guides for ethical conduct.

The Community Relations Committee of the Lokpal should be responsible for educating public about the ills of corruption and enlisting their support in anti-graft activities.

Finally, the Joint Drafting Committee should invite Constitutional experts and other eminent scholars to participate in the final drafting of the Bill to ensure the feasibility, practicability and Constitutional validity of every provision.

Incidentally, the present issue of the Journal was not intended to be a theme based issue, but due to the ubiquitous public discourse on corruption, it has emerged as being largely centred round corruption in government. In future we would try to occasionally bring out special issues devoted to particular subjects.

***Prabhat Kumar***

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Prem Shankar Jha

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## ***How did India Become a Predator State***

On April 8 2011, when Anna Hazare's fast forced the government to accept the need for a Lokpal with real teeth, civil society won a battle that could change the future of the nation. But a single battle seldom decides the outcome of a war. A month after their initial success, its activists have yet to realise that what their victory has triggered off is a war. It is a war they could easily lose if they do not identify not just who they are fighting against and what they are fighting for.

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

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

reducing the area within which a democratic consensus can evolve between the reformers and the government.

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

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

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

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

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

### **Ban on company donations**

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

The oversight could have been remedied with a constitutional amendment at a later date, but instead, in 1967, Mrs. Indira Gandhi took the country in the opposite direction and choked off the only legitimate source of funds

had sprung up in the intervening years. This was the donations from corporations that all parties except the communists had begun to depend upon.

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

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

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

### Article 311

The Constituent Assembly was guilty of another, unpardonable, oversight. This was its failure to realise that

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

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

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

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

But the civil service remained unfazed, and tried to extend the scope of Section 19 to cover even retired public servants. Luckily, the amendment was not ratified by the Rajya Sabha even though it was passed by the Lok Sabha.<sup>2</sup>

### **The birth of the predatory state**

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

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

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

A corollary to this has been the rise of the so-called 'princelings'—a second generation of political leaders in Indian politics who have inherited and not earned their places in Indian politics. In western democracies, when a long term member of the Parliament, National Assembly or Congress dies, the party chooses his or her successor, usually on the basis of his or her standing in the constituency. In India, the death of a senior politician, triggers a rush by party members from the constituency to Delhi or the state capital to make sure that there is no contest within the party for the vacant

seat, and that the dead leader's son or daughter is nominated to take the parent's place. They do this because, sentiment apart, this is the best way of making sure that the network of financial and other relations upon which their personal fortunes rest, is not disturbed.

The final act in the closing of access to power within Indian democracy was taken, again by a Congress government, on the recommendation of former Maharashtra Chief minister A.R. Antulay. Antulay had remained, throughout, somewhat outside the crony-criminal network that the perpetual need for money had spawned. When he became the chief minister he therefore hit upon a novel way of building up the trust fund needed to ensure freedom from financial want as he fought one election after the other. His stratagem was to create a trust of which he was the sole executor, to which any Mumbai builder who wanted an allocation of cement at the then fixed price of Rs. 12 a bag of 50 kgs, had to contribute to the trust a sum of Rs. 40 (the black market price of cement at the time was around Rs. 60.) because this was a registered trust the scam soon came to light and Antulay was forced to resign. When, some years later the Congress resuscitated him, it was as a one man committee to propose reforms of electoral finance! Antulay suggested that each MP should be allocated a discretionary quota of Rs. One crore worth of plan funds to disburse on projects within his constituency. On paper the power was hedged with elaborate safeguards to prevent misuse but in practice there is no effective monitoring of how the money is spent and whether the projects to which it has been allocated actually exist outside the paper on which they are described. This opened the floodgates for the consolidation of personal power and wealth through the appropriation of public funds. The state assemblies lost no time in following the lead given by the centre, and as prices (and greed) rose, the allocations were steadily raised. In March 2011 in the middle of the crisis caused by the 2G scam, the Manmohan Singh government raised the MP's discretionary development funds from Rs. 2 to Rs, 5 crores. The state assemblies promptly followed suit and raised MLAs' quota from Rs. 1 to Rs. 2 crores. In all this has bestowed Rs 7,000 crores a year on the MLAs and Rs.

4,500 crores on the MPs. In a five year plan period this has diverted Rs. Rs. 57,500 crores from public agencies to wholly unaccountable private individuals. This has not only formalised economic predation, but further strengthened the feudal bonds in which India's political elite has bound the nation.

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

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

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

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

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

### The criminalisation of politics

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

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

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

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

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

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

Today India's criminal class is firmly ensconced in its parliament and state assemblies. 155 out of the 544 members elected to the current Lok Sabha are facing serious criminal

indictments in their home states and cities. The ratio of members with criminal records is much higher in the state assemblies: 44.6 percent of the persons elected to the Bihar assembly in 2011 were facing similar criminal charges at the time of their election. In the May 2011 state elections 75 MLAs of West Bengal, 36 MLAs of Tamil Nadu, 8 of Assam and 2 of Puducherry have declared serious criminal cases pending against them including charges of murder, kidnapping and extortion<sup>5</sup>.

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

Over time, the two types of clientelist networks have merged. This is most clearly visible in the Shiv Sena in Mumbai, whose leader, Bal Thackeray, has openly admitted that that many of Mumbai's most notorious dons, like Arun Gawli began life as members of the party but then as he put it, 'went the wrong way'<sup>6</sup>.

#### **Four stages of its growth**

The transformation of what began as a developmental state into a predatory one has taken place in four stages. In the immediate aftermath of the ban on company donations, the Congress party's fund managers also found themselves at a loss for where to raise the money to fight elections. In the 1971 Lok Sabha and 1972 State Assembly elections they therefore went back to the same companies and trade organisations from whom they used to accept tax-deductible cheques in the past, and demanded cash. Although most of them complied, they did so unwillingly. Raising money to meet electoral and administrative expenses therefore became more difficult than it had been before. But the gap was filled

by owner-managers of small and medium sized enterprises and trade associations, which had earlier played a minor in funding politics. One result of this was a diffusion of the sources of party funds, and a relative shift in the balance of financial power within the Congress party, from the national towards the state units of the party. This came back to haunt Mrs. Indira Gandhi till her untimely death in 1984.

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

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

for crippling even the legal and regulatory framework that it had inherited from the British.

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

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

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

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

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

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

The loss of money is, however, the least part of the harm that the institutionalisation of kickbacks has done. Kickbacks take time to negotiate. This has meant escalations in cost and

a loss of invaluable time. The last is unforgivable in defence contracts because it has left the country vulnerable for long periods while the kickbacks are being struck. For instance both Pakistan and India decided to equip their armies with 155 mm howitzers at more or less the same time in the late seventies. The Pakistan army got its guns by the early eighties. The Bofors deal was only finalised in 1985.

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

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

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

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

State governments in particular, have taken advantage of this by developing a stratagem for extracting money from projects that only Indian ingenuity could have dreamed up: they chop up large projects into numerous smaller parts in the name of preserving competition, and invite separate tenders for each part. This allows ministers and bureaucrats to award contracts to small companies without the capital

base, equipment or track record required to qualify for large projects, but willing to offer almost anything in return for getting a piece of the cake. Highway projects and, more recently, a trash of tiny solar power projects are the most obvious examples of such parsing for profit. The cost, in terms of delays, inflation and shoddy work can be judged from the fact that the 'Golden Quadrilateral' highway project, to link Mumbai, Delhi, Calcutta and Chennai, started by Prime minister Atal Behari Vajpayee in 1999 with the express purpose of providing a fiscal stimulus to the Indian economy after two years of recession and intended to be completed by 2004, is not even half completed in 2011. What is more, it is incomplete because there were unfinished portions in each and every section of the four Highways! By contrast, Chinese companies have built 1000 kms of four lane highways that measure up to European specifications in Kenya, and another 500 kms of high grade two lane roads, in just three years.

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

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

parishads and the Rural Development Agencies sign every year. The true estimate of the sums being 'scammed' every year is several times larger.

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

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

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

industry, commerce, energy, the railways, telecommunications and civil aviation have gone to the coalition partners.

### **Preying upon the poor**

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

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

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

15 percent of the funds intended for the poorer sections of society ever got to them.

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

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

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

### **The cooptation of the bureaucracy**

Needless to say, none of the above stratagems for capturing and retaining political power would have worked

without the willing or unwilling connivance of the bureaucracy and the police. Politicians have needed the connivance of State, Central and All-India services officers to facilitate the receipt of kickbacks, cite regulations and precedents where necessary, and put the gloss of public interest upon the most private of transactions. And they have needed the connivance of the police to protect the suppliers of muscle power for local and state level elections. Article 311 of the Constitution has not only removed the single main threat to their connivance with their political masters, but it has also made it fatally easy for them to go into the business of extortion on their own. Today, there is hardly a transaction between the public and the State, whether it is the collection of one's pension, one's income tax refund, one's ration or BPL card, the passage of an architect's plan or receipt of a 'completion' certificate after the construction is completed, the registration of a property sale, the payment of the stamp duty, and the renewal of a license, no matter what it is for, that does not require the payment of a bribe – more strictly an extorted 'price' – to a petty civil servant.

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

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

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

to remote areas, and with it the loss of prestige and the hardship of removing children from good city schools.

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

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

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

### **The mature clientelist state**

The two charge sheets filed by the CBI in April contain a wealth of supporting information that has exposed, for the first time the vast reach of the crony network that has been built over the last four decades to sustain the Predatory state. This stretches from Dubai and Lichtenstein, to Singapore,

from Chennai to Delhi, from the metropolis to rural villages and tehsils, and from cabinet ministers to criminal dons currently residing in Dubai and Pakistan.

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

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

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

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

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

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

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

Greenhouse Promoters had a similar meteoric rise in Chennai, for similar reasons. Early in his career as a local lawyer in Perambalur, Tamil Nadu, A.Raja once defended a young man who had a small business in rural Karur district, buying plots of land with margin payments and completing the payment when he sold the land to someone else. His name was Sadiq Batcha. Batcha had sought legal help when some

of his deals went sour. This became the foundation of an extraordinarily lucrative partnership. When Raja later entered politics, he seems to have begun to feed Batcha with information about where the government intended to buy land for new projects in the area, for whenever the government announced a project in the neighbourhood of Perambalur, Raja's constituency, the land had already been bought by Batcha and had to be acquired from him at a much higher price.

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

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

Much of what has appeared in the media is, nonetheless, still conjecture. Ambani may not have known about DB

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

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

The public also knows that the 2G scam is one of not hundreds but thousands that take place every year. It cannot therefore be blamed for concluding that the Indian state today

bears not even a passing resemblance to the nation that Mahatma Gandhi and Pandit Nehru had tried to found, for in it nothing is sacred any more, except the relentless accumulation of money for personal and political gain. Coming on top of Bal Thakre's remark, which was quoted earlier, Niira Radia's casual reference to Pawar's personal interest in DB Realty could complete the destruction of peoples' faith in the Indian State.

### Is reform even possible?

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

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

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

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

#### A State fund for elections

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

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

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

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

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

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

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

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

### Removing article 311

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

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

The key requirement – the goal – of this reform must be the complete insulation of the applicant from the decision-

making officer. This requires no great feat of innovation for it is the norm in advanced democracies, notably the US. It has also made considerable inroads to government practice in India. Mainly through the use of computers to make online procedures of taxes, fees and bills and reservations in the railroads and airlines.

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

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

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

### **Conclusion**

Once article 311 has been abolished enforcing accountability within the bureaucracy will become relatively easy. Despite fifty years pressure to fall in line, there are a surprisingly large number of civil servants who have managed to remain honest, even at the expense of their careers. There is a much larger number who have complied with their

political masters' bidding only reluctantly, and there are still others who have fallen prey to temptation only once or twice, mainly to hedge the uncertainties of imminent retirement. The change will be speeded immensely if the Lokpal is given the *suo moto* powers that the civil society leaders are demanding.

But corruption will not really come down till it becomes politically insignificant until the political system is reformed, and the starting point for that is the creation of a state fund for financing elections. But how large must this fund be? The answer is as large as is needed to completely free the leaders of all recognised political parties from the need to depend upon crony networks of politicians, financiers and criminals, to win elections. Forty years ago some of us had estimated, on the basis of the cost of elections at that time that a fund of Rs 100 crores a year— 500 crores per election cycle, would have sufficed. Today, with the separation of central from state elections, Rs. 2000 crores would be a minimum requirement. Is this too large a sum? The answer is that it is one tenth of one percent – ten paise out of every hundred rupees — of the combined revenues of the central and state governments in 2009-10. A comparison that is more relevant, because of the light it sheds upon the representatives we have chosen to govern us , is that this is one sixth of funds that MPs and MLAs have allocated *to themselves* to spend at their discretion every year on development projects in their constituency and elsewhere. In sum we have a political elite, which includes every prime minister, chief minister and party president we have ever had that feels no qualms about forcing us, the taxpayers, to give a Taslimuddin or a Hari Shankar Tiwari, and about 1,400 of their criminal colleagues, a guaranteed income of Rs. 2 to 5 crores a year to keep themselves in power, but considers spending a sixth of that amount on a measure that will break their power, too expensive to justify.

History has shown those who bother to consult it, that no State that loses its moral moorings lasts very long. The teachings of Confucius and his disciple Mencius allowed the Chinese State to develop the concept of the *Tien* – the

mandate of heaven — which rested upon the ruler only so long as he trod the path of virtue.

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

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

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Notes:

- <sup>1</sup> This provision can also be traced back to British constitutional practice, albeit a highly contested one. As the British Crown is the source of legitimacy for all law in Britain it is, of necessity, above the law. But the Crown operates through its servants. Does this mean that they too are above law when carrying out the sovereign's orders? This immunity was contested by the British Parliament with increasing vigour for nearly a hundred years from the rule of William and Mary at the end of the 17<sup>th</sup> century till that of George III a century later and ended with a typical messy British compromise. While individuals cannot bring charges against the state in a court of law, they can do so against civil servants in their personal capacity for the manner in which they perform the duties given to them by the State.
- <sup>2</sup> This would have completely undone a judgement of the 2006 Supreme Court in which it held that Section 19 of the Prevention of Corruption Act, 1988, did not protect former public servants. See The web of corruption - Centre must take the bull by its horns by G.P. Joshi & Maja Daruwala, The Tribune, 16 January 2011.
- <sup>3</sup> It may have been Congress party treasurer Atulya Ghosh's moan of complaint in December 1966 that the party had till then received only a third as much in donations as five years earlier, that triggered the ban on company donations.
- <sup>4</sup> I Obtained this insight from a discussion with H.N. Bahuguna, at the Indian Express guest house in Chennai in the summer of 1980. Its full significance dawned upon me only after the outbreak of the Khalistani insurrection in Punjab, in 1983.
- <sup>5</sup> National Election Watch newsletter, may 16, 2011. See ADR India [adr@adrindia.org]

- <sup>6</sup> Bal Thakre reportedly said “ If they have Dawood, we have Gawli”. By ‘they’ he meant the Congress.
- <sup>7</sup> In Tamil Nadu, for instance, a decision taken by the AIADMK government headed by Jayalalithaa, after it came to power in 1991, not to refund the ten percent ‘earnest money’ that it took from prospective investors, led to a sharp fall in the rate of private investment in the state between 1991 and 1996. The indignation this caused as Tamil Nadu slipped rapidly back in the industrialisation race, was partly responsible for the AIADMK’s resounding defeat in 1996. .
- <sup>8</sup> This came spectacularly to light about a decade ago when an aspirant to the position of the chairman of the Vishakhapatnam Port Authority, who got the job of deputy insisted on returning the money he had borrowed and got caught while trying to raise it.
- <sup>9</sup> Broken System Human Right Watch report on Indian Police, August 2009.
- <sup>10</sup> National Crime Records Bureau, Ministry of Home Affairs, “Crime in india 2007,” <http://ncrb.nic.in/cii2007/home.htm> (accessed March 28, 2009). Quoted in the Human rights report cited above: Broken System : Obstacles to Police Accountably

Vinod Rai

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## ***Corruption free Governance***

**T**he concerns on governance and in fact corruption free governance are not new. I would like to mention the speeches made by important dignitaries on the midnight that India gained independence. While we are all familiar with the much talked about “Tryst with destiny” speech of Shri Jawahar Lal Nehru, I would like to refer to another speech made at the same time. Speaking on the occasion Dr. S. Radhakrishnan our first Vice President, a great visionary and statesman said:

“Our opportunities are great but let me warn you that when power outstrips ability, we will fall on evil days. We should develop competence and ability which would help us to utilize the opportunities which are now open to us. From tomorrow morning – from midnight today – we cannot throw the blame on the Britishers. We have to assume the responsibility ourselves for what we do. A free India will be judged by the way in which it will serve the interests of the common man in the matter of food, clothing, shelter and social services. Unless we destroy corruption in high places, root out every trace of nepotism, love of power, profiteering and black-marketing which have spoiled the good name of this great country in recent times, we will not be able to raise the standards of efficiency in administration as well as in the production and distribution of the necessary goods of life.”

Concerns regarding corruption in public dealing continue to occupy the public mind. In a survey conducted internationally in 1964, about most commonly used words in selected countries of the world: the findings for the US was “John Kennedy” (that is probably because he had been

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*The Paper is based on the talk delivered by the Author on Feb 18, 2011 at the India International Centre.*

assassinated a few months earlier). The finding for India in the same survey was: “Bhrastachar”. I am quoting this only to emphasise that concerns regarding probity in public life have continued over the years. In fact if we go much further back in the history of India, Kautilya has made the following observations in the Arthashastra.

“Just as it is impossible not to taste honey or poison that one may find at the tip of one’s tongue, so it is impossible for one dealing with government funds not to taste, at least a little bit, of the King’s wealth.

Just as it is impossible to know when a fish moving in water is drinking it, so it is impossible to find out when government servants in charge of undertakings, misappropriate money.”

Nevertheless, these were observations made by a statesman who observed and participated in public life and made their perceptions on the situation obtaining then. Today’s level of probity in public life certainly paints a far more dismal picture. We confront situations of the kind when:

A Chief Minister of a mainstream state is arrested for amassing wealth totally disproportionate to his sources of income and owning mines and other entities abroad.

When in the context of allegations made against a Chief Minister of a Southern State his own party President has observed that his actions were and I quote “not illegal but immoral”.

We have the most startling experience of bags of currency notes being placed in the table of Parliament and 11 Hon’ble Members of Parliament proceeded against for having accepted cash for asking questions in the House.

When officers in the Civil Service and Public Sector are caught red handed with ill gotten gains.

While we were familiar with expressions such as revenue deficit, fiscal deficit and current account deficit, we are now being sensitized about deficit of trust and governance deficit. If all this is not depressing enough to the normal Indian psyche we have a senior Minister pointing towards a deficit

in ethics in Government. This truly drives the last nail in the reputation of the quality of public administration in India. This is where we stand today.

It is also very interesting to observe that various models have been deployed by those seeking to gain from devolution of public moneys. The traditional method has always been seeking a share out of works or purchase contracts. Later there were leakages from government project funds which compelled a former Prime Minister to remark that he suspected that only 17% reached the targeted population. Subsequently a more sophisticated model was developed privatization /disinvestment of public sector entities. We hastily commenced on this model without gaining knowledge on how best government interests could be protected. Yet another improvement on this was through approval of Public Private Partnership concession agreements - a model projected as the ultimate panacea for all our physical infrastructure creation. Projects for Airports, Ports, Power Plants, Road and Dams fell a prey to this model. The ultimate super sophistication on all these models has been the lease or auction of Public goods such as airways or gas wells to private entities on revenue share terms which are most unevenly devised.

It is indeed most ironical that whilst on the one hand India is poised to be one of the most robust economies in the world and prepares to be counted as a super power, the quality of our governance has fallen to levels to which I have mentioned earlier.

The issue of corruption has been addressed on the basic premise that governments are designed, to, and should be interested, and determined to fighting this evil in our society. However, I place the proposition that the time has come when we need to recognize the fact that this mindset has failed us. If we have to fight corruption we need to look elsewhere. I wish to place before you the proposition for the participation of civil society in Government programmes and how such participation is critically linked to good governance and effective delivery of Government services. I also wish to add how public oversight of such delivery channels would add

value and not hinder the process of delivery. In the vein of public participation I would also like to show how social audit can improve the processes of Government spending and thereby increase accountability.

In this context, I advocate a major paradigm shift – a shift from the old paradigm of Government action and civil society inaction, to one wherein the ultimate stakeholder, which is civil society at large, takes on to itself, the responsibility of cleansing the quality of governance. I suggest that civil society organizations no longer remain passive and expect Government to fight corruption, because this does not seem to be happening and probably will never happen. It is for us to recognize the reality and take positive action with the empowerment provided by the Parliament. We can no longer continue to deceive ourselves that it is the duty of the Government of the day to fight corruption and indeed see them fail. We need to be content that in the new paradigm the responsibility of Government becomes that of enacting law and that of the citizens, civil society groups, opinion leaders and the media, to ensure the enforcement of these legislations. In doing so we will all be providing an element of vigilante which will keep government on its toes. There is already considerable pressure and media glare on Government functionaries making them aware that they live and function in glass houses that all their actions have to be transparent and the public can hold them accountable for acts of misdemeanor. We have media as an invaluable asset of our democracy. A free and vibrant press, which is on overdrive at times, does act as a force multiplier in this paradigm shift.

The Indian economy has established its predominance in the international arena. It is very reassuring that our vibrant democracy has delivered such an impressive growth. The resilience displayed by the private sector in economic development and the political stability in the nation is also a remarkable example of freedom and equality for all within the country. We seek double digit economic growth coupled with good governance which would ensure leakage free delivery systems for flagship programmes of Government

thereby facilitating, inclusive growth. The country has displayed an un-paralleled capability, and demonstrated even in the international fraternity, that growth with equity is not only feasible, but achievable, and hence desirable. The Parliament has already created an enabling legal environment to empower the public to fight corruption without fear of victimization through legislations such as the Right to Information and the Whistle Blower Acts.

The Government has launched massive programmes for generating rural employment, rural incomes and rural infrastructure. There are flagship programmes of the federal Government for which in the current year roughly Rs. 90,000 crore would be devolved through Panchyati Raj Institutions, Public Private Partnership Projects and a large number of non-Governmental organizations. These programmes do not fall within the automatic legal mandate of the CAG audit. The common man has now gained access to Government records through the RTI and the media has become a powerful and effective tool to create a culture of accountability. I feel it is incumbent upon us to partner with Government, and other institutions empowered by Government for generating economic activity, to ensure more effective delivery and better outcomes of such programmes. There is adequate evidence in states to indicate that where there has been participation of civil service organization and social groups, the delivery of such programmes has been more effective.

I wish to mention about the Mazdoor Kissan Shiksha Sangathan which has played a very constructive role in Rajasthan. This programme, compelled the Rajasthan Government to introduce its own RTI Act in 2000 itself. In a little over a decade this organization has developed into one of India's most potent social justice movements. The organization is a union of peasants and workers and has successfully demonstrated the power of information as an effective tool to enable citizens to participate in governance. The programme is very well designed and has five elements viz., gathering information, collating information, distributing information, public hearing and follow-up. The programme

is commonly referred to as the “Jan Sunwai Programme”. It has achieved remarkable results, often in the face of bureaucratic apathy. In the Jan Sunwai, the officials are confronted with factual information gleaned from Government files. There are any numbers of instances where corrupt officials have been forced to return illegal gratification cornered by them for discharging their routine duty. The programme has evinced remarkable deterrence in leakage of Government moneys purveyed through formal and informal channels. It has also compelled the Rajasthan Government to introduce aspects of social auditing within the local governance processes. The programme has been successful in introducing a radical change in the institutional space provided to citizens to scrutinize public spending in rural areas. Another example is the programme of “communitization” in Nagaland. Started about 10 years back, this programme has achieved remarkable success in the education and health sectors. Communitization has helped improve these basic services through participation and ownership by the user community and revitalization of dysfunctional and decadent health service by improving staff attendance, medicine distribution and even timely disbursement of salary.

We are all familiar with the theory of fortune at the bottom of the pyramid enunciated by late Dr. C.K. Prahlad. About 4 billion people constitute the fourth tier of that pyramid and 15% of this fourth tier live in India. This is roughly 600 million people. Considering that India has successfully transformed its huge population base into productive human capital and where about 54% of the GDP is contributed by the service sector, it is evident that these people are no longer a burden on society. They need to be empowered to be resilient value creators and conscious consumers. It is thus imperative that a national effort is launched to develop and strengthen the accountability architecture from grass root organizations upwards, in a manner which is commensurate with the increasing value of fiscal transfers to grass root bodies. It is in this direction that informed citizens and civil society groups of the kind, can help in providing vigilance over Government departments and the

official machinery, to ensure that funds do reach the targeted strata of the population.

The Constitution makers have put in place a very well designed architecture for auditing. However, it needs to be recognized that such architecture is beset with limitations and infirmities. The formal structure has limitations in tracing the rupee from the Government Treasury to its ultimate destinations. The Audit department is reaching out to seek a partnership with civil society to provide an effective architecture of social audit. Such a model whether in Nagaland, Rajasthan or Kerala has delivered very effectively. Quite often Government audit has neither the sectoral professional competence, knowledge of local areas nor the numbers to ensure intensive audit of Government funds deployed in the social sector at every grass root level. We have partnered with social action groups to give us that last mileage to ascertain whether institutions such as PHC, Primary Education or Drinking Water Programmes are in fact functioning in areas where funds have been deployed for them. Informed social action groups have helped us initiate public dialogue and scrutiny. They help examine the local relevance of spending, process and asset creation thereby establishing the essentiality of public spending. They have often helped devise local innovations and micro solutions and have helped to factor in checks and balances at the village level.

One significant infirmity in Government audit is the fact that there is no time limit within which the executive must render answers to the queries sought by audit, whereas the common man, under the RTI, can obtain any information from Government within 30 days. There is no such stipulation for audit. Hence the reason for huge delays. We are seeking to overcome such delays and have suggested to Government certain modifications in the existing Audit Act. We have undertaken positive reporting such that it is not only faults in the delivery channels that we point out but also improvements and best practices. Since audit has the benefit of holistically observing a Government programme, it can disseminate best practices where it observes them. In fact to be able to reach out to media, civil society organizations,

educational institutions and such other informed public agencies we have introduced a new series of micro Reports for distribution.

Most of us embody certain very vital social concerns and are passionate about upgrading governance, being totally distraught by the corruption and infirmities that have crept in to the functioning of Government. It is in this context that the proposal to establish an Anti Corruption Commission is laudable. The Chairman should be a Constitutional appointee with the status of a Supreme Court Judge. He should have a term of 5 years and be removed in a manner as that of a Judge of the Supreme Court. In fact we need to lead opinion for appointments such as CAG, Director CBI, Election Commissioners, Vigilance Commissioners and Information Commissioners of the type that is prescribed for the CVC. Just as it is specified that the CAG would not be eligible for any appointment to an office under the Government post completion of his tenure, the same needs to be mandated for Supreme Court Chief Justice also.

I feel it is the duty of each one of us to function as opinion leaders and formulate such information dissemination channels by which we can act as catalytic agents to ensure that all officials function as per their allegiance to the Constitution and that individuals or institutions with vested agenda do not hijack Government functioning.

It is our bounden duty to instill confidence among that strata of civil society in which we dwell, about the rights of any beneficiary, the duties of a civil servant and the need to ensure that a consideration is neither sought nor paid, for performing the duties as mandated for any functionary.

It is our duty to help provide the partnership between such peoples agencies and Government oversight bodies to ensure greater accountability among officials implementing schemes at the local level. I firmly believe that we stand today at the threshold of creating history. The focus is on us and it might well be asked, if we can roll back the rampant corruption observed in governance and the de-generation which has taken place in standards of government functioning.

We are a country which in desperation had to ship 20 tons of gold in 1991 to the Bank of England for availing of a loan of USD 400 million as per conditions imposed by the IMF. We are now competing with China for economic development and FDI.

We are a country which despite all the adverse factors, bungling, mismanagement and misdemeanor, still delivered the Commonwealth Games which was world class and in which our own medal tally was the highest ever.

It is in this context that this country must yet again display its inherent strength and debunk the oft repeated phenomenon of a silent majority. It is this majority which will have to take courage and challenge the wrong doers in Government. It is this majority which has remained silent till now and which will have to display its courage of conviction and ensure that it can restore every common citizen its rightful due and that in fact a Government functionary actually performs as a Government servant and not master of the citizenry. This majority can no longer remain silent. It has indeed started raising its voice. The PIL in the case of the appointment of the CVC, pursuit of the Spectrum allocations case in court and the relentless pursuit by the media in cases like the Jessica Lal murder, the unofficer like behavior of the DGP of Haryana and the undeserved release on false grounds of a politician's son on parole are outstanding examples of how the hitherto silent majority can put pressure on government and bring into public domain the wrong doing of those in power.

Let me conclude that we do not falter in our steps now such that posterity judge us for having lost the opportunity to liberate, empower, and economically stabilize the 600 million opportunity seekers at the bottom of the pyramid and, let posterity not comment that we had the opportunity to partner in the up-gradation of governance, but we were found wanting.

We would have let down our glorious past, lost the opportunity of a golden present and certainly denied this delightful opportunity to forthcoming generations.

B K Chaturvedi

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***Corruption, Governance and  
Economic Growth\****

**T**here has been serious national concern in the last few months over the CAG Report on 2G Spectrum which highlighted the serious irregularities in the sector. Subsequently, these matters have gone to the court and are being investigated. Earlier, the Committee under former CAG, Shri V.K. Shunglu had gone into a number of instances indicating possibilities of corrupt practices in some of the contracts of the Commonwealth Games. There have been other instances of corruption in the State Governments in award of contracts, allotment of funds and gross abuse at the grassroots level in implementation of power, road and irrigation projects. If one were to read the newspapers and see the electronic media continuously, the impression would go down that this country is going downhill rapidly. Lot of this is quite disturbing and needs strong corrective measures. An important characteristic of a civilized society, a society governed by rule of law, is a strong and effective opposition to corrupt practices. Let me recall what the famous Russian author Anton Chekhov had said about a convict's view on this: *"No matter how corrupt and unjust a convict may be, he loves fairness more than anything else. If the people placed over him are unfair, from year to year he lapses into an embittered state characterized by an extreme lack of faith."* It is, therefore, critical for us to consider our future as we grow economically. As the new generation of young boys and girls enter their careers look for jobs and plan their future, we should seriously consider how they should plan to take their lives forward.

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\* *The article is based on a memorial lecture delivered by the author at the Lucknow University.*

Let me re-assess our situation in the global context first. There has been serious concern in the international fora on corrupt practices and need for curbing it. The United Nations Convention Against Corruption (UNCAC) has been acceded to by 144 countries. Most major economies, including US, China, Russia and Brazil have already ratified it. India too has signed the convention but not ratified it. Some of the other interesting initiatives have been banning of corrupt payments which are outside the terms of the contract to guard against illegitimate payments for promoting such businesses. Several countries including India have mandated integrity pact in contract terms for large public purchases. Several countries have strengthened their laws against corruption. I plan to revert back to this issue slightly later.

The extent of corruption prevalent in major economies of the world is measured by the World Bank and Transparency International. The World Bank measurement is on a scale of (-) 2.5 to (+)2.5 with increasing values indicates reducing corruption. On this scale between 1998-2009, the level of corruption in India went down from (-) 0.34 to (-) 0.33. This indicates a static picture. In terms of Transparency International Index (TII), which uses a scale of 0–10, India improved from 2.9 (1998) to 3.4 (2009); a growth of 5%. During this period, the global average on the World Bank scale declined from (-) 0.046 to (-) 0.048, or a nearly static trend. The Transparency International data showed a similar trend. The world average remained almost static at around 6. Interestingly, during this period, China's index on the World Bank scale declined from (-)0.26 to (-)0.53, or 5% decline, showing a higher level of corruption. The Transparency International data for China, however, did not show a decline but it was almost static at around 3.5–3.6. Brazil, one of the major BRICS power, showed a marginal decline in terms of WBI and 3% decline in terms of TII.

These facts indicate two trends. First, at a global level, corruption indices have remained almost static during the ten year period. Second, the Indian indices have improved marginally, particularly in respect of methodology adopted by TII. Thirdly, the level of corruption in China has remained

either static or became worse. Brazil, too, did not show any improvement.

An interesting aspect of the corruption levels in world economies is the relationship between per capita incomes and corruption. A study done by us of the 172 economies for which data was available from the World Bank indicated that countries which were in the bottom 25% in global per capita incomes had a high level of corruption. In terms of the indices, it was on an average around (-) 0.7 to (-)0.8 (WBI) and around 2.4 to 2.7 (TII). Similarly, countries which were in the top 25% of the per capita GDP income scale had an average index of 1.18 to 1.33 (WBI) and 8.24 and above (TII). This indicated a very strong correlation between levels of income and the extent of corruption. Countries with low per capita income have generally high level of corruption. Similarly, countries with high per capita income have generally a low level of corruption. There are, of course, exceptions to this broad classification.

Clearly, the low level of incomes and aspirations of the people for better standards of life leads them to adoption of inappropriate means and corrupt practices. As incomes rise, several developments take place. Firstly, the requirements for better life are met more effectively. The pressure for adopting corrupt practices reduces. Secondly, levels of education and health standards increase, as both the State and the individual spend more on social goods. Large numbers of educated persons imply that consciousness in the society against corruption improves. There are greater pressures from civil society for better governance. It also leads to a wider debate on corruption and its debilitating effect on the civilized way of living. This leads to development of new safeguards, development of new institutions and stronger legislations. A stronger political will may emerge gradually. New institutions of governance tend to come in place. As per capita incomes become fairly high, the institutions are put firmly in place and the incentive for corruption is drastically reduced. This puts a very firm lid on corrupt practices. Interestingly, therefore, what emerges is the need for higher incomes as a key factor so as to effectively check corruption levels.

The above analysis indicates a strong correlation between higher per capita incomes and reduced level of corruption. The actual levels corruption is, however, determined by several other factors, apart from per capita income. The average corruption levels at a global level have remained static though per capita incomes have doubled in last ten years. This indicates that increased incomes need not necessarily reduce corruption. One of the most striking examples is Russia. Its per capita income (2009) is around US\$9,000. It has still, however, a very high level of corruption as indicated both by the WBI and the TII indices. Similarly, we have example of large economies like China and Brazil. In the last decade, there has been practically no improvement in reducing corruption levels in these while the per capita incomes have nearly doubled in Brazil and gone up 4–5 times in China. There are other economies too which buck the trend. It is, therefore, incorrect to argue that economic prosperity per se would lead to reduced corruption levels. While definitely increased economic prosperity will create a very positive environment and reduce inertia to change, the governance structures will need to be strengthened consciously through specific identified measures to improve corruption standards. It is also necessary to realize that these measures may be at times country-specific depending on the major sources of corruption. For example, in the oil-rich economies, the source of corruption may be award of contracts or earning money through firms which are implementing these projects. Similarly, economies, which are dependent on exports or mining of natural resources like iron-ore and coal, will have to take measures which address the issues of the concerned economy.

In an interesting study Klitgaard (2004), has noticed a distinction between normal corruption and systemic corruption. The normal corruption is controllable by anti-corruption apparatus, which includes legal system, accounting and auditing, budgets, competitive procurement and citizens' rights. As against this systemic corruption implies that corruption is very widespread and the apparatus for restraining and combating corruption is ineffective as this is

itself penetrated by corruption. While increasing incomes improve the overall environment, an ineffective legislature, a dysfunctional judicial system that is not independent, inefficient and weak civil society networks and absence of political will to control corruption will be ineffective in reducing corruption.

It is also important that society perceives corruption, as an endemic disease. If for them getting Television, Cars, Air Conditioners and better houses is much more important, irrespective of the type of means adopted, then it may be difficult to reduce corruption. In some Latin American countries, this could be a problem.

The above analysis leads to a view that an increase in per capita income creates an enabling atmosphere for reducing corruption. It is the social and political will thereafter which decides whether corruption will go down. A study made by us on the 54 economies has confirmed that “voice and accountability” and “government effectiveness” explain nearly 93% of increase or deterioration in the CPI of countries which had a high level of corruption. These appear to be the most dominant factors which determine whether a country would be able to improve its corruption levels or not. Both are crucial governance indicators.

The above analysis highlights the need for faster economic growth which, apart from helping us to a good quality of life, also enables a curb on corruption. Rapid increase in per capita incomes requires development of good governance institutions, large investments in the economy and foreign direct investments. Often, investors are hesitant in putting money if there are deficiencies in these parameters. Faster growth, therefore, is impacted by these parameters. High levels of corruption can impede growth. The most quoted study in this regard is that of Mauro (IMF, 1995) indicating that improvement of 2.38 points in the Corruption Index scale is associated with loss of growth of over half a percentage point. Experience has shown that between 1995-2009, no country was able to improve its CPI values by more than 2 points. Based on Corruption Control data from the World Bank over 1996-2009, only Cote d’Ivoire, Cyprus, Guinea,

North Korea, Mongolia, Papua New Guinea, Trinidad and Zimbabwe were able to improve their Corruption Index by more than one point, out of the 213 economies reported. It is clear, therefore, the corruption according to this study, impacts growth adversely but very few countries are managing control over corruption. A large body of persons, including Brunetti (1997), Poirson (1998), Li, Xu and Zou (2000), Mo (2001), Abed and Davoodi (2002) Leite and Weidmann (2002) and Gyimah, Brempong (2002) have all held the view that corruption has negative impact on growth. Interestingly, there is also a view that it has a positive impact on per capita GDP growth (Barreto, 2001). It is also possible to argue that it is difficult to ascertain impact of corruption on GDP per capita growth (Pellegrini and Gerlagh, 2004).

While it may be possible to have different views on the extent of impact of corruption on growth, it is difficult to argue that it has no impact or positive impact. This is for several reasons. Firstly, a very large body of experts as mentioned above has confirmed the negative impact of corruption on growth. Secondly, the money acquired through corruption often goes in untaxed underground channels. Experience shows that such income is generally used in real estate or other areas where this can be conveniently hidden. This is not conducive for an economically efficient utilization of overall resources. The money earned through corruption, therefore, may be utilized in uneconomic channels. Thirdly, lot of this money may be earned through export contracts. It is thus, often kept in bank deposits in other countries. A recent study (Defkar, November, 2010) has assessed that \$213 billion were lost to India through illicit flows (present value \$462 billion) since independence (1948-2008). Lot of this money did not get invested within the country or even its returns do not come. It would, therefore, reduce investment levels in the country. Fourthly, it leads to wastage of valuable financial resources and poor level of economic development, which is particularly harmful for economic growth. Poor quality roads get built which either get washed or deteriorate so much that movement of traffic on it goes at snail's pace causing poor utilization of transport infrastructure and large

consumption of oil and gas. Bridges get built and washed away quickly. Dams for water supply scheme get built and washed away. The corruption, thus, leads to huge wastage of resources. The productivity of resources, thus, goes down. These arguments could be extended further in a number of other areas. It is, therefore, clear that corruption slows down growth. The extent of slowdown indicated by Mauro is not very high. There could be higher estimates if one were to take a holistic view.

International experience, however, on GDP growth rates runs counter to above logic in the decade 2000-2010. China has continued to grow at more than 10% per annum during this period and Indian economy has similarly grown at an average of around 8% per annum in spite of high corruption levels. In fact, if one were to list out economies in 2009 with the highest per capita growth, almost all of them have very high level of corruption. The World Bank data shows that GDP growth in Cameroon (12.3%), Azerbaijan (9.31%), China (9.1%), Ethiopia (8.7%), Uzbekistan (8.1%), Turkmenistan (8.0%), India (7.7%), Malawi (7.7%) Democratic Republic of Congo (7.6%) was very high. All these countries had, in terms of TII, corruption index of less than 3.6%. In fact, except for India, China and Malawi, index for all of them was less than 3%. This trend was witnessed during this entire period from 2005-09 with very few exceptions. Singapore, Qatar, Oman and Bhutan were, in fact, the only exceptions. Thus, more than 90% of the countries which had very high rates of GDP growth had high corruption index too.

Economic growth depends strongly on investments in the economy and productivity of the capital used. These in turn are dependent on good governance institutions, attractive public policy and market opportunities. A number of above countries, it seems, were able to develop their economic policies and governance institutions which the investors found attractive and they were willing to live with the corrupt practices prevalent in these countries. This may provide a possible reason for high growth.

A further confirmation of this view was provided by a study of 170 economies made to determine whether countries

at the bottom 25% per capita income range showed a correlation between corruption and growth rates. In all the three years (2005-07), for which this was assessed, it was found that there was very little correlation between growth rates and corruption. At low level of incomes, growth is determined primarily by financial policies, good institutions of governance, investment opportunities, nature of market and such other factors which the investors find attractive. There is, however, very little correlation with the corruption levels as at these levels of income most of the countries in any case have a high level of corruption. The distinguishing feature of growth, therefore, in one country from the other is the policy architecture and market attractiveness rather than degrees of corruption. It is these factors which primarily determine the growth. In fact, the position extends up to middle 50% income groups also. It is only in the top 25% countries that variations in corruption levels are related to rates of GDP growth though here also it was found to be weak. The inescapable conclusion is that at low levels of income growth rates are determined more by institutional policy and market attractiveness factors rather than corruption. It is only when these institutions are firmly in place that corruption becomes a factor.

The above trend seems to suggest that growth can go on at high levels consistently in spite of high corruption. This is not a correct interpretation of the above global experience. It will clearly slowdown if corruption is high. Firstly, the growth rates for corrupt State clearly get reduced albeit marginally. Secondly, growth is non-inclusive and given rise to strong fissures in social structure. Thirdly, Human Development Index is adversely affected. Fourthly, inter-regional growth may be uneven. Lastly, the growth process is unstable.

A number of countries have adopted different strategies for countering corruption. One of the successful models has been that of Hong Kong, which set up the Independent Commission Against Corruption (ICAC) (1974). The ICAC Commissioner is appointed by the State Council of China in consultation with the Chief Executive of Hong Kong and is responsible only to the Chief Executive, who is Governor of

the State. Its work is closely scrutinized by four Independent Committees comprising leading citizens as members and non-officials as Chairman. It uses deterrence, prevention and education as strategies for tackling corruption. 70% of its resources, however, are devoted to effective enforcement. The reasons are that any successful fight against corruption must be based on effectively tackling the corrupt and showing determination to fight corruption at all costs. However, it also has a corruption prevention policy determined to bring out systemic changes in practices and the procedures of various public offices which provide the opportunity for unscrupulous elements to indulge in corruption. The CPI of Hong Kong improved to 8.2 in 2009, while in the rest of China this index was 3.6. The contrast becomes obvious. The political response to fight against corruption has been ambivalent in China. The struggle against corruption is characterized by routine enforcement. Thus, in spite of the fact that one hears of some corrupt senior officials or even Ministers being shot to death, the corruption thrives.

One of the best models in controlling corruption is that of Singapore. It can be best summarized by the statement of Lee Kuan Yew (1964): *“The moment key leaders are less than incorruptible, less than stern in demanding high standards; from that moment the structure of administrative integrity will weaken and eventually crumble. Singapore can survive only if Ministers and senior officers are incorruptible and efficient. .... Only when we uphold the integrity of the administration, can the economy work in a way which enables Singaporeans to clearly see the nexus between hard work and rewards”*.

The Singapore strategy was based on a Corruption Practices Investigation Bureau, which is placed under the Prime Minister’s Office. Singapore passed Prevention of Corruption Act, 1960 and Confiscation of Benefits Act, 1989. It also subsequently, ratified the UN Convention Against Corruption (UNCAC) in 2009. As the political will started growing, the salaries and working conditions of civil servants were increased in 1980s. While this contributed substantially in the fight against corruption, Singapore was able to reduce

this substantially even earlier. The level of CPI in 2009 was 9.20.

Yet another major success story comes from Finland. The culture of responsibility in public administration was developed and buttressed by officially declaring ethical values to be the core of public service. This was also supported by highly competitive salaries of Finnish officials and overall low income disparities in the country. A number of laws including Administrative Procedures Act, the Act on the Openness of Government Activities, the Penal Code, the State Budget Act, Public Procurement Act and the Acts on Accounting and Auditing were passed to strengthen openness in government. This was supported by Finland signing the UNCAC in 2000 and ratifying it officially in 2006.

Two major initiatives have helped Finland's success. First, the Chancellor of Justice (appointed by the President) and the Parliamentary Ombudsman (appointed by the Parliament) have authority to investigate the actions of Members of Parliament, Ministers and even the head of State. Giving a larger representation to women with over a third of the Finland's Parliament and Municipal Councils being women as well as half of the members of the Cabinet generally being women has helped a better gender equity. It has, however, substantially helped in increasing quality of governance, too. The CPI has been around 9 with a slight decline in 2009 to 8.9 primarily due to concerns about lack of transparency in election campaigns finance.

The international experience makes it clear that the effectiveness in combating corruption in all these cases has been due to institutions which are independent in taking action against political executives as well as legislators when they are corrupt. This action has to be taken by them when facts come to their notice and not when issues are referred to them by some other organization. Secondly, the effectiveness of action and faith in the independence of the institution in initiating action are also critical factors. In case of Singapore, the institutions have been under the Prime Minister's Office and have enjoyed excellent independent reputations. In case of Hong Kong and Finland, they report

to the Chief Executive and are supervised by independent bodies. It also is quite clear that most of the countries have emphasized preventive corruption through electronic technologies and other methods for simplifying procedures and reducing bureaucratic delays. Most of them are fairly advanced in this. Prevention of corruption requires decision making and transparent functioning. These systems would need to be developed if we have to curb corruption. This is a process which must be widespread across all levels of government. It is not possible to argue that in certain Central Government departments. If these are implemented, it will automatically flow down to other levels. It is not likely to happen. This is a process which has to be taken up at all levels in State Government, Central Government and local bodies. This requires a strong commitment of the political system and a very strong political will.

One of the major reasons of corruption is funding for elections. Even in a well-established society like Finland, the electoral financing concerns have led to reduction in the CPI. There are serious concerns today within the country on this issue. Several efforts have been made to provide for electoral funding by the State. These have, however, failed as no equitable method could be found. There is a clear need to evolve a consensus by the Election Commission on this issue. One of the possible ways could be to provide funds in proportion to the total votes earned by a certain political party at a national level. A provision could be made for providing resources to new political parties and new candidates who would not completely discourage them. The Election Commission could work out a formula for this purpose.

The Administrative Reforms Commission has studied this question and made a number of recommendations. Several of these need a strong support. Let me outline an Agenda for Reforms, specifically aimed at reducing corruption:

- (a) A strong legal framework for punishing corrupt Ministers, legislators and officials. Independent institutions like LokAyukt/Lok Pal, both at Central and State levels headed by eminent persons with independent in-house

investigative wing for prosecuting on Hong Kong/Finnish model.

- (i) Chief Ministers, Central Ministers, Member of Parliament and Legislators are investigated by Central/State level LokAyukt/Lok Pal.
  - (ii) Investigative agencies should be independent of political interference and report directly to PM/Governor.
  - (iii) The work of investigative agencies should be supervised by special oversight committees as in case of Hong Kong.
  - (iv) The punishment of offenders in such cases should include forfeiture of their assets and imprisonment.
  - (v) Special courts to hear cases and decide in a maximum of six months.
  - (vi) Article 311 is deleted and civil servants be dismissed if convicted by courts or under disciplinary proceedings.
  - (vii) Ombudsman at local levels to ensure that corrupt officials are punished quickly.
- (b) An institutional legal and procedural framework be developed to prevent corrupt practices.
- (i) Review and simplify laws/rules/procedures for delivery of public service at all levels of government. Use IT to support this.
  - (ii) Government procurement through e-tender and transparent process. Integrity pact in all major procurements be mandatory.
  - (iii) Award of licenses or rights to conduct business based on transparent and widely publicized procedures.
  - (iv) Award decisions should be taken quickly.
- (c) Reform of political funding and tightening of anti-defection law.
- (d) Code of Ethics for Ministers, Members of Parliament/Legislatures, civil servants, judges and regulators.
- (e) Develop consensus and strong political will to curb

corruption supported by Media, political parties, civil societies, business organizations, civil services and Election Commission.

Coming two decades are going to be extremely eventful for our nation. To begin with, we are being recognized globally as a fast growing economic power. If we continue to grow at the level of 8%–9% per annum, our economy would become larger than the economy of US in 2050. Our per capita incomes are expected to increase continuously in the coming two decades. We should at this growth rate be able to have a per capita income of nearly \$8,000–10,000 from the present level of around \$1,300 by 2025. This would mean, India would become a middle level income economy. International experience has shown that incomes at this level are generally accompanied by better governance institutions and less corruption. There are, however, exceptions too. There is a large degree of concern in our nation today on these issues. We have a strong judiciary, media and public voice, and the accountability of the executive on many of the issues would gradually get strengthened. Sustained level of growth would require that we concentrate on our governance institutions. In particular, the regulatory structures, which may ensure investment in the economy which is so critical for our growth, would need to be supported. Simultaneously, other supportive policy interactions will have to be taken up. In particular, the physical and the social infrastructure will need to be strengthened continuously. I have earlier outlined the policy interventions required to control corruption. Above all there should be a political will. It seems that people's strong opposition to corrupt practices and a very vocal and effective civil society is gradually bringing this issue forward for strengthening of laws on this. Discussions on the Lok Pal Bill between the Government and the civil society in April, 2011 is one such example. People have started asking questions on why governance structures are not improving. This is a critical stage and it is here the democracy scores over other forms of government. The coming years would see a major improvement, as we work on many of these challenges. We have a very bright future but sustained hard work is ahead of us as we plan for our next generation.

Dhanendra Kumar

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***Competition and Good  
Governance—Aiming at Inclusive  
Growth through Competition***

**G**overnance is a broad term, varying defined as a process of enacting legislations, formulating policies, taking decisions and implementing them efficiently and effectively for the benefit of all in the society. An analysis of governance focuses on all formal and informal actors, all formal and informal structures involved in the process of decision making and implementing them<sup>1</sup>. While robust institutions are necessary to promote justice, process and actors involved in the process are equally important. As Amartya Sen views, Niti and Nyaya, both are vital for ensuring equality and liberty.<sup>2</sup>

**Good Governance - Attributes**

According to one of the studies, Good governance has 8 major characteristics<sup>3</sup>. It is one which is participatory, consensual, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. Good governance requires effective implementation of rule of law, is ethical, rational and impartial.<sup>4</sup>

In India, since 1991, there has been paradigm shift in economic governance. The New Economic Policy of 1991 triggered the dynamic forces of competition in the Indian economy, which unleashed tremendous growth momentum across sectors in the subsequent years. It is axiomatic that both political and economic good governance are needed to contribute to higher rate of economic growth and create an environment in which sustained economic growth becomes achievable.<sup>5</sup> One of the essential attribute of good economic governance is guarantee of fair and free competition<sup>6</sup> since competition is considered a powerful instrument to achieve

the macroeconomic policy goals. Competition regarded as a sine qua non to a liberalized economy fosters economic democracy by providing equal opportunity at market place to all its participants.

This paper attempts to analyze linkages between competition and good governance and traces how some jurisdictions have benefited out of competition laws, while also accounting for the developments in the field of competition so far in India.

### Competition and Governance

Competition is regarded as the fourth corner-stone of the public policy framework, along with the monetary, fiscal and trade policies. Two opposing ideologies have shaped the evolution of antitrust law in the United States since 1890, which have shaped the design of competition laws elsewhere also. The evolutionary vision which considers that markets will destroy monopoly without government intervention and intentional vision which views the market as a mechanism within which powerful interest can coerce consumers, labour, and small businesses; markets, in this vision, tend toward monopoly unless government intervenes.<sup>7</sup> Among these differing ideologies, however, the main underlying objective of competition policy and law remains the same; to preserve and promote competition as a means of ensuring efficient allocation of resources in an economy, resulting into lower prices, adequate supplies for consumers, faster growth and a more equitable distribution of income. It is widely recognized as a powerful tool to secure efficient use of scarce resources, enhance productive efficiency, maximize economic growth and contribute to the welfare of the common man.

Studies have been carried out outlining the linkages between good governance and competition. It has been found that by lowering barriers to the entry of new firms into an industry, competition policy helps to create an enabling environment for entrepreneurial development, an essential pre-requisite for a vibrant economy (OECD and Khemani 1998)<sup>8</sup>. Michael Porter in his book 'Competitive Advantage of Nations' has outlined the role of government as a catalyst

which should encourage companies to move to the higher levels of competitive performance. The role of government in Porter's Diamond Model is that of "a catalyst and challenger; it is to encourage or even push companies to raise their aspirations and move to higher levels of competitive performance." He has also recommended that government should encourage companies to raise their performance, stimulate early demand for advanced products, focus on specialized factor creation and stimulate local rivalry by limiting direct cooperation and enforcing anti-trust regulations.

In the Indian context, the implementation of a competition law and policy has always been considered an essential component of governance. Even the Arthashastra, the first known treatise on Government written by Chanakya in the 3rd century BC, in which political governance has been equated with economic governance, had emphasized fair trade as one of the mainstay of good governance. Chanakya has warned against the propensity of traders to fix prices by forming cartels and recommended heavy fines for traders who could collude and fleece consumers by conspiring together. According to the Indian Constitution, freedom to trade or practice any occupation is a fundamental right. As per Constitution, only the Parliament or the State Legislature has the power to impose restrictions on this right. Constitution also provides for curbing concentration of economic power, so that the common good is not adversely affected.

Taking into account the fact that competition is essential for governance, in his address to the central hall of parliament, dated 03.07.2007, the then President, Dr. Abdul Kalam observed;

*"The challenges in realizing the developed India vision 2020 provide also opportunities for innovation in every aspect of governance and legislative actions. As we review the governance system and legislative processes for the 21st century, full advantages and implications of technological revolutions, national and global connectivities, globalization and international cooperation and competition have to be taken into account."*<sup>9</sup>

Vigorous competition between firms has been recognized as the essential attribute of strong and effective markets. New firms enter the market and prosper if they perform well; less efficient firms become unprofitable and are forced out. These effects have been amply verified by empirical studies of the determinants of industrial growth (Easterly 2001; Baldwin 1998; Khemani 2007)<sup>10</sup>.

Competition policy and law, when they effectively implemented, foster an effective competitive process. Countries that have implemented and enforced their competition laws effectively have experienced higher growth (Dutz and Hayri 2001)<sup>11</sup>. Competition allocates productive resources, ensures allocative and dynamic efficiency to the fullest, causing firms to develop new products and services, giving consumers' wider choice of products. Competition law and policy can play a crucial role in the advancement of developing countries. **Studies have shown that competition drives productivity gains, can stop bid rigging and help expose corruption (Adhikari 2004).**<sup>12</sup> In Korea, the competition commission could unearth bid rigging for key public construction projects and by setting up permanent monitoring of bids, government could save roughly 4 trillion won (US\$4 billion).<sup>13</sup>

**Competition also addresses mergers and acquisitions effectively.** Mergers and acquisitions have potential implications for competition because they reduce the number of market players. Merger review empowers a competition authority to look into the positive and negative implications of any prospective merger and to identify an appropriate response to suit the economy on whole.

### **Benefits of Competition in Some Jurisdictions**

Some empirical studies that have been carried out have tried to measure the gains from competition in the markets. A contemporaneous review of the deregulation of natural gas, long-distance telecommunications, airlines, trucking and rail and competition ushered in the United States reported that real prices dropped at least 25 per cent and sometimes close to 50 per cent within ten years of deregulation in those

industries. The annual value of consumer benefit from such deregulation was estimated to be approximately US\$5 bn in the long-distance telecommunications industry, US\$19.40 bn in the airline industry, US\$19.60 bn in the trucking industry, and US\$9.10 bn in the rail industry. A study by the Australian Productivity Commission, estimates that Australian household's "annual incomes are, on average, around Australian Dollar 7000 higher as a result of competition policy". Studies also suggest that in Australia, due to measures of competition, Gross Domestic Product grew by over 2.5%. Studies also estimate that pro-competition policy developments in New Zealand and the United Kingdom have added around 2.5 percentage points to their employment rate over the 1978–1998 period; countries with more modest reforms, such as Greece, Italy and Spain added only 0.5–1 per cent to the employment rate.<sup>14</sup> Another study carried out in the World Bank finds that "*reforms promoting private governance (i.e. privatization) and competition tend to boost productivity.*"<sup>15</sup>

It has been observed that competition in the market can be negated through anti-competitive practices adopted by enterprises and the harm could be even greater in developing countries, because there the markets are generally more fragile as concentration levels are higher, dominant position is more prevalent and entry barriers are higher. It has been found that the vulnerable sections of society, who form the major portion of developing countries' population, are more liable to fall into traps of poverty by price hikes and other shocks generated by anti-competitive practices. Competition law keeps a check on those practices. Moreover, competition fosters economic growth, thereby creating opportunities of employment – the essential tool for alleviating poverty.<sup>16</sup>

Cartels are considered to be the most pernicious form of anti-competitive activity. A World Bank Background Paper shows that in 1997, developing countries imported US\$81.1 billion worth of goods from industries that had seen a price-fixing conspiracy during the 1990s.<sup>17</sup> Those imports represented 6.7 per cent of the total imports and 1.2 per cent of the GDP in the developing countries and an even larger

proportion of trade in the poorest developing countries for whom the products in question represented 8.8 per cent of the imports.

In one of the studies conducted by Eckbo in 1976, using international data of 51 cartel agreements in 18 industries, he found that in about the 30 per cent of the agreements analysed (19 of the 51 cartel agreements), the corporations were able to raise the price 200 per cent above the unit cost of production and distribution.<sup>18</sup>

Another international cartel impact study was done by Yu in 2003. Using import data, Yu<sup>19</sup> calculated overcharges in the vitamins cartel (1990–1999), the citric acid cartel (1991–1995), the bromine cartel (1995–1998), the seamless steel tubes cartel (1990–1995), the graphite electrodes cartel (1992–1997), and the lysine cartel (1992–1995). The results indicate that the overcharges to developing countries generated through collusion by these cartels are quite large amounting to US\$1.71 billion, US\$67 million, US\$8 million, US\$1.19 billion, US\$975 million and US\$43 million, respectively. An analysis of the international vitamins cartel, which divided up the world markets for various types of vitamins from 1989 until 1999 reveals that the total overcharge in India was estimated to around US\$25.71 million.<sup>20</sup>

Some jurisdictions have also made cost–benefit analysis to measure benefits in terms of increase in overall consumer welfare against the costs of competition law enforcement. In one such analysis made by the Korean Fair Trading Commission (KFTC), it has been found that in 2000, each dollar spent on competition law enforcement yielded US\$20.57 in terms of consumer welfare gains. In 2001, this number increased to 28.64, suggesting even better implementation of competition law<sup>21</sup>.

### **Competition Law in India - Development so Far**

In India, since 1969, issues of competition concerns were being scrutinised under Monopolies and Restrictive Trade Practices Commission Act, 1969. However, a slew of policy measures taken after 1991, which marked a shift from a

planned economy to a market economy characterised by Liberalisation, Privatisation and Globalisation, led to enactment of a new progressive act, in form of Competition Act, 2002.

The Competition Commission of India was duly constituted in March 2009. Competition Act, 2002 aims at removing all impediments in the ways of freedom of trade and eliminating all practices which may have anti-competitive effect in the market causing harm to the consumers.

The Commission has been entrusted with the following mandate under Section 18 of the Act:

*“It shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition in markets, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India”*

Competition law in India like in any other jurisdiction has three main ingredients. First, it prohibits all agreements which restrict freedom of trade and cause consumer harm by way of limiting production and distribution of goods and services and fixing prices higher than normal. Second, competition law regulates the abusive behavior of a dominant firm, who through its position of monopoly may restrict market and set unfair and discriminatory conditions. Unilateral conduct by corporations may lead to welfare loss and consumer interest may be harmed due to their actions. Competition law provides the legal mechanism to take corrective or remedial measures. Third, to safeguard competitive markets, the competition law oversees the mergers and acquisitions of large corporations. Section 3 and 4 of the Competition Act, 2002 relating to anti-competitive agreements and abuse of dominance has been notified in May 2009. Section 5 and 6 concerning mergers and combinations have recently been notified to be made effective from 1<sup>st</sup> of June 2011.

Prime Minister in his speech during annual general meeting of CII in 2007, pointed out that there are 10 areas in which industry leadership can go a long way to ensure that

our growth process is both inclusive and broad-based. One of the areas he mentioned was need for more competition;

*“— desist from non-competitive behavior. The operation of cartels by groups of companies to keep prices high must end. It is unacceptable to obstruct the forces of competition from having freer play. It is even more distressing in a country where the poor are severely affected by rising commodity prices. Cartels are a crime and go against the grain of an open economy. Even profit maximization should be within the bounds of decency and greed! If a liberalized economy has to succeed, we must give full play to competitive forces and the private sector should show some self-restraint in this regard.”<sup>22</sup>*

Similarly, Prime Minister while giving away Business Standard Awards on March 25, 2011 further said;

*“.....before my arrival here, there was a discussion that marked the 20th anniversary of the economic reforms of 1991..... . In these past two decades we have seen an acceleration of India’s economic growth. We have seen the unshackling and unleashing of the animal spirits of Indian enterprise. We have seen the emergence of new businesses. We have seen the empowerment of a new middle class in our country. But, this process of growth has brought with it new problems, and accentuated some old ones.*

*Inequality has widened – between rich and poor, between town and country, between one region and another. That is why our government has made the principle of “Inclusive Growth” a corner stone of all our policies. If growth is not inclusive, it is not sustainable.*

*The end of the License-Permit Raj ended old opportunities for corruption and favouritism. ....”*

*On this occasion, when you are celebrating two decades of economic reform and liberalization, I affirm our commitment to a new wave of reform. I am aware of the fact that much more needs to be done to make our economy more competitive.”*

In the context of free market economy, brought in after economic liberalization, the role of competition to regulate

the market becomes extremely important. Section 3 and 4 of the Competition Act dealing with anti-competitive agreements and abuse of dominance aims at achieving the above policy role. Since May 2009, the Commission has received about 150 cases in which inquiries are in progress. The cases received in the Commission pertain to different sectors like - pharmaceuticals, power, entertainment industry, financial markets, real estate etc. In some of the cases under inquiry, anti-competitive conduct on the part of Government Ministries/Departments has also been alleged. **Decisions have been taken in some cases with far reaching implications on different sectors of the economy.** While taking decisions, the Commission in accordance with the preamble of the Act that mandates the commission to keep the objective of economic development of the country at the forefront, considers accelerated development of economy as an important key point besides freedom of trade and promotion of overall social welfare.

The Act extends the mandate of the Competition Commission of India beyond merely enforcing the law also to Competition advocacy in order to create a culture of competition. The Competition Commission of India (CCI), in terms of the advocacy provisions in the Act, is enabled to participate in the formulation of the country's economic policies and to participate in the reviewing of laws related to competition at the instance of the Central Government. The Central Government can make a reference to the CCI for its opinion on the possible effect of a policy under formulation or of an existing law related to competition. Under the scheme of the Act, the opinion of CCI may form an important input for the Government to finalize its law or policy.

Looking at the mandate, it is the endeavor of the Commission to sensitize the Government Ministries and Departments about the ill-effects of anti-competitive behavior and positive impact of competition on growth and development, more so when some of the cases under inquiry relate to many Government Ministries, Departments and Public Sector Undertakings.

### Positive Role of Competition in some Crucial Sectors

Experience suggests that, in the process of transition from planned economy to a more open economy, the application of competition law can usefully support other policy initiatives. **One significant area which can be influenced by competition policy is the public procurement.**

#### Competition in Public Procurement- Optimal Utilization of Government Resources

It is estimated that public procurement accounts for about 25-30 per cent of GDP in India. The public procurement process is, vulnerable to various kinds of unfair, anti-competitive practices like bid rigging or collusive bidding and government departments has been losing thousands of crore of public money. It is required to sensitize procurement officials and field officers and maybe train them for procurement so that public money saved is put to better use.

Globally, anti-trust bodies like Competition Commission of India are seized with the matters connected with bid rigging and collusive bidding in the Government procurement and thereby help the Government and Government agencies in achieving the best value for money. In various reports like of OECD, and International Conferences, like in Russia, it has been highlighted how such practices have helped in achieving up to 15-20% economy in public procurement.

There are substantial gains from the promotion of competition in government procurement. As per the findings of an OECD survey, savings to public treasuries between 17% and 43% have been achieved in some developing countries through the implementation of more transparent and competitive government procurement regimes. Given below are some of the instances wherein the impact of introduction of competition in various procurement processes has been assessed.<sup>23</sup>

- An independent external study for the European Commission found that increased competition and transparency resulting from implementation of the “Public Procurement Directives” of the European Communities in the period between 1993 and 2002

generated cost savings of between • 5 billion to • 25 billion. On the other hand collusion in public procurement markets has been conservatively estimated to raise prices on the order of 20% or more above competitive levels.

- In Russia, as a result of the reform in the field of public procurements, in 2008 an amount of \$7 billion of the Russian budget was saved
- 43 percent saving in the cost of purchasing medicines in Guatemala, due to the introduction of more transparent and competitive procurement procedures and the elimination of any tender specifications that favour a particular tender.

Economically, Government has a pre-eminent role as a major buyer of goods and services in the Country, and their procurement operations have a direct and strong effect on the behaviour of the market, and other activities down the line. There could be collusion and bid rigging by the supplier in certain situations involving rigid and inadequately designed procurement processes which may germinate such practices. Similarly, designing standards and specifications without adequate care could facilitate abuse of dominance in procurement. The Competition Commission of India through effective implementation of the provisions of Section 3 of the Indian Competition Act, 2002 is in position to curb practices which are anti-competitive and improve upon the process of bidding. The anti competitive practices such as bid rigging, collusive bidding are specifically prohibited under Section 3(3)(d) of the Competition Act since such activities are pernicious to any economy. To enforce the provision against bid rigging/collusive bidding, the Commission may pass appropriate orders and impose penalties after the enquiry under section 27 of the Act. The penalty can be severe, and may result in heavy financial and other cost on the erring party.

The institutions of CVC and C&AG exercise a very **important role while discharging their** responsibilities of ensuring integrity of procurement officials, enforcement of

financial prudence rules during the procurement process; however, this generally involves **ex-post** scrutiny. Competition Commission of India is set to play a crucial **ex ante** role by promoting competition in public procurement and with **ex ante** deterrent effect of severe monetary penalties on delinquent vendors. The concerted action of three Cs (CVC, CAG and CCI) can play a crucial role in ensuring integrity in Government procurement and value for money.

### **Competition – Way to Bridge the Infrastructure Deficit**

Competition can help country in effective and efficient utilization of large untapped potential in infrastructural sectors as the infrastructure deficit presents perhaps the most critical constraint in achieving ‘miracle growth rates’ in the Indian economy. Financial resources as well as technical expertise in management and execution constitute the major gaps in this area. Besides, the comparative efficiencies of the government and private sector to manage infrastructure services differ. This has led to the greater recognition of the importance of Public Private Partnership (PPP) in infrastructure development. In the past, infrastructure services were under government control and were operating without significant competition; this led to the perception that competition is inherently infeasible in these sectors. However, a number of infrastructure services previously treated as natural monopolies are no longer so. When competition is inherently infeasible, as in a natural monopoly, the next best option available is to allocate the right to supply a specified market, known as a concession, through a competitive process. A concession grants the concessionaire party the right to operate a defined infrastructure service and to receive revenues generated; while the ownership of assets remains with the Government.

Competitive bidding is a preferable way of allocating concessions. The more the bidders, in general, the more competitive the auction is likely to be. The auction should aim at identifying the most efficient service provider. The designing of the concession bid may be done in a way that it takes care of legal entry barriers provided by the concession

agreement which make anti-competitive practices all the more easy for the concessionaire. Oversight of the concession agreement and its implementation is to be ensured in such a manner that such concession should not be misused for exclusionary behavior which includes predatory pricing, denial of market access, or use of dominant position in one market to access another market. Proactive steps are required in designing the bid and implementation process to attract not only the existing participants but also to attract the new participants by reducing the bidding cost, more transparency in bidding and implementation process.

### **Benefits of Competition in other key sectors**

Competition can also play a key role in several other sectors. For example, competition across agricultural value chain has the potential to enhance competitiveness and rejuvenate agriculture. It is a common knowledge that while the producer–farmer does not get adequate remunerative return on his investment and labour, the consumer ends up paying much more, and there are inefficiencies in distribution system, which can be improved through better competition in various stage, including in inputs to the farmers, as well as in the trade. In fact, there are hurdles in the APMC Act itself which restricts farmers to sell their produce in designated markets where licensed traders enjoy monopoly. Similarly, competition can remove hurdles in road transport sector and ensure free and smooth movement of goods up to last mile connectivity. Further, removal of supply bottlenecks in sectors like pharma, steel, cement, tyre can enhance manufacturing competitiveness significantly.

### **Competition –Way Ahead**

It is possible that an efficient and effective competition law enforcement regime might not emerge in the beginning and past legacy might slow down the process of implementation of competition laws in initial days. However, judicious and effective implementation of competition laws coupled with measures of advocacy can mitigate initial resistance, when benefits of competition are better known and percolate down to all sectors of the economy. It may be borne

in mind that everybody is a consumer; even the industry is a consumer of intermediate goods and services, as also other sections of society.

There may be several areas in existing Government policies, or reminiscent/residual procedures in erstwhile policies which may attract provisions of the Competition Act which could be identified and brought to the attention of the concerned Government Departments or PSUs. Likewise, there may be several State Government Laws and policies which may attract the provisions of Competition Act and need to be carefully studied, identified and wherever attracting concerns under the Competition Act, may have to be reviewed.

In this context it may also be desirable that trade policy, industrial policy, and all other policies be designed and implemented in a manner attuned to the market mechanism and for an economy to function as efficiently as possible. It is important that a mechanism exists for incorporating a review through the lens of “competition dimension” in all such Government policies.

In this context, Competition Commission of India can play a constructive role and in many countries, is in fact actively associated during the designing of Government policies to advise from the angle of competition. The KPPU of Indonesia has offered more than 60 recommendations to avoid or reduce monopolies created by Government regulation which has gained attention of Government there. In Ireland, one of the Competition Authority’s roles is to promote competition primarily by advising public policy makers on the implications for competition of existing and proposed legislation, regulations and other relevant decisions.

### **Conclusion**

The Indian economy stands at a historic crossroads. The widespread economic reforms programme, pursued with consistence and calibration over nearly two decades now, has unleashed unprecedented growth momentum and pushed the development frontiers of the country. The stunning growth performance of the economy, at an annual average rate of 8-9% during 2003 to 2007 and the smooth and fast economic

recovery post global economic recession has caught the attention of the world. Bolstered by its strong macroeconomic fundamentals, a vibrant entrepreneurial force, a large and growing domestic market and the right policy–mix, the Indian economy now finds double digit growth very much within the realm of possibility despite the problems of inflation, and competition is known to have helped in boosting GDP growth in many countries, like in Australia.

The encouraging growth predictions, which peg India's economic growth at higher rates than China within another two years, hinge on another crucial factor of 'demographic dividend', which is in the country's favour. While opportunities abound, there are several areas here where competition can help in providing greater avenues for our youth. Ultimately, competition generates greater options, creates avenues, provides access, and helps in unleashing initiatives, enterprise and innovations.

Competition in markets implies broadly that there is rivalry among businesses, there is easy entry and exit and no single firm or any group of firms is able to influence market on its own. The competitive process empowers customers to exercise choice in switching to new products or new suppliers. It also allows new businesses to enter and existing competitors to develop new ways to compete in a market. It is through the choice of customers and corresponding responses of businesses. Cumulatively, it stands for economic democracy, greater transparency, and more open and free trade through lowering of barriers.

Further, as demonstrated by international experience, competition can be a powerful instrument to ensure that the fruits of growth percolate down to the bottom of the pyramid through lower prices, wider choice and better quality of products and services. The benefits of competition work through the economy by enhancing allocative, productive and dynamic efficiency, and thereby benefit the consumers, businesses and the government.

From the foregoing, it would be seen that competition is an integral component of good governance, as it leads to wider and informed choice for consumers, accelerated growth

with equity, freedom of trade, greater avenues for investment and innovation, employment generation, curbing of corruption and rent seeking, altogether leading to economic democracy in society.

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P S Bawa

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***In Search of Practical Ethics***

Any mention of ethics evokes three sources. These are religious texts, moral codes of conduct, or individual virtues. All these are of limited validity for various reasons. All people belong to one religion or the other. Yet religion had a very negligible influence on conduct of people who draw a line of demarcation between the sacred and the profane, and believe more in practices than the values conveyed by the profound religious texts. It has not succeeded to inspire an ethical life style. Few take instructions of the text to heart. For most, religion is a ritual to be followed, a drill performed daily without getting to the core of ideas and, more important, translating these into action.

Similarly, moral codes of conduct like the Civil Service Conduct Rules, Ten Commandments, Scouts Guide, the Hippocratic Oath, various oaths and pledges on joining a service, etc., have proven not up to the mark as these are forgotten soon, violated, and taken has just givens without any compulsion or desire to be serious.

Third is the invocation of virtue in the individual who is expected to have all the qualities fitting an angel, like honesty, truth, devotion to duty, non-violence, compassion, hard work, industry, loyalty, faith, objectivity, impartiality, etc. Nolan's principles fall in this category. This is too tall an order. It is difficult to know whether the person has inculcated these virtues. There is no astrolabe for testing person's capability in this connection.

The problem with the above categories is that they seek compliance under the threat of authority - spiritual, governmental, departmental, professional, or law. Those pertaining to individual traits demand a very strong personality that is rare, exceptional, and hence impossible to inculcate for all those who are to administer, govern, and help

in the processes at all levels. Since these are injunctions and of 'should' type, these are more conspicuous by their absence.

Therefore, one has to search for an ethics that does not depend on religion (as most people are not seriously religious), codes of conduct that are taken lightly, or individual effort that is rarely made consciously. Yet there is need to search for ethics that are workable and appeal to self-interest and logic. We need ethics that hits the individual directly, comes from within and without at the same time, that touches the individual sharply, that can be internalized without memorizing the injunctions, cultivating values, qualities that are not only amorphous but also defy definition or concreteness.

It is difficult to understand truth and goodness as these may have various interpretations and are prone to subjectivity. The concept of good has various manifestations. The good of the individual may clash with the good of society, and vice versa. The principle of the greatest good of the greatest number may curb the individual rights and create problems of justice. One cannot trample the right of an individual at altar of interest of the majority. Similarly, truth has various connotations of subjectivity, interpretation, and semantics. Besides, justice too has various forms and one may get confused, as is evident from the populist demands of killing the rapist, or sense of popular justice, or trial before the 'court of people'. There is thus need for ethics that can be rationalized in general terms.

### **Why search for ethics**

What is the need for searching for ethics when there is whole spectrum of existing values that are supposed to guide human action and behavior? Why create new paradigms when the existing ones are not put to use? The latter is, in fact, the cause of quest. Because the existing ones are not used to best advantage, it is imperative to find new ones. The object of the quest is not to disagree with eternal values, ethical principles, and codes of conduct that are faultless, but to ensure that these get embedded in the person who must immediately discern their import and act accordingly. The aim

is to see that these concepts are operational. The purpose is, therefore, not to derogate values, but to make these realizable. The person must own these attitudes and act accordingly. It is to provide basis for action.

There are many terms that reflect the same meaning but have different connotations. These are often interchangeable expressions. But it is necessary to distinguish these in the interest of clarity. The distinction may appear contrived but it might express some clarity.

Virtue: an aspect of qualities based on the concept of the good

Norms: a set of values accepted by the society

Values: a standard of acceptable behavior

Morality: quality of response to values and norms

Ethics: response to values and norms

In the context of the above, an ethical person is one who behaves in a manner that is acceptable to the norms of the society, based upon virtue. Morality is reflected in the response of an individual and has nothing to do with personal convictions. Therefore, ethics is essentially an outward behavior of a person, how he acts and how he should act. It is an aspect of human behavior. Whereas morality is a personal response to norms, ethics is an area of action, behavior, and conduct. The person acts without the need for legal compulsion. Ethics is thus an area that promotes good conduct.

### **Search for practical ethics**

As indicated above, the reason for search is that the existing ethics have not worked despite various stipulations. So is there a way by which the same effect can be achieved to a great extent by changing the paradigm and looking for something that is more practical? My argument is that what cannot work in a positive way might do so when examined differently. The aim is to search for a moral compass that can guide behavior. Since the existing techniques have not been of much avail, it may be pertinent to try new methods. May be these can work. Some of the ideas are attempted. These

are thoughts culled out of existing literature that I interpret in a different manner.

### 1. Negative utilitarianism

The idea has been expanded by Pralong on a study of Sir Karl Popper, one of the foremost thinkers, who was a conscientious objector to the thesis of communism that had attempted to create a blueprint for progress and human happiness and believed in the philosophy of utilitarianism, i.e., greatest happiness of the greatest number. Popper was of the view that it is difficult to achieve this objective for the basic reason that happiness defies definition. There are different things that give happiness to an individual. Hence it is not possible to set up norms and measures to that end. Happiness has many connotations that cannot be standardized. Therefore, one has to look for a criterion that is universally accepted and felt. It is in this context that one must look to the reverse of happiness. What makes people unhappy? There are not many divergences in this respect. It is here that the strategy of seeking a norm of ethical behavior shall lie.

Whereas suffering is tangible, happiness is not. Happiness may depend upon different likes and dislikes. But there is no choice so far as the reverse of happiness is concerned. Some of these feelings like pain, insult, abuse, illness, being cheated or kicked, shouted at, put under duress, injustice, kept waiting for a response, etc., are universal without any difference. The reaction to all these is the same without any divergence. Having accepted the uniformity of negative feelings, one has to ask whether such a treatment is acceptable to the individual. If not, then one does not have any right or reason to inflict these on anyone. Therefore, rather than speak of justice, respect, health, and absence of pain that are ambiguous expressions, is it not closer to understanding when these values are taken in their negations. My point is that looked as negatives these feelings are more comprehensible than considering the positives.

The crux, then, is that instead of stating 'Do' it may be more useful to say 'Do not'. The principle then is 'DO NOT

do unto others that you do like to be done unto you. This ethic is closer than saying 'Do unto others as you would not like to be done unto you'. Hence the derivative of Popper's negative utilitarianism looks more workable than the positive utilitarianism. Conceived in this manner, the ethic of avoiding wrong-doing would be more comprehensible than the positive ethic that is ambiguous, because injustice, indignity, and pain are tangible and visible.

## 2. Minimize avoidable suffering

As a sequel to the above, it is more relevant to minimize suffering than eliminating it completely. Whereas the latter is not within the competence of all, an effort to reduce suffering can be any one's contribution. If the officer-in-charge of a police station cannot work out crime immediately, he can assure help and alleviate the suffering of the victim to a great extent. The assurance and empathy of the official does calm the nerves of the sufferer. But on the other hand, if the officer refuses to register a case, for whatever reason, avoidable pain is caused to the victim of crime. A rude doctor causes pain by not attending to a patient or using rough language, or taking the patient in a dismissive manner, or standing on formalities while attending to a victim of accident on the ground of this being a medico-legal case. These are instances of avoidable suffering that lie within the competence of the person who has the authority or power to do so.

And if the suffering is not avoidable, then one has to share it with others. It is the case when someone dies and you go and express condolence and express solidarity with the bereaved family. The suffering is not avoidable, being inevitable, yet the gesture shows that the suffering is being shared. Or during a drought, sharing food with the hungry is a gesture of great significance. Or a general denying himself the comforts when his soldiers are in discomfort is one who shall elicit the greatest loyalty. Sharing shortages is an aspect of ethical conduct. Not doing so is an act of aggrandizement and self-seeking. The principle is equitable distribution of unavoidable suffering like shortages of space, food, resources, etc.

### 3. Acceptance of the 'other'

The modern man lives in a transactional society where he interacts with people around. The interaction may be during travel, using roads, place of entertainment, in the garden, street, mall, in fact, wherever use of public spaces is involved. The underlying issue is commonness of resources and their accessibility. All common resources have to be shared and made use of in such a way as does not restrict the use by others. It is in this context that the 'other' is to be accepted in the scheme of things. One may be a recluse, but one cannot help interacting with others when in the public arena.

There are four implications of this phenomenon. One, there is need to accept the predictability of behavior of all so that one is not taken unawares by the act of the other. This is true of all traffic laws that are designed to ensure predictable behavior of road users as pedestrians, passengers, drivers, or hawkers. If the behavior is not predictable, one is likely to be involved in an accident or a clash. In other words, all laws are concerned with ensuring predictability of behavior. Following traffic laws is an ethical issue. Two, underlying the fact of common use of resources is the idea that one has to care for the safety, comfort, convenience, and rights of others. Standing in a queue is an aspect of not seeking advantage on others thorough strength, aggression, or sheer chicanery. All this looks trivial, but it is ethical. Three, one does not behave as a nuisance for those around by creating noise, disturbing silence or sleep. Use of loudspeakers thus causing noise falls in the category of unethical behavior. Four, the society runs on trust. It is generally trust in the 'other'. Though some people indulge in breach of trust, they are exceptions. Trust is an aspect of living in a community. Therefore, though these items appear mundane, it is essential to realize their ethical aspect that lies in not being a nuisance to the 'other'.

We need the 'other'. There is interdependence upon the other. Nothing is complete in itself. Everyone may be independent, but he is dependent upon the other for fulfillment of his needs, desires, and living. One cannot be a

recluse and live without interacting with others. Hence the idea of interdependence in society and nature must be accepted for the sake of harmony. It is an ethical issue, as revealed in the 'I-thou' relationship.

#### 4. Seeing self in the 'other'

A sequel to the above ethical norm is to realize that 'I may be the 'other' or 'I am that'. This attitude provides a wider view of reality. This is an aspect of empathy, putting feet in the shoes of the other and then realizing where the shoe pinches. This attitude shall create compassion, the greatest quality suggested by Buddha who taught compassion for all living things. Compassion is an aspect of love of all. This makes one more caring and concerned. Seeing the self in the other like the officer in charge of a police station reversing his role and considering himself as victim of crime shall change the response to the moment. In case he has never put himself in that position, he shall not be able to determine the agony of the victim. Role reversal is a sure success for a humane response by one who has power to do. It may be poor-rich relationship, doctor-patient, victim-police, criminal-court, creditor-debtor, student-teacher, literate-illiterate, or clever-simpleton. All such combinations, if seen in role reversal, shall lead to proper response. This brings about change in the attitude of the superior who can be of use to his reverse. This attitude too is ethical as it believes in "I-thou' relationship. Martin Buber has elaborated this aspect of human behavior.

#### 5. All good things in life are free

All good things are freely available without any cost. The only price is an acknowledgment of their existence and an eye to see these. The problem is that these are taken for granted without recognizing their worth. Flowers of the season, warmth of the sun in winter, leisure, walk in a garden, cup of tea or coffee, company of a friend, a good book, conversation, reading an ethical text, reflection, etc., do not cost anything or very little. Such a consideration makes one less dependent upon the pleasures that are available at price

only, like dinner at an expensive hotel, shopping for exclusive clothes or jewelry.

What is relevance of this aspect to ethos? Importance of this stems from the fact dependence on money for enjoyment of life is different from fulfillment of life through finer pursuits. The former put a financial burden and mental strain upon the individual, the later makes the mind free and healthy. Reflection on the good shall prepare one for finer aspects of enjoyment compared to those that are to be purchased and labored for.

I may not own a farm to enjoy a garden. Non-possession does not mean not owning or enjoying. One may not possess a park, but one may yet enjoy its spaciousness and greenery. One may not possess an expensive painting, but one may enjoy this in art gallery. Even though the item does not belong to you, you may yet enjoy its presence. All this requires an eye for taste and a developed consciousness. In this context, all gardens, walks, boulevards, malls, picnic spots, places I like, beaches, rivers, mountains, belong to me.

## 6. Caring for the self

All texts had been involved in sculpting the self. But this requires both an acknowledgment of the ignorance of the self and the possibility of bringing about a change. The call of Socrates to 'know thyself' alludes to this aspect. He also mentions that 'an unexamined life is not worth living'. And therefore, 'a life worth living is a life worth recounting'. As Covey has mentioned that one must live a life as per the obituary he would like to have, how he likes to be remembered after the life is over.

In other words, one has to be an author of one's life and write the narrative. We write our life's script as we live along. Ricoeur gives us guidance on this aspect. People do not live in isolation. And that is what happens when one governs, administers, or interacts. One has to develop constancy in character. One must be predictable in behavior. Self-constancy is manifest only in being constant in my words, as a promise to others. It is, what Ricoeur calls, 'for each person that manner of conducting himself or herself so that others can

*count* on that person. Because someone is counting on me, I am *accountable* for my actions before another. The term 'responsibility' unites both meanings: 'counting on' and 'being accountable for'. It unites them, adding to them an idea of response to the question 'Where are you?' asked by another who needs me. The response is the following: 'Here I am', a response that is a statement of self-constancy. The expression 'here I am' is an ethical response. The other needs me, because I am of use to him. And my response that 'Here I'm' expresses a moral identity. It is an expression of humility and care. I do what I can. I assume responsibility.

The other insight is provided by Michel Foucault who has propounded the thesis of 'technologies of the self'. He too, like Socrates, emphasizes 'know thyself' as the most important moral principle of ancient philosophy. It is an 'obligation to know oneself' that forms the object of quest to take stock of feelings, intentions, and desires. For him, ethos is 'a mode of living for the subject, along with a certain way of acting, a way visible to others' suggesting that 'a person who takes care of himself would be able to conduct himself properly in relation to others and for others'. A reading of Foucault suggests that care for self-concern may involve an attitude of a watchman who does not let anyone (bad thoughts) enter, moneychanger who inspects a coin (thought) for its authenticity, self reflection (exercise of committing to memory the things one has learned), meditation of future ills (imagining the worst that can happen or might happen as a way of neutralizing both the future and the evil), practice of abstinence and physical resistance, and meditation on death. He quotes Seneca, 'Let us go to our sleep with joy and gladness; let us say I have lived' and Marcus Aurelius who said, 'moral perfection requires that one spend each day as if it were the last'. He mentions, 'By thinking of oneself as being about to die, one can judge each action that one is performing in terms of its own value'.

One of the aspects of caring for oneself is proposed by Kinane who has stressed upon role of 'self-consciousness as a supporter of ethics. This 'implies that officers should be aware that people are watching what they do , that people

care for what they do, and that people want them to do a good job'. They are always under watch. Their conduct is under constant scrutiny. People may not say so, but they have a penetrating eye that looks all and do not miss anything, especially the blemishes of the officials. The officers live in glass houses. An unethical official cannot hide behind the skin of decency. In the context of police, he says, 'What must be kept in mind are the idealized expectations of the public and the ideals of the fledgling members of these occupations'. It would be good for an officer to feel that he is under a constant gaze of people around him. Penetration by the people is inescapable. Therefore, he must beware of bad conduct. He must act 'as if' they are watching. McLuhan's famous quote, 'You *cannot not* communicate' confirms this. This indicates that one is all the time communicating in one form or the other.

I again invoke Popper to reflect upon attitude to criticism. Wisdom is not the prerogative of anyone. A rationalist to the core, Popper felt that progress in science is the result of conjectures and refutations. This is acceptance of the fact that nothing is finally determined and certain, and that things may be different if looked from a different point of view. The thinking depends upon paradigms, the starting points, or the assumptions. So it is ethical to accept criticism because seeing is varied and opinions may differ. Sticking to one's truths does not lead to harmony. It creates discords. It is an impediment in the process of learning. Criticism is to be accepted and not shifted as an aspect of blame. Here lies the aspect of accountability, an aspect of ethics. Blaming does not solve a problem; it only complicates matters. One is, therefore, one's own censor.

It is thus caring for oneself that can lead to ethical being, and behavior. I am my own subject. And, therefore, I have to ensure my own behavior that is consistent with ethical norms.

## 7. Inspiration from the Constitution of India

The Constitution of India, besides being a document of governance, and a catalogue of aspirations, is a moral text.

The preamble, the fundamental rights, the directive principles of state policy, and the fundamental rights are pointers to ethical standards that must be adhered to, especially by those who have taken oath of the Constitution at the time of joining employment. It is a covenant of good conduct. The preamble speaks of values like justice, equality, freedoms, fraternity, dignity of the individual, etc. The fundamental rights are couched in negations. The expressions 'the State shall not deny' (Article 14), 'The State shall not discriminate' (Article 15), 'No title...shall be conferred by the State' (Article 18), 'No person shall be ...' (Article 20-3), etc., are couched in negations. This is a technique of realizing the positives in terms of negating the negatives and, therefore, more forceful.

Similarly, the directive principles of state policy are 'obligations' upon the state that is required to do certain desirable things in the interest of the people. And the fundamental duties are an aspect of ethics that give primacy to respect for law, noble ideals that inspired our national struggle, to promote harmony, value rich heritage of composite culture, develop scientific temper, humanism, spirit of enquiry, abjure violence, strive towards excellence, etc. In other words, the Constitution is a sacred document that must inspire one who governs.

### **Reason for quest**

There is no dispute with values, laws, and systems/ procedures as such. But these are not effective. Fear of law cannot control temptations that carry on with their onslaught in the acquisitive society. One of the problems is that law is imposed from outside. It is the individual who, with his ingenuity, finds a way out of its clutches. Therefore, whereas the 'outside' controls are desirable, the 'inside' has to be transformed. With outside, we always find fault. It is easier to do so as blaming is simple. You shift responsibility to others. Let outside efforts continue. But things have to be tackled from inside by creating an awareness in the person so that he looks at outside with lenses of inside. Hence the ethics have to be discovered via the self. That is why Socrates

had mentioned that 'ethics can be taught'. At present ethics is now being assumed. This is not so. The assumption is belied in the context of reality.

The change has to start from the self. The object is to actualize the values that are indisputable. The seed has to be planted by practice. All the points mentioned above deal with practice. One cannot be honest without being honest, i.e., without practicing honesty. What propels one to be honest is his attitude that can be affected by the strategies mentioned earlier. It is during training that all aspects of practical ethics are to be imbibed by the administrator and one who governs.

So we have reached form where we started. The practice of the strategies shall make a person honest, truthful, honest, devoted to duty, etc. he can realize Nolan's principles and other homilies that are necessary for a harmonious social order that values the ethics of transparency, integrity, accountability, and responsibility. All that has been said is workable, doable, and practical. There is nothing amorphous about these practices, or ambiguous.

My effort is not a dispute with values. It is an attempt to realize these.

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B P Mathur

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## ***Reinventing the Civil Services***

**I**n modern State the Civil Services constitute the essential basis of government and its executive machinery. The power of the State, though it may emanate from people, can be put into effect only by an organized system of civil officials which is known as Civil Services. While bureaucracy in common parlance means all government employees, the Civil Services signify members of the elite core at the top of the hierarchy, who deal with higher branches of executive and administrative work, for which a greater degree of intelligence and training is necessary and operate as a single body, with *an esprit de corps*. OECD<sup>1</sup> describes Senior Civil Service (SCS) as “a structured and recognised system of personnel for the higher non-political positions in government. It is a career civil service providing people to be competitively appointed to functions that cover policy advice, operational delivery or corporate service delivery. The service is centrally managed through appropriate institutions and procedures, in order to provide stability and professionalism of the core group of senior civil servants, but also allowing the necessary flexibility to match changes in the composition of Government by using appropriate due processes.”

At the Union level Civil Services can be divided into three categories: a) IAS (Indian Administrative Service), IPS (Indian Police Service) and IFoS ( Indian Forest Service) known as All India Services as members have liability to serve both Union and States; (b) Central Services such as IFS (Indian Foreign Service), IRS (Indian Revenue Service- Income-tax, Customs & Central Excise), IA&AS (Indian Audit & Accounts Service) etc; (c) Central Technical Services such as engineering and medical where a technical degree is necessary before recruitment. There are 58 organized Group

A Central Civil Services of varying cadre strength and responsibilities. There are some common characteristics of civil services- they are recruited through Union Public Service Commission, the recruitment is merit based, they belong to a professional cadre, they go up the hierarchy through merit cum seniority principle and inculcate an esprit- de-core. Civil Service manage wide variety of functions at field level such as District Magistrate, Superintendent Police, Post Master General, Divisional Manager Railway, Commissioner of Income-tax, besides almost all senior positions in Central Secretariat. In addition to Union civil services, there are also State civil services with similar characteristics. The recruitment is made by State Public Service Commission on a merit based system, it is organized as specialized cadre and its members hold key positions in administration, police, engineering, medical and other technical departments.

### I. Civil Services in History

**C**ontrary to general impression bureaucracy does not have its origin in Europe. Bureaucracy owes its origin to **China**, which has a long history of Civil Services, dating back to 200 BC and lasting till 1905, with its philosophy worked out, its functions defined, its method of recruitment determined and its integration in government and society carried out. This unique organization of officials, upheld the tradition of Chinese life and civilization and administered the country with reasonable wisdom and efficiency, irrespective of dynasty in power. The Chinese Civil Service, mandarin as it was called, was based on three principles: first the eligibility to office is determined by a public examination-the purpose of the examination was to test general intellectual ability through knowledge of classics and literature in the Confucian tradition. Secondly, there were two set of examinations, one for the superior services and the other for the inferior. Those securing admission to the senior division were entitled to look forward to the highest offices of the empire by promotion on the basis of their merit or achievement. The third principle was continued supervision by a commission of three of the highest officials, men of known virtue and integrity, who were

dread to corrupt and inefficient and were responsible for maintaining high administrative standards. According to K M Panikkar<sup>2</sup>, the prestige of the mandarin, the emphasis on Confucian classics and the examination system, “provided the Chinese Empire with a cadre of officials of unusual general ability for a period of nearly 2000 years who were able to secure community of thought, ideals and practice which imprinted on the largest aggregation of the population in the world a national unity which nothing has been able to break...Even when violent political convulsions such as a foreign conquest took place, the mandarin carried on, maintaining the integrity of China and upholding its social and cultural fabric”.

In India the fully organized bureaucracy can be said to have been established during the Mauryan age. Kautilya's *Arthashastra* gives the range and scope of official activity. The Mauryan State and following its traditions, all the imperial States in India, built up administrative systems which covered the entire economic life of people, which necessitated a regular bureaucracy trained in both general and specialized functions. In ancient times land administration was the basis of State and as recurrent famines required storage of grains and uncertain monsoon required irrigation net work, the king with the assistance of trained personnel carried out systematic programme of economic and social welfare. The weakness of the system was that it evolved no satisfactory method of recruitment to offices, with an interest in continuity of the State. K M Panikkar<sup>3</sup> observes,

The absence of a system of converting this army of officials into a graded corps, a bureaucracy led to disastrous results, for whenever an empire fell, the civil services disintegrated, except at the lowest level of village revenue administration. This is opposite of what happened in China for whatever calamity fell on the dynasty, the mandarin carried on and upheld the unity of China. In India, every time a dynasty was overturned, the country broke up in bits, and therefore no tradition of imperial civil service developed over time. Every empire had to build up its administrative services. This was possible because the tradition of local

authority, dealing with land, irrigation, tolls etc was permanent in India, as against an imperial authority which was always imposed from the top. On the basis of local authority the higher structure could be built up whenever the imperial idea was revived.

**Britain** had a rudimentary civil service at the beginning of 19<sup>th</sup> century, but towards last quarter of the century it established an efficient well oiled civil service. Two factors contributed. First was the development of trained civil service in German States and the bureaucracy created in France particularly by Napoleon from which it drew inspiration. Second the Northcote-Trevelyan report (1853) which emphasized the need of establishing administration on trained and efficient civil service and recruitment through competitive examination with the highest description of education in the country as provided by Oxford and Cambridge. Northcote-Trevelyan report was greatly influenced by British experience of East India Company and Macaulay's spirited championing that candidates for service in India be recruited through examination and should possess high degree of intellectual competence. In 1870 Gladstone, having decided on introduction of Income-tax, felt the need of an effective administration and established the system of competitive examination for civil services. It was through the examination system that the officers of ICS came and ruled India with firm grip and gave a reasonably effective administration.

In Britain, historically, Parliament, always looked at executive officers as King's servants and therefore with suspicion. But over years the British civil service grew in public esteem. Post first world-war, the State depended on its success on a trained and efficient civil service which could advise the political chiefs in formulating effective policies from vague ideas and carry them out loyally. The top civil servants thus became more and more associates rather than the executive instruments of the political leaders. The rise of welfare State after the Second World War and the technological revolution and global competitive forces posed new challenges to the administration. The Fulton Committee

(1968) appointed by Harold Wilson recognized importance of professionals, they should have parity of esteem with generalist, and recommended abolition of classes and a unified grading structure. The truly dramatic changes were brought about by Margaret Thatcher. Its main elements were rolling back the State, providing value-for-money for taxpayers, making use of best private-sector experience and introducing management and efficiency into government. The civil services received a big jolt. As a commentator<sup>4</sup> put it, “For a while the whole Whitehall system almost visibly juddered...It was a culture shock. The elite administrative grade of the Civil Service in Whitehall has come to think of itself as the guardian and trustee of national continuity...The Prime Minister and a small group of sympathetic ministers...were arguing that its ideas and advice had proved bankrupt, that now was the time for an entirely new approach.” Competition was introduced in the civil services and a cadre of Senior Civil Service was created. However, the key principles on which the British civil service was based remained intact: integrity, political impartiality, objectivity, selection and promotion on merit and accountability through Ministers to Parliament. The civil service was downsized but it was given a larger role than before and more managerial responsibilities.

### **Senior Civil Service in Developed Countries**

Most advanced countries in recent years have created a Senior Civil Service (SCS) as part of the public service reform process. The idea is to select the very best of the society for the most challenging tasks in the government at senior level and form them into a unified and cohesive group responsible for higher level policy advice, managerial and professional responsibilities. OECD <sup>5</sup> defines SCS as follows,

The SCS is a mediating institution in a vertical and in a horizontal axis. In the vertical axis, the SCS mediates between the political arena-executive politicians and political appointees- and the administrative field- civil servants-by finding the balance between political responsiveness and neutral competence. In the horizontal axis, the SCS mediates

and bridges different sectors, groups and departments of government through shared values and skill-sets related to leadership, policy and service delivery and policy advice.

Creation of SES by Commonwealth countries such as UK, Australia, New Zealand and Canada is an essential component of the philosophy of New Public Management embraced by them. USA and European countries such as Belgium and Netherlands have also established SCS. The size of the SCS varies across countries. Smaller countries such as Belgium, the Netherlands, and New Zealand have less than 1000 senior civil servants, while USA has more than 7000. In Britain Senior Civil Service (SCS) was created in April 1996 and includes around 4 000 officers, replacing the former top five grades of the civil service. The idea of creating it was to overcome a certain departmentalism in the way in which Whitehall operated and to enhance cohesiveness at the top levels of the civil service. The avowed goals were to improve the delivery of public services through broadening the pool of advice, expertise and managers for public policies and services.

The justifications for creating a Senior Civil Service are: overcoming fragmentation and creating a corporate culture at the top; creating flexible recruitment and employment conditions; and clarifying boundaries between politics and administration. The distinguishing feature of SES<sup>6</sup> are as follows: 1) It is a select group of persons who are appointed to top level positions across ministries, departments, and agencies. 2) It is open to applicants from outside the civil service. 3) The members of SES are chosen on the basis of competition, after advertisement for talent search. 4) They are appointed on contractual terms with higher rates of remuneration to attract talent. 5) Progression in career is determined on the basis of performance. 6) They are bound by distinct set of ethical standards.

The biggest strength of SES is its openness as appointments are made from a wide pool consisting of people from private sector, academia etc besides civil servants, with relevant domain experience and competency. As managerial ability, leadership and innovation are the attributes sought

for entry into SES, persons recruited into it are expected to be performance oriented. Performance standards are stipulated in advance and a written agreement is drawn. The remuneration package has a component which is determined by performance.

While the British Civil service has undergone tumultuous change during last three decades, its core value has remained intact according to Michael Dugget<sup>7</sup> an academic at Civil Service college. The six principles are 1. Political Neutrality. 2 Appointment and promotion on Merit. 3 Permanence in the sense that elections do not determine the holders of senior posts. 4 Administrative experience and management technique applied to the practical skill of policy advice. 5 Awareness of value for money and propriety in its use. 6 A sense of public service alongside the constitutional imperative of being servants of the Crown.

The establishment of Senior Civil Service in Britain and the efficiency it has brought in running public services offers valuable lessons for us in India, which is still stuck in century old mold of amateur civil service which we inherited from our erstwhile rulers.

## II. Senior Civil Service in India

*An incompetent in high office is like a man on a mountain top; everything looks small to him and he looks small to everyone else.*

*Peter's Bureaucratic Perspective*

**T**he task of policy making in government is complex and needs specialist knowledge of the subject. Under the existing system all senior appointments in the ministries are monopolised by Indian Administrative Service (IAS) officers who are generalists. The hold on policy making by a group of people who have no expertise in the area is regarded as the single biggest factor for poor administration in the country by most expert committees and knowledgeable persons. The First Administrative Reforms Commission<sup>8</sup> (ARC) had observed as early as 1969, "We can no longer be satisfied with

the development of a broad genius like that of a professional civil servant; rather we must try and develop a professional economic administrator, a professional social administrator and so on. Effective administration requires to match each job with the man possessing the needed qualification and competence". The Commission emphasized, "Future administration has to be oriented towards specialisation and an important objective of personnel administration should be to create and nurture the needed specialisation." The Commission recommended that a specific functional field must be carved out for the IAS and the general purpose IAS to be converted into a functional service with its sphere defined.

The ARC laid utmost emphasis on filling up positions in the Secretariat which is the nerve centre of the government and envisaged entry into middle and senior management levels in the Central Secretariat from all the Services. The middle level personnel should be drawn, through the device of a mid-career competitive examination, from all the sources on the basis of equal opportunity for all. An officer of Class I Service (all India and Central) possessing experience of eight to twelve years should be eligible for appointment to the post falling outside his functional area. The selection should depend on the outcome of a written test to be conducted by UPSC, an interview and an assessment of previous record. The scheme was intended to tackle the central problem of higher administration namely getting the best man for each job.

The report of the high powered Administrative Reforms Commission was examined by Committee of Secretaries, which turned down the package of reforms proposed by it. It was never put up to the Cabinet for decision.

For the last four decades every expert committee which has studied the problem of Indian administration has pointed out need for specialisation for appointment to senior positions in government. The Economic Administration Reforms Commission (1984) headed by L K Jha observed that for key posts in economic administration, something more than the general administrative ability is needed and in filling senior

posts in economic ministries preference should be given to experience and knowledge of the subject and a sub-cadre of people who specialise in this work from existing services be created. A committee headed by Lt Gen (retd) Surendra Nath<sup>9</sup> former Chairman of UPSC (2003) to review the system of performance appraisal, promotion and empanelment for officers of All India Services and Group A Services has recommended that for positions dealing with policy formulation and implementation, “there should be deep selection and only those who can demonstrate a credible record of actual performance and possess the necessary knowledge and skills required for higher responsibilities, should only be promoted. Promotion should be based on merit and competition rather than simple attainment of benchmark.” The committee recommended that for empanelment to the post of Joint Secretary and above under the Central Staffing Scheme, the empanelment committee should be chaired by Chairman UPSC with at least two eminent professionals as members and should include an interview. The Hota Committee<sup>10</sup> (2004) also found that the present system of empanelment of officers for the post of Joint secretary and above is unsatisfactory and suggested that they be filled on merit and suitability of the officer. The 2<sup>nd</sup> ARC<sup>11</sup> (2008) has also expressed similar views. It has observed that an element of competition should be introduced both ‘from within the civil service’ and ‘outside’ for posts in the Senior Administrative Grade/ Higher Administrative Grade (Jt secretary/ Addl Secretary and higher level) so that only officers of proven merit are appointed. ARC has identified 12 domains in which officers should specialize.

Arvind Panagariya<sup>12</sup> an economist at Columbia University observes that our ministers being generalists rely heavily on their Secretaries for the formulation of policy. “And when the Secretaries themselves lack the specialized knowledge of the field, we run the risk of blind leading the blind”. He argues for reform that subjects the Service (IAS) to greater outside competition, and gives increased role to the specialized talent. “If you are not persuaded, I challenge you to look for defenders of the Service (IAS). Chances are that

you may not find any. And when you do, they will likely to be members of the Service themselves!”

### **The IAS dominance**

The IAS today dominates all policy making posts in Central ministries. In the States, besides holding all key Secretariat posts, they occupy the field posts of directors of most technical departments and head of state public sector undertakings. A few years back the post of Secretary Telecom used to be held by an officer of Indian Telecom Service and of Secretary Statistics by Indian Economic Service but now held by IAS officers. The key post of Finance Secretary in the Department of Economic Affairs used to be held by eminent economists like Dr IG Patel, Dr. Manmohan Singh and Dr Montek Singh Ahluwalia is now held routinely by IAS officers, many of whom have no background of economic policy making. A large number of posts of Financial Advisers in central ministries which used to be earlier held by officers of Central Finance & Accounts Services such as IA&AS, ICAS, IRAS etc is now held by IAS officers with no background of finance and accounts work. The most blatant case of arbitrary appointment is evident from the fact that IAS officers are appointed to the post of Comptroller & Auditor General, when technically qualified officers of proven competence are available from Audit and Account Service which runs the public audit system in the country. Such encroachment by IAS demoralizes the technical services and causes frustration and low morale.

Nirmal Mukerjee <sup>xxiii</sup> former Cabinet Secretary and a member of elite ICS core has commented that the whole context under which IAS functions today has changed as unlike the highly centralized British administration, India today is a federal democracy with power getting decentralised to Panchayats and municipalities, “Basically for a service recruited and controlled by the centre to supply officers for the key posts in the states and for the states to accept the arrangement because the said posts are reserved for such officers is a position wholly incompatible with our federal democracy.” Lamenting on the deterioration in the standard

of the service, Mukerjee says that IAS is sinking under the weight of its own numbers, "The service has fallen steeply in public esteem, because far too many IAS officers are seen to be corrupt or in league with politicians or in many states communal or casteist. Its very reason for existence as an elite body no longer holds true." He argues for abolition of the IAS as it has outlived its utility. The end result would be central, state and local government bureaucracies under the control of elected rulers at each level so that autonomy for the states and self-government would be imbued with meaning.

Expressing similar views Abid Hussain<sup>14</sup> a former distinguished member of the IAS says that, "The present situation is that the structure of All India Services would appear to be incompatible with the development of full fledged representative democratic government at the district level. In plain words, that law and order has also to be brought within the ambit of elected district council which should be in-charge of development activity. It may well mean the disappearance of the post of district collector, an institution traditionally venerated by the advocates of All India Service." Advocating specialisation by IAS officers he says, "Above a certain level- above the present Joint Secretary to Government of India level- the posts should be manned by persons drawn from different services and sources and even from industry corporate houses, NGO's and the posts of Secretaries should not be near monopoly of IAS officers." Abid Hussain says that it would be naïve to expect IAS to change the pattern of governance. They have a vested interest in preserving the status quo and also lack the vision and imagination to devise new and innovative policies.

PC Hota<sup>15</sup> former Chairman of UPSC analyses some of the reasons for the deterioration in the IAS: they have become more conscious of their powers and privileges and lack commitment to public service; do not give free and independent advice to political executive in order to serve their narrow partisan interest; have lost their sense of values and many have become corrupt; and do not feel responsible for the results due to frequent transfers they have to undergo. NC Saxena<sup>16</sup> Former Secretary Planning Commission

and member of NAC says that over the years whatever virtues the IAS possessed— integrity, political neutrality, courage and high morale— are shown signs of decay. They are deeply involved with partisan politics. He laments lack of professionalism and their becoming deadwood within a few years of joining the service.

*It is evident that without redefining the role of the IAS and restructuring it, no major reform in our public administration system can take place.*

### **Politicalisation of Services**

One of the most serious problem facing the public services is their politicization. The political masters often resort to arbitrary and questionable methods of appointments, promotions and transfers which corrodes their morale and independence. It gives rise to temptation in services to work in collusion with politicians, do their bidding and gain advantages in terms of promotion, cushy postings and foreign assignments. The Shah Commission<sup>17</sup> (1978), which had investigated the excesses during Emergency, observed that a large number officer – District Magistrates and Commissioners of Police— misused the powers acquired by Government under MISA (Maintenance of Internal Security Act) and obediently carried out the instructions emanating from politicians and administrative heads issued on personal or political considerations. “In a number of cases the officials were almost anticipating the wishes of those in authority, however illegal, immoral and incongruous with the basic tenets of administration, such conduct on their part may have been. In a large number of cases it appears that unscrupulous and over ambitious officers were prepared to curry favour with the seats of power and position by doing what they thought the people in authority desired.” The Commission sermonized that if the administrative machinery is to be rendered safe for our children, the services must give a better account of themselves by standing up to the basic values of an honest and efficient administration.

TN Dhar<sup>18</sup> an IAS veteran who has done a critical study of trends prevailing in IAS in UP, says that rot in civil services

had started from 1970's onwards largely due to instability of governments in power- there were 12 changes in government between 1977 to 1997. Social cauldron was on boil, caste and communal factors assumed dominance, which impacted on civil services. Some officers began to be identified with different political parties, factions or individuals. "For some cadre officers, seeking a political umbrella, became, at first a convenient choice and for a smaller number, a necessity. Favourable treatment like cosy and privilege laden posting, out- of- turn house allotments, allocation of a car from state quota, quicker promotion, foreign assignments or visits, training stints abroad- all these possibilities were mouth watering and capable of being achieved through compromise and genuflection. In turn, the beneficiary hoped to succeed in enlisting powerful political support. With the passage of time, officers began, covertly or overtly, to be identified with particular political leaders/parties, caste and class factions and group interests. What was lost were integrity, independence, objectivity, fairness and impartiality that constitutes the essential strength of the service. At times politicians and civil servants became ungrudging partners in manipulative shady deals. In administration one could observe the growing level of venality, self interest and self aggrandizement, severe decline in professionalism, more sycophancy, loss of neutrality and absence of transparency. Thus a kind of spoils system emerged, that in the parliamentary democracy we follow, is destructive of essential qualities of sound administration, namely continuity, credibility, fearlessness and impartiality."

Due to frequent transfer of officers administration has become a casualty. Dhar studied the tenures of District Magistrates in UP covering a span of 15 to 25 years and found that in most districts it was less than one year, in some districts DM's were transferred in less three months. He observes, "The transfer industry is perhaps the only flourishing industry in the largest populated State of India. It is used as a means of taming the bureaucracy, for partisan action and for furthering the cause of a political party or political individual in power". P D Malviya<sup>19</sup>, a former

Director General of National Police Academy, observes that political transfers at the behest of politicians can have disastrous consequences in police force as it undermines the authority of the head of police and weakens internal discipline of the force and its effectiveness in maintaining law and order. Due to political meddling the Provincial Armed Constabulary (PAC) in UP and Bihar Military Police, became ineffective and their impartiality suspect and para –military forces from Centre had to be called every time there was apprehension of caste or communal trouble in these states.

Many eminent members of the IAS such as like PC Hota<sup>20</sup> and N C Saxena have been pleading for fixed statutory tenure for civil servants. David C Potter, an American expert on public administration has data to prove that 60 percent of IAS officers posted under State government remained in their assignments for less than one year and 80 percent were transferred after the elections to the State Assembly, when it resulted in change in government. The position in Centre is no better. It is widely believed that the Establishment Board under Cabinet Secretary has hardly any say in posting officers in Central Secretariat. The post-retirement assignment of senior officers to Regulatory bodies and other important posts is largely done on patronage with no set guidelines.

There is an urgent need for creation of an institutional arrangement for better personnel management. In a conference of Chief Ministers held in May 1997, a proposal for constituting Civil Services Boards in the States which should handle senior level postings and promotions was mooted. The proposal could not, however, make much headway. Concerned over unhealthy trend of political masters interfering with appointment, promotion and transfer of civil servants the National Commission to Review the Working of the Constitution<sup>21</sup> (NCRWC) has recommended that , “the questions of personnel policy including placements, promotions, transfers and fast-track advancements on the basis of forward-looking career management policies and techniques should be managed by autonomous Personnel Boards for assisting the high level political authorities in

making key decisions. Such civil service boards should be constituted under statutory provisions". The Commission felt that such Boards should be function like the UPSC and should associate reputed management experts to provide a broad based pool of expertise.

The Hota Committee while noting with great concern frequent re-shuffling of officers, particularly District Magistrates and Superintendents of Police observed that rapid turnover of officers adversely affects delivery and quality of services and the ever-present threat of transfer affects the morale of the officers and their capacity to stand up to undesirable local pressures. Absence of a fixed tenure of officials is one of the most important reasons for administrative inefficiency, as no accountability can be fixed on officers for waste of public money, tardy implementation of programmes and large-scale corruption. Officers must have a fixed tenure of at least three years. The Committee recommended setting up of a statutory Civil Services Board both at the Centre as well as the States to regulate service matters and to prevent arbitrary interference by politicians. Recommendations on similar lines have been made by 2<sup>nd</sup> Administrative Reforms Commission. It has suggested creation of a statutory Civil Services Authority <sup>22</sup> which should formulate norms and evaluate and recommend officers for senior positions in government so that appointments are depoliticized.

*It is high time government depoliticizes the appointment, promotion, transfer and other service matters of Civil Servants and gives them autonomy necessary for delivering performance.*

### **Civil Servants and Political Executive Relationship**

The relationship between the Minister and Secretary and Departmental Heads is most difficult in a democracy, as often the ministers due to their political and party considerations try to influence and pressurize the civil servants. The principles of good administration require that civil servants should function in political neutral and impartial manner. The 2<sup>nd</sup> ARC <sup>23</sup> has observed, "There is need to safeguard the

political neutrality and impartiality of the civil services. The onus lies equally on the political executive and the civil services. This aspect should be included in the Code of Ethics for Ministers as well as the Code of Conduct for Public Services". The ARC has not spelled out the manner in which the independence and neutrality of civil servants can be maintained.

It would be worthwhile drawing attention to the UK Ministerial Code of Conduct <sup>24</sup> which states:

Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching policy decisions; a duty to uphold the political impartiality of the Civil service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code; a duty to ensure that influence over appointments is not abused for partisan purpose; and a duty to observe the obligations of a good employer with regard to terms and conditions of those who serve them.

In UK the Heads of Departments and Secretaries to Government act as Accounting Officers and they have personal responsibility for propriety and regularity of public finance and for avoidance of waste and extravagance. The Code stipulates, "If a Minister in charge of a Department is contemplating a course of action which would involve a transaction that the Accounting Officer considers would breach the requirements of propriety or regularity, the Accounting Officer will set out in writing his or her objection to the proposal, the reasons of the objection and the duty to inform the Comptroller and Auditor General should the advice be over ruled. If the Minister decides nonetheless to proceed, the Accounting Officer will seek a written instruction to take the action in question. The Accounting Officer is obliged to comply with the instructions, send relevant papers to the Comptroller and Auditor General, and inform the Treasury of what has occurred." It is evident that in UK, a Secretary or Departmental Head is made fully accountable for proper usage of public money and he is absolved of the responsibility

in cases where the Minister does not accept his advice, by making a report to CAG and the Treasury.

*In our country the relationship between Minister and Civil Service is fuzzy. The central issue in governance today is to put in place a system in which interface of political executive with civil services is governed by rule of law and public interest. The Prime Minister or a Chief Minister or a Minister should act in a just and fair manner and not in an arbitrary and partisan manner in regard to the appointment, posting, promotion, transfer and other service matters of civil servants. There is need for suitable legislation to define the powers of political executive Vis a Vis civil services so that they are able to function independently, without fear or favour.*

### III. The Philosophy of New Public Management

Today it is widely accepted that Weberian model of bureaucracy to which we continue to stick, is unresponsive to popular demands, embroiled in red tape and formalism, loves tradition and stands for conservatism and status quo. Bureaucracy is charged with self-aggrandizement as officials are power hungry and it is self-perpetuating. Today's environment, where developments in the field of computers, electronics and avionics have crushed time and space, demands institutions which are extremely flexible and adaptable, capable of delivering high quality service to the people and responsive to their needs. A large number of countries ranging from Commonwealth countries such as UK, Australia, New Zealand, Canada and Singapore to USA and Sweden have embraced the philosophy of New Public Management (NPM), which has dramatically transformed the performance of their governments and brought all round efficiency. The main elements of sea changes which are taking place in managing public services have been summed up in an OECD<sup>25</sup> document:

1. Decentralisation of authority within governmental units and devolution of responsibilities to lower levels of government.
2. Downsizing the public services and privatisation and corporatisation of activities.

3. Re-examination of what government should both pay for and do, what it should pay for but not do, and what it should neither pay for nor do.
4. Consideration of more cost-effective ways of delivering services, such as contracting out, market-type mechanism and user charges.
5. Customer orientation including explicit quality standards for public services.
6. Benchmarking and measuring performance and
7. Reforms designed to simplify regulations and reduce its costs.

There are three main components of public services reform:

- a) *Devolution of Authority*- This is based on the premise that decisions made closer to their actual point of impact, are with greater knowledge of likely results and therefore better decisions. A significant feature of devolution is removal of unnecessarily prescriptive rules and regulations. This implies substantial freeing up of centrally imposed rules on budgetary, staffing and procurement matters. An essential component of the devolution package is creation of autonomous agencies or units. Total management responsibilities has been delegated to the heads of the institution so that they are able to devise structures and processes that match the needs of the organization and deliver results that are agreed upon.
- (b) *Performance Contracting*- increased emphasis on performance. This helps imposing accountability on public officials for delivering results. While the framework of traditional civil service remains, the life-time employment has been replaced by contracts. Appointments to senior posts are made by selection through competition and possession of domain knowledge, and a proviso for exit in the event of non-performance.
- (c) *Client or Customer focus* -A major theme associated with improving performance of public services is the

development of a customer or a client focus or service quality initiatives in the public sector. The U K Citizens Charter is the best known example.

With a view to invigorate the public services, management expert Pradip N Khandwalla<sup>1</sup> has made a strong case for introduction of NPM in India. S K Das 22 S K Das : Building A World Class Civil Service. It is a major challenge to our governing elite-both political master as civil services leadership, to embrace the philosophy of New Public Management. However, we cannot simply sit back and be a mute spectator to declining standards of civil services, which imposes great cost to the country.

#### **THE WAY FORWARD**

There is need for sober appraisal why Civil Services have become politicized and why they have lost their independence, objectivity and integrity. The civil services as they are organized today whether IAS, IPS or other Central Services such as Income-tax, Customs & Excise, Audit & Accounts, Central Engineering Services, have very little place for professionalism, specialization and competence. Once selected by UPSC through Civil Services Examination there is no obligation for officers to perform and deliver results. Promotion is guaranteed by years of service one has put. This breeds complacency and indolence. A large number of Civil servants become dead wood after few years of service and have no market value. They therefore try to cultivate the political masters or their peers in the service to get convenient postings and promotion. The system breeds sycophancy and kowtowing to superiors in power. Merit becomes a casualty. However, this is only one side of the problem.

The other side of the problem is political meddling with the civil services. There is wide-spread demoralization in superior civil services due to their power and authority being completely usurped by political bosses. There is no proper delegation of powers even to top level Civil Servants whether it is personnel, financial or operational matters. A Secretary to government has no power to select even a Dy Secretary from the approved panel, he has to seek Ministers approval.

In Defence Ministry, every contract above a certain nominal value (Rs 5 cr) for indigenization of defence equipment, laboriously negotiated by high powered committees over months, has to be put up on file to the Minister for approval. Civil Services have many honest and committed officers who work in true spirit of *nishkama karma* as enunciated in Bhagwad Gita, but they are unable to contribute for lack of effective power and authority and have been completely neutralised. Political masters must understand this inner dynamics of civil servants, as to what motivates and demotivates them.

*There is no doubt that the system needs to be fixed. The first requirement is for political masters to develop healthy respect for senior civil servants and give them power and authority which is their due, so that they can effectively discharge their responsibilities.* Pt Jawaharlal Nehru and Sardar Vallabh Bhai Patel understood this and trusted them. Immediately after independence, civil servants handled with aplomb gigantic tasks, such as integration of princely States, rehabilitation of vast army of refugees from Pakistan and setting up of an industrial base for the country.

*The second requirement is creation of an institutional machinery in which merit and competence is to be rewarded. For this the superior civil services need to be completely re-structured and professionalized.* The creation of British type Senior Civil Service, which has dramatically transformed the public services, is the answer. All the posts of Joint Secretary and above in the Central Secretariat should be thrown open to members of all the civil services, as well as persons outside government, working in industry, business and academia. The selection should be made by Union Public Service Commission, which should include experts in relevant domain as members of the Interview Board. Similarly all field posts in Senior Administrative Grade and above in all the Services, such as Commissioners of Income-tax, Collector of Central Excise & Customs, Accountant General, Chief Engineer CPWD, Director of Health Services should be thrown open to competition from amongst the civil services, as well as professionals such as tax lawyers, chartered accountants,

civil engineers, doctors and other experts in respective fields (if there is fear of demoralization amongst Services, may be 50 % posts be thrown open to outsiders). This will bring much needed merit and expertise in higher echelons of the civil services.

*The biggest advantage in aforesaid system will be that all senior appointments will be de-politicized as selection will be made by UPSC and will be job specific.* This elite core of Senior Civil Servants will be professionals of proven ability and will be able to provide leadership to the entire bureaucracy and make it an instrument of serving the people for which it is intended.

The country needs to realize the importance of Senior Civil Service in giving an effective administration. The mandarins in China helped maintain its territorial integrity and unity for two thousand years despite violent political convulsions. During British rule, the Indian Civil Service (ICS) was instrumental in consolidation of the country and gave a unified civilian administration. Today in Britain and other developed countries, the Senior Civil Services have completely transformed themselves to meet the challenges of a globalised technocratic world. Belgium today does not have a government for more than a year, yet its sizable civil service manages to keep things going well enough. Unfortunately, we in India are unable to reform the civil services and still carrying the baggage of the past. It is time the superior Civil Service in India reinvents itself, to meet the challenge of good governance which the nation is facing.

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Notes:

<sup>1</sup> This provision can also be traced back to British constitutional practice, albeit a highly contested one. As the British Crown is the source of legitimacy for all law in Britain it is, of necessity, above the law. But the Crown operates through its servants. Does this mean that they too are above law when carrying out the sovereign's orders? This immunity was contested by the British Parliament with increasing vigour for nearly a hundred years from the rule of William and Mary at the end of the 17<sup>th</sup> century till that of George III a century later and ended with a typical messy British compromise. While individuals cannot bring charges against the state in a court of law, they can do so against civil servants in their personal capacity for the manner in

which they perform the duties given to them by the State.

<sup>2</sup> This would have completely undone a judgement of the 2006 Supreme Court in which it held that Section 19 of the Prevention of Corruption Act, 1988, did not protect former public servants. See The web of corruption - Centre must take the bull by its horns by G.P. Joshi & Maja Daruwala, The Tribune, 16 January 2011.

<sup>3</sup> It may have been Congress party treasurer Atulya Ghosh's moan of complaint in December 1966 that the party had till then received only a third as much in donations as five years earlier, that triggered the ban on company donations.

<sup>45</sup> I Obtained this insight from a discussion with H.N. Bahuguna, at the Indian Express guest house in Chennai in the summer of 1980. Its full significance dawned upon me only after the outbreak of the Khalistani 9onsurrection in Punjab, in 1983.

<sup>6</sup> National Election Watch newsletter, may 16, 2011. See ADR India [adr@adrindia.org]

<sup>7</sup> Bal Thakre reportedly said " If they have Dawood, we have Gawli". By 'they' he meant the Congress.

<sup>8</sup> In Tamil Nadu, for instance, a decision taken by the AIADMK government headed b y Jayalalithaa, after it came to power in 1991, not to refund the ten pwercent 'earnest money' that it took from prospective investors, led to a sharp fall in the rate of private investment in the state between 1991 and 1996.The indignation this caused as Tamil Nadu slipped rapidly back in the industrialisation race , was partly responsible for the AIADMK's resounding defeat in 1996. .

<sup>9</sup> This came spectacularly to light about a decade ago when an aspirant to the position of the chairman of the Vishakhapatnam Port Authority , who got the job of a deputy insisted on returning the money he had borrowed and got caught while trying to raise it.

<sup>10</sup> Broken System Human Rights Watch report on Indian Police , Augsut 2009.

<sup>11</sup> National Crime Records Bureau, Ministry of Home Affairs, "Crime in India 2007," <http://ncrb.nic.in/cii2007/home.htm> (accessed March 28, 2009). Quoted in the Human rights report cited above: Broken System : Obstacles to Police Accountability

<sup>12</sup> OECD: Senior Civil Service in National Government of OECD Countries, 31<sup>st</sup> January 2008; Gov/PGC/PEM/ (2008)2

<sup>13</sup> K M Panikkar: The Civil Services in History, in *Studies in Indian History*, ( Asia Publishing House, Bombay, 1963), pp 97- 136

<sup>14</sup> Ibid, p 112

<sup>15</sup> Michael Dugget: The Evolution of the United Kingdom Civil Services 1848-1957, A paper prepared for the International Institute of

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- <sup>37</sup> Pradip N Khandwalla : Transforming Government through New Public Management, ( Ahemdabad Management Association, 2010)
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Sumandeep Kaur Punia

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***Right to Live in Healthy and Clean  
Environment – An Appraisal***

*Man's paradise is on earth;  
This living world is the beloved place of all,  
It has the blessings of Nature's bounties;  
Live in a lovely spirit.*

*Atharva Veda (5.30.6)*

**T**he safe, clean and adequate environment is significant for the proper development of human being. If we look at society from a historical perspective, we realize that protection and preservation of the environment has been integral to the cultural and religious ethos of most human communities. Nature has been venerated by ancient Hindus, Greeks, Native Americans and other religions around the world. They worshipped all forms of nature believing that it emanated the spirit of God. Hinduism declared in its dictum that “the Earth is our mother and we are all her children.” The ancient Greeks worshipped the Earth Goddess. Islamic law regards man as having inherited “all the resources of life and nature” and having certain religious duties to God in using them. In the Judeo-Christian tradition, God gave the earth to his people and their offspring as an everlasting possession, to be cared for and passed on to each generation. The first Sikh guru, Nanak Dev, also gave importance to air, water and earth as he wrote in Japuji *‘Pavan Guru Pani Pita Mata Dhart Mahat.’*

Environment plays a pivotal role in human life as well as in the development of society. The existence of life on earth depends on the harmonious relationship between ecosystem and environment. Through the rapid acceleration of science and technology, human beings have acquired the power to transform environment in countless ways and on an unprecedented scale. If this capacity is used wisely and with respect to the ways of nature, then this can enhance the

quality of life. But wrongly or heedlessly applied, or applied in iniquitous ways, the same power can do incalculable harm to human beings and their environment.

Development, which is supposed to alleviate problems on one hand, often gives birth to so many problems on the other hand. With growing technological advancement and industrialization, the purity of environment has been threatened to an appalling extent. Many people do not have access to clean air and drinking water, thus experience health problems due to increasing pollution. The destruction of natural resources such as tropical forests, freshwater wetlands and marine coastal areas has both immediate and long lasting consequences on present and future populations. The anthropogenic activities lead to major and undesirable disturbances in the earth's climate and protective layers such as ozone layer. Due to the large scale occurrence of environmental crisis, the global community has expressed major concern over environmental protection and environmental development. The major objectives are the protection of the flora and fauna, the preservation of ecological balance and the conservation of the diversity of species.

#### **International Efforts for the Protection of Environment:**

The importance of safe and adequate environment was stressed in Stockholm conference of 1972. The first principle of the 1972 Stockholm Declaration states that: *“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”* Almost twenty years later, in resolution 45/94 the UN General Assembly recalled the language of Stockholm, stating that all individuals are entitled to live in an environment adequate for their health and well-being. The resolution called for enhanced efforts towards ensuring a better and healthier environment. When the declaration was adopted the conference proclaimed that both natural and man made environment are essential to his well being and to the enjoyment of basic human rights even right to life it self.

The most revolutionary step towards the preservation of the environment was the 'Earth Summit' convened by the UN General Assembly at Rio De Janerio. The main objective of the summit was to find an equitable balance between the economic, social and environmental needs of the present and future generations and to lay down a foundation for global partnership between developed and developing countries, on one hand, as well as governmental agencies and private organisations. Amongst the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change.

Vienna Convention for the protection of Ozone Layer (1985) and Montreal Protocol (1987) urged the countries to take measures to limit or prevent activities that could cause damage to the ozone layer. U.N. Framework Convention on Climate Change (1992) and Kyoto Protocol (1998) calls upon nations to reduce emissions that are responsible for global warming and climate change. Convention on Biological Diversity (1992), a legally binding agreement, asked member countries to take actions for conservation of biodiversity, sustainable use of biological resources, and equitable sharing of benefits relating to biodiversity<sup>2</sup>.

The Draft Declaration of Principles on Human Rights and the Environment (1994) accepted that Human rights, ecologically sound environment, sustainable development and peace are interdependent and indivisible. All persons have the right to a secure, healthy and ecologically sound environment. They have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries.

The World Summit on Sustainable Development was held at Johannesburg in 2002. The summit reaffirmed sustainable development as a central element of the international agenda and gave new impetus to global action to fight poverty and protect environment. It intended to set the world's environmental agenda for the next ten years (2012) and is expected to be a model for future international agreements.

The Copenhagen Accord recognised that climate change is one of the greatest challenges of the present day and that actions should be taken to keep any temperature increases to below 2°C. However, this document was not legally binding and did not contain any legally binding commitments for reducing CO<sub>2</sub> emissions<sup>3</sup>.

In Cancun Climate Conference 2010, the representatives from 194 nations had agreed to create a Green Climate Fund to foster environmentally friendly development in poor countries, calls for major emissions cuts. The deal also sets up new incentives for nations that protect their forests<sup>4</sup>.

#### **Domestic Efforts for the Protection of Environment:**

The Constitution of India, 1950, did not include any specific provision relating to environment protection and nature conservation. Presumably, the acute environmental problems being faced now in the country were not visualized by the framers of the Constitution. However, the past five decades have witnessed two major developments in this connection. The first development took place when the 42<sup>nd</sup> amendment, 1976, was adopted in the mid-seventies. Specific provisions relating to certain aspects of the environment, more especially for the protection of the forests and wildlife in the country, were incorporated in Part IV- Directive Principles of the State Policy- and List III- the Concurrent List- of the Seventh Schedule of the constitution. As a result, the Constitution has now the following provisions specifically relating to environmental protection and nature conservation: Part IV- Directive Principles of the State Policy (Article 48A): The state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Part IV A- Fundamental Duties (Article 51 A): it shall be the duty of every citizen of India- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creature. Seventh Schedule (Article 246) List III- Concurrent List: Prevention of cruelty to animals; forests and protection of wild animals and birds.

The protection of the environment is a fundamental duty not only of the state, but also of every person, says Article

51-A (g) of the Constitution of India. Many environmental crimes are committed not only by the state, but by private actors. The state has to prevent the private persons who damage the environment, because with this the rights of other citizens could be affected. Under public interest litigation, the courts facilitated the enforcement of environmental rights. Class actions have been entertained by the Supreme Court under Article 32 of the Constitution as being part of public interest litigation actions. The High Courts, also being granted this jurisdiction under Article 226 have intervened by passing writs, orders and directions in appropriate cases, thereby giving birth to an incomparable environmental jurisprudence in the form of a constitutional right to healthy environment.

The right to healthy environment has been incorporated, directly or indirectly, into the judgments of the court. The link between environmental quality and the right to life was first addressed by a constitutional bench of the Supreme Court in the *Charan Lal Sahu Case*.<sup>5</sup> The jurisdiction of the Supreme Court widened the scope of the right to life in Article 21 and included the right to a wholesome environment.<sup>6</sup> In *Subhash Kumar vs. State of Bihar*<sup>7</sup>, the Supreme Court held that 'right to life is a fundamental right under Article 21 of the constitution and it include the right to enjoyment of pollution free water and air for full enjoyment of life.' The court even went to say that any person doubtful that the environmental conditions at some place are sufficient to live a life in dignity, can call upon the courts.

Another case, *M.C.Mehta v. Union of India*, concerned the deterioration of the world environment and the duty of the state government, under Article 21, to ensure a better quality of environment. The Supreme Court has held that life, public health and ecology have priority over unemployment and loss of revenue. The Supreme Court ordered the Central government to show the steps they have taken to achieve this goal through national policy and to restore the quality of environment. The apex court established a new concept of managerial liability-'absolute and non-delegable'- for disasters arising from the storage of or use of hazardous materials from their factories. The enterprise must ensure that no harm

results to anyone irrespective of the fact that it was negligent or not.

In *Vellore Citizens Welfare Forum vs. Union of India*, AIR 1996 SC 2715, the Supreme Court held that industries are vital for the country's development, but having regard to pollution caused by them, principle of 'Sustainable Development' has to be adopted as the balancing concept. 'Precautionary Principle' and 'Polluter Pays Principle' has been accepted as a part of the law of the country. In *Indian Council of Enviro-Legal Action vs. Union of India*, 1996 3 SCC 212 (the Bichhri Pollution Case), the polluting industries were directed to compensate for the harm caused by them to the villagers in the affected areas, especially to the soil and to the underground water. Enunciating the doctrine of 'Public Trust' in *M.C.Mehta vs. Kamal Nath* (1997) 1 SCC 388, the apex court held that resources such as air, sea, water and forests have such a great importance to the people as a whole that by leasing ecologically fragile land to the Motel management, the State government had committed a serious breach of public trust.

The trajectory of environment rights in India, from a historical perspective, Active judicial intervention by NGOs, community groups, and others, have also set a series of important precedences that go beyond what the bare laws provide. There are many initiatives in Public Interest Litigation (PIL). Some of these include the cases against the construction of Tehri Dam<sup>8</sup> and Narmada Dams<sup>9</sup>; against deforestation<sup>10</sup>; against mining in Aravallis<sup>11</sup>. The judgments in other cases have set important precedents and directions for the further development of policy, law and practice. For instance, the *Godavarman* and the *WWF vs. Union of India* cases have led to the orders that no forest, National Park or Sanctuary even if prior approval under the Forest (conservation) Act, 1980 had been obtained, New authorities, committees and agencies have been set up such as the Central Empowered Committee (CEC) and the Compensatory Afforestation Management and Planning Agency.

Some judgments not directly related to environmental cases, also have significant implications for the struggle to

establish environment as a human right. Mention should especially be made of a number of cases in which the Constitutional Right to Life (Article 21) has been interpreted widely to include a series of basic rights that include environment and livelihoods. In *Francis Coralie vs. Union Territory of Delhi* (AIR 1981 SC 746), Justice Bhagwati observed: 'We think that the right to life includes the right to live human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing, and expressing oneself in diverse forms, freely moving about and mixing and co-mingling with fellow human beings.'

Another expansion of the right to life is the right to livelihood (article 41), which is a directive principle of state policy. This extension can check government actions in relation to an environmental impact that has threatened to dislocate the poor and disrupt their lifestyles. A strong connection between the right to livelihood and the right to life in the context of environmental rights has thus been established over the years. Especially in the context of the rights of indigenous people being evicted by development projects, the Court has been guided by the positive obligations contained in article 48A and 51A(g), and has ordered adequate compensation and rehabilitation of the evictees.

### **Sustainable Development**

Awareness of the major challenges emerging both as regards development and with reference to the environment has made possible a consensus on the concept of "sustainable and environmentally sound development" which was endeavoured to focus in "Earth Summit", meeting in Rio in 1992. We can also refer to the content of the Declaration on International Economic Cooperation adopted by the General Assembly in May 1990, which clearly recognizes that "Economic development must be environmentally sound and sustainable."

The concept of sustainable development contains some basic components or principles. *First* among these is the

precautionary principle, whereby the state must *anticipate, prevent* and *attack* the cause of environmental degradation.<sup>12</sup> The Rio Declaration affirms the principle by stating that where ever “there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”<sup>13</sup> The Indian Supreme Court has accepted the principle and applied it on several occasions. In the *Taj Trapezium Case*, applying the precautionary approach the Supreme Court ordered a number of industries in the area surrounding the Taj Mahal to relocate or introduce pollution abatement measures in order to protect the Taj from deterioration and damage.

The second component of the doctrine of sustainable development is the principle of ‘*polluter pays*’. The principle states that the polluter not only has an obligation to make good the loss but shall bear the cost of rehabilitating the environment to its original state.<sup>14</sup> In operation, this principle is usually visible alongside the precautionary principle.

A Native American proverb states that “*we do not inherit the planet from our ancestors but borrow it from our children*”, this is the next significant component of sustainable development— the principle of intergenerational equity. The Brundtland Commission defined sustainable development as development ‘*which meets the needs of the present without compromising the ability of the future generations to meet their own needs*.’ The principle envisages that each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should also be entitled to diversity comparable to that enjoyed by previous generations. This principle is called “conservation of options.” *Secondly*, each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations. This is the principle of “conservation of quality.” *Thirdly*, each generation should provide its

members with equitable rights of access to the legacy of past generations and should conserve this access for future generations. This is the principle of “conservation of access.”<sup>15</sup>

### **What should we do for the protection of environment?**

According to environmentalists, the blind race for increasing exploitation of natural resources in the name of development has alienated human beings from nature physically as well as spiritually. In order to restore a harmonious relationship between the two, human beings will have to learn a degree of ‘humility’ with regard to their environment and to the various types of species on earth. People must realize that the relentless extraction of natural minerals and other resources to feed an increasingly greedy manufacturing system gives rise to environment degradation and causes immense harm to humanity.

As we seriously recognize the serious impact of a degraded environment on human health and well being, we are better placed to adjust our policies and cultural practices, which see environment and development not contradictory but rather as complementary forces for sustainable development. It will be better to improve both the environmental condition and the economic situation of the people.

In order to save mankind from imminent catastrophe, environmentalists wish to dismantle the prevailing large-scale manufacturing system and to replace it by smaller-scale manufacturing system. Environmentalists argue that the people of advanced nations should reduce the use of private vehicles and increase the use of public transport and bicycles. They should promote the use of wind energy and solar energy instead of coal, electricity and nuclear energy. They encourage plantation of trees all over the world. Environmentalists wish that human beings should maintain friendly relations with nature, and should not damage it. In order to curb the overall levels of consumption the environmentalists also demand the reduction in population.

Finally, environmentalists insist on moral regeneration of mankind to ensure a just and equitable distribution of

resources. If individuals of all countries realize their responsibility to maintain a clean and congenial atmosphere on the globe, they will certainly make it worth living for the present as well as future generations. Environmentalists exhort people to forget their ideological differences and act together for a better future of mankind. ‘Think globally, act locally.’

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## INITIATIVES OF CHANGE

Anil Swarup

### *Rashtriya Swasthya Bima Yojana*

*Providing health insurance cover to the poor*

#### Introduction

One of the most urgent and vexing problems in the developing world, more so in India, is how to finance and provide health care for more than a billion persons, most of whom are impoverished or belong to low income group. This is brought out clearly in the World Development Report 2000/2001. In most Asian countries, health care is financed by out-of-pocket (OOP) payments by individuals. These expenditures result in jeopardizing an equitable health system in developing countries. In the absence of financial risk pooling, the poor have to meet the costs of health care from their own pocket, pushing them further down the abyss.

#### The Indian Context

In India, around 94% of the total workforce is in the unorganized sector. In absolute terms too, the numbers (around 433 million) are mind boggling. One of the major insecurities of these workers and their families is the frequent incidence of illness and need for medical care and hospitalization. Despite expansion in the health facilities, illness remains one of the most prevalent causes of human deprivation.

It has been clearly recognized that health insurance is one way of providing protection to poor households against the risk of health spending leading to poverty. However, most efforts to provide health insurance in the past have faced

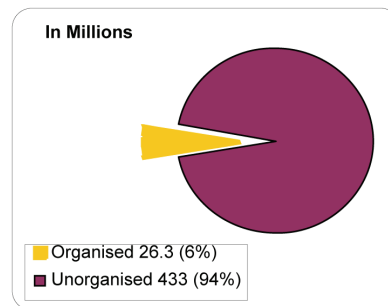


Fig.1: Total Workforce

difficulties in both design and implementation. The poor are unable or unwilling to take up health insurance because of its cost or lack of perceived benefits. Organising and administering health insurance, especially in rural areas, is also difficult.

The common dilemma facing policy makers is with regard to the need for a Government sponsored health insurance cover when health services are being provided 'free' by the Government itself. However, the fact is that the 'free' government health services are not meeting the needs of the

**Table 1: Out of pocket payments and indebtedness in some States in India (Rural)**

|   | All India | Poorest | Low Income | Middle Income | High Income |
|---|-----------|---------|------------|---------------|-------------|
| % of people who do not use health services                                  | 18        | 24      | 24         | 18            | 11          |
| % of people who use government services for OP                              | 22        | 30      | 26         | 22            | 18          |
| % of people who use government services for IP                              | 42        |         |            |               |             |
| Average OOP payments made for OP (Rs)                                       | 257       | 191     | 237        | 243           | 426         |
| Average OOP payments made for OP in Government facilities                   | 11        | 9       | 19         | 9             | 12          |
| Average OOP payments made for OP in private facilities (Rs)                 | 246       | 163     | 190        | 211           | 377         |
| Average OOP payments made per hospitalization (Rs)                          | 5695      |         |            |               |             |
| Average OOP payments made per hospitalization in Government facilities (Rs) | 3238      | 2530    | 2950       | 3017          | 6374        |
| Average OOP payments made per hospitalization in private facilities (Rs)    | 7408      | 5431    | 5777       | 6781          | 10749       |
| % of people who are indebted due to OP care                                 | 23        | 21      | 31         | 32            | 20          |
| % of people who are indebted due to IP care                                 | 52        | 64      | 65         | 60            | 52          |

*Source: NSSO 60<sup>th</sup> round 2004. Govt. of India*

community. This is the reason why a lot of out-of-pocket expenses are still taking place which in turn lead to indebtedness, as is evident from table below. It is also evident that the poorest bear the brunt of it.

## THE SCHEME

### Target Group

The unorganized sector workers below poverty line (BPL) and their families are proposed to be covered under Rashtriya Swasthya Bima Yojana (RSBY) during the next five years (2008-09 to 2012-2013).

Understanding the characteristics of the target group was found to be absolutely imperative in evolving a scheme that could have a meaningful impact. An analysis of this group reveals that they are primarily:

- Poor
- Self employed
- Illiterate
- Migratory, and
- Unskilled

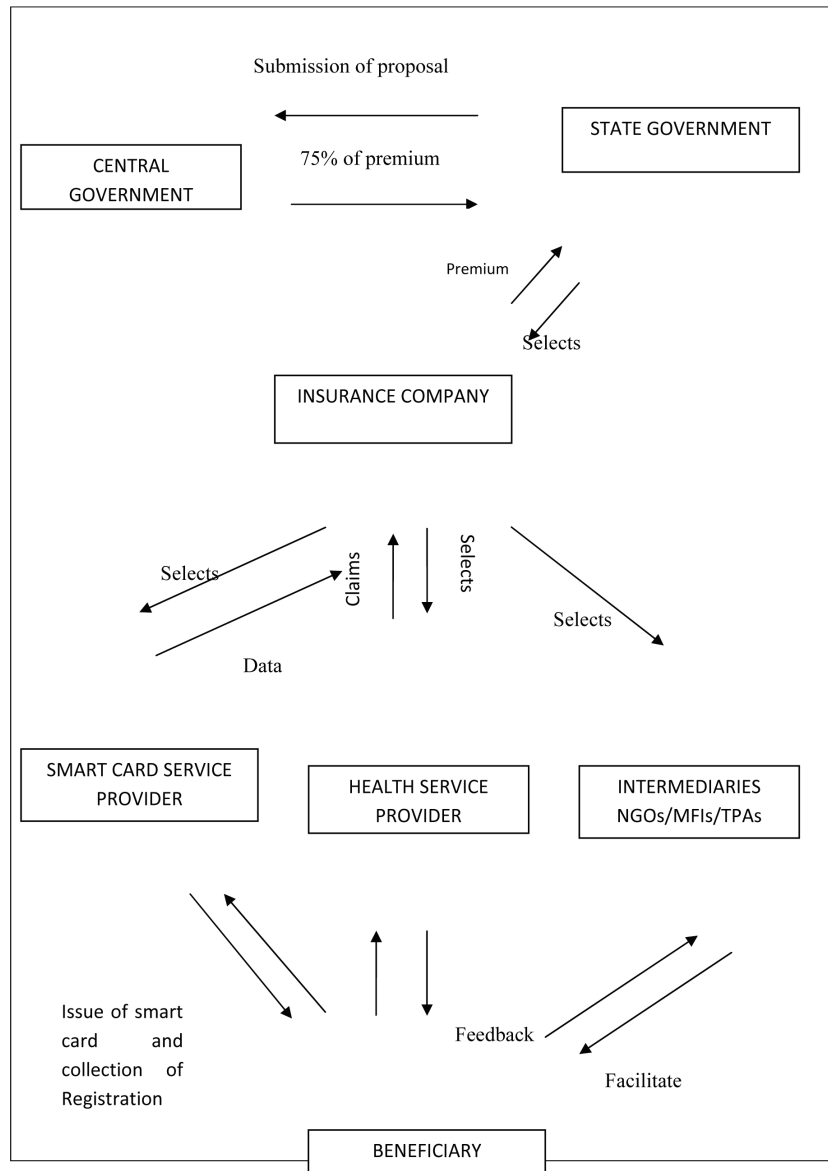
Thus, the scheme had to be cashless because there was no way in which the beneficiary could raise the financial resources and then claim reimbursement from any agency. The reimbursement process itself is normally so cumbersome that it would have been virtually impossible for those below poverty line, even if they could raise the resources upfront, to claim the benefit.

A large number of workers in India migrate from one State to the other in search of employment. So far, none of the health insurance schemes, for that matter any other scheme, addresses this aspect. An added complexity emerges when only some in the family migrate and rest of them stay back.

On account of illiteracy, repeated documentation cannot be resorted to and, in this sense, the cashless system was the only alternative.

### SCHEME DESIGN

Fig.2: Scheme Design



### Benefits

The beneficiary, under RSBY, is eligible for the following minimum benefits:

- (a) Total sum insured of Rs. 30,000 per BPL family per annum on a family floater basis. (A family would comprise the household head, spouse and up to three dependents)
- (b) Pre-existing conditions are covered.
- (c) Cashless coverage of health services related to hospitalization, including maternity benefit and some such services of a surgical nature which can be provided on a daycare basis. (Though OPD facilities are not covered under the scheme, OPD consultation is free)
- (d) Provision for pre and post-hospitalization expenses for one day prior and 5 days after hospitalization.
- (e) Provision for transport allowance up to a limit of Rs. 100 per visit subject to an annual ceiling of Rs.1000.

### Funding

- a) Contribution by Government of India: 75% of the estimated annual premium. Additionally, the cost of the smart cards to be borne by the Central Government @ Rs60 per card.
- b) Contribution by the respective State Governments: 25% of the annual premium.
- c) The beneficiary to pay Rs.30 per annum as registration/renewal fee.
- d) Any administrative and other related cost of administering the scheme in each State, not otherwise included in the premium cost, is to be borne by the respective State Governments.

### Estimated Coverage and Allocation for the Scheme

An estimated 60 million BPL families (300 million persons) in 600 districts of the country are targeted for coverage. When all these families are covered, there would be an annual recurring expenditure of around Rs.4000 Crores.

## ROLL-OUT OF THE SCHEME

### Process Flow

The process flow under RSBY is given in *Annexure.1*.

After the identification of the Districts to be taken up in a particular year, the State Governments are required to select one or more health insurance service providers on a periodic basis according to a tender process which would take account of both the price of the insurance package and technical merit of the proposal. The tender is open to both public and private insurers who meet the standards fixed by Insurance Regulatory Development Authority (IRDA).

The selected insurance company has to have back to back arrangement with:

- a) Health service providers
- b) Smart card service providers
- c) Intermediaries

Only such health service providers are empanelled by the insurance company as are able to meet the predefined criteria. The idea here is to ensure that though an attempt is made to keep the number as large as possible to facilitate competition and easy access, some minimum standards are adhered to. The hospitals have also to agree to a predetermined package of medical and surgical procedures and the costs thereof to obviate subjectivity. No preauthorization is required in case of predetermined packages. Majority of the ailments are covered under these packages. However, in case the ailment does not fall in such packages, the procedure for preauthorization has been prescribed.

### Information Technology Application

Smart Card is central to RSBY, as it enables cashless transaction as well as inter-operability in



network hospitals throughout the country. It also enables fool-proof biometric identification of the beneficiary.

The smart card is issued by the smart card service providers on behalf of the Insurance Company to the beneficiary. However, ownership of the card remains with the Central Government for its use in subsequent years and for other purposes. The card is personalized and delivered on the spot.

The cost, if any, is borne by the insurance company as a part of the overall bill.

The presence of the head of the family or the spouse is mandatory as his/her photograph has to appear on the face of the card. However, it can be issued in the absence of other members. Their details can be added subsequently at the district kiosk, to be maintained by the insurance companies.

In view of the possible migration of BPL workers, there is a facility of split card under the scheme. These cards can be split at the time of first issue or subsequently at the district kiosk. Split value can be decided by the head of the family, provided the total amount on both the cards is equivalent to the total amount available on the primary card before the split. The insurance company will authorize issue of these cards.

A new card can be issued in case of loss of smart card. However, the beneficiary has to bear the cost of duplicate card. As the details of the family are available in the database, the card can be issued at the district kiosk.

The hospitals are mandated to possess necessary hardware of predetermined specifications to read and operate the data on the smart card. Transaction software, based on the specifications, is to be prepared by the service provider for use in the hospitals.

A back-end data base management is in place for transmission from hospitals to a designated server and for electronic settlement of claims to make the scheme not only cashless but also paperless. An elaborate MIS has been developed for close supervision and monitoring at various levels.

As indicated in Annexure.2, in all, 11 sets of software are being used for effective use of smart cards under RSBY.

### **Security**

With a view to imparting security to the entire process of issuing and use of smart card, an elaborate key management system (KMS) has been evolved by the National Informatics Centre (NIC). A Central Key Generation Authority (CKGA) has been set up for creating root keys and to manage the entire key management system at the Central level. The district keys are generated by CKGA. Thereafter, the keys for field key officers (FKOs) are generated at the district level. The district keys are transferred by the CKGA to the district key managers. An elaborate training schedule has been worked out for the field key officers. On the occasion of district level workshop, the FKO cards are issued to them, using the DKMA software developed by NIC.

### **Role of Intermediaries**

The Intermediaries between the insurance companies and the beneficiary have a very important role in carrying the scheme to such beneficiaries. These intermediaries can be in the form of TPA, NGOs, MFIs, Panchayati Raj Institutions or a combination of these depending upon the requirement in each region and the capacity and capability of the intermediaries. However, without such 'social aggregators' it will be virtually impossible to roll out the scheme.

The intermediaries can leverage existing network of beneficiaries and existing infrastructure in the administration of the product, thereby reducing the overall administrative cost. The intermediaries, specially the local NGOs, know the people in the area and their language. This helps them prepare an effective communication plan for awareness generation which results in a greater participation of beneficiaries in the scheme and its better understanding. Such intermediaries can also provide advice to beneficiary households wishing to avail health facilities.

### **Monitoring and Evaluation**

Monitoring of the progress under the scheme takes place at various levels (District, State and National) by respective Governments and Insurance Companies. The parameters for monitoring relate to:

- (a) Cards issued
- (b) Visits to the hospitals
- (c) Admissions and deaths while admitted
- (d) Claims made by the hospitals and settlement thereof by the insurance companies
- (e) Payment of premium

A robust IT enabled back-end database management has been evolved to facilitate monitoring.

The scheme also entails evaluation and impact analyses. The key areas being covered relate to hospital utilization/health outcomes and beneficiary satisfaction.

### **Challenges Faced so Far**

The complex nature of the scheme, the commitment required in terms of time and finances and the preconceived notion about the social sector being an exclusive domain of the government threw up major challenges in terms of marketing of the scheme amongst the States. Similarly, on account of negative perception about government schemes and in view of upfront investments in procuring hardware, in developing software and putting in place the required manpower, there was initial reluctance on the part of insurance, smart card and health service providers in coming on board. Hence, the scheme had to be marketed through a well defined strategy amongst each of the stakeholders.

Personal visits by senior officials to the States to market the scheme, organizing video conferences to provide on-the-spot clarifications and dispelling misapprehensions and prompt response to queries, lending a helping hand, both in terms of understanding the technology as well as in organizing sensitization workshops and standardization documents and templates went a long way in providing

comfort to the States. They have gradually come to 'own' the scheme.

The scheme has been sold as a business model to the other stakeholders as there was an in-built business opportunity for them. A series of interactive sessions facilitated in conveying this message as also the fact that government meant business.

The biggest challenge for the scheme, however, has been the problems faced with regard to the data base of the beneficiaries. Such data base either incomplete or when complete, was not in the desired format. Considering the volume of the data, it has been a stupendous task to get the data in shape.

#### Unique Features of the Scheme

##### 1) IT tools for poorest of the poor:

In all 60 million cards will be issued under RSBY during the next five years. This will be the biggest ever exercise involving IT applications for BPL families in India or anywhere else in the world. So far, IT applications had been used primarily in the urban areas. The smart card is now traveling to rural areas on such a large scale.

##### 2) Empowering Below Poverty Line families:

Unlike the previous Government sponsored schemes, where the beneficiaries did not have option to select the service delivery point, under RSBY, the beneficiary can choose the hospitals from a list of network hospitals, including private hospitals, for seeking treatment.

##### 3) RSBY operates on a business model:

In view of the numbers and the fund involved, there are business opportunities for all the key players, like Insurance Companies, Hospitals, Smart Card Service Providers and the Intermediaries. On an average, around Rs.50 million (US \$ 1.2 million) is being pumped in each district every year. This has created business opportunity as there would be incentive for private sector health providers to set up health related infrastructure. Similarly, on account of sheer volumes, smart

card service providers will have the incentive to deliver the cards even in the rural areas. The insurance companies obviously can also make decent money on account of the proposed volumes.

A healthy tension between hospitals and Insurance companies, where the former would want more patients and operations while the latter would want the opposite, will enable monitor claims data as it comes in.

#### 4) Security of Cards:

A key management system has been evolved by National Informatics Centre to ensure that the smart cards are fully secure. There would be no scope of cards being duplicated or being misused. The smart card also envisages use of biometrics (finger print verification).

#### Rsby Gets Going

The response of the State Governments and other stakeholders has been very encouraging. The Scheme became operational from 1.4.08. So far, 27 State Governments have initiated steps to implement the scheme. Smart cards have started rolling out in 25 of them. By 30.04.11, more than 23 million cards, providing health insurance cover to around 90 million persons, have already been issued. Around 1,700,000 persons have already availed of free hospitalization facility.

A decision has been taken to extend the scheme to categories beyond BPL. Thus the benefits have now been extended to the building and other construction workers and street vendors. The Finance Minister has also announced extension of RSBY benefits to such MNREGA beneficiaries as have worked for 15 days or more during the previous year. The Railway Minister has announced similar benefits for railway coolies and vendors. The scheme has also been opened up for such groups of workers as are prepared to pay the premium under the scheme. So far, more than 150,000 such families have been covered.

The scheme has come in for appreciation both within and outside the country. The World Bank has called it “one of the most promising efforts in India”. It has commented that

“the program is now internationally recognized for its innovative approach to harnessing information technology to reach the poor.” The UNDP has selected the scheme as a Social Protection Floor success story to be published in its document “Sharing Innovative Experiences: Social Protection Floor success stories”. The initial evaluations of the scheme have revealed some very encouraging trends in terms of beneficiary satisfaction.

### **THE CHALLENGES AHEAD**

The front end of the scheme is quite simple but the back-end, specially in the context of Information Technology applications, is quite complex involving a number of players, both in the public and private sector domains. Vertical and horizontal coordination poses the biggest challenge even after the stabilization of a variety of software that are being used to roll out the scheme.

The back-end data base management throws up a different challenge in terms of developing the structure and putting in place the hardware. There are some issues yet to be resolved: Who will own and manage these structures? Who will own and manage this database?

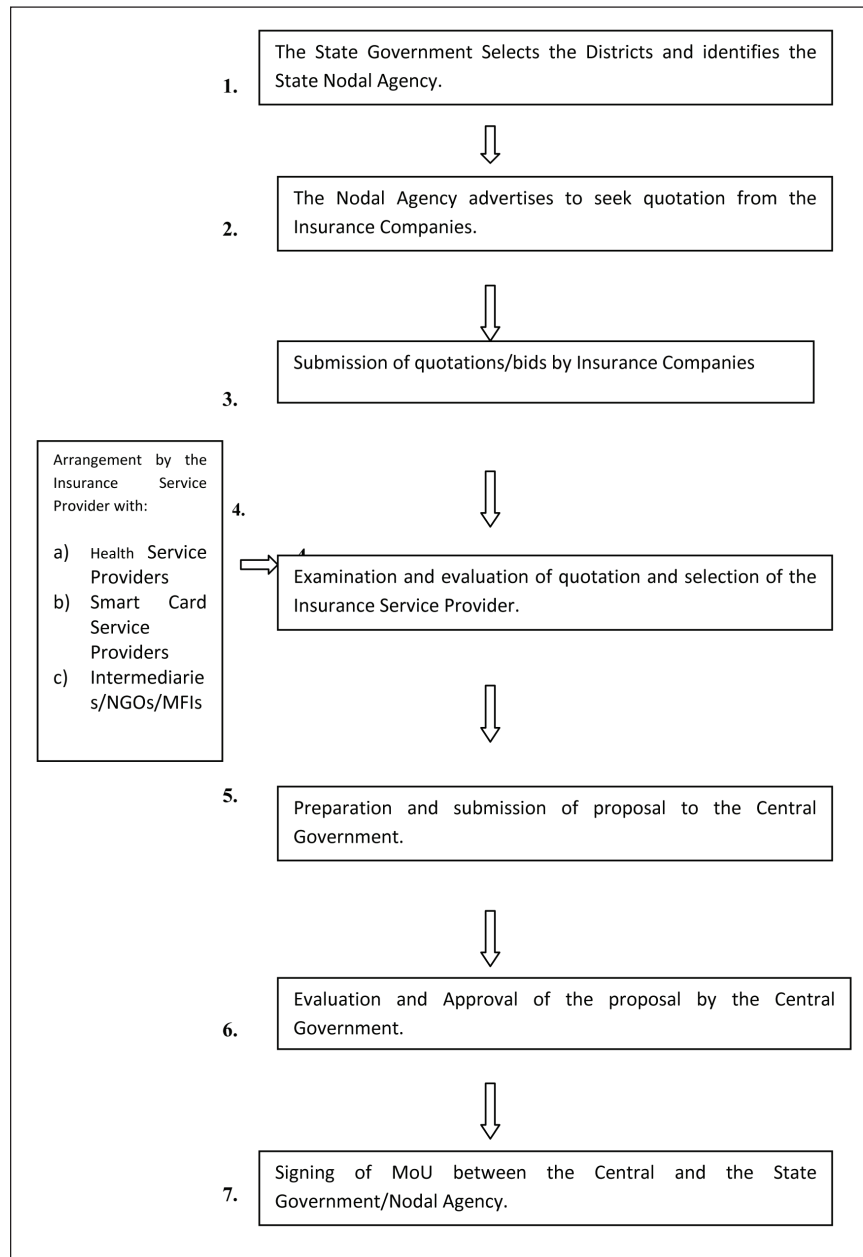
Reaching out to such huge numbers in far flung areas is a stupendous task. Evolving communication modules and delivering them on such a scale continues to test the capacity and capabilities of the Insurance Companies whose task is to sell this product.

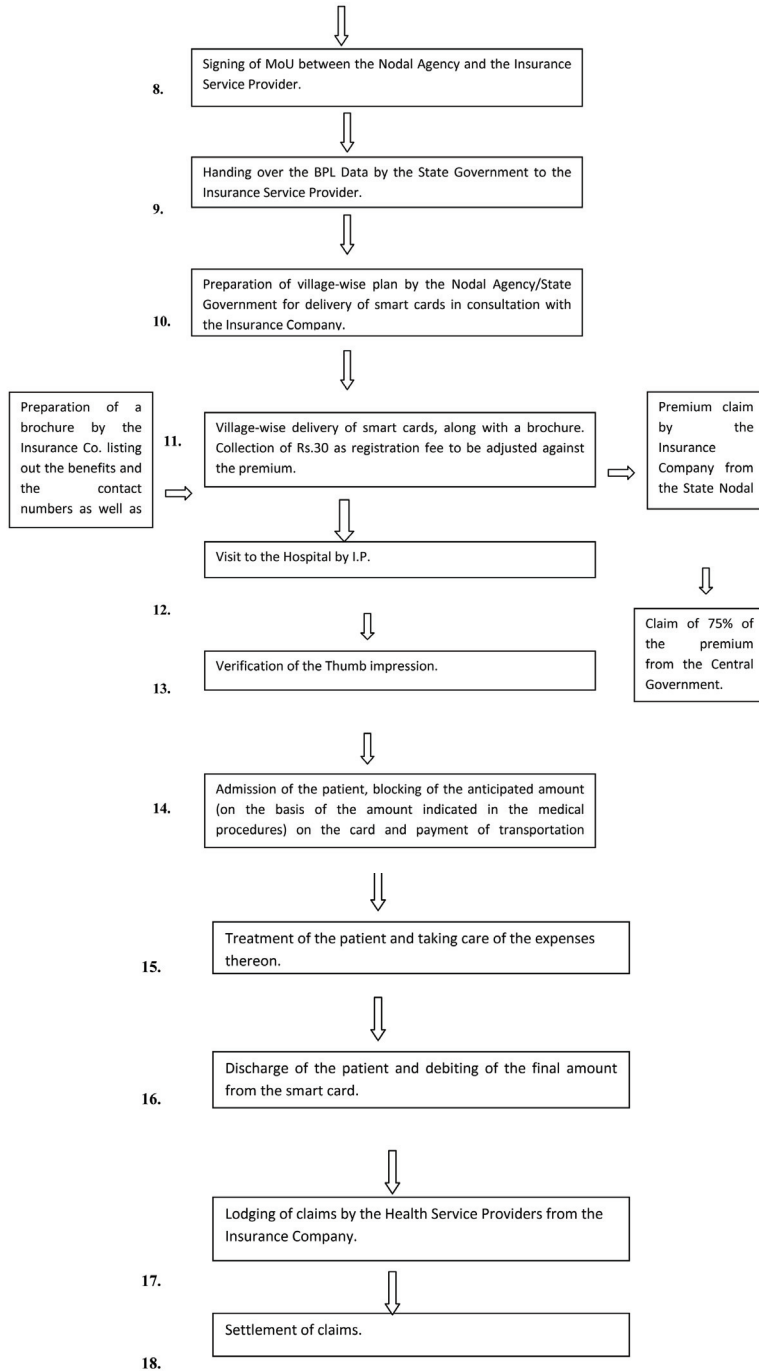
And finally, the challenge is not merely of quantity but also of quality of service by various service providers.

The journey so far has been difficult but extremely enjoyable. There are indeed huge challenges ahead.

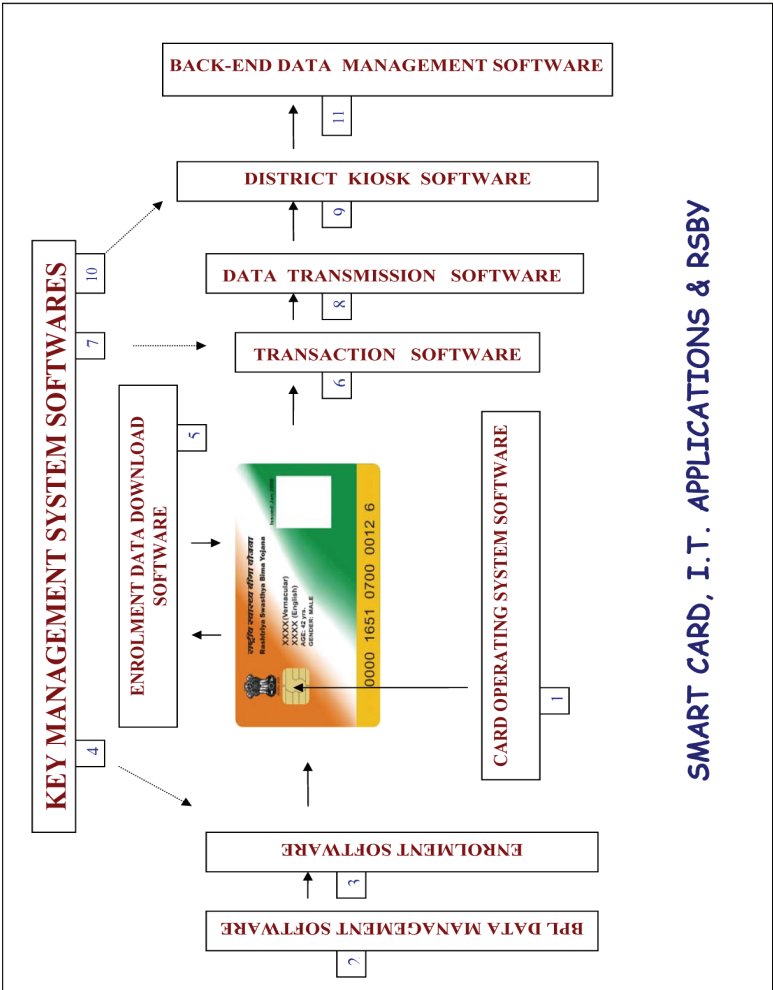
Annexure -I

### PROCESS FLOW





Annexure -II



Mayur Maheshwari

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## ***Aarogyam - Experiment in delivery of Health Care***

### **Introduction**

Maternal and child health are closely linked and the results are greatest when interventions are combined as packages that address the period before and during pregnancy, through birth and the neonatal stage, and then through early childhood (up to five years of age). The most effective approaches provide a continuum of care throughout this whole period. Aarogyam is Sanskrit word which means “complete freedom from illness”. Aarogyam is an ICT based responsive system which ensures and involves active participation of all key stakeholders viz. local administration, health facilities and doctors, frontline health workers (ASHA, ANM, AWW), village heads and beneficiaries, to ensure that a pregnant women is provided with ANC, PNC and complete immunization throughout the continuum of care.

Aarogyam has a village wise database of all the beneficiaries (pregnant/lactating women, children upto 5 years) of an area, which gets continually updated with new data generating on the field with the help of front line health workers. The database thus generated is the backbone of the software system used by Aarogyam as the system generates automated alerts in the form of vernacular voice calls/SMS to the beneficiary thus enabling the beneficiary with vital information at their door step.

The system not only provides beneficiary with the information to act upon but also ensures that the services are delivered to the beneficiary by generating automated alerts (vernacular voice calls/SMS) for the ANM and Block level health officials, informing them of due services in their area.

Aarogyam uses a mapped database where each beneficiary is mapped with a village including the village head (pradhan), related health officials including frontline workers and health facilities. This multi dimensional mapping gives Aarogyam the capacity to monitor and take proactive correction measures on its own, even in the absence of human interface e.g. if a woman is due for TT and she does not receive one Aarogyam will not only report this to the beneficiary but also to the village head and related health workers and subsequently to the health facility. Competent district authorities can also monitor and evaluate the performance and pendency at any level of the system, thus strengthening accountability and transparency. Aarogyam also has an Interactive Voice response system, whereby you can register a complaint or can enquire about various health related information.

Aarogyam ensures that the government not only empowers its people with information and knowledge on basic mother and child health care but also reaches out to them with responsive health care delivery.

### Objectives

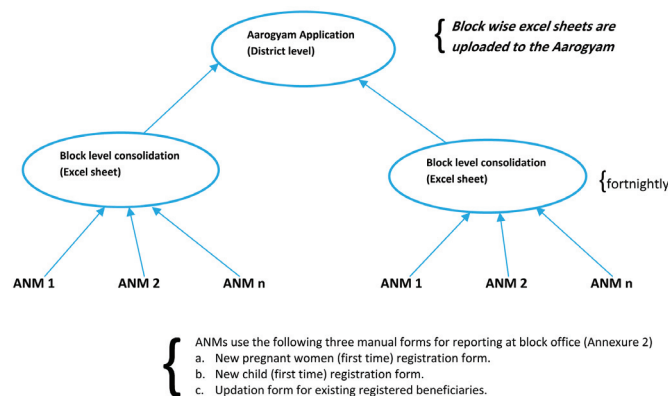
With the problems and issues identified the Aarogyam scheme was envisaged as an ICT based health care delivery system for Pregnancy Tracking and Digital Health Mapping with the following objectives:

- a) Tracking each pregnancy with the help of technology based monitoring system.
- b) Ensuring complete ANC/PNC care including early registration of pregnancy, 3 ANC visits, TT, institutional delivery and promotion of Janani Suraksha Yojna (JSY)
- c) Ensuring 100% immunization for pregnant women & children in 0-5 year age group.
- d) Bridging the gap between goals and present-actual values for MDG 4 and 5 indicators.
- e) Developing healthcare delivery into a two-way demand based interactive eco-system.

- f) Involving community at village level to generate awareness about health services.
- g) Taking health information to community's doorsteps.

## How Aarogyam Works

### A. Data collection and processing



Every month (twice) the data collection formats are filled by ANMs and are submitted to the block PHC/CHC, where the data entry operator consolidates village wise data in pre-formatted excel sheets. Once the excel sheets are prepared they are sent to the district chief medical officer's (CMO) office where the Aarogyam software is currently installed. The data entry operator at the CMO office enters block-wise data into Aarogyam as per the excel sheets.

ANMs maintain the JBSA register (Annexure-1) also called as Aarogyam register with them which contains village wise beneficiary details with expected date of delivery and dates of actual and expected ANC/PNC visits and immunization etc.

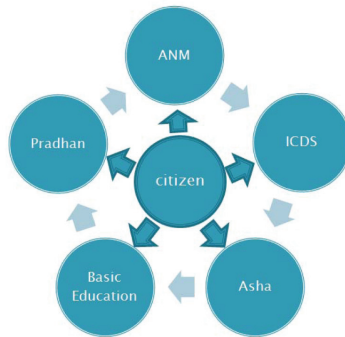
Initially the complete data of the Aarogyam register is entered into the Aarogyam database and then only the incremental data is updated. The incremental data is of three

types, captured in pre-formatted forms using the block and village code:

- a. New pregnant women (first time) registration form.
- b. New child (first time) registration form.
- c. Updation form for existing registered beneficiaries.

Each beneficiary is given a unique id (8 digits) the id consists of Block id (1<sup>st</sup> two digits) + Village id (2<sup>nd</sup> two digits) + beneficiary id (last four digits). Same id is used for tracking a mother and her child in the system.

## B. Stakeholders Participation



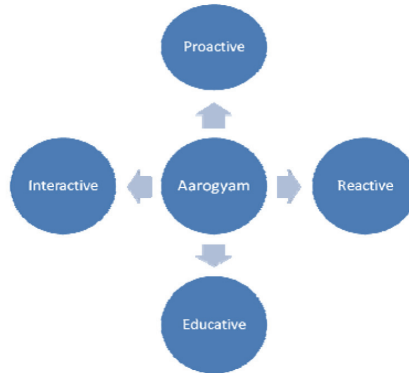
1. **ANM:** The ANM has the critical role of not only as the data aggregator of her area but also as someone who ensures that based on the data entered into the system timely services are provided and any non-compliance reported by the system is swiftly addressed.
2. **Village Pradhan:** Village Pradhan is the face of community at village level. Aarogyam keeps the Pradhans informed of the service delivery and pendency status in their villages which enables them to ensure primary care health service delivery to the village beneficiaries.
3. **ASHA:** ASHAs motivate the community on the entire Aarogyam approach. The presence of ASHAs is vital in reaching to the beneficiaries.
4. **ICDS:** The AWWs (Angan Wadi Workers) have a crucial role in Aarogyam as they were not only responsible for

creation of detailed master database of the baseline data by ensuring coverage of each and every household but also continue to support in gap identification and service delivery at the village level.

5. **Basic Education:** The network of school teachers and shiksha mitras has been utilized to spread awareness about the project through school health programs etc.

### C. Aarogyam Modules

Aarogyam works on a four pronged approach of proactive, reactive, Interactive and educative interventions among the community.



Aarogyam consists of two primary modules as follows:

- a) Pregnancy tracking and monitoring module (Proactive and Reactive)
  - i. **Proactive-** Aarogyam keeps citizens at the centre of the health model and uses an Interactive Voice Response System (IVRS), which generates automatic family specific reminder calls/SMS in Hindi (Annexure-3) encompassing the following areas:
    - Immunization details for children from 0-5 years informing them about the place and date of vaccination.
    - ANC/PNC details of pregnant and lactating mother based on the due date for TT, IFA tablets etc.
    - Institutional delivery and benefits of Janani Surakhsha yojna (JSY).

- ii. **Reactive-** In case of pendency the reminder calls are sent to the concerned family and village pradhan for ensuring the service delivery, ANMs are also sent reminder calls for all uncovered families per village. This enables Aarogyama to ensure that all beneficiaries receive the desired services.
- iii. **Services delivered**
  - Enabling the digital health mapping and pregnancy tracking system.
  - Outbound IVR/ Hindi SMS disseminating personalized information w.r.t mothers and children for BCG, DPT, Polio, Measles vaccines etc.
  - Audit Trails - Regular pendency reminder calls to family, ANM, Pradhan (Village Heads) for ensuring 100% immunization, ANC, PNC etc.
- b) Grievance redressal and Information dissemination module (Interactive and Educative)
  - i. **Interactive** –Aarogyam allows beneficiaries to interact with the system whereby through in-dial option on a helpline number, one can gather maternal and child health care information e.g. child vaccinations, antenatal care, postnatal care, institutional delivery, birth preparedness, and Janani Suraksha Yojna (JSY) among other topics. A beneficiary can also lodge specific health related complaints using the in-dial facility.
  - ii. **Educational-** Aarogyam provides educational support to various health campaigns such as Directly Observed Treatment Short Course for Tuberculosis (DOTS), pulse polio campaigns, gender-equality, anti-epidemic (ie, cholera or dengue fever) campaigns, Prenatal Diagnostic Tests (PNDT), JSY, and the burden of disease in a particular region among others. In addition to this Aarogyam sends periodic Behavior Change Communication (BCC) messages to the beneficiaries.
- iii. **Services Delivered**
  - Inbound Information retrieval of Health parameters and schemes

- Complaint lodging and redressal
- Community Broadcasting

### **Implementation methodology**

#### **a. Baseline survey**

A comprehensive baseline survey of the district with respect to the family health indicators like age, gender, class, parity, immunization details of the children, ANC PNC services provided to the pregnant women etc. was conducted in the beginning, which involved using existing data available at district level under different govt. schemes. A survey was also conducted to generate a database of all the ANMs, village pradhans, health facilities, health officials etc. along with their mobile nos.

Simultaneously a database of pregnant women with their expected date of deliveries (EDD) and children in the age group 0-2 yrs was prepared along with the services availed by them till that time, this was done with interdepartmental coordination especially health and ICDS department. The survey helped in creating the village wise database of beneficiaries along with vital health indicators and status.

#### **b. Software design and development**

- i. Design of the software was finalized based on the requirements identified as per the objectives of the system. JBSA registers maintained by ANMs with the help of ASHAs to capture pregnant women across the continuum of care constituted the basic data elements of the software. Relational database design principles were used for the database design which involved Area (district, block, gram panchayat, village etc.), Gram Pradhan, ANM, Health facility and health administration data and mappings.

#### **c. Software application development and IVRS implementation**

- i. Aarogyam application was developed based on the requirements, as a standalone version with facility to upload pre-formatted block wise data.

- ii. The application is linked with the Interactive Voice Response System (IVRS). The technique uses analogue/digital card to read all the uploaded data and devolve it to beneficiaries.
- iii. Multiple phone lines and health helpline was initiated to receive complaints and grievances from the community and to update/educate them of the health services and other relevant health information.
- d. Establishing standard operating procedures (SOP)**
  - i. Establishment and orientation of required institutional mechanisms at district and block level was done so as to streamline the data capturing, consolidation and reporting processes.
  - ii. Standardization of required formats, periodicity of reporting, roles and responsibility of the field workers and accountability of health officials were fixed, delineated and informed.
- e. Capacity Building (Trainings)**
  - i. Capacity building of ANMs, Data entry operators and other block and district level health staff was done so as to introduce them to the initiative, its objectives, use and possible impact.
- f. Community Awareness**
  - i. Awareness was generated through IEC and BCC activities like films, songs, nukkad natak, pamphlets, hoarding etc. about the project.
  - ii. ANMs and ASHAs disseminate information regarding the system to the beneficiaries in the villages.

#### **Monitoring and Evaluation**

- iii. Development of web-based monitoring portal which reflects total disposal of grievances, office wise complaint pendency, status of call alerts and SMS sent on daily basis, pendency calls generated etc. This portal is regularly accessed by key officials including CMO and District Magistrate (DM).

- iv. Regular monthly meeting with key stakeholders to assess the progress.
- v. Generation of audit trails- Aarogyam automatically generates pendency list w.r.t unfulfilled targets for medical officers, ANMs, Pradhans and beneficiaries, based on this call alerts and SMS are sent to all stakeholders every 10 days till the services are reported as delivered by the system.

### Impact

The scheme has benefitted more than 1.4 lakh families so far (till Dec-2010) in 3 districts which are Baghpat, JP Nagar and GB Nagar of U.P. 2 lakh more families would be added in 4 other districts where it has been initiated. So far more than 175,000 automated calls and SMSs have been sent by the system. Some of the major impacts of Aarogyam are listed below:

1. **Improved responsibility and accountability of service providers:** Instant messages and calls to service providers (ANM, MO I/c etc.) have resulted in more accountability and better and timely service delivery to the community.
2. **Improvement of the measurable indicators:** There has been a positive trend in the measurable indicators over the period of time when the Aarogyam was put in use.

| Immunization | Apr-2007 to Jan 2008 | Apr-2010 to Jan 2011 |
|--------------|----------------------|----------------------|
| Polio        | 19914                | 33964                |
| DPT          | 19914                | 33964                |
| BCG          | 22637                | 34419                |
| MEASLES      | 21838                | 33934                |
| TT Mother -1 | 20314                | 39525                |
| TT Mother -2 | 18374                | 38280                |

Indicators like TT Mother, BCG, DPT, DPT Booster, measles etc. have shown a significant positive trend. Achievement in child immunization is also very encouraging and showing consistent improvement e.g.

for Baghpat district the data for the period from 1st Apr-2007 to 31st Jan 2008 and 1st Apr-2010 to 31st Jan-2011 is as follows:

3. **Community Feedback:** Community feedback has been an enormous success of the program as community has started to understand more about not only the types of health services available to them but also how to avail them and report any non-compliance to the health and district administration.
4. **User Friendly approach:** With vernacular messages literacy is no more a hindrance for availing health services and information. Free of cost information delivery and grievance redressal has empowered communities in demanding services.
5. **Focus on preventive medicare:** The model has helped health department to refocus its strategy on preventive healthcare whereby on the basis of the health indicators reported and demand generated along with the complaints lodged in, corrective actions can be timely taken for achieving better results.
6. **Knowledge empowerment:** Economically and socially impoverished and illiterate families can also now not only get information about their health profile and services required but also demand the services especially regarding ANC/PNC and immunizations. Aarogyam ensures that the services are delivered to such sections of society at their doorstep.
7. **Better Monitoring and Evaluation:** Individual level health indicators' tracking has enabled the system to facilitate in monitoring and evaluation of the program implementation strategies and achievements.
8. **Effective Planning:** Better planning of community level health programs especially ANC/PNC checkups and Immunization drives are possible with the system e.g. ANMs can be now informed of the number of beneficiaries to expect at the each session, this will not only result in reduced waste of vaccines but also more accurate head count.

**Constraints and Challenges (Overcome)**

1. **Database creation and regular Updation:** To create and maintain an accurate database of beneficiaries with periodic Updation is a great challenge which requires not only good quality data collection but also time feeding and synchronization. Aarogyam used ANMs, ASHAs and AWWs extensively to create the initial master database supported by appropriate trainings and currently uses pre-formatted data entry forms for data collection by ANMs and data upload by the blocks (Annexure 2)
2. **Motivation for increased workload and accountability:** Biggest challenge was to motivate health workers across the system (medical officers to ANMs), to be a part of the program and overcome their initial resistance. Pradhans and ANMs had an increased accountability with the system which was also the reason for their non proactive participation on the beginning. With introduction of rewards and recognitions in combination with proper trainings and orientation the workforce could finally be mobilized for the program.
3. **Public awareness generation:** The concept being novel had a great challenge in community to accept it and not mistake it for any other commercial propaganda. It was evident with non reception of automated calls, in the beginning. Mass scale and systematic campaigns were then launched to generate awareness about the program. Wall paintings with brief of the scheme and in-dial phone numbers were done at key locations. ANMs and Gram Pradhans were mobilized to make people more aware of the scheme and its operational aspects. Village level demonstration of Aarogyam was done it was also demonstrated at important village functions of the district. The mass campaign resulted in almost 95% reception of out-bound calls and a significant jump was seen in the inbound calls.
4. **Capacity building:** ANMs were not trained to handle daily feedback and specific information; data entry

operators also required significant training to clearly understand the application requirements of data quality and consistency. Weekly and focussed trainings resulted in better quality of data and improved response from the ANM vital for the success of Aarogyam.

### **Constraints and Challenges (Existing)**

1. **Increased work load on ANM:** The existing system of having different registers for ANM, at times having similar data not only increases data redundancy but more importantly results in increased work load for ANM. Similarly regularly filling and submitting data updates to the system at block office is a time consuming mechanism, sometimes resulting in extra ANM visits to the block.
2. **District level feeding:** Currently Aarogyam has district level data entry and data comes in excel sheets till district. Data inconsistency and delays in data entry along with inability of block level operator to correct/modify data and no readily access to block reports are major challenges.
3. **Automated job-chart/ work-schedule:** Non availability of advance job-charts or work schedules based on the Aarogyam data is another issue which needs attention. Such a system for ANMs/ASHAs can help them in planning their work in community better.
4. **Change of mobile numbers:** To keep up with a change in the mobile numbers of various stakeholders is another issue which needs a solution. In the absence of any paper based reporting/schedules, the system struggles to meet the desired output if the key stakeholders change their mobiles number unreported.
5. **Mobile/Landline coverage:** Mobile and landline coverage among the most vulnerable people and their involvement in the system continues to remain a challenge.

### **Conclusion**

Despite the challenges, Aarogyam through information

communication and technology can improve the lives of the poor while capitalizing on the mobile advantage. Aarogyam can assist India in realizing success in MMR and IMR paralleling its recent economic growth.

### **Recommendations**

The following points can be considered in Aarogyam to make it a more comprehensive system:

- Involvement of ASHAs, voice calls/SMS going to ASHA level will reduce the burden on ANM and can provide better results.
- Use of Iconic messages along with the Hindi text messages can have a greater impact on illiterate beneficiaries.
- Aarogyam register (JBSA register) should be made more comprehensive so that ANM does not maintain another set of registers to capture the indicators left out from this register but which need to be reported to other authorities.
- The data entry currently done at district level, if done at block level into the Aarogyam system will make the system more effective as it will encourage timely reporting.
- A dedicated call centre to answer and manually manage some critical components of the application can be effective.

Jayesh Ranjan

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***Social Mobilization Approach for the  
Reduction of Extreme Poverty***

**R**eduction of extreme poverty has been a major challenge confronting our country since independence. Despite the high financial outlays and a large bureaucracy devoted to this task, the results have, at best, been mixed. In particular, the condition of the poorest of the poor has not seen much change; in fact, there is much anecdotal evidence to suggest that their condition has worsened in the decades of economic liberalization and globalization. Going by the causes behind the inability to reach out to the poorest of the poor and make a significant and sustainable difference in their poverty condition, a novel approach has been tried out in the state of Andhra Pradesh, which relies on social mobilization, institution building, capacity building and livelihoods support to the poorest of the poor.

**Who are the Poor? and the Poorest?**

In the backward regions of Andhra Pradesh, the poorest of the poor sections generally comprise the tribals belonging to the primitive groups, landless dalits, artisans among the backward classes, marginal farmers in drought prone areas, migrant workers, and at a micro-level, women headed families, families with disabled members, etc. A typical poorest of the poor household has no productive assets in its possession, absolutely lacks creditworthiness, faces the largest social and human risks, and has lowest form of skills for its livelihoods to be diversified. A vast majority of the poorest depends upon their daily labours to just eke out their livelihoods. These are the people whose own strength is just not enough to pull them out of poverty — they definitely need the benefit of organizing; but it is this task of organizing them

that is the most challenging. Any investment in their favour economic, physical or social remains unproductive due to the absence of strong receiving mechanisms among the poorest of the poor till the time they remain unorganized.

If we try to understand the typical mentality of the poorest of the poor, their sole concern seems to be about their labour and the consequent daily bread they need to earn. With such mindsets, it is very difficult to engage their attentions fully to help them receive other developmental messages. Moreover, the usual agencies that are supposed to visit the villages and deliver these messages to the poorest, namely the development bureaucracy, have lost their credibility completely in the eyes of the poorest. The way they have been operating in the last 40-50 years, namely, restricting their meeting with only the village elites, conducting their confabulations in secrecy, not demonstrating patience and tact when they have to interact with the poor under inevitable circumstances, their open corruption, and so on, has rendered them highly suspect and ineffective. The response of the poorest to delivery efforts by this machinery is also marked by shortsightedness their main attempt is to try to get the most that is possible immediately, which may deliver short-run benefits, but is mostly unsustainable, and quite often has many hidden costs which become burdensome for the poorest subsequently.

### **Social Mobilization Approach**

It is therefore clear that a very intense and patient approach is required to seek the complete attention of the poorest, and that the regular developmental agencies would certainly not be up to this task. A new approach has been tried out in Andhra Pradesh since 2000 to overcome these problems with extremely encouraging results. This approach is called the **Social Mobilization approach**, carried out by a sensitive support mechanism and following a methodology of village immersion. An autonomous body, called the Society for Elimination of Rural Poverty (SERP), and having a mix of pro-poor government officers and the best of private sector talent, has been painstakingly overseeing this process since its inception.

### Steps in Social Mobilization Process

The social mobilization approach aims to organize the poor into small and homogenous self-help groups, and eventually to federate these groups at intermediate and apex levels to help them gain strength from numbers. Young men and women, having proven commitment to this cause are specially chosen, sensitized and inspired to work with the poorest in a totally participatory fashion. These Community Coordinators, as they are called, start living with the poorest, sharing all their daily lifestyle rituals as one among them. This establishes their credentials as being selfless to the core, in contrast to the conventional delivery machinery. Over a period of time, the poorest open up to the Community Coordinators and start paying attention to all that they try to convey to them. The Community Coordinators begin by explaining about the necessity of organizing as the main prerequisite for any steps in poverty alleviation, and also the need to have a long-term vision of poverty alleviation through self-help. In the process, strong, self-reliant and visionary community organizations are built up. The self-help groups are organised on the principles of homogeneity and affinity within a neighbourhood. The mobilization process begins with the women among the poorest, and then brings into its folds the youth, men, and the adolescents. All the self-help groups are federated at the village level, and next at the apex level, again following a process-oriented approach. The community organizations are strengthened intensively through repeated capacity building sessions on best practices of group management, bookkeeping, social activism, etc.

A key message at this stage is about the requirement of financial support for the poorest to enable them to invest in productive opportunities of coming out of poverty visualized by them. The only way to attract investment is by becoming creditworthy by gaining the confidence of outside agencies from the government, financial institutions and other donors who are helping in poverty alleviation efforts. The self help groups and their apex federations gain the trust and confidence of the outsiders by demonstrating certain vital principles of democracy, justice, transparency, self-help, and

the like, in their functioning. These community groups provide the basis for the successful delivery of other developmental initiatives that are then envisaged for the poorest through a demand-driven process.

### **Livelihoods Enhancement**

Once the community organizations reach a level of maturity as displayed in their group functioning, they are supported in accessing credit incrementally. The first few doses of credit could be small amounts, primarily to meet their immediate consumption needs. Once these amounts are successfully repaid, a detailed exercise is carried out to identify the actual investment requirements for the Groups. This exercise, called Livelihoods Enhancement Action Plan (LEAP), does a detailed gap analysis in the whole chain of their livelihoods activities. Wherever gaps exist in the livelihoods chain and possibilities for value addition exist, the required capital is mobilized mainly through bank finance. On some occasions, funding support is procured for trying out new livelihoods options, if the potential for further value addition in existing livelihoods does not appear to be much. The Community Activists handhold the members to ensure that the investments are used judiciously and deliver the desired results without any obstacles. Given the credibility of the community organizations, banks have the slightest hesitation in lending the required credit, and experience has shown a very high repayment rate for these loans.

### **Spread Effect**

A doubt that is commonly expressed is whether such an effort is not highly time consuming and whether so many development professionals are available to do intense field work with the poorest. Experience has shown that both of these doubts are unfounded. While the Community Coordinator is developing complete rapport with the poorest in one habitation, word spreads like magic about his work and demands start arriving from the poorest in other habitations for similar support. A number of committed Community Activists also emerge in the process who agree to be the ally

of the Community Coordinator and help him expand his work. Typical experience in Andhra Pradesh has been that it is possible to organize all the poorest into strong community groups within a geographical cluster of about 30 villages using 3 Community Coordinators in a span of 1 to 1 ½ years (12 to 18 months).

### **Social Consequences**

Looking at the kind of results that emanate, it appears completely justified to invest in this social mobilization approach. Poorest, who till yesterday had difficulty in getting small loans from even the village moneylender, are today basking in creditworthiness. Many of them have developed entrepreneurial skills. A number of important social norms like avoiding wasteful expenditure through cheap liquor, enrolling all their children to school, getting rid of health-related superstitions, gender equality, and the like have been internalized in village after village among the poorest. The community activists are providing adequate guidance to the poorest to ensure that their rights and entitlements are met. Using their new found confidence, the poorest are able to make the line departments respond positively to their priorities.

Left wing Extremism has been posed as a major challenge of governance in many parts of India. Andhra Pradesh, however, remains the only state where this challenge has been met successfully, that too, over a reasonably long period of time now. The lessons drawn from the Andhra Pradesh experience usually refer to the security aspects of the success, mostly about the elite Greyhounds anti-naxal commando forces. Yet, while the affected areas were made secure by the Greyhound forces, the parallel and intensive community empowerment process has ensured that all the fruits of development percolate to the people, particularly the poorest of the poor among them. This has resulted in the communities of the poor taking responsibility for their own development, and it is unlikely that they will ever need to look up to the extremists again for redressing their grievances, real or imagined. In short, a remarkable transformation is taking place in the lives of the poorest.

### Visible Impact

The Social Mobilization approach was rolled out in Andhra Pradesh in the year 2000, and has been in operation for over a decade now. A decade is a long enough time to establish conclusively the efficacy of any given programme or scheme. In this period, the social mobilization approach has succeeded in mobilizing 99.50 lakh poor and the poorest of the poor through community organizations. The mobilization has been supported through World Bank funds, and an amount of Rs 2500 cr have been spent so far in the process. Most of this has covered the remuneration of the project's field staff like the Community Coordinator, but also includes training and capacity building costs for the community organizations, and Community Investment Fund (CIF) provided to the community organizations to establish their creditworthiness. It is very pertinent to note that the community mobilization process has been so robust that the strength of the community organizations has been recognized by the commercial and rural banks, who in turn have made credit available to a tune of Rs 20,000 cr to them. Thus, in a way, an investment of Rs 2,500 cr has been able to leverage nearly 10 times capital, which has helped many poorest and hitherto unreached families come out of their poverty.

Apart from the very impressive financial performance, the robust community organizations have been linked up with the functioning of a number of government programmes and institutions. Communities of the poor have taken control of NREGA, watersheds, Mid Day Meals, anti-child labour schemes, running of Mini Anganwadis, Health & Nutrition centres, supervising the functioning of Community Health Workers, rural sanitation programmes, commodity marketing (rice, maize, milk, honey, lac, MFPs), NPM, anti-trafficking campaigns, literacy programmes, Community insurance, community pension, land distribution, power distribution, etc. There is virtually no sphere impacting upon the poor left wherein the active presence and a pro-poor stance of the community organizations is not felt today.

## Conclusions

Youth play a crucial role in this amazing social transformation process as committed Community Coordinators and Community Activists, who are able to capture the mindsets of the poorest of the poor through their sense of dedication and selflessness. It is the youth alone who are able to provide that sensitive support mechanism to transform the poorest from people who have been by-passed by development to people who are today active partners in development and are shaping their own destinies.

Recourse to an all-pervasive sense of hopelessness is no more the only option for the rural poor. People at the bottom of the developmental ladder, namely, the poorest of the poor, have shown that through the social mobilization approach, their lives can be transformed.

## COMMENT

Pratyush Sinha

### *Enhancing Value in Public Procurement*

Public procurement in India constitutes about 30% of the GDP. Departments like Defence, Railways and Telecom, devote about 50% of their budget to procurement, which happens to be higher than the expenditure of most of the State Governments. About 26% of the health budget is devoted to procurement. A sound procurement system is therefore crucial for ensuring national security, safety of users, health of the citizen and the quality of infrastructure and services.

Public procurement impacts the economy significantly by generating demand and consumption. Government, by virtue of its purchasing power can steer the market in a particular direction. Public procurement also serves as an instrument to attain social outcomes. By way of preferential treatment in procurement, it may be used to promote indigenization of foreign technology, development of backward regions or protection of small enterprises. Of late procurement is also being leveraged to promote the causes of environment, human rights, protection of children and gender equality.

Public procurement has to balance three concerns, maximize satisfaction to the public by providing quality products and services, maximize opportunities for growth for the private sector; and efficient spending of government money.

Public procurement in the government activity is most vulnerable to corruption. The quality of the public procurement system has a profound influence on the competitiveness and integrity of the vendors in the market. An inappropriate public procurement system may act as a deterrent for firms maintaining high quality and ethical

standards. Firms with lesser competence often survive on government contracts by exploiting the weaknesses in the public procurement system. The prime objective of any procurement is to obtain the best value for money, which means getting the right product or services, at the right price and at the right time. Three factors are essential to ensuring that right product or service is chosen. **First**, the qualitative requirements should be carefully framed so as to truly reflect the user's needs. Best practices dictate that requirements should be defined in terms of functional parameters and not as narrow technical specifications. **Secondly**, all available options in the market should be evaluated, which is best achieved by inviting all potential vendors through open tendering. **Thirdly**, the evaluation of offers should be done in the most objective manner. It is equally important that the best technical choice is accompanied by the best possible price, which is only possible through a competitive price discovery mechanism. The Central Vigilance Commission has observed numerous instances where the price quoted by a vendor was 20 to 50% less in a multivendor situation than the price quoted by him as a single vendor. Competition is often misunderstood to merely mean open tendering or soliciting offers from a large number of vendors. Correct framing of qualitative requirements, objective evaluation of offers and proper cost estimation are equally important to ensuring true and fair competition. From the above analysis it is clear that value for money can be ensured in procurement only if adequate competition is generated and if objectivity, transparency and fairplay are maintained at all stages of procurement and are evident in all decision making. Thus integrity and competition in procurement are two sides of the same coin. **Maintaining integrity in public procurement is not merely an ethical requirement but an economic compulsion.**

Indian economy has fared relatively better in the competitiveness index than in the corruption index. The public procurement system in India contains the basic framework of procedures and guidelines and is supported by good oversight and grievance redressal mechanism. However there are many weaknesses in the system which need to be addressed.

A **major problem** expressed by the procurement officials is the confusion created by the existence of multiple procurement guidelines and procedures issued by multiple agencies. There is neither a single comprehensive public procurement standard nor a single nodal agency to deal with public procurement policy. In the US the Federal Acquisition Regulation is the public procurement standard which codifies a uniform policy for acquisition of supplies and services by executive agencies. The procedures issued by the various other organizations are only supplementary to these regulations. Office of the Federal Procurement Policy which operates these regulations is centrally responsible for all policy matters relating to public procurement. This office is headed by a committee consisting of the heads of the major procuring organisations. There is an urgent need to put in place a comprehensive public procurement standard in India with a single authority to handle public procurement issues. The office of the DGS&D can be reconfigured to serve as the nodal agency for all public procurement issues. It should also operate a help desk to provide clarifications and guide the procurement officials.

**Another anomaly** in our public procurement regime is that there is an attempt to apply the procurement procedures and guidelines in the letter without an appreciation of the spirit behind these stipulations. These procedures or guidelines have been framed to uphold the values of competition, transparency, fairplay, integrity and value for money while undertaking procurement. The ultimate test of any procedure is its ability to promote these values. Therefore a good manual of procedures should explain the underlying principles.

**Lack of standardization** and proper documentation not only causes inefficiency, but is also a major hurdle in ensuring transparency, probity and accountability in procurement. The Committee on Infrastructure under the Planning Commission has standardized the process and documentation with respect to the Public Private Partnerships. This effort needs to be extended to the whole public procurement activity.

**Besides a good framework** of policies and procedures, the quality of manpower which operates the procurement system

is equally crucial. In India public procurement has never been treated as a specialized activity requiring specialized knowledge and skills. Even the most critical and complex procurements are handled in a non-professional manner. Except for the Railways and the DGS&D, no other organisation has created a specialized cadre for this purpose. In most of the developed countries and international organizations, occupying a procurement desk requires some professional qualification. There is a need to either have qualified staff handling procurement or to provide adequate professional training to convert the procurement officials into procurement managers. Public sector should take a lead in promoting the professional development of procurement management in India.

**Information Technology and work flow automation** have emerged as a solution not only to achieving efficiency but also in ensuring transparency, objectivity and integrity in operations. There is an urgent need to computerize all those activities which are vulnerable to corruption. The manual systems should be replaced by e-procurement and e-payment systems. Many organisations which have embraced computerization of public procurement have gained in terms of quality and value of procured items. The effort of the CVC in leveraging Information Technology in order to combat corruption has been quoted as an international best practice by OECD.

A serious problem confronted by public procurement in India is the malpractice of cartel formation accompanied by collusive bidding and bid rigging. Besides enforcement of Competition Act and designing a sound procurement system, other innovative solutions have to be explored to deal with this menace.

I would conclude by underlining two important factors to be considered while undertaking any reform in the public procurement system. First, there is a greater need for coordination between the various agencies engaged in public procurement. Second, no reform in the Indian public procurement system can be complete without the active role of the private sector which has an equal stake in it. There is a need to sensitize and involve the private sector in promoting integrity and healthy competition in public procurement.

## BOOK REVIEW

*The Honest Always Stands Alone*  
*By G C Somaiah, Published*  
*by Niyogi Books in 2010*  
*274 pages Price Rs.395*

The premise of the title of the book is misleading. It may have been a quote from someone persecuted for integrity, but one expected something different and more encouraging from the author of the book. That he was and is undeniably honest in all his doings is accepted by all those who know him. But his assertion that he stood alone is ludicrous. In fact, he should have announced that his example proves that the world stands with (or behind) an honest person. His has been one of the most envious careers in the history of Indian Administrative Service, which could not have been possible without the support of the political masters (both honest and largely dishonest) and, more importantly, of his own fraternity. I am personally a witness to the respect and admiration enjoyed by him in the Service.

I must correct myself. In the preface, he says, “this book is dedicated to the dwindling band of honest officers who are battling heavy odds to maintain their integrity and dignity to extend corruption free good governance to the people of India”. If he means that there are very few honest persons left in the Indian bureaucracy and that he stood alone in the midst of dishonest colleagues, it can be argued. In my limited view as well, honesty is undoubtedly on the decline in civil services (and elsewhere in society). Honesty has lost the premium it used to enjoy forty years ago. It is difficult to find conglomerations of honest officers in the Indian Administrative Service, but the stray examples are far too many to ignore. Honesty has not lost all its lustre, at least not as yet.

Apart from the title, the book provides interesting sidelights in the business of governing the country that may not interest the governed masses. He writes for those well

informed about the goings on in government. The normal reader may not find much of interest in his childhood, excellence in studies and tennis and loyalty to his tribe. The general reader of biographies may not find much in the book either to raise his curiosity or to quench his thirst for secrets of governments. The book is meant only for people like me, who see their own image in the gradual progression of Somiah from a lecturer in Loyola College at a princely salary of Rs 100 to the constitutional authority controlling the accounts of the Government of India.

The reader can safely skip over the first fifteen chapters without missing more than half a dozen narrations of interesting incidents and governance insights. One particular incident is illustrative of the relationship between political bosses and the higher civil service. It has been related on pages 95-96. Exactly identical in substance happened with me also. Another incident that rings a bell is his being dumped in a useless job by the Chief Minister. Dhirubhai offering him shares of Reliance is another commonly encountered seduction.

There are some factual errors too like, on page 82 he mentions the name of the Director of NICD as IDN Sahni, which was IDN Sahi of UP Cadre. Similarly he mentions the name of then Chief Secretary of UP as Sarwan, while it was Saran. It is however not unusual to memory playing games with us in advancing age. The most glaring is the name of his Home Secretary during emergency for two years as ML Khurana. In fact, his name was Sunder Lal Khurana, ML Khurana was one of the Chief Ministers of Delhi. Rajiv Gandhi's oft quoted remark was 15% of the released amount reaching the poor, not 30%. Perhaps he should have done a little more research to correct these irritating slips of human memory.

The story of his non-empanelment as joint secretary is also fairly well shared by many members of IAS. But as he was always lucky and supported by gods and men alike, he did not have to suffer the indignity of being superseded for long.

The most important part of his auto biography is about his tenure as Home Secretary of India when he showed his

real mettle. Somiah's reputation as an honest, upright and courageous officer rests primarily on his managing one of the most sensitive assignments in government. He rose above the mediocrity of his colleagues duly supported by a young and well meaning Prime Minister.

Interaction with Buta Singh in episodes relating to Ved Marwah or in the attempted assassination bid on Rajiv Gandhi are good examples of his courage and straight forwardness so rarely witnessed in today's bureaucrats. Similarly, his handling the visit of the Indian Delegation to Pakistan for talks with his counterpart in Islamabad and his visit to the Golden Temple after Operation Blue Star show the strength of his character.

Self glorification is an inevitable hazard of writing an auto biography. Very few have been able to deal with the urge to appear larger than life. He is not one of them though he comes very close to them.

I have worked in the Home Ministry for six years when he was a joint secretary. I remember him as a tall, dark and handsome man walking in the corridors of North Block with long strides. In Home Secretary's weekly meetings, he generally kept quiet, speaking when asked to. In my view, that's the hallmark of a purposeful civil servant.

He is judgemental in his assessments. The dramatis personae have been dealt summarily. Most of the characters have been dismissed in a sentence or two. For him, it is either black or white. The shades of grey, to which majority of humans belong, are absent in his assessment. For example he says, "He (MP Misra) was an unusually honest politician, but honesty in politics does not pay and he was abruptly removed".

B K Nehru at least says that 'good guys finish second', not the last. In my view, good and honest civil servants receive their due credit in the long run either in their career or in the reverence of their fellow men and women. Some, like the author of the book, are rewarded with both.

**Prabhat Kumar**

## MAIL BOX

Every article in this journal has proved very illuminating for me. I do admire the fact that ICCfG is spreading positive message to us all and taking concrete steps for improving governance from several angles.

I am sending herewith a copy of my new book Theory and Practice of Ethics & Morals, ICFAI University Press, 2010 for review in the journal .My sincere hope is that you & your colleagues will find it worth reviewing in the context of good governance.

It is my pleasure to enclose a copy each of my two books for you, personally. The book chanakya on Management, JAICO is in its 9<sup>th</sup> imprint. The emphasis on “ethics” by chanakya is very forceful.

**Ashok Garde**  
**Author**

It was an honor for me that the article of mine you kindly considered worthy of publishing in your journal of repute. The books received have been carefully chosen considering their topicality, relevance and importance. Glad to find some thought having gone into their selection at the higher level of the organisation. I remain always overwhelmed by the unique gesture and expansive nature of yours.

As for the list of Libraries which should be sent the copies of the Journal, I would suggest for you consideration, the inclusion of the following:

- a) The Vice Chancellors, Chancellors and the Rectors of Universities in the States, and UTs
- b) The Directors of the Institutes of Business Management.
- c) Institutions like the National Library, Asiatic Society, Indian Statistical Institute, all of Kolkata.

- d) Libraries of the Public Service Commissions and the Administrative and Police and Para Military Training Schools and Colleges etc.

**Shyamal Datta**  
**Ex-Governor of Nagaland**

Dr. Yogendra Narain in his very well written article has dealt with the issue of enactment of laws for good governance but as he himself says Enactment of laws by itself is not good enough. The proof of good governance is ultimately seen through the actual delivery of services which despite all the good laws have not been adequate. I wish Dr. Yogendra Narain had gone a little beyond the enactment of laws in his article.

**Avinash Bakshi**  
**Sent an E-mail**

We have had the opportunity of reading The Journal of Governance (Jan 2011). The article by Shri P C Chaturvedi, is of great interest to us.

We bring out a magazine "The Bridge" on yearly basis for our society, detailing our activities and initiatives during the period as well as articles relevant to socio-economic-educational development issues.

In this context, we shall be grateful if you could allow us to reproduce the article by Shri P C Chaturvedi in the forthcoming issue of our magazine and look forward to an early and favourable response.

**Khalid Bilgrami**  
**(Member Secretary)**  
**The Bridge-Centre-for Assistance to weaker sections**  
**of the Indian Society.**

## OUR CONTRIBUTORS

**P S Bawa** joined the Indian Police Service in 1964 after spending three years in the Rajasthan Administrative Service. He retired as Director General of Police in 1997 and became a member of the Delhi Prison Reform Committee. Presently he is the Chairman, Transparency International, India.

**B.K. Chaturvedi** is presently Member, Planning Commission and was earlier Cabinet Secretary. After his Masters from Allahabad University, he studied Public Administration at Manchester University, U.K. (1976). Worked as head of the National Crisis Management Committee and handled two major national disasters: the Tsunami and the Jammu & Kashmir Earthquake. Has been awarded the Padma Bhushan.

**Prem Shankar Jha** is a noted analyst and commentator, and a former editor and contributor to The Hindustan Times, The Hindu, The Economic Times and The Financial Express. Was also Information Adviser to the Prime Minister of India. Is the author of several books including, Kashmir 1947. He has been a Visiting Fellow at the Fairbank Centre at Harvard University.

**Dhanendra Kumar** is the first Chairperson of the Competition Commission of India. He also served as Executive Director for India at the World Bank in Washington representing India, Sri Lanka, Bangladesh and Bhutan. Served in a wide variety of senior positions in the Ministries of Culture, Defence Production, Road Transport & Highways, and Power. Graduated from the Allahabad University. Completed executive programs at the IIM (Bangalore and Lucknow) and the Harvard Kennedy School.

**B P Mathur** a former Deputy Comptroller and Auditor General and Chairman, Audit Board, has been an eminent member of the Indian Audit and Accounts Service. Has had vast, varied and rich experience in the Indian Audit and Accounts Department and in two main Ministries of Defence and Steel as their Financial Adviser. Has also held other important assignments in and outside the country.

**Sumandeep Kaur Punia** is a research scholar, in the Department of Political Science, Punjabi University, Patiala. After successful completion of UGC-NET from Punjabi University, is pursuing a PhD from the same university. She has had various papers published in the sphere of Politics and elections in Punjab.

**Vinod Rai** is currently Comptroller & Auditor General of India. He has wide experience of working in various capacities at both, the Federal and State Governments. Was Secretary in the Ministry of Finance and has been a Director on the Boards of several Banks including the State Bank of India, ICICI Bank, IDBI Bank.

**Jayesh Ranjan** is Secretary of Tourism Department in Andhra Pradesh. Has also worked as Vice Chairman of Hyderabad Urban Development Authority (HUDA). He holds a Masters Degree in Psychology from Delhi University and Bachelor's Degree in Business Management from the Indian Institute of Management, Calcutta. Has done international consultancy assignments for institutions like the World Bank and UN-ESCAP.

**Pratyush Sinha** is a Former Central Vigilance Commissioner. He joined the Indian Administrative Service in 1969 (Bihar Cadre). He completed his post-graduation from Patna University and did on M.Sc in Development Economics from the London School of Economics. Has had the unique distinction of serving at all levels of governance both in the state and the central government and later as an international civil servant .

**Anil Swarup** is Director General for Labour Welfare in the Government of India. Is the founder of RSBY, the National Health Insurance Program currently targeting low-income families. Was Managing Director of the State Financial Corporation (Uttar Pradesh), Secretary of Externally Aided Projects (Uttar Pradesh) and Export Commissioner in the Ministry of Commerce.

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