Readings in Public Administration--II

Edited by

P. Bhattacharya IAS
International HRD Fellow (Manchester)
DIRECTOR ATI
&
PRINCIPAL SECRETARY
DEVELOPMENT & PLANNING DEPARTMENT

Administrative Training Institute
Government of West Bengal

CONTENTS

Fifty years of missed chances

Subhash C. Kashyap[1]

The denunciation of the government by the National Commission to Review the Working of the Constitution (NCRWC), on various counts, must have come as a great surprise to those who had doubted its intentions.

The Commission came to the overall assessment there were more failures than success stories. The inference, then, was inescapable: fifty years of the working of the Constitution was largely a saga of missed opportunities. According to it, almost all our present ills flow from the government's breach of faith in not accepting the fundamental premise of democracy — that all power flows from the people and must therefore be restored to them.

The Commission accuses the government of ''neglect of the people''. The democratic processes have not promoted self-governance and the people have no effective control over their social, political and economic destiny. The system of administration, designed by the political executive with the active support of the civil services, has limited the sovereignty of the people to the mere right to cast their votes in an election.

The Commission rues the fact that public servants and institutions are not alive to the basic imperative that they are servants of the people and points out that constitutional protection for the civil services, under Article 311, has been largely exploited by dishonest officials. As a result, citizens have lost faith in the institutions of democracy and ''needlessly harsh, lugubrious, unimaginative and indifferent administration'' has pushed the poor to the wall. Crises of leadership have resulted in extra-legal systems, parallel economies and even parallel governments.

There has been an enormous increase in the size of Cabinets — in the Union and the states — adding to the cost and clumsiness of governments. The Commission stated there should be a law or convention to limit the size of the Cabinet, particularly at the present juncture.

When it comes to concrete recommendations, the Report of the Commission, unfortunately, does not give much evidence of any proposals for comprehensive and meaningful reform. Take the chapter on executive and public administration, which is more a chapter on administrative reforms and little else. Here, too, the recommendations are vague, peripheral or elitist, with hardly any reference to the ground reality. For example, a closer relationship between the government and civil society is recommended. It is suggested that officials take an oath of good governance, that think-tanks are promoted with state funding, that chairmen of Commissions of Inquiry are consulted about their tenures and that the MEA is reorganised to change the form, working and structuring of foreign affairs mechanisms.

Among the other recommendations of the Commission with regard to administrative reform, are greater devolution, decentralisation and democratisation of power by making the elected bodies at the district level as the basic units of planning for development; the use of modern methods of management to curb the runaway expansion of the bureaucracy, and the setting up of Civil Service Boards for recommending the placements, promotions and transfers of civil servants.

[1] The writer was a member of the NCRWC

Information: an inviolable right[2]

Nirmala Lakshman

Despite the fact that there are serious attempts to muzzle the right to information by the ruling elite and powerful vested interests through the tabling of an ineffective Bill, the tide of civil resistance cannot be stemmed for long.

"The key to wisdom is this - constant and frequent questioning ... for by doubting we are led to question and by questioning we arrive at the truth" -' Peter Abelard (medieval dialectician, theologian, philosopher.)

IT is a measure of the imperfection of a democracy when access to information in the public sphere is curtailed or restricted in any way. The right to information lies at the very foundation of civil liberties and underscores the fact that an elected government and its actions are open to questioning and accountable to the people who put them in power.

Accountability in a democracy means, among other things, that every citizen must have a right to answers. It presupposes a transparency in the public functioning of those who hold the reins of power whether it is at the village and township level, or at the State and national level. Transparency and accountability in governance have a direct impact on issues of survival in the poorest communities including their right to food, shelter, health, environment and livelihood. In India the right to information evolved over a decade, primarily out of a remarkable grassroots mobilisation in Rajasthan where the Mazdoor Kisan Shakti Sangathan (MKSS) succeeded through struggle and agitation, in accessing and using information to put an end to local corruption and exploitation. When the Government tabled the Right to Information Bill 2004 in Parliament on December 23, it was expected to be a progressive piece of legislation that would effectively empower the ordinary citizen and ensure maximum transparency in governance at all levels. The National Advisory Council [NAC, which is headed by Sonia Gandhi and whose duty is to monitor the implementation of the UPA Government's Common Minimum Programme) had recommended 36 amendments (proposed by the National Campaign for People's Right to Information) to the Freedom of Information Act 2002 including changing its name to the Right - to Information Act, which would emphasise the fundamental nature of the right.

The Bill, however, has diluted many of the recommendations. For example, although the NAC's draft was applicable to both the Central and State Governments and covers the entire country, the new Bill excludes State Governments, district authorities and local bodies from its purview and restricts its scope only to the Central Government and Union Territories. Additionally, it makes the penalty clause for those who refuse to give information extremely ineffective, by suggesting, that the complaint must be filed before a First Class Judicial Magistrate and this too only when the officer concerned has "persistently failed to provide information without any reasonable cause within the period specified..." The National Campaign for People's Right to Information (NCPR1) has expressed its "deep disappointment" with the Bill, which is more retrograde than the Freedom of Information" (FOI) Act 2002 that it seeks to replace.

In the FOI Act, blanket exemptions were given to security and intelligence organisations; appeals were possible only within the government if someone violated the law, and further there were no prescribed penalties for offenders. The NAC proposed the principle of minimal exclusions, which says that access to information must be possible even from sen-

sitive government agencies "if they have a bearing on the life and liberty of people, and to allegations relating to corruption or violation of human rights." Other crucial amendments proposed were the provision for independent appeal and the appointment of information commissioners at various levels, specific penalties for violations, the destruction of evidence, etc. There were also amendments relating to the rationalisation of the fee structure, which would not make the cost of obtaining information prohibitive to the ordinary citizen.

The Right to Information Bill 2004 in its present form is actually much worse than the 2002 Act. While the NCPR1 members are determined to continue to fight for a more effective law that will be applicable at all levels and in all parts of the country, the backtracking of those in government who appeared to be committed to a strong Right to Information Bill has stunned and dismayed many. Expressing her anguish in a letter to the Prime Minister on behalf of the NCPRL Aruna Roy, MKSS activist and National Advisory Council member who had pushed for many of the amendments, says: "It is specially disheartening to note that the new Bill takes away the access given by the earlier Act to information with State Governments and with district and local governments ... this is perhaps the information most affecting the lives of the common people of India, and thereby the most sought after."

The fact that eight States already have their own RTI laws and citizens' groups have been increasingly active in the use of these laws in States such as Delhi, Maharashtra and Karnataka, does in no way preclude the need for a strong law on information that will make participatory democracy a real process across the country. Parivartan, an NGO in Delhi, has used the State law with considerable success in its efforts to rid the PDS of corruption. Arvind Kejriwal of Parivartan recalls the case of Nanu, a daily wage labourer who was put to great hardship for three months by various government departments to replace a lost ration card, but when he applied the State law through Parivartan, he got his card in three days. Mr. Kejriwal says that a comprehensive Central law in conjunction with State laws is necessary as there are many lacunae in State RTI Acts. In Maharashtra, the use of the RTI spearheaded by social activist Anna Hazare has proved that ordinary citizens can successfully challenge the administration.

Aruna Roy points out that the right to information touches all levels of governance. "If even one per cent of the country uses it, it can shape democracy in the country. Central debates like corruption in public office, corruption in political parties and the corrupt deals of national governments will all be set against the context of real facts," she says. For instance, the actual working out of system or a project can be made transparent and "one can challenge the conditionalities of a licence," she points out and "there need not be any more disasters like Bhopal or Enron even." Also, any institution that raises and uses public money should come under this law, suggests Ms. Roy. Along with a comprehensive RTI there should be a push for a Lok Pal Bill and a Whistleblower's Act that would protect those who used the RTI against intimidation and violence.

MKSS activist and NCPRI member Nikhil Dey emphasises that a strong right to Information law would also actually allow all policy contradictions that are papered over to emerge for public scrutiny. "There is so much control over modes of communication by those who are in power; information allows you to sift through the facts and see what kinds of measures have had what kinds of effect. And to at least remove blatant corruption." The problem of access "to information from private parties involved with big contracts such as in housing development and other infrastructure projects would also be addressed by a comprehensive RTI Act, as at some level of project clearance government agencies would have been

involved. If the required details are not with the government, that again could be a violation of the RTI.

The success of the MKSS' right to information campaign in the area of minimum wages and other rural developmental work in Rajasthan demonstrated that information has to move into the realm of activism if governments are to be made accountable to their people. In the implementation of the Employment Guarantee Act (EGA) for instance, the noted economist and National Advisory Council member, Jean Dreze, says the RTI is very crucial and is complementary to the EGA while creating public vigilance and activism. According to him, an effective RTI law will enhance people's direct involvement in the democratic process and place them less at the mercy of the system.

An effective RTI Act will force a culture of transparency, which is mandatory for good governance according to N.C. Saxena, former Secretary, Planning Commission, and NAC member. His formulation in one of the earliest RTI drafts, which said that any information that is available to members of legislatures and Parliament should be made available to the public, is a crucial cornerstone in the building of the RTI law. Transparency and public monitoring of governments' policies are essential to fight endemic corruption and ensure effective delivery mechanisms. This will be possible only when a vigorous and sound RTI is in place and the rule of law is enforced, suggests Dr. Saxena. He stressed the need for large-scale mobilisation to use the RTI law so that elected representatives become accountable to the public.

The mobilisation that became a movement in Rajasthan and empowered numerous poor communities through years of struggle, public hearings and protests holds up a mirror for other grassroots groups in the country as it reflects a major shift in the paradigm of development and politics in the country. Despite the fact that there are serious attempts to muzzle the right to information by the ruling elite and powerful vested interests through the tabling of an ineffective Bill, the tide of civil resistance cannot be stemmed for long. The collective power of a people's experience in participatory democracy has vastly strengthened the right to information campaign. It now needs to be recognised as an inviolable and fundamental right.

---

2 – The Hindu, 4.1.2005, p. 10

Declaration of assets dates back to the Cholas[3]

T.S. Subramanian

CHENNAI, JAN. 15. A few weeks from now, candidates contesting the Bihar, Haryana and Jharkhand Assembly elections will submit a list of their assets. Newspapers will carry interesting information on the assets they have disclosed - bungalows, cars, jewellery and land - or whether they are modest in their means, But this disclosure of assets is not just a feature of modern day elections. The newly-discovered Tamil inscriptions of Parantaka Chola and Parthivendrathipathi Varman, dating back to the 10th century A.D., in a village called Pazhaiya Seevaram, show that those elected to the local assembly (called *variyam* in the inscriptions) had to take the oath of office and disclose their assets every year to the assembly. Besides, the accountant of the local assembly had to give a list of his assets to the assembly.

The local assembly, or variya perumakkal, met in the centre of the village, called *sirkooti am-balam,* and functioned for a two-year term.

Temple renovation

These Tamil inscriptions were discovered on the base wall *(adhistana)* of the Sri Vaikunthanatha Perumal temple at Pazhaiya Seevaram in Kan-cheepuram, on the Chengalpat-tu-Kancheepuram highway in Tamil Nadu. Pazhaiya Seevaram is a small village on the northern banks of the confluence of the Palar, Vegavathi and Cheyyar rivers.

Of the five inscriptions, three belong to Parantaka Chola-I, and two to Parthivendrathipathi Varman. The latter was, perhaps, an independent ruler of Tondamandalam in the second half of the 10th century after Parantaka Chola-I.

The residents of Palaya Seevaram, led by S.A. Venkatachari and S. Ramaswamy, were renovating the Vaikunthanatha Perumal temple, when they discovered the inscriptions. They informed the Superintending Archaeologist of the Archaeological Survey of India (AS1), Chennai Circle, about their find.

Self-government

During the early Chola period, Pazhaiya Seevaram was an important centre for Saivism and Vaishnavism. It had two sectors -- Sivapuram and Vinnapuram. According to S. Raja velu, Epigraphist, ASI, the newly-discovered inscriptions refer to the village as Vinnapuram, after Vishnu, They mention *variyams* such as *samvatcham variyam* (yearly management) and *eri variyam* (management of lake). The assembly accountant had to reveal his assets both when he took charge and left office. Once they completed a term, the assembly members were barred from holding office. All this information is contained in the inscriptions belonging to the fourth regnal year of Parthivendrathipathi Varman.

This system of local self-government in the villages is an important feature of the 10th century Chola administration. Uttiramerur, about 25 km. from in Kancheepuram, is famous for the inscriptions found there about its self-government, the election system based on bal-lots, qualifications for candidates and the subsequent relaxation of qualifications. The inscriptions at Uttiremerur of Parantaka Chola 1 (907-955 A.D.) were dated 917 A.D. and 921 A.D.

According to Dr. Rajavelu, the inscriptions belonging to the 15th regnal year of Parantaka Chola-I (922 A.D.) reveal that the assembly waselected through wards *{kudumpu)* of the

village and through the Brahminical assembly *(sabha).* The members of the *variyam* received an annual payment of two *kalanju* of gold for their work as *variya perumakkal.* They were not to receive any other payments or concessions. They had to perform their *variyam work* and list their assets every year. The inscriptions at both Uttiramerur and Pazhaiya Seevram showed that there was an excellent system of self-government at the village level in Tamil Nadu in the 10th century A.D., the epigraphist said.

---

3 – The Hindu, January 16, 2005

IN DEFENCE OF THE BUREAUCRACY[4]

S. K. Parthasarathy

The bureaucracy in this country is blamed for all social and economic ills. Bureaucracy bashing has become almost a fashion. It is perceived to be bloated, highly politicised, apathetic and corrupt. While this impression is easily shared by most, there is very little desire to understand the role, responsibilities, problems and achievements of the bureaucracy.

The contribution of the bureaucracy to development since independence has not received due recognition. Its role in policy formulation is known only to the Ministers who work with senior civil servants. Whatever progress has been achieved in agriculture, education, health, communications, electrification, industry and science and technology has been largely because of the existence of a well-organised government system at the Centre and in the States.

Since recognition of the bureaucracy's contribution and its .role has been lacking, there has not been serious efforts to look into the causes of its degeneration. Anonymity being its hallmark, it has neither had the benefits of publicity of its achievements nor an effective forum for replying to charges. It has certainly its faults and is guilty of sins of omission and commission. Since most critics are not aware of the constraints with which it has to function, it may be said that the bureaucracy is more sinned against than sinning.

There are several levels and groups of civil servants within the bureaucracy. Who do we have in mind when we condemn it? Only top senior civil servants interact with the political bosses and advise them on policy matters. A large number of civil servants at different levels work in numerous departments spread all over the country; performing administrative and technical tasks. There arc scientists who work in government research laboratories. But only those who work in departments such as posts, telecommunications, the railways, inland revenue, civil supplies, motor vehicles and collectorates and who constitute the cutting edge of the Government come in direct contact with the citizens. It is not fair to club all civil servants together and paint them with the same brush. Generalisation in the context of evaluation hardly helps in remedying the perceived faults.

In this background, let us look at the major charges which are levelled against the bureaucracy. Is it bloated? Around eight million employees both at the Centre and in the States is not staggering considering the size of the country and the fact that the state in India has to perform many more functions than mere governance. The railways and telecommunications which are in private hands in many countries alone account for more than .two million jobs. Perhaps there are too many posts at the higher levels and excess staff in purely administrative offices. It is also true that senior posts are often created for promotional needs rather than on functional justification. The "excess fat" at this level, however, forms a low percentage of the total wage bill of the Government.

It is not. therefore, correct to generalise and say that the bureaucracy is bloated. The standards for job creation in the operative branches of the Government are more stringent than in the private sector. To improve efficiency at the cutting edge and lift the quality of life of the citizens, there may be even need for the creation of more posts of postmen, health workers, technicians, teachers, policemen and the like. The size of the bureaucracy can be reduced only by identifying the function which the state should shed and by transferring them to the

private sector. Until then, all that has to be done is to make the bureaucracy work rather than worry about its size.

That the bureaucracy has become politicised is an oft-repeated charge. The concept of political neutrality of the civil service suggests that the civil servant implements the policies of the political party in power faithfully without regard to his personal convictions. This has not been seriously eroded yet. What has happened is that many senior civil servants are willing to cam' out the orders and wishes of their political bosses without offering objective advice. There are cases where they have circumvented the rules to further the interests of politicians. One of the main reasons for this trend is the excessive responsibilities given to Ministers for the total activities and the day-to-day administration of their departments, with the result they enjoy vast administrative powers relating to contracts for carrying out governmental works, appointment, postings, transfers and promotions of officials. This induces the civil servants to keep their political masters in good humour.

The Ministers should be accountable to Parliament mainly for policies, objectives and resources and the Secretaries to the Government for the implementation of the policies and functioning of their departments. The civil service should have more powers and autonomy to manage its affairs to function efficiently and fearlessly. There have been instances of civil servants showing remarkable efficiency and high performance when they are given independence and authority.

In the present system, the civil servants also come under the undue influence of the elected representatives of the party in power because of the latter's access to Ministers. Ideally, there should be a system where there is proper interaction between the down-to-earth wisdom of the politicians and the technical expertise of the civil servants and which allows the civil servant to function with more powers and independence.

The bureaucracy at the cutting edge of the administration is certainly excessively rule-bound and is by and large not sensitive to the needs of the people who deserve a more friendly system. The lack of proper training of the officials and the absence of effective control and supervision over them are the major causes of low efficiency at this level. However, there is very little public knowledge of the poor working conditions in a majority of field offices, the enormous responsibility attached to the officials at the lower levels and the pressures to which they are subjected in their day-to-day functioning. The frustrations of an honest official who wants to discharge his functions can only be experienced.

At present there is lack of leadership at the managerial level and of motivation at the operative level. If the system is to work efficiently, the higher echelons of the bureaucracy should have adequate powers to take care of the working needs of the subordinates and to discipline them. The politicisation of trade unions of government employees has contributed not in a small measure to the Government's inability to ensure high levels of productivity.

The charge that there is widespread corruption in the bureaucracy is difficult to defend. While people only hear about corruption at higher levels, what hits them most is that they have to part with some money to "facilitate" or "speed up" service. While there are innumerable officials who work sincerely and honestly, the adverse impression about the bureaucracy has come about because of the increase in corruption and harassment in recent years.

It is difficult to cleanse the bureaucracy of this malady as long as there is degeneration of moral values in society. Corruption, like water, flows from higher levels to lower. In an atmosphere of political corruption and where there is absence of a strong will to put down corruption, it is unfair to expect the bureaucracy to be corrupt-free. Corruption needs to be tackled at all levels.

It is time to recognise that an efficient civil service is important for rapid economic and social development, and civil service reforms is as urgent as political or economic reforms. There is concern about the waning popularity of the civil service among the younger generation. The low salary structure and the political interference are cited as causes. That the best of students do not opt for the civil service need not be a worn".
Considering the job requirements, it is not necessary that the toppers in universities alone should enter it. The civil service requires men of character with high moral values and aptitude for social service in addition to intellectual attainment. The methods of recruitment even now ensure the entry of candidates with academic brilliance. The opportunity to participate in nation-building and the social status attached to wielding authority are sufficient incentives to attract people. If only a certain measure of autonomy is given to civil service, insulating it from extraneous pressures, better talents can be attracted notwithstanding the low salary structure.

It should be realised that in the ultimate analysis it is the people who employ government servants by selecting them from among themselves to provide public service and to implement democratically determined policies. Government jobs are a means to an end and not the end in itself. Therefore there should be a system which will ensure that competent men are appointed and they work in a proper administrative environment with full accountability for their performance.

---

4 – The Hindu, 9.1.1996

VOHRA REPORT AND AFTER

H. R. Khanna[5]

The Vohra Committee report has highlighted the manifold dimensions of the malaise of criminalisation of politics.

The germs of this malaise took birth in 1969 ; when there was a split in the Congress and *:* the guiding motto became the pursuit of power. The maxim that means were as important as-the ends, which had been sedulously preached and nourished by Gandhiji who wanted the chasm between politics and ethics to shorten as much as possible, was ' given a go-by and (he policy of naked, un abashed pursuit of power, by whatever means, came to be the governing policy of those is power. If for the attainment of that end money was needed, no qualm of the desirability of clean public life was allowed to stand in the way. The demand for money for party funds for contesting elections paved the way, as was inevitable, to political corruption. *Once* Ministers and other leaders had acquired the taste and propensity of asking for money for party funds, it was well-nigh impossible for them to resist the temptation of asking it for themselves.

The two vicious offshoots of the demand for money in the garb of election funds were the malady of political corruption and the scourge of black money. Political corruption acts as the foster-mother of administrative corruption. Corruption has the vicious tendency of percolating. Once it is there at the top. it is bound to filter down, spread wide and become ubiquitous. When an outcry was raised by some public men about the menace of corruption and its immensity, they were sought to be silenced on the ground that corruption prevailed in all countries. The fact that the extent of corruption in our country was much larger was simply brushed under *the* carpet. As things arc, corruption has befouled the entire political and administrative apparatus of the country. Undoubtedly, earlier also, there was corruption but it was confined to officials at the lower level and the scale of corruption was also not high. As against that the malaise has now affected also those at the higher rung of administration and all factions of the State.

As regards black money, while some upright Finance Ministers denounce the evil and stress the need for its eradication, the political wing of the party has become the presiding deity and in a great measure the progenitor of this vice. It is no wonder that incidence of black money is the highest in our country and according to knowledgeable circles it is as much as, if not more than the white, legal, untainted money.

The third aspect of the pursuit of power was the need of musclemen and physically strong persons al the time of elections. For this purpose youth wings were created. Experience shows that quite a substantial number of those joining the youth wings were of shady antecedents and adept in matters of physical violence. Leaving aside one or two parties, the members particularly in youth cadre did not pass through a course or. drill of self-discipline and character-building and as such had no touch of idealism.

The exigencies of electoral process made the candidates and the political parties to look for stouter muscle power than was provided by their youth wings and because of that the parties looked to and took the aid of. criminals and mafia leaders on account of their greater physical prowess. The impression also came, to prevail that the greater a person was a 'goondu'. the higher was his rating and utility at the time of elections. The criminals and mafia leaders, when in difficulty at the hand of law-enforcement agencies, would turn to the legislators and party leaders lo whom they had rendered assistance at (lie time of elections to rescue them and the latter were none too unwilling to render such assistance as a *quid pro*

quo for the help received by them. There thus came to exist a nexus between the criminals and politicians.

Subsequently, the criminals and mafia leaders had second thoughts in the matter. They felt that if they could get other elected, why should they not with, their grip and hold over a section of the population seek election for themselves. The result was that many of them contested elections and quite a number of them were elected. Some of them also came to occupy ministerial chairs. Things came to such a pass that according to newspaper reports, about 45 per cent of members of one State Legislature were those who were history-sheeters on the police records.

Another fallout of criminalisation of politics has been the havoc wrought to the administration of criminal justice. As things are, it has become most difficult, if not well-nigh impossible, to secure the conviction of major culprits accused of serious offences such as murder, homicide, grievous hurt, intimidation and kidnapping. This is so because of interference by the political bosses in the investigation of crimes. As a. result, effective investigation has to take a back seat and no serious effort is made to procure incriminating pieces of evidence.

The question then arises on how to break the nexus between the criminals and politicians. It is thus necessary to evolve a code of conduct for the political parties so that they may not in the selection of candidates for election choose anyone with shady antecedents. The code of conduct, if it is not to remain a collection of pious sentiments, must be given some teeth. We should therefore give thought to (he idea of giving legal sanction to the prescribed code of conduct to prevent its violation and infraction, Even in the absence of legal sanctions public opinion, reinforced by vigilant media, should be built up to impel the parties to adhere to the code of conduct in the selection of candidates.

Denunciation of the malady of criminalisation of politics would remain confined to the theoretical plane, unless the identity of the politicians having close links with criminals Is brought out. The Vohra Committee has done the basic spade work and pointed out the various facets and dimensions of this malady of criminalisation of politics and how the mafia network was virtually running a parallel Government. The Government has, as a follow up action, appointed a Committee of Secretaries to look further into the matter with the help of intelligence services. In my opinion, this is bound to operate as a cover up. It would be wholly unrealistic and an exercise in sheer naivete to think that a committee of serving civil servants, however upright they may otherwise be, to name the politicians some of whom may be Ministers having close nexus with criminals. If we are earnest in the matter, the further task should be entrusted to a body of independent persons not subordinate to the Government. Indeed, the present attempt to cover up the identity of the culprits remains one of an earlier attempt which was made at the highest political level to cover up die identity of the recipients of kickbacks of the Bofors gun transaction. The attempts then being made to find out the identity of the recipients of that tainted money were sabotaged at the highest political level when our then External Affairs Minister accompanying the Prime Minister to Switzerland told the Swiss Government to go slow.

As regards the malady of the money power, the need of the hour is to ensure audit of party funds by an independent agency such as the Comptroller & Auditor-General India. A system of the audit of party funds by -an independent agency already exists in countries such as Germany and ensures transparency of the monetary affairs of political parties. Legal provisions may require that all receipts of money in excess of a specified amount, say Rs. 1

lakh and above, should be by cheques and be reflected in the account books of the parties. The report of the independent audit agency should be submitted to Parliament, it may furl her be provided that any receipt of money in ;:ash and without being reflected in the account books of the party would, if repeated three times, result in derecognition of the party.

The country today is passing through moral crises because of the doings of politicians. This is so, despite the presence in the political arena of a number of persons of the highest integrity, attached to moral values, although unfortunately they belong to a diminishing tribe. It is necessary that we should check the rot and rescue the system in consonance with the moral aura and rich legacy bequeathed to us by Vivekananda, Gandhi, Tagore and Aurobindo as enshrined in the motto of 'Satyameva jayate' inscribed on the national emblem.

---

5 – The writer is a former Judge of Supreme Court

POLITICS & CRIME[6] :
Beyond Vohra Committee Report

P. R. Dubhashi

The Vohra Committee report on the criminalization of politics in India has been variously described as "a damp squib" and "a cat out of the bag". A damp squib, because it did not reveal any specific names of politicians but only stated in a general manner what has already been widely known and talked about for several years now and depicted in a lurid manner in films tike "Ardha-satya" and "Simhasan".

At the same time, it was "a cat out of the bag" because it was for the first time that an official report clearly brought out that (a) crime syndicates and mafia organizations have developed significant muscle and money power and (b) they were virtually running a parallel government pushing the State apparatus into irrelevance. This is a frightening admission to make for an official committee but it does not state how to "bell the cat", how the situation has to be dealt with, how criminalization of politics and government can be overcome and ultimately eliminated.

All that it suggests is the setting up of a nodal agency which will- provide one place where the intelligence and information relating to the- activities of crime syndicates and mafia organizations gathered by different agencies like the Intelligence Bureau, Central Bureau of Investigation and various agencies under the Department of Revenue could be brought together and monitored, Lack of coordination between various administrative agencies is a well-known shortcoming of our administrative system and this holds good in our system of intelligence gathering also. An internal coordinating agency should be looked upon as a normal internal device of day-today working of administration and that such a device did not exist and had lo lie suggested by a committee is a sad reflection on the state of our administration.

But we have to go beyond intelligence gathering. 'The purpose of intelligence gathering is to plumb the depths of criminalization, unravel its genesis, lay bare the root causes and work out comprehensive measures to root out corruption and criminalization in politics, government and administration. The Vohra Committee report does not indicate how this can be accomplished.

The first step is to see that candidates who stand for elections to Parliament and Legislative Assemblies do not use the money and muscle power of criminals to get elected; nor criminals allowed to stand for election. The strict enforcement of the electoral code of conduct during the last State elections did serve this purpose, to a considerable extent, of curbing use of money and muscle power. Voters at large have welcomed this development and expect that this gain should be consolidated through similar strictness in future elections as well. The electoral law should be further strengthened so as to debar criminals from standing for elections.

The strict enforcement of the electoral code of conduct is but part of the strict enforcement of the law of the land in every other sphere - whether urban building activity, trade, business and industry, working of banking and financial institutions, imports and exports or use of arms. These are spheres in which illegal activity by gangs of criminals has flourished during the last several years with the complicity of politicians in power and the civil servants.

It is the duty of the civil servants to enforce law. If they do not do so, it is because they are pressured by corrupt politicians who are in league with criminals or have themselves become corrupt and join hands with criminal elements, In the latter case, they should be brought to book by the Vigilance Commissioner or Lok Ayukt who are appointed in several Stales. The vigilance machinery should be strengthened. But honest civil servants, including police

officers, are sometimes prevented from proper enforcement of the law and taking decisions in the public interest.

Where the officers refuse to be pressured, they are subjected to abrupt and vexations transfers taking a heavy toll of their family lives. Governed by the rules of a strict code of conduct and discipline, the honest officer finds himself helpless, it is idle to talk of professionalism in such an environment.

If the nation wants civil servants to be honest and play their role in a professional manner, they need more protection than is available now. They should not he exposed to arbitrary 'transfers and their careers should no! be ruined or jeopardized just for doing their duty. Administrative mechanisms should he (rented and con-dm I rules modified to enable honest officers to function without fear or favour. The public at large should also appreciate the importance of honest and strict administration whit It should have its own autonomy and should function without political interference. Needless to say. that strict administration does not mean non-responsive administration.

Political interference on behalf of criminal elements is at present a worrisome feature of, our administration. It is necessary, therefore, to go beyond civil service and police reforms and extend the reforms process to political parties as well. At present political parties seem to be beyond the pale of any framework of rules and regulations.

Taking advantage of this, criminal elements enter into and later dominate the affairs of political parties. Their youth wings seem to he specially vulnerable to the criminal and aggressive elements. How can the political parties be reformed? Neither the Constitution nor any law prescribes how they should function.

The time has now come for laying down' broad norms for composition and functioning of political parties in the country. No less than a chapter in Constitution itself on the code of conduct of political parties can serve the purpose. Such a code of conduct could be on the lines of the prescriptions of the Nolan Committee in Britain - honesty, integrity, objectivity, openness and accountability.

Honest administration can bring the culprits to book and prosecute them in courts of law - no matter who the culprits are and what positions they hold in public life. It is only through the relentless pursuit of criminal politicians by the honest prosecutors and intrepid judges that criminalization of politics has been halted in Italy. The crusades of those judges are a reflection of the public disgust and frustration of having to put up with corrupt politicians for so long.

The trial of the former Prime Minister, Chiton Andreotti, for collusion with the mafia is the culminating point of this crusade. This powerful politician, 31 times Minister and seven times Prime Minister, is charged with having ordered the assassination of an over zealous journalist and colluded with mafia chiefs, even sending birthday and marriage presents to members of their families. The Italian case should provide an excellent example of how we should proceed to eliminate criminalization of politics in our own country.

The ultimate remedy is. of course, awakening ol the spirit of the people against criminalization of politics and government so that they do not fear criminals in politics and society and stand hold against them and their i rimes, The time has now come to demand the

setting up of a National Commission on ethics of public life for making comprehensive recommendations regarding an agenda of reforms.

---

6 – *The Statesman*, 1.12.1995

A Compromised Bureaucracy[7]
Unequal Equations Need Correction
HARISH KHARA

Mr. Chandra Shekhar's recent exhortation to-his senior administrative aides to give their objective assessment of any problem, as well as to define the options open to the government to deal with it, need not be dismissed as the outpouring of a compulsive moraliser. At first it would seem that the Prime Minister perhaps entertains outdated notions of a bureaucracy, apart from being patently at odds with the wholesale - and, rather unwholesome - bureaucratic changes Mr. Chandra Shekhar felt compelled to effect.

The situation in various slates, is. no more comforting, though slightly different. In state after stale bureaucrats arc no longer diffident about telling the politicians that the pot should not be calling the kettle black. For example, in Orissa, bureaucrats resent the chief minister, Mr Biju Painaik's invitation to the public to beat up corrupt officials. In Himachal Pradesh, two senior IAS officers look their own sweet time in implementing (he chief minister's directive lo start disciplinary proceedings against a fellow officer, accused of corrupt practices.

In Kamataka, a chief secretary has won an appeal from the Central Administrative Tribunal against the chief minister, Mr S. Bangarappa's decision to transfer him summarily. What is more, the chief secretary has also gone on record 1 hat the chief minister ordered, his transfer at the behest of the excise lobby.

Though in normal times all this washing of dirty linen in public could be deplored as a troublesome departure from the expected image of a faceless and apolitical civil service, this outbreak of bureaucratic volubility should be welcomed. Perhaps, for too long the politicians and the bureaucrats, though for different and self-serving reasons, have pretended that the bureaucracy was an objective, fair-minded and impartial executioner of policies and decisions, taken in the highest public interest.

Cosy Relationship

That this is not so has been quite obvious for some lime. In fact, we no longer hear the old refrain that bureaucracy should not be politicised. Now every Prime Minister or every chief minister feels the need to have at the helm a group of senior bureaucrats in whom he feels he can have total confidence. Given the decline in the quality of political leadership and .deterioration of the goals they pursue, it stands to reason that the only role left for a chief secretary is that of an accomplice in the far from- edifying deeds and misdeeds of the ministerial class. This cosy relationship need not in itself be inherently detrimental lo the health and efficacy of the political system.

However at a lime when the political leadership has demonstrated itself to be indifferent to canons of political morality, constitutional niceties, institutional autonomy and personal ethics, do we have a body of men and women which is capable of guarding the best interests of the Indian slate? In countries like Japan, France and Italy, which have periodic and frequent .turnover in political leadership, the business of governance is carried on, by and large, fairly competently, without allowing the venality of the politicians in power to hurl the basic interests of the slate.

This concern gets more pronounced as we move into increasingly uncertain times al home and abroad. Can we depend upon the Indian bureaucracy to be sufficiently mindful and watchful of requirements "of healthy and sound governance as our polity and economy arc

no longer immune from external developments? Can we, for example, be reasonably sure that our senior bureaucrats would be able or inclined to ensure that an insecure government docs not in its struggle for survival squander away the IMF borrowings? Such reassurance is not easily available.

Professional Elan

For some lime, those who wanted to see an end to the Congress dominance in the Indian politics were fairly confident that subsequent chaos would be manageable because we have a bureaucracy of proven competence and integrity. The un-slated assumption was that the establishment could still be counted upon to ensure that the administration did his duty by people. But as is turned out, an overwhelming number of IAS and IPS men and women felt comfortable with stability and continuity provided by the Nehru family, and they lost whatever interest they ever had in becoming agents of social change and maintaining administrative fairness. Presiding over an adequate and ill-equipped administrative state, they rarely wielded their enormous powers lo favour (hose who wanted a change in the status quo.

It is therefore no surprise that the bureaucracy failed to take advantage of the confusion and blunders of the political class in the last 18 months to regain some of its old autonomy and professional clan. If anything, the average IAS officer today seems all too eager to crawl when he is merely asked lo bend. The bureaucracy cannot win this battle against politicians for two reasons. First, the politician, in spite of all his flaws, articulates the aspirations and dreams of people at the grassroots. The politician is also' better informed about what is going on: the average bureaucrat is in touch with only touts and brokers.

Secondly, the bureaucracy as a whole remains incorrigibly opposed to any notion of accountability. The Indian political class has understood this weakness and uses it against the bureaucrats. What is more, the political masters have encouraged the caring, the indifferent, the honourable and not so honourable bureaucrat alike lo sublimate his energies and talent in an incessant preoccupation 'with promotion, perks and posting.

Yet the Indian bureaucracy bears the responsibility to sec that the entire civic order does not degenerate into chaos. The only other organ capable of providing an antidote lo a self-serving political class is the judiciary. But its interventions arc, in the nature of things, spasmodic and limited. Indeed, the task is still not beyond the bureaucracy. Il docs not follow that IAS officers' associations in each stale should become functional trade unions nor docs it mean that IAS and IPS cadres should overnight become defiant, adversarial towards the ministerial class.

Despite the too apparent odds, a bureaucrat can still insist that a minister conforms lo procedural norms. A chief secretary may not be able to prevent a chief minister from overruling him and exercising his discretion for a palpably wrong, ill-advised end, but he can certainly insist that if his advice is to be overruled, it must be so done in writing, as per service rules.

Punitive Transfer

For example, it would cost a conscientious home secretary in a stale nothing to tell his minister that if he had any preference in matter of transfers of police officers, such a preference be better recorded in writing. And if a chief secretary is not willing lo cross swords with a particularly intransigent chief minister, the least he can do is to ensure that a

junior officer, say, a district collector, is given the necessary protection and encouragement in standing up to taluka level politicians.

This in itself is not an entirely hopeless situation. If an officer has the courage of his conviction, the most that a vindictive minister can do is to resort to the politician's ultimate weapon, namely transfer.

This weapon will lose its sting if the bureaucracy ever finds the collective voice and gumption to insist that rules of transfers be so framed as to ensure that a punitive transfer does not lead to a total disruption of the official's family life.

But the bureaucracy cannot ever . hope to play its rightful rote unless it is willing lo accept a genuine structure of accountability. As long as bureaucrats continue lo worship She gods of secrecy, the Om Prakash Chaulalas will feel *free* to make bureaucracy a co-conspirator in their subversion of our polity.

Indeed, this is one more illustration of escalating his political strategy through a series of serially unfolding dreams that he arranges for the people. If the issue of probity in public life marked Mr V. P. Singh's point of political departure from the Congress and Mandal as his jumping board for mass mobilisation, his third and latest strategy is premised on sloganising the term "equity".

Equity is the catch word of the moment as far as Mr V. P. Singh is concerned. He posits federalist and administrative decentralisation as the principal content of political equity, the issue of land reform, redistribution of wealth and opportunity and participation in management as elements of economic equity and reservations and special provisions for women as factors of social equity.

Now he goes further and re-defines secularism as a reflection of cultural equity. He naturally expects that "equity" captures the political imagination, it will be as electorally remunerative as garibi hatao was as the slogan of the last populist era.

It was obvious during the Janata Dal convention that while the possibilities of political realignments at Delhi and possible dismissal of the Bihar government did hang over the assembled delegates, at feast one section of the leadership did not appear to be particularly bothered about it.

Top leaders explained their apparent indifference in pragmatic terms. First, they were not inclined to dismiss the force of anti-Congressism altogether.

Secondly, they felt that even if some Janata Dal heavyweights wanted to abjure anti-Congressism, they would not be able to persuade sufficient number of party members to follow them. Thus, in the case of a formal floor-crossing, the anti-defection provisions could still apply.

Thirdly, even if a Congress-led government was formed at the Centre, it would attempt to gain protempore legitimacy only by promising early elections. In that case, the compulsions of vote-gathering would keep the Janata Dal together to a large extent.

Finally, - if elections were postponed beyond a few months, it did not really matter to the "new equity politics" if the present legislative parties of the Janata Dal changed' dramatically, as there would be time enough to re-build a new "60 per cent leadership".

At the end of the Janata Dal convention yesterday, the party was by no means smug and self-assured, but neither was it torn apart by self-doubt as some observers had expected.

Making Government accountable - A simple proposal for Bureaucrats[8]

Praful Bidwai

On November 20, 1996 the topmost civil servants of India did something unusual. At a meeting in New Delhi that was poorly reported by the media, presided over by Prime Minister H.D. Deve Gowda and addressed by Cabinet Secretary T.S.R. Subramaniam, the Chief Secretaries of all the States and Union Territories demanded a thorough overhaul of the bureaucracy so as to make it "People oriented" besides breaking "the existing nexus between politicians, bureaucrats and criminals". They called for serious reforms that go beyond "procedural changes, cosmetic abolition of some office-creation of so-called single windows and decentralisation which are all directed inwards at the Secretariat processes, without taking into account their quality of service for the people."

The emphasis in the meeting was on the "three inter-connected issues of accountability, transparency and cleansing public services." The Chief Secretaries demanded that civil servants should be accountable to the public and not to the political executive, in keeping with the spirit of the "the basic principal of the Constitution." The political executive, in their opinion, "should concentrate on policy formulation," and accountability must be defined in relation to "public satisfaction". Some of the bureaucrats even went so far as to demand the introduction of a Citizens' Charter of Rights and a Freedom o Information Act. Secrecy, they argued, must be dispensed with, barring the exceptional case, for example, involving national security. Some of the bureaucrats were unsparing in their demand for exemplary prosecution of and punishment to corrupt officials. The meeting called for a "new code of ethics" in place of "out-dated" Service Conduct Rules.

The spirit of the deliberations of the meeting stands in sharp contrast to the spectacle of former Tamil Nadu Chief Secretary N. Haribhaskar being arrested on serious charges of corruption, as well as the fiasco over the Lok Pal Bill 1996. However, it does bear testimony to the seriousness with which a good chunk of out civil service is debating issues of ethics in governance and openness in administration. The Uttar Pradesh, IAS Officers' Association has taken the initiative to identify and isolate corrupt officers. At the end of last year, as in 1995, it named the ten most corrupt officials in its ranks although, regrettably, it failed to make the list public. At least three former top-level bureaucrats have intervened in the public debate on the question of accountability, and officers' training academics in some States are organising seminars on the issue. Ethics and accountability have engaged the bureaucracy's attention as never before.

This is a most welcome development. The accountability debate must be pursued to its logical conclusion and a series a of practical reform measure must be quickly put in place. Or else, their is a danger that the present momentum may be lost and a new cynicism might set in, which declares that after the recent spurt of judicial activism (in reality, an effort by the courts to enforce the law and remind the executive of its own responsibilities) and some interesting seminars, the government is - as it is doomed to be - back to its old, familiar, venal ways; it is business as usual once again.

To sustain the momentum, three measures are urgently needed. First, the public's right to information has to be established both through a formal Act and through a change of administrative procedures which gives content and meaning to that right. As argued in this column (*Frontline,* September 6, 1996), such a right is critical to the functioning of India's democracy and promoting public participation in decision-making. Unless the people have access to information about the Government's working, the rationale of its policies and

---

8 – FRONTLINE

Mafia running parallel Government: Vohra Panel [9]

The following is the Vohra Committee report tabled in Parliament on1st August 1995:

The Government had (through its Order No. S/7937/SS(ISP)/93 dated 9th July' 93) established a committee comprised as below, to take stock of all available information about the activities of crime syndicates mafia organization which had developed links with and were being protected by Government functionaries and political personalities. Based on the recommendations of the committee, Government shall determine the need, if any, to establish a special organization/agency to regularly collect information and pursue cases against such elements:

Home Secretary Chairman: Secretary (R) Member: DIB Member: Director CBI Member and JS(PP) MHA Member Secretary.

The Committee was authorized to invite senior officers of various concerned Departments to gather the required information.

The Special Secretary (Internal Security & Police), MHA, was subsequently added as a Member of the Committee. The committee was desired to submit its report within 3 months.

In the first meeting of the committee(held on 15th July '93), I had explained to the Members that the Government had established the committee after seeing the reports of our intelligence and investigation agencies on the activities/linkages of the Dawood Ibrahim gang, consequent to the bomb blasts in Bombay in March 1993. From these various reports, it was apparent that the activities of the Memon brothers and Dawood Ibrahim had progressed over the years, leading to the establishment of a powerful network. This could not have happened without these elements having been protected by the functionaries of the concerned Government departments, especially Customs, Income Tax, Police and others. It was, therefore, necessary to identify the linkages and to also determine how such information could be timely collected and acted upon in the future.

In the course of the discussions, I perceived that some of the Members appeared to have some hesitation in openly expressing their views and also seemed unconvinced that the Government actually intended to pursue such matters. Accordingly, I addressed separate personal letters to each of the Members of the Committee seeking their well considered suggestions and recommendations. Their responses are briefly brought out below.

Collection of Intelligence

The various offices abroad of this Agency have a limited strength and are largely geared to the collection of military, economic, scientific and political intelligence. R&AW monitor the activities of certain organizations abroad only insofar as they relate to their involvement with narco-terrorist elements and smuggling arms, ammunition, explosives etc. into the country. It does not monitor the activities of criminal elements abroad which are mainly confined to "normal smuggling without any links to terrorist elements." The present strength of the Agency's offices abroad would not permit to enlarge its field of activities. If, however, there is evidence to suggest that these organizations have links with Intelligence agencies of other countries, particularly Pakistan, and that they are being used or are likely to be used by such countries for de-establishing our economy, it would become R&AW's responsibility to monitor their activities as is being done by this Agencies to collect vital information in regard to the investigations in the Bombay bomb blasts case.

The creation of a nodal agency to collect information regarding the activities of mafia organizations is very essential. All the existing information/data available with R&AW, IB and CBI could be made available to this nodal agency. R&AW will nominate an officer of suitable rank to liaise with the nodal agency on a regular basis to enable expeditious follow-up action.

Crime Syndicate

A report on the nexus between the Bombay city police and the Bombay under-world was prepared by CBI in 1986. It would be useful to institute a fresh study by CBI, on the basis of which appropriate administrative/legal measures could be initiated.

An organized crime syndicate/mafia generally commences its activities by indulging in petty crime at the local level, mostly relating to illicit distillation/gambling/organized satta and prostitution in the larger towns. In port towns, their activities involve smuggling and sale of imported goods and progressively graduate to narcotics drug trafficking. In the bigger cities, the main source of income relates to real estate - forcibly occupying lands/buildings, procuring such properties at cheap rates by forcing out the existing occupants/tenants etc. over time, the money power thus acquired is used for building up contacts with bureaucrats and politicians and expansion of activities with impunity. The money power is used to develop a network of muscle-power which is also used by the politicians during elections.

The CBI has reported that all over India crimes syndicates have become a law unto themselves. Even in the smaller towns and rural areas, muscle-men have become the order of the day. Hired assassins have become a part of these organizations. The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various part of the country. The existing criminal justice system, which was essentially designed to deal with the individual offences/crimes, is unable to deal with the activities of the mafia: the provisions of law in regard to economic offences are weak: there are insurmountable legal difficulties in attaching/confiscation of the property acquired through mafia activities.

It has been suggested that the menace has first to be tackled at the local level where the agencies of the State and the concerned Central Enforcement Agencies like Customs and Exercise, Income Tax would be required to take effective action. In case where a crime syndicate has graduated to big business, it would be necessary to conduct detailed investigations into its assets, both movable and immovable. It has been stressed that when such action is not timely and effectively taken, the lower functionaries of the concerned State and Central Departments/organizations start overlooking the activities of the crime syndicates. To elucidate the point, the Director CBI has given the example of Iqbal Mirchi of Bombay who, till the late 80's was merely a visitor to passenger and carrier ships to obtain liquor and cigarettes for selling the same at a profit. In the last 3-4 years, Mirchi acquired real estate valuing crores of rupees; he has many bank accounts and has been paying lakhs of rupees to his careers. The growth of Mirchi is due to the fact that the concerned Enforcement agencies did not take timely action against him and, later, this perhaps became difficult on account of the enormous patronage that he had developed. If Mirchi is investigated, the entire patronage enjoyed by him and his linkages will come to light. The Director, CBI has observed that there are many such cases, as that of Mirchi where the initials failure has led to the emergence of Mafia giants who have become too big to be tackled.

The director, CBI has stated that the main mode of communications/contacts of the mafias operating at the international level is through telephonic communications. Referring to the useful leads emerging from the investigations into the activities of Dawood Ibrahim, a mafia leader, the director. CBI has stated that the effective monitoring of the telephone calls made from India/received from abroad would yield useful information and, for this being done, the Government may grant sanction to monitor certain telephone connections.

The assistance of banks is an essential input. The Bank Managers can be placed under obligation to render reports on all heavy transactions and suspicious accounts to the Enforcement agencies. Such a practice obtains in U.K.

Concluding his analysts, the Director, CBI has made the following suggestions to bring under control the activities of the criminal syndicates: identification of offences and award of deterrent punishments, including preventive detention: trial procedures should be simplified and hastened: surveillance should be carried out through finger printing, photographs and dossiers; monitoring mechanisms should be established at the State and Central levels; establishment of Special Cells in the State CIDs and CBI: suitable amendments should be introduced in the existing laws to more effectively deal with the activities of mafia organizations, etc., this would also include review of the existing laws and a detailed case study of 10-15 cases would provide useful information regarding the administrative/legal measures which would be required to be taken to effectively tackle the functioning of mafia organizations. The CBI can do this within a short period.

Decline in values

The DIB has reported that due to the progressive decline in the values of public life in the country "warning signals of sinister linkages between the underworld politicians and bureaucracy have been evident with disturbing regularity as exemplified by the exposures of the networks of the Bombay blast case". He has recommended immediate attention to: identification of the nexus between the criminals/mafias and anti-national elements on the one hand and bureaucrats, politicians and other sensitively located individuals on the other; identification of the nature and dimensions of these linkages and the modus operandi of their operations: assessment of the impact of these linkages of the various institutions viz. the electoral, political, economic, law and order and the administrative apparatus: nexus, if any, between the domestic linkages with foreign intelligence; necessary action to show effective action to counteract/neutralize the mafia activities and political and legal constraints in dealing with the covert/illegal functioning of the linkages.

Like the Director, CBI, the DIB has also stated that there has been a rapid spread the growth of criminal gangs, armed senas, drug mafias, smuggling gangs, drug peddlers and economic lobbies in the country which have, over the years developed an extensive network of contacts with the bureaucrats/Government functionaries at the local levels, politicians, media persons and strategically located individuals in the non-State sector. Some of these syndicates also have international linkages, including the foreign intelligence agencies. In this context, the DIB has given the following examples: in certain States, like Bihar, Haryana and U.P., these gangs enjoy the patronage of local level politicians, cutting across party lines and the protection of Government functionaries. Some political leaders become the leaders of these gangs/armed senas and over the years, get themselves elected to local bodies, State Assemblies and the national Parliament. Resultantly, such elements have acquired considerable political clout seriously jeopardizing the smooth functioning of the administration and the safety of life and property of the common man, causing a sense of despair and alienation among the people: the big smuggling syndicates, having international

linkages, have spread into and infected the various economic and financial activities, including hawala transactions, circulation of black money and operations of a vicious parallel economy causing serious damage to the economic fiber of the country. These syndicates have acquired substantial financial and muscle power and social respectability and have successfully corrupted the Government machinery at the levels and yield enough influence to make the task of Investigating and Prosecuting agencies extremely difficult; even the members of the judicial system have not escaped the embrace of the mafia: certain elements of the Mafia have shifted to narcotics, drugs and weapon smuggling and established narco-terrorism net-works, specially in the States of J& K, Punjab, Gujarat and Maharashtra. The cost of contesting elections has thrown the politician into the lap of these elements and led to a grave compromise by officials of the preventive/defective system. The virus has spread to almost all the centers in the country: the costal and the border States have been particularly affected: the Bombay bomb blast case and the communal riots in Surat and Ahmedabad have demonstrated how the Indian underworld had been exploited by the Pak, ISI and the latter's network in UAE to cause sabotage, subversion and communal tension in various parts of the country. The investigations into the Bombay bomb blast cases have revealed extensive linkages of the underworld in the various governmental agencies, political circles, business sector and the film world.

The DIB has stated that the network of the mafia is virtually running a parallel Government, pushing the State apparatus into irrelevance. It is thus most immediately necessary than an institution is established to effectively deal with the menace. In this connection, the DIB has stated: presently, there is no system/mechanism which is specifically designated to collect and collate intelligence pertaining to the linkages developed by crime syndicates mafia with the Government set up. Nonetheless, the various intelligence/investigation/enforcement agencies collect, in the normal course of their functioning, information about the nexus between the bureaucracy and politicians with the mafia gangs, smugglers and the underworld. These agencies use such available inputs "only within the narrow confines of their work charter and choose not to take undue cognizance and follow-up action, leave alone sharing with any other agencies." Thus, all these agencies "functioning within their own cocoons, with the result that a plethora of information falls to get specific and purposeful attention needed for the exposure of the linkages." It is, therefore, necessary to immediately have an institutionalized system which "while giving total freedom to the various agencies pursue their charter of work, would simultaneously cast on them the onus of sharing such inputs to a nodal outfit whose job will be to process this information for attention of a single designated authority." This will enable the Nodal Group to provide useful leads to the various to the various agencies and, over time, a progressive data base will get generated "to facilitate periodic reviews and analysis which could then be passed to a designated body."

Central Board of Excise & Customs (CBEC)

Interalia, CBEC is responsible for the prevention of smuggling. In this and other tasks, it is assisted by the Director General of Revenue Intelligence (DGRI) and the Director General of Anti-Evasion (DGAE). The DGRI deals with the evasion of customs duties: the DGAE with Excise duty evasion.

Income Tax Department administers the Income Tax Act, Wealth Tax Act, etc.

The CEIB is responsible for coordinating and strengthening the intelligence gathering activities and the investigative and enforcement actions of the various agencies responsible for investigation into economic offences and the enforcement of economic laws. The CEIB

is responsible for maintaining liaison with the concerned Departments/Directorates both at the Center and at the State levels and is expected to provide overall direction to the investigative agencies under the Department of Revenue.
The CEIB is expected, interalia, to attend to the following tasks: Identification of major sources generation black money: directing and developing intelligence about such sources: planning and coordinating action and operations against such sources. Assisting the various enforcement agencies in strengthening the intelligence gathering infrastructure and building up their capability for storage and retrieval of intelligence. Conducting investigative and analytical studies in difficult areas of black money operations and monitoring indicators thereof.

This Directorate is concerned with the enforcement of the investigation and penal provision of the Foreign Exchange Regulation Act; collection of intelligence relating to foreign exchange offences; enquires into suspected violations of the provisions of FERA etc.

Narcotics Control Bureau
The NCB is responsible for the administration of the Narcotics Drugs and Psychotropic Act. It is responsible for coordination with different Central and State Government Departments/Ministers and the various Central and State law enforcement agencies for the implementations of the NDPS Act.

I explained to Secretary (Revenue) the broad considerations on account of which the Government had set up a committee to look into the linkages developed by the mafia elements. He informed me that he had recently held a meeting with senior representatives of the RBI, the Chairman CBEC, Chairman CBDT and the Economic Intelligence Council in the Department of Revenue, and readily agreed with my request to attend a meeting of the committee along with his concerned officers for a full discussion on the issue before the committee. Accordingly, I arranged a meeting of the Committee (30th Aug. '93) to hear the views of Secretary (Revenue), who was accompanied by chairman CBDT, DGRI, Members (Customs) and Director (Enforcement). During the course of the discussion with Secretary (Revenue) and his aforesaid principal officers, the following significant observations were made: In the normal course of his work, to detect violations of Customs & Exercise laws, the DGRI comes across information on linkages between crime Syndicates and governmental functionaries etc. As following up of such information is not within the charter of duties of DGRI, his officers focus primarily on the information relating to the violation of the laws relating to their charter. As in the case of DGRI, indirect information also becomes available to the CBDT about linkages. Here again, not being directly relating to their charter of responsibilities, the CBDT do not follow up such leads. While the NCB is specifically responsible for booking drug traffickers, with the increasing importance being given to Narco-terrorism, the NCB has been asked to gather further information so that the real king-pins in the narcotics trade can be apprehended. The Directorate of Enforcement comes across information on linkages and passed it on to the CBI and IB. Of late, currency amounting to crores of rupees is being seized, invariably paced in suit-case and gunny bags. The Banks are reluctant to pass on information about account holders to CBDT and do not allow their officers to hold exploratory requires. While a certain amount of information is shared between the various organization under the Department of Revenue, and those under the MHA and Cabinet Secretariat, the exchanges are sporadic and limited. This is perhaps due to the fact that each concerned organization/agency is anxious to protect its sources and is apprehensive that a full sharing of all information might jeopardize its operations, on account of premature leakage of information. While DGRI, Director (Enforcement) and DG NCB are authorized to undertake phone tapping of suspected offenders, the DGRI has not

been allowed to enforce surveillance on the telephonic communications of political personalities.

Senior police officers, even in the border States, are not trained or adequately informed of the work done by the Directorate of Enforcement, specially in regard to money laundering operations, information about the activities of drug traffickers is passed on by DG NCB to the concerned State Governments and their agencies. However, niggardly responses by the latter and prolonged delays in the disposal of cases before the Courts seriously hampers the effective functioning of the NCB. While the NDPS act prescribes the award of deterrent punishments to offenders the results are to the contrary. It is necessary that the directorates of prosecution in the State Governments are urgently brought under the control of the State Police.

The Secretary (Revenue) stated that the field officers of his various Departments were faced with various problems, amongst which are: The utter inadequacy of the criminal justice system: cases are not heard timely: functioning of the Government lawyers is grossly inadequate: all this results in a low percentage of convictions and mild punishments. Unless the criminal justice system is geared up, the work of the enforcement agencies cannot be effective, the field officers of the various agencies of the Revenue Dept. are often pressurised by senior Government functionaries/political leaders, apparently at the behest of crime Syndicates/Mafia elements. Unless the field level officers are offered effective protection, they cannot be expected to maintain interest in vigorously pursuing action against the activities of such elements. The Chairman, CBDT stated that insofar as the functioning of his officers is concerned, whenever they come into possession of any information regarding the violation of any other law, the pass it on the concerned agency. He suggested that, if the information available with the other agencies is passed on to him, his officers could pursue the same.

As a result of the discussions held by the committee with the Secretary (Revenue) and his principal officers, it is evident that: While in the course of their normal activities, information on the linkages of the crime syndicates sometimes becomes available such information is not pursed on the score that is not directly related to offences falling within the laws administered by these agencies; such information is occasionally passed on by these agencies to the CBI and or IB; the various agencies under the Department of Revenue do not specifically search out information on the linkages of crime Syndicates.

Consequent to the committee's discussions with the Secretary (Revenue) and his principal officers held a series of further personal discussions with the Secretary (Revenue). At my request, Secretary (Revenue) gave me a personal note indicating his views, which are briefly as below. The information gathered by the various agencies under the Revenue Department, while gathering intelligence on offences relating to the laws administered by them, is generally not put to any use unless it is required to be passed on to other intelligence agencies outside the Department of Revenue. The linkages developed by crime Syndicates get generally confirmed when pressure is mounted on the concerned agencies not to take action against the offenders or to go slow in the case against them. Such pressures are amounted either immediately after a raid is conducted or at the time when prosecution is about to be initiated. Pressure are also exerted whenever corrupt and undesirable officers are shifted from sensitive assignments (Preventive Customs Divisions at the Airports, sensitive Collectorate in the Central Excise etc.) In the narcotics arena, which includes cultivation of opium, manufacture of alkaloids, prevention of narcotics, smuggling etc, the final stakes, are astronomically high. Consequently, the level of corruption is a very high order in this area

of functioning and enormous pressures are brought to bear even when subordinate officials are posted away, specially when the shift of an officer adversely affects the interests of those who are making easy money. Narcotics trade has world-wide network of smugglers who also have close links with terrorists. Terrorists indulge in narcotics trade to amass huge funds in various foreign currencies from which they source their procurement of weapons etc.

While the Department of Revenue, has initiated a member of steps to deal with the activities of smugglers and to plug loop-holes in the system the Secretary (Revenue) has stated that a possible approach to effectively liquidating the linkages developed by the crime Syndicates would be to mercilessly prosecute the offenders without succumbing to any pressure whatsoever. He is of the view that once the offenders are deterrently punished under the law, their influence and strength will start declining, as also of all those who support them, wherever located. He has emphasized that for the objectives being achieved it will be extremely necessary that: the center governmental machinery involved in taking action against the crime Syndicates is allowed to perform its duties with total freedom; officer with impeccable integrity should be posted to head the various organizations, which are responsible for taking action against tax offenders, smuggling etc., such officers should be selected with utmost care and provided sufficiently long tenures, giving them the clear mandate to ruthlessly punish the offenders: action must be taken to ensure the objective functioning of Courts which deal with the trial of economic offences; all cases before the Courts should be speedily concluded without the judicial officers coming under any pressure or succumbing to temptations; insufficient and corrupt elements in the various organizations must be weeded out and Government should take stringent action against officers who seek to the exert political pressure for securing postings and appointments of their choice.

From the above narrated analysis, the following conclusions can be drawn: On the basis of the extensive experience gained by our various concerned intelligence, investigative and enforcement agencies, it is apparent that crime syndicates and mafia organizations have established themselves in various parts of the country. The various crime syndicates/mafia organizations have developed significant muscle and money power and established linkages with governmental functionaries, political leaders and others to be able to operate with impunity (as recently exemplified by the activities of the Memon Brothers and Dawood Ibrahim). While the CBI and IB and the various agencies under the Department of Revenue, in their normal course of functioning come across information relating to the linkages of crime syndicates/mafia organizations, there is presently no system under which they are expected to pass on such information to an identified nodal agency. Sharing of such information is presently of an occasional nature and no evidence is available of the same having been put to any operational use (the only mentionable exception perhaps relates to the recent investigations into the activities of Memon Brothers and the Dawood gang on which several of our agencies were put to work collectively).

Even where an agency comes across certain information about the linkages of crime Syndicates, it has no mandate to immediately pass it on to one or more agencies. An agency which comes across information regarding linkages is also apprehensive that the sharing of such information may jeopardize its own functioning through premature leakage. In sum, the various agencies presently in the field take care to essentially focus on their respective character of duties, dealing with the infringement of laws relating to their organizations and consciously putting aside any information on linkages when they may come across.

In the discussions in the committee, I asked each of the members as well as the Secretary (Revenue) and his principal officers about their views regarding the establishment of a Nodal

Agency for the collection, collation and operationalisation of all information relating to the activities of crime Syndicates. Broadly, the following approaches have been mooted.

The DIB has stated that while considering the establishment of any nodal mechanism, it must be appreciated that the problems has enormous impact on national security and is indeed highly political in nature. In this context, he has suggested that the nodal set up should be under the IB which is even otherwise engaged in monitoring various political activities having a bearing on national security. He has recommended that an exclusive Top Secret Cell be established security in the IB to function as the Nodal Group for receipt of inputs from various operating difficulties could be sorted out there periodic meetings among the heads of these organizations.

---

9 – *The Hindu*, Wednesday, August 2, 1995

.

T.S.R SUBRAMANIAN **CABINET SECRETARY**
D.O. No. 501/1/5/97-C.A.V NEW DELHI
2 February 1998

Dear Chief Secretary,

The Lal Bahadur Shastri National Academy of Administration had organised a two-day Retreat for the 1961 batch Officers of different All-India and Central Services on November 6-7, 1997. The participants passed a unanimous resolution titled, "The Mussoorie Resolution", a copy of which is enclosed. This resolution caputures the functions of a responsive Government and sets an ideal for young officers in the civil services.
2. You may consider affording appropriating publicity to this resolution in the context of the ongoing administrative reforms and also circulating it to officers of all departments in the state administration.

Yours sincerely,
T.S.R. Subramanian

MUSSOORIE RESOLUTION

We call for a renewal of the public service the modernization of its systems, its mind-set, its work culture and its responsiveness to people's needs.

Even in the environment of liberalization, the quality and values of our public service remain basic to our national well-being.

Our system of government depends heavily on the integrity, professionalism and dedication of our public service. It must contribute more effectively to national enhancement through festering India's competitive advantage, impartially implementing the rule of law, tightening efficiency in throughout the system and providing citizens with services of better quality in a cost-effective manner.

Within the public service, performance must be made to count, leadership and teamwork improved, and a culture of continuous improvement prompted. The older values of probity and political independence now need to be combined with the newer qualities of leadership, excellence, openness, productivity and dynamism.

The excessive concern with procedures must be replaced by a focus on results. The boundary between policy making and implementation, now blurred, must be clearly demarcated and a new and constructive partnership established in the larger national interest between the political leadership and the civil servant, bases on mutual respect. Only in this way can accountability be made a real feature of administration.

All who form part of the process of governance need to be infused with the idea of serving the people and responding to their needs in a timely and effective manner.

While the progressive transformation of institutional structures and attitudes will take time, the relationship between government agencies and the citizenry must be put on a new footing. Citizens must be enabled to organize and express their needs and the public service to respond to them. This interchange must find expression in ways that are creative and generate real and sustained improvements in the lives of all our people.

On the 50th anniversary of our nation's freedom, we are conscious how far we are from attaining justice, equity and order.

We ask the public service of our country:

- to rededicate itself to the blossoming of the genius of our nation consistent with its spirit of harmony, tolerance and respect for diversity.
- to protect, preserve and respect our oneness with the environment.
- to strengthen the civilization uniqueness of our country.

- To these ends, we call for a new and vibrant partnership between all the instruments of governance and the people they seek to serve.
- Each of us, in our own little way, must consecrate himself to the sacred endeavour which will make these goals a reality.

Mussoorie, 7 November,1997

Transformation in Governance since 1990s--Some Reflections[10]

VINOD VYASULU

On the basis of field study, this paper argues that the third tier of government is today, 10 years after these amendments, no more than an agency - and not even the sole agency - of the state government. This is true in perhaps all of India's states, in both the rural and urban sectors. The 73rd and 74th Constitution amendments open up an opportunity to change them to local self governments. This has yet to be realised. How it can be done is the question. Some suggestions are offered here.

After the transfer of power from the British in 1947, the government of India decided upon a path of major social and economic transformation in which the union government played a major role. The declared objective was for the 'state' (which was taken to mean the union government) to 'control the commanding heights of the economy' in order to ensure growth with social justice. Another reason was the belief, expressed eloquently by Ambedkar, that the union, distant from the caste and other conflicts of rural India, staffed by urban, western educated, upper caste men, was more likely to be just and impartial in its treatment of the oppressed castes and minorities of the subcontinent than (he rural elite led state governments. Thus, the Indian Constitution has a built in bias, within a federal structure, that gives the union some extraordinary powers.[3]

The manner in which the Constitution was worked in the early years reinforced this centralising tilt. Even in subjects that were constitutionally the primary responsibility of state governments, the lead came from the union government - and, in those days, its think tank, the Planning Commission (PC). In the interests of planned development states voluntarily gave up some of their powers to the union *of* India.[4] For example, sales tax is a state subject, but a central sales tax was put in place. The Planning Commission played an important role, with the tacit acceptance of the states, as an impartial think tank concerned with the larger national interest in this process.-" Because there was agreement on these issues, this kind of practice was accepted in the long-term interest of the country. The result, over time, was a very strong union government, which became known as the centre.[6] Although the Constitution did not visualise state governments as 'subordinate' governments, they effectively became so.

Atul Kholi puts it succinctly. "As federal democracies go. India is a relatively centralized state... Over the years, as democracy has spread, numerous mobilised groups in India have demanded further redistribution of power. These demands were often resisted, sometimes wisely, and at other times unwisely and at great cost. Overall however, enough concessions have been made so that the Indian political system by now possesses significant decentralised traits." While this has been the direction, the process of change has been uneven. The 1990s have been a decade in which new elements entered this process as it took on new force. It is this that I try to trace in what follows.

Ministries of agriculture, health, and rural development, which are state government responsibilities, came up and prospered in Delhi from the early years of the Constitution coming into force. There was no role whatsoever for the centre in these subjects - for example, there are items like immunisation in the union list that the GOI must attend to. Agricultural research too is best organised on a national scale, and the success of the green revolution strategy attests to that. The point is that these ministries went well beyond this limited brief and effectively became operational agencies. These ministries (and

'autonomous' bodies set up by them) received funds from the central exchequer on the basis of five-year plans prepared by the PC. This arrangement was legitimised through approval from a National Development Council, chaired by the prime minister in the union government, with the chief ministers of states as members. These funds were spent through central schemes designed by the ministries and often implemented by them through agencies set up by them in a uniform manner across the states. The civil service became very powerful in the process.

These agencies were staffed by employees of the state government, except for the IAS officers at the top. Examples of this are the district rural development agencies (DRDAs) that channel these funds at local levels. One example is, in each state, the state district primary education society for implementing the District Primary Education Programme funded by various donors. Another example is the society set up to deal with the problem of blindness in rural areas, with branches in the districts and drawing on the health department staff at the local level. Panchayats have no role here.

In one district of Karnataka. I found that around 400 schemes, designed by the union or the state, were supposed to be in operation in the year 2000, but around 20 accounted for two-thirds of the funds spent. Many had trivial amounts allotted to them and some had no allocations at all. Not one was locally designed or conceptualised. The zilla parishad had no power to make even minor changes or reallocations within the overall budget. The situation is not very different in other districts or states. This structure of centralised administration is shown in Figure 1.

Central planning made a difference in (he industrial sector, where basic manufacturing capacities in a number of new areas were indeed created. The names of companies like HMT, BEL, ITI, BHEL, SAIL, etc, are all well known, and they have contributed to the Indian economy in a basic way. Even in industry, the model had run into trouble by the end of the 1960s.[9] There was little modernisation or technological Lipgradation once the plants were established. Projects were constantly subject to cost and time over-runs of a large mag-nitude.[10] This policy however did not have the same level of success in the social sector.

Figure1: The State Government and Decentralization (Ref date 1980) Karnataka, India

In the social sector, India did not meet, even in part, the goals enshrined in the Constitution, such as full literacy, which was to be attained within 10 years *of* the Constitution coming into force, These weaknesses or limitations, call (hem what you will, are old ones, not recent failures." There was debate in the 1970s and 1980s on what was called "centre-stale' relations. But the states, which took such a fierce position against the centralising tendencies of the 'centre', themselves were unprepared to devolve funds and functions below their own level. One wonders if the issue was one of development or the sharing of the fruits if elective office across levels. If there is failure in outcomes, it was because the powers that be failed to recognise the true nature of this problem.

A massive local bureaucracy had been created over the years, with the block development officer in the block/taluk at its head to implement the many schemes of the GOI in the social sphere.[l3] Yet, the impact of the schemes was well below expectations. Poverty and deprivation continued to exist.[14] Old and traditional ways of doing things collapsed in a regime where government was expected to do everything (is this what the "socialistic pattern of society' meant?). New ways by which people looked after their assets such as common lands did not emerge as people began to depend upon the government rather than themselves. An example is the traditional manner in which ponds, tanks and water bodies were maintained in villages. These practices stopped when government decided to take on the responsibility for all such tasks. But the local bureaucracy failed to meet this challenge, and so these bodies decayed. The result was a net loss of welfare. What existed in the field was inefficiency and corruption on a massive scale - and in recent years, the corruption has been seen as increasing.[15] In the social sector and in rural development programmes, the union government saw the problem as the lack of the involvement of "the people' in the implementation of these schemes meant for their welfare. This is an element that has bedeviled policy in this sector for a !ong time in India.

The issue can be stated simply in terms of the well known principal-agent problem. Economic theory works on the assumption that people act rationally. This is fine if people make their own decisions with full information. But if people delegate decision making powers to agents, then there is a possibility that the agents will act, not in the principal's interest, but their own and if there is asymmetry in the availability *of* information between the principal and the agent, the problem becomes much worse. Agents have information, principals do not. Given laws like the Official Secrets Acts that govern civil servants, and the 'oath of office and secrecy' that all ministers take on assuming office, such asymmetry in the availability of information with ordinary citizens is an unfortunate reality in India. (The Right to Information Acts passed in some states, like Karnataka, are well meaning, but implementation problems remain.)[16] Even in theory, this institutional structure cannot reach an optimum except perhaps by coincidence. Change in this basic structure, which may not be what is understood by the popular term structural adjustment programme, becomes a necessary condition for sustained improvements.

If the people - citizens - are the principals in a democracy like India, then we have the following situation. [8] The principals elect representatives - MPs and MLAs - to rule on their behalf. These agents, if not subject to scrutiny and monitoring, begin to think of themselves as principals who run a government in their own interest. Being educated in a largely illiterate society, it is easy for them to begin to believe that they do indeed know better. They limit access to information, as information is indeed power in this context.

To complicate the situation further, these agents' wishes are implemented by the bureaucracy, who are, shall we say. sub-agents. They are not elected representatives. The civil servants who constitute the bureaucracy, while subject to a code of conduct and to disciplinary action, enjoy security of tenure and protection of a high order through Articles

310 and 311 of the Constitution. Judgments of the Supreme Court that have broadened the definition of the state as mentioned in Article 12 of the Constitution also contributed to this situation.

The civil servants are certainly not accountable to citizens -the principals in this analysis. They are accountable to their seniors in the civil service, who are agents themselves. There is thus a hierarchy of agents. Codes of conduct prohibit them from sharing information with citizens on pain of disciplinary action.[19] There are thus multiple levels of principals, agents (sub-principals?) and subagents. Some of the agents can function in situations like principals because of lack of accountability. The principals, as Bardhan points out in his paper (see note 18) are large in number, and co-ordination is indeed difficult. It is a complex social formation.

Although the subagents are government servants who are meant to implement the orders of the political masters who are elected by the people, they often end up making decisions[20] (because of the lack of interest of the politician in governance as opposed to the perks of office) - hence the term 'sub-principals'. In the long period of colonial rule, the civil servants had enjoyed vast powers, especially at the local level, and this has continued (even increased) after the transfer of power to Indians. We have a classic situation of moral hazard because of the vast distance and multiple layers of agents between the principal who is the ordinary citizen and the agent/subagent/sub-principal who are the de facto rulers. Accountability requires an active monitoring system. That is conspicuous by its absence today.

If both the elected rulers and the permanent civil servants begin to take decisions and use public resources in their own narrow interest, the principals can do little in representative democracies.[21] Many have commented that the public sector is popular with ruling politicians because of the private uses to which it can be put. The opposition to privatisation programmes can be. in part, put down to this. If projects arc centrally decided by politicians and bureaucrats at the union and state levels, there are often institutional design problems in them (a simple wav to understand this is through the fable of the Procruestean bed). This is because of the vast, and over time, unfortunately growing, distance between the planner and the field. If these centrally designed projects are then implemented by lower level politicians and subordinate civil servants, they become rigid like square pegs in a round hole. Ordinary people, who had little say in the choice, prioritisation and implementation of these schemes, have little incentive to take any interest in them. Apart from a vote cast when elections are held, there is little by way of accountability of government to the citizen. Without an effective local monitoring system, those elected in a representative form of government begin to behave like absentee landlords.

In this situation, formation of coalitions of corrupt politicians and civil servants to siphon off money from poorly designed and monitored projects is a temptation too great to resist. In a populist regime, vast sums of taxpayer funds are allotted for such schemes. Under the lead of an unscrupulous political leadership, the bureaucracy is forced to collaborate[2]-' or drop out of the system, and corruption becomes the norm.[24] If well organised by political parties, then a market can spring up to organise such rent seeking activity. 'Prices' can be set for services- an approval costs Rs X; a driving licence costs Rs Y and so on. Every point of control becomes a point of rent extraction. In any given project, a fixed percentage-sometimes as high as 30 percent, is seen as a 'rightful commission' to be shared between those executing and overseeing it.[25] As Lloyd and Susanne Rudolph[26] write, "from 'bakshish' to the- little guy to bribes for his boss to 'commissions' for the governing elite, office was seen to serve as a source of income". A complication arises from the fact that some of these payments are considered legitimate by the general public. If not all pay ments then are considered bribes, we have to understand the finer nuances of this system carefully.

Another aspect of this situation is that, over time, those who are committed to the larger good tend to get marginalised from important decisions. Given caste and other groups that function in India, appointments get to be made on grounds that support rent seeking activity (the scandal in the Punjab State Public Service Commission in which civil service jobs were sold, is an illustration here). Through such adverse selection of persons to important posts, Gresham's law operates outside the realm of money - 'bad' civil servants drive out "good' ones. The corrupt system perpetuates itself,[28] and the honest civil servant becomes an endangered species. If nothing else, not taking a decision is safe, as you cannot be held responsible for what you have not done. Over the years, this has rigidified into a mould that will be difficult to break without thinking 'out-of-the-box'.

Projects may be approved, and funds sanctioned, but little gets done - unless there is money to be made in the process. Civil service reform is essential, but it has to be part of larger reforms, including reforms of the electoral system, which will be necessary conditions for its success.[29] Suggestions for civil service reform have been made in a principal-agent framework.-[10] stressing the importance of contractual relationships.

This lack of progress (in terms of outcomes) in the social sector, in areas like health and education, began to be taken seriously by the 1970s, when the Ashok Media Committee spoke strongly of the need for locally elected governments. But the Janata government that set up this

committee fell shortly after, and these recommendations were ignored by the Congress government of Indira Gandhi that followed.

The debate since then has focused narrowly on how people could be made to participate in the implementation of development schemes of the union government.-*- It has not been about the functioning of elected local bodies. The result has been the creation of a plethora of institutions at state and local levels in all the states to facilitate such 'participation', bypassing these bodies. Around this time also, international donors began to focus on women's empowerment, environmental conservation, compensation to people displaced by large projects, people's participation and the like, and supported a number of developmental organisations to implement these ideas at the local level. Since the lowest level of constitutional government at the time was the state government, this also was reasonable.

This policy of promoting "participation' created a network of both governmental and non-governmental organisations, funded from abroad, with a strong local presence, that took to implementing a number of governmental schemes in the sectors of education, health, drinking water and the like. The contrast with the inefficiency, insensitivity and corruption of the district administrations was stark. This donor funding also led to state governments joining the people's participation bandwagon and building links with NGOs, with some pitting NGOs against locally-elected governments like panchayats and municipalities.[33] The language of development administration internalized these terms without any change in structure. Local governments merely existed, and did little. For example, the forest department speaks of 'joint forest management', but as many studies have shown, the change is cosmetic. Gram panchayats are excluded systematically with power vested in the local forest official. The same is true of watershed development projects.[34] It is business as usual on the ground.

It is function that determines form, a fact well known in biology. If die function is improvement of the well-being of people by themselves, then democratic people's organisations are essential.-'[5] But these are conspicuous by their absence in Indian administration, which is designed to be top down. And since the form of administration did not change, the functions ii could perform were pre-determined. The rigid administrative structure functioned as before, and it could not adapt to the new requirements in spite of changes in jargon. An administrative structure designed to function in a colony, meant to maintain law and order in a subject population was simply not capable of performing

developmental functions in a vibrant democracy. Unrest that arose because of poverty and distress was seen through the prism of law and order. If citizens were unhappy at being evicted because a power plant or a factory was to be constructed, then that was seen, not as an issue of displacement and compensation, it of law and order. Public interest was never clearly defined, it was what the bureaucracy wanted it to be.

Figure2: The State Government and Decentralization (Ref date 1994) Karnataka, India

In India, at the local level, the form of the administration is fixed, with the 'collector' in charge. The legal requirements of constitutional amendments were met, by holding elections, but not their spirit. This was achieved by empowering the civil servant, not the elected representative, in a complex structure, as Figure 2 shows. It is a descendant of the colonial form put in place by the British. It adapted to some extent, but the transfer of power did not result in the changes of form that the change of function - from the maintenance of law and order in a colony to development work in a democracy - dictated. Instead, the form permitted its capture by vested interests in several areas. Rural and other elites, who had connections at state capita! and higher levels, got into the committees and other bodies that were given such responsibilities and often used the position to protect their own interests rather than improve life for the majority. Municipalities were elected bodies that functioned only as talking shops. The executive power of the municipality was vested in the civil servant who was called commissioner, instead of the elected body. Those who were elected then used their membership to negotiate contracts and the like with the commissioner. The result was a people unfriendly local bureaucracy that higher level politicians took advantage of for rent seeking activities followed by corruption, inefficiency and lingering poverty and deprivation in place of the rapid improvements hoped for in the Constitution. It is no wonder that literacy could not be rapidly increased, nor that people did not participate in the implementation-of these schemes. To 'participate' in their own exploitation would have been irrational. Attempts to change this situation by changing form have also been made. A reference was made above to the Ashok Mehta Committee that looked into these issues. Changes in function were to lead to changes in form.

It may be useful to quote for Bardhan (note 18, p 192). "Citizens are viewed as principals and their elected representatives as agents. The local government has better means (in the form of information) to be responsive, also better (electoral) incentives. In the case of centralisation, the number of principals is very large, while the number of agents are few whereas in the case of decentralisation, there is one agent per locality. The larger the number of principals, the more serious is the problem of lack of coordination in contracting with agents." It should be possible for seasoned administrators and political scientists to design such a structure or system. Figure 3 shows one such structure. But how does one move from the existing structure to a new one, in a situation in[1] which many of those who benefit from the existing structure have to give up their power? This is the key issue in the current reforms.

There has been a great deal of experimentation with elected bodies at local levels. In this, the tradition of the colonial raj was followed, where elected bodies were not made responsible for work for which they had been elected, but made debating fora with power lying with independent civil servants.[36] This is a picture that is more or less uniform, mutatis mutandis, across the states in India. The municipalities elected across the provinces of British India - and which continue in the same way today - are good examples of what was done. The term used to describe these attempts was decentralisation. This is the word still used in this context today. By that, the point at which decisions were taken, and the manner in which they were to be taken, in a given administrative structure, could be modified, but the structure of decision making and the structure *of* the government that rule remained unchanged/ This continued in the Indian experiment of decentralisation after the Balwantrai

Mehta committee repot of 1959. The transfer of power in 1947 made absolutely ru difference to this aspect of governance at the local level.

But there have been a few brave experiments at change as well At the forefront in this has been Karnataka. which along will a few other states, undertook a bold experiment in the 1980s. While the experiment was confined to rural areas, it was bold It created elected bodies at the district level to which a number of developmental functions were handed over. Along with the functions, funds and functionaries were transferred as well. Civil servants were put under the control *of* the district government. whose head was given ministerial status/[19] This was the key differentiator - civil servants had to work under the orders of the elected masters at that level. These bodies still could not have their own staff, but a good start was made.[40] Unfortunately, the experiment was killed even before it had finished one term in office. The structure that functions today on Karnataka is shown as in Figure I. While the term zilla panchayat continues to be used, it no longer refers to the elected body, but to the collective of district level officials.

This structure changed permanently, in a legal sense, in the early 1990s, with the passing of the 73rd and 74th amendments to the Indian Constitution. Based on the presumption that there can be no responsive administration locally without elected government to supervise it - a conclusion prime minister Rajiv Gandhi came to in the 1980s - these two amendments together create a third tier of governance in India, at the local level. This makes for a fundamental change in the way one sees governance in India. The challenge now is to make this law a reality at the local level. Passing a law and making it work are two entirely different things. The traverse from one path to the other is difficult.

After the constitutional amendments, states have met their legal obligations. Conformity legislation has been passed. Elections have been held, reservations for women and the depressed castes have been implemented, finance commissions set up and so on. These arc formal steps required under the law. The amendment left it to the state assemblies to decide upon the details, and upon the subjects which could be transferred and how. This was meant to give flexibility to the states which differed from each other in so many ways. Change then is in the hands of the state assemblies. Most have done less than Karnataka in the figure. Compliance with the law does not mean that local governments have begun to function. The existing governmental system is so big that different arms speak with different voices. While the Planning Commission has been urging a greater devolution of powers, the ministry of rural development has been insisting on the continued operation of the DRDAs that bypass local governments. Depending on the balance of forces at the state level, it is possible for states to do more or less what they like citing one authority or the other as it suits them.

This is a point that needs to be emphasised. In an otherwise excellent paper, Subrata K Mitra. assumes that panchayats are local government, and goes on to examine how people work with them. My point is that they are state government agencies, not yet local governments (in the sense of elected governments that work to a mandate), and what we have in India is a process of transformation from one to the other. While the results that Mitra presents are useful, they cannot be taken to reflect citizen's views of a true local government because that has not yet become a reality in a substantive sense on the ground. His choice of states for study - Maharashtra, Bihar and West Bengal - have useful lessons to teach, but the study does not provide insights into the changes that the 73rd amendment may have brought in. This, to be fair, was not the question asked in the paper. Mitra mentions Karnataka only *once,* yet the experience of this state is crucial to understand how at this level devolution can be rolled back, as this state has actually regressed after the 73rd amendment. Post 73rd amendment, the interesting states from the decentralisation point of view are Kerala and Madhya Pradesh. The World Bank studies referred to have provided useful information on this point.

The gulf between expectation and reality in local administration is growing. The law may prescribe one thing, but what happens in practice may be quite another. There are many vested interests involved in the process - the interest of the principals and agents not only differs, but the distance between them may be increasing as well. This 'gap", if it may be called that, is leading to tension in the system. It is from this tension that a new pattern will have to emerge. How that will happen is difficult to predict, but it would appear that this kind of tension cannot last for long - but that could still be many years!

Figure3: The State Government and Decentralization (A possible futire?) Karnataka, India

In Karnataka, for example, the difference in the municipal law and municipal reality is growing.[43] The 74th amendment seems to have made no difference to the manner in which municipalities function. This chasm will have to be bridged eventually. How is again not clear at this time and that is the crucial question.

But some have innovated under the 73rd amendment and recorded great progress. A good example of this is Madhya Pradesh. Madhya Pradesh has used the district planning committee provision in the 74th amendment to deconcentrate government and pass on considerable decision making powers to the districts. In terms of empowering local bodies this is limited,[4]-[1] but it is nevertheless an improvement over the earlier system. Kerala is another state that has taken planning to the people in an innovative manner, and made good use of the 73rd amendment in this regard. The traverse is possible, even if the progress is uneven. It involves a step forward and a step back. It is over time that change can be noted, as Gurucharn Das writes.

To be effective, such a change cannot be one-dimensional. It requires concomitant changes in at least three dimensions - the political, the administrative, and the fiscal. With the holding of .lections the political aspect has been taken care of. Bui on the other two dimensions, no state has made all the required changes, as the World Bank studies have noted. It is this multidimensional change that citizens have to struggle for. The possible resulting structure could be as shown in Figure 3. This would have many components.

Where administration - or staffing of these bodies is concerned - it is essential that they hire their own staff. It could be done through the public service commissions in each state, or by some other suitable system that could be set up for the purpose. No state has permitted this. Some, like Madhya Pradesh and Uttar Pradesh have taken advantage of the fiscal crisis to declare some class 3 and 4 cadres at the state level as "dying cadres' and stopped recruitment to them. Replacements, if needed, will be made at the local level. But these people still work under the directions of higher level civil servants. It is essential that locally elected leaders have control over their staff in the same way the prime minister and chief minister[47] have control over their employees. The function of local management of development programmes requires that local leaders - and the citizens through them -control officials who work at that level, Till that happens, rent seeking activities will be difficult to control.

Another administrative aspect has to do with the devolution of functions. The 11th schedule of the Constitution lists 29 items that state legislatures could devolve to the local governments. But such a devolution cannot be just an announcement, which most states have made. It means that the state must desist from simultaneously functioning in the same sphere. Parallel institutions must be shut down, parastatals wound up - or put under local government control.[48] The staff working on implementation must be put under the control of local government. This has not been done anywhere. If education is devolved, for example, then the state education department must confine itself only to matters of policy that cut across the domain of local governments. They must be providers of expertise and resources, not implemented of schemes. This has not happened in any state. In Karnataka, which had begun such devolution in the 1980s, a reversal has taken place where panchayats are concerned.

In fiscal matters, the transfer of funds must be with a minimum of conditions. While a certain amount must be completely untied, for the local body to use as it deems fit, there must be other funds meant for specific areas, such as education. But they must not be lied to specific schemes with rigid norms, as is the case today. Some amount of flexibility must be given to the elected local government. This has not been done in any stale. How can these local governments then be held responsible for acts of commission or omission? They have not been tested at all.

It is also true that local bodies have not used the power of tax to raise resources that they enjoy under the law. There are many reasons for this. But raising of resources at the local level - for example through the tax on property - will be a necessary condition for these bodies to function as governments. *One* way of encouraging this is to change the transfer of funds from a scheme based one to a block grant with a hard budget constraint. Another is to encourage matching grants. Gradually, the local share can be increased.

Local bodies, in the current set up, have a poor record of even collecting water rates and oilier charges. Part of the reason lies in populist politics. Another lies in the fact that no state has imposed a hard budget constraint on the functioning of any local government. Also, there is no effective monitoring of use of funds - leakages are common,

It is essential in this situation that each local body function democratically. It must prepare a budget, get it passed at its own level, maintain accounts and insist on audit within a specific time frame. Citizens must be empowered to act on the audit findings Transfers of funds from higher levels is a right of local bodies in India. This should be clear and transparent, and accountability must be to the local citizen. We area far cry from such a system Karnataka's experience with panchayats shows how state governments, even if they begin to do the right thing, soon backtrack in the context of political forces today.

The key element in moving forward on the traverse to a new path is engagement with citizens in governance. Whether this is called participation, transparency or accountability is not important. What is important is that citizens get together with local governments, recognise that there are honest politicians and civil servants in the system who cannot deliver the goods because of systemic limitations, and who then partner these positive elements in building confidence and improving the system. For far too long have activists confronted government and tried to pin responsibility for the undoubted failures on many fronts, with no success. The system defends itself. But in a partnership mode, things change. What India needs today is positive engagement with the system, to bring about change together. It requires an active and energetic citizenry.

That such engagement can make a difference is seen by the experience of the PROOF campaign in Bangalore. Thanks to the work of the Bangalore Agenda Task Force, the Bangalore Mahanagar Palike has today a sound fund based accounting system in place. But there is little incentive for the officials to use it, as they find the earlier cash based single entry system of accounting more convenient. But a system of regular and standardised disclosures, and management analysis and discussions with the public and joint efforts at developing simple performance indicators, can go a long way to ushering in change. In Bangalore, four public debates have been held on the quarterly results of the Bangalore Mahanagar Palike's budget for the year 2002-03. The BMP officials provided the data and answered the tough questions of the citizens. While it is true that there were some favourable conditions that made this possible in Bangalore, the opportunity for engagement exists every where. The form may differ, but that is the challenge facing citizens.

Pressure from citizens, channelled positively by the campaign, has resulted in a dialogue that holds promise of change. Such engagement is a necessary condition if processes are to change.[50] It is early days still, but a direction and approach is available. If citizens want a corruption free, open government, then they have to invest time and energy. Eternal vigilance is the price of liberty - and democracy. We must be encouraged by the fact that

there are a number of many positive examples to inspire us.[51] Nothing worthwhile is easy to attain. Nor is something easily attained - like the constitutional amendments from above - converted into something of value without the investment of clearly thought out effort. That is what we must now focus on.

Another necessary condition for the success of local governance is to engage with elected representatives. There is a great need for capacity building - in accounts, budgeting, monitoring

_i so on. For a host of reasons, they have not only been ineffective in voicing the concerns of the majority who are poor, but also earned reputation for inefficiency and corrupt practices. But it not only local bodies that are corrupt - this is a cancer in our society that has to be fought at all levels. It is easier to begin the fight at the local level, and it is here that a start needs to be made. It is only when elected representatives have the full responsibility of not only deciding upon what work to undertake, but also to raise the finances for it, by taxes or otherwise, in a hard budget constraint situation, that change becomes possible. This is something that must be facilitated by NGOs, academics - and citizens themselves. The law on fiscal responsibilities of local bodies provides the citizen with a legal base to begin such work in Karnataka.

There is a great deal that can be done if the citizens so wish, under the law as it exists today. It is essential that this opportunity be taken and to begin with small improvements. Taking local budgets seriously is one such starting point. The action in making the system work will also have its own momentum and trajectory. The future i.s not ours to see. But it need not be gloomy is what the PROOF campaign seems to tell us. It could be a precedent on which others can build.

---

10 – Economic & Political Weekly, June 5, 2004

Good Governance: A Distant Dream[11]

MADHAV GODBOLE

Responding to a public interest litigation on the state of civil services in the country and. on making good governance an explicit right, the Supreme Court held that it was not in favour of declaring good governance as a fundamental right as this would bind the court to looking into every aspect of governance. The court's refusal to take cognisance of the critical issues of public interest involved in the petition raises important questions for the governance of the country.

This author and his former colleague in the civil service, E A S Sarma, had filed a public interest litigation (69 of 2004) in the Supreme Court on the state of civil services in the country and the larger issues and concerns arising therefrom. This 64-page comprehensive petition came up for preliminary hearing in the court on February 23, 2004. The court dismissed the writ as 'not necessary'. During the hearing, the court observed that if there was a specific case of grievance, the court could look into it but it could not rewrite the Constitution or run the administration. It was also not in favour of declaring good governance as a fundamental right as this would mean the court looking into every aspect of governance. The court's refusal to take cognisance of the critical issues *of* public interest involved in the petition raises important questions for the governance of the country. Some of these are discussed in this article. The petition comprised five sections: (i) introduction,(ii)background, (iii) some major concerns, (iv) the issues, and (v) the prayer. While drafting the petition, a note was taken of the fact that the court had, in the past, declined to entertain a PIL by Common Cause, an NGO in Delhi, which related only to some matters such as arbitrary transfers. A public interest litigation (PIL) on the non-implementation of the recommendations of the National Police Commission by the central and the state governments too has been pending in the Supreme Court for quite some time. It was therefore felt that the issues pertaining to civil services should be dealt with on a larger canvas of good governance, fundamental rights and the basic structure of the Constitution. As a result, the PIL did not just seek safeguards for retaining the apolitical character and independence of civil services but equally importantly also dealt with improving their efficiency, integrity, morale and public image.

The founding fathers of the Constitution wisely provided, by making provisions in Part XIV of the Constitution, for apolitical and independent civil services, with requisite protection for service matters. These provisions pertain not just to the union but also the states. One of the provisions of the Constitution (Article 312) which was hotly debated and faced considerable opposition, particularly from the provincial governments, pertained to the creation of All India Services (AIS) with recruitment based on all India competitive examination and dual control by the centre and the states. Such a constitutional protection was meant to enable the AIS to operate independently, freely, objectively and fearlessly. It is a travesty that the AIS. and particularly the Indian Administrative Service and the Indian Police Service officers, are the worst sufferers in the last three decades due to the onslaught of the political executives, making a mockery of the erstwhile much acclaimed steel frame of the country.

The years since independence have seen progressive, marked and unabashed interference in the management of civil services and excessive political interference, and arbitrary, unguided and blatant misuse of discretion in all personnel matters, even at the highest levels of bureaucracy. Introduction of self-serving criterion such as "officer enjoying the confidence of the government" for purposes of promotions, postings and transfers has led to highly personalised administration. This is against all precepts underlying the creation of

permanent civil services. Rule of law. equality before law and equal protection of law arc given a go by in the process. This is not the governance, which was visualised by the Constitution and is an anti-thesis of democratic and accountable government. This is nothing but authoritarian use of power by a democratically elected government. Inevitably, this has led to politicisation of the services leading to the civil services becoming the instruments and handmaiden of the political party in power. Thus, the constitutional protection to civil services has not just been eroded but has been wiped out altogether. This has led to a substantial decline in their morale and the standards of their efficiency and integrity. Public image of a civil servant is now that of a rent seeker and exploiter who has no respect for the rule of law. He has ceased to be either civil or a servant of the society. One noteworthy feature in this behalf is that the situation is equally bad and worrisome at the centre and the states, and irrespective of which political party is in power.

The petition brings out that the dangers of political interference in and politicisation of services and dilution of their independence, objectivity, and freedom to give frank and dispassionate advice were clearly foreseen by the founding fathers of the Constitution. As H M Seervai (1996) has emphasised, "If the Constitution made no attempt to demarcate the respective spheres of the civil servants and ministers, their functions and duties, it was assumed that the British model which we have adopted gave sufficient guidance to the relation between a permanent non-political civil service and the ministers in charge of the various departments of the state... However, the draft Constitution had reached a stage on October 10. 1949 where it was impossible to devise a new scheme for the selection, appointment, transfer, promotion and other matters affecting the members of the civil service." As brought out in the reports of a number of committees, commissions and experts, cited in the petition, the constitutional safeguards have largely remained on paper. As in the case of some of the other institutions created by the Constitution, it is necessary to recognise that the weakening of the civil services too has serious deleterious effect on the working of the Constitution.

The petition deals with some major concerns and discusses the issues, which are basic to the very survival of independent, apolitical civil services in the country. These include, among others, personnel matters such as transfers, postings, suspension from service, compulsory waiting, promotions, empanelment, foreign postings, extensions in service, re-employment, post-retirement assignments and so on. Admittedly, there are serious limitations to individual officers approaching the courts for getting relief. These limitations are on the part of both the aggrieved officer - costs involved in approaching the courts and difficulties in establishing the malafides on the part of the government - as also the courts - the extent to which courts can interfere in day to day administration and substitute their judgments for those of the government. In the process it is the public interest, which suffers. Some systemic and institutional changes are, therefore, necessary to make sure .that all such personnel matters are decided solely in public interest according to statutory rules and regulations and on the advice of statutory civil service boards. If, for any reasons, the political executive wants to use its discretion in an individual case and go against the recommendations of the statutory civil service board, it must be incumbent on it to pass a speaking order. In all important matters pertaining to higher civil services, it must be obligatory on the government to lay a statement on the table of parliament/state legislature whenever it decides to over-rule the civil service board.

It is pertinent to note that the petition does not merely ask for protection for the civil services but also deals with some important matters aimed at enhancing the accountability of the civil services, improving their standards of integrity and underlining their commitment to good governance. The petition discusses the two most important issues. First, does the petition involve public interest? And second, is it a fit and proper case for the court to intervene in the domain which has been so far generally considered to be the prerogative of the elected

executive? The petition argues that there is overwhelming evidence to show that matters pertaining to good governance clearly involve public interest. This is well recognised the world over and a number of countries are taking energetic steps to provide to their citizens an accountable, people-friendly, sensitive and clean government. Increasing transparency in governance has become one of the prime objectives in a number of democracies. India is still a long way off from achieving these objectives and has not been able to provide even rudimentary framework of good governance in the country. Insofar as the second question is concerned, the petition urged that good governance and apolitical and independent permanent civil services should be declared by the court as a part of the basic structure of the Constitution and an inalienable and intrinsic part of the scheme of the Constitution. Unless this is accepted, the fundamental rights and the basic structure of the Constitution, which the court has held sacrosanct and inviolable, will largely remain on paper. It is only by declaration of good governance as basic to the proper working of the Constitution and apolitical, permanent civil services as one of the instruments for its realisation that foundation can be laid for some structural and overdue reforms in civil administration in the country.

Protection to Civil Services

The final section entitled the prayers contain a number of wide-ranging and important suggestions for providing protection to the civil services in the light of experience analysed in the petition and, simultaneously, improving perceptibly their performance, efficiency, accountability and integrity. These comprise: declaring good governance and permanent and politically neutral civil services as intrinsic to the scheme of the Constitution and part of its basic structure; laying down that officials, before starting their career, in addition to taking the oath of loyalty to the Constitution, should also swear to abide by the basic principles of good governance so as to give unequivocal commitment to the basic tenets of the Constitution. Towards this end, the government servants conduct rules should be completely rewritten so as to be in accord with modern notions of accountability: all personnel matters pertaining to civil services such as transfers, promotions, empanelment. extension of service after retirement, re-employment and so on should be governed by statutory rules and regulations framed after following the procedure of pre-publication of the draft rules and regulations so as to ensure wider consultation with all stakeholders. In view of the large-scale misuse of the power of suspension by some state governments, the rules should, inter alia, provide that suspension of an officer can be effected only after preliminary enquiry and after seeking the advice of the civil service board (CSB); all personnel matters pertaining to All India Services (AIS) and other higher civil services should be the responsibility of statutory civil service boards; setting up of the such boards at the level of government of India (GOI) and the state governments as also at the lower levels with composition suggested in the petition; their recommendations to be binding on the government and when the government over-rules the board, a statement giving reasons therefore should be recorded on the file and placed on the table of the legislature/parliament; whenever cabinet secretary or chief secretary or director general of police is proposed to be shifted peremptorily before completion of his term and/ or retirement, the government must get a panel of suitable names for appointment from the central CSB. It must be incumbent for the government to make a selection only from the panel furnished by the CSB; there should be total ban on extensions and re-employment of officers after retirement and appointment of retired officers on statutory bodies and regulatory commissions should be permissible only if there are independent statutory selection boards or prescribed statutory procedures for selection for incumbents for these posts; an officer who is not empanelled for the post of joint secretary in GOI or a secretary in the state government, and for each stage of promotion thereafter, should be retired and this rule should also be extended to field organisations, the central

services and slate civil services at appropriate levels; there should be a cooling off period of two years after retirement before a public servant can join a political party; annual returns of movable and immovable property filed by officers should be in public domain and put on a designated website by the state governments and GOI; departmental actions initiated against officers should not be treated as secret and the details of these cases as also the progress thereof should be posted on the website; no permission should be required to be obtained by the central bureau of investigation (CB1) or other anti-corruption authorities for commencing anti-corruption inquiries against any officer or for further consequent actions such as carrying out raids; police should have full authority to launch prosecutions in anti-corruption cases. No approval of the government should be necessary for the purpose and any withdrawal of prosecution should be only with the prior approval of the Lok Ayukta and the state public service commission in the case of state government servants and of Union Public Service Commission (UPSC) and the Central Vigilance Commission (CVC) in respect of A1S and the central services. In the states in which there is no Lok Ayukta, the decision of the state Public Service Commission should be final; state and central governments should enact a Public Interest Disclosure Act (Whistleblowers Act) to give protection to bonafide informants against retribution and any form of discrimination for reporting what they perceive to be wrong-doing in their organisations and the act may contain salutary safeguards as in the United Kingdom Act on the subject; the government should enact a comprehensive law to provide that where a public servant causes loss to the state by his mala fide actions or omissions, he should be made liable to make good the loss caused and, in addition, should be liable for damages; central government should frame Rules under section 8 of the Benami Transactions (Prohibition) Act, 1988, for acquiring benami property and enact a law to provide for forfeiture of benami property of corrupt public servants as well as non-public servants; government should take early steps to enact a law for confiscation of illegally acquired assets on the lines suggested by the Supreme Court itself in the case of Delhi Development Authority v Skipper Construction Company (AIR 1996 SC 2005); the Prevention of Corruption Act, 1988, be amended to provide for confiscation of the property of a public servant who is found to be in possession of property disproportionate to his/her known sources of income and is convicted of the said offences and in such a case, the law should shift the burden of proof to the public servant who was convicted and the proof of preponderance of probability should be sufficient for confiscation of property; a comprehensive examination of the corpus of administrative jurisprudence be undertaken to rationalise and simplify the procedures of administrative and legal action so as to reestablish the accountability of a public servant and to ensure that while homestand efficient public servants are given the requisite protection, the dishonest are not allowed a long rope; the Official Secrets Act. 1923, should be repealed and replaced with a law with more restrictive scope confined tocertain matters such as national defence, national security, law and order, investigation of crime, external relations and atomic and trade secrets, etc, and pending such an enactment, the existing law be amended to provide at least for public interest as a defence by a person charged under the Act; the Police Act, 1861, be replaced by a more modern, forward-looking enactment; a statutory national authority, with autonomy and independence, be cstabl ished to pursue the cases pertaining to the nexus between criminals, bureaucrats and politicians along the lines of the recommendations of the committee on reforms of the criminal justice system[GOI 2003]; all state governments and the central government be directed to bring out annual reports on the management of civil services to make available relevant information in a consolidated form for use of stakeholders in society.

These reports need to be prepared under the guidance of a multi-disciplinary team comprising, among others, management experts, academics, and other prominent persons in public life to focus attention on issues pertaining to civil service reforms and improving the

governance in the country; a standing statutory National Civil Service Commission (NCSC) may be appointed comprising five persons of outstanding merit from diverse sections of society to oversee the functioning of the civil services in the country and suggest ways for improving the standards of their performance, efficiency, productivity, accountability and transparency. The NCSC should have only a skeleton staff of its own and may make use of consultants and experts on a contract basis for its studies. The NCSC should bring out an annual report and special reports, as may be necessary, and these be placed on the table of parliament/state legislatures, as and when they are received. This long list of prayers essentially comprises four submissions, namely, to declare good governance as a part of the basic structure of the Constitution and to also declare that apolitical and independent civil services arc an integral part of the scheme of the Constitution, providing statutory safeguards for personnel matters, promoting integrity and efficiency of civil services, and surveillance over them by the civil society.

The petition forcefully argued that fundamental rights enshrined in the Constitution cannot be safeguarded unless civil services are given independence and are made accountable for their actions and inactions. In Ajay Hasia v Khalid Mujib (AIR 1981 SC 487 at 493: (1981) 1 SCC 722), Bhagwati, J. has observed, "It must be remembered that the fundamental rights arc constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation."

The petition has underlined that the basic structure of the Constitution which has been held inviolable by the Supreme Court too would remain on paper unless the civil services are protected from the onslaught of excessive politicisation and political interference. This is evident from the halfhearted manner in which some of the basic features of the Constitution such as the rule *oi'* law, conduct of free and fair elections, rights of minorities, secularism or welfare of weaker sections of society are implemented in the country.

The words 'governance of the country' appear only in Article 37 of the Constitution in Part IV on Directive Principles of State Policy but good governance is writ large and implicit in several provisions of the Constitution. Time has come to declare right to good governance as a fundamental right under Articles 14, 19 and 21 of the Constitution. There is some merit in making it explicit as was done by the Supreme Court in respect of a number of other rights such as right to privacy, right to information, freedom of press, environmental protection and so on. In Maneka Gandhi (AIR 1978 SC 597: (1978) 1 SCC 248), the landmark case which initiated the process of expansion of the scope of Article 21, the Supreme Court has observed, "The attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and content by a process of judicial construction.'

In Unni Krishnan J P v State of Andhra Pradesh (AIR 1993 SC 2178: (1993) 1 SCC 645). the Supreme Court has even enunciated the doctrine of implied fundamental rights. The court has asserted that in order to treat a right as fundamental right, it is not necessary that it should be expressly stated in the Constitution as a fundamental right. Political, social and economic changes occurring in the country may entail the recognition of new rights and the law in its eternal youth grows to meet social demands. This is evident from the fact that by interpretative process, several new fundamental rights have been recognised by the court in addition to those which have been expressly stated as such in the Constitution. These include, among others referred to earlier, right to livelihood, right to medical care, right to shelter, and so on. In Francis Coralie (AIR 1981 SC 746 at 753: (1981) 1 SCC 608), the Supreme Court has declared, "We think that the right to life includes the right to live with human dignity and all that goes with it." In State of West Bengal v Ashok Dey, the Supreme Court has held that, 'The expression 'personal liberty' in Art 21 is of the widest amplitude

and it covers a variety of rights which go to constitute the personal liberty of man and some of these have been raised to the status of distinct fundamental rights."This is further borne out by the observations of the court in Pathumma v State of Kerala, (AIR 1978 SC 771: (1978) 2 SCC1), that in interpreting the Constitution, "the judicial approach should be dynamic rather than static, pragmatic and not pedantic, and elastic rather than rigid" [Jain 2003].
As opposed to the doctrine of exclusivity and treating each right as a distinct and a separate entity, the Supreme Court has recognised that fundamental rights are not all distinct and mutually exclusive and each freedom has different dimensions.

Ensuring Good Governance

The fundamental rights play a noteworthy role in the area of administrative law due to the phenomenal increase in the functions, powers and activities of civil administration, particularly in a welfare state. A large amount of discretion has to be inevitably left in the hands of administration. This has meant close scrutiny of both the administrative laws as also the procedures to ensure that they do not bestow arbitrary and unregulated discretion in the hands of administration. This brings out the close inter-relationship between the fundamental rights and good governance. Good governance requires, among others, sound. forward-looking and enlightened constitutional framework, democratic governance, independent judiciary, freedom of press, and independent, apolitical, neutral and fearless civil service owing allegiance to the Constitution and the rule of law and not to the political party in power. While a great deal has been done, debated and translated in reality in respect of the first four items, the last named item pertaining to the civil services has been totally lost sight of and has often been pushed under the carpet. And the disastrous consequences are there for all to see. It must be realised that independence of civil services is no less important or significant for the working of the Constitution than the independence of the judiciary.
It is not enough to declare good governance as a fundamental right and independent, apolitical, neutral and fearless civil services as one of the instruments for its realisation since not all fundamental rights are a part of the basic structure of the Constitution. It is necessary to declare the right to good governance as a part of the basic structure of the Constitution. The doctrine of basic structure can strictly be invoked only when any amendment of the Constitution or legislation strikes at any of the basic features of the Constitution. But, over the years, the Supreme Court has pronounced several features of the Constitution as a part of the basic structure. In the Indira Gandhi case, Chandrachud, J, has held that the proper approach of a judge, who is confronted with the question whether a particular facet of the Constitution is a part of the basic structure, is to examine in each individual case, the place of the particular feature in the scheme of our Constitution, its object and purpose, and *the consequences of its denial on the integrity of our Constitution as a fundamental instrument for the governance of the country* (emphasis added) [Sathe 2002]. In Indra Sawney v India ((1992) 22 ATC pp 385, 670 (para 398)), Sawant, J, has stated, "Constitution being essentially a political document has to be interpreted to meet the felt needs of the time. To interpret it ignoring the social, political, economic and cultural realities is to interpret it not as a vibrant document alive to the social situation but as an immutable cold letter of law unconcerned with the realities". Justice V R Krishna Iyer has emphasised that, "The sweep and scope of the basic structure is still moot" [Iyer 2003].
The petition did not ask the court to rewrite the Constitution in any way. It prayed that the protection given to the civil services by the Constitution which has become a dead letter should be made a reality and the government be directed to put in place statutory safeguards for the purpose. The petition also requested the court to make the right to good governance which is implicit in various provisions of the Constitution explicit as has been done by the court in respect of some other fundamental rights referred to earlier. Over the years, the

Supreme Court has enunciated important constitutional doctrines such as the basic structure of the Constitution, enlarging the scope of fundamental rights, bringing about greater coherence between the Directive Principles of the State Policy and fundamental rights and so on. The decision of the Supreme Court in the Bommai case gave an altogether new interpretation to Article 356 of the Constitution and made it practically impossible for the central government to invoke the provisions of this article indiscriminately as in the past.

Structure of CBI

In Vineet Narain v India, the Supreme Court thought it fit to go into the constitution of CBI and its control mechanism. The court rightly held that, "No doubt, the overall control of the [investigative] agencies and responsibility for their functioning has to be in the executive, but then a scheme giving the needed insulation from extraneous influences, even of the controlling executive, is imperative" ({1998) 1 SCC 226, 243). In this case, the court went into the structure of the CBI and suggested procedure for selecting its director. The court monitored the proceedings through what was called "continuing mandamus". According to S P Sathe (2002:145), "'in laying down the structure of the CBI and stating how the vigilance commissioner should be appointed, the court doubtless exceeded its powers. But this judicial excessivism was received well. Critics of judicial activism have often argued that the Supreme Court and the high courts have, in recent years, pronounced a number of decisions on matters which can be said to fall within the purview of the executive. As compared to this, what the PIL in question asked for was by no means exceptionable since the petition basically contained two submissions: One, it sought the intervention of the Supreme Court to direct the government to put in place statutory and other safeguards for translation of the protection given by the Constitution to the civil services in general and the AIS in particular. Second, equally importantly, the petition sought to make the civil services accountable and effective instruments of good governance by perceptibly increasing their integrity, efficiency, morale and public image. The systemic and institutional changes suggested in the petition would have greatly strengthened and perceptibly improved the working of the Constitution and eventually even led to a reduction in the workload of the judiciary.

Over the last 50 years, a number of committees and commissions have applied their mind to the issues critical for the proper management of civil services. Unfortunately, their recommendations have fallen on deaf ears. Neither the state governments nor the central government, irrespective of which political party was in power, has taken any interest in reforming the system. In fact, there is a secular and all-round deterioration in governance at all levels. Therefore, as a last resort, this comprehensive PIL was filed in the Supreme Court. In view of the several constitutional issues and matters of serious public interest brought out in the petition, the petitioners had hoped thai it would be admitted for substantive hearing and notices issued to the central government and all state governments. Unfortunately, these expectations have been belied. Maybe we, as a country, have still not reached the nadir of governance and considerable further downhill journey still remains, in spite of the slogans of Mera Bharat Mahan' and 'Shining India'.

11- *Economic & Political Weekly*, March 13, 2004

INTERVIEW: VASUNDHARA RAJE

‘Centre has moral, not legal, say over state decisions on officers’

Union Minister of State for Personnel VASUNDHARA RAJE SCINDIA holds out no hope for immediate change in the status of all-India officers on state postings. The answer, she tells Arati R Jerath, lies in debate and discussion at the Central and state levels

What do you feel about political interference in the bureaucracy in various states, especially highlighted by the recent large-scale transfers by Mayawati in Uttar Pradesh and Narendra Modi in Gujarat?
My answer holds good for what Mayawati may do in UP or what Laloo may do in Bihar. Ours is a federal structure in which the command and control over an all-India officer posted in a state rests with the state government. We have three all India services: the IAS, which is controlled by my ministry, the IPS which is controlled by the Home Ministry and the Indian Forests Service, which is controlled by the Environment Ministry. The same structure exists both at the Central and at the state level.

The system works something like this: As the cadre controlling authority, we at the Centre are responsible for the appointment, disciplining and dismissal of officers belonging to the all-India services. For everything else, the power rests with the state government. In any case, these officers deal with things like law and order, management of forest lands, etc. which are state subjects and, therefore, they necessarily have to be under the control of the state government.

The Centre has no legal right to intervene in the decisions a state government may take on postings and transfers. We do, of course, have moral authority. We can encourage the states to give a reasonable tenure to officers. Before an officer is transferred, we can talk to the state government. But all this can at best be done through letters or over the telephone. There are no legal remedies available to us to change a decision that a state government has taken.

Can’t we build a system of dykes, particularly around the institutions of District Magistrate and Superintendent of Police, so that they don’t get transferred each they want to uphold the law or the CM changes?
It’s not possible in the current system. While an officer is posted in a state, we can’t exercise any authority over him. Even when an officer is posted to the Centre, we have to seek cadre clearance from the states. As I said, we do have moral authority but if you ask me for a formula on how to exercise this authority, I can’t give you one. It varies from case to case and it may or may not work.

The Sarkaria Commission and the Administrative Reforms Commission have recommended that an independent constitutional authority be set up to control the postings, transfers and promotions of civil servants. Why haven’t these recommendations been implemented?
Look, the Centre and the states have to agree on this first. It’s not a subject that can be taken lightly. Actually, this problem of frequent and large-scale transfers is something that has come up only in the last few years, ever since we’ve had coalition governments and frequent changes of state governments. Earlier, there used to be a huge Congress government at the Centre and most of the states were also ruled by the Congress. So, there was rarely a problem.

Couldn’t the Centre simply institute a minimal posting period of, say, three years for an officer with the rider that any transfer under that period should be based on sound reasoning? The IAS and IPS Associations have been demanding this.

It cannot be done unilaterally. This is something that has to be debated and discussed thoroughly, both at the central level and with the states.

The Mussalam-e-Murgh Dossier[13]

I, Vishwambhar Pati, have merely translated and transcribed the following dossier from Economic and Polemical Weekly. All responsibility for any inaccuracies, fabrications and omissions therein lie solely with Yasser Muammar Saddam Pervez's surviving relatives and Economic and Polemical Weekly's (barely surviving) editors.

1432 hrs, January 31, 2002. Outskirts of Srinagar: A 0.45 calibre bullet pierces the broad back of Yasser Muammar Saddam Pervez, and lodges in his trachea. Half-munched piece of tandoori chicken flies out of his mouth and lands 16.8 metres away, at the feet of Naik Havaldar Jarnail Singh, who mistakes it for an unexploded live hand-grenade, and naturally picks it up to investigate. On noting that it is merely a half-eaten chicken leg, munches remaining half with relish, but only after wisely detaching and pocketing Saddam Pervez's false teeth that are attached to the fleshy part of his unexpected but welcome afternoon snack.

1655 hrs, Forensic Laboratory, Undisclosed Location near the L-O-C: Trained sniffer dogs detect that false teeth in Havaldar Singh's pockets are not true false teeth, but false false teeth. Barking out in Morse code, they communicate this to their Boss, who puts them (the teeth, not the dogs) under the microscope. Newspapers report demise of Pervez. The Indian home minister rejoices, and leaves for the US to share his glee with George Bush and 23 pro-India senators. Later discovery that the slain Saddam Pervez is neither the real Saddam nor the real Pervez causes a pall of deep collective gloom to descend over these 25 gentlemen.

1656 hrs, False Tooth Department, Self-same Forensic Laboratory: The false teeth have been scanned and X-rayed, and three are found not to be teeth at all. One contains a complete microdot copy of the Koran, but written in Swedish, to fool curious onlookers. The second contains a 16-digit number. The mysterious number is flashed to FBI, CIA and Interpol. The CIA chief reverts immediately by telephone. It is a Pakistani number from Quetta, in Baluchistan, part of P-o-P (Pakistan-occupied Pakistan).

"But what is this Pakistani number the Pakistani number of?", enquires a befuddled Indian Intelligence Officer. The CIA chief asks for more time. *1843 hrs, CIA HQ Langley, Virginia:* A crack team of US military commandos stationed in Quetta is ordered to swing into action. They start by comparing the 16-digit number with all possible Pakistani numbers, and further determine that it is a prime number. Therefore it is either a gun licence number or a dog licence number. The CIA chief gets back on the phone and reports this breakthrough to Indian authorities.

After hours of intricate reasoning and computer simulation, Indian authorities inevitably conclude that it is a dog licence number, since you don't need a licence to own a gun in Pakistan. (In fact, you need a licence NOT to own a gun in Pakistan, and those numbers are only single-digit ones.) Operation False Tooth appears to be at a dead-end. Half an hour later, the home ministry discovers that the dog possessing that 16-digit licence number is a Dawood operative living in a high-security kennel in Karachi. US secretary of state Colin Powell is sent a formal request from the Indian government to pressure the Pakistani authorities to extradite at least the dog, if not its owner. Colin forwards the request to Pervez Musharraf, who forwards it to Dawood, who forwards it to his dog, who eats it up. Third false tooth seems only hope.

1900 hrs, February 2, Centre for Biological Specimens, Hyderabad: Using a single beam multiply polarised electron microscope (used for the artificial insemination of fruit flies), a crack team of scientists is able to decipher micro-encrypted third tooth. It contains the entire text of the *Encyclopaedia Britannica,* but with several alphabets missing. These missing alphabets are quickly supplied by a routine computer Spellcheck, and after exhausting the 63 trillion permutations of those letters, exactly one permutation makes sense. Very diabolical sense, that is.

Home Ministry Internal Security Memo: This part of the dossier is so secret that it has only been reported as a one-time editorial in the *Economic and Polemical Weekly.* The remainder of this account is a translation of that editorial into English, and might therefore contain some inaccuracies.

(1) Yasser Muammar Saddam Pervez is a brother-in-law (also brother, also father, also second cousin) unto the dreaded Osama bin Laden, the mastermind of the WTC bombings and chief of Al-Qaida. Frequently travels under the assumed names of Omar Gibran Khayyam Kahlil and Sheikh Haroun al Rasheid. He is said to hold a Yemeni and an Indian passport, though the Indian one is now invalid because cheap binding has made all its pages fall out. Indian passport renewal denied by home ministry because he listed 17 distinct individuals under 'Father's Name' in his application form.

(2) Pervez heads his own terrorist outfit called Mussallam-e-Murgh (M-e-M for short), which is headquartered in the coal cellar of a popular Old Delhi kabab-joint cum STD-booth, which also bears the same name. Communication is via chits of paper rolled into the sheekh kababs, which are in turn rolled into the STD phone, which is then rolled down the road to a waiting motorcycle courier. Pervez travels only in stolen Maruti Gypsies, and never uses the same car twice. As an added precaution, drives only in reverse gear making full use of rear-view mirror.

(3) M-e-M's stated goal is to foment civil unrest and confusion in India. In this goal, it has a loose alliance with J-e-M and L-e-T, and also direct access to funds from Al-Qaida and its subsidiary, the Kadaai Gosht Mujahiddeen. The ensuing items detail some of their planned operations, some successful, some still in the making, and some aborted.

(4) The first is a plan to forge the signatures of Jaya Amma on a large number of shady real estate deeds, some as far afield as London, Ooty and Kodaikanal. This causes a large number of criminal cases, all false, to be filed against her, tying the entire judicial system of Tamil Nadu into a hopeless knot. Also causes loss of her chief ministerial post, her ensuing blackmail of the prime minister, and eventually a withdrawal of her party's support to the central government, causing it to collapse. M-e-M doesn't anticipate that this move of hers would so boost her popularity that she'd win the next election by a landslide. M-e-M also fails to anticipate that no court of law in Tamil Nadu would be suicidal enough to bring in a verdict that ever finds her guilty of anything.

(5) The second is a plan to attack the heart of India's industrial prosperity. The Sardar Sarovar Project in the Narmada Valley is slated to solve all of India's water and energy problems for all time to come, and thus enable it to become an 'info-knowledge-society'. This would, of course, be prejudicial to Pakistani interests, so an internal memo traced to ISI in Islamabad details the logistics of sabotaging this entire project before it gets off the ground, in the most effective manner. RDX and other violent methods are ruled out, because they would arouse immediate suspicion, so the method chosen is to infiltrate the World Bank with a white sahib M-e-M agent, code-named M-e-Msahib. His real name is Morse, the same Morse who forms the Morse Commission, and submits a report trashing the entire project as unviable. This causes the World Bank to withdraw funding. Again M-e-M fails to reckon on the hidden riches and even more hidden nationalism of Indian capitalists, and has to launch a second sabotage mission. This involves a large number of ISI operatives dressed (or rather, undressed) as tribal evacuees from the Narmada Valley. They launch a big agitation called the NBA, and make a last ditch attempt to derail the construction of the dam. This is an ongoing project of the ISI and M-e-M, and continues to snarl the courts, the dams, and the police stations.

(6) An aborted plan to replace the Indian home minister's bedside reading matter (allegedly the book The *Erogenous Zones of Sheep and Fowl* by George W Bush), with a deeply perverted pornographic novel entitled *Tractatus Logico-Philosophicus* (by Ludwig Wittgenstein), which would totally mess up his mind. Plan backfires because of intelligence failure to note that said mind's reading matter consists entirely of *Mein Kampf,* which makes said mind immune to further messing up. Plan aborted at preliminary stages.

(7) A plan to kidnap the HRD minister of India, and force him to attend high-school physics classes. The idea being to convince him (by means of severe caning) of the outrageous canard that Newton's Laws of Motion were discovered by Newton, when everybody knows they are due to Dronacharya. An ex-professor of physics who claims that Newton discovered Newton's laws would be laughing stock of entire Civilised World, and quickly cost our nation its infotech and software supremacy. Plan aborted because HRD minister is only interested in history, and hasn't heard of Newton.

(8) This plan is still in the execution stage. The plan is to air-drop large numbers of puzzle-books, chess-sets and mathematical games on the population of UP. The large-scale epidemic of logical thinking that consequently erupts instantly boosts the average IQ of the entire state into the double

digit range, and causes its populace to abstain from all future elections. Since political parties in UP continuously bank on caste-bashing, temple-building, mosque-busting and communal rioting to get votes, and since this state controls the Lok Sabha by its sheer size, the calamitous consequences of a non-imbecilic UP population are self-evident. Fortunately, UP-wallahs are a patriotic lot, and aren't falling for this anti-national plot to make them smarter.

(9) This plan is aimed at the leader of the Opposition. Large quantities of 'Dark and Ugly' facial cream are smuggled into leader of the opposition's dresser, disguised as her regular cosmetics. After two months of unsuspecting use, she loses her white skin and turns dark, or at least 'wheatish'. Thus becomes fully qualified to contest for prime ministerial post, and unseats present wheatish prime minister, on grounds of being even more wheatish than him. Plan aborted because the cream supplies are adulterated, and instead of darkening the opposition leader's skin, cause her to start babbling in Italian-accented Hindi.

(10) A large section of westernised, but otherwise sensible Indians currently believes that Arundhati Roy is just an uppity woman blessed with a good prose style and a bad hair style. Little do they know. The self-same Morse of item 5 above was infiltrated into the Booker Prize Committee the self-same year Roy got the prize. She is of Kazak origin, and is not a native English speaker at all, as is clear from the fact that the original hand-written draft of her novel was written in Roman script, but from right to left. Her publisher had to hold it in front of a mirror to typeset it, and the fact never came to light because he burnt the draft and smashed the mirror. Roy was then recruited by the Cultural Wing of M-e-M (known independently to the CIA as Biriyani-Do-Piaza) and infiltrated into India through Ladakh, disguised as an underweight yak. Her exact brief in this country is still a mystery, but her long diatribes against globalisation, large dams and nuclear weapons are evidence enough of her ISI and M-e-M links. Fortunately, her readership consists entirely of indolent English-speaking whiskey-quaffing Indian elite who are more dedicated to the mobilisation of funds than of people.

(11) The I and B minister has been crusading against an insidious cable channel known as FTV. Semi-clad women parade their stuff, ostensibly to showcase major international designer labels. In reality a deep-seated fundamentalist plot to hypnotise and eventually rot the brains of all adult Indian males, a ridiculously easy task since brains of most Indian males grow to a maximum size not exceeding that of an adult fruit fly. Koranic injunction against exposure of more than 1 square millimetre of female skin is cunningly circumvented by using only un-Islamic European women, who are allowed to COVER at most one square millimetre of their infidel skin. The optical resolutions of most TV screens being what they are, this one square millimetre of clothing is generally invisible to the..er.. ahem.. heh-heh..naked eye. On older TV sets, the models themselves are invisible to the naked eye. (They get only one square meal per year from the sadistic and sexist bin Laden, who happens to be their employer since he owns all these so-called European designer labels.)

(12) The financing of Sunny Dettol's jingoistic Bollywood blockbusters. Sheer incompetence in acting, and shoddy direction give patriotism such a bad name that most Indians feel actually ashamed to be patriotic, for fear of looking like the shirtless, clueless and brainless Sunny. This plan has been a complete success, because armies of selfless workers have to be deployed by movie theatres brave enough to screen his drivel, just to mop up the gallons of vomit that overflow the aisles after each show. In case some mentally deranged viewer actually likes the drivel, or takes it seriously, this plan yields same end result as Plan 11 above.

(13) Funding, outright purchase of art critics, and market manipulation of art prices to ensure that M F Hussain gets hailed as India's leading artist. As his name clearly establishes, he's also a second cousin of Saddam Pervez, but not the same second cousin as Osama. 'Fida' in his second name is short for 'Fidayeen'. Once established as a top-bracket artist, Hussain starts painting offensive semi-nude pictures of revered Hindu goddesses. Plot goes undetected for a decade, because his sophisticated painting style makes it impossible for the lay viewer to distinguish a semi-dressed goddess from a fully dressed barn owl. Even the best critics are too blinded by their adulation and pay-offs to notice, and only the Shiv Sena's eagle-eyed professional art evaluators later fully expose Hussain and fully un-expose the goddesses.

(14) This plan is the most supremely diabolical one, and could only have originated from the dreaded Osama himself. Calls for the slow and systematic replacement of all the contents of the prime ministerial liquor cabinet with a lethal substitute called 'Sherbet-e-Morarjee'. It is of a yellowish hue,

and is easily mistaken for premium scotch, both by sight and by taste. Long-term effects include total senility, dyslexia, double vision and double-speak. Other symptoms are knee-wobbling and slurred speech, and it is unclear if this particular plan has actually been carried out. Needs to be investigated thoroughly and terminated immediately.

Post Script: Formal home ministry request dated February 12, 2002 to defence ministry asking for promotion of Naik Havaldar Jarnail Singh to Jarnail Jarnail Singh

---

13- *Economic & Political Weekly*

Politics, The Administration, Police and The Law

M.N. Buch

The Gujarat situation has been commented upon at length by many worthy people, especially in the context of communalism, biased police behavior and a virtual genocide of Muslims under the tutelage of the Sangh Parivar. The points made by all these writers indicate a very serious malaise with our political system and pose a very grave threat to even the concept of secularism in India. Undoubtedly this is a matter which should cause grave concern to all Indians, including those who are not particularly liberal in their outlook but who nevertheless favor the rule of law in the country.

Departing from the above theme I would like to look at the Gujarat situation from the point of view of an administrator who, during the course of his career, has had to deal with law and order situations. Does Gujarat have an administrative structure which is capable of maintaining public order? Or has the administration been so pulverized that it no longer has any capacity to enforce the law and maintain order? To seek an answer to these questions one has to go back to the post Hitendra Desai Gujarat, in which such luminaries as Chiman Bhai Patel, Madhavsinh Solanki and Amar Singh Choudhary ruled the state. Their Chief Ministerships were distinguished by nepotism, corruption and favoritism. Whereas on the one hand this impoverished the state, on the other hand it demoralized the Services to an extent where administrative structures began to break down. The 1969 riots in Ahmedabad, in which reportedly about five thousand people died and which took almost a year to subside, were a direct result of bad government in Gujarat.

Gujarat is not a state in which caste politics or communal politics had much role to play in the earlier years of independence. Gujarat is one of the fortunate states which escaped the horrors of partition and, by and large, there was very little exodus of Gujarati Muslims to Pakistan. It is when caste politics entered Gujarat in the mid sixties of the last century that political harmony in the state began to unravel. The undercurrents were very powerful but they remained hidden under a veneer of prosperity in a state which became well known countrywide for its business acumen and cooperative spirit in which there was a great deal of give–and-take. It was loudly proclaimed that a cooperative venture like *Amul* could only succeed in Gujarat and nowhere else. Because of this the underlying unrest remained hidden and Gujarat, which sat on a volcano, remained as insouciant as Pompeii before Mount Vesuvius erupted. Not even the massive disturbances resultant on the Nav Nirman movement alerted the country to what was boiling in Gujarat.

The politicians continued to destroy the administrative coherence of Gujarat piecemeal. Prohibition and smuggling ate into the vitals of the police, which has been corrupted almost beyond redemption. The day to day interference of politicians in matters administrative, which filtered down even to the posting of a constable or a *patwari* (Talati in Gujarat) cut into the hierarchical discipline of government departments in general and the police in particular. When governmental structures are perverted the organization comes apart, of which danger the Gujarat politicians have been blissfully unaware. The harmony in the district between the Collector and the SP was also destabilized and, by using the police to further political ends, the politicians marginalized the Collectors. As I shall try and demonstrate, what happened in Godhra is a direct consequence of what the government has done to the district administration in Gujarat.

What seems to have completely passed notice, even of the secular, liberal, left leaning activists, is that it is not UP or Maharashtra but Gujarat which had become the focal point of extremist, highly communal Hindu politics , with the Sangh Parivar, especially RSS and VHP, having made deep inroads even into the interior of the state. Because Ayodhya and the proposed Ram Mandir are in UP our focus has been on that state in the context of communal politics. The last two elections have shown that in UP the caste factor is more important than the communal factor and the Sangh Parivar is unable to make any significant electoral impact. Instead Gujarat seems to have become the focus of communal politics, a situation compounded by the fact that the government there is headed by a staunch RSS Pracharak and whose Home Minister is from VHP. The situation in Gujarat, therefore, is a highly volatile, explosive mixture of an administration in disarray, an ineffective and demoralized police force and a political executive which makes no bones about its religious bias. In such a situation, with the Government of India obviously being unwilling to act decisively, which is the lone factor which can retrieve things? In my view it is the administration at the district level which can still take things in hand and bring the situation under control. This, however, will not happen if, as reported, the IPS officers secretly complained to K P S Gill that (i) political interference has made them lose control over their subordinates, and (ii) they did not take decisive action because they were awaiting orders from above and had been told to go easy on rioters. Why were they silent so far? Why did the Chief Secretary, Principal Secretary, Home and the DGP not act in concert to make it clear to government that they would not carry out illegal instructions ?

Section 23 of the Indian Police Act,1861 (which our police officers consistently run down) reads, “It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent commission of offences and public nuisances, to detect and bring offenders to justice." Under Section 29 of the Indian Police Act any police officer guilty of any violation of duty or willful breach or neglect of any rule or regulation or lawful order made by a competent authority is liable to three months imprisonment and a fine equivalent to three months pay. Was it a lawful order of the Chief Minister or Home Minister to go easy on the rioters? Was it lawful for the police not to use Section 129 of Cr.P.C. to disperse unlawful assemblies? Was it lawful for the police not to take preventive action under Chapter XI Cr.P.C.? Was it lawful for the police not to record FIRs under Section 154 Cr.P.C. or to proceed with investigation under section 156 and 157 Cr.P.C.? The fact is that senior police officers in Gujarat did not do their duty, obeyed illegal orders and are now trying to seek cover under alleged political interference which weakened their authority. This simply will not cut ice.

To return to Godhra, I see this as a prime example of the complete and utter destruction of cohesive district administration in Gujarat. As the headquarters of the Panchmahals District Godhra has a DM and SP. It also is an important railway junction with a Government Railway Police presence. A mob of two thousand people armed with incendiary materials, etc., gathered at about seven ‘0 clock in the morning in the station and in the yard. The DM and SP were blissfully unaware of this development. The city police and GRP also seem to have been totally inactive. A DM and SP worth their salt would have received some information and reacted immediately. Had they done so and dispersed the mob nothing would have happened in Godhra, nor would the consequences which followed have occurred. In a well administered state both these officers would have been placed under suspension. In Gujarat so many Collectors and SsP have been transferred but the Godhra

team continues unscathed. This is the true symbol of present day Gujarat and it should worry all of us.

INDIA, HINDUSTHAN, HINDUSTAN OR BHARAT?

Dr. M N BUCH

Article 1 of the Constitution reads, 'India, i.e., Bharat, shall be a Union of States'. The Constitution was not framed by the British or by the Muslims who created Pakistan. It was framed by a Constituent Assembly whose Chairman was Dr. Rajendra Prasad, as staunch a Hindu as one could find who, as President of India, insisted on a ceremonial inauguration of the work on the rebuilding of the Somnath Temple. The majority of the members of the Constituent Assembly were Hindus, none of whom has ever been accused of anything but liberal, nationalist Indians with a great love for this country. The name India is an honourable one in the greater universal society of the world. It is from India that names such as the Indian Ocean, Indonesia, East Indies and West Indies have been derived. Obviously, because India is a part of the comity of nations, in its international context the country will always be known as India.

The other name of India which has been adopted by the Constitution is Bharat. Bharat was the son of Dhushyant and Shakuntala, who was known for his immense bravery even as a toddler and in whom one found an enormous storehouse of wisdom. In Aryan society Bharat has always been a name which commands great reverence. Even in the context of the Ramayana, if Ram was the Maryada Purushottam it is Bharat who proved himself to be the utterly selfless brother who, when propelled into kingship, preferred only to be a Regent and governed in the name of Ram whilst keeping Ram's Charan Padukas, or footwear, enshrined on the throne. Bharat was no less of a Maryada Purushottam than Ram himself. The Founding Fathers had no option but to adopt the ancient and glorious name of this nation, Bharatvarsha, as the name by which the Republic would be known. It fills me with a great sense of personal pride as a Bharatiya and Indian that my land has gone back to being called by the name which is as old as the Vedas. It makes me even more proud that this is the name which evokes our ancient traditions and completely shuns any semblance of parochialism.

The debates of the Constituent Assembly of India have been brought out vividly in B Shiva Rao's book, *The Framing of India's Constitution – Select Documents*. Veteran parliamentarians such as H V Kamath and Seth Govind Das wanted to name India as Bharat or, in the English language, India. Both Kamath and Govind Das pleaded that the name Bharat could be traced to the most ancient literature of India and that the name India came into use only when the Greeks came to India and named the Sindhu River as Indus. Ultimately Ambedkar prevailed and the name given was India, i.e., Bharat. It is unfortunate that some VHP leaders, namely Acharya Giriraj Kishore, Ashok Singhal and Praveen Togadia have now raised a demand for naming India as Hindusthan and for the country to be declared as Hindurashtra. In selecting the name Hindusthan in place of Allama Iqbal's Hindustan, the VHP leadership has borrowed heavily from Veer Savarkar. The semantics of the additional 'h' in the name is that whereas Iqbal's Hindustan refers to a territory Savarkar's Hindusthan refers to the land only of the Hindus. This is linguistic chicanery at its worst and is aimed at not only declaring India to be a theocratic Hindu state but also to send a message to the religious minorities, especially the Muslims and the Christians, that they have no right to exist in India. From being an exercise in adoption of a name the present campaign of VHP becomes a sinister manoeuvre to oust the Muslims and Christians from India. The fact that this is violative of various sections of the Indian Penal Code, in particular Section 153A, and of the basic tenet of the Constitution that India is a secular democracy seems to be ignored by the very powers who are required to enforce the law and who should have come down heavily on the perpetrators of this obnoxious idea.

I have tried to consult the text of the scriptures most dear to the Hindus. I have not come across the word 'Hindu' in any of them, be they the Vedas, the Upanishads, the Puranas, the *Shrimad Bhagwat* or even the *Ramayana*. The Vedas refer to the people of Aryavrat or Bharatvarsh as Purush, Brahman, etc., but not as Hindu. The word Hindu is of much later introduction, being used by the Arabs as the term to describe all those who live on or beyond the Sindhu River. Even today in the Arab world Indians are known as Hindvis or Hindu. The Central Asians also refer to the people living to the south of the Hindu Kush mountains as Hindu. Incidentally Hindu Kush means the killer of Hindus. The name and the religion touted by the VHP are in fact nomenclatures given to us by 'mlechcha' Sunni Muslims living in Arabia and Central Asia. It is no thanks to the VHP that the word Hindu has come to have an extremely honourable meaning as being a person who follows a faith of universal tolerance, the like of which the world has never seen.

If it is semantics in which we are to indulge, then I would state that because the Indus River largely flows through Pakistan it is that country which should be known as Hindustan. The really pure or Pak land is India because it contains Devbhumi and is watered by such sacred rivers as the Ganga, the Yamuna, the Narmada, the Saraswati, the Godavari and the Kaveri. It is India which should be called Pakistan or Pavitradham. Is VHP prepared to accept Pakistan as India's name or does it prefer to call India by a name which is of Arab origin, Hindustan or Hindusthan?

I have never been able to understand what deep rooted inferiority complex drives the VHP leadership to making such extreme statements which would bring about a second partition of the country. Fourteen crore Muslims cannot be driven out of India without taking with them some of the territory of this country. Even if we were to accept Hitler's ultimate solution for the Jews, that would only take care of sixty lakhs (six million) people who perished in Nazi concentration camps. We cannot kill fourteen crore Muslims. We cannot even enslave them as the Germans tried to do with the Slavic people of Eastern Europe. Man is not born to be a slave and enslavement inevitably leads to revolt, whether of a Spartacus in Rome, the Negro people of America during the Civil War or the East Timores in Indonesia. That is the lesson of history. When will VHP realise that the Muslims are very much a part of the fabric of India and that too a part which, like zardozi, has enhanced the silk from which India is woven? India, i.e., Bharat, is not endangered by the Muslims—it is enriched by them. The Hindus, who form the vast majority of this country, are not in danger of being engulfed by the Muslims. If anything, as a wise old ullema of Indonesia told me in 1979, it is the Muslims who struggle to retain a separate identity in India because they are afraid of being swamped by the Hindu majority. This struggle for identity is not a love for Pakistan or a hatred for India and the Hindus. It is symptomatic of the fears of the minority and its attempt to survive. If VHP were to be truly Hindu it would allay these fears and help make the Muslims a proud partner in the enterprise called India. It is for this reason that India must be Bharat and nothing else.

VOICE OF " COMMON CAUSE

H.D. SHOURIE[23]

FOCUS ON CORRUPTION

There is widespread impression that corruption has seeped into every nook and corner of the governance of our country and has spread its tentacles in almost every sphere of activity and body politic, it is stated to be now rampant. at various levels of public functionaries, politicians and bureaucrats. The mighty ones and those who are high on the ladder besides those who are at lower level. This is a disquieting state of affairs. In actual fact the malaise may not really be so widely prevalent as is made out to be but the very !act that people are talking about it is a matter of grave concern.

There are various spheres which corruption is alleged to have invaded. These include projects of various sizes, which are operating in the country or are on the anvil and at different stages of imp1ementation. There are areas of all sorts of contracts, right from smallness in the sphere of local bodies to contracts for construction of bridges, highways and for installation of power stations. The entire area of public sector functioning is stated to have provided various types of opportunities for corruption. from the level of politicians who are often put in top positions to functionaries and operatives who run the show. Banks are alleged to have been utilized for siphoning off huge amounts through manipulations and share-brokers often with connivance of senior functionaries. In the entire arc of taxes and levies including income tax, customs and excise of the Centre and Sales Tax of States and property tax of local authorities. There has always been large-scale tax evasion and scope of manipulations and concealments: "No. 2 account" is widely known to prevail all over. The area of real estate including land acquisition. Land allotments, building construction sanction: completion certificates and all the various measures connected with these have during the last two/three decades become a major source of corruption. Continuing enlargement of transport and communications in recent years has led correspondingly to the expansion of the areas of corruption. Public transport requirements in urban centres provide splendid opportunities to the. politicians as well as the administrators to anticipate in the maneouverings, which are attendant on the expansion of requirements.

With the expansion of urban centres there are also corresponding constraints on the provisions of civic services of local bodies and these come handy for the unscrupulous. In the functioning of administration in certain areas such as of officers of the nature of Inspectors who come in contact with the people, as well as those in charge of Police Stations. There are allegations of corruption which are utilized for arranging transfers to the more lucrative positions and assignments. Area of judiciary till now has been without blemish, excepting for occasion of corruption at lower levels of judiciary; it is very unfortunate hat in the recent past allegations have started appearing about certain higher levels of judiciary also getting trained.

Certain institutions and oranisations have been created for the purpose of ensuring avoidance of frauds, wastage of public funds, and corruption. These include the institutions of Comptroller and Auditor General (CAG), Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI) and its wing Anti Corruption Branch (ACB) and the Public Grievances Cells in certain with the responsibility of Central Government and establishing public account al Bureau of Investigation (CBI) and its wing Anti Corruption Branch (ACB)

and the Public departments of the Centre and in the States. CAG exists as a Constitutional authority. It is charged arising from the scrutiny f up for comments by PAC; There are a large number ensuring proper utilization of public funds through exercise of its powers in relation to accounts of the State Governments. This institution was envisaged as the vital link in the process of ability of all expenses from public funds. The Reports prepared by this high level Constitutional authority are placed before the Parliament; they are referred to Public Accounts Committee. However, it appears that results of these Reports are not adequate enough; only a very small number of audit paras actually come and often after the scrutiny the paras get practically lost in the maze of administrative procedures, offices of CAG, including the offices of Account Generals in the States; total of audit paras emanating from their operations is very large indeed but the eventual outcome of the objections raised and the frauds detected is not significant.

The other institution established for the specific purpose of curbing completion is that of CVC. This institution operates for the Central Government offices. There are also vigilance establishments in the States. Collectively these vigilance organizations give impression of being quite formidable in size but their outcome too becomes visible only in reports and objections they raise regarding shady transactions, wastage of public funds, fraudulent expenses and bills. Reports of vigilance machinery again lead practically to recounting in figures of complaints received complaints disposed of administrative measures taken. Only very few individuals are eventually hauled up for the indiscretions and corruption and these too arc dealt with mainly through administrative measures. Some odd cases result in launching of prosecutions hut the results of these prosecutions rarely get any mention. A very serious shortcoming in relating to the operations of vigilance machinery is that it is at most taking up defaults committed at the lower levels of administration; there arc very few cases where senior bureaucrats arc brought to book and there is no case at all which is taken up against any politicians.

Central Bureau of Investigation (CBI) and its Branch ACB arc of course dealing with cases of corruption. There are instance where matters of corruption have been taken up by them in relation to the operations of senior bureaucrats and also some politicians. but these are almost are. Amidst prevailing allegations of large-scale corruption. wherein politicians and senior bureaucrats are involved.: it is a matter of concern that the machinery of CBI too has not been able to make any distinctive dent. The fact remains that the top echelons of executive and administrative authority, which oversees the functioning of CBI and ACB. consist mainly f the political masters and senior bureaucrats. It is therefore understandable that it is only seldom that this institution is in a position to lay hands on the misdeeds of politicians and the bureaucrats.

Amidst this scenario of the general impression of widespread prevalence of corruption it is evident. therefore, that the present machinery does not hold out hope of being able to prove efficacious enough to deal with the serious malaise. From the public interest organisation COMMON CAUSE we have taken account of these facts. and also of existence of the general machinery of receiving and dealing with public grievances at the Centre and in the States. and have now placed the entire matter before the Supreme Court in a w1rit petition. with impleadment of the Central Ministries of Home Affairs. Law, and the Department of Personnel, and the concerned Authorities Comptroller and Auditor Genera. Central Vigilance Commissioner. Director of Central Bureau of Investigation. and the State Governments; all those who in one way or another are responsible for curbing corruption. A writ petition had previously been submitted to the Supreme Court couple of months earlier. In that petition we had highlighted the fact that the political leadership at the Centre has over

the past 30 years been evading the important matter of setting up the institution of LOKPAL, on the lines of the institution of Ombudsman which is functioning in a number of countries for curbing and checking corruption. When the petition came up for hearing the Hon'ble Judges desired that it would be appropriate to enlarge its scope for dealing comprehensively with the problems of corruption. Accordingly. the writ petition has been elaborated and resubmitted. Prayer embodied in the writ petition i- :hat the institution of LOKPAL should be established where these have not been set up in the States and should be strengthened where already established. and the institutions of CAG. CVC and CBI should be made responsible for ensuring effective action in relation to curbing corruption. We have also prayed that the Corruption Prevention Act should be brought upto date where it fails to meet the present day requirements. We look forward to further developments arising from the submission of this writ petition in the Supreme Court for effectively checking corruption.

WRIT PETITION RE: CORRUPTION

Arising from our recent writ petition on the subject of LOKPAL, wherein we highlighted the default of III Government of India to set up this institution, and the observation of Hon'ble Judges of the Supreme Court that scope of this writ petition be enlarged to include in it the problems of corruption, we have elaborated the entire subject and have filed an amended Petition. This petition will be of obvious interest to our readers reproducing hereunder its main substance and will be grateful for their comments and suggestions: they are welcome to bring to our notice further specific areas of corruption, the organizations and institutions set up for the purpose of curbing corruption, their handicaps, inadequacies and failures to achieve the objective and concrete suggestions of how this problem needs effectively to be dealt with. It will be unavailing to receive any specific: instances of corruption because these would be enormous in number, but if there are any outstanding examples, illustrations which can be indicative of concrete steps required for curbing corruption, the readers may send them.

In the new writ petition which we have now submitted we have impleaded three Ministries of the Government of India. namely, Ministry of Home Affairs, Ministry of Law, and the Ministry of Personnel. Public Grievances and Pensions, and Chief Secretaries of all States in the .country. besides CAG. CYC and CBI.

A PETITON BY WAY OF PUBLIC INTEREST LITIGATION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA PRAYING FOR ISSUANCE OF A WRIT OF CERTIORARIOR ANY OTHER WRIT. ORDER OR DIRECTION DIRECTING THE UNION OF INDIA IN THE MINISTR Y OF HOME AFFAIRS, DEPARTMENT OF PERSONNEL AND DEPARTMENT OF LAW. AS WELL AS THE STATE GOVERNMENTS Of THE COUNTRY TO INITIATE CONCRETE AND POSITIVE STEPS TOWARDS CURBING CORRUPTION WHICH HAS BECOME WIDELY PREVALENT IN ALLSPHERES OF ACTIVITY IN THE COUNTRY AND THREATENS TO FURTHER SPREAD AND CAUSE SERIOUS DEPREDATIONS TO THE MORALS AND PATTERN OF LIFE OF CITIZENS. AND IN PARTICULAR FOR THE UNION OF INDIA TO TAKE ACTION; IN RELATION SPECIACALLY TO THE AREAS WHICH HAVE BEEN OUTLJNED IN THE BODY OF THE WRIT PETITJON INCLUDING THOSE RELATING TO THE ESTABLISHMENT OF THE INSTITUTION OF LOKPAL. STRENGTHENING THE IMPLEMENTATION MACJINERY FOR DEALING WITH THE ISSUES ARISING FROM THE FINDINGS OF THE COMPTROLLER & AUDITOR GENERAL OF INDIA WIDENING AND STRENGTHENING THE FUNCTIONING OFTHE CENTRAL VIGILANCE COMMISSION AND CENTRAL BUREAU OF

INVESTIGATION. REVAMPING THE PREVENTION OF CORRUPTION ACT AND STRENGTHENING AND FUNCTIONING OF PUBLIC GRIEVANCE MACHINERY OF THE GOVERNMENT AT THE CENTRE AS WELL AS IN THE STATES BESIDES ESTABLISHMENT OF LOKAYUKT INSTITUTION IN THE STATES WHERE IT HAS NOT SO FAR BEEN ESTABLISHED. AS THE CONTINUATION OF THE PRESENT CIRCUMSTANCES AND WIDENING SPREAD OF CORRUPTION IN PUBLIC LIFE. RELATING PARTICULARLY TO THE SPHERES OF ACTIVITY OF POLITICIANS AS WELL AS BUREAUCRATS IS THREATENIG TO CAUSE SERIOUS HARM TO THE LIVING PATTERN OF CITIZENS. THEREBY AFFECTING THH FUNDAMENTAL RIGHTS OF CITIZENS EMBODIED IN THE CONSTITUTION OF THE COUNTRY.

I. That the Petitioner Society. which has taken up various public causes for redressal and has filed Writ Petitions on different matters before this Hon'ble Court and the Delhi High Court on its own behalf and on behalf of citizens of India. is filing this public interest petitiol1 on account of being seriously perturbed in the rampant and widespread corruption prevailing in various spheres of governance in the country at the level of the Centre as well as in the States and having felt that the present executive authorities, at the political and bureaucratic levels, are not displaying adequate positive interest in or taking stringent measures at curbing corruption. The Petitioner Society is, therefore approaching this Hon'ble Court. in the interest of safeguarding the fundamental rights of citizens, to call upon the executive authorities of the Central Government and the State Governments of the country to take the measures that need to be taken for curbing this menace. In this writ petition attempt is made to present before this Hon'ble Court specific measures which need to be taken through establishment of required institutions at the Centre and in certain States where they have not yet been established and for strengthening the institutions which presently exist in the related fields and which can be expected to adopt measures leading to the attainment of the objective of curbing corruption.

2. That before going into the matter relating to the establishment of required institutions and strengthening the existing institutions the Petitioner takes the opportunity to broadly indicate hereunder how the malaise of corruption has enveloped various spheres of activity in the country. These listed areas are primarily illustrative and do not comprise an exhaustive list:

i) PROJECTS

Measures relating to the initiation of projects and inviting quotations for them including projects of various descriptions varying from power projects to local projects relating to city transport etc., are presently alleged to be utilised by unscrupulous politicians and bureaucrats in power to adopt methods involving big kickbacks which adversely affect the interests of citizens. With the steps initiated for globalising and liberalizing the economy the opportunities for establishment of big projects, which would involve large-sized opportunities of mal-practices, are expected to further increase. There have been recent reports in the newspapers of very big sized power projects being contemplated for establishment in various~ parts of the country and it has also been reported that in implementing such projects normal method of inviting quotations and tenders are not being adopted by the concerned authorities.

ii) CONTRACTS

For long contracts of all various descriptions. at the local level. at level of States and at the Central level. have been the medium whereby unscrupulous politicians and bureaucrats in power are alleged to have adopted various manipulations for utilising the opportunity to

derive illegal gains. which inevitably are at the expense of citizens who suffer by the higher costs involved and lower quality provided.

iii) PUBLIC SECTOR

Allegations of misuse of public sector units at the Central level as well as in the States. for collecting vast amounts, for purposes of unscrupulous politicians and bureaucrats, have been widely prevalent. In large number of cases, public sector units, of the Centre and particularly in the State, have been placed under the charge of politicians who are generally alleged to be siphoning off large scale funds from them which are used for election purposes of their parties as well as for their personal gains.

iv) BANKS

Operations of banks, particularly of those which have been nationalised for the last three decades, as well as certain other banks, have come into scrutiny for manipulations resorted to in them for wrongful gains of manipulators and share brokers who are alleged to have been passing on benefits to the unscrupulous politicians and bureaucrats.

v) TAXES

In respect almost of all taxes, including particularly Income Tax of Central level. Sales Tax of State level, Property Tax and other municipal taxes at local levels, there are invariably reports of evasions, sometimes large-scale evasions, which are often facilitated through collusions and manipulations with the concerned authorities and which are built into the existing systems such as provisions relating to transactions concerning real estates of which the values have escalated beyond measure.

vi) CONSTRUCTION

Very widespread corruption has allegedly become prevalent in the construction industry in general, including land acquisition and building industry. This has particularly arisen because of highly escalated and continuously rising values of real estate property all over the country and particularly in the bigger cities. This corruption is facilitated through various measures relating to preparation of development plans. building regulations including sanction of building construction. supervision and issue of completion certificates.

vii) EXCISE & CUSTOMS

The areas of Excise and Customs have long been known to replete with all sorts of malpractices, evasion: and manipulations wherein the concerned authorities collude with the manipulators.

viii) TRANSPORT

The area of road transport has over the years become a very important source of corruption ,in its various aspects of functioning including the licensing of operations. authorisation of inter-state movement of vehicles, prescription of transport rules in cities, licensing of vehicles and such like. In all these spheres manipulations are resorted to in collusion with the concerned authorities. often also with politicians in power. In the operations relating to expansion and functioning of railway system too there have been reports of high-level corruption.

ix) CIVIC FACILITIES

In all matters relating to provision of facilities such as electricity, telephones. gas connections. etc. large scale evasions and corruption. particularly at the level of operators are widely prevalent. These are facilitated through and are effected in connivance with the

functionaries and manifest themselves in various shapes such as large-scale theft of electricity, wrongful utilisation of telephone connections and gas supply connections. Tampering with recording meters and such like. There are serious complaints also of corruption taking place in relation to the allotment of government accommodation.

x) TRANSFERS

There have for long been allegations of completion prevailing in the positioning of officials in certain posts which provide greater opportunities for completion. There have been such reports in relation to points such as of inspectors of building departments of municipalities, electricity meter readers, telephone linesmen and practically in all spheres \v!1ere the subordinate officials come in contact with citizen~ and the unscrupulous elements manipulate evasions of charges and taxes. There have also been cases of manipulations resorted to in securing placement incharge of certain police stations which are related to expectation of greater opportunities for commission of illegalities and attendant gratifications.

xi) JUDICIARY

People all over the country have over the decades placed great faith in the functioning of judiciary holding the belief that our judiciary is incorruptible excepting in rare instances at the lower levels. It is a matter of serious concern for the citizens that allegations of corruption have now started emerging more widely in relation to the functioning of these levels of judiciary. and instances, fortunately rare at present, have also started manifesting in the operations even of higher levels of judiciary in the country)'.

3. That the Petitioner Society. in recording the areas of existing corruption in the above list. recognizes that these areas are only indicative of the malaise which has spread far and wide in all spheres of governance in the country including the operation of unscrupulous political masters and bureaucrats at the Central level as well as in the States. and operatives in public sector units an local bodies and organisations which in the one way or the other c()me in contact with the citizens. In the emerging scenario of spread of corruption in the country there are two important reasons which appear to have largely contributed to the malaise. One is that of financing elections in the processes of functioning of our democracy, which inevitably involves the functioning of present system of our political parties and the funds required by them for the financing of the elections and matters connected therewith. as well as the concomitant operations of politicians who have been functioning as whole time politicians. The other reason is that over the decades no effort appears to have been effectively made for overhauling the numerous statutes and their connected rules and regulations, which affect the everyday life of citizens. There are legislations till in operation which were enacted even a century ago. There are also rules and regulations which arc totally anachronistic in the present day and which are utilizable by the corrupt operators for causing harassment to the citizens and thereby provide opportunities to the functionaries to derive advantages of wrongful gain.

4. That the Petitioner Society, while presenting this vista of the extent of existing malaise of corruption and the broad causes of its existence seeks to present hereinafter a picture of various organisations and institutions which were envisaged or created in the country for the purpose of detecting corruption, and which too in their respective areas have not been able to marshal adequate strength for effectively dealing with the problems of completion. In the paragraphs that follow an attempt has been made to present a broad picture of the functioning of various" institutions and agencies which were created for this

purpose of checking corruption and wastage of public resources and for utilisation of these resources to the best advantage of its citizens.

5 COMPTROLLER & AUDITOR GENERAL

The institution of Comptroller & Auditor General, an authority created under the Constitution was obviously envisaged as a vital link in the process of establishing public accountability, for ensuring that the people entrusted with public resources remain answerable for the physical, managerial, and programme responsibilities conferred on them. CAG discharges these responsibilities through audit reports which are presented to the Parliament and are examined by its Public Accounts Committee. There are frequent complaints of wastage, fraud. costly delays, allegation of cost consciousness. inefficiency, bureaucratic inertia, and corruption which are highlighted in the Reports put out by CAG. There is. however, in inescapable feeling that the facts brought out in these Reports do not lead to any effective stringent and timely action. The reports are commended upon by Public Accounts Committee: audit paras contained in these Reports invite more paras; these are referred again to the concerned Departments and organisations, and even they get submerged under enormous lot of correspondence leading seldom to any positive action. On an average CAG issues about 100 Reports every year. It has 35 audit offices dealing with Central Government and 33 offices dealing with the States. In all there are about 100 offices including accounting and entitlement regulation functions. Staff strength is about 35.000 persons on audit and 25,000 on accounts and entitlement side. Annual budget is over Rs. 300 crores. General impression is that inspite of the immense powers of Auditor General and despite this enormous staff and the funds utilised for the purpose there is continuing breakdown of accountability and wastage, and that fraud and misuse of public resources are not effectively checked.

6. Comptroller & Auditor General also oversees the accounts of public sector units.(PSU's) and highlights cases of lapses including their implementation of loss making orders for keeping themselves in business, failure to promptly realise dues, and insurance companies making payment claims even when no premiums are recovered. Instances have been brought out such as Bharat Electricals Ltd. (BEL) of losing Rs. 52 crores on sale of glass shells for TV tubes. General Insurance Corporation (GIC) short investing over Rs. 330 crores in social economic sector, a PSU giving unmerited discount of Rs. 4 crores. On occasions CAG Reports bring out instances of wastages and frauds of appalling proportions, but inspite of the immense powers and constitutional status as well as independence conferred on CAG, it has not been possible to secure any satisfactory solution to curbing corruption. misuse and frauds, and to control financial indiscipline. There are allegations that out of the total expenditure of the Central Government, at least Rs. 20.000 crores goes down the drain every year due to corruption besides inefficiency and apathy at various levels. A previous chairman of Public Accounts Committee. which scrutinises the Reports of CAG, has commented that 10% of budgetary allocations possibly reach unauthorised hands. CAG has the authority to call for scrutiny in relation to every single rupee spent by the government, but there is a growing feeling that corruption. fraud. misuse and mismanagement of public funds go on unchecked and unabated. In fact it is being voiced that the institution of CAG has been reduced to impotence and the role of audit has been systematically undermined by the inept and corrupt executive. There are various factors which are stated to have been responsible for this state of affairs. The Petitioner Society will be in a position to place before the Hon'ble court. if so desired. the weaknesses which are stated to have crept into the institution of CAG and which stand in the way of its effectively checking misuse and abuse of the public resources and to prevent fraud and corruption. Thousands of paras of misuse and abuse of public funds are raised every year by the audit

staff of CAG and Accountant Generals of the States which owe allegiance to CAG. but these paras are massacred at various levels. Hardly 2000 instances pointed out in the paras eventually reach the level of CAG. These are subjected to heavy vetting and a large number are dropped. Eventually, hardly 400 audit paras find their way in the yearly audit reports presented to the Parliament. Out of these only about 20 are examined by the Public Accounts Committee. and the fact remains that no one hears of their fate afterwards. No meaningful debates are reported normally to have taken place on these audit objections. The entire exercise gives the impression of only chasing a crooked shadow in a never-ending circle. and the entire exercise remains only a cry in the wilderness. The role of CAG Reports under the present systems has been reduced merely to a post-office for pinpointing instances of deficiencies and inefficiency and misuse: it possesses no powers to effectively pursue the instances leading to punitive action against persons responsible and to elimination of scope of their happening again. Inspite of the fact that Audit Reports reveal loss of public funds or their misuse and misappropriation. there is no investigating agency available to the CAG which is charged with the duty to probe into the instances of misuse and abuse and to identify the culprits. Recommendations of the CAG are not yielding any tangible results and the long lapse of time between the transaction and the recommendation normally results in disappearance of incriminating evidence. There is now a strong feeling emerging that there is no reason why the Audit paras which disclose obvious wrong doing should not be registered as FIRs and should not be pursued for investigation by the Central Bureau of Investigation (CBI) or Anti-corruption Branch (ACB).

7 CENTRAL VIGILANCE COMMISSION.

The Central Vigilance Commission (CVC) is the other institution which shoulders responsibility in relation to acts which involve misuse of authority and areas of corruption. It was set up as long ago as 1964 as a watchdog mechanism against corruption. The objective in setting up this body was to have an independent and neutral body to advise government in matters relating to corruption, misconduct, allegations relating to lack of integrity or other mal-practices or misdemeanors on the part of public servants under the control of Central Government including public sector undert3kings and banks. The machinery of vigilance exists also in d~p3rtmcnts and ministries as well as in public sector undcrt3kings and some States, and for facilitating and conducting enquiries. The Commission has status of independence and autonomy. Its annual reports are placed before the Parliament. The observations, findings and recommendations of the Commission are conveyed to the concerned departments of the government and the PSU's, and eventually are incorporated in its Reports.

8. Legally, however, the Commission is only an advisory body. This fact inevitably handicaps even the limited functions of this institution, the main objective of which is to curb corruption. Firstly, it is restricting its operations only in relation to cases of defaults committed by government servants, and that too limiting itself to operations of senior gazetted officers. Although political appointees apparently come within its purview in their capacity as public servants, it is hardly ever in its history of operations that CVC has unearthed any misdeeds of non government servants or launched prosecution for any misdeeds of political figures. Its charter lays down that "it has to undertake an enquiry into transactions which a public servant is suspected or is alleged to have conducted for an improper purpose or in a corrupt manner". All cases which prima facie have or are likely to have vigilance angle and element of corruption, criminal misconduct or malafide action are expected to be referred to it, but in actual practice it is seldom that cases of serious corruption come to its notice for action. It has also imposed a self-restriction on itself by prescribing a procedure that it will entertain only those complaints which are signed. It can

involve itself in conducting the investigation only to such extent that where investigation leads to matters outside the concerned department or outside the area of government servants operations it has to depend upon other investigating agencies of the government for pursuing cases of any alleged fraud or corruption. It has to depend upon CBI for conducting investigations in cases involving non-government servants or examination of unofficial documents. The CBI in its turn is under obligation to submit all cases to the Home Ministry where the cases investigated lead to the possibility of prosecution to be launched against a public servant. The Central Vigilance Commissioner no doubt has been given important status, equivalent to the Chairman of UPSC, and is a constitutional authority, in as much as he is appointed by the President and holds office for five years. Inspite of all these powers and the authority that CVC exercises over the vigilance machinery operating in PSUs etc. the fact remains that in actual practice the results of vigilance exercised by CVC have not been commensurate with the paraphernalia provided to it and the expenditure incurred on it. It Report of 1992. which is the latest Report presently available (because the drafted Report of 1993 is stated not to have so far been cleared by the Ministry of Home Affairs and has consequently not yet been submitted to the Parliament and cannot therefore be available) shows a picture which is nowhere near encouraging as an organisation which IS charged with the responsibility of curbing corruption. The total strength of the staff of CVC is over 200. During 1992 it received as many as 4000 complaints including cases referred to it for advise; "tendered advice" in over 200 cases. but the final outcome was prosecution of only 48 persons out of which it is not clear as to how many convictions, if any, ultimately came about. In any case, no senior officer or any political appointee is reported to have been brought to book. As an institution set up for checking corruption, therefore, CVC has not come up to the expectation and does not appear to have felt itself competent to exercise authority to investigate cases of corruption relating to senior bureaucrats or political figures, inspite of its being able to utilise the services of Commissioners for Departmental Enquiries, and also the intermediary of CBI for purposes of investigation. To all intents and purposes it gives the feel of operating as another branch of the Ministry of Home Affairs to which it is attached.

9. CENTRAL BUREAU OF INVESTIGATION (CBI)

Central Bureau of Investigation (CBI) is the institution which is charged directly with the responsibility of conducting and investigating organised crime and corruption. Its investigations cover all, including political figures as well as government servants, and its operations range over departments and organisations of the government and public sector units including banks. It has staff of about 3500 persons including.650 investigating officials. Its operations cover the entire country; it has offices in all States but it can operate in the area of a State only with the permission of the State Government. It makes secret enquiries where any cases of crime or corruption are referred to it, collects all relevant facts including information about assets disproportionate to the normal sources of income. On the basis of its findings FIRs are registered and prosecutions follow. It has an Anti-corruption Branch (ACB) for conducting investigations into cases of corruption. Cases get referred to it from Central Vigilance Commission and from various other sources. There have been cases, though very rare, where political figures have been subjected to investigation by CB I, and there are quite a few cases where it has initiated action against any officials including senior bureaucrats. It does operate under the handicap that it cannot initiate action against any official or political figure of a State Government without permission of that Government which may not be easily forthcoming or may even be withdrawn as is reported to have happened in the case of an important political figure whose conduct was being investigated regarding corruption and whose case had then to be referred to the Supreme Court for securing direction for continuance of the investigation.

10. GRIEVANCES MACHINERY

There is a Department of Public Grievances in the Ministry of Personnel, Public Grievances & Pensions, and there is also a Grievances Cell in the Cabinet Secretariat. Large number of grievances are addressed by the people to these, but the general impression is that these operate mostly as post offices for passing on to the concerned organisations and departments. Following up of these grievances seldom comes about, and it is seldom that redressal is secured by the aggrieved persons through these channels. Similar position obtains in most of the States where too machinery for receiving public grievances exists, but where, likewise, the impression prevails about their functioning as more intermediaries for passing on the complaints. to the concerned departments.

11. PREVENTION OF CORRUPTION ACT

The Prevention of Corruption Act was enacted as long ago as 1947. It has no doubt been amended from time to time but there is a general feeling that it does not meet the present day requirements of effectively curbing and punishing corruption. Objects and Reasons forming part of this Act are indicative of its inadequate approach to the problem of curbing and punishing corruption; this legislation is stated to have been necessitated due to the "enormous increase of the scope for bribery and corruption of public servants by war (second war) conditions". It at most sought to strengthen the provisions of Sec. 161 and 165 of the Indian Penal Code. prescribing that offence under this Act will be deemed to be cognizable offence and laying down the criteria and circumstances for deriving the presumption of guilt of the person accused of the offence, besides also prescribing the extent of punishment for proven offence. Certain limitations have been laid down in this act regarding the officers who are authorised to conduct investigations of c corruption, and the permissions that the authorised officers have to take before they can enter upon such investigation. Where an investigation for instance. has to be made into allegations of property disproportionate to the pecuniary resources of the public servant, it cannot be started without the permission of an officer of at least the level of Superintendent of Police. This Act enables action to be taken against a public servant, and the "public servant" for the purpose is as defined in the Indian Penal Code. which include also political functionaries besides government servants, but it is seldom that in actual practice this enactment is invoked for launching prosecutions against any political appointees and functionaries.

12. That against the background of position submitted in the foregoing paragraphs in regard to the wide spread and the areas of corruption. and the functioning as well as inadequacies of the various existing institutions and organisations entrusted with the task of ensuring appropriate utilization of funds and of curbing corruption. it would be appropriate to take stock of the action that has so far been taken in the country for enabling an appraisal to be made of what more needs to be done to meet this essential requirement. One major step that was considered. necessary, and which has not hitherto been taken, is that of the establishment of the institution of Lokpal which was conceived ~s long ago as 1964. arising from the recommendations of Santhanam Committee on Prevention of Corruption. This recommendation was strongly supported by the Administrative Reforms Commission in 1966. It was recommended that Lokpal in the shape of Chief Ombudsman will be established at the Centre and that .similar arrangements would be made in the States by the establishment of Lokayukt. these persons to be equated respectively to the Chief Justice of India "and Chief Justices of High Courts. Bills for the implementation of these recommendations, in particular for the establishment of Lokpal at the Centre, were prepared and introduced in the Parliament on five different occasions, in 1968, 1971, 1977, 1985 and 1989. It was conceived that the offices of Prime Minister and Central Ministers would also

be brought within the purview of the Lokpal institution whereas the offices of Chief Ministers and Ministers of the States would come within the ambit of operations of Lokayukts. Bills introduced in the years 1977, 1985 and 1989 were deliberated upon even by the Joint Parliamentary Committees. and they made -their detailed recommendations. However, each of these respective previous Bills were either allowed to lapse or were withdrawn, with the result that till now no legislation has been enacted to implement the recommendations which were made about 30 years ago and the institutions of Lokpal, for purposes of effectively checking corruption in the spheres of senior political and administrative levels at the Centre has not so far been established. The institution of Lokayukts has been established in I I States of the country. These include Andhra Pradesh, Assam, Bihar, Gujarat, Himachal Pradesh, Kamataka, Madhya Pradesh, Maharashtra and Rajasthan. In some States Uplokayukts ha\'e also been set up. The system and mode of functioning of these Lokayukts in the States are not uniform and whereas in some States they have been made competent to deal with allegations against corrupt senior political functionaries in the others this position is not clear, and whereas in some States these institutions have been authorised to direct prosecution similar authority. does not appear to be available in the other States where the Lokayukts can only convey recommendations to the State Governments for launching prosecutions. An Implementation Committee of five Lokayukts, set up in 1991, comprising Lokayukts of the standing of Judges of the High Courts, made certain specific recommendations which aimed (i) to ensure the establishment of institution of Lokayukts in every State; (ii) to achieve uniformity in the provisions Constitutional status on the institution of Lokayukts. These recommendations have remained unimplemented.

13. That in view of the current degradation and debasement of moral values. and the exponential increase in political and bureaucratic corruption, as has been indicated in the foregoing paragraphs. and taking into account the fact that the requirement of setting up effective machinery at the Centre in the shape of Chief Ombudsman. the Lokpal. has not yet been achieved, and that the recommended system of Lokayukts has also not been established in a number of States and wherever it has been established. with few exceptions, these are not achieving positive results of curbing corruption. and also that the existing institutions of Comptroller and Auditor General (CAG), Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI) and its Anti-Corruptions Branch (ACP), and the Public Grievances Cells have not been able to achieve this objective, the petitioner Society has considered it appropriate to submit this entire matter before the Hon'ble Court to seek directions to the effect aforementioned and which has been further elaborated in the succeeding paragraphs.

14. That the Petitioner Society has not filed any other Petition in this Hon’ble Court or in any other court to seek same or similar relief.

15. That all other remedies having apparently been exhausted the Petitioner Society is not left with any alternative except to approach this Hon'ble Court under Article 32 of the Constitution of India inter alia on the following grounds:

GROUNDS

a) Because the Petitioner Society and similarly placed citizens in the country feel greatly aggrieved by the arbitrary, discriminatory, and malafide actions of Respondents, particularly those of the Union of India, and the States which has either not so far set up the institutions of Lokayukts or where the functioning of presently established Lokayuktas is yet .inadequate for meeting the requirement of effectively curbing corruption at the political and

bureaucratic levels, it is submitted that the action of the Respondents of the Union of India in allowing the Bill for establishment of Lokpal institution at the Centre to either lapse or to be withdrawn, and the responsibility of the concerned States t? default in the matter of establishment of Lokayuktas or to
fail in strengthening of the established systems of Lokayuktas on the line specifically recommended by the Implementation Committee of Lokayuktas, comprises gross negligence and deliberate omission which is tantamount to violation of Fundamental Rights of the people of the country. The omission on their part as well as deliberate default of these respective authorities to set up effective and efficacious remedy for checking and prohibiting corruption, and malfunctioning of public offices is tantamount to violation of Fundamental Rights of the citizens enshrined in Articles 14 and 21 or the Constitution of India.

b) Because the current degradation and debasement of moral values in public life coupled with the enormous increase in political and bureaucratic corruption has made it imperative on the Governments at the Centre as well as in the States to establish modalities, institutions and structures to check and control corruption. The information submitted in the foregoing paragraphs seeks to present that the existing institutions and organizations, including the Comptroller and Auditor General of India(CAG), Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI) and its Anti-Corruption Branch (ACB) as well as the Public Grievances Cells established at the Centre and in the States, and even the provisions of Prevention of Corruption Act, which in the present context is apparently anachronistic, is indicative of the fact that these institutions are not capable of adequately and effectively meeting the present emerging obligation of efficacious remedies for curbing and combating corruption.

c) Because five attempts since I968 have been made for achieving the objective of establishing the institution of Lokpal, but all these attempts have remained unavailing because the Bills introduced for the purpose in the Parliament were either allowed to lapse or were withdrawn, and consequently at the level of the Centre the recommendations to establish this institution have remained unimplemented, and also at the level of States a number of States have not yet set up the institution of Lokayukta and where this system has been established there has been default in further strengthening it on the lines of specific recommendations made by the Implementation Committee of Lokayuktas in 1991. Recommendations made by this Committee were to the effect that every State should have the institution of Lokayukta alongwith the availability of assistance of Upa-Lokayukta. to bring about uniformity in the provisions of various Lokayukta and Upa-Lokayukta Acts, and to confer Constitutional status on the institution of Lokayuktas.

d) Because specific further suggestions have now emanated from the colloquium recently organised by the Indian Institute of Public Administration at New Delhi wherein participants from some foreign countries and knowledgeable persons and Lokayuktas/Upa-Lokayuktas from within our country. have formulated specific provisions for being incorporated in the legislations for the setting up of Lokpal institution and improvement of the institution of Lokayuktas.

e) Because the right to life under Article 21 of the Constitution of India includes a corruptions free life. At the Centre the absence of appropriate legislation or an alternative provision for the purpose. is violative of the right under Article 21 of the Constitution. Likewise, the continuing default in the establishment of the institution of Lokayuktas in the States where this institution has so far not been established. as well as the default in strengthening the institution of Lokayuktas on the lines recommended by the Implementation Committee of Lokayuktas, is also violative of the Funda':I1er:tal Right under Article 2) of the Constitution. Defaults on the part of the union of India and by the concerned States in pursuing the objective of ensuring the establishment of effective and efficacious machinery for curbing corruption is obviously tantamount to violation of Article 14 of the constitution.

f) Because Part IV read with the Fundamental Rights under Part III of the Constitution, especially Articles 14, 21 and 19 endow the citizens of India with the Fundamental Right of protection from corruption in public offices and public life, enforceable by the Hon'ble Court.

PRAYERS

16. That in view of the facts and circumstances stated above it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:

i) Pass an appropriate writ, order: or orders directing the Respondents I to 3 to specifically declare as to when the Union of India will now bring before the Parliament an appropriately drafted Bill for enactment of legislation for establishment of the institution of Lokpal, or a suitable alternative system of the nature of Ombudsman which is operating in a number of other countries, for checking and controlling corruption in public offices. inter alia, at the political and bureaucratic levels. and whether in the enactment of such legislation they will take into consideration the suggestions that have emanated from the Colloquium recently organised under the auspices of India Institute of Public Administration with the participation of foreign and Indian experts for examining various aspects of the matter relating to establishment of Ombudsman institution in this country;

ii) Pass an appropriate writ, order or orders directing that the institutions and organisations of the Comptroller and Auditor General of India, Chief Vigilance Commissioner, and the Central Bureau of Investigation should indicate to the Hon'ble Court the specific steps which they will take for effectively overcoming any inadequacies and weaknesses in the operations of these important institutions which presently hamper effective and efficacious check on prevalence of corrupt practices in the country and to curb corruption at all political and bureaucratic levels;

iii) Pass an appropriate writ, order or orders appointing a Commission or Commissioner to urgently undertake comprehensive study of the present inadequacies in the Prevention of Corruption Act 1947 for making specific recommendations to strengthen this enactment for achieving the objective of curbing and checking corruption at the political and bureaucratic levels in the country.

iv) Pass an appropriate writ, order or orders directing the State Governments Respondents to indicate to the Hon'ble Court as to when they propose implementing the specific suggestions which have been made for strengthening and improvement of the functioning of the system of Lokayukta, including inter alia. the following:

a) To ensure expeditious establishment of the institution of Lokayukta and Upa-Lokayukta in every State;

b) To achieve uniformity in the provisions of various Lokayukta and Upa-Lokayukta Acts; and

c) To confer Constitutional status on the institution of Lokayukta.

v) Pass such other further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

23-DIRECTOR, COMMON CAUSE

REVIEWING CONSUMER PROTECTION ACT
- Common Cause

A comprehensive effort is again in progress for reviewing the Consumer Protection Act for pinpointing by inadequacies and imperfections in it for making further amendments which may be needed. A thorough effort to this end was made a couple of years ago and certain important amendments were effected by persuading the Government to expeditiously place the matter before the Parliament:

The C.P. Act in its application and spread to all districts of the country has, within a span of few years, gathered more momentum and acceptance than perhaps any other recent social enactment. By now the consumer "courts" are operating in all the 455 districts of the country; more than 500,000 cases have been taken to these "courts" and about 60 percent of these have already been decided, majority of then in favour of consumers. About 700 consumer organisations have come up in various parts of the country. State Governments continue to be goaded to discharge their responsibilities under the Act. Government of India has .been successfully persuaded to release funds aggregating to Rs. 61 crores for ensuring that Consumer Forums and State Commissions, which have been set up under the Act for redressal of consumer grievances, do not continue to suffer any inadequacies in the matter of staff, equipment, furniture, accommodation, funds etc.

The exercise which is presently in progress. through a special Working Group set up for the purpose. is analysing in detail all provisions of this Act for assessing the further amendments which are now required in the light of continuing experience of its operations. Suggestions for the purpose have been sought from all possible quarters including also the State Commissions and Consumer Forums. If any readers may desire to sent their suggestions they arc most welcome to send these to me through this newspaper so that I can place them before the Working Group. It will be of interest to take stock of the result so far accrued from the analysis conducted by the Working Group.

Primary objective kept in view for making the amendments is the need of streamlining the procedures in such manner that the cases are disposed of expeditiously. Everybody feels deeply concerned that the existing procedures are causing great lot of delays. At places the number of cases has accumulated to an extent which has rendered il impossible to give early dates for hearing. In fact. at a number of places, and also at the level of State Commissions and the National Commission. the first hearing itself is now being fixed after six months to one year. and the crises linger on for two to three years before they are decided. After decisions are announced a large number of these, in fact a substantial majority, are taken by the parties in appeals and revisions. Such delays defeat the primary purpose of enactment of this legislation which aimed at providing speedy justice. based practically on the principle of quasi-judicial operation. In the enactment it was envisaged that decision would be given in 90 days. There is hardly any case anywhere which is being decided within this period.

A proposal which has been placed before the Working Group in this context is to prescribe such procedure that when any complaint is received in the consumer court. at District level, State level or National level. the complaint should be initially scrutinised by authorised and competent personnel. for determining whether the case falls within the purview of C.P. Act and should be pursued. Presently according to the procedure prescribed under the Act court is under obligation to straightaway send copy of the complaint to the other party for reply; prescription of initial scrutiny of the complaint can help to curtail workload on these courts.

In connection with the procedure of expeditiously dealing with complaints. it has previously been urged. and is likely to he reiterated. that presence of lawyers in consumer courts should be permitted only where the complainant engages a lawyer which will justify engagement of lawyer by the respondent. or alternatively a lawyer should be allowed only where the court specifically permits or considers necessary in view of nature of the case.

It 15 also being demanded that consumers should be freely allowed to be represented, instead, by person:; who may not be lawyers, but who are working in consumer organisations and are dedicating themselves to help consumers in processing their cases.

Experience of functioning of consumer courts by and large have been that the company or organisation against which decision is given by the court, including organisations such as electric supply company or bank or telephone authority or insurance company, there is almost invariably a tendency on its part to file appeal. This adds to the problems of consumers and inevitably delays the application of sought remedy and payment of adjudicated compensation. In the Act there is provision of only one appeal i.e. where the decision is given by the District Forum the appeal lies to the State Commission and where decision is of the State Commission appeal lies to the National Commission. But, in actual practice, in a large number of cases, when the remedy of appeals exhausted the company or organisation very often resort to the strategy .of filing 'revision' petition before the National Commission. Filing of 'revision' petition further delays the award of remedy and compensation. The aggrieved consumer has to face additional problems if the 'revision' is admitted and the case has to be heard. In some cases the organisations and companies go even further and file appeals before the Supreme Court against decision of the National Commission. Inevitably this leads to further excruciating delay, and also the bother and expense~ to the consumer where he feels obliged to contest the matter.

Another serious problem caused by intermediacy of lawyers is that of adjournments. Quite often the cases are adjourned on the demand of lawyers. to suit their convenience. We do not want cases to be delayed by adjournments: we are keen that it should be clearly laid down that in no case more than two adjournments will be allowed if at all these are necessitated. Another cause for delays in final disposal of cases is the procedure in supply of copies of orders: delay caused in the procedure provides opportunity to ask for condonation of delay in submission of appeals. We are keen that procedure must be established which makes it incumbent on the court to immediately supply copy of the order to the parties so that no cause is given for casuation of delay in submission of appeal if it is considered necessary.

A matter of great importance which representatives of consumers are pressing for incorporation in the amendments of C.P. Act .is that the loop-holes which have been experienced in the matter of giving the final redressal to consumers should be satisfactorily removed. Problems have risen for determination .whether negligence and culpability of doctors will come under the purview of the Act. The judgment of Madras High Court has held that doctors cannot be arraigned under this statute; paramedical staff can be arraigned. We are demanding that this matter should be settled through amendment of the Act wherein it should be provided clearly that doctors as well as hospitals, including those where treatment is given free such as government hospitals, should come within the ambit of this Act. We are also demanding that mandatory civic services, such as sanitation, water supply etc., should be clearly brought under this Act. Presently, the position is that only those services come within this Act for which specific payment is made, such as electricity, telephones, banking, insurance, transport etc. Our contention is that scope of this provision should be enlarged; after all, people pay for basic municipal services, if not specifically for individual services; they are subjected to taxes which are collected for provision of these services. The demand for incorporation of mandatory civic services in this Act is not likely to be easy for acceptance by the government, because it will inevitably have far-reaching manifestations of accountability of Government and its agencies in relation to the general taxes, but the consumer representatives will surely continue pressing for its acceptance.

A major problem arising .practically everywhere is that of execution of the orders passed by the consumer courts in awarding compensation or directing redressal to be given to the consumer by the party complained against. In a large number of cases there are defaults in compliance with the orders. There are cases where consumer courts have started resorting to

issue of warrants to the defaulting parties. Cases have been taken to High courts through writ petitions challenging the validity of issue of warrants; it is heartening to note that High Courts have upheld the validity of issue of warrants, and even the issue of non-bail able warrants. An important issue relating to the execution of the orders is that the consumer courts have necessarily to depend on execution of these orders by civil courts to which the orders are remitted for execution or to criminal courts to which they are referred for service of warrants. These procedures involve frustrating delays. Increasingly demands are being made that the consumer redressal agencies should be equipped with the personnel for execution of these orders and that the necessity of depending on civil or criminal courts should thereby be obviated. This too may not be easily acceptable but the objective is worth pursuing.

There are a number of other matters which are under consideration of the Working Group for bringing about amendments in the C.P. Act. These include, for instance, the inclusion of "shares" and "stocks" etc. in the category of "goods", for obviating difficulties which may come about in regard to deficiency of performance by the companies, provision of providing interim relief, of the nature of "stay" or stoppage of sale of any hazardous goods. Most important of all is the paramount need of prescribing the basic essential infrastructure to the District Forums and State Commissions so that they are no longer handicapped in effective functioning, either on account of difficulties of accommodation or staff or of inadequate availability of funds. Linked with this is also the essential requirement of ensuring the quality and competence of non-judicial members who are selected to work on benches of these courts, and also to provide adequate compensation to them and to the Presidents of the redressal agencies so that their output is in no way adversely affected on account of this basic necessity.

OFFICERS MUST PAY FOR DEFAULTS

Since the enactment and wider implementation of Consumer Protection Act there have been some very satisfying adjudications wherein officials whose defaults caused difficulties to aggrieved consumers have been directed by the consumer courts to be penalised for the defaults rather than the penalty should be borne by their departments or organisations. This is a very welcome and healthy trend. It will go a long way to build up ethos of accolll1tability in our services which has hitherto been totally lacking.

This healthy development has started in recent months by the 1993 judgment of the Supreme Court cited as Central Cooperative Consumer Stores Ltd. vs Labour Court of Shimla JT 1993 (3) - sc - 33. In this case it was directed that the loss caused to the organisation should be recovered from the officers who were responsible for causing problems which brought about the loss.

It is interesting to know the facts of this case and circumstances which caused the loss. A sales girl working in the Cooperative Store at Shimla was subjected to harassment and humiliation by a newly appointed manager. Her services were terminated by this manager without ostensible reason and without giving her notice. She had been complaining to the superior officer about the attitude of the Manager, and when she was confronted with termination of service she immediately submitted an appeal to the Cooperative Department. To her misfortune the Assistant Registrar took seven long years on the case; she put up determined fight; the case was eventually decided in her favour: she was ordered to be reinstated. This decision obviously hurt the ego of the Manager. He did not implement the direction for eight months. The Store instead decided to appeal. The girl continued her fight. before the appellate authority, the revising authority. High Court, Labour Court, and once again before the High Court. Everywhere the case was decided in her favour but the Store went on filing appeals and revisions. and eventually the matter was taken by the Store to the Supreme Court.

It was in the Supreme Court that this girl eventually secured the verdict which could not be further challenged. The court recorded: " the obstinacy displayed by the Store, without least regard of financial implications, can only be indulged by a public body, as those entrusted to look after public bodies affairs do not have any personal involvement and the money they squander in such litigation IS not their own." Despite unequal strength the girl had managed to survive. Her working life was lost in these tortuous and painful litigation of more than twenty years.

The public money in this case was wasted due to the "adamant behaviour not only of the officer who terminated her services but also due to cantankerous attitude adopted by those responsible for pursuing the litigation. Amount of as much as Rs 3 lakhs was directed by the Supreme Court to be paid by the Store to the aggrieved person. and it was directed that this amount should be recovered from the personal salary of officers of the Store who were responsible for this prolonged litigation. including the officer who terminated here services.

Another important decision of the Supreme Court of 'similar pattern is that related to Lucknow Development Authority wherein an applicant for allotment of a house suffered continuous harassment and denials at the hands of officials of the Authority even after the fulfillment of all his obligations of making requisite payments within the prescribed period. The Court gave very strong verdict that housing construction activity is definitely within the purview of Consumer Protection Act. which fact was being contested by the Development Authority. but more importantly it directed that the compensation which was ordered to be paid to the aggrieved applicant should be recovered from those who were responsible for such unpardonable behaviour of depriving the citizen of his legitimate rights; the amount to be divided proportionately for effecting the recovery from defaulting officials.

Still another recent judgment of Supreme Court, in a case arising from Andhra Pradesh, has laid down the principle that the State cannot escape its liability to pay compensation for any harm done to a citizen due to negligence or acts of its officials. It will be for the State recover the amount from the defaulting officials. The judgment says that sovereignty rests with the people; the State cannot claim immunity, and if a suit for damages is maintained personally against an officer, the responsibility will equally lie on the State to discharge the obligation imposed on it. It has been laid down by the Court that "no legal or political system can place the State above the law as it is unjust and unfair for a citizen to be deprived of his property illegally by the negligent acts of its officers. In such case of highhandedness and abuse of powers leading to victimisation of any citizen, the, infringement of such nature is wrong in public law, and the State must be held liable to compensate the victim". No officer can interfere with the life and liberty in the legitimate functioning of a citizen.

Increasingly powers of the courts are being invoked by citizens for redressal of their grievances because a feeling has grown that executive machinery of the government, functioning amidst the political atmosphere generated in the country in the recent decades, has become almost totally unresponsive to the legitimate demands of citizens. This trend has particularly emerged from the operations of Consumer Protection Act which for the first time has prescribed powers to a court to award compensation to an aggrieved person who suffers at the hands of an unscrupulous trader or a callous official. In tens of tl1ousands of cases sizeable compensations ha\'e been awarded. Increasingly also it is being realised that when the compensation is awarded against an organisation or department of the government it is appropriate that recovery should be effected from the officials whose omissions or commissions have caused imposition of penalty.

In a case against a Development Authority, instituted under the Consumer Protection Act. where the default was traced to the acts of two senior officers who caused difficulties to a citizen in the matter of allotting to him a plot for which he had made payment a decade ago. a State Commission established under this Act has directed that the penalty of Rs 50,000

payable to the victim should be recovered from two officers who were responsible for the default.

Practically every day there is now some item in the newspapers about action initiated against senior officers of the government for failure to comply with court orders and also for contempt of court. In a recent case in Madras the Chief Secretary of Tamil Nadu was ordered to pay compensation of Rs 50,000 to a person who was injured in an accident caused by his car, and on delay coming about in making the payment of part of this amount, the court ordered issue of warrant of attachment of Chief Secretary's property. The executive chief of New Delhi Municipal Council was recently told by a court to personally appear before it to tender unqualified apology for disobeying a direction given in regard to stay of proceedings of demolition of the stall of a citizen. The Chief Secretary of Punjab was recently given a verdict of one month's imprisonment and fine of Rs 5000 for failure to pass on to certain government employees the benefits which had been decided by the court to be given to them and which they had remained deprived of:

These welcome developments are symptomatic of the important observation recently made by Supreme Court Judge at an inaugural function, Said this Judge, Mr. Justice P.B. Sawant:

> "Accountability is the most potent weapon in the hands of citizens; society can get rid of corruption, nepotism, inefficiency, delays and wastage in public administration by making the individual officers responsible for their acts of omission and commission. Where damages are awarded against public bodies, this does not help to improve the administration, it is necessary to made the defaulting officials pay the compensation and thereby to keep the entire bureaucracy on their toes. Where an official fails to discharge his duties he should be made to pay to the citizen compensation for the difficulty caused by his default",

Amidst the adjudication, pronouncements and emerging trends one looks forward to new chapters opening in the functioning of our democracy.

VVIPS ON OUR ROADS

VVIPs need to be made aware of the resentment and exasperation caused to the people when the roads and entire traffic on the roads, are blocked for their motorcades. This happens quite often on the roads of Delhi, particularly in those areas which lie on the way to airport. Similar problems arise also in other cities when the VVIPs travel on the roads there.

Let me explain the problem in some detail. This problem is encountered particularly when the President or the Prime Minister, or a foreign dignitary, is either going to or coming from Delhi airport. I have collected certain facts in this regard. There are 25 road crossings and road junctions between Palam Airport and Prime Minister’s residence, and practically same number between airport and Rashtrapathi Bhavan. Following drill inevitably comes about whenever either of these VVIPs is going out of Delhi or coming to Delhi:

i) Police jawans are deputed all along the route, on both sides of the road, with their out-dated .303 guns hung on their shoulders. They are spaced every 80 to 100 metres. Total number of policemen employed on each occasion is about 500.

ii) These police jawans are put in position two hours before the expected passing of motorcade. It takes about one hour to take them in the police vehicles for placement at the sites, and it takes almost the same time to round them up and get them back to the barracks after the performance of this duty. The placement is on all road crossings and road junctions as well as at other places which are deemed strategically important. More than three hours are spent by these policemen for each such duty.

iii) These jawans are drawn from various police establishments which include Central Security Force. Central Reserve Police Force. Traffic Police and Delhi Police. They are particularly supplemented by traffic police who are deputed at every road crossing and junction. Officers of various levels. from the respective police establishments, are deputed at

all strategic places. At every road intersection a jeep is stationed under the charge of a police officer. •

iv) Wireless continues to be extensively used by the deputed police officers well before the arrival and departure of motorcade. Through wireless messages all roads on route are blocked; all vehicles and every kind of traffic, including even pedestrians, are stopped at the junctions and crossings.

v) At every important crossing the number of vehicles thus blocked comes upto about 100to200; at minor road junctions the number ranges upto 50. If scooters, bicycles and pedestrians are also counted, the number of persons held up at each of the crossings and junctions averages, respectively, 1500 and 500. Taking account of all the 25 crossings and junctions the number of persons who thus find themselves blocked is not less than about 20,000. There was report of an ambulance, carrying a patient of serious heart attack, having been held up at a crossing; there was no alternative for it except to wait for the traffic to be released.

VI) The passing of motorcade of VVIP is eagerly awaited at each site, every person practically itching and complaining about being held up. The traffic hold-up lasts about 15 minutes. The blocking is not only at the junctions and crossings; service roads parallel to the highway, in each of the residential colonies en route, are completely emptied of all traffic; even pedestrians are not allowed to walk on these internal parallel roads of the colonies.

vii) The motorcade is preceded by two to three jeeps sounding sirens, one following the other, and it comprises 15 to 20 cars which speed past the resentful crowds. Quite a while after the motorcade has passed, police officials at the crossings and junctions start sounding whistles and eventually the traffic and people are allowed to move on. This brings about a virtual flood of traffic on the roads which takes time to clear up. This happens four to five times a week, sometimes twice in the day.

Few days ago I received copy of the complaint submitted to the High Court of Delhi by a senior officer of the Government of India. It typifies the indignation of the people who are thus inconvenienced by being held up at the crossings. This officer has severely complained about having been submitted to humiliation when he pleaded to the police officer at the site of blockage that he be allowed to pass through because he had to immediately take his daughter to school where she had already got late. He says: "The police officer detained me illegally, snatching the key of my car with the help of a constable who threatened to shoot me." His contention is that it is his fundamental right to move on the public road, and that this right has been violated. His complaint is that "police are stopping people in the name of VIP movement, thus committing offence day in and day out; they regularly stop people from using public roads at busy school and office timings without regard either for the law or for the public convenience". Reason put forth by him in submitting the petition before the High Court is that is would be "no use making complaint at the police station or before the Police Commissioner or Lt. Governor of Delhi or Union Home Secretary because they are all serving under these so-called VIPs and are afraid of them: in fact they are the ones who are directing the police force to commit such offence."

Nothing obviously would have resulted from this complaint nor have I received any further information about it. But it evidences the exasperation of the people who are held up on the roads because of the movements of VVIPs.

Police have come to accept these hold-ups on the roads as inescapable inconvenience. They do realise that security is an absolute must for VVIPs and everything possible must be done to avoid any problem arising from the lack of security. However, they inevitably ask whether there is no alternative to these visitations on the roads. Arising from the pressures which were previously built up, procedures have been adopted for carrying some foreign VVIPs by helicopter for journeys between the airport and selected landing site, in or near Rashtrapathi

Bhavan area. Question asked is why cannot same procedure be adopted in connection with the travels of President and Prime Minister? Traffic hold-ups, blocking of roads, holding up of movements can be eliminated or at least minimised by adoption of such alternative. In case the authorities feel that any such alternative cannot be adopted, it is necessary that people should be told why the alternative is not feasible.

Time was when top VVIP the President of India drove in open horse-drawn carriage from Rashtrapathi Bhavan to India Gate on Rajpath the then Kingsway. on the 1st Republic Day parade of 26th January 1950. People showered flowers. and some even coins. President thereafter went in open carriage inside the city. to the Town hall in Old Delhi to felicitate citizens of Delhi. Prime Minister Pandit Nehru often rode on horse back with a few companions from his residence at Teenmurthi through Chanakyapuri area of Delhi. He drove in open car with General Eisenhower through huge crowds in Connaught Place and often was amidst thick crowds.

People recognise that things have changed. It is inconceivable in the present circumstances that any risk in relation to security of VVIPs can be taken. But, people cannot help asking whether the blocking of roads, holding up of traffic, movements of pedestrians, cannot be eliminated with the adoption of appropriate alternative.

It is necessary to find out what modes are adopted for security of VVIPs in the other countries. I have secured information about arrangements that are made for the President of USA. Secret service agents form a protective shield round the President when is anywhere on the move, constantly watching for threats. The agents round the President are only a part of the network of protection that is activate when the President travels. They maintain a thorough vigil wherever the President goes, checking the route of his motorcade for potential sniper posts. AII possible precautions are taken to ensure protection to the President but not in the crude way of holding up the entire traffic and all movements on the roads. Amidst all the sophistication and thorough arrangements, however, it is recognised in USA that even the best efforts of secret police have not been enough in some situations. President Kennedy was assassinated; would-be assassins twice missed Gerald Ford; Ronald Reagan survived a bullet wound in the chest.

We must ensure that our VVIPs on the move are fully protected, but we must evolve methods which would achieve the objective without evoking resentment of the people and without making unsavoury spectacles of their motorcades.

JOURNEYS THROUGH BABUDOM AND NETALAND
T.S.R. SUBRAMANIAN[25]

Respect of probity and efficiency had significantly declined as compared with previous times. This was the impression I carried, when I returned to India in 1990.
Later that year, during my field tours of Uttar Pradesh, I found that the assessment I had made in Geneva was completely incorrect. Contrary to the impression I had formed, most of the young officers I met were not mediocre at all. They were of high calibre, bright and enthusiastic, and totally committed. They were knowledgeable and upright, with the ability to stand up to local pressures. I would meet a large number of officers from different departments, especially those belonging to the IAS and the PCS. Many of the district magistrates and most of the chief development officers were bright youngsters from the IAS.
I had to reconcile this curious difference as to how bright and dedicated young officers, could after some years be seen as sub-standard. There can be only one explanation. When the same talented officers I saw on the field, reached headquarters at Lucknow or Delhi they became transformed into supine pen-pushers, losing their enthusiasm and elan, and forgetting that they had a mission to accomplish. The Union Public Service Commission (UPSC) continues to do a creditable job in finding the right youngsters, but the administrative milieu is able to soon transform talented idealists into petty, self-seeking babus. The system is able to bludgeon them into a state of apathy, if not callousness.

That year, Mulayam Singh as the chief minister was the chief guest and he addressed the 200-odd IAS officers who had gathered at the meeting. What he had to say made me sit up indeed. He spoke on these lines: "You all have such excellent minds and education; some of you are scholars; some of you have Nobel-prize minds; you will all succeed in any walk of life, wherever you turn your attention to; you have good jobs; you can educate your children well; and you are all respected by society; - (and then, the clincher, raising his voice) — *Why do you come and touch my feet? Why do you come and lick my shoes? Why do you come to me for personal favours? When you do so, I will do as you desire and then extract my price from you."* It was an amazing statement because it succinctly summed up the situation and pin-pointed the reason for the collapse of the steel frame!

I hold this view. Having seen the working of governmental processes from inside, I know that we in government have become pathologically unable to speak the truth as we see it, but need to put a spin on every event or every occurrence. On countless occasions, I have seen efforts by the ministers in response to even starred parliamentary questions to hide the essentials of any situation, disclose only whatever is absolute minimally acceptable, deny any wrong doing of any sort, and generally make sure that the true picture does not emerge. The way the government of the day has never accepted in parliament any failure, however trivial, would suggest that we have had, over the past fifty years, the most successful administration anywhere in the world. We are hiding from ourselves.
Again, public servants have been ever willing to turn themselves to become private servants. Increasingly, the attitude of new entrants to various public services is to see what they can extract from the system - not what they can contribute. Many of our leaders who got us freedom belonged to a category of eminent lawyers and doctors who deliberately left their lucrative vocations and came into public life, with a sense of purpose. Till the 1970s, a number of entrants to the public services were bright young men from universities who entered the civil services with genuine intentions to contribute, coupled with expectations of a reasonably good standard of living. Those days are long gone by. In my four decades of public service,

I have come across thousands of politicians, small and large, operating at the district or village or state or national level. I have worked closely with hundreds of them in one context or another. I am saddened to say that 1 have come across only a handful of honest politicians. Politicians in power seek out corrupt officers and ask them to be collaborators, for mutual benefit. That many corrupt officers exist is also in no doubt. This tribe is increasing alarmingly in strength. In the UP of the 1980s, one could think of say five rotten eggs, in an IAS cadre of 400. Today, that number has increased by tragic proportions, though it is a bit better still rhan the condition in many other class I services. If the malignancy in the IAS is yet at a primary stage, it has reached the secondary stage in some other service

Even if the vast proportion of civil servants in the higher civil service are not corrupt in the financial sense, several have exhibited intellectual dishonesty of a high order. Whenever they sniff a tainted request or issue, they quickly withdraw and sideline themselves, allowing the operators to have their own way. I recall that one of our ministers would quickly find a way to travel out, when given notice of a difficult issue soon to come up before the Cabinet. He wished to avoid being part of a controversial decision, recall with amusement the plight of his personal staff, desperately trying to locate a destination abroad where he could be officially received at short notice. Metaphorically, most civil servants follow this route, when confronted with any issue of importance. They find ways of not tackling the matter or not having to express an opinion on the subject, and find avenues for avoiding agreement or disagreement with any proposed action. The brighter amongst these usually rise to the top, and find cushy berths in the upper reaches of the central administration. Their ultimate aim is to find an international assignment, and leave the country for good.

Officers who are not corrupt, often go out of their way to endear themselves to their minister. Civil servants collaborate with their political masters to curry favour with them. The relationship is not at arm's length. Officials wish to be in the good books of ministers, with an eye on a good annual entry or a prestigious posting in India, or abroad. They can also ask for petty favours. Shrewd as he is, what the minister does is to gradually break in the pliant official, taking him through his paces. There is a steady crease in the number of obligations sought by the minister and the intensity of departure from the norms. The official is fully exploited. Then, after the official has been fully used, he is suddenly dropped. He is no longer in favour as other officials are found to do the biddings. I have watched innumerable officials compromise themselves and bend over backwards to oblige their political master, only to be unceremoniously cast aside. I have seen it a hundred times. I could even predict, to the day, when the minister would suddenly not even recognise the official, who had hitherto sold his soul to enable the minister get his way. It is usually a pathetic sight.

It is not as if the category of honest and forthright civil servant does not exist, but they are being side-lined. Some officers do not hesitate to stand upright and express their views without fear or favour, never mind that a few untimely transfers or even some enquiries come their way. There was a time when some of the abler and brighter ones in this category would get the opportunity for promotion in the state and also at the Centre. In today's administrative conditions, my judgement is that such types no longer stand even a slim a chance to climb the administrative ladder. The rot has set in and has become irreversible: the steel frame is corroded, and is in danger of collapse.

This could leave the impression that most members of the civil service are indolent, indifferent, unmotivated, and are mere passengers. But I need to correct that impression and stop short of such a sweeping generalisation. At all levels of administration, one does find brilliant and outstanding young people; motivated, dedicated, and imbued with a spirit of service. I have had the chance to work with many such people. The civil services can be proud of officers such as Rajeeva Kumar, who was my staff officer when I was chief secretary in UP, B.P. Sharma who was my deputy secretary in the Cabinet secretariat and thousands of such people, who are dedicated to their work, self-effacing and not seeking the

limelight. What contribution the Indian administration might have made is indeed thanks to such people. These are the best available anywhere in the world, in public or private service. Indeed, many are not allowed to perform and this is a failure of rhe system and no fault of such officers themselves.
Another systemic failure is the undue importance given to postings in the economic ministries. The impression has gained ground that these are more important desks and thus such postings are coveted. This is wrong, since in the government, all departments serve the public and so are of equal importance. The present culture is that civil servants are obsessed with the need to have postings of their choice and they are willing to go to any extent in search of these. Further, Delhi is a draw. An unseemly glamour is attached to certain posts in the economic ministries in Delhi, unrelated to the contribution that the officer can make to policy formulation and implementation. There are similar positions of equal importance in the state governments. Officers get a false sense of importance when economic ministry. Has 'something happened' to our civil servants, though seemingly normal, that they have lost their sense of balance?

The average civil servant looks at a file as a piece of paper, on which he has to write and express his views, without compromising his own position. It is of little concern to the civil servant, whether issues raised in the file get settled or not and if so, in what time frame. He sees no immediacy. Key concerns that engage his attention relate to his transfers and promotions. However, the minister sees the file from an entirely different perspective. For him, each file represents a potential gold mine: the file has to be nursed carefully, and brought up to a position where it can yield maximum benefits. For him also, time is not of the essence. However, timing is important as the yields from the file will depend on how and when the decision is timed. The games that are played have infinite variety, great ingenuity and are lucrative. In such a scenario, how can public interest be served?
Ministers take lightly their oath of office. I have been present at a number of occasions to witness the swearing-in of ministers. Not many would have noticed that the oath taken by the minister is in two parts: the first part refers to his allegiance to the Constitution. It is the second part of the oath that requires attention. This oath affirms that on each official matter the minister will not share any information received by him in the course of his official work with anyone not directly concerned, nor will he disclose any official information unless such sharing or disclosure of information is essential for the discharge of the official work he is entrusted with. I wish to be given one rupee, each time this oath is violated by a minister. I would soon be the richest man in India. I have repeatedly seen ministers disclose details of official matters even on sensitive issues, to their benefactors. Many ministers routinely show the noting of the secretariat or the secretary, opposing a particular proposal to the private party directly concerned. It is amazing how private businessmen get to know of what the secretariat and the secretary himself have written, to the minutest detail. And then, it would come as no surprise to see the minister’s rebuttal note, obligingly drafted by the interested party. Even a cursory glance at the papers would reveal this. The extent of detail, finesse in argument and command over the technical aspects evidenced in the minister's orders would be startlingly high, with no loopholes to pick.

The rule of law is of no value unless every citizen is aware of his rights and obligations. In most rural areas, we are indeed ruled by the greasy hand of the local politician, local policeman and the patwari in tow. In urban areas, most people with money think that they are above the law. As I travel in my car from my residence to the Golf Club in central Delhi, a drive that takes twenty minutes, I keep looking out for violations of traffic laws. These are mostly minor in nature. The offenders appear well educated, from the middle and upper middle class. They have scant regard for traffic laws. We have seen that no politician feels

that the law applies to him, and as long as he is in power, he is immune from the reach of the law. One of my golfing colleagues, a businessman, is quite bemused at the occasional anger displayed by me at the spread of corruption in India. He does not understand how an even-tempered person like me can get worked up on a simple matter like a bribe. He says with conviction that the person who pays the bribe gets his work done, and the receiver of the bribe is satisfied; why should it bother anyone else? Why should anyone unnecessarily get worked up over something that makes things move in India? After all, the bribe keeps the economy moving efficiently. To paraphrase in an economist's language, corruption is merely a transfer payment, not affecting a nation's wealth or GDP and so we may summarily dismiss it as an issue not of great importance. I cannot bring myself to explain to my golfing friend or the economist the complex linkages between corruption, political thuggery, maladministration and lack of governance, illiteracy, and poverty. The common thread is a notion called the 'rule of law'.

Finally, if one were to summarise the essence of all that I have seen in the course of my career, it is ironic that these could take shape in the form of four laws that govern public affairs in India. Indeed, it might well be that these are timeless and universal laws of public administration. The laws are as follows:

1 Administration is conducted for the benefit of the administrators.
1 In a conflict between private interest and public interest, the former shall prevail.
3 The country belongs to the haves and the have nots do not exist.
4 A public servants work output and rewards are inversely related.

---

25 – Former Cabinet Secretary, Govt. of India, extract from his memories published by Rupa, 2004