

**PAVAN KUMAR'S IAS**

**PUBLIC  
ADMINISTRATION**

**Summary of  
Second Administrative  
Reforms Commission  
Reports**

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## **10<sup>th</sup> REPORT-REFURBISHING PERSONNEL ADMINISTRATION**

### **ARC – 10<sup>th</sup> Report Notes (Preface)**

Kautilya's Arthashastra stipulates seven basic elements of the administrative apparatus. These elements are embodied in the doctrine of the Prakrits. They are: Swamin (the ruler), Amatya (the bureaucracy), Janapada (territory), Durga (the fortified capital), Kosa (the treasury), Danda (the army), and Mitra (the ally). According to Arthashastra, the higher bureaucracy consisted of the mantrins and the amatyas. While the mantrins were the highest advisors to the King, the amatyas were the civil servants. There were three kinds of amatyas: the highest, the intermediate and the lowest, based on the qualifications possessed by the civil servants. The key civil servant was the samahartr, who prepared the annual budget, kept accounts and fixed the revenue to be collected. The other key civil servant was the samnidhattr who kept records of the body of taxes realised and was in charge of the stores.

The civil service system in India during the British times was based essentially on the Mughal system, albeit with certain refinements. But the big changes came with the implementation of Macaulay's Report. The Macaulay Report recommended that only the best and brightest would do for the Indian Civil Service. The Report insisted that the civil servants of the Company should have taken their first degree in arts at Oxford or Cambridge. The Macaulay Committee cannot be faulted for its enthusiasm to get the best and the brightest for the ICS. After all, the interests of the Empire itself demanded that the civil service of colonial India attract the best talents of the British universities. The Report suggested that the educational background of the colonial administrator should be even more comprehensive than that of the civil servant in England.

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The ICS men were trusted agents of the British Government even though there were also many patriots among them. The ICS was the instrument of the imperial power, and the leaders of the Indian National Congress had made it clear during their struggle for independence that they wanted to abolish the ICS and all it stood for. Jawaharlal Nehru was 'quite sure' in 1934 that 'no new order can be built in India so long as the spirit of the Indian Civil Service pervades our administration and our public services', it being therefore 'essential that the ICS and similar services must disappear completely'. Yet in the years afterwards the ICS tradition not only survived, it prospered. In the spring of 1964, Nehru was asked at a private meeting by some friends what he considered to be his greatest failure as India's first Prime Minister. He reportedly replied, 'I could not change the administration, it is still a colonial administration'. Nehru then went on to elaborate his belief that the continuation of that colonial administration 'was one of the main causes of India's inability to solve the problem of poverty'.

Prime Minister Indira Gandhi was even more critical. Replying to the debate on the President's address in the Parliament in March 1966, she said, "what India needed today, was a 'revolution in the administrative system' without which no enduring change could be brought about in any field".

It is ironical that there has been no sincere attempt to restructure the civil service although more than six hundred committees and commissions have looked into different aspects of public administration in the country. Rather, the Indian reform effort has been unfailingly conservative, with limited impact. While there has been some improvement in civil service recruitment and training procedures; other incremental reform measures such as O&M, vigilance committees and commissions, citizens' grievance organisations, Whitleyism, manpower planning, and the institutions of Lok Ayukta have achieved very little. Civil service reform in India has neither enhanced the efficiency nor the accountability of the civil service in any meaningful manner.

Despite these momentous changes, the attitude of civil servants does not seem to have changed at all. This is because the civil servants still believe in the Hegelian prescription that they represent the universal interest of the society. Hegel argued that the most important institution in the state was the bureaucracy which represented "the absolutely universal interests of the state proper". To Hegel, the bureaucracy was a transcendent entity, a mind above individual minds. It will not be an exaggeration to say that the civil service in India has continued to be faithful to the Hegelian dictum. It believes that its authority and legitimacy is derived not from the mandate of the people but from an immutable corpus of rules that it has prescribed for itself, without any correspondence to the needs and aspirations of the people it serves and the democratic ethos. That is why the functioning of the civil service is characterised by a great deal of negativity, lack of responsiveness to what the people want and the dictates of democracy. It is sad but true that the civil service in India evokes the metaphors of what Michel Crozier calls 'bureaucratic behaviour'; the normal association that people have with the "vulgar and frequent use of the word 'bureaucracy'" which as Crozier explains, "evokes the slowness, the ponderousness, the routine, the complication of procedures, and the maladapted responses of 'bureaucratic' organisations to the needs of the citizens/clients".

With the implementation of the slew of reform initiatives proposed in this Report, India will have a civil service

- that is valued by ministers, and is a superb source of expert, objective policy advice;
- that delivers world-class, customer-focussed services, day-in and day-out, frequently in partnership;
- that attracts the best talents from every area of the society;
- in which the civil servants are honest, objective, impartial, and act with integrity;

- in which the civil servants are accountable, result-oriented and transparent in their dealings;
- in which the civil servants are proud of, and passionate about their work, committed to doing what they have to do with the pace that India needs and expects in the twenty-first century, and with the right professional skills; and
- every part of which commands the confidence and respect of the public it serves.

### **Chapter -1**

In any system the quality of public servants is the key determinant of outcomes. It is in this context that this Report of the Commission, on Refurbishing of Personnel Administration, is critical to its wider mandate. Specifically under this Term of Reference, the Commission is required to look into the following aspects of administration:-

- (i) Review the policy relating to and all methods of recruitment, training and placement and suggest changes, if required.
- (ii) Provide guidelines for enhancing performance of civil servants and its appraisal.
- (iii) Improved methods of cadre management focusing on career progression, motivation and productivity enhancement.
- (iv) Strategies for upgradation of skills and competencies of civil servants and administrative cadres and appropriate interventions for capacity building.
- (v) Linking of performance of Civil Servants and Government personnel to social and economic objectives and outcomes.

### **KEY PRINCIPLES OF CIVIL SERVICES REFORM**

Commission's approach to the **key principles of civil services reform** which need to be particularly emphasized. These are mentioned below:

- **Setting right the asymmetry of power:** It was noted that there is an imbalance in the exercise of power in governance. Often systemic rigidities, needless complexities and over-centralization make public servants ineffective and helpless in achieving positive outcomes. On the other hand, negative power of abuse of authority through flagrant violation of law, petty

tyranny and nuisance value is virtually unchecked. This situation is further aggravated by the asymmetry of power in our society. The 'privileged' government position gives even the lower government functionaries, enormous power over most of the citizens given the abject poverty, illiteracy and a lingering feudal culture. This needs to be set right in any effort towards public services reforms.

- **Insulating civil servants from undue political interference:** In a democracy, the civil service has to be answerable to the elected government. There is criticism, however, that increasingly partisan intervention and cronyism are undermining the Rule of Law, distorting incentives and condoning corruption. This is adversely affecting the morale of public servants. The relationship between the political executive and the civil services needs to be transformed on the basis of mutual understanding, respect and recognition of each other's distinct roles and responsibilities.
- **Professionalisation** with stability of tenure and competition: There is need to recognize the complex challenges of modern administration in various spheres of activities. Meeting such challenges require domain expertise and long experience in the sectors concerned. There is also need to foster excellence in the public system. Existing procedures and practices do not adequately help in developing domain expertise, nor do they help in utilizing the available domain expertise.
- **Citizen-centric administration:** The fact that the functioning of the civil services has an impact on the quality of governance and thus on the well-being of the citizen and the welfare of the community as a whole is often forgotten. The perception of the civil services today is of a vast impersonal organization without commitment to human needs and values. It is necessary to redress the situation particularly in this era of participative democracy by making the governance apparatus an instrument of service to the people.
- **Accountability:** There is a general feeling that existing mechanisms of accountability are inadequate. On the one hand, there are alibis for non-performance and on the other, competence and integrity are not adequately recognized or rewarded. Therefore, innovative and effective mechanisms need to be put in place to protect public money, guarantee intended outcomes and enforce accountability.

• **Outcome orientation:** Monitoring in government is primarily through measurement of expenditure against outlays and at best through defined outputs. Clearly, there is need to move towards measurement of outcomes. A change in this direction has already started with the initial outcome budgeting exercises. In order to engineer this shift to outcomes, major changes in attitudes, monitoring and evaluation systems, incentives and accountability measures are necessary.

• **Promoting public service values and ethics:** Apart from the traditional civil service values of efficiency, integrity, accountability and patriotism, it is necessary for civil servants to inculcate and adopt ethical and moral values including probity in public life, respect for human rights and compassion for the downtrodden and commitment to their welfare.

These core principles and the issues emanating from them have been analyzed in detail in various chapters of this Report.

### **CONSTITUTIONAL POSITION**

Part 14 of Constitution – Services under Union And States

Art 309-Recruitment

Art 310-Tenure

• Art 311-Dismissal, Removal, Reduction in rank

Art 312-AIS

Article 312 of the Constitution empowers Parliament to create the All India Services (AIS) on the fulfilment of certain conditions. The Indian Administrative and Police Services are deemed to be services created by Parliament under this Article. Section 3 of the AIS Act, 1951 and the rules and regulations made by the government prescribe the selection process for the IAS. Similar provisions exist for the IPS and the IFoS.

### **OBJECTIVES BEHIND CREATION of AIS**

The key objectives of government in creating the AIS are:

- (a) preserving national unity and integrity and uniform standards of administration
- (b) neutrality and objectivity - non-political, secular and nonsectarian outlook
- (c) competence, efficiency and professionalism - at entry by attracting the best and brightest and throughout the career
- (d) integrity and
- (e) idealism.

(Refer Figure 2.1 it depicts the key features of the design of the AIS.)

A gist of the recommendations of the First ARC that are relevant to this Report are outlined below:

- a. Need for specialization:
- b. Unified Grading structure:
- c. Recruitment:
- d. Recruitment Agencies:
- e. Training:
- f. Promotions:
- g. Conduct and Discipline:
- h. Service Conditions:

Apart from the First Administrative Reforms Commission, as stated earlier, several other Commissions and Committees were set up over the years to examine various aspects of Civil Services Reforms. The recommendations made by these Committees and Commissions including, of course, of the first ARC are grouped issue-wise and discussed in the following paragraphs.

### Recruitment

In any governance system the quality of its public servants is critical and in this context recruitment of suitable persons is of great importance. Those aspiring to be civil servants must have not only the required skills and knowledge, but also the right values which would include integrity, commitment to public service and above all, commitment to the ideals and philosophy embodied in the Constitution. Therefore the recruitment process, apart from being transparent, objective, fair and equitable should also ensure that the right type of persons join the civil services. Several changes have been made in the recruitment process, especially after

Independence to reflect the needs of the administration from time to time. A number of Committees and Commissions were set up to make recommendations on various aspects of recruitment. These recommendations are included in the:

- **A.D.Gorwala's Report** (Report on Public Administration, 1951) recommended that recruitment to all grades of Government service should be conducted in a manner which eliminates scope for patronage and suggested that this principle should also apply to temporary staff.
- **Dr. A. Ramaswami Mudaliar Committee Report**, 1956, on Public Services (Qualifications for Recruitment) recommended that a University degree should be the minimum qualification for recruitment into the higher services whereas for secretarial and ministerial services a University degree need not be insisted upon. This Committee also recommended that the age limit for the highest executive and administrative services should be kept between 21-23 years.
- The Krishnamachari Committee Report (Report on Indian and State Administrative Services and Problems of District Administration by V.T. Krishnamachari, 1962) analysed the recruitments to Class I and Class II services in the State Governments and recommended that recruitments should be made annually.
  - The first ARC emphasized the importance of proper personnel planning and cadre management. It recommended that recruitment to the IAS/IFS and other non-technical Class I services should be made only through a single competitive examination. It also recommended that the upper age limit for taking the civil services competitive examinations should be raised to 26 years. The First ARC further recommended that direct recruitment to Class II posts of Section Officers should be stopped and these posts may be filled by promotion of Assistants. The Commission also suggested that recruitment to clerical and other secretarial posts should be conducted through simple objective tests. The Commission recommended constitution of Recruitment Boards for appointment of Class III and Class IV employees.
  - The D.S. Kothari Committee Report on Recruitment Policy and Selection Methods, 1976, inter alia recommended a major change in the examination system. They recommended a two stage examination process – a preliminary examination followed by a main examination.

This Committee also suggested changes in the training pattern for the civil services.

- The Fifth Central Pay Commission suggested that employment on contract basis should be encouraged and Government employees should have the right to retain their lien for two years in case they wish to migrate to the private sector.
- The Civil Services Examination Review Committee, 2001 (chaired by Professor Yoginder K. Alagh) recommended major changes in the structure of the examination system for recruitment to the civil services. It favoured testing the candidates in a common subject rather than on optional subjects.
- The Committee on Civil Service Reforms (Hota Committee Report, 2004) made recommendations, inter alia, on recruitment and recommended that the age for entrants to the higher civil services should be between 21-24 years with a five years' age concession for members of the Scheduled Castes/Scheduled Tribes and three years' for the Other Backward Classes. The Hota Committee also recommended that aptitude and leadership tests may be introduced for selection, and that probationers may be allowed one month's time after commencement of training to exercise their option for Services.

### Training

While a number of Committees have emphasised the importance of training – both induction and in-service, some of the major recommendations are given below:

- The Report on Public Administration by A.D. Gorwala (1951) highlighted the fact that in order to have suitable personnel to staff the public services, it is essential that there is proper recruitment and training and an adequate organization and methods set-up. It also recommended an induction training to equip a civil servant with the necessary knowledge and skills to perform his/her duties followed by trainings at designated intervals to refresh his/her knowledge, keep him in touch with new developments and his/her mind active, supple and receptive. The Committee recommended the appointment of a Director of Training to closely monitor all aspects of training.
- The Report on Indian and State Administrative Services and Problems of District Administration by V.T. Krishnamachari (1962) emphasised

that State Civil Service officers should also undergo a structured training similar to that for IAS officers. It also recommended establishment of training institutes in States with the help of the National Academy of Administration.

- The First ARC emphasized that the training should prepare the individual civil servant not only for performing his/her present job, but also for shouldering higher responsibilities and meeting the new and complex challenges in the future. The ARC recommended the formulation of a national policy on civil services training. It also recommended the creation of the Central Training Division in the Department of Personnel. The Commission further recommended changes in the contents of the foundation courses at the National Academy of Administration.
- The Committee to Review In-Service Training of IAS officers, (Yugandhar Committee, 2003) examined the efficacy of the in-service training of IAS officers and subsequently made several recommendations to further strengthen and improve these. Its recommendations, inter alia, included the need for three mid-career training programmes in the 12th, 20th and 28th years of service. The training programme in the 12th year of civil service should be for a minimum duration of 8 weeks consisting of 5 weeks of academic content and 3 weeks of study, training and exposure visits to study best practices in India and abroad. The training programme in the 20th year of service should be for a duration of 12 weeks. The duration of training in the 28th year of service was not specified. Trainings at these 3 stages was suggested as there is a "major shift" in the nature of work of the officer, at these stages of their career.

### Domain Expertise

- The first ARC had set out its philosophy on domain expertise as follows:
  - Devising a rational basis to fill policy-making positions with those possessing required qualifications and competence. This would involve an optimum use of different Services for secretariat assignments as also the adoption of special measures to build necessary specializations in the secretariat.

- Selecting senior management personnel from all relevant sources – generalist and specialist. For the purpose, talent should be identified and nurtured in all the services, specially among those who have not so far been inducted into the higher management positions in the secretariat.
- Providing greater opportunities to talented personnel to move to higher positions in the civil services on the basis of competence and performance. the ARC recommended eight broad areas of specialization:
  1. Economic Administration
  2. Industrial Administration
  3. Agricultural and Rural Development Administration
  4. Social and Educational Administration
  5. Personnel Administration
  6. Financial Administration
  7. Defence Administration and Internal Security
  8. Planning
- The Report of the Group constituted to Review the System of Performance Appraisal, Promotion, Empanelment and Placement for the All India Services and other Group 'A' Services (Surinder Nath Committee Report, 2003) suggested that assigning particular domains to the officers should be a key step for their selection to the Central Staffing Scheme posts. The Group suggested the following 11 domains:
  1. Agriculture and Rural Development
  2. Social Sectors (Education, Health, Tribal Welfare, etc.)
  3. Culture and Information
  4. Natural Resources Management including Environment (green side)
  5. Energy and Environment (brown side)
  6. Communication Systems and Connectivity Infrastructure
  7. Public Finance and Finance Management
  8. Industry and Trade
  9. Domestic Affairs and Defence
  10. Housing and Urban Affairs
  11. Personnel and General Administration

The Committee suggested that officers may be assigned to a maximum of three domains out of the eleven listed. The assignment of domains may be a part of the empanelment process at JS/AS levels which would identify offi

cers for posting to the Government of India at levels of JS and above. Officers due for consideration for empanelment may submit a write-up summarising their experience, academic background, training courses undergone, research accomplishments, recognitions relevant to the domain areas, and significant achievements during their career relevant to their areas. These write-ups may be scrutinised by the Empanelment Committee. The output of the empanelment process would be a list of officers found suitable for selection to specific positions under the Central Staffing Scheme, together with their domain assignments.

The Committee also suggested that for the empanelment process, individual batches may be taken up sequentially along with those from the previous batches who are due for review. Thus, there would be a fresh batch to be considered each year and some review batches. Cases of such officers who are not empanelled when their batch is taken up for consideration on the first occasion, may be reviewed twice.

- The Hota Committee on Civil Services Reforms, 2004, had recommended that domain assignment should be introduced for civil servants to encourage acquisition of skills, professional excellence and career planning. It had also recommended that empanelment and posting of Joint Secretaries, Additional Secretaries and Secretaries should be carried out through domain assignment, competitive selection and matching of available skills with the job requirements.

### Efficiency

There has been a succession of Committees that were asked to recommend measures for increasing the efficiency of the civil services.

- The Secretariat Reorganization Committee (1947), under the chairmanship of Sir Girija Shankar Bajpai examined the functions of the existing departments of Government of India with reference to relative priority and necessity of their activities and made recommendations about how these activities were to be undertaken by the Union Government with the available personnel.
- In 1949, the Gopalswami Ayyangar Committee while recommending restructuring of the Central Secretariat, suggested that a Department should be identified with a Secretary's charge and a Ministry should be identified with a Minister's charge. It also recommended the abolition of the separate grade of Additional Secretary. For better coordination of

policy and planning, the Committee suggested grouping of the Departments dealing with economic and social services into four bureaus. It also recommended the creation of an Organization and Methods machinery.

- A.D. Gorwala, in his two reports to the Planning Commission in 1951, recommended that there should be greater understanding between Ministers and civil servants. More concretely, Gorwala asked for an Organization and Methods (O&M) machinery and Whitley Councils.
- The Appleby Report (1953) also contained recommendations relating to the establishment of O&M machinery and an Institute of Public Administration. These two recommendations were implemented by Government.
  - The various Reports of the first ARC underscored the significance of an efficient administrative system. Some of the recommendations to enhance efficiency included, suitable awards such as rolling cup/shield to be given as incentives for timely completion of specific projects, cash rewards for valuable suggestions given for simplification of work that led to economies in expenditure and increased efficiency, establishing work norms and examining staff strength on the basis of studies by Staff Inspection Units.
  - The Fifth Central Pay Commission (2000) stressed upon the need to optimise the size of the government machinery.
  - The Expenditure Reforms Commission (2001) emphasised on a drastic downsizing of the government staff strength for securing modern and professional governance and also reducing the increasing salary bill of the Government of India.
  - The Committee on Civil Services Reforms (Hota Committee, 2004) emphasised the use of information and communication technologies (ICT) to transform Government by making it more accessible, effective and accountable. It stressed on the need to recognise that e-governance is about discarding old procedures and transforming the process of decision making and that technology is merely a tool and a catalyst for such transformations.

### Accountability

- The Committee on Prevention of Corruption (Santhanam Committee) made a range of recommendations to fight the menace of corruption. It

recommended the constitution of the Central Vigilance Commission, and administrative vigilance divisions in all Departments and major organizations of the Government. The Committee suggested rules to be framed for governing the conduct of civil servants. Some suggested changes in the

rules were filing of assets and liabilities statement instead of immovable property statement by government servants, rules regarding receipt of gifts and raising of contributions, and rules regarding dealing in stocks and speculations. Changes were also suggested in Art. 311 of the Constitution of India for conducting disciplinary proceedings against government servants. The Committee also suggested a systematic review of the laws, rules, procedures and practices of the Ministries so that the possible scope and modes of corruption may be identified and remedial measures prescribed. Changes in the Indian Penal Code were also suggested to strengthen anti corruption measures. Economic offences, evasion of taxes, profiteering, black-marketing, misappropriation of public properties, trafficking in licences and misuse of position by a public servant in making contracts and issuing licenses etc, it was suggested, should find a prominent place in the general criminal law of the country. It was also suggested that the Law Commission should further look into these issues. The definition of public servant was recommended to be widened under the IPC to include Ministers, employees of PSUs etc. It was also recommended that offering of bribes should be made a substantive offence. The Committee further suggested that on completing 25 years of service or 50 years of age, a government servant may be retired without prescribing any reason, if the government thinks it fit. This was subsequently incorporated in Rule 56(j) of the Fundamental Rules.

- The first ARC recommended that the departments and organizations which were in direct charge of development programmes should introduce performance budgeting. The ARC also recommended the establishment of two special institutions, the Lok Pal to deal with complaints against the administrative acts of Ministers and Secretaries to the government at the Centre and the Lok Ayuktas to deal with such complaints in States.
- The Hota Committee recommended that Sections 13 (1) (d) and 19 of the Prevention of Corruption Act and Section 197 of the Code of Criminal Procedure may be amended to protect honest civil servants

from malicious prosecution and harassment. It also recommended that a Code of Ethics should be drawn up for civil servants incorporating the core values of integrity, merit and excellence in public service. Another recommendation of the Hota Committee was that each department should lay down and benchmark services to be delivered, methods of grievance redressal and public evaluation of performance. It also recommended that a Model Code of Governance should be drawn up benchmarking the standards of governance to be made available to the citizens. It further recommended that an annual State of Governance Report, benchmarking the performance levels of each State/department/Ministry should be brought out.

### **Performance Appraisal**

The first ARC had recommended several changes in the performance appraisal system as indicated below.

- The term 'performance record' should be used instead of 'confidential report'.
- At the end of the assessment year, the civil servant should furnish an account of the work done by him/her during the year, to his/her reporting officer and this account should form a part of the performance record. The reporting officer should take note of this account while grading the civil servant.
- Grading in the performance report should consist of three categories: (a) fit for promotion out of turn, (b) fit for promotion, and (c) not yet fit for promotion. The category 'unfit for promotion' should be scrapped.
- Only 5 to 10 per cent of the civil-servants engaged in work of a similar nature and at the same level in any organization, should be given the grade "fit for promotion out of turn".
- Adverse remarks should not be communicated to the civil servant. When adverse remarks are recorded, the reviewing officer should, after discussing them with the reporting officer, and, if necessary, with the officer reported upon, either confirm the remarks or suitably modify them.

The Fifth Central Pay Commission was of the view that the ACR format should follow the rating system based on a 10 point scale as in the Armed Forces. It was also recommended that the final grading in the ACR should be communicated to the employee.

The **Pay Commission** also recommended a quinquennial appraisal of Group A officers, so that a full picture of their personality emerges after every five years. It recommended restoration of the Annual Confidential Report for Group D cadres.

The Report of the Group constituted to review the system of Performance Appraisal, Promotion, Empanelment and Placement of the AIS and Other Services (**Surinder Nath Committee, 2003**) recommended that –

- Performance appraisal should be primarily used for the overall development of an officer and for his/her placement in an area where his/her abilities and potential can be best used.
- The agency assigned the responsibility of monitoring the timely writing of annual performance reports should put in place a computerized system for more effective monitoring.
- The entire performance record including the overall grade should be disclosed to the officer reported upon. In case the appraisee submits any comments, it would be open to the reporting and reviewing officers to accept the comments and modify the performance report accordingly. In case they do not accept the representation of the appraisee, the report may be placed before a designated referral board that would consider the matter and make changes if required including the overall grading.
- As yet, there is no established modality for evaluation of an officer's performance by peers, subordinates and clients. It would be useful to supplement the formal performance appraisal regime with an institutionalised means of ascertaining the reputation of civil servants consistent with our culture and ethos.
- Only those who can demonstrate a credible record of actual performance and possess the necessary knowledge and skills required for higher responsibilities should be promoted. Promotion norms should be stringent and the process of promotion based on merit and competition rather than a simple attainment of a priori benchmarks. Officers must be evaluated not only on the basis of their performance in the lower positions but also in respect of their level of preparation by way of acquiring the necessary skills and knowledge for the higher level positions.
- There is no benefit in retaining officers who lack demonstrated competence, or who are unqualified, or of doubtful moral or financial integrity or who are in unacceptably poor health. It is important that an effective system of screening with the following norms may be adopted for identifying the officers to be screened out:

An officer who has failed to make it to the select list for promotion to the next higher grade three times.

An officer who has encountered three proceedings resulting from vigilance enquiries or criminal proceedings in respect of alleged lapses of moral or financial integrity in the course of his/her career, even if the officer is cleared on completion of proceedings in each of these, may be screened out for lack of moral or financial integrity.

An officer who has failed three times to qualify in the requisite career courses for his/her next promotion.

An officer who is permanently medically unfit to perform the normal duties of the service as revealed from the biennial medical examination.

The Hota Committee on Civil Services Reforms, 2004, recommended replacing the ACR with a system of performance assessment in which greater emphasis is placed on objective assessment against agreed work plans.

### **STRUCTURE OF CIVIL SERVICES IN INDIA :**

**The civil services in India** can be grouped into three broad categories:

- 1) Services whose members serve both the Union and the State Governments are termed as All India Services.
- 2) Services whose members serve only the Union Government are termed Central Civil Services.
- 3) State Civil Services

The posts in the Union and the State Governments are hierarchically arranged into four Groups – Group A to Group D.

The Central Civil Services administer subjects like Posts & Telegraphs, Railways, Customs and Central Excise, Income Tax, Telecommunication etc. A list of the organized Group 'A' Central Services is at Table 4.1.

There are three All-India Services which are all Group 'A' Services, namely, the Indian Administrative Service, Indian Police Service and Indian Forest Service. These are common to the Union and the States. The Constitution, in Article 312, originally mentioned only two Services as belonging to the category of All-India Services, namely, the Indian Administrative Service and

the Indian Police Service. Subsequently, the Indian Forest Service was also constituted as an All India Service. The Constitution (Forty-second Amendment) Act, 1976 made provisions for constituting an all India Judicial Service, which has not yet been formed.

### Need for Reforms

The Prime Minister Dr. Manmohan Singh, recently summed up the achievements of the Civil Services in India in the following words:

"If we look back at the history of modern administration in India, we can take justifiable pride in what has been achieved. The civil service has contributed positively to the functioning of our vibrant democracy, our plural society and polity and our growing economy. In our quest to build a modern nation, absorbing the best from the outside world, epitomizing Gandhiji's vision of an inclusive society, the civil services have played an admirable role."

An assessment report of the World Bank says, "The civil service in India, the legendary 'steel frame' of the British Raj is today battling against onslaughts to its relevance. The strengths of the civil service in India lies in its extraordinary pool of skills and talents, its field experience, its extensive networking, its appreciation and overview of the functioning of the government at the cutting edge, its understanding of delivery systems for development, awareness of the formal and informal socio-economic networks in the field, its 'can deliver' attitude, its role in national integration, its ready adaptability to new and unfamiliar situation and tasks, and its social orientation, bolstered by intense competition among the officers."

It is widely recognised that the civil services have contributed to stability in terms of maintenance of peace, the conduct of fair elections, managing disasters and the preservation of the unity of the nation. There is no denying the fact that the civil service has played an important role in preserving unity, providing stability and maintaining order in a vast country prone to various conflicts – ethnic, communal, regional etc.

- Nonetheless there are concerns about the performance of the civil service in the context of realising a results-oriented government. It has been pointed out that the Civil Service in India is more concerned with the internal processes than with results. The systemic rigidities, needless complexities and over-centralization in the policy and

management structures within which the civil service functions are too complex and often too constraining. The structures are based on hierarchies and there are a large number of veto points to be negotiated for a decision to eventually emerge. To compound it, the size and the number of ministries and departments have both overloaded the decision-making system and diminished the capacities of the individual civil servants to fulfil their operational responsibilities.

- Civil servants in India are accountable to the Ministers in charge of the department, but in practice, the accountability is vague and of a generalised nature. Since there is no system of ex ante specification of accountability, the relationship between the minister and the civil servants is essentially issue-sensitive and civil servants deal with the ministers as the issues present themselves. The role of the senior civil servants is to advise the ministers

about the long-term social pay off of any proposed policies so that these are not determined by short-term political priorities. The accountability relationship can be anything from all pervasive to minimalistic and it is left to the incumbent minister to interpret it in a manner that is most convenient to him/her. This leads to either collusive relationship or to discord, both of which can adversely affect the Administration.

- Rapid and fundamental changes are taking place in the country in terms of rapid economic growth, urbanization, environmental degradation, technological change and increased local awareness and identity. The response time to adapt to these changes is much shorter than it used to be. As instruments of public service, civil servants have to be ready to manage such change. On the other hand, the perception is that they resist change as they are wedded to their privileges and prospects and thereby have become ends in themselves.

In the political field, the 73rd and 74th Amendments to the Constitution have brought about a major change. Rural and urban local governments have to be enabled to become institutions of self government. To bring this about, the existing system of administration at the district level has to undergo fundamental changes. Though sixteen years have passed, the progress remains very slow (vide Commission's Sixth Report) and local governments are 'local' only in 'form' but are 'central and state in content'.

- Far-reaching changes in the global economy, increased global interdependence and a sea change in the way governments function have made it all the more necessary to build a competent, well-functioning civil service. The telecommunications and computer revolution offer immense opportunities to bring about efficient delivery of services. Here also there is resistance to simplification of procedures which is a pre-requisite for introduction of e-governance. In short, if the civil services are to be relevant and competent to meet the current and emerging needs, nothing short of a mutation will be adequate.
- With the passage of time, the role of civil society organisations, in governance, has increased with demands for better governance. The same can be said of the private sector, which is increasingly providing services in several areas, which hitherto were the exclusive preserve of the public sector. Consequently, civil servants should view civil society organisations and the private sector as partners in the process of the country's governance. There is need to shift from pre-eminence of governance to effective governance with a focus on decentralization and citizen-centricity.
- The latest developments in the area of public administration such as the New Public Management in UK and reinventing-the-state emphasize the importance of measuring result and highlight the outputs and outcomes rather than inputs and processes. They focus on the benefits derived from the use of government funds and seek to establish a framework in which it can be ascertained what quantifiable outcomes have been achieved. Under the circumstances, data-driven performance assessment against ex ante specification of performance, needs to be the main basis for the performance assessment of civil servants.
- Based on the need to reform the civil services as highlighted in the foregoing paragraphs, the Commission has examined different aspects of civil services in India. Following the core principles of reforms as enunciated in Chapter 1, the Commission has analysed the recruitment process, the training regime, placement mechanisms, performance management systems, issues regarding accountability etc and made concrete recommendations in the following chapters.

#### An Agenda for Reforms/ Reform Areas in Civil Services:

##### W.r.t. SECOND ARC RECOMMENDATIONS

Only for nagendrarajput9753@gmail.com

- Recruitment and Age of Entry
- Training
- Tenure
- Domain Competency
- Fostering Competition for Appointment to Senior Executive Positions
- Performance Management System
- Exit Mechanisms
- Clarity of Purpose and Task
- A Results-Oriented Civil Service
- Accountability for Results
- Code of Ethics
- Civil Services Law

## **RECRUITMENT:**

The Commission has deliberated on various issues involving recruitment into the civil services through the Civil Services Examination (CSE). The concluding deliberations have centred around the following issues:

### **i. Stage of entry into the civil services**

#### **Recommendations**

- a. Government of India should establish National Institutes of Public Administration to run Bachelor's Degree courses in public administration/governance/management. In the long run it is expected that these specialized centres of excellence (National Institutes of Public Administration) would evolve as major sources of civil services aspirants.
- b. Selected Central and other Universities should also be assisted to offer such graduate level programmes in public administration/governance/public management which will produce graduates to further expand the pool of eligible applicants to the civil services.
- c. The courses offered in these universities should include core subjects such

as the Constitution of India, Indian legal system, administrative law, Indian economy, Indian polity, Indian history and culture apart from optional subjects.

d. Graduates of the above mentioned special courses from the National Institutes of Public Administration and selected universities would be eligible for appearing in the Civil Services Examinations. Further, graduates in other disciplines would also be eligible to appear in the Civil Services Examination provided they complete a 'Bridge Course' in the core subjects mentioned above. The Bridge course should be run by the same selected national institutes/universities, which conduct the graduate level courses stated in (c) above.

e. Liberal need-based scholarships should be provided to students admitted to the Institutes/Universities.

f. An 'Expert Committee' should be appointed immediately by the Government in consultation with UPSC to develop the curricula and determine the admission policy to these selected institutes/universities. This Committee should inter alia have the following terms of reference:

- i. Lay down norms for identification universities and institutes where the said courses would be conducted.
- ii. Design the content of the curricula for the said courses in public administration.
- iii. Prescribe the modalities for admission to these courses.
- iv. Prescribe the modalities and design of the bridge courses.

The Commission strongly recommends that the Expert Committee be appointed straightway so that the new courses could be started in some of these institutions/universities from the coming academic year. The Commission also feels that the bridge courses and their effectiveness should be reviewed based on the experience of five years.

g. Since this is a major reform relating to an important area of governance and will need coordinated guidance, especially in the initial years, a high-level oversight/coordination committee with the Prime Minister as Chairman may be constituted to meet once in three months and give guidance to the implementing agencies and concerned institutions.

h. The reforms to the scheme of the examination system as recommended in paragraph 5.5 may be taken up immediately. Examination and Recruitment reforms following the introduction of public administration/governance management as a full-fledged degree course in National Institutes of Public Administration and selected universities would take some time to be operationalised. Till then, the existing system, where students from all disciplines can appear for the competitive examinations, may continue.

i. Students who have acquired a graduation degree in the above-mentioned course would have option to join any other career of their choice either in the public or private sector.

### **ii. Age of entry and number of attempts:**

Recommendations

a. The permissible age for appearing in the Civil Services Examination should be 21 to 25 years for general candidates, 21 to 28 years for candidates from OBC and 21 to 29 years for candidates from SC/ST as also for those who are physically challenged.

b. The number of permissible attempts in the Civil Services Examination should be 3, 5, 6 and 6 respectively for general candidates, candidates from OBC, candidates from SC/ST and physically challenged candidates respectively.

c. The present cut-off date for determining the eligibility in terms of age (i.e. 1st of August in the year of the examination) may continue.

### **iii. Structure of the civil services examination**

Recommendations

a. Structure of Examination: Either of the following two models may be adopted for compressing the examination cycle.

i. The Preliminary and Main Examinations for the Civil Services Examination would be conducted together on two to three consecutive days. Evaluation of papers for the Main Examination should be done

in case of only those candidates who have secured a threshold level of marks in the Preliminary Examination. The personality test would follow thereafter.

OR

ii. Based on the results of the Preliminary Examination, candidates eligible for taking the main examination and the personality test would be short listed in accordance with their rankings. Only these short-listed candidates would be eligible for appearing in the Main Examination, which would be conducted within two months of the Preliminary Examination. The short list would be limited to about two to three times of the number of vacancies available. Thus it would be possible to start the Personality Test and the Main Examination almost simultaneously.

b. Content:

i. The Preliminary Examination should consist of an objective type test having one or two papers on general studies including the Constitution of India, the Indian legal system, Indian economy, polity, history and culture. There should be no optional subjects.

ii. The Main Examination should consist of two papers only in the compulsory subjects. These compulsory subjects may include Constitution of India, Indian legal system, Indian economy, polity, history and culture etc. The question papers should be of the conventional descriptive type. Besides, there should be a separate essay paper as a part of the Main Examination.

c. Steps may be taken by DOPT in consultation with the UPSC to finalise the syllabi of compulsory subjects for both the preliminary and main examination, for the recruitment cycle 2010

#### **iv. Other modes of induction into the civil services**

##### **Recommendations**

a. The induction of officers of the State Civil Services into the IAS should be done by the UPSC on the basis of a common examination.

b. UPSC should conduct such an examination annually for officers from the State Civil Services who have completed 8 to 10 years of service in Grade 'A' posts. The eligibility criteria should also include norms such as an upper age limit of 40 years etc. On the basis of this examination, the UPSC should provide the State Governments with an eligibility list. The State Governments should fill up their quota for promotion to the IAS on the basis of this eligibility list. A maximum of two attempts should be allowed to an eligible candidate for taking this examination. To ensure that the existing officers in the State Civil Services are not denied adequate opportunities, the examination in the next two years may be conducted for all such eligible officers and the upper age limit of 40 years may be

c. The mechanism mentioned above should also be applied in case of induction into other All India Services at the State level.

d. Induction by way of promotion into Group 'A' Central Services should, in addition to consideration of ACRs, also be done through conduct of examination on the basis of the criteria as mentioned above. The nature of the examination, ratio of posts to be filled by promotion etc. should be decided by the concerned departments in consultation with the UPSC.

### UPSC:-

#### **Role and Functions**

The first Public Service Commission was set up on October 1st, 1926 by the British Indian Government in response to the demands of the Indian leaders. The scope of this Commission was further widened under the Government of India Act, 1935 and the Commission was named the Federal Public Service Commission. After Independence, a constitutional status was accorded to it and it was called the Union Public Service Commission. The Union Public Service Commission has been entrusted with the following duties and role under the Constitution:

1. Recruitment to services & posts under the Union through conduct of competitive examinations;
2. Recruitment to services & posts under the Central Government by Selection

through Interviews;

3. Advising on the suitability of officers for appointment on promotion as well as transfer-on-deputation;
4. Advising the Government on all matters relating to methods of Recruitment to various services and posts;
5. Disciplinary cases relating to different civil services; and
6. Miscellaneous matters relating to grant of extraordinary pensions, reimbursement of legal expenses etc.

Thus broadly the functions of the UPSC could be categorized as follows:

a. Recruitment

Article 320(1) of the Constitution provides:

"It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively"

According to Article 320(3)(a) of the Constitution:

"The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted –

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

b. Promotions

c. Disciplinary matters

Article 320 (3) (c) of the Constitution provides:

"The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted –

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters."

d. Miscellaneous matters

Recommendations:

- a. Promotion of officers through Departmental Promotion Committees (DPC), upto the level of Selection Grade may be delegated to the concerned Departments. The UPSC should supervise the functioning of these DPCs through periodic reviews, audit etc.
- b. In the case of disciplinary proceedings, consultation with the UPSC should be mandatory only in cases involving likely dismissal or removal of a government servant.

## CAPACITY BUILDING

### **6.4 Weaknesses in the Present Training System:**

6.4.1 Even though the Government of India as well as State Governments have given importance to training and the need to institutionalize these through setting up of training institutions at various levels, there remain basic shortcomings-cutting across all services and at all levels-that need to be addressed.

6.4.2 While the induction training for Group 'A' officers, especially the IAS, was well structured and conceptualized, several weaknesses have crept in over the years. In particular, one weakness that has been highlighted on several occasions relates to the value attached to the Foundation Course. Officers selected to the IAS, or the Indian Foreign Service undertake the Foundation Course at the appropriate phase of their overall training. However, officers selected for other services tend to seek leave for writing the Civil Service Examination again, and therefore, undergo the Foundation Course at the fag end of their two-years training. In some cases, officers are even exempted from undergoing the Foundation Course. In fact, the technical services do not have to undergo this course. Some services also do not consider attending the Foundation Training to be mandatory while others require attendance but attach no value to the officers' performance in the training. This greatly devalues the crucial induction training mechanism.

6.4.3 The induction training – for IAS officers- has a major shortcoming; it tends to focus predominantly on the district and sub-divisional assignment that an IAS officer is likely to hold in the initial years of his/her career but does not adequately take into account the need for development of domain expertise and knowledge of various sectors of government nor is it responsive to the officer's individual interests and academic qualifications. This

training has also been criticized for being outdated and reflecting a relatively archaic mindset by not being in tune with the nature of the job performed in the present-day context. The design and contents of this programme have been recently reviewed in great depth by the Aiyyar Committee and these need to be examined and implemented. Unfortunately, information on a similar review for the other services is not known.

6.4.4 An overarching weakness for all training programmes is the minimal value attached to training by many senior officers. Caught up in the compulsion of short-term needs as against the long-term objectives of an organization, immediate supervisors may tend to be guided by the compulsions of the immediate need and not spare their best officers for training. This implies that only "spareables" get trained and not the more important "good performers". Also, those who are appointed to train are frequently from the 'spareable' category and are not chosen on the basis of their ability, commitment and knowledge of training. A corollary to this has been that, often trainings are not taken seriously by the trainees. The Commission would also like to point out that only 203 weeks out of a 3336 years (11%) or longer career of a civil servant is likely to be spent on his/her training as is evident from the schematic depiction of a typical career training schedule for an IAS officer.

6.4.5 A revised system of mid-career training has been introduced for the IAS from 2007. This has been structured in line with the changing job profile of an officer and the need to develop competencies for different assignments at different levels of government. It has been stipulated that promotions would not be given if the training is not completed. However, there is no formal evaluation of performance of trainees even in these newly introduced programmes. These mid-term training courses of all durations continue to be rather generic and do not adequately cater to the need for inculcating greater domain knowledge in civil servants. Importantly, promotions continue to be based on an evaluation of how well an officer has been in performing the tasks assigned to him (through his/her ACRs) and his/ her performance in developing skills through training programmes or other academic pursuits is not given adequate importance. Initial feedback seems to suggest that there is a possible mis-match between the actual design of the programmes and their objectives. It is recommended that a quick review of these programmes be conducted so that any failure or shortcomings noticed in the first round of conducting them can be rectified.

6.4.6 Training efforts are largely focused on the senior civil services and very little goes into training the middle and lower levels of government. In fact, these levels are very important as they are the citizens' interface with government and the image of any government is made or marred by the way the patwari, the gramsevak, a police constable and the extension officer functions. It is these levels that also need a major motivation building initiative as they are the ones whose prospects of promotions and other forms of reward are limited. In this context, Box 7.2 which shows the impact of the training of such government servants in Gujarat and the training of Safai Karamcharis in Satara district, under a project of the Department of Personnel, is revealing. It shows the importance of such initiatives.(plz refer it)

6.4.7 The contents of these trainings also leave much to be desired. The conventional training programmes focus largely on enhancing professional skills and knowledge of civil servants. Other important aspects of training - helping the civil servant in understanding and analyzing the environment in which he/she operates and bringing about the desired attitudinal and behavioural change in civil servants - are often neglected. It has also been observed that the training programmes do not provide adequate emphasis on 'administrative law'. A large number of civil servants discharge quasi-judicial functions. Besides, with increasing accountability of civil servants and a large number of decisions of government facing judicial scrutiny, it is imperative that all civil servants are well acquainted with the laws and their application in general and administrative law in particular. Training programmes of civil servants at all levels must address this issue.

6.4.8 Apart from a few of the Group A Services, there is no structured mid-career training for many Group A Services. There is also no structured mid-career training for any of the Group B, C and D Services. A move has been made for introducing mid-career training for the CSS, but this is yet to be formally introduced. In the few cases that mid-career trainings do exist, it is not mandatory and performance in the training is not evaluated. Hence, such training is often not treated with the degree of seriousness it deserves. Even the relevance of the mid-career training of IAS officers, started in 1986 with laudable objectives, has, over the years, been considerably diluted, virtually converting these programmes into a routine activity. There were no penalties

for non-attendance and extremely low fees were paid to the training institutes, considering the current market rates.

6.4.9 Training programmes for the Civil Services are conducted in a large number of Government Training Institutions at the Union and the State level. In addition, a large number of academic institutions are also now undertaking mid-career training programmes. However, a high quality educational institution may not always turn out to be a high quality training facility for Civil Servants. This is because academic institutions are not always able to design training programmes with the right mix of theoretical and practical inputs that are relevant for the civil services.

6.4.10 The National Training Policy has laid down the road-map for strengthening and streamlining the training efforts of all the Ministries of Government of India, but in the absence of a monitoring mechanism, it has not been possible to evaluate the effectiveness of the National Training Policy. It is high time that monitoring is made an intrinsic part of the 'Training Policy'.

### A New Approach to Training Civil Servants

#### 6.6.1 General Principles

6.6.1.1 The Commission is of the view that, first and foremost, every government servant must undergo mandatory training at the induction stage and also periodically during his/her career. Successful completion of these trainings should be a minimum necessary condition for confirmation in service. Measures to evaluate performance in subsequent training must be put in place and taken into account in determining suitability for promotions and also for determining inter-se seniority. This has now become necessary for the following reasons:

- the environment in which officers have to work is, in comparison with the past, more demanding and complex and is also rapidly and constantly changing,
- there is all-pervasive demand for improved governance,
- a paradigm shift has occurred in the idea of governance, of what governments should do, and also how they should govern, and
- the reinforcing forces of globalization, urbanization, democratization, and the IT revolution are immutably altering the practice of governance.

6.6.1.2 Often issues like high costs and inability to spare an officer for a training course have been the reasons for officers not attending training programs. These should be strongly discouraged and, if necessary, be made a ground for imposing penalties. Training is far less expensive than the loss that could result from the decisions or inaction of an uninformed official. Similarly, as pointed out earlier, the duration of training is insignificant when compared to the length of service in the government. There may sometimes be practical problems in sparing an officer if he/she is required to leave a charge at short notice. To obviate such difficulties, notice for mandatory training should be given at least 6 months in advance. This would not only enable the employing department to plan interim arrangements but also enable the officer to mentally attune himself/herself for the learning opportunity. Major personal emergencies and unforeseen official contingencies aside; two successive failures to attend training programmes should debar the officer from future programmes and also his/her next promotion.

6.6.1.3 The quality of training is very important because poor quality of training could result in lack of interest of the trainees in the training itself. A number of factors are responsible for poor quality of training programmes. These include financial constraints because of which the best faculty is not utilized by the training institutes as also a mis-match between the expertise of the training institutes and the subject matter of the training programme entrusted to it. It has also been noted that prestigious institutes often do not take adequate interest in training programmes while relatively lesser known institutes impart better training both in terms of quality and content. It is, therefore, necessary that there should be an intensive evaluation of the quality of all training programmes and only those institutions that deliver best results should be utilized for training of civil servants.

6.6.1.4 The Commission would like to emphasize that training should seek to impart the knowledge, skills and aptitude necessary for performing their assigned jobs. Ideally, therefore, training should be designed separately for each person and for each job, by taking into account the needs of the job, the existing capabilities of the officer and thus identifying the gaps in his/her knowledge, skills and aptitude for performing the job. However, as this is not possible in a country of India's size, it is necessary to identify clusters of jobs, and participants and thus clusters of training. This will mean that a

series of "training needs analyses" will have to be carried out and training programmes designed accordingly.

6.6.1.5 The duration of each training programme will vary depending on the complexity and intensity of the inputs. It will also vary from service to service and for different levels. Therefore, it will not be possible here to suggest either the duration or the specific inputs required for each training programme. These are matters of detailed design and should be carried out as an independent exercise for each cluster of jobs/officers.

## 6.6.2 Induction Training

6.6.2.1 The objective of induction training is manifold. It seeks, firstly, to instill, in the new recruit the ethos of public service. Secondly, it seeks to facilitate an understanding of the structure of the government machinery and the role of its different components. Thirdly, it serves to impart the skills and knowledge necessary for performing a specific job.

6.6.2.2 The inputs for instilling the ethos of public service and explaining the structure of the government machinery, administrative law etc would be common for all Services, whereas the skills and knowledge required for the specific responsibilities of different Services would vary. This justifies the current practice of having a common Foundation Course for several Services and a separate Professional Course for each Service. The Commission is of the view that all services including technical Services which do not undergo the Foundation Course at present, should be included in the course. It would also be appropriate if this course could be conducted at a single institute like the LBSNAA. Infrastructure shortages if any, in the LBSNAA, will need to be made good to enable them to run an adequate number of Foundation Courses to cover all Group 'A' Service officers.

6.6.2.3 The current Foundation Course for the Group 'A' Services especially as reviewed by the Aiyyar Committee has been taken as a benchmark. A two-years duration for the professional training programmes of all Group A and All India Services also appears to be an appropriate period. Similarly, the duration for the Foundation and Professional programmes for the Group 'B', 'C' and 'D' needs to be fixed after taking their job requirements into account. This may be taken as an initial set of suggestions which could be modified as

part of the exercise to actually design programmes for each of these categories of civil servants.

6.6.2.4 Unfortunately, the contents of many professional programmes appear to be rather outdated and need to be reviewed to serve present-day needs. This exercise has already been carried out for the IAS by the Aiyyar Committee. Since the Aiyyar Committee has had very wide ranging consultations, fresh views on its recommendations are not being offered here. Any in-depth examination or review would best be done only after its recommendations are implemented for a few years. Accordingly, it is suggested that the Foundation Course, as recommended by the Aiyyar Committee, be applied to all Group 'A' Services. The professional program for the I.A.S. may also be implemented as recommended by the Aiyyar Committee. In addition, the district training, for IAS officers should include an on-the-job training in one field of his/her choice for a period of one month so that the element of domain specialization linked to the officer's own interest and qualifications is initiated at a nascent stage of his/her career. It is also recommended that for the other Services, Committees may be set up to review the current programmes, through wide ranging consultations with all stake-holders and not merely from inputs from members of the Service. Views of potential clients and those who require the services offered by such officers should receive due importance.

### 6.6.3 Mid-career Training

6.6.3.1 The objective of mid-career training should be two-fold; firstly, to update the knowledge base of the participant in the context of today's rapidly changing environment, and secondly to develop competencies for changes in the job profile, as would happen when a promotion takes place. Mid-career programmes can also serve as a medium for enhancing formal qualifications, thereby creating greater confidence in an officer. Therefore a good mid-career training must serve the following needs:

- Provide an opportunity for updating one's knowledge and skills base, especially at a time of rapid change.
- Provide an opportunity to learn the skills essential for higher positions, as an officer goes up in the hierarchy and faces a change in his/her job profile.
- Provide an opportunity to acquire basic knowledge of a new sector to which an officer may be assigned.

6.6.3.2 In this context, the Commission has considered proposals to assign areas of specialization or domains to officers (paragraph 8.4). This would imply that officers can be considered for different assignments only on the basis of the domains assigned to them. This would require that mid career learning opportunities relevant to the domain should be available for officers both before and after promotion to the SAG level. The requirement before such promotion is to enable an officer to acquire professional capability at an early stage itself in the expectation that in most cases the domain sought will be assigned. The requirement after the selection is primarily to enable continuous learning and updating of domain relevant knowledge.

6.6.3.3 Competencies required from civil servants in the IAS and other general Services can, therefore, be classified into two categories. One is the domain knowledge, i.e., knowledge of the sector in which the officer functions. For example, officers working in the area of petroleum and natural gas must have an understanding of the petroleum sector while those working in the area of rural development must have in-depth knowledge of agriculture and poverty etc. Similarly, officers working in the area of international trade would require an understanding of the international trading regime etc. In the second category would fall the specific skills required by an officer for carrying out his/her functions and responsibilities based on his/her position in the official hierarchy. For example, the function of officers at the lower end of the hierarchy includes more of implementation responsibility while those at the mid-level would need skills to perform managerial and supervisory tasks of monitoring and programme formulation. Officers at the higher levels perform policy oriented functions and would need to develop skills related to these functions.

6.6.3.4 It would, therefore, be appropriate if a mid career training is conducted a little before a promotion becomes due. Such a programme would, then, serve three purposes:

1. Help in updating the knowledge base of an officer
2. Develop competencies for the new job profile
3. Test the presence of attributes required for the promoted post and thereby help assess suitability for promotion

6.6.3.5 The design of the mid-career programmes would again depend on the nature of the Service and the extent of inputs required to be given. It is not possible, in this Report, to suggest the requirements for each Service or even

each category of Service. As an example, it is recognized that in the case of the IAS there is a clear change in the job profile as one goes up in the hierarchy. Over the first 10-11 years, officers largely function in field positions, interspersed by some postings in the State Secretariat or in the offices of heads of departments.

However, after completing about 12-13 years of service, officers enter the second phase of their careers which largely involve postings in the State Secretariat or as heads of field agencies under development departments. In the State Secretariat they hold middle level posts and primarily support policy formulation and implementation. Monitoring and evaluation as well as project appraisal are also important functions performed by them. As heads of departments they are primarily concerned with formulating and managing development programmes across the State. On completion of 17-18 years of service, they enter the third phase of their careers when they are largely posted in the State or Central Secretariat. Their responsibilities at this level are primarily policy formulation in focused sectors and overseeing the implementation of such policies. Finally, after about 28-30 years of service, they enter the last phase of their career when they hold top posts in the State/Union Government and are largely concerned with inter-sectoral policy formulation and larger system management responsibilities. Except during the first phase of 10-11 years, officers can also head or hold senior management positions in corporate entities owned or substantially controlled by the State or the Union Government.

**6.6.3.6** During all phases of their career, officers are called upon to display sound qualities of leadership and human resource management. Concern for the citizen is a key requirement in all the activities they undertake. Hence, the mid-career training programme introduced in 2007 has been designed with this career profile in mind.

**6.6.3.7** In this context it is important to recognize that in the present-day context, it is important for all officers occupying managerial and senior positions to have an exposure to global developments. It is for this reason that an international exposure visit has been included in the mid-career programmes for the IAS. This should be a feature of all midcareer programmes of Group A services and at least one of the mid-career Programmes for Group B services. However, these international visits should primarily be exposure visits and not be confined to academic classroom

sessions in an Institute.

6.6.3.8 Mid-career training programmes should include a balanced mix of both short-term and long-term courses. The short-term programmes should be mandatory and should serve the twin purpose of upgrading the knowledge of the officer and also assessing whether he/she has the qualities and potential to undertake higher professional responsibilities. Each officer/official should be evaluated on completion of training programmes. This evaluation, coupled with the officer's ACR assessment, should be the criteria for his/her selection for the long-term training programme. Apart from the existing generic short-term training courses, there should also be some sector-specific training courses which can facilitate the development of domain expertise in civil servants. It would be necessary to identify suitable training institutions with a diverse range of outstanding faculty, including those invited on a guest basis for the long-term training courses.

6.6.3.9 On the lines of assignment of domains to members of organized Group A Services, assignment of domains may also be done for members of the CSS and the CSCS, who function in a wide variety of sectors. In all such cases it will be necessary to ensure that domain specific learning opportunities as well as structured training programs are available for those assigned to a domain. While structured training could be available at two or three points in the career and serve the purpose of building job profile competence and knowledge, a continuous learning opportunity also has to be provided to ensure regular updating of knowledge. This can best be done through online courses that could be taken at an officer's convenience as well as a web-based library that would function as an in-house resource for all members of the public service. Such in-house learning opportunities are available in many international organizations of which the UNDP system is amongst the most sophisticated. There is a learning manager in each country office of the UNDP assigned with the responsibility of creating and promoting learning amongst the members of the staff of that office. This role has to be performed by a training manager in each Ministry, coordinated by the Training Division of the Department of Personnel/the concerned Ministry in the Government of India.

6.6.3.10 With the increased emphasis on updating professional knowledge and skills it is important that public servants are encouraged to acquire higher qualifications during their career. Members of Group A services should, for

example, be encouraged to acquire Masters degree in Public Policy/Public Administration preferably before they reach the level of Joint Secretary. This would be useful since they have to function in an assigned domain where the expectation is of greater professionalism and conceptual understanding. For the same reasons the practice of civil servants writing papers for reputed journals needs to be encouraged.

**6.6.3.11 Stress Management:** Working in government could create mental and emotional stress on government servants like in any other job. Each person develops his/her own way to respond to stress created by his/her job. These responses are generally in the form of anxiety, withdrawal, lack of interest in work, violent reaction etc. Thus stress is not only harmful to the individual it also reduces his/her efficiency which reflects in poor performance. However, years of research has helped in evolution of good stress management techniques which help a person to cope with stress created by work. Stress management modules have now become a regular component of training in the corporate sector. The Commission is of the view that all training programmes especially the mid-career ones should include a module on stress management.

## 6.7 Institutional Arrangements

- Head of the Institute and Faculty
- Funding
- Academic Content
- Oversight
- Centre to Promote Good Governance Practices

### **2<sup>nd</sup> ARC Recommendations :**

- a. Every government servant should undergo a mandatory training at the induction stage and also periodically during his/her career. Successful completion of these trainings should be a minimum necessary condition for confirmation in service and subsequent promotions. Mandatory induction trainings should be prescribed for Group D staff also before they are assigned postings.
- b. A monitoring mechanism should be set up for overseeing the implementation of the National Training Policy (1996).

- c. The practice of having a 'Common Foundation-Course' for all Group 'A' Services – generalist, specialized and technical, should continue. For Group 'B' and 'C' Services, the Institute of Secretarial Training and Management (ISTM) may be developed as the nodal agency for design and delivery of common Foundation Courses.
- d. All civil servants should undergo mandatory training before each promotion and each officer/official should be evaluated after each training programme. Successful completion of the training programmes should be made mandatory for promotions.
- e. The objective of mid-career training should be to develop domain knowledge and competence required for the changing job profile of the officer. To this end, mid career learning opportunities relevant to specific domains or specializations should be made available for officers.
- f. Public servants should be encouraged to obtain higher academic qualifications and to write papers for reputed and authoritative journals.
- g. A strong network of training institutions at the Union and State levels needs to be built up to cater to the training requirements of civil servants. However, instead of spreading resources over a large number of institutions, a few institutions should be identified for capacity-building and upgradation.
- h. The composition of governing bodies of the national training institutions such as the LBSNAA, SVPNPA, IGNFA and also the State Administrative Training Institutes should be broadened by inducting eminent experts. The governing bodies should be adequately empowered to enable them to discharge their functions efficiently.
- i. A national institute of good governance may be set up by upgrading one of the existing national/state institutes. This institute would identify, document, and disseminate best practices and also conduct training programmes.

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Summarized from page 1-150

## management

### Performance Management System

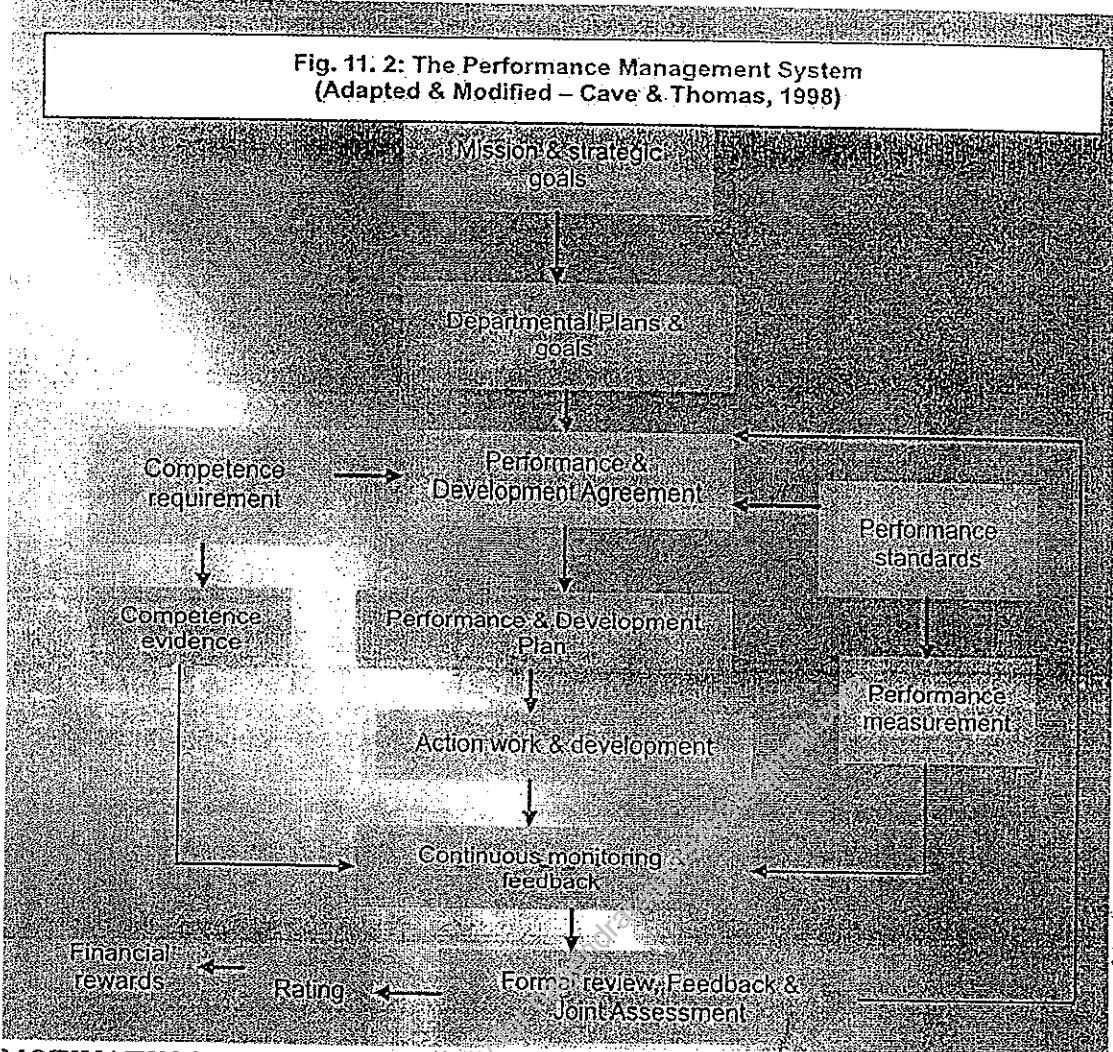
Table 11.1 Performance Appraisals vs. Performance Management <sup>95</sup>		
Characteristics	Performance Management	Performance Appraisal
Types of Objectives	Emphasis on integrating organizational, team & individual objectives	Individual objectives
Types of Performance Measures	Competency requirements as well as quantified measures	Qualitative & quantitative
Frequency	Continuous review with one or more formal reviews in a year	Annual appraisal
Rating System	Joint or participative process; ratings less common	Top-down systems with ratings
Reward Linkage	Does not have direct link to rewards	Often linked to pay
Ownership	Owned by line management	Owned by human resource department
Corporate Alignment	Integrated business driven system aimed at organizational & people development	Isolated system, not linked to organizational goals
Focus of Performance Reviews	Future focused	Focus on past performance
Questions Asked	What can be done to help employees perform as effectively as possible?	How well was the work done?
Emphasis	On ratings and evaluation	On performance planning, analysis, review, development and improvement
Monitoring & Designing	by the Personnel/Administration department	Designed by the Personnel/HR department but could be monitored by the respective departments themselves
Identification of Developmental Needs	At the end of the year	At the beginning of the year

### Processes of PMS

Performance management is a cyclical process which includes the following elements

- Planning work & setting expectations
- Monitoring performance
- Developing the capacity to perform

- Rating performance
- Rewarding good performance



## MOTIVATING CIVIL SERVANTS

Motivation comes through incentives. Contrary to popular perception that it is monetary incentives which matter the most, the fact is that academic theory as well as experience both in the Corporate sector and in Government, indicates that it is the non-monetary incentives which are the key factors in motivating employees especially in the context of Government.

The common perception is that the incentive structure in government is too weak and inadequate to motivate better performance. Even the tool of promotion is not always used for motivation, as the principle of seniority is generally followed rather than competence and performance. Sixth Central Pay Commission observed as follows: "Government employees are generally

de-motivated, with poor self perception reflected in low morale and low performance. This is notwithstanding the fact that at recruitment stage, through competitive procedures, the best quality is available to the Central Government at all levels. The problem, therefore, lies in retaining this excellence through designing motivating jobs with greater responsibility, accountability and recognition of merit."

#### Factors affecting motivation of civil servants

Sixth Central Pay Commission has broadly categorized the benefits a public servant gets by virtue of his/her being in public service, into two broad categories - 'transactional benefits' and 'relational benefits'. Transactional returns are those returns - monetary and non-monetary - that the employee is entitled to perennially. Eg) the basic pay, dearness allowance etc. and all the intangible benefits fall under this category. "Relational" returns refer to those needs that are not necessarily monetary in nature. These returns satisfy the self-esteem and self-satisfaction needs of the employees. They include, for instance, the pride of having an association with an organization, job challenge, Opportunity to be part of the larger cause of serving the country, variety in job profile etc.

Generally, the 'transactional returns' for a government servant are much less as compared to a similarly placed person in the corporate sector, but the 'relational benefits' are much more.

#### Motivating a civil servant

Monetary Factor: In India, Government employees are paid according to their service incremental salary scales. For a larger (majority) section of employees there is hardly any performance for pay incentive available to them. The Pay Commission has recommended introduction of a new performance based pecuniary benefit, over and above the regular salary, for Government employees - Performance Related Incentive Scheme (PRIS).

#### Non-monetary Factors:

Recognition: A positive step in recognising serving civil servants on civil service day each year. More such initiatives like providing them with padma awards more often can be taken.

Job Enrichment: Expand the scope of the job with a greater variety of tasks, vertical in nature, that require self-sufficiency to counter monotony.

Linking career prospects with performance: Better career prospects can be an important motivating factor within an organization. The corporate sector uses this optimally. The Commission is of the view that in matters of promotion, the performance of a candidate should be given due weight.

**Removing the Causes of Dissatisfaction:** There are a large number of factors which lead to dissatisfaction among officers/officials in the government like poor working conditions, unfair personnel policies, excess or absence of supervision, absence of fair-play within the organization, indiscipline, lack of transparency within the organization, lack of opportunity for self-expression, interference in objective functioning. It should be the responsibility of the head of each office to ensure that a congenial work environment is created.

**Dis-incentives for non-performers:** Reward and punishment are two sides of a coin. Therefore, while those government servants who perform well must be rewarded as discussed above, it is equally necessary both in the interests of good governance and for motivating good performers that instruments of performance management – counselling, warning, action – are used for those who do not perform.

**A Sound Evaluation System:** Measure motivation level of the employees regularly but motivation is only a means towards the end performance. Therefore, a sound performance management system is also imperative.

# **13. ACCOUNTABILITY**

## **13.1 Accountability of Public Servants**

Public Officials have varying degrees of power in discharging their functions and responsibilities based on the authority vested in them.

To ensure that there is proper and responsible use of this power and authority, all democratic countries have developed systems and procedures of checks and balances, incentive mechanisms to reward good performance.

These systems and procedures can broadly be termed as mechanisms that promote accountability

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In all democratic countries, civil servants are accountable both to the political executive and to citizens for ensuring responsive, transparent and honest policy implementation and service delivery.

But ensuring accountability for performance is not a simple task. Setting performance targets and their measurement is easier in respect of service delivery, But when the outputs and outcomes are policy related and hence assessment of performance becomes much more complicated.

The diffusion of responsibility and authority across different levels in Government and the lack of linkage between authority and accountability also lead to a system where non-performance is bounded, particularly for activities that cut across departmental dividing lines.

The accountability mechanisms in any country are broadly categorized as those that are located within the State and those outside

Accountability of the executive arm of government to Parliament and to the citizens of the country is of course the fundamental feature of a democracy.

The final expression of accountability in a democracy is through the medium of periodic elections is an ultimate instrument of accountability. An independent judiciary embodies the constitutional doctrine of separation of powers and is another important element in the system of checks and balances that exists in any democratic country.

In India, constitutional and statutory bodies such as the office of the CAG, the Election Commission, and the CVC are examples of other oversight mechanisms that are autonomous but lie within the framework of the State.

Analysts have categorized these accountability mechanisms into "horizontal" accountability mechanisms which refer to those located within the State as against 'vertical' accountability mechanisms which are those outside the State<sup>111</sup> and include the media, civil society and citizens.

Table 13.1 shows the categorization of such accountability mechanisms in India.

**Table 13.1: Institutions and Mechanisms that Promote Accountability**

Outside the State (Vertical)	
• To the people through elections	High effectiveness
• Through RTI Act to citizens	
• Citizens' oversight committees	
• Civil society/watchdog bodies	
• Media	Low effectiveness
• Service delivery surveys	
• Citizens' charters	Low to medium effectiveness

Within the State (Horizontal)	
<i>External</i> (Outside the Executive)	<ul style="list-style-type: none"> <li>• Parliament</li> <li>• Judiciary</li> <li>• Lokayukta</li> <li>• CAG</li> <li>• CVC</li> </ul>
<i>Internal</i> (Within the Executive)	<ul style="list-style-type: none"> <li>• Superior officers</li> <li>1. Rewards/punishments</li> <li>2. Disciplinary procedures</li> <li>Performance Management</li> <li>3. System</li> <li>• CBI/police/vigilance</li> <li>• Internal Audit</li> <li>• Grievance Redressal Mechanisms</li> </ul>

The Sixth Central Pay Commission observed as follows:

*The institutional structures of top down management and isolated managerial efforts have proved inadequate for satisfying performance i.e. delivery of results and outcomes. There is over-reliance on 'command' models of administrative effort for service delivery. Citizens and service users are stakeholders and participants not just 'customers'. This role needs to be institutionalized in the administrative structures linked to the specific organizational service delivery. This participation of stakeholders in the process design and their institutional integration into the decision and delivery framework can be based on a 'cooperative model' of consultation and co-production. Institutional norms and practices become habits and routines and have to be consciously analyzed, confronted and substituted with alternate institutionalized practices. This perspective of purpose is important also for determining the type of Performance Related Incentive Scheme (PRIS) developed and adopted. The importance of a systems shift from top down monitoring to stakeholder-citizen participation and co-production with transparency and checks is critical for better public service delivery.*

### **13.2 Fitness Bar**

The public perception today is that government servants are unresponsive to the needs and concerns of citizens and the system does not address this problem because the mechanisms to ensure accountability, integrity and efficiency of public servants do not appear to be adequate. The common perception is that initiation of disciplinary action against incompetent and erring government servants is more an exception than the rule.

The life-long job security provided to a government servant further leads to such a distorted incentive structure because it is a fact that under the present system, very rarely is a government servant punished or removed for poor performance. As a result, an element of complacency and inertia has got internalized in the civil services. In fact, it has been noted that this trend not only manifests itself in terms of indifference to and disregard of citizens' complaints and concerns but also in the form of indiscipline and insubordination.

In the section 'Dismissal Procedures', the Commission has recommended a major revamp of the present system of disciplinary proceedings against government employees to ensure greater accountability and to minimize, if not eliminate, misconduct and indiscipline. In addition, the Commission feels that there is also need to find a systemic solution to the issue of complacency that stems from the lifelong job security coupled with lack of penal consequences for non performance or inadequate performance.

In fact, at present, annual confidential records of civil servants are the only mechanism to assess the performance of a government servant and these records are used to evaluate the fitness of a civil servant usually at the time of promotion. The Commission is of the view that there is need to have a comprehensive in-depth assessment at important milestones in an officer's career. These assessments, in view of the Commission, should be carried out on completion of 14 and 20 years of service.

- 1) The first review at 14 years would primarily serve the purpose of apprising the public servant about

his/her strengths and shortcomings for his/her future advancement. This should also be used for assessing his/her training needs.

2) The second review at 20 years would mainly serve to assess the fitness of the officer for his/her further continuance in government service. These performance evaluations could be conducted by committees constituted for this purpose. So far as the second review is concerned, as this would involve a more intensive assessment about a public servant's fitness to continue in service, this may be entrusted to an empowered committee comprising both government officers as well as external experts. The second review would involve a very careful scrutiny and analysis of the officer's general reputation, performance and his/her potential to hold leadership positions involving higher responsibilities in government. To the extent possible, feedback from citizens, wherever available, should be used as an input in this exercise. A personal interview with the officer should normally be a part of this process. The detailed modalities of this assessment would need to be worked out by government.

The services of public servants, who are found to be unfit after the second review at 20 years, should be discontinued. A provision regarding this should be made in the proposed Civil Services Law. Besides, for new appointments it should be expressly provided that the period of employment shall be for 20 years only

The above proposals are not as radical as they may *prima facie* appear. Elements of such a system exist in the Armed Forces, for both officers and other ranks. The provision has however been used only occasionally in the past although it has withstood judicial scrutiny. The present proposals seek to broaden base and institutionalize such a mechanism for all government employees. The Sixth Central Pay Commission has recommended that employees seeking VRS should be eligible for pension equal to 50% of the average emoluments/last pay drawn on completion of 20 years of qualifying service thus making the VRS more attractive. Government has accepted this recommendation and the liberal retirement scheme dovetails well with the mechanism suggested by the Commission. The system of intensive reviews coupled with liberalized pension and VRS benefits can be integrated into the government's performance management system.

### **13.3 Ways to Promote Accountability to citizens**

Accountability also means answerability i.e. questions asked of public officials have to be answered by them.

There are two types of questions that can be asked.

- 1) One type as under the RTI Act merely seeks information/data and involves one-way transmission of information. It promotes transparency and to a much lesser degree accountability in Government.
- 2) The second type of question enquires not just as to what was done but why; and therefore involves a consultative two-way flow of information with the citizens usually providing a feedback in respect of the working of government departments and service delivery of public agencies. Such mechanisms include citizens' charters, service delivery surveys, social audits, citizens' report card and outcome surveys.

{Each of these mechanisms would be examined in detail in the Commission's subsequent Report on 'Citizen Centric Administration'.}

## 14. DISCIPLINARY PROCEEDINGS

### 14.1 Article 311

14.1.1 In its Fourth Report, on "Ethics in Governance", the Commission had dealt with two specific issues relating to accountability of civil servants viz

- 1) the issue of whether the protection to civil servants enshrined in Article 311 of the Constitution should be retained; and
- 2) the question of what to do about the dilatory disciplinary proceedings that often seem to make a mockery of any attempt to instill discipline and accountability within the government departments.

While the Commission had taken a final view on the former issue, the latter was left open to be dealt with in detail in the present report. It would be instructive to briefly recapitulate the Commission's deliberations on these two core issues.

14.1.2 On this issue, the Commission concluded as under:

"*3.10.18 The Commission has given deep consideration to the case for and against Article 311 remaining in the Constitution of India. No other Constitution appears to contain the kind of guarantees that this Article does. The Government of India Act-1919 was the first enactment to apply the 'doctrine of pleasure' in India, through Section 96B thereof. Its application was "subject to rules" and the courts while examining challenges to penalties under that Act applied the extant rules to determine whether these were rightly imposed. In other words, when this doctrine was first applied in India, it was deemed sufficient to provide protection against any unjust exercise of 'pleasure'. With the provisions of Judicial review now available in our Constitution, the protection available to Government employees is indeed formidable even outside Article 311. This is borne out by the fact that ample relief is available to employees invoking judicial intervention in cases involving compulsory retirements even though Article 311 does not extend to such cases.*

*3.10.19 When Sardar Patel argued for protection of civil servants, the intention was clearly to embolden senior civil servants to render impartial and frank advice to the political executive without fear of retribution. But the compulsions of equal treatment of all public servants and judicial pronouncements have made such a protection applicable to employees of PSUs, para-statal organizations and even body corporates*

### **13.4 Recommendations**

- a. A system of two intensive reviews – one on completion of 14 years of service, and another on completion of 20 years of service - should be established for all government servants.
- b. The first review at 14 years would primarily serve the purpose of intimating to the public servant about his/her strengths and shortcomings for his/ her future advancement. The second review at 20 years would mainly serve to assess the fitness of the officer for his/her further continuation in government service. The detailed modalities of this assessment system would need to be worked out by government.
- c. The services of public servants, who are found to be unfit after the second review at 20 years, should be discontinued. A provision regarding this should be made in the proposed Civil Services Law. Besides, for new appointments it should be expressly provided that the period of employment shall be for 20 years. Further continuance in government service would depend upon the outcome of the intensive performance reviews.

like cooperatives and this has created a climate of excessive security without fear of penalty for incompetence or wrongdoing. The challenge before the nation now is to confront this exaggerated notion of lifetime security irrespective of performance and to create a climate conducive to effective delivery of services and accountability with reasonable security of tenure.

The Commission believes that the rights of a civil servant under the Constitution should be subordinate to the overall requirement of public interest and the contractual right of the State. It cannot be an argument that a corrupt civil servant's rights are more important than the need to ensure an honest, efficient and corruption-free administration. Ultimately, the public servant, an agent of the State, cannot be superior to the State and it is his fundamental duty to serve the State with integrity, devotion, honesty, impartiality, objectivity, transparency and accountability.

It is true that the government is expected to act in a fair manner like a model employer worthy of emulation by others. It has also to be ensured that honest and efficient public servants are not subjected to the whims and fancies of their superiors. Arbitrary removal of a govt servant is not possible for govt also not so in the private sector. Strictly, there should be no need for retaining Article 310, and legal safeguards may be provided through legislation under Article 309.

Articles 309, 310 and 311 form a continuum. If the whole gamut of "conditions of service" is codified as required by the substantive part of Article 309, this can include matters such as disciplinary proceedings and imposition of penalties. Moreover, as noted above, with rule of law accepted as an integral part of the basic structure of the constitution, reasonable protection now attributed to Article 311 will continue to be available to satisfy the requirements of 'rule of law'.

Explicit articulation of "protection" in the Constitution itself gives an impression of inordinate 'protection', the Commission is of the view that on balance Article 311 need not continue to be a part of the Constitution. Instead appropriate and comprehensive legislation under Article 309 could be framed to cover all aspects of recruitment and service, even with regard to dismissal, removal or reduction in rank. Appropriate legislation by the respective legislatures may also be ensured through a revised Constitutional provision. The Commission will examine in detail issues related to such enactment in its Report on "Civil Services Reforms".

#### Recommendations:

- a. Article 311 of the Constitution should be repealed.
- b. Simultaneously, Article 310 of the Constitution should also be repealed.

## 14.2 Disciplinary Proceedings

14.2.1 As regards disciplinary proceedings, the Commission, in its Report on "Ethics in Governance", first analyzed the processes and the data relating to actual cases; and made the following observations:

"3.11.7 Detailed procedures governing the initiation of disciplinary proceedings, and the progress and culmination are diagrammatically depicted in Figure.<sup>112</sup>

Broadly the 'flows' are indicated therein embrace the entire community of central and state government employees including those of the public sector and nationalized banks., it will be sufficient to note the following

- Complaints received or lapses noticed are examined to ascertain whether they involve a 'vigilance angle' (essentially violation of conduct rules) – 1 month
- Decision about whom to refer complaints to ascertain whether these have any substance to the CBI or departmental agencies -3 months.
- Submission of findings of investigations - 3 months.
- Department/CBI report to be sent for 'First Stage Advice' to the CVC - 1 month from the date of reference.
- Formulation of CVC's advice - 1 month.
- Issue of charge-sheet, statement of imputation of misconduct, and list of witnesses and documents etc, if it is decided to proceed in departmental inquiry - 1 month from the receipt of CVC advice.
- Consideration of Defence Statement of the accused employee- 15 days.
- Issue of final orders in minor penalty cases - 2 months from receipt of Defence Statement.
- Appointment of the Inquiry Authority (IA) and Presenting Officer (PO) where the 'first stage advice' recommends major penalty which requires detailed inquiry - Immediately after receipt of Statement of Defence.
- Completion of inquiry - 6 months from the date of appointment of the Inquiry Officer and the Presenting Officer.
- Sending a copy of the inquiry report, (where the accused is held guilty or the

disciplinary authority records reasons for disagreement with an inquiry report holding that charges are not proved), to the charged officer for representation.

- Considering the representation of the accused employee and forwarding the inquiry report for Second Stage Advice to the CVC - 1 month from the date of receipt of the representation.
- Issue of orders on the inquiry report - 1 month from the receipt of CVC's 'second stage advice (or 2 months from the date of inquiry report where such advice is not required).

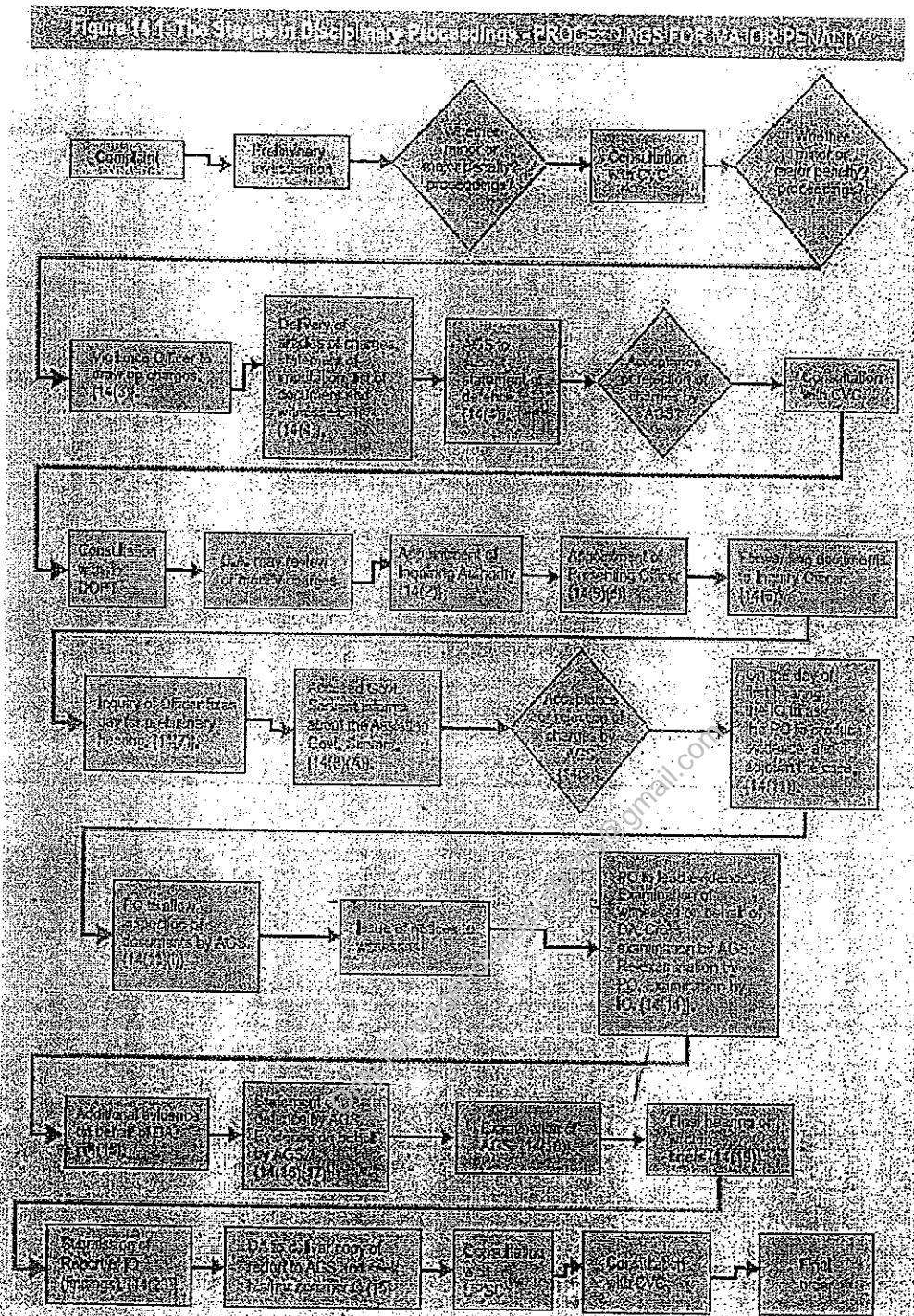
(It may be noticed that the above schedule does not include the time taken between commission of a 'wrong' and its detection or receipt of a complaint about it. A very rough calculation, the estimated time taken in bringing to culmination cases involving minor and major penalties can be respectively estimated at 10 month 15 days and 16 months. It needs to be added that this schedule excludes the time required for consultation with the UPSC wherever required)

#### **3.11.8 Problems involved in the conduct of actual proceedings,**

- With the formation of Central Administrative Tribunals (CATs) in the 1980s most of the judicial proceedings arising out of departmental inquiries are handled in these for which, not infrequently, entertain pleas to stay disciplinary proceedings on technical grounds and even entertain pleas against interlocutory orders. Public servants are able to challenge the orders of the tribunal in High Courts. There is, in addition, recourse to the Supreme Court under Article 136 of the Constitution of filing 'appeal by special leave'.
- Recent study brings out 'break-up' of time taken by various agencies;

Admin Dept - 69%, Inquiry Officer - 17%, CVC - 9%, UPSC - 5%

- There was considerable variation in the time taken often in the same stages depending on the source relied upon viz. Disciplinary Cases Monitoring and Management Information System (DCMMIS) of the Administrative Vigilance Division of the Department of Personnel and Training, CVC data of 'first stage advice' i.e. cases resulting in closure or minor penalties and 'second stage advice' of the same organization i.e. cases referred again after departmental inquiry.



### **14.3 Simplifying Disciplinary Procedures**

14.3.1 As noted by the Commission in its Fourth Report on - "Ethics in Governance",

*"It has been held that, for proper compliance with the requirement of 'reasonable opportunity' as envisaged in Article 311(2), a government servant against whom action is contemplated should, in the first instance, be given an opportunity to deny the charges. If, as a result of an inquiry, the charges are proved and it is proposed to impose any of the penalties of dismissal, removal, or reduction in rank, such penalty may be imposed on the basis of the findings of the inquiry. It is not necessary to give him any opportunity of making a representation on the penalty proposed after the amendment of clause (2) of Article 311 of the Constitution with effect from 3rd January, 1977.*

*The Santhanam Committee had listed as many as 15 criteria laid down by the Supreme Court and the High Courts in order to enable conduct of an inquiry in accordance with the spirit of the Constitution. The interpretations and requirements laid down by the highest courts have made disciplinary proceedings for major penalties very convoluted, tedious and time consuming involving a large number of sequential steps before a person can be found guilty of the charges and punished. The process unfortunately does not end there. Provisions exist for appeal, revision and review only after completion of which, the delinquent officer would begin to suffer the penalty.*

*The accused officer also has the right to challenge the legality of the action of disciplinary authority before the Administrative Tribunal, get an interim stay of the proceedings and relief thereafter, and to substantively appeal against the decision of the disciplinary authority or the government as the case may be in the Tribunal. This apart, he reserves his fundamental right to invoke the writ jurisdiction of the High Court and the Supreme Court protesting the violation of such rights in the conduct of the inquiry"*

14.3.2 The Committee on Civil Service Reforms (Hota Committee) in its report had specifically addressed the issue of simplifying disciplinary procedures for government servants in India and made the following recommendations:

1. *To eliminate delay in disposal of a disciplinary inquiry, the Union Public Service Commission need not be consulted in case of a civil servant facing charges of corrupt practice and whose case has been referred to the Central Vigilance Commission for the first stage/second stage advice. If however the officer is penalized in the inquiry and prefers an appeal the case may be referred to the UPSC for advice on the appeal petition.*

(The concept of 'date of occurrence of misconduct', though an innovative bench-mark, needs to be used with caution in a situation where the 'discovery' of misconduct is necessarily possible only at some future date).

**3.11.11 From the above data two facts clearly emerge:**

- 1) There is no congruence between the time taken in completion of various stages and the schedule prescribed for their completion by the CVC;
- 2), while it would be unrealistic in such cases to expect 'immediate report of the offence', the discovery of the commission of a 'misconduct' is shockingly delayed.

In fact, it is not very clear, on the whole, as to how such 'misconducts' come to light whether a significant number of cases could be detected within the organization or whether most such cases were disclosed through complaints of 'affected-outsiders'. These are aspects on which greater clarity and empirical evidence are clearly required."

**14.2.2 The Commission then concluded as under:**

**"3.11.12 The existing regulations governing disciplinary proceedings need to be recast and the following broad principles should be followed in laying down the new regulations.**

- a. The procedure needs to be made simple so that the proceedings could be completed within a short time frame.
- b. Emphasis should be on documentary evidence, and only in case documentary evidence is not sufficient, recourse should be made to oral evidence.
- c. An appellate mechanism should be provided within the department itself.
- d. Imposition of major penalties should be recommended by a committee in order to ensure objectivity.

The Commission would be elaborating these aspects in its Report on "Civil Services Reforms."

2. Where minor disciplinary proceedings are sufficient to meet the end of justice, major penalty proceedings which are lengthy and time-consuming should not be initiated.
3. An Inquiry Officer should be relieved from his normal duties for a sufficient period to enable him to complete the departmental inquiry expeditiously and submit the report.
4. A database on disciplinary cases should be maintained to keep track of their progress.

14.3.3 In addition, the Committee recommended the following procedure for summary disciplinary action:

1. We recommend that Article 311 of the Constitution be amended to provide that if there are allegations against a civil servant/person holding a civil post of accepting illegal gratification or of having assets disproportionate to his known sources of income and the President or the Governor is satisfied that the civil servant/person holding a civil post be removed from service forthwith in the public interest, the President or the Governor may pass an order removing the civil servant/person holding the civil post from service and give him an opportunity in a post-decisional hearing to defend himself.
2. The proposed amendment would be constitutionally valid in view of decisions of the Supreme Court in Maneka Gandhi's case (AIR 1978 Supreme Court 597) that the principle of *audi alteram partem* (right to be heard) which is a part of natural justice is satisfied if a decision has to be taken urgently in the public interest and a post-decisional hearing is given to the person affected and reasonable opportunity is provided to the person to defend himself. The decision in Maneka Gandhi's case was reiterated in Liberty Oil Mills case (AIR 1984 Supreme Court 1271) and Tulsiram Patel's case (AIR 1985 Supreme Court 1416).

#### 14.4 Disciplinary Procedures in the UK Civil Services

14.4.1 If we compare disciplinary procedures relating to the civil services in the United Kingdom (UK) and India, the contrast between the highly centralized, multi-layered, long-winded and ultimately self-defeating procedure, that is followed in India (which seems to mimic a criminal trial); and the decentralized, relatively simple, flexible and quicker procedures in the UK stand out.

14.4.2 In the UK, the disciplinary rules have the following main features:

- The Employment Act, 2002 (Dispute Resolution) Regulations, 2004 brought into effect, from 1 October 2004, the provisions in the Employment Act, 2002 which sets out minimum statutory dismissal and disciplinary procedures. These apply where the employer, including the Government, first contemplates dismissing or taking such action against an employee on or after that date. (Details are omitted..)

#### 14.6 Rationalising Disciplinary Procedures in India

14.5.1 Disciplinary procedures for civil servants in other developed countries also appear to be similar. It may still be worthwhile to look at some aspects of the present rules and examine whether these procedures can be simplified, compressed and decentralized so that disciplinary action in government departments becomes more conclusive and not a charade as is often perceived at present. The procedures for imposing major penalties such as dismissal or reduction in rank have been depicted by means of a flow diagram in Fig 14.1. These derive their basis from the Central Civil Service (Classification, Control and Appeal) Rules, 1965. These rules are an elaboration of the principles laid down in the Constitution (Article 311). In addition, the requirement for consultation with the UPSC stems from Article 320 (3)

(b) of the Constitution and for the "two stage" consultation with the Central Vigilance Commission (CVC), from the Vigilance Manual containing resolutions of Government of India on disciplinary cases having a vigilance angle.

14.5.2 The Commission has already recommended that Article 311 of the Constitution should be repealed and appropriate and comprehensive legislation under Article 309 could be framed to cover all aspects of recruitment and service, even with regard to dismissal, removal or reduction in rank. A comprehensive Public Service Bill is currently being prepared by Government of India. The Commission is of the view that the following changes are necessary while drawing up the same:

- The new Civil Services Law should set out only the minimum statutory – disciplinary and dismissal procedures required to satisfy the criteria of natural justice leaving the details of the procedure to be followed to the respective departments. A natural corollary of this proposition is that the CCS (CCA) Rules, 1965 would be repealed.
- The penalty of dismissal or removal of a public servant should only be imposed by an authority three levels higher than the present post held by that public servant whereas all other penalties (Reduction in Rank/Scale,

Suspensions, etc..) may be imposed by an authority who is two levels higher. The right to appeal to an officer at least one level higher than the disciplinary authority would be continued.

- However, no penalty would be imposed without holding an inquiry/interview; the accused is given an opportunity of being heard.
- The inquiry into the charges brought against a government servant should be a simple two stage process with the following parameters:
  - The charges against the government servant should be communicated to him in writing.
  - The inquiry process should be based to the maximum extent possible on documentary rather than oral evidence.
  - Fixed and brief time limits should be prescribed for admission and denial of documents from both sides followed by a meeting/ disciplinary interview to give the government servant a chance to respond to the charges.
  - The degree to which an oral examination would be part of the inquiry process and the extent to which the procedures that are borrowed from court proceedings such as cross examination, reexamination etc, would be permissible; should be left to the enquiry officer to decide depending on the facts of the case but should not be the norm as is currently the case.
- Preponderance of probabilities rather than beyond reasonable doubt would be the standard of evidence required for the inquiry authority to reach his/her conclusions.
- The two-stage consultation with the CVC in cases involving a vigilance angle should be done away with and only second stage advice after the completion of the disciplinary process, should be obtained. In addition for cases involving a vigilance angle, no consultation with the UPSC should be required.
- Consultation with the UPSC should be mandatory only in cases leading to the proposed dismissal of a government servant and all other cases should be exempted from UPSC's purview.

## **14.6 Recommendations**

- a. In the proposed Civil Services law, the minimum statutory disciplinary and dismissal procedures required to satisfy the criteria of natural justice should be spelt out leaving the details of the procedure to be followed to the respective government departments. The present oral inquiry process should be converted into a disciplinary meeting or interview to be conducted by a superior officer in a summary manner without the trappings and procedures borrowed from court trials. This would require that the CCS (CCA) Rules, 1965 be repealed and substituted by appropriate regulations.
- b. No penalty of removal and dismissal should be imposed except by an Authority which is at least three levels above the post which the government servant is holding. Other penalties – apart from dismissal and removal – may be imposed by an Authority which is at least two levels above the current post of the government servant. No penalty may be imposed, unless an inquiry is conducted and the accused government servant has been given an opportunity of being heard.
- c. The two-stage consultation with the CVC in cases involving a vigilance angle should be done away with and only the second stage advice after completion of the disciplinary process, should be obtained. In addition, for cases involving a vigilance angle, no consultation with the UPSC should be required.
- d. Consultation with the UPSC should be mandatory only in cases leading to the proposed dismissal of government servants and all other types of disciplinary cases should be exempted from the UPSC's purview.

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End of 14<sup>th</sup> Chapter

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# **15 RELATION BETWEEN THE POLITICAL EXECUTIVE AND CIVIL SERVANTS (Very Important)**

## **15.1 Background**

15.1.1 In a democracy, power vests with the people. This power is exercised through its elected representatives who have the mandate to govern them for a specific period. The civil services by virtue of its knowledge, experience and understanding of public affairs assist the elected representatives in formulating policy and are responsible for implementing these policies. Parliamentary democracies are usually characterized by a permanent civil service which assists the political executive. Under the Presidential form of government (like in the US), the higher echelons of the civil services are, in contrast, appointed by the government of the day (spoils system). India has adopted the British model.

15.1.2 Some advantages of having an independent, permanent and impartial civil service are as follows:

- i. The spoils system has the propensity to degenerate into a system of patronage, nepotism and corruption. Having a credible recruitment process through an impartial agency provides a defence against such abuse.
- ii. Public policy today has become a complex exercise requiring in-depth knowledge and expertise in public affairs. A permanent civil service provides continuity and develops expertise as well as institutional memory for effective policy making.
- iii. A permanent and impartial civil service is more likely to assess the long-term social payoffs of any policy whereas the political executive may have a tendency to look for short term political gain.
- iv. A permanent civil service helps to ensure uniformity in public administration and also acts as a unifying force particularly in vast and culturally diverse nations.
- v. A permanent civil service like any other reputable profession is likely to evolve over time an ethical basis for its functioning

### **Box 15.1 The Democratic Accountability**

There is a clear democratic line of accountability which runs from the electorate through MPs to the Government which commands the confidence of a majority of those MPs in Parliament. The duly constituted government – whatever its political complexion – is assisted by the Civil Service which is permanent and politically impartial. Hence Ministers are accountable to Parliament; civil servants are accountable to Ministers. That is the system we have in this country.

**15.1.3 A healthy working relationship between Ministers and civil servants is critical for good governance.** While the principles governing the roles and responsibilities of Ministers and civil servants are well defined in political theory, in the actual working of this relationship this division of responsibility becomes blurred with both sides often encroaching upon the other's sphere of responsibility. In any democracy, Ministers are responsible to the people through Parliament and therefore the civil servants have to be accountable to the Minister. However, an impartial civil service is responsible not only to the government of the day but to the Constitution of the land to which they have taken an oath of loyalty. At the same time, implementing the policies of the duly elected government is a core function of civil servants. That is why the division of responsibility between the civil servants and ministers needs to be more clearly defined. A framework in which responsibility and accountability is well defined would be useful.

## 15.2 Constitutional Provisions in India

**15.2.1** The Indian Constitution provides for separation of powers between the legislature, executive and judiciary with well-defined roles and responsibilities for each one of them. Since India is a parliamentary democracy, there is an interface between the legislature and the executive at the level of the Council of Ministers, which is collectively responsible to the legislature. In terms of Articles 53 and 154, the executive power of the Union and the States vests in the President or Governor directly or through officers subordinate to him. These officers constitute the permanent civil service and are governed by Part XIV of the Constitution.

**15.2.2** The other part of the executive is the 'political'. The President or Governor is required to act according to the aid and advice of his/her Council of Ministers, appointed under Articles 73 and 163 of the Constitution. The President and Governor frame rules for the conduct of business in the government. Work is allocated among Ministers as per the Government of India (Allocation of Business) Rules and the manner in which the officers are required to help the President or Governor to exercise his/her executive functions is governed by the Government of India (Transaction of Business) Rules. What this means is that though officers are subordinate to the President or Governor, they carry out the orders

of the Council of Ministers in accordance with the rules framed in this behalf. The Rules of Business of Government do provide for the Secretary to the Government to advise his/ her Minister to give him a note which tells him about the propriety or legality of his/her orders and suggest that either such orders not be given or that they be suitably modified. The relationship between the Secretary and the Minister is organic.

The Minister has the mandate of the people to govern, but the Secretary has an equivalent constitutional mandate to advise the Minister.

The Minister, on his/her part, is required to support the Secretary who is implementing his/her order. Once a law is framed or rules and regulations are approved, they apply to everyone, whether a member of the political executive or of the permanent civil service. A civil servant is required to implement the orders of government without bias, with honesty and without fear or favour. It is precisely in this area that a degree of a difference of opinion often occurs between the political executive and the civil servants.

### 15.3 The Civil Services in Post Independence India

15.3.1 In the initial years after Independence, relations between Ministers and civil servants were characterized by mutual respect and understanding of each other's respective roles, with neither encroaching upon the other's domain. However, in subsequent years, matters started changing for the worse. While some civil servants did not render objective and impartial advice to their Ministers, often some Ministers began to resent advice that did not fit in with short-term political interests. There was also a tendency for some Ministers at the Union and the State levels to focus more on routine administrative matters such as transfers in preference to policy making. At the same time, some civil servants learnt the art of 'maneuvering' for favours in return for pliability in their decision making. This trend was further accentuated by rising materialism and acquisitiveness in society as well as decline in values across the board. As a result, 'political neutrality' which was the hallmark of the civil service in the pre-Independence era as well as in the period right after Independence, was gradually eroded. These trends led to the phenomenon of 'politicisation of the civil service' in India.

### 15.4 Areas of Friction

The areas of potential conflict in the relationship between the political executive and the permanent civil service can be identified as follows:

- a. The concept of neutrality
- b. Advisory role of civil servants in policy making
- c. Statutory role of the civil servants
- d. Discharge of delegated functions
- e. Appointments/Recruitment to the/civil services
- f. Transfers and Postings of civil servants

### 15.4.1 The Concept of Neutrality

15.4.1.1 Sardar Patel had made the following observations in the Constituent Assembly to support the continuance of the pre-independence civil service structure:-

*"It needs hardly to be emphasized that an efficient, discipline and contended civil service assured of its prospects as a result of diligent and honest work, is a sine-qua-non of sound administration under democratic regime even more than under an authoritarian rule. The service must be above party and we should ensure that political considerations, either in its recruitment or in its discipline and control, are reduced to the minimum if not eliminated altogether."*

15.4.1.2 Unfortunately, this vision of civil service neutrality no longer holds good. Changes in governments particularly at the state level often lead to wholesale transfer of civil servants. Political neutrality is no longer the accepted norm with many civil servants getting identified, rightly or wrongly, with a particular political dispensation. There is a perception that officers have to cultivate and seek patronage from politicians for obtaining suitable positions even in the Union Government. As a result, the civil services in public perception are often seen as increasingly politicized.

15.4.1.3 The Commission is of the view that the political neutrality and impartiality of the civil services needs to be preserved. The onus for this lies equally on the political executive and civil servants. The Commission in its Report on "Ethics in Governance" while examining the ethical framework for Ministers has recommended that a code of ethics for Ministers should inter-alia include the following:

*"Ministers must uphold the political impartiality of the civil service and not ask the civil servants to act in any way which would conflict with the duties and responsibilities of the civil servants."*

15.4.1.4 As observed by Paul Appleby civil servants should not confuse 'political neutrality' with 'programme neutrality'. At the stage of policy formulation, the role of civil servants is to render free and frank advice which should not be coloured by any political considerations. Once a policy or programme has been approved by the elected government, it is the duty of the civil servant to faithfully and enthusiastically see to its implementation. Not carrying out this task in the right spirit would amount to misconduct inviting appropriate sanctions.

#### 15.4.2 Advisory Role of Civil Servants in Policy Making

15.4.2.1 Rendering **policy advice** to the political executive is the most important **"staff function" of the civil servant**. **Policy making** is the ultimate responsibility of the Minister. After a policy is approved by the elected government, it is duty of the civil servant to implement such policy in the right earnest whether he/she agrees with it or not. At the same time, it is the duty of the civil servant to provide the factual basis, thorough analysis of all possible implications of any measure under consideration and free and frank advice, without fear or favour, at the stage of policy formulation. However, for civil servants to be able to provide appropriate policy inputs, they must acquire the necessary combination of a broad perspective of the sector as well as of the Government as a whole, combined with conceptual clarity and requisite knowledge.

15.4.2.2 If a **policy** that is being formulated is perceived by the civil servant to be against **public interest**, his/her responsibility is to convince the political executive about the adverse implications of such a policy. However, *if the political executive does not agree with such an advice, there is little that the civil servant can do other than putting his/her views clearly on record*. It is for the other institutional mechanisms such as Parliament, the CAG, Judiciary and ultimately the electorate to hold the political executive to account for bad policy.

15.4.2.3 In order to ensure that senior civil servants have adequate time to focus their attention on their 'policy advice role', the Commission is making detailed recommendations on separation of staff and line functions, in a separate report. The issue of getting the most suitable civil servants to staff leadership positions has been examined in the Chapter 9.

#### 15.4.3 Statutory Role of the Civil Servants

15.4.2.4 Civil servants are required to discharge statutory functions under various legislative enactments which may sometimes be quasi-judicial in nature.

The role of the executive magistrate under the Cr. PC, the role of an Assessing Officer under the Income Tax Act and of the SHO under the Cr. PC and the respective Police Acts are some examples of such functions.

It has been observed that there is an increasing trend on the part of the senior functionaries both in the civil services as well as elected representatives including Ministers to interfere in such statutory functions. Acquiescence in the face of such interference is primarily the fault of the officer who has been entrusted with these statutory functions although those bringing such extraneous pressures should also be held to account.

15.4.2.5 The Commission in its Report on "Ethics in Governance" while examining the definition of corruption under the Prevention of Corruption Act, 1988 has recommended that "abuse of authority unduly favouring or harming someone" and "obstruction of justice" should be classified as an offence under the Act.

#### 15.4.4 Discharge of Delegated Functions

15.4.4.1 Like in any large organization, Government also has to function through a hierarchy of functionaries to carry out defined tasks at different levels and in different locations. This necessitates on practical considerations the delegation of authority and responsibility to the civil servants at different levels in government. Such delegation is in line with the principles of subsidiarity which helps to take government closer to the people. The principles of sound management demand that authority and responsibility should go hand-in-hand.

15.4.4.2 It has been observed that there is an increasing tendency in government departments to centralize authority and also after having first delegated authority downwards, to interfere in decision making of the subordinate functionaries since such centralization leads to inefficiencies and poor service delivery. It is also for the legislature to correct this trend by means of legislative enactments in certain critical areas as has been done for local bodies through Constitutional amendments (73rd and 74th) followed by State laws.

There is perhaps a perception that decentralization and delegation of authority to field functionaries may lead to more corruption and abuse of power.

15.4.4.3 The Chapter on Accountability and Disciplinary Procedures in this Report has provided for an elaborate mechanism for enforcing accountability among civil servants at all levels. Therefore, once these mechanisms are in place, there is no reason for decentralization to be held back. In both decentralization and delegation the underlying principle is that powers delegated should be exercised by the authority to which the delegation has been done. Also, the exercise of such delegated authority should be allowed without any formal or informal interference.

#### 15.4.5 Appointments/Recruitment to the Civil Services

15.4.5.1 The Constitution of India provides for an independent Union Public Service Commission (UPSC) and State Public Service Commissions (SPSCs). It lays down that it shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the States respectively. However, while the UPSC enjoys an untarnished reputation for having developed a fair and transparent recruitment system, the same cannot be said for all the State PSCs. In addition, a large number of recruitments to various positions is done by departments of government and different organizations under their control both at the Union and the State government levels. Examples of such large scale recruitments which have often been the subject of complaints and controversies are recruitments to the posts of Police constables, teachers, bus-drivers and conductors etc. The Commission feels that it is essential to lay down certain principles/norms for such recruitments to avoid complaints of favouritism, nepotism, corruption and abuse of power that have often characterized these recruitment exercises. These principles are :

- i. Well-defined merit-based procedure for recruitment to all government jobs

- ii. Wide publicity and open competition for recruitment to all posts
- iii. Minimisation, if not elimination, of discretion in the recruitment process
- iv. Selection primarily on the basis of written examination or on the basis of performance in existing public/board/university examination with minimum weightage to interview.

#### 15.4.6 Postings and Transfers of Civil Servants

##### 15.4.6.1 The National Commission to Review the Working of the Constitution

made the following observations regarding transfers and postings of civil servants:

*"Arbitrary and questionable methods of appointments, promotions and transfers of officers by political superiors also led to corrosion of the moral basis of its independence. It has strengthened the temptation in services to collusive practices with politicians to avoid the inconvenience of transfers and to gain advantages by ingratiating themselves to political masters. They would do the politicians' biddings rather than adhere to rules. Lest the situation becomes more vicious, it is necessary that a better arrangement be conceived under the Constitution. The question of appointments, transfers and placements is not to be left to the discretion of the politicians or administrative bosses but be entrusted to independent and autonomous boards. The Commission, therefore, recommends that the questions of personnel policy including placements, promotions, transfers and fast-track advancements on the basis of forward-looking career management policies and techniques should be managed by autonomous Personnel Boards for assisting the high level political authorities in making key decisions. Such civil service boards should be constituted under statutory provisions. They should be expected to function like the UPSC. Reputed management experts from institutes of management, well known for their excellence, should be inducted into these boards to provide a broad based pool of expertise. The principle is not to take politics out of personnel policy but to make knowledge and information institutionally available to the political decision-makers on the basis of appropriate parliamentary legislation under Article 309. The sanctity of parliamentary legislation under Article 309 is needed to counteract the publicly known trends of the play of unhealthy and destabilizing influences in the management of public services in general and higher civil services in particular."*

##### 15.4.6.2 Arbitrary and motivated transfers of government servants which are not in public interest and good governance have become a matter of great concern particularly in some States although the position is somewhat better at the Union Government level.

##### 15.4.6.3 The Union Government has initiated several measures in order to ensure security of tenure to civil servants. The Rules governing the All India Services have been amended and provision made for fixation of tenures of posts encadred with the AIS. For example, the Indian Administrative Service (Cadre) Rules, 1955, have been amended and a new clause inserted 7(c)

- (i) *The Central Government, in consultation with the State Government or State Governments concerned, may determine the tenure of all or any of the cadre posts specified for the State concerned in item 1 of the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulation, 1955.*
- (ii) *A cadre officer, appointed to any post for which the tenure has been so determined, shall hold the minimum tenure as prescribed except in the event of promotion, retirement, deputation outside the State or training exceeding two months.*
- (iii) *An officer may be transferred before the minimum prescribed tenure only on the recommendation of a Committee on Minimum Tenure as specified in the Schedule annexed to these rules.”*

15.4.6.4 The tenure of several posts has been notified accordingly for many States. The Commission would like to reiterate that the tenure of all posts above a certain level should be fixed in Government of India by making a provision in the new civil services law. State Governments should also take similar steps.

#### 15.5 Civil Service Law

This has been examined in detail in Chapter 17.

#### 15.6 Recommendations

- a. There is a need to safeguard the political neutrality and impartiality of the civil services. The onus for this lies equally on the political executive and the civil services. This aspect should be included in the Code of Ethics for Ministers as well as the Code of Conduct for Public Servants.
- b. The Commission would like to reiterate its recommendation made in its Report on “Ethics in Governance” while examining the definition of corruption under the Prevention of Corruption Act, 1988, wherein it has been recommended that “abuse of authority unduly favouring or harming someone” and “obstruction of justice” should be classified as an offence under the Act.
- c. It is essential to lay down certain norms for recruitment in government to avoid complaints of favouritism, nepotism, corruption and abuse of power. These norms are:
  - i. Well-defined procedure for recruitment to all government jobs.
  - ii. Wide publicity and open competition for recruitment to all posts.

- iii. Minimisation, if not elimination, of discretion in the recruitment process.
- iv. Selection primarily on the basis of written examination or on the basis of performance in existing public/board/university examination with minimum weight to interview.

These principles could be included in the 'Civil Services Bill' as recommended by the Commission in Chapter 17.

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## 16 CIVIL SERVICES CODE

16.1 Ethics is a set of principles of right conduct.<sup>116</sup> It has been defined as a set of values and principles which helps guide behaviour, choice and actions. It helps to decide whether ones' actions are right or wrong. Organizations as well as individuals have ethical standards. These standards help ensure that individuals belonging to an organization have a consistent approach in carrying out their responsibilities and making decisions. They also ensure that members of an organization maintain a consistent and appropriate behaviour towards one another and towards clients and persons outside the organization.

\*\* These lines are worth reading which gives good lines for answers.. \*\*

16.2 Civil servants have special obligations because they are responsible for managing resources entrusted to them by the community, because they provide and deliver services to the community and because they take important decisions that affect all aspects of a community's life. The community has a right to expect that the civil service functions fairly, impartially and efficiently. It is essential that the community must be able to trust and have confidence in the integrity of the civil service decision-making process. Within the civil service itself, it needs to be ensured that the decisions and actions of civil servants reflect the policies of the government of the day and the standards that the community expects from them as government servants. The expectation that the civil service will maintain the same standards of professionalism, responsiveness and impartiality in serving successive political governments is a key element of the way our democratic polity functions.

16.3 In a democracy, an efficient civil service must have a set of values that distinguishes it from other professions. Integrity, dedication to public service, impartiality, political neutrality, anonymity etc are said to be the hallmarks of an efficient civil service. In some countries, these values have been embodied in laws – e.g. in Australia - and in some countries these are enshrined in the respective Constitutions. Article 153 of the Polish Constitution states:<sup>117</sup>

"(1) A corps of civil servants shall operate in the organs of government administration in order to ensure a professional, diligent, impartial and politically neutral discharge of the State's obligations.

(2) The Prime Minister shall be the superior of such corps of civil servants."

<sup>116</sup><http://dictionary.reference.com/browse/ethics>

<sup>117</sup>[http://www.poland.pl/info/information\\_about\\_poland/constitution/ch6.htm](http://www.poland.pl/info/information_about_poland/constitution/ch6.htm) (extracted on 19.9.08)

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### Box 16.1: Civil Service Values in UK

1. The Civil Service is an integral and key part of the Government of the United Kingdom. It supports the Government of the day in developing and implementing its policies and in delivering public services. Civil servants are accountable to Ministers, who in turn are accountable to Parliament.
  2. As a civil servant you are appointed on merit on the basis of fair and open competition and are expected to carry out your role with dedication and a commitment to the Civil Service and its core values: integrity, honesty, objectivity and impartiality. In this Code:
- integrity** is putting the obligations of public service above your own personal interests;
- honesty** is being truthful and open;
- objectivity** is basing your advice and decisions on rigorous analysis of the evidence;
- impartiality** is acting solely according to the merits of the case and serving equally well Governments of different political persuasions.
3. These core values support good government and ensure the achievement of the highest possible standards in all that the Civil Service does. This in turn helps the Civil Service to gain and retain the respect of Ministers, Parliament, the public and its customers.

16.4 Most countries that have reformed their civil services such as New Zealand, Australia and the UK have established a set of principles to guide civil service behaviour in the form of values and a legally enforceable code of conduct, setting out standards of behaviour expected of those working in the civil services. In the UK, following the recommendations of the Nolan Committee on standards in public service, the Civil Service Code was incorporated into a law that came into force on 1st January 1996. The Code is a clear and concise statement of standards of behaviour that the civil servants must follow, and is a part of the civil servant's terms and conditions of employment. In addition to describing the integrity and loyalty required of civil servants, the Code prohibits deceiving Parliament or the public, misuse of official positions, and unauthorized disclosure of confidential information.

The Code provides a right of appeal to independent Civil Service Commissioners on matters of propriety and conscience, if the problem cannot be resolved within the department in question.

16.5 In New Zealand, the reforms have led to the enactment of the State Services Act with focus on ethics and public service ethos. This was primarily because civil service reforms in New Zealand created a system in which loyalty of the civil servant was to his/her department or agency rather than to the public service as a whole. So, it was necessary to raise the awareness about ethics, and public service values and ethos. The State Services Commission took the lead in raising such awareness and issued the Code of Conduct for civil servants. A Standards and Ethics Board was also set up.

16.6 In Australia, reforms in this respect have been the most comprehensive. Section 10 of the Public Service Act, 1999 contains a declaration of fifteen values, which affirm that the Australian Public Service:

- is apolitical, performing its functions in an impartial and professional manner
- is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament, and the Australian public
- is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs
- delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public
- provides a reasonable opportunity to all eligible members of the community to apply for APS employment
- is a public service in which employment decisions are based on merit
- provides a workplace that is free from discrimination and recognizes and utilizes the diversity of the Australian community it serves
- establishes workplace relations that value communication, consultation, co-operation and input from employees on matters that affect their workplace
- provides a fair, flexible, safe and rewarding workplace
- focuses on achieving results and managing performance
- promotes equity in employment
- provides a fair system of review of decisions taken in respect of APS employees
- has the highest ethical standards
- has leadership of the highest quality
- is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government.

16.8 Section 13 of Australia's Public Service Act lays down the code of conduct for Australia's civil service. The code of conduct requires that an employee must:

- behave honestly and with integrity in the course of APS

employment

- act with care and diligence in the course of APS employment
- when acting in the course of APS employment, treat everyone with respect and courtesy, and without harassment
- when acting in the course of APS employment, comply with all applicable Australian laws
- comply with any lawful and reasonable direction given by someone in the employee's agency who has authority to give the direction
- maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff
- disclose, and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with APS employment
- use Commonwealth resources in a proper manner
- not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment
- not make improper use of (a)inside information and (b)the employee's duties, status, power or authority in order to gain, or seek to gain, a benefit or advantage for the employee or any other person
- at all times, behave in a way that upholds the APS values and the integrity and good reputation of the APS
- while on duty overseas, at all times, behave in a way that upholds the good reputation of Australia
- except in the course of his/her or her duties as an APS employee or with the Agency Head's express authority, not give or disclose, directly or indirectly, any information about public business or anything of which the employee has official knowledge.

**16.9 In India**, the current set of ethical norms are the Conduct Rules, contained in the Central Services (Conduct) Rules, 1964 and analogous rules applicable to members of the All India Services or employees of various State Governments(\*\*\*)). The code of behaviour as enunciated in the Conduct Rules, while containing some general norms like 'maintaining integrity and absolute devotion to duty' and not indulging in 'conduct unbecoming of a government servant' is generally directed towards cataloguing specific activities deemed undesirable for government servants. These conduct rules do not constitute a code of ethics.

16.9 The Draft Public Services Bill, 2007 proposes the necessary first step towards evolving a code of ethics. It states in Chapter III,

**6. Values of Public Service: The Public Service and the Public Servants shall be guided by the following values in the discharge of their functions:**

- (1) *patriotism and upholding national pride*
- (2) *allegiance to the Constitution and the law of the nation*
- (3) *objectivity, impartiality, honesty, diligence, courtesy and transparency*
- (4) *maintain absolute integrity*

**7. Without prejudice to the provisions of this Act, the Central Government may, on the recommendations of or in consultation with the Central Authority, notify from time to time other values in this Section.**

**8. Review of Public Service Values: The Central Authority may from time to time review the adoption, adherence to and implementation of the Public Service Values in the departments or organizations under the Central Government and send reports to the Central Government.**

### **9. Public Services Code:**

- (1) *The Government shall promote the Public Service Values and a standard of ethics in the Public Service operations, requiring and facilitating every Public Service employee:*
  - i. *to discharge official duties with competence and accountability; care and diligence; responsibility, honesty, objectivity and impartiality; without discrimination and in accordance with law*
  - ii. *to ensure effective management, professional growth and leadership development*
  - iii. *to avoid misuse of official position or information and using the public moneys with utmost care and autonomy*
  - iv. *function with the objective that Public Services and Public Servants are to serve as instruments of good governance and to provide services for the Betterment of the public at large; foster socio-economic development, with due regard to the diversity of the nation but without discrimination on the ground of caste, community, religion, gender or class and duly protecting the interest of poor, underprivileged and weaker sections.*
- (2) *The Government shall, in consultation with the Central Authority, prepare a Public Services Code of Ethics for guiding the Public Service employees within one year from the commencement of this Act.*

16.10. In India, civil service values have evolved over years of tradition. The Code of Conduct. The current set of 'enforceable norms' are 'Conduct Rules', typified by the Central Civil Services (Conduct) Rules - 1964, while containing some general norms like 'maintaining integrity and absolute devotion to duty' and not indulging in 'conduct unbecoming of a government servant'.

**There is no Code of Ethics prescribed for civil servants in INDIA**  
although such Codes exist in other countries.

A comprehensive Civil Service Code can be conceptualized at three levels.

At the apex level, there should be a clear and concise statement of the values and ethical standards that a civil servant should imbibe. These values should reflect public expectations from a civil servant with reference to political impartiality, maintenance of highest ethical standards and accountability for actions.

At the second level, the broad principles which should govern the behaviour of a civil servant may be outlined. This would constitute the Code of Ethics.

At the third level, there should be a specific Code of Conduct stipulating in a precise and unambiguous manner, a list of acceptable and unacceptable behaviour and actions. The Commission feels that the values and the Code of Ethics should be given a statutory backing by including them in the proposed Civil Services Bill.

16.11 The Commission is of the view that in addition to commitment to the Constitution these values should include:

- a. Adherence to the highest standards of probity, integrity and conduct
- b. Impartiality and non-partisanship
- c. Objectivity
- d. Commitment to the citizens' concerns and public good
- e. Empathy for the vulnerable and weaker sections of society.

16.12 The Commission is also of the view that these values, *per se*, may not be enforceable. But a mechanism may be put in place so that efforts are made, particularly, by those in leadership positions, for inculcating these values in all persons in their organisations.

The Commission feels that an independent agency should audit organizations/departments and evaluate the measures the organization has undertaken to uphold the civil service values. The Central Civil Services Authority may be entrusted with this task.

16.13 The Commission has studied the issue of ethics in public life in other countries and in its Report on "Ethics in Governance"; it has highlighted the seven principles of public life enunciated by the Nolan Committee in UK. Drawing from these, the Commission would suggest the inclusion of the following principles in the Code of Ethics for civil servants in India:

- **Integrity**: Civil servants should be guided solely by public interest in their official decision making and not by any financial or other consideration either in respect of themselves, their families or their friends.
- **Impartiality**: Civil servants in carrying out their official work, including functions like procurement, recruitment, delivery of services etc, should take decisions based on merit alone.
- **Commitment to public service**: Civil servants should deliver services in a fair, effective, impartial and courteous manner.
- **Open accountability**: Civil servants are accountable for their decisions and actions and should be willing to subject themselves to appropriate scrutiny for this purpose.
- **Devotion to duty**: Civil servants maintain absolute and unstinting devotion towards their duties and responsibilities at all times.
- **Exemplary behaviour**: Civil servants shall treat all members of the public with respect and courtesy and, at all times, should behave in a manner that upholds the rich traditions of the civil services.

16.14 At the third level are a set of specific guidelines regulating the conduct of civil servants. The present Conduct Rules regulate the behaviour of civil servants. Although these constitute a very comprehensive and wide ranging set of guidelines, they suffer from many shortcomings and anomalies. To illustrate:

- (1) No Class I officer shall, except with the previous sanction of the Government, permit his son, daughter or other dependant, to accept employment in any [company or firm] with which he has official dealings or in any other [company or firm] having official dealings with the Government.<sup>118</sup>

Since there may be no company or firm in India that does not have any dealing with the Government, all firms and companies are automatically covered by such a sweeping rule which is likely therefore to be observed more in breach than in reality.

- (2) Where a Government servant enters into a transaction in respect of movable property either in his own name or in the name of the member of his family, he shall, within one month from the date of such transaction, report the same to the prescribed authority, if the value of such property exceeds twenty thousand rupees in the case of a Government servant holding any Class I or Class II post or fifteen thousand rupees in the case of Government servant holding any Class III or Class IV post, provided that the previous sanction of the prescribed authority shall be obtained by the Government servant if any such transaction is with a person having official dealings with him.

16.15 Considering the rate of inflation in the country, rising living standards and rising income levels, the financial ceilings prescribed above mean that even for buying day-to-day consumer appliances, intimation of the transaction to Government becomes necessary. This restriction again is therefore observed more in breach than in reality. Even if such intimation is given, it is unlikely that the Government can maintain or process the records of such transactions. It also amounts in any case to duplication of efforts since an annual statement of movable and immovable properties is to be submitted by Government servants.

- (3) No Government servant shall, except with the previous knowledge of the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family.

<sup>118</sup> Rule 4(2) of the Central Services (Conduct) Rules, 1964

This Rule is again so sweeping in its coverage that even inheritance of ancestral family property would require prior intimation. It also amounts to duplication since an annual property return is supposed to reflect all the transactions.

- (4) *A Government servant shall so manage his private affairs as to avoid habitual indebtedness or insolvency. A Government servant against whom any legal proceeding is instituted for the recovery of any debt due from him or for adjudging him as an insolvent, shall forthwith report the full facts of the legal proceedings to the Government.*

This appears to be a meaningless provision which is unlikely to be enforced nor does it have any direct linkage with the official work of the civil servant.

16.16 Therefore, in the light of the above, the Conduct Rules need to be completely redrawn based on the values and code of ethics as suggested in the preceding paragraphs. The proposed Central Civil Services Authority may be consulted while drawing up the Conduct Rules and for interpreting any 'grey areas' that may emerge in enforcing these Conduct Rules. The recommendations regarding the 'Civil Services Values' and the 'Code of Ethics' would have to be incorporated in the proposed Civil Services Bill.

#### **16.17 Recommendations**

- a. 'Civil Services Values' and the 'Code of Ethics' should be incorporated in the proposed Civil Services Bill.
- b. Conduct Rules for civil servants need to be redrawn based on the values and code of ethics as outlined in this Chapter (Chapter 16).

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## CITIZEN CENTRIC ADMINISTRATION The Heart of Governance

### Chap 1. INTRODUCTION

average citizen is concerned less with the convolutions of governance and politics, also the myriad structures and levels of government departments; than with obtaining rapid and equitable access to government services, whether regulatory or developmental or welfare oriented, preferably at his doorstep. That is why, stability, transparency, efficiency and continuity in the governance system that the citizens are most immediately concerned with, is so necessary. That is why, our priority in India must be to place the citizen at the centre of a modern public administration.

The concepts of good governance and citizen centric administration are intimately connected. Citizen centricity with the aim of ensuring citizens' welfare and citizens' satisfaction, is critical for any government, local, state or national; which aims to provide good governance.

#### Focus

Governance in order to be citizen centric should be participative and transparent. It should be effective, efficient and responsive to the citizens. Furthermore, an ethos of serving

the citizens should permeate all government organizations. Last but not the least, government

organisations should be accountable to the people. As one of the primary functions of the State is to promote the welfare of its citizens, an evaluation of the functioning of the institutions of governance will ultimately have to be based on the satisfaction they provide to the common man. In this regard, prominence would need to be attached to the voice of the citizens themselves.

#### Initiative in the past

There have been a large number of reform measures - some at the macro level and others at the micro level - which have sought to bring administration closer to the people. These include (i) enacting laws giving certain rights to people, (ii) setting up of new institutional mechanisms to redress citizens' grievances, (iii) improving accessibility to citizens by setting up units closer to people, (iv) simplifying procedures to reduce bureaucratic delays, (v) using technology to improve internal efficiency, (vi) rewarding government employees who perform well, (vii) improving discipline within the organization, (viii) reducing regulatory control (ix) holding public contact programmes etc.

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#### **Other initiatives**

- \*Santhanam Committee Report – Creation of The Central Vigilance Commission
- \*First ARC - Lok Pal and Lokayukta- The Lok Pal is supposed to be a watchdog over the integrity of Ministers and the Members of Parliament. The Lok Pal Bill provides for constitution of the Lok Pal as an independent body to enquire into cases of corruption against public functionaries, with a mechanism for filing complaints and conducting inquiries etc.
- \*Citizens' Charter\* e governance\* Computerised Grievances Redressal Mechanisms
- \* Right to Information\* Citizens Feedback

#### **Chap 2. Good governance**

The concept of good governance is not new. Kautilya in his treatise Arthashastra elaborated the traits of the king of a well governed State thus: "in the happiness of his subjects

lies his happiness, in their welfare his welfare, whatever pleases himself, he does not consider as good, but whatever pleases his subjects he considers as good"

goodgovernance,  
participatory,consensoriented,accountable,transperant,responsive,effective,efficient,equitable,inclusive

#### **pillars of good governance**

- Ethos (of service to the citizen),
- Ethics (honesty, integrity and transparency),
- Equity (treating all citizens alike with empathy for the weaker sections), and
- Efficiency (speedy and effective delivery of service without harassment and using ICT increasingly).

**The Eleventh Plan has emphasized that good governance should cover the following distinct dimensions:**

- \*As a democratic country, a central feature of good governance is the constitutionally protected right to elect government at various levels in a fair manner, with effective participation by all sections of the population
- \*The government at all levels must be accountable and transparent. Closely related to

accountability is the need to eliminate corruption, which is widely seen as a major deficiency in governance. Transparency is also critical, both to ensure accountability, and also to enable genuine participation.

\*The government must be effective and efficient in delivering social and economic public services, which are its primary responsibilities. This requires constant monitoring and attention to the design of our programme

\*Governments at lower levels can only function efficiently if they are empowered to do so

\* An overarching requirement is that the rule of law must be firmly established

\*minorities groups, especially the SCs, STs, minorities and others, must feel they have an equal stake and should perceive an adequate flow of benefits to ensure the legitimacy of the State

Transparency International- India features at No. 87/178 with a rating of 3.3. This is a very low ranking in the international scenario and shows that corruption is a serious problem in India.

#### **Problem areas**

Among the most commonly noted bottlenecks in implementation of projects are:

\* Multiplicity of laws governing same or similar set of issues.

\* Requirement of a large number of approvals/permissions.

\* Lack of transparency in the administration of clearances and approvals.

For the common man, bureaucracy denotes routine and repetitive procedures, paper work

and delays. This, despite the fact that the Government and bureaucracy exist to facilitate

the citizens in the rightful pursuit of their legal activities. Rigidities of the system over

centralization of powers, highly hierarchical and top down method of functioning with

a large number of intermediary levels delaying finalization of any decision, divorce of

authority from accountability and the tendency towards micromanagement, have led to a

structure in which form is more important than substance and procedures are valued over

end results and outcomes. Non-performance of the administrative structures, poor service

quality and lack of responsiveness, and the subjective and negative abuse of authority have

eroded trust in governance systems which needs to be restored urgently.”

Not only are public servants perceived to be too many in number it is also believed that they do not contribute to the gross domestic product. There is a general impression—that the absolute size of the bureaucracy is overgrown beyond what is fundamentally necessary.

productivity, accountability, transparency and integrity problem areas

## Barriers to Good Governance

the reasons for Governments not being citizen centric can be attributed to the attitude and work of some government servants, the deficiencies in existing institutional structures and also to some citizens. While the laws made by the Legislature may be sound and relevant, very often they are not properly implemented by government functionaries. The institutional structure provided at times may be also weak and ill-conceived and thus has neither the capacity nor the resources to implement the laws in letter and spirit

**PM MMS**" Effective and efficient institutions form the backbone of a successful development and governance process. The founding fathers had the foresight to create the necessary institutional framework which has brought us thus far. We need to think whether this framework is adequate in the years to come; whether past modes of functioning will address the demands of the future in fast changing world; whether skills and capabilities that were relevant in the past have outlived their utility? It is only by asking and answering these questions will we be able to identify institutional reforms which will meet the needs of our times"

The system often suffers from problems of excessive centralization and policies and action plans are far removed from the needs of the citizens. It results in a mismatch between what is required and what is being provided. Inadequate capacity building of personnel who are to implement the laws also results in policies and laws not being implemented properly.

**Attitudinal Problems of the Civil Servants** there is a growing concern that the Civil Services and administration in general, have become wooden, inflexible, self-perpetuating and inward looking, indifferent and insensitive to the needs of citizens

Other problem include

- 1) Lack of Accountability,
- 2) Red Tapism, Very often, the most difficult area of reform in government is process and procedural reform. No amount of investment in capabilities and technologies can improve performance and service delivery beyond a point if we continue to be prisoners of archaic procedures and processes. Often, policy reform measures do not deliver the desired outcomes because of lack of forward movement in reform of government processes. This is

after all, what gives rise to the so-called Inspector Raj. This is what makes the interface of a common citizen with government a cumbersome and daunting affair. This is often the root cause of corruption

as well. When I meet individuals or industrialists, it is this aspect of government which is crying out for change

**3) Low levels of Awareness of the Rights and Duties of Citizens** Inadequate awareness about their rights prevents citizens from holding erring government servants to account. Similarly, low levels of compliance of Rules by the citizens also acts as an impediment to good governance. Thus, awareness of rights and adherence to duties are two sides of the same coin.

#### **4) Ineffective Implementation of Laws and Rules**

##### **Need for reforms**

It is in this context that 'reform of government' becomes relevant. 'Administrative Reforms' is a phrase that has been used widely to mean many things. It is used by some to mean change of any kind to deal with government problems of any description. Some regard 'administrative reform' merely as a means of "making the government work" better. Others

in fact see 'reform' as "less government". I view the reform of government as a means of making citizens central to all government activities and concerns and reorganising government to effectively address the concerns of the common people.

##### **# Necessary Pre-conditions for Good Governance to overcome barriers of good governance**

- a. Sound legal framework.
- b. Robust institutional mechanism for proper implementation of the laws and their effective functioning.
- c. Competent personnel staffing these institutions; and sound personnel management policies.
- d. Right policies for decentralization, delegation and accountability.

Besides, a number of tools can also be employed to make administration citizen centric.

These are:

- a. Re-engineering processes to make governance 'citizen centric'.
- b. Adoption of appropriate modern technology.
- c. Right to information.
- d. Citizens' charters.
- e. Independent evaluation of services/focus on outcomes

- f. Grievance redressal mechanisms.
- g. Active citizens' participation – public-private partnership/information dissemination
- h. process simplification

#### **Core Principles for Making Governance Citizen Centric**

##### **Rule of Law - Zero Tolerance Strategy**

##### **Making Institutions Vibrant, Responsive and Accountable**

##### **Active Citizens' Participation – Decentralization and Delegation**

**Transparency, Civil Service Reforms, Ethics in Governance, Process Reforms Periodic & Independent Evaluation of the Quality of Governance**

### **Chap 3. Functions of Government**

- a. **Regulatory functions** Regulation only where necessary, Regulation to be effective, Regulatory procedures to be simple, transparent and citizen friendly, Involving citizens' groups, professional organizations in the regulation activities
- b. **Service providing function** social services like education and health to infrastructural services like power, road, transport and water etc. There is need for a shift in emphasis in the crucial service delivery sectors of education and health from centralized control to decentralized action, from accountability to the State department to accountability to the local communities and from employment guarantee to service guarantee. Single Window System for Delivery of Services concept within their organisations to minimize delays and maximize convenience to citizens
- c. **Developmental functions.** Government implements a large number of welfare and development programmes for promoting the socio-economic upliftment of its citizens. These include programmes for poverty alleviation, employment generation schemes, schemes to strengthen infrastructure, measures for the welfare of weaker sections of society, programmes to improve the health and nutritional status of citizens etc.
  - a. the principle of subsidiarity should be followed while deciding on the implementation machinery for any programme.
  - b. Citizens should be actively involved in all stages of these programmes i.e. planning, implementation and monitoring.
  - c. Mandatory social audit should be carried out for all programmes.
- d. Impact assessment should be carried out for all programmes at periodic intervals.

## **Chap4. CITIZENS'-CHARTER**

The Citizens' Charter is an instrument which seeks to make an organization transparent, accountable and citizen friendly. A Citizens' Charter is basically a set of commitments made by an organization regarding the standards of service which it delivers. Every citizens' charter has several essential components to make it meaningful; the first being

the Vision and Mission Statement of the organization. This gives the outcomes desired and the broad strategy to achieve these goals and outcomes. This also makes the users aware of the intent of their service provider and helps in holding the organization accountable. Secondly, in its Citizens' Charter, the organization must state clearly what subjects it deals with and the service areas it broadly covers. This helps the users to understand the type of services they can expect from a particular service provider. These commitments/promises constitute the heart of a citizens' charter. Even though these promises are not enforceable in a court of law, each organization should ensure that the promises made are kept and, in case of default, a suitable compensatory/remedial mechanism should be provided. Thirdly, the Citizens' Charter should also stipulate the responsibilities of the citizens in the context of the charter.

The Citizens' Charter, when introduced in the early 1990's, represented a landmark shift in the delivery of public services. The emphasis of the Citizens' Charter is on citizens as customers of public services. The Citizens' Charter scheme in its present form was first launched in 1991 in the UK.

A Citizens' Charter is a public statement that defines the entitlements of citizens to a specific service, the standards of the service, the conditions to be met by users, and the remedies available to the latter in case of non-compliance of standards. The Charter concept empowers the citizens in demanding committed standards of service.

### **PRINCIPLE OF CITIZEN CHARTER**

- i. Quality - improving the quality of services;
- ii. Choice - for the users wherever possible;
- iii. Standards - specifying what to expect within a time frame;

- iv. Value - for the taxpayers' money;v. Accountability - of the service provider (individual as well as Organization);andvi. Transparency - in rules, procedures, schemes and grievance redressal.
- i. Set standards of service;ii. Be open and provide full information;iii. Consult and involve;
- iv. Encourage access and promote choice;v. Treat all fairly;vi. Put things right when they go wrong;vii. Use resources effectively;viii. Innovate and improve; andix. Work with other providers.

#### **The Indian Experience of Citizens' Charter**

the Government of India in 1996 commenced a National Debate for Responsive Administration. A major suggestion which emerged was bringing out Citizens' Charters for all public service organisations. The idea received strong support at the Chief Ministers' Conference in May 1997; one of the key decisions of the Conference was to formulate and operationalise Citizens' Charters at the Union and State Government levels in sectors which have large public interface such as Railways, Telecom, Post & Public Distribution Systems, Hospitals, and the Revenue & Electricity Departments. The momentum for this was provided by the Department of Administrative Reforms & Public Grievances (DAR&PG) in consultation with the Department for Consumer Affairs.

#### **The Report of PAC has also brought out the following general deficiencies:**

Poor design and content; Lack of public awareness; Inadequate groundwork: Charters are rarely updated; End-users and NGOs are not consulted when Charters are drafted, the needs of senior citizens and the disabled are not considered when drafting, Resistance to change:

Citizens' Charters have still not been adopted by all Ministries/Departments  
There is often little interest shown by the organizations in adhering to their Charter  
There was general lack of accountability and review mechanisms.  
There was general lack of accountability and review mechanisms.

#### **Reforms suggested for citizen charter shortcomings**

In order to make these Charters effective tools for holding public servants accountable, the Charters should clearly spell out the remedy/penalty/compensation in case there is a default in meeting the standards spelt out in the Charter. It emphasized that it is better to have a few promises which can be kept than a long list of lofty but impractical aspirations.

**Internal restructuring should precede Charter formulation; One size does not fit all, Wide consultation process, Firm commitments to be made, Redressal mechanism in case of default , Periodic evaluation of Citizens' Charter, Benchmark using end-user feedback, Hold officers accountable for results, Include Civil Society in the process**

**Citizens' Charters specify standards of services and time limits that the public can reasonably expect from the organization. It also contains the details of grievances redressal mechanism and how it can be accessed.**

#### **e Sevottam Model**

The Sevottam model has three modules. The first component of the model requires effective Charter implementation thereby opening up a channel for receiving citizens' inputs into the way in which organizations determine service delivery requirements. Citizens' Charters

publicly declare the information on citizens' entitlements thereby making citizens better informed and hence empowering them to demand better services. The second component of the model, 'Public Grievance Redress' requires a good grievance redressal system operating

in a manner that leaves the citizen more satisfied with how the organization responds to complaints/grievances, irrespective of the final decision. The third component 'Excellence in

'Service Delivery', postulates that an organization can have an excellent performance in service

delivery only if it is efficiently managing well the key ingredients for good service delivery and building its own capacity to continuously improve service delivery.

#### **The Citizens' Charter shall contain:**

1. Vision and mission statement of the organisation. 2. List of key service(s) being offered by the organisation, and 3. Measurable service standards for the service(s) provided and remedies

available to the customer for non-compliance to the standards.

1. Represent a systematic effort of the organisation to focus on its commitment towards its customers. 2. Be simple and easily understandable and also printed in local languages, as required. 3. Be non-discriminatory.

4. Describe or refer to complaint handling process. 5. Include the name, address, telephone number and other contact details of the public grievance officer.

6. Be periodically reviewed for up-dates and continual improvement.
7. Highlight expectations of the organisation from its customers where required.

**the ARC Seven Step Model for Citizen Centricity**

- a. Define all services which you provide and identify your clients.
- b. Set standards and norms for each service.
- c. Develop capability to meet the set standards.
- d. Perform to achieve the standards
- e. Monitor performance against the set standards.
- f. Evaluate the impact through an independent mechanism.
- g. Continuous improvement based on monitoring and evaluation results.

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## **Chap5.CITIZENS' PARTICIPATION IN ADMINISTRATION**

### **Peoples' Participation in Governance**

Governance comprises the mechanisms, processes and institutions through which collective decisions are made and implemented, citizens' groups and communities pursue their vision, articulate their interests, exercise their legal rights, meet their obligations and mediate their difference

**Citizens' participation in governance embodies a shift in the development paradigm from citizens as the recipients of development to one that views them as active participants in the development process. Equally, it involves a shift from a "top-down" to a "bottom-up" approach to development involving increasing decentralization of power away from the Union Government and closer to grassroots levels, i.e. "Subsidiarity" which the Commission has gone into in detail in its Sixth Report on "Local Governance". The concept of citizens' participation in governance is essentially based on the premise that citizens have a legitimate role in influencing decision making processes that affect their lives, their businesses and their communities. In other words, citizens' participation refers to the mechanism and modalities by which citizens can influence and take control over resources and decision making that directly impacts their lives. At the ideological level, direct citizens' participation in governance is seen as contributing to a healthy democracy because it enhances and improves upon the traditional form of representative democracy to transform it into more responsive and thus a participative grassroots democracy.**

**active citizens' participation can contribute to good governance in the following ways:**

- i) It enables citizens to demand accountability and helps to make government more responsive, efficient and effective.
- ii) It helps to make government programmes and services more effective and sustainable.
- iii) It enables the poor and marginalized to influence public policy and service delivery to improve their lives.
- iv) It helps to promote healthy, grassroots democracy

**Under this new paradigm, citizens are no longer considered mere beneficiaries of the**

**fruits of technical expertise and knowhow from externally guided development programmes.**

**Instead, they are seen as equal stakeholders in the development process. In fact, popular**

participation as a democratic right that should be promoted in all development projects, has increasingly come to be accepted as an objective and not just as a means to development. Citizens' participation in governance is a bilateral engagement wherein it is essential both for government agencies as well as the citizens to be fully involved in order for such participation to lead to improved outcomes such as better service delivery, change in public policy, redressal of grievances etc. The pattern of such participation has been described as a ladder with different types of engagements that represent different degrees or intensity of participation.

**mechanisms for citizens' participation**Citizens seeking information; Citizens giving suggestions; Citizens demanding better services; Citizens holding service providers and other

government agencies' accountableActive citizens' participation in administration/decision making.

citizens should be given the opportunity to rate the services provided by government organizations, on a periodic basis. Regular citizens' feedback and survey and citizens report cards should therefore be evolved by all departments for this purpose. This would not only give a voice to the citizens but also enable the agencies concerned to judge satisfaction ratings and the need for improvementGiving citizens on-going access to the decision-making process, beyond periodic consultations is a more mature and intensive form of citizens' participation in governance which can help them negotiate with the govt for better policy making, plans and projects. The Commission has taken note of the debate on local governments versus citizens' groups. The Commission is of the considered view that empowerment of stakeholders and local governments must be seen as a continuum and that there should be no cause for conflict between stakeholders' groups and representative local governments. Effective empowerment of stakeholders accompanied by mechanisms for coordination with local governments is, therefore, a key principle to be followed"

**Examples= participatory municipal budgeting, allowing citizens to vote directly through a referendum on specific proposals for changes in public policies, projects and laws; mandatory public hearings before approval of projects or decisions such as changes in land use plans, that affect the environment and/or the local community, giving citizens' representation on management committees for local hospitals and schools, social audit, empowering the Gram Sabha to decide on issues of implementation in government welfare schemes etc.**

### **Social Audit**

**Social audit generally refers to engagement of the stakeholders in measuring the achievement of objectives under any or all of the activities of a government organization, especially those pertaining to developmental goals. The basic aim here is to have an understanding of an activity from the perspective of the vast majority of people in**

society for whom the institutional/administrative system is designed and to improve upon it.

Various participation techniques are used to involve all stakeholders in measuring, understanding, reporting and improving the social performance of an organization or activity. The whole process is intended as a means for social engagement, transparency and communication of information, leading to greater accountability of decisionmakers, representatives, managers and officials. It can be a continuous process covering all the stages of the target activity/programme.

#### **Encouraging Citizens' Participation**

the Commission feels that while no single modality or mechanism can be prescribed for encouraging citizens' participation in governance; in general, there is need to create institutionalized mechanisms for encouraging their participation in governance across public agencies at all levels and, for this to happen, the following steps are necessary

##### **A comprehensive review of policy and practice in each department/public agency**

**Modifying administrative procedures where necessary** Entrustment of the function of institutionalizing citizens' participation in governance to a senior level officer, Performance management reviews to incorporate effectiveness in ensuring citizens' participation in governance:

**Enabling Women's Participation** Because of socio-cultural mores and seclusion norms, women in many parts of our country find it more difficult to approach and access government offices/services. This gender perspective must be kept in mind by all government authorities and

agencies while ensuring participation of citizens in governance, including physically challenged as well

**few recommendations**

a) It should be mandatory for all government organizations to develop a suitable mechanism for receipt of suggestions from citizens, which could range from the simple 'Suggestion Box' to periodic consultations with citizens' groups.

b) Every government organization must ensure the following: (i) fool-proof system for registration of all complaints, (ii) a prescribed time schedule for response and resolution, and (iii) a monitoring and evaluation mechanism to ensure that the norms, prescribed are complied with. Use of tools of information technology can help to make such a system more accessible for citizens.

## RIGHT TO INFORMATION MASTER KEY TO GOOD GOVERNANCE

### **INTRODUCTION**

Right to information has been seen as the key to strengthening participatory democracy and ushering in people centred governance. Access to information can empower the poor and the weaker sections of society to demand and get information about public policies and actions, thereby leading to their welfare. Without good governance, no amount of developmental schemes can bring improvements in the quality of life of the citizens. Good governance has four elements- transparency, accountability, predictability and participation.

Transparency refers to availability of information to the general public and clarity about functioning of governmental institutions. Right to information opens up government's records to public scrutiny, thereby arming citizens with a vital tool to inform them about what the government does and how effectively, thus making the government more accountable. Transparency in government organisations makes them function more objectively thereby

enhancing predictability. Information about functioning of government also enables citizens to participate in the governance process effectively. In a fundamental sense, right to information is a basic necessity of good governance.

### **OFFICIAL SECRETS**

#### **Background**

The Official Secrets Act, 1923 (hereinafter referred to as OSA), enacted during the colonial era, governs all-matters of secrecy and confidentiality in governance. The law largely deals with matters of security and provides a framework for dealing with espionage, sedition and other assaults on the unity and integrity of the nation. However, given the colonial climate of mistrust of people and the primacy of public officials in dealing with the citizens, OSA created a culture of secrecy. Confidentiality became the norm and disclosure the exception.

This tendency was buttressed by the Civil Service Conduct Rules, 1964 which prohibit communication of an official document to anyone without authorization. Not surprisingly, Section 123 of the Indian Evidence Act, enacted in 1872, prohibits the giving of evidence from unpublished official records without the permission of the Head of the Department, who has abundant discretion in the matter. Needless to say even the instructions issued for classification of documents for security purposes and the official procedures displayed this tendency of holding back information.

The word "secret" or the phrase "official secrets" has not been defined in the Act. Therefore, public servants enjoy the discretion to classify anything as "secret".

The various enactments in force in India dealing with offences against the national security are:-

- (i) chapters 6 and 7 of the Indian Penal Code ;
- (ii) the Foreign Recruiting Act, 1874;
- (iii) the Official Secrets Act, 1923;
- (iv) the Criminal Law Amendment Act, 1938;
- (v) the Criminal Law Amendment Act, 1961; and
- (vi) the Unlawful Activities (Prevention) Act, 1967

The Official Secrets Act, 1923 is the main statute for fighting espionage activities which vitally affect the national security. The main offences created by this Act are as follows:-

- (i) "spying", or entry into a prohibited place etc., transmission or collection of secret information, and the like ;
- (ii) wrongful communication of, or receiving secret information of the specified type;
- (iii) harbouring spies;
- (iv) unauthorized use of uniforms, falsification of reports etc., in order to enter a prohibited place, or for a purpose prejudicial to the safety of the State ;
- (v) interference with the police or military, near a prohibited place

The Law Commission also recommended consolidation of all laws dealing with national security and suggested a "National Security Bill". The Commission agrees with the recommendation of the Law Commission that all laws relating to national security should be consolidated. The Law Commission's recommendation was made in 1971. The National Security Act (NSA), subsequently enacted in 1980, essentially replaced the earlier Maintenance of Internal Security Act and deals only with preventive detention.

Section 5 (1) may lead to some controversy. It penalizes not only the communication of information useful to the enemy or any information which is vital to national security, but also includes the act of communicating in any unauthorized manner any kind of secret information which a Government servant has obtained by virtue of his office.

The Working Group constituted under the Chairmanship of Shri H. D. Shourie on "Right to Information and Transparency, 1997" recommended a comprehensive amendment of Section

5(1) to make the penal provisions of OSA applicable only to violations affecting national security. However the Ministry of Home Affairs, on consultation expressed the view that there is no need to amend OSA as the RTI Act has overriding effect.

OSA, in its present form is an obstacle for creation of a regime of freedom of information, and to that extent the provisions of OSA need to be amended. The Commission, on careful consideration agrees with the amendment proposed by the Shourie Committee, as it reconciles harmoniously the need for transparency and the imperatives of national security without in anyway compromising the latter. These can be incorporated in the proposed new chapter in the NSA relating to Official Secrets.

**Recommendations:**

- a. The Official Secrets Act, 1923 should be repealed, and substituted by a chapter in the National Security Act, containing provisions relating to official secrets.
- b. The equivalent of the existing Section 5, in the new law may be on the lines recommended by the Shourie Committee as quoted below.

"5(1) If any person, having in his possession or control any official secret which has come into his possession or control by virtue of:-

b1. his holding or having held an office with or under government,

or

b2. a contract with the government,

or

b3. it being entrusted to him in confidence by another person holding or having held an office under or with the government,

or in any other manner,

i. communicates, without due authority such official secret to another person or uses it for a purpose other than a purpose for which he is permitted to use it under any law for the time being in force; or

ii. fails to take reasonable care of, or so conducts himself as to endanger the safety of the official secret; or

iii. wilfully fails to return the official secret when it is his duty to return it, shall be guilty of an offence under this section.

5(2) Any person voluntarily receiving any official secret knowing or having reasonable ground to believe, at the time he receives it, that the official secret is communicated in contravention of this Act, shall be guilty of an offence under this section.

5(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

**Explanation:** For the purpose of this section, 'Official Secret' means any information the disclosure of which is likely to prejudicially affect the sovereignty and integrity of India, the security of State, friendly relations with foreign states, economic, commercial, scientific and technological matters relating to national security and includes: any secret code, password, sketch plan, model, article, note or document in relation to a prohibited place."

### **Governmental Privilege in Evidence:**

Public Law in its procedural aspect is of as much interest as substantive law. Although the citizen may sue public bodies and the Government, it does not necessarily follow that the law and procedure applied by the courts in such suits will be the same as is applied in litigation between private citizens. Special procedural advantages and protections are enjoyed by the State. One such protection operates in the field of evidence and is in the nature of a privilege regarding the production of certain documents and disclosure of certain communication

The term "privilege" as used in Evidence law means freedom from compulsion to give evidence or to discover material, or a right to prevent or bar information from other sources during or in connection with litigation, but on grounds extrinsic to the goals of litigation

Section 123 of the Indian Evidence Act, 1872 prohibits the giving of evidence derived from unpublished official records relating to affairs of State except with the permission of the Head of the Department.

#### **Recommendations:**

a. Section 123 of the Indian Evidence Act, 1872 should be amended to read as follows:

"123.(1) Subject to the provisions of this section, no one shall be permitted to give any evidence derived from official records which are exempt from public disclosure under the RTI Act, 2005.

(2) Where he withholds such permission, he shall make an affidavit containing a statement to that effect and setting forth his reasons therefor.

(3) Where such officer has withheld permission for the giving of such evidence, the Court, after considering the affidavit or further affidavit, and if it so thinks fit, after examining such officer or, in appropriate cases, the Minister, orally:

a) shall issue a summons for the production of the unpublished official records concerned, if such summons has not already been issued

b) shall inspect the records in chambers; and

c) shall determine the question whether the giving of such evidence would or would not be injurious to public interest, recording its reasons therefor.

(4) Where, under sub-section (3), the Court decides that the giving of such evidence would not be injurious to public interest; the provisions of subsection (1) shall not apply to such evidence.

Provided that in respect of information classified as Top Secret for reasons of national security, only the High Court shall have the power to order production of the records."

Section 124 of the Indian Evidence Act will become redundant on account of the above and will have to be repealed.

Accordingly, the following will have to be inserted at the appropriate place in the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973:

"Any person aggrieved by the decision of any Court subordinate to the High Court rejecting a claim for privilege made under section 123 of the Indian Evidence Act, 1872 shall have a right to appeal to the High Court against such decision, and such appeal may be filed notwithstanding the fact that the proceeding in which the decision was pronounced by the Court is still pending."

#### **The Oath of Secrecy:**

A Minister is a bridge between the people and the Government and owes his primary allegiance to the people who elect him. The existence of this provision of oath of secrecy and its administration along with the oath of office appears to be a legacy of the colonial era where the public was subjugated to the government. However, national security and larger public interest considerations of the country's integrity and sovereignty may require a Minister or a public servant with sufficient justification not to disclose information. But a very public oath of secrecy at the time of assumption of office is both unnecessary and repugnant to the principles of democratic accountability, representative government and popular sovereignty.

Therefore, the obligation not to disclose official secrets may be built in through an appropriate insertion of a clause in the national security law dealing with official secrets. If required, such an undertaking may be taken in writing, thus avoiding public display of propensity to secrecy. The Commission is therefore of the view that the Oath of Secrecy may be dispensed with and substituted by a statutory arrangement and a written undertaking.

#### **Recommendations:**

- a. As an affirmation of the importance of transparency in public affairs, Ministers on assumption of office may take an oath of transparency alongwith the oath of office and the requirement of administering the oath of secrecy should be dispensed with. Articles 75(4) and 164 (3), and the Third Schedule should be suitably amended.
- b. Safeguard against disclosure of information against the national interest may be provided through written undertaking by incorporation of a clause in the national security law dealing with official secrets.

#### **Exempted Organizations:**

Certain categories of organizations have been exempted from the provisions of the Act. The list of organizations includes Border Security Force (BSF), Central Reserve Police force (CRPF), Assam Rifles etc., but the Armed Forces have been left outside the purview of the Act. When organizations such as BSF, CRPF, Assam Rifles are exempted, there is no rationale for not exempting the Armed Forces as well. The Second schedule needs to be periodically revised to include or exclude organizations in keeping with changing needs.

The Commission feels that the Armed Forces should be included in the list of exempted organization (Second Schedule of the Act), because almost all activities of the Armed Forces would be covered under the exemption 8(a) which states that there shall be no obligation to give to any citizen, information which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State.....".

**Recommendations:**

- a. The Armed Forces should be included in the Second Schedule of the Act.
  - b. The Second Schedule of the Act may be reviewed periodically.
  - c. All organizations listed in the Second Schedule have to appoint PIOs.
- Appeals against orders of PIOs should lie with CIC/SICs. (This provision can be made by way of removal of difficulties under section 30).

**THE CENTRAL CIVIL SERVICES (CONDUCT) RULES:**

**The Central Civil Services (Conduct) Rules:**

The Central Civil Services (Conduct) Rules prohibit unauthorized communication of information (similar provisions exist for the state government employees under their respective Rules).

The Central Civil Services (Conduct) Rules were formulated when the RTI Act did not exist. The spirit of these Rules is to hold back information. With the emergence of an era of freedom of information, these Rules would have to be recast so that dissemination of information is the rule and holding back information is an exception. The Department of Personnel and Training has amended the Civil Services (Conduct) Rules on these lines in Oct. 2005. However all States need to amend rules in a similar manner in keeping with the letter and spirit of RTI Act.

**Recommendations:**

- a. Civil Services Rules of all States may be reworded on the following lines:

"Communication of Official Information: Every Government servant shall, in performance of his duties in good faith, communicate to a member of public or any organisation full and accurate information, which can be disclosed under the Right to Information Act, 2005..

**Explanation – Nothing in this rule shall be construed as permitting communication of classified information in an unauthorised manner or for improper gains to a Government servant or others."**

### **The Manual of Office Procedure**

The Manual of Office Procedure was prepared when the RTI Act was not in existence. These provisions are totally violative of the Act and hence need to be brought in conformity with the Act. The Act also defines "information" to mean any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. Thus notings and files per se will not become confidential and inaccessible unless they are classified as such and are declared to be covered under exemption provisions of Section 8(1) of the Act. To bring it in conformity with the Act, the provisions regarding unauthorized communication of official information and confidential character of notes / files will have to be amended.

#### **Recommendations:**

a. Para 116 of the Manual of Office Procedure needs to be reworded as follows:-

"Communication of Official Information: Every Government Servant shall, in performance of his duties in good faith, communicate to a member of public or any organization full and accurate information, which can be disclosed under the Right to Information Act. (Nothing stated above shall be construed as permitting communication of classified information in an unauthorized manner or for improper gains to a Government Servant or others)."

b. Para 118 (1) should be deleted.

c. The State Governments may be advised to carry out similar amendments in their Manuals, if such provisions exist therein.

### **CONFIDENTIALITY CLASSIFICATION**

#### **Classification of Information:**

A major contributor to the culture of secrecy in the government is the tendency to classify information even where such classification is clearly unwarranted. The Government of India has issued detailed instructions pertaining to safeguarding information in its possession, the unauthorised disclosure of which would cause damage to national security or would cause embarrassment to the Government in its functioning or would be prejudicial to national interest. These instructions, which are contained in the Manual of Departmental Security Instructions and the Manual of Office Procedure, lay down guidelines to give a security classification to a record based on the degree of confidentiality required. They also describe the manner in which each of such classified information should be handled and the persons who can access such information.

The Manual of Departmental Security Instructions deals with classification of documents and records involving national security and sensitive matters. Once information gets a security classification it moves out of the public domain. Even the RTI Act respects the need to keep certain information outside the public domain. Section 8 of the Act lists out the exemptions under which the PIO need not give information. However it is necessary to harmonise security classification with the provisions of the Act.

The hierarchy of security classification needs to be rationalised, reflecting the scheme of exemptions under the Act and emerging challenges. The Act has listed 11 categories (section 8 and 9) of exemption wherein information may not be given out. These range from "information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence; to "infringement of copyright subsisting in a person". The Commission feels that the classification-system should broadly cover each of these categories of information.

Although the 11 categories of information are fairly exhaustive and cover almost all possible situations for keeping information secret, some situations which demand secrecy seem to remain out of these exemptions like confidential reports of officials, and question papers of examinations. The Commission feels that information in these cases should also be covered by exemptions.

#### **Recommendations:**

a. The GOI should amend the Manual of Departmental Security Instructions in the following manner:

##### **i. Information Deserving Classification (Para 3)**

It would be advisable for each Ministry/Department to identify the information which deserves to be given a security classification. Ordinarily, only such information should be given a security classification which would qualify for exemption from disclosure under the Right to Information Act, 2005.

##### **ii. Upgrading and Downgrading (Para 2.3)**

Documents once classified as "Top Secret" or "Secret", should remain so classified as long as required but not exceeding 30 years. Documents classified as confidential and restricted should remain so for a period not exceeding 10 years. However, the competent classifying officer may, for reasons to be recorded in writing, authorise continued classification beyond the period prescribed above if information, the disclosure of which would cause damage to national security or national interest. A recipient officer of appropriate rank in a Ministry or Department may upgrade the security classification of a document received from outside, but this raised classification will be limited only to the Ministry or Department. (S)He will, however, have no authority to downgrade the security classification of a document received, without the concurrence of the originator. Within the same Department, an officer superior to the originator would have the authority to downgrade or upgrade the classification.

##### **iii. Officer Authorised to Accord the Grading:**

Top Secret Not below Joint Secretary

Secret Not below Deputy Secretary

Confidential Not below Under Secretary

The State Governments may authorise officers of equivalent rank to accord the grading.

## **IMPLEMENTATION OF THE RIGHT TO INFORMATION ACT**

### **RIGHTS AND OBLIGATIONS**

#### **Rights and Obligations under the Act:**

In order to enforce the rights and fulfil the obligations under the Act, building of institutions, organization of information and creation of an enabling environment are critical. Therefore, the Commission has as a first step reviewed the steps taken so far to implement the Act as follows:

#### **I. BUILDING INSTITUTIONS:**

- a. Information Commissions
- b. Information Officers and Appellate Authorities.

#### **II. INFORMATION AND RECORD-KEEPING:**

- a. *Suo motu* declaration under Section 4.
- b. Public Interest Disclosure.
- c. Modernizing recordkeeping.

#### **III. CAPACITY BUILDING AND AWARENESS GENERATION:**

#### **IV. CREATION OF MONITORING MECHANISMS**

#### **Building Institutions:**

##### **Information Commissions:**

Government of India (GOI) constituted the Central Information Commission (CIC) with a Chief Information Commissioner and four Information Commissioners (Section 12). The provisions of Section 15 came into force at once, thereby meaning that all the State Governments were required to constitute their respective Commissions immediately on enactment of the RTI Act.

The Act provides for selection of CIC and SICs in a bipartisan manner, and involves the Leader of the Opposition in the process. Since the Act is applicable to all three organs of the State, it would be appropriate to include in the selection committee the Chief Justice of the Supreme Court or High Court as the case may be. This will inspire public confidence and enhance the quality of the selection.

**Recommendations:**

- a. Section 12 of the Act may be amended to constitute the Selection Committee of CIC with the Prime Minister, Leader of the Opposition and the Chief Justice of India. Section 15 may be similarly amended to constitute the Selection Committee at the State level with the Chief Minister, Leader of the Opposition and the Chief Justice of the High Court.
- b. The GOI should ensure the constitution of SICs in all States within 3 months.
- c. The CIC should establish 4 regional offices of CIC with a Commissioner heading each. Similarly regional offices of SICs should be established in larger States.
- d. At least half of the members of the Information Commissions should be drawn from non civil services background. Such a provision may be made in the Rules under the Act, by the Union Government, applicable to both CIC and SICs.

**Designating Information Officers and Appellate Authorities:**

All Union Ministries/Departments have designated PIOs thus complying with the stipulation of designating PIOs. There is however a wide variation in the numbers of PIOs appointed, and the level of officers appointed.

The Commission also noted that in GOI the level of PIOs varied from Joint Secretary to Under Secretary. Ideally the PIO should be of a sufficiently senior rank to be able to access information and furnish it in an intelligible and useful manner. At the same time the PIO should be sufficiently accessible to the public.

**Recommendations:**

- (i) All Ministries/ Departments/Agencies/Offices with more than one PIO have to designate a nodal Assistant Public Information Officer with the authority to receive requests for information on behalf of all PIOs. Such a provision should be incorporated in the Rules by appropriate governments.
- (ii) PIOs in Central Secretariats should be of the level of atleast Deputy Secretary /Director. In State Secretariats, officers of similar rank should be notified as PIOs. In all subordinate agencies and departments, officers sufficiently senior in rank and yet accessible to public may be designated as PIOs.
- (iii) All public authorities may be advised by the Government of India that along with the Public Information Officers they should also designate the appellate authority and publish both together.
- (iv) The designation and notification of Appellate Authorities for each public authority may be made either under Rules or by invoking Section 30 of the Act.

**Organising Information and Record Keeping:**

Pro - active disclosure of important information by governmental agencies constitutes the essence of transparency in governance. Keeping in view this philosophy, the Act emphasises *suo motu* disclosure {Section 4(1)}, and stipulates publication of prescribed information by all public authorities. Ideally in a vast majority of cases, information sought should be available in these disclosures without recourse to an application under Section 6.

Even when the *suo motu* disclosure is of an acceptable quality the question of its access still remains. While the present practice of web publication should continue with regular up-dating, there are inherent limitations in electronic communication. The vast majority of people will not have access to computers in the foreseeable future. Also a large number of small public offices and village panchayats are unlikely to be able to use this mode of communication.

One important class of disclosures not covered under the Act is public interest disclosure. Interestingly, it is recognised in many democracies that an honest and conscientious public servant who is privy to information relating to gross corruption, abuse of authority or grave injustice should be encouraged to disclose it in public interest without fear of retribution.

Perhaps the weakest link in our information system is the total neglect of record keeping. The Tenth Finance Commission took note of it and recommended special grants to the States for improving record keeping. Land records are probably the most important public documents in any governance system. A vast number of people need them as a proof of title; dispute resolution relies heavily on records; access to credit is usually dependent on land ownership, and the whole administration hinges on the accuracy and reliability of land records. Naturally, access to land records will constitute bulk of the requests for information under the Act at grass roots level. Unfortunately, land records updating and maintenance has suffered great neglect after Independence. In many states, significant proportions of land records no longer exist; they are often fragile when they exist;

#### **Recommendations:**

- a. *Suo motu* disclosures should also be available in the form of printed, priced publication in the official language, revised periodically (at least once a year). Such a publication should be available for reference, free of charge. In respect of electronic disclosures, NIC should provide a single portal through which disclosures of all public authorities under appropriate governments could be accessed, to facilitate easy availability of information.

- b. Public Records Offices should be established as an independent authority in GOI and all States within 6 months by integrating and restructuring the multiple agencies currently involved in record keeping. This Office will be a repository of technical and professional expertise in management of public records. It will be responsible for supervision, monitoring, control and inspection of record keeping in all public offices.
- c. Public Records Office would function under the overall supervision and guidance of CIC/SIC.
- d. As a one time measure, GOI should earmark 1% of the funds of all Flagship Programmes for a period of five years for updating records, improving infrastructure, creating manuals and establishing the Public Records Offices. (An amount not exceeding 25% of this should be utilized for awareness generation.)
- e. As a one time measure, GOI may create a Land Records Modernisation Fund for survey and updation of all land records. The quantum of assistance for each State would be based on an assessment of the field situation.
- f. All organizations, which have jurisdiction over an area equal to or exceeding a district, should be funded and required to complete the process of digitization by the end of 2009. All sub-district level organizations should complete this task by the end of 2011. The controlling Ministries/Departments at Union and State level should lay down a detailed road map for this purpose with well-defined milestones within 6 months, so that this could be implemented as a priority item in the Eleventh Five Year Plan.

#### **Capacity Building and Awareness Generation:**

##### **Training programmes:**

The enactment of Right to Information Act is only the first step in promoting transparency in governance. The real challenge lies in ensuring that the information sought is provided expeditiously, and in an intelligible form. The mindset of the government functionaries, wherein secrecy is the norm and disclosure the exception, would require a revolutionary change. Such a change would also be required in the mindset of citizens who traditionally have been reluctant to seek information. Bringing about this radical change would require sustained training and awareness generation programmes.

##### **Awareness generation:**

The enactment of the Right to Information Act has led to an intense debate in the media on various aspects of freedom of information. Despite this, enquiries reveal that level of awareness, particularly at the grass roots level, is surprisingly low.

##### **Recommendations:**

- a. Training programmes should not be confined to merely PIOs and APIOs.

All government functionaries should be imparted atleast one day training on Right to Information within a year. These training programmes have to be organized in a decentralized manner in every block. A cascading model could be adopted with a batch of master trainers in each district.

- b. In all general or specialized training programmes, of more than 3 days duration, a half-day module on Right to Information should be compulsory.
- c. Awareness campaigns may be entrusted to credible non profit organizations at the State level. They should design a multi media campaign best suited to the needs, in the local language. The funds earmarked (as mentioned in para 5.4.11.d) could be utilized for this purpose.
- d. Appropriate governments should bring out guides and comprehensible information material within the prescribed time.
- e. The CIC and the SICs may issue guidelines for the benefit of public authorities and public officials in particular and public in general about key concepts in the Act and approach to be taken in response to information requests on the lines of the Awareness Guidance Series

referred to above (para 5.5.1)

#### **Monitoring Mechanism:**

A strong monitoring mechanism is a basic necessity for ensuring successful implementation of the Act. The monitoring mechanism apart from exercising a supervisory role, should be able to detect problems in the process of implementation and trigger corrective measures. This monitoring should be done at several levels -within the public authority, for a group of authorities in a territory, for a whole state and the country. Normally monitoring is an inhouse function where the implementing authority itself monitors the operations. For each department/agency, the head of the organization will be responsible for monitoring. A question arises as to which agency should be at the apex of the monitoring process.

#### **Need for a coordination mechanism**

Although the Act is applicable to both the Union and state governments, the field situation varies from state to state. Moreover the State Information Commissions are independent of the Central Information Commission. It is likely that many similar issues crop up before various Information Commissions. It would be advisable in public interest if all the Information Commissions can share perspectives and experiences. This would avoid duplication of efforts, minimize litigation and ensure uniform application of the Act throughout the country.

#### **Recommendations:**

- a. The CIC and the SICs may be entrusted with the task of monitoring effective implementation of the Right to Information Act in all public authorities. (An appropriate provision could be made under Section 30 by way of removal of difficulties).

- b. As a large number of Public Authorities exist at regional, state, district and sub district level, a nodal officer should be identified wherever necessary by the appropriate monitoring authority (CIC/SIC) to monitor implementation of the Act.
- c. Each public authority should be responsible for compliance of provisions of the Act in its own office as well as that of the subordinate public authorities
- d. A National Coordination Committee (NCC) may be set up under the chairpersonship of the Chief Information Commissioner with the nodal Union Ministry, the SICs and representatives of States as members. A provision to this effect may be made under Section 30 of the Act by way of removing difficulties. The National Coordination Committee would:
- i. serve as a national platform for effective implementation of the Act,
  - ii. document and disseminate best practices in India and elsewhere,
  - iii. monitor the creation and functioning of the national portal for Right to Information,
  - iv. review the Rules and Executive orders issued by the appropriate governments under the Act,
  - v. carry out impact evaluation of the implementation of the Act; and
  - vi. perform such other relevant functions as may be deemed necessary

## ISSUES IN IMPLEMENTATION

### Implementation of the Act

The implementation of the RTI Act is an administrative challenge which has thrown up various structural, procedural and logistical issues and problems, which need to be addressed in the early stages.

### Facilitating Access:

For seeking information, a process as prescribed under the Act has to be set in motion. The trigger is filing of a request. Once the request is filed the onus of responding to it shifts to the government agency.

### FIG. 1 FLOWCHART OF THE PROCESSES INVOLVED IN GIVING INFORMATION UNDER RTI ACT page no 39

Based on the case studies conducted by the Commission, responses of various Ministries to a questionnaire, and interactions with the stakeholders, a number of difficulties /impediments were noted:

- Complicated system of accepting requests.
- Insistence on demand drafts
- Difficulties in filing applications by post.
- Varying and often higher rates of application fee.
- Large number of PIOs.

**Recommendations:**

- a. In addition to the existing modes of payment, appropriate governments should amend the Rules to include payment through postal orders.
- b. States may be required to frame Rules regarding application fee which are in harmony with the Central Rules. It needs to be ensured that the fee itself does not become a disincentive.
- c. Appropriate governments may restructure the fees (including additional fees) in multiples of Rs 5. {e.g. instead of prescribing a fee of Rs. 2 per additional page it may be desirable to have a fee of Rs. 5 for every 3 pages or part thereof}.
- d. State Governments may issue appropriate stamps in suitable denominations as a mode of payment of fees. Such stamps would be used for making applications before public authorities coming within the purview of State Governments.
- e. As all the post offices in the country have already been authorized to function as APIOs on behalf of Union Ministries/Departments, they may also be authorized to collect the fees in cash and forward a receipt along with the application.

**Inventory of Public Authorities:**

The Act defines public authorities to include a vast array of institutions and agencies. For people to access information, a catalogued and indexed list of all public authorities is necessary. In a vast and diverse country with a federal structure, listing out all the public authorities is a Herculean task.

**Recommendations:**

- a. At the Government of India level the Department of Personnel and Training has been identified as the nodal department for implementation of the RTI Act. This nodal department should have a complete list of all Union Ministries/ Departments which function as public authorities.
- b. Each Union Ministry/ Department should also have an exhaustive list of all public authorities, which come within its purview. The public authorities coming under each ministry/ department should be classified into (i) constitutional bodies, (ii) line agencies, (iii) statutory bodies, (iv) public sector undertakings, (v) bodies created under executive orders, (vi) bodies owned, controlled or substantially financed, and (vii) NGOs substantially financed by government. Within each category an up-to-date list of all public authorities has to be maintained.

- c. Each public authority should have the details of all public authorities subordinate to it at the immediately next level. This should continue till the last level is reached. All these details should be made available on the websites of the respective public authorities, in a hierarchical form.
- d. A similar system should also be adopted by the States.

#### **Single Window Agency at District Level:**

After sufficient awareness generation, it is expected that a large number of requests for information would come to the field level Public Authorities. Presently almost all departments and agencies of the State Government are represented at the District level. All these offices are often dispersed and most citizens would be unaware of their location. Under

such circumstances it becomes difficult for an applicant to identify the Public Authority and to locate it.

#### **Recommendation:**

- a. A Single Window Agency should be set up in each District. This could be achieved by creating a cell in a district-level office, and designating an officer as the Assistant Public Information Officer for all public authorities served by the Single Window Agency. The office of the District Collector/Deputy Commissioner, or the Zilla Parishad is well suited for location of the cell. This should be completed by all States within 6 months.

#### **Subordinate Field Offices and Public Authorities**

'Public authority' has been defined as any authority or body or institution of selfgovernment established or constituted by or under the Constitution, by any other law made by Parliament, by State Legislatures, and by any notification issued by the appropriate Government, including institutions substantially funded by the appropriate Government. This would extend the spread of public authorities to the level of panchayats and village patwaris across the country.

Under Section 5 of the Act, public authorities have to appoint Public Information Officers/Assistant Public Information Officers (PIOs/ APIOs). Different public authorities have adopted different approaches towards discharge of these responsibilities.

Even a literal interpretation of the law indicates a considerable overlap between PIOs/APIOs and public authorities. According to the definition in the Act, lower tiers of field formations should be treated as Public Authorities. While these tiers of administration may be appointed as APIOs by the higher authorities of their respective organizations, these tiers per se would also qualify as Public Authorities for their own internal functioning. This would in turn cast on them the responsibility of making suo motu disclosure of information under Section 4 of the Act. Currently, this is not being done.

**Recommendation:**

- a. The lowest office in any organization which has decision making power or is a custodian of records should be recognized as a public authority

**Time Limit for Information Beyond 20 Years:**

A uniform limit of 20 years may on a few occasions pose problems for the Public Authorities as well as the applicants. There is a significant percentage of records which is permanent in nature. On the other hand most public records are not maintained for 20 years. This is prescribed by the Manual of Office Procedure in the Government of India. Similar Manuals also exist in the State Governments.

**Recommendations:**

- a. The stipulation of making available 20-year old records on request should be applicable only to those public records which need to be preserved for such a period. In respect of all other records, the period of availability will be limited to the period for which they should be preserved under the record keeping procedures.
- b. If any public authority intends to reduce the period upto which any category of record is to be kept, it shall do so after taking concurrence of the Public Records Office as suggested in para 5.4.11.
- c. These recommendations could be implemented by way of removal of difficulties under Section 30 of the Act.

**Mechanism for Redressal of Public Grievances:**

In a large number of cases information sought to be accessed stems from a grievance against a department/ agency. Information is the starting point in a citizen's quest for justice and is not an end in itself. Information thus becomes a means to fight corruption and misgovernance or obtain better services.

Experience has shown that functionaries/departments tend to be defensive rather than proactive in redressing a grievance (or even in disclosing information) particularly when it directly pertains to their conduct (or misconduct). This proclivity underlines the need for an independent forum to hear complaints into acts of omission and commission, harassment, corruption etc. which emerge either through information collected under the Right to Information Act or otherwise.

**Recommendation:**

- a. The lowest office in any organization which has decision making power or is a custodian of records should be recognized as a public authority.

**Application to Non Governmental Bodies:**

Under the Act, a non-governmental body needs to be substantially financed by government to be categorized as a public authority under the Act. There is however no definition of "substantially financed."

In the wake of outsourcing of functions which traditionally were performed by government agencies, it is desirable that institutions that enjoy a natural monopoly, or whose functions impinge on citizens' lives substantially, must come under the provisions of the RTI Act.

**Recommendations:**

- a. Organisations which perform functions of a public nature that are ordinarily performed by government or its agencies, and those which enjoy natural monopoly may be brought within the purview of the Act.
- b. Norms should be laid down that any institution or body that has received 50% of its annual operating costs, or a sum equal to or greater than Rs.1 crore-during any of the preceding 3 years should be understood to have obtained 'substantial funding' from the government for the period and purpose of such funding.
- c. Any information which, if it were held by the government, would be subject to disclosure under the law, must remain subject to such disclosure even when it is transferred to a non-government body or institution.
- d. This could be achieved by way of removal of difficulties under section 30 of the Act.

**Frivolous and Vexatious Requests:**

Certain instances have been brought to the notice of the Commission in which the requests were patently frivolous or vexatious (or mala fide). There are also cases in which public servants under a cloud and facing grave disciplinary charges have repeatedly attempted to use the Act to intimidate, harass or at times even humiliate seniors with requests that have been vexatious. If safeguards are not provided in such situations, there could be three dangers.

First, such frivolous or vexatious requests may overwhelm the system and defeat the very purpose of the Act. Second, the even tenor of the administration may be paralysed, seriously undermining delivery of services. Third, if public servants facing serious charges successfully resort to such tactics directly or through proxies it may lead to breakdown of discipline, insubordination and disharmony in public institutions.

It has also been brought to the notice of the Commission that there may be cases where the efforts in compiling information may not be commensurate with the results achieved. Even in case of furnishing information to Parliament there is a stipulation that a question which clearly relates to day-to-day administration and asks for collection of facts pertaining to the Ministries entailing prolonged labour and time not commensurate with results achieved is ordinarily disallowed.

**Recommendations:**

a. Section 7 may be amended to insert sub section (10) as follows:

"The PIO may refuse a request for information if the request is manifestly frivolous or vexatious.

Provided that such a refusal shall be communicated within 15 days of receipt of application, with the prior approval of the appellate authority.

Provided further that all such refusals shall stand transferred to CIC/SIC, as the case may be and the CIC/SIC shall dispose the case as if it is an appeal under section 19(3) of the RTI Act".

b. It may be provided that information can be denied if the work involved in processing the request would substantially and unreasonably divert the resources of the public body,

Provided that such a refusal shall be communicated within 15 days of receipt of application, with the prior approval of the appellate authority.

Provided further that all such refusals shall stand transferred to CIC/SIC, as the case may be and the CIC/SIC shall dispose the case as if it is an appeal under section 19(3) of the RTI Act.

This may be accomplished by way of removal of difficulties or framing of appropriate Rules.

**APPLICATION OF THE ACT TO THE LEGISLATURE AND THE JUDICIARY**

In the Executive branch, traditionally secrecy has been the norm throughout the world, so also in India. The Legislatures and the Judiciary in India already operate within the public eye to a far greater extent than the Executive. The proceedings of the Legislatures are open to public and media and even telecast live in recent years. The meetings of Legislative Committees, however are generally not open to the public and media. Nevertheless, most of the functioning of the Legislature is in full public gaze.

Similarly, all judicial processes are in the public domain and hence totally transparent. But administrative processes within the courts would have to be brought within the ambit of this law, at the same time, without compromising with the independence and the dignity of the courts. There is need to bring uniformity in the information recording systems, introduce standard forms and a better system of classification of cases. The Act may be used as an instrument to build capacity to evolve efficient systems of information dissemination.

#### **LEGISLATURE**

Legislatures are storehouses of enormous amount of information on public policies and executive actions. However, there are two problems. First the information is disaggregated and not adequately synthesised. Thus, on the same subject there are several separate documents, often chronologically arranged, without sectoral linkages. Second, while information is available to legislators, it is very hard for citizens to access it. In order to address these issues, all information with the legislatures needs to be indexed, catalogued and computerised, with online access to all citizens and supply on demand.

Apart from law making, the Legislature exercises oversight function over the Executive branch. Parliamentary (Legislative) questions, proceedings of various committees, follow up action on the reports of CAG; action taken reports submitted by the government are a few vital mechanisms for such legislative oversight. However, except through media reports, the citizens rarely have direct access to such information

In most democracies, a major part of the legislative work is conducted in Committees. As Woodrow Wilson once observed, "Congress in session is Congress on exhibition; Congress in Committees is Congress at work". In India too, most of the important legislative work is conducted in the Committees, away from partisan influences and transient emotions. However, the work of legislative committees in India has generally been away from the public and media gaze.

#### **JUDICIARY**

As mentioned earlier the judicial processes are transparent. Even on the administrative front, the last decade has seen major strides made by judiciary in use of information technology for better court management and providing information to the litigants. In the Supreme Court of India and all High Courts, fresh cases are filed only before the computerized filing counters; cause lists are generated automatically by the computer and manual intervention has been eliminated resulting in generation of Cause List in time without any hurdles;

#### **Recommendations:**

- a. A system of indexing and cataloguing of records of the legislatures, which facilitates easy access should be put in place. This could be best achieved by digitising all the records and providing access to citizens with facilities for retrieving records based on intelligible searches.

- b. A tracking mechanism needs to be developed so that the action taken by the executive branch on various reports—like CAG, Commissions of Enquiry and House Committees is available to legislators and public, online.
- c. The working of the legislative committees should be thrown open to the public. The presiding officer of the committee, if required in the interest of State or privacy, may hold proceedings in camera.
- d. The records at the district court and the subordinate courts should be stored in a scientific way, by adopting uniform norms for indexing and cataloguing.
- e. The administrative processes in the district and the subordinate courts should be computerised in a time bound manner. These processes should be totally in the public domain.

## **CONCLUSION**

The Right to Information law of 2005 signals a radical shift in our governance culture and permanently impacts all agencies of state. The effective implementation of this law depends on three fundamental shifts: from the prevailing culture of secrecy to a new culture of openness; from personalized despotism to authority coupled with accountability; and from unilateral decision making to participative governance. Obviously one single law cannot change everything. But this fine legislation is an important beginning. Its effective application depends largely on the institutions created, early traditions and practices, attendant changes in laws and procedures, and adequate participation of people and the public servants. The Commission, therefore, focused on two broad categories of issues:

The first set of issues relates to changes in other laws and practices involving state secrets, civil service conduct rules and classification of documents. The Commission firmly believes that the Official-Secrets Act, 1923 in the-current form is antiquated and unsuitable to emerging needs. The second set of issues relates to implementation of the RTI Act itself, in particular process engineering, record keeping, disclosures, access and monitoring. In respect of the second category of issues, the Commission's recommendations are largely within the framework of the present law.

It is well recognized that right to Information is necessary, but not sufficient, to improve governance. A lot more needs to be done to usher in accountability in governance, including protection of whistle blowers, decentralization of power and fusion of authority with accountability at all levels. Nevertheless, this law provides us a priceless opportunity to redesign the processes of governance, particularly at the grass roots level where the citizens' interface is maximum. Now that the romance of the struggle for transparency is over, the tedious process of system-building has to take over. It is in this spirit that the Commission made specific recommendations and attempted to provide a road map for their time-bound implementation.

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**Report – 4**  
**Ethics in Governance**  
**Chapter – 1.**

**INTRODUCTION**

Ethics is a set of standards that society places on itself and which helps guide behaviour, choices and actions. The Commission is painfully aware that standards do not, by themselves, ensure ethical behaviour; that requires a robust culture of integrity

In our society, corruption and abuse of office has been aggravated by three factors. First, there is a colonial legacy of unchallenged authority and propensity to exercise power arbitrarily. In a society which worships power, it is easy for public officials to deviate from ethical conduct. Second, there is enormous asymmetry of power in our society. Third, as a conscious choice, the Indian state in the early decades after Independence chose a set of policies whose unintended consequence was to put the citizen at the mercy of the State. Over regulation, severe restrictions on economic activity, excessive state control, near-monopoly of the government in many sectors and an economy of scarcity all created conditions conducive to unbridled corruption.

A factor which increases corruption is over-centralization. The more remotely power is exercised from the administrators, the greater is the distance between authority and accountability.

It is well recognized that every democracy requires the empowerment of citizens in order to hold those in authority to account. Right to Information, effective citizens' charters, opportunity and incentives to promote proactive approach of citizens, stake-holders' involvement in delivery of public services, public consultation in decision making and social auditing are some of the instruments of accountability that dramatically curbed corruption and promoted integrity and quality of decision making.

A detailed analysis of our anti-corruption mechanisms and the causes of their failure is necessary in order to strengthen the forces of law and deter the corrupt public servants. If politics attracts and rewards men and women of integrity, competence and passion for public good, then the society is safe and integrity is maintained. But if honesty is incompatible with survival in politics, and if public life attracts undesirable and corrupt elements seeking private gain, then abuse of authority and corruption become the norm. All forms of corruption are reprehensible and we need to promote a culture of zero tolerance of corruption.

The ADB OECD Anti-Corruption Action Plan, which has been signed by the Government of India, is a broad understanding to further the cause of inter-regional cooperation in the matter of prevention of corruption. The World Bank has also declared war against corruption by refusing to fund projects whose implementation is tainted by corrupt practices.

The Supreme Court has ruled that candidates contesting elections should file details regarding their wealth, educational qualifications and criminal antecedents along with their nomination papers. The Right to Information Act, which has recently been enacted, is a potent weapon to fight corruption. The introduction of information communication technologies, e governance initiatives and automation of corruption-prone processes in administration have succeeded in reducing corruption.

Whistleblower legislation has to be put in place to protect informants against retribution. Also, we have to suitably strengthen the institutional framework for investigating corrupt practices and awarding exemplary punishment to the corrupt thereby raising the risk associated with corrupt behaviour.

## **Chapter – 2**

### **ETHICAL FRAMEWORK**

India was fortunate that high standards of ethical conduct were an integral part of the freedom struggle. Unfortunately, ethical capital started getting eroded after the transfer of power. Excesses in elections (in campaign-funding, use of illegitimate money, quantum of expenditure, imperfect electoral rolls, impersonation, booth-capturing, violence, inducements and intimidation), floor-crossing after elections to get into power and abuse of power in public office became major afflictions of the political process over the years. Political parties, governments and more importantly the Election Commission and the Supreme Court have taken several steps since the late 1980s in an attempt to eliminate the gross abuses that had virtually become the norm.

Criminalization of politics – ‘participation of criminals in the electoral process’ – is the soft underbelly of our political system. The growth of crime and violence in society (to the point of encouraging ‘mafia’ in many sectors) is due to a number of root causes. Flagrant violation of laws, poor quality of services and the corruption in them; protection for law-breakers on political, group, class, communal or caste grounds, partisan interference in investigation of crimes and poor prosecution of cases, inordinate delays lasting over years and high costs in the judicial process, mass withdrawal of cases, indiscriminate grant of parole, etc., are the more important of the causes.

Large, illegal and illegitimate expenditure in elections is another root cause of corruption. While there are formal limits to expenditure and some steps have been put in place in an attempt to check them, in reality, actual expenditure is alleged to be far higher. Abnormal election expenditure has to be recouped in multiples to sustain the electoral cycle!

#### **Recent Improvements**

**Improvement in Accuracy of Electoral Rolls:** The Election Commission has made efforts to make voter registration more accessible to voters. Printed electoral rolls/CDs have been made available for sale. Computerisation of entire electoral rolls of over 620 million voters has been initiated. The provision of photo-identity cards for all voters has been started.

**Disclosure of Antecedents of Candidates:** The Supreme Court has directed that a candidate should declare any conviction by a court or whether a criminal case is pending against him. The direction to file a declaration of assets and liabilities of the candidate and family members would enable a check at the time of the next elections.

#### **Disqualification of Persons Convicted of Criminal Offence**

**Enforcement of the Code of Conduct:** Using its over-all powers to “superintend, control and direct” elections under Article 324 of the Constitution, the Election Commission has made the Code of Conduct for elections binding in all respects, issuing directions regarding timings of campaigns, prohibition of festoons/cutouts, insistence on daily expenditure statements, appointment of a large number of observers, ordering of re-poll in specific polling booths and other such steps.

**Free and fearless polling:** Policing arrangements have been improved, including greater use of Central Forces and holding of elections for more than one day in a State, and measures like sealing of borders, etc. Electronic voting machines have been introduced throughout the country. It has been decided that the death of an independent candidate would not lead to the cancellation of an election.

**Reduction in size of Council of Ministers:** A recommendation to restrict the size to 10% was made by the first Administrative Reforms Commission more than three decades ago. The Constitution (Ninety-first Amendment) Act, 2003 restricts the size of the Council of Ministers to 15% of the strength of the Lower House in Parliament/State legislature. The amendment is a step towards moderating the number of Ministers to some extent.

### **Issues in Political Reforms**

#### **Reform of Political Funding**

One of the sources of funding of political parties has been through private donations. Internationally, there are three broad patterns of state funding for political parties and elections.

- Minimalist pattern, wherein elections alone are partially subsidized usually through specific grants or state rendered services.
- Maximalist pattern of state funding involves public funding not merely for elections but even for other party activities
- In between, there are a variety of mixed patterns involving partial reimbursement for public funding of elections on a matching grant basis

In India, the Indrajit Gupta Committee on State Funding of Elections has recommended partial state-funding mainly in kind. However, the National Committee for Review of the Constitution has expressed the view that until better regulatory mechanism for political parties can be developed in India, state funding of elections should be deferred.

Parliament in 2003 unanimously enacted the Election and Other Related Laws (Amendment) Act, provisions of the act:

- Full tax exemption to individuals and corporate on all contributions to political parties.
- Effective repeal of Explanation I under Section 77 of the Representation of the People Act. Expenditure by third parties and political parties now comes under ceiling limits, and only travel expenditure of leaders of parties is exempt.
- Disclosure of party finances and contributions over Rs.20,000.
- Indirect public funding to candidates of recognized parties – including free supply of electoral rolls (already in vogue), and such items as the Election Commission decides in consultation with the union government.
- Equitable sharing of time by the recognized political parties on the cable television network and other electronic media (public and private).

As recommended by the Indrajit Gupta Committee on State Funding of Elections, the funding should be partial state funding mainly in kind for certain essential items.

#### **Tightening of anti-defection law:**

Defection has long been a malaise of Indian political life. It represents manipulation of the political system for furthering private interests, and has been a potent source of political corruption. The anti-defection legislation that was enacted to combat this malaise, fixed a certain number above which defection in a group was permitted. Legalising such selective defection however, provided opportunities for transgressing political ethics and opportunism. There is no doubt that permitting defection in any form or context is a travesty of ethics in politics.

The Election Commission has recommended that the question of disqualification of members on the ground of defection should also be decided by the President/Governor on the advice of the Election Commission. Such an amendment to the law seems to be unfortunately necessary in the light of the long delays seen in some recent cases of obvious defection.

#### **Publication of Accounts by Political Parties:**

Political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited annually. The steps taken in the Election and Other Related Laws (Amendment) Act, 2003.

#### **Coalition and Ethics**

The phenomenon of coalition politics has emerged as a strong presence in the Indian polity in recent years. The very diversity and complexity of the Indian electorate and our vibrant democracy has made this a familiar aspect of our electoral process. Coalitions are often necessitated by the fact that, in a multiparty system such as ours, it is difficult today for a single party to obtain a clear majority in the Legislature. It is necessary for the coalition partners to reach an understanding based on broad-based programmes to ensure that the goals of socio-economic development are met. Such an understanding needs to be translated into a common minimum programme and announced either prior to the election or before the formation of the coalition government.

The Constitution should be amended to ensure that if one or more parties in a coalition with a common programme mandated by the electorate either explicitly before the elections or implicitly while forming the government, realign midstream with one or more parties outside the coalition, then Members of that party or parties shall have to seek a fresh mandate from the electorate.

#### **Appointment of the Chief Election Commissioner/Commissioners**

During debates in the Constituent Assembly on the procedure for appointment, there were suggestions that the person appointed as the Chief Election Commissioner should enjoy the confidence of all parties and therefore his appointment should be confirmed by a 2/3 majority of both the Houses.

**Recommendation:** A collegium headed by the Prime Minister with the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Law Minister and the Deputy Chairman of the Rajya Sabha as members should make recommendations for the consideration of the President for appointment of the Chief Election Commissioner and the Election Commissioners.

#### **Expediting Disposal of Election Petitions**

The National Commission to Review the Working of the Constitution (NCRWC) recommended that special election benches should be constituted in the High Courts earmarked exclusively for the disposal of election petitions.

Special Election Tribunals should be constituted at the regional level under Article 323B of the Constitution to ensure speedy disposal of election petitions and disputes within a stipulated period of six months. Each Tribunal should comprise a High Court Judge and a senior civil servant with at least 5 years of experience in the conduct of elections (not below the rank of an Additional Secretary to Government of India/Principal Secretary of a State Government). Its mandate should be to ensure that all election petitions are decided within a period of six months as provided by law. The Tribunals should normally be set up for a term of one year only, extendable for a period of 6 months in exceptional circumstances.

#### **Grounds of Disqualification for Membership**

A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament -

- If he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
- If he is of unsound mind and stands so declared by a competent court;
- If he is an undischarged insolvent;

- If he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
- If he is so disqualified by or under any law made by Parliament.

A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

### Ethics in Public Life

The fundamental principle in a democracy is that all persons holding authority derive it from the people; in other words, all public functionaries are trustees of the people. With the expansion of the role of government, public functionaries exercise considerable influence over the lives of people. The trusteeship relationship between the public and the officials requires that the authority entrusted to the officials be exercised in the best interest of the people or in 'public interest'.

Committee on Standards in Public Life in the United Kingdom, popularly known as the Nolan Committee, which outlined the following seven principles of public life:

- Selflessness: Holders of public office should take decisions solely in terms of public interest.
- They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.
- Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.
- Objectivity: In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- Openness: Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- Leadership: Holders of public office should promote and support these principles by leadership and example.

### Ethical Framework for Ministers

In Canada, the 'Guide for Ministers (2006)' sets out core principles regarding the role and responsibilities of Ministers. This includes the central tenet of ministerial responsibility, both individual and collective, as well as Ministers' relations with the Prime Minister and Cabinet, their portfolios, and Parliament. It outlines standards of conduct expected of Ministers as well as addressing a range of administrative, procedural and institutional matters.

Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct in Parliament. The Code is not a rulebook, and it is not the role of the Secretary of the Cabinet or other officials to enforce it or to investigate Ministers although they may provide Ministers with private advice on matters which it covers. Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those

standards, although he will not expect to comment on every allegation that is brought to his attention."

Government of India has prescribed a Code of Conduct which is applicable to Ministers of both the Union and State Governments:

In addition to the observance of the provisions of the Constitution, the Representation of the People Act, 1951, and any other law for the time being in force, a person before taking office as a Minister, shall:

- Disclose to the Prime Minister, or the Chief Minister, as the case may be, details of the assets and liabilities, and of business interests, of himself and of members of his family. The details to be disclosed shall consist of particulars of all immovable property and the total approximate value of (i) shares and debentures, (ii) cash holdings and (iii) jewellery;
- Sever all connections, short of divesting himself of the ownership, with the conduct and management of any business in which he was interested before his appointment as Minister; and
- With regard to a business concern which supplies goods or services to the Government concerned or to undertakings of that Government (excepting in the usual course of trade or business and at standard or market rates) or whose business primarily depends on licenses, permits, quotas, leases, etc., received or to be received from the Government concerned, divest himself of all his interests in the said business and also of the management thereof.

Provided, however, that he may transfer in the case of (b) his interest in the management, and in the case of (c) both ownership and management, to any adult member of his family or adult relative, other than his wife (or husband, as the case may be), who was prior to his appointment as Minister associated with the conduct or management or ownership of the said business. The question of divesting himself of his interests would not arise in case of holding of share in public limited companies except where the Prime Minister, or the Chief Minister, as the case may be, considers that the nature or extent of his holding is such that it is likely to embarrass him in the discharge of his official duties.

After taking office, and so long as he remains in office, the Minister shall:-

- Furnish annually by the 31st March to the Prime Minister, or the Chief Minister, as the case may be, a declaration regarding his assets and liabilities;
- Refrain from buying from or selling to, the Government any immovable property except where such property is compulsorily acquired by the Government in usual course;
- Refrain from starting, or joining, any business;
- ensure that the members of his family do not start, or participate in, business concerns, engaged in supplying goods or services to that Government (excepting in the usual course of trade or business and at standard or market rates) or dependent primarily on grant of licenses, permits, quotas, leases, etc., from that Government; and
- Report the matter to the Prime Minister, or the Chief Minister as the case may be, if any member of his family sets up, or joins in the conduct and management of, any other business.

No Minister should:-

- Personally, or through a member of his family, accept contribution for any purpose, whether political, charitable or otherwise. If any purse or cheque intended for a registered society, or a charitable body, or an institution recognized by a public authority, or a political party, is presented to him, he should pass it on as soon as possible to the organisation for which it is intended; and
- Associate himself with the raising of funds except for the benefit of (i) a registered society, or a charitable body, or an institution recognised by a public authority and (ii) a political party. He should, however, ensure that such

contributions are sent to a specified office bearer, etc. of the society or body or institution of party concerned and not to him. Nothing herein before shall prevent a Minister from being associated with the operation for disbursement of funds raised as above.

A Minister, including the Union Ministers, the Chief Ministers and other Ministers of State Governments/Union Territories, should not permit their spouse and dependents to accept employment under a Foreign Government, in India or abroad, or in a foreign organisation (including commercial concerns) without prior approval of the Prime Minister. Where the wife or a dependent of a Minister is already in such employment, the matter should be reported to the Prime Minister for decision whether the employment should or should not continue. As a general rule, there should be total prohibition on employment with a Foreign Mission.

A Minister should-

- not accept valuable gifts except from close relatives, and he or members of his family should not accept any gifts at all from any person with whom he may have official dealings; and
- not permit a member of his family, contract debts of a nature likely to embarrass or influence him in the discharge of his official duties.

A Minister may receive gifts when he goes abroad or from foreign dignitaries in India. Such gifts fall into two categories. The first category will include gifts, which are of symbolic nature, like a sword of honour, ceremonial robes etc. and which can be retained by the recipients. The second category of gifts would be those which are not of symbolic nature. If its value is less than Rs. 5,000/- it can be retained by the Minister. If, however, there is any doubt about the estimated value of the gifts, the matter should be referred to the Toshakhana for valuation. If the value of the gift, on assessment is found to be within the prescribed limit of Rs.5,000/- the gift will be returned to the Minister. If it exceeds Rs.5,000/- the recipient will have the option to purchase it from the Toshakhana by paying the difference between the value as assessed by the Toshakhana and Rs.5,000/-. Only gifts of household goods which are retained by the Toshakhana, such as carpets, paintings, furniture etc. exceeding Rs.5,000/- in value, will be kept in Rashtrapati Bhavan, Prime Minister's House or Raj Bhavan as State property.

In case of grant of an award by any organisation to a Minister/a person holding the Minister's status/rank, the following procedure may be followed:-

- The credentials of the organisation giving award may be gone into;
- If the credentials of the body giving the awards are unimpeachable, the award as such, may be accepted but the cash part should not be accepted;
- If the awards relate to the work done by the individual prior to his holding the office of Minister, such awards may be accepted but in all such cases, specific approval of the Prime Minister or the Chief Minister as the case may be, should be obtained; The Chief Minister and other Ministers shall have to take permission of the Prime Minister and the Union Home Minister; and
- those instances, where a Minister is to receive any award by any organisation which has connections with any Foreign Agencies/Organisations, such a Minister/a person holding the Minister's status/rank, will have to seek prior approval of the Prime Minister of India.

A Minister should follow the instructions given from time to time by the Prime Minister in matters relating to attending functions arranged by foreign missions in India or abroad, and also for accepting the membership of any foreign trust, institution or organisation other than UN Organisations of which India is a Member.

The Commission has examined the code of conduct in other countries and is of the view that a Code of Ethics and a Code of Conduct for Ministers should include the following:

- Ministers must uphold the highest ethical standards;
- Ministers must uphold the principle of collective responsibility;
- Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies;
- Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;
- Ministers in the Lok Sabha must keep separate their roles as Minister and constituency member;
- Ministers must not use government resources for party or political purposes; they must accept responsibility for decisions taken by them and not merely blame it on wrong advice.
- Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way, which would conflict with the duties and responsibilities of civil servants;
- Ministers must comply with the requirements which the two Houses of Parliament lay down from time to time;
- Ministers must recognize that misuse of official position or information is violation of the trust reposed in them as public functionaries;
- Ministers must ensure that public moneys are used with utmost economy and care;
- Ministers must function in such a manner as to serve as instruments of good governance and to provide services for the betterment of the public at large and foster socio-economic development; and
- Ministers must act objectively, impartially, honestly, equitably, diligently and in a fair and just manner.

The Prime Minister or the Chief Minister should be duty bound to ensure the observance of the Code of Ethics and the Code of Conduct by Ministers. This would be applicable even in the case of coalition governments where the Ministers may belong to different parties.

#### **Ethical Framework for Legislators**

Chapter XXIV of the Rules of Procedure and Conduct of Business in the Council of States, provides for constitution of the Committee on Ethics to oversee the moral and ethical conduct of Members. The same is available in Lok Sabha also.

**Disclosure of Interest** - One way of avoiding conflict between public and private interest is through disclosure of one's interest. This by itself cannot resolve the conflict of interest but is a good first step as it acknowledges the possibility of such a conflict.

**Register of Interests** - A specific mechanism for disclosure of private interests is maintenance of a 'Register of Interests'. Legislators are expected to record in the register all their interests periodically.

**Filing Assets and Liabilities Statement** - every elected candidate for a House of Parliament or the Legislature of the State, shall, within ninety days from the date on which he/she makes and subscribes an oath or affirmation, files the details of his/her assets/liabilities

#### **Recommendations**

An Office of 'Ethics Commissioner' may be constituted by each House of Parliament. This Office, functioning under the Speaker/Chairman, would assist the Committee on Ethics in the discharge of its functions, and advise Members, when required, and maintain necessary records.

#### **Office of Profit:**

The Constitution of India lays down that legislators would be disqualified for being chosen as, and for being, a member of the legislature if they were to hold any office of profit under the government other than an office declared by the legislature by law not to disqualify its holder.

If the legislators are beholden to the executive, the legislature can no longer retain its independence and loses the ability to control the Council of Ministers and the army of officials and public servants. From this perspective, the Constitutional embargo on office of profit for legislators is both necessary and welcome.

Recommendations:

- The Law should be amended to define office of profit based on the following principles:
- All offices in purely advisory bodies where the experience, insights and expertise of a legislator would be inputs in governmental policy, shall not be treated as offices of profit, irrespective of the remuneration and perks associated with such an office.
- All offices involving executive decision making and control of public funds, including positions on the governing boards of public undertakings and statutory and non-statutory authorities directly
- deciding policy or managing institutions or authorizing or approving expenditure shall be treated as offices of profit, and no legislator shall hold such offices.
- If a serving Minister, by virtue of office, is a member or head of certain organizations like the Planning Commission, where close coordination and integration between the Council of Ministers and the organization or authority or committee is vital for the day-to-day functioning of government, it shall not be treated as office of profit.
- Schemes such as MPLADS and MLALADS should be abolished.
- Members of Parliament and Members of State Legislatures should be declared as 'Public Authorities' under the Right to Information Act, except when they are discharging legislative functions

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## **Chapter – 3**

### **LEGAL FRAMEWORK FOR FIGHTING CORRUPTION**

#### **1. Evolution of the Anti-Corruption Laws in India**

In the pre-independence period - Indian Penal Code (IPC), chapter on 'Offences by Public Servants'. Sections 161 to 165 provided the legal framework to prosecute corrupt public servants

**The Prevention of Corruption Act 1947** – Same provisions of IPC were continued and 'Criminal misconduct in discharge of official duty' was added. Shift the burden of proof in certain cases to the accused is sea change in this act.

**The Criminal Law (Amendment) Act, 1952** - It was stipulated that all corruption related offences should be tried only by special judges.

**Amendments in 1964:** Major amendments were brought in. Definitions of Public servant and Criminal misconduct were amended as per Santanam Committee recommendations

**The Prevention of Corruption Act, 1988:** preventive anti-corruption policies and practices, as provided in the act

- Fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law.
- Establish and promote effective practices aimed at the prevention of corruption.
- Periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption

The Prevention of Corruption Act, 1988, lists offences of bribery and other related offences and the penalties from Sections 7 to 15. These offences broadly cover acceptance of illegal gratification as a motive or reward for doing or forbearing to do any official act, or favouring or disfavouring any person; obtaining a valuable thing without consideration or inadequate consideration; and criminal misconduct involving receiving gratification, misappropriation, obtaining any pecuniary advantage to any person without any public interest, or being in possession of pecuniary resources or property disproportionate to his known sources of income. Attempts to commit such offences and abetment are also listed as offences, in keeping with the principles usually applied in criminal law. The accent is thus on consideration, gratification of all kinds and pecuniary advantage.

#### **Recommendations**

The following should be classified as offences under the Prevention of Corruption Act:

- Gross perversion of the Constitution and democratic institutions amounting to wilful violation of oath of office.
- Abuse of authority unduly favouring or harming someone.
- Obstruction of justice.
- Squandering public money.

#### **2. Collusive Bribery**

Where the bribe-giver and bribe-taker together fleece society, and the bribe giver is as guilty or even more guilty than the bribe-taker. These are cases of execution of substandard works, distortion of competition, robbing the public exchequer, commissions in public procurement, tax evasion by collusion, and causing direct harm to people by spurious drugs and violation of safety norms unlike coercive bribery where giver is compelled to do so. In the present act there is no distinction between collusive bribery and coercive bribery. It provides immunity from prosecution to a bribe-giver if he/she

gives a statement in a court of law that he/she offered bribe. The negative impact of collusive corruption is much more adverse and the government and often the society, at large, are the sufferers.

#### **Recommendations**

- Section 7 of the Prevention of Corruption Act needs to be amended to provide for a special offence of 'collusive bribery'. An offence could be classified as 'collusive bribery' if the outcome or intended outcome of the transaction leads to a loss to the state, public or public interest.
- The punishments for all such cases of collusive bribery should be double that of other cases of bribery. The law may be suitably amended in this regard.

#### **3. Sanction for Prosecution Recommendations**

- Prior sanction should not be necessary for prosecuting a public servant who has been trapped red-handed or in cases of possessing assets disproportionate to the known sources of income.
- The Presiding Officer of a House of Legislature should be designated as the sanctioning authority for MPs and MLAs respectively.
- The requirement of prior sanction for prosecution now applicable to serving public servants should also apply to retired public servants for acts performed while in service.

#### **4. Liability of Corrupt Public Servants to Pay Damages**

There is no provision for compensation to the person/organization which has been wronged or has suffered damage because of the misconduct of the public servant. In addition to the penalty in criminal cases, the law should provide that public servants who cause loss to the state or citizens by their corrupt acts should be made liable to make good the loss caused and, in addition, be liable for damages. This could be done by inserting a chapter in the Prevention of Corruption Act.

#### **5. Speeding up Trials under the Prevention of Corruption Act:**

- A legal provision needs to be introduced fixing a time limit for various stages of trial. This could be done by amendments to the CrPC.
- The Supreme Court and the High Courts may lay down guidelines to preclude unwarranted adjournments and avoidable delays.

#### **6. Corruption Involving the Private Sector:**

Corruption in the private sector does not come under the purview of the Prevention of Corruption Act unless a public authority is involved as a party in it.

With PPP Public Private Partnership - many public activities are entrusted to Private and a large section of NGOs are getting aid from govt., so there is need to bring private into the law purview.

In India, the Companies Act, 1956 provides the statutory framework which governs the internal processes of a Company. The Company is a juridical person whose internal processes are determined by the Companies Act and its Articles of Association. The Companies Act, 1956 contains penal provisions against criminal offences by companies and their directors and officers.

#### **7. Confiscation of Properties Illegally Acquired by Corrupt Means**

Shortcoming in the existing provisions is that the procedure for attachment can start only after the court has taken cognizance of the offence. In actual situations, this may be too late as the accused may get enough time to hide or adjust his/her ill-gotten wealth.

The Corrupt Public Servants (Forfeiture of Property) Bill as suggested by the Law Commission should be enacted without further delay.

### **8. Prohibition of Benami Transactions**

Steps should be taken for immediate implementation of the Benami Transactions (Prohibition) Act, 1988.

### **9. Protection to Whistleblowers**

Legislation should be enacted immediately to provide protection to whistleblowers on the following lines proposed by the Law Commission:

- Whistleblowers exposing false claims, fraud or corruption should be protected by ensuring confidentiality and anonymity, protection from victimization in career, and other administrative measures to prevent bodily harm and harassment.
- The legislation should cover corporate whistleblowers unearthing fraud or serious damage to public interest by willful acts of omission or commission.
- Acts of harassment or victimization of or retaliation against, a whistleblower should be criminal offences with substantial penalty and sentence.

### **10. Serious Economic Offences**

This concern because of an increasing trend both in terms of size and complexity. These economic offences include tax evasion, counterfeiting, distorting share markets, falsification of accounts, frauds in the banking system, smuggling, money laundering, insider trading and even bribery. In a world of increasing financial activity, with new instruments for such activity and new technology to facilitate it, the present laws are not adequate to combat new economic crimes.

N.N. Vohra Committee had revealed the powerful nexus between those who violated the economic laws, politicians and government functionaries, which resulted in protection of large-scale economic crimes. That Committee had also pointed out that in those cases, which became public, only nominal action was taken against the offenders.

A Serious Frauds Investigation Office (SFIO) was set up in 2003 as a specialised multi-disciplinary organisation to deal with cases of serious corporate frauds. It has experts from the financial sector, capital market, banks, accountancy, forensic audit, taxation, law, information technology, company law, customs and investigation.

Its burden of proof regarding its non-existence, shall lie on the accused.

### **11. As per Section 6-A of the Delhi Special Police Establishment Act, 1946**

The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Central Government where such allegation relates to-

- b. The employees of the Central Government of the level of Joint Secretary and above; and
- c. Such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government

There is danger of such a provision being misused to protect corrupt senior public servants.

The counter argument is that officers at the level of Joint Secretaries and above have an important role in decision making in the government. Also while taking these decisions or rendering advice they should be able to do so without any fear or favour. Exposing these officers to frequent enquiries could have a demoralizing effect on them.

### **12. Immunity Enjoyed by Legislators**

The immunity enjoyed by Members of Parliament under parliamentary privileges should not cover corrupt acts committed by them in connection with their duties in the House or otherwise.

Right to equality and equal protection of law is a fundamental right and the Constitution enshrines this principle of equality. The Ruling in the above case creates an anomalous situation wherein the Members of Parliament are immune from prosecution for their corrupt acts if they are related to voting or speaking in the Parliament. This runs contrary to norms of justice and fair-play. Members of Parliament, being the lawmakers have to maintain the highest standards of integrity and probity. It is, therefore, necessary to amend the Constitution to remove this anomaly. The Commission recommends that similar amendments may be made in Article 194(2) of the Constitution in respect of members of the state legislatures.

### **13. Constitutional Protection to Civil Servants – Article 311**

Civil servants in India enjoy unique protection in terms of specific provisions in Part XIV of the Constitution, which authorize the regulation of their conditions of service.

Read complete text of Article 311 once.

Arguments in favour of retaining Article 311:

- The requirement that only an authority which is the appointing authority or any other authority superior to it can impose a punishment of dismissal or removal also appears reasonable as the government follows a hierarchical structure where the appointing authority for different categories of employees are assigned to different levels
- In the absence of Article 311 would be an increase in litigation concerning service matters.

Arguments in favour of repealing Article 311:

- It can be argued that if the decisions of the judiciary did not obviate the need to act against delinquent officials, then why retain the Article with its potential to protect the corrupt through any unintended interpretation?
- The position prevailing in India has to be viewed against the practice followed in other countries, where such punitive action is possible with a hearing permitted at the discretion of the appropriate authority, not as a matter of right.
- The Constitution has been amended to recognize the needs of governance as felt from time to time. The Indian Constitution, and Part XIV thereof, was drafted at a time when, in the aftermath of partition, and post-colonial administrative upheavals, it was felt necessary to prescribe certain guarantees to the bureaucracy

Santhanam Committee, Hota Committee and The National Commission to Review the Working of the Constitution had already recommended to amend article 311.

Recommendations:

- Article 310, 311 of the Constitution should be repealed.
- Suitable legislation to provide for all necessary terms and conditions of services should be provided under Article 309, to protect the bona fide actions of public servants taken in public interest; this should be made applicable to the States.
- Necessary protection to public servants against arbitrary action should be provided through such legislation under Article 309.

### **14. Statutory Reporting Obligations**

Failure to give information as required by law also constitutes an offence under Sections 176 or 202 of the Indian Penal Code which deal with omission to give notice to public servant by a person legally bound to give it and intentional omission to give information of offence by a person bound to inform.

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### **Defining E-governance**

With the increasing awareness among citizens about their rights and the resultant increase in expectations from the government to perform and deliver, the whole paradigm of governance has changed.

Government, today, is expected to be transparent in its dealings, accountable for its activities and faster in its responses. This has made the use of ICT imperative in any agenda drawn towards achieving good governance

#### **World Bank Definition::**

"E-Government refers to the use by government agencies of information technologies (such as Wide Area Networks, the Internet, and mobile computing) that have the ability to transform relations with citizens, businesses, and other arms of government."

stress here is on use of information technologies in improving citizen-government interactions, cost-cutting and generation of revenue and transparency.

#### **Therefore**

Basically, e-Governance is generally understood as the use of Information and Communications Technology (ICT) at all levels of the Government in order to provide services to the citizens, interaction with business enterprises and communication and exchange of information between different agencies of the Government in a speedy, convenient efficient and transparent manner

#### **APJ abdul Kalam's definition:**

*"A transparent smart e-Governance with seamless access, secure and authentic flow of information crossing the interdepartmental barrier and providing a fair and unbiased service to the citizen."*

### Stages of E-governance

- (a) **Computerisation:** In the first phase, with the availability of personal computers, a large number of Government offices got equipped with computers. The use of computers began with word processing, quickly followed by data processing.
- (b) **Networking:** In this phase, some units of a few government organizations got connected through a hub leading to sharing of information and flow of data between different government entities.
- (c) **On-line presence:** With increasing internet connectivity, a need was felt for maintaining a presence on the web. This resulted in maintenance of websites by government departments and other entities. Generally, these web-pages/web-sites contained information about the organizational structure, contact details, reports and publications, objectives and vision statements of the respective government entities.
- (d) **On-line interactivity:** A natural consequence of on-line presence was opening up of communication channels between government entities and the citizens, civil society organizations etc. The main aim at this stage was to minimize the scope of personal interface with government entities by providing downloadable Forms, Instructions, Acts, Rules etc. In some cases, this has already led to on-line submission of Forms. Most citizen-government transactions have the potential of being put on e-Governance mode.

### Types of Interaction

**(Can expand these parts here too)**

- (1) **G2G: Government to Government**
- (2) **G2C: Government to Citizen**
- (3) **G2B: Government to Business**
- (4) **G2E: Government to Employee**

### Benefits of e-Governance

#### **Better access to information and quality services for citizens:**

- ICT would make available timely and reliable information on various aspects of governance
- Examples: as forms, laws, rules, procedures etc later extending to detailed information including reports (including performance reports), public database, decision making processes etc.
- As regards services, there would be an immediate impact in terms of savings in time, effort and money, resulting from online and one-point accessibility of public services backed up by automation of back end processes.
- The ultimate objective of e-Governance is to reach out to citizens by adopting a life-cycle approach
- i.e. providing public services to citizens which would be required right from birth to death

#### **Simplicity, efficiency and accountability in the government:**

Application of ICT to governance combined with detailed business process reengineering would lead to ::

- simplification of complicated processes,
- weeding out of redundant processes,
- simplification in structures
- and changes in statutes and regulations.

The end result would be simplification of the functioning of government, enhanced decision making abilities and increased efficiency across government – all contributing to an overall environment of a more accountable government machinery.

This, in turn, would result in enhanced productivity and efficiency in all sectors.

### Expanded reach of governance:

- Rapid growth of communications technology and its adoption in governance would help in bringing government machinery to the doorsteps of the citizens.
- Expansion of telephone network, rapid strides in mobile telephony, spread of internet and strengthening of other communications infrastructure would facilitate delivery of a large number of services provided by the government.
- This enhancement of the reach of government – both spatial and demographic – would also enable better participation of citizens in the process of governance.

### International Case Studies::

~~USA/UK and New Zealand case studies have been covered. But India's case studies are more important. So we will focus on Indian case studies.~~

#### E-Governance is not about technology and it's about governance

- So far, though, the story of e-government has been one of quantity, not quality. It has provided plenty of reasons for skepticism and not much cause for enthusiasm.
- Its most conspicuous feature has been colossal waste of taxpayers' money on big computer systems, poorly thought out and overpriced.
- More often, though, big government projects stagger into operation but work badly.
- Only rarely do promised benefits materialize. Some of those who have studied e-government call it a "dangerous enthusiasm": a technological quick fix that distracts from the real tasks – hard and slow – of reforming government and running public services properly

The main factors behind such failures were identified as follows:

- i. The technological interface of the project did not match with the IT-preparedness of the organization owning and implementing the project.
- ii. The organizational processes did not match with the application platform provided by the technological solution.
- iii. The management structures were not conducive to implementation and sustenance of e-Governance projects.

iv. Adequate resources (time, money etc.) were not allocated to e-Government projects.

Thus, e-Governance projects cannot be planted from outside. A holistic approach has to be adopted in order to understand the needs of the citizens, the capabilities of government organizations, their processes and structures and based on these, the technology-based solution would have to be devised

### Indian Initiatives Before NeGP

- Department of Electronics in 1970
- Establishment of the National Informatics Centre (NIC) in 1977 was the first major step towards e-Governance in India as it brought 'information' and its communication in focus.
- main thrust for e-Governance was provided by the launching of NICNET in 1987 – the national satellite-based computer network
- District Information System of the National Informatics Centre (DISNIC) programme to computerize all district offices in the country for which free hardware and software was offered to the State Governments.
- NICNET was extended via the State capitals to all district headquarters by 1990.
- In 2000 12 point minimum agenda for governance
- Tax administration departments both at the Union and State levels were among the first to use ICT to improve their internal working.

## **Some Initiatives in the same field**

### **Government to Citizen (G2C) Initiatives::**

- **Computerisation of Land Records:** In collaboration with NIC.
- Ensuring that landowners get computerized copies of ownership, crop and tenancy and updated copies of Records of Rights (RoRs) on demand.
- **Bhoomi Project: Online delivery of Land Records.**
- self-sustainable e-Governance project for the computerized delivery of 20 million rural land records to 6.7 million farmers through 177 Government-owned kiosks in the State of Karnataka
- **Gyandoot: MP**
  - Gyandoot is an Intranet-based Government to Citizen (G2C) service delivery initiative. It was initiated in the Dhar district of Madhya Pradesh in January 2000 with the twin objective of providing relevant information to the rural population and acting as an interface between the district administration and the people. The basic idea behind this project was to establish and foster a technologically innovative initiative which is owned and operated by the community itself.
- **Lokvani Project in Uttar Pradesh:**
  - Lokvani is a public-private partnership project at Sitapur District in Uttar Pradesh which was initiated in November, 2004. Its objective is to provide a single window, self sustainable e-Governance solution with regard to handling of grievances, land record maintenance and providing a mixture of essential services.
- **Project FRIENDS in Kerala:**
  - FRIENDS (Fast, Reliable, Instant, Efficient Network for the Disbursement of Services) is a Single Window Facility providing citizens the means to pay taxes and other financial dues to the State Government. It was launched in Thiruvananthapuram in June 2000 and replicated in other district headquarters

during 2001-02. The services are provided through FRIENDS *Janasevana Kendram*s located in the district headquarters.

➤ e-Mitra Project in Rajasthan::

- This e-Governance initiative builds upon the experiences gained through the *LokMitrā* and *JanMitra* pilot projects launched in 2002. While *LokMitra* was centred in the city of Jaipur, *JanMitra* was piloted in Jhalawar district to provide information and services under one roof to urban and rural populations. e-Mitra is an integration of these two projects in all the 32 districts using PPP model. There are two major components – ‘back office processing’ and ‘service counters’. Back office processing includes computerization of participating departments and establishing an IT enabled hub in form of a mini data centre at the district level (e-Mitra data centre)

➤ eSeva (Andhra Pradesh)::

- This project is designed to provide ‘Government to Citizen’ and ‘e-Business to Citizen’ services. Originally, it was implemented in the form of the TWINS (Twin Cities Integrated Network Services) project in 1999 in the twin cities of Hyderabad and Secunderabad. The highlight of the eSeva project is that all the services are delivered online to consumers /citizens by connecting them to the respective government departments and providing online information at the point of service delivery.

➤ Admission to Professional Colleges -- Common Entrance Test (CET)::

- With the rapid growth in the demand as well as supply of professional education, the process of admission to these institutions became a major challenge in the early 1990s. Recourse was then taken to ICT to make the process of admission transparent and objective. One of the pioneering efforts was made by Karnataka. The State Government decided to conduct a common entrance test based on which admission to different colleges and disciplines was made.

➤ Government to Business (G2B) Initiatives::

- e-Procurement Project in Andhra Pradesh and Gujarat:
  - To reduce the time and cost of doing business for both vendors and government.
- MCA 21:
  - By The Ministry of Corporate Affairs.
  - The project aims at providing easy and secure online access to all registry related services provided by the Union Ministry of Corporate Affairs to corporates and other stakeholders at any time and in a manner that best suits them

#### **Government to Government (G2G) Initiatives::**

- Khajane Project in Karnataka:
  - It is a comprehensive online treasury computerization project of the Government of Karnataka. The project has resulted in the computerization of the entire treasury related activities of the State Government and the system has the ability to track every activity right from the approval of the State Budget to the point of rendering accounts to the government
- SmartGov (Andhra Pradesh):
  - SmartGov has been developed to streamline operations, enhance efficiency through workflow automation and knowledge management for implementation in the Andhra Pradesh Secretariat.

The broad lessons from these independent initiatives undertaken at various levels are as follows(i.e from G2B,G2C,G2E)

- i. Political support at the highest level is a sine qua non for successful implementation of e-Governance initiatives;
  - ii. Major e-Governance projects bear fruit only when application of IT is preceded by process re-engineering;
  - iii. Successful projects require an empowered leader with a dedicated team who can conceptualise and implement e-Governance projects with the help of officials at all levels and technological solution providers;
  - iv. Initiatives which save the citizens' time, money and effort are able to succeed even when back-end computerization is not done. However, these successes are generally limited to cases where payment of bills for public/private utilities is involved but for complete transformation of governance there has to be an end-to-end ICT enablement coupled with process re-engineering;
  - v. Scaling up should be attempted only after the success of pilot projects. Systems should have the flexibility to incorporate changes mid-way;
  - vi. In rural areas, issues of connectivity and electricity supply are of paramount importance; and
- vii. In case of complex projects, all components need to be identified and analysed at the outset, followed by meticulous planning and project implementation.

#### What are the core principles of e-governance

{11 points and this should be answer of any question related to e-governance: what to Do, Most important part of the report }

##### **(1) Clarity of Purpose:**

- A clear understanding and appreciation of the purpose and objectives to be achieved through e-Governance.

- o e-Governance should not be taken up merely to demonstrate the capability of an existing technology, but the technology should be adopted to solve an existing problem. Citizen-centricity should be at the heart of all e-Governance initiatives.

## (2) Environment Building::

- There is need to change the mind-set of all the stakeholders involved, i.e. politicians, government officials and civil society at large i.e
- Political Support at all level.
- government personnel would have to be incentivised to change old habits and acquire new skills.
- In the public, awareness needs to be created so that there is a constant demand for reforms in governance through implementation of e-Governance.
- Raising public awareness, forming partnerships with academic institutions – public and private, Public-Private Partnerships (PPPs), exchange of best practices including with the private sector and involvement of citizen-groups should all form part of this process

## (3)e-Governance as an Integral Part of Reform in Governance:

- o Every government organization or entity, every government programme or policy and every law and regulation would have to integrate e-Governance modules within itself rather than brought-in as an afterthought or introduced as an adjunct.

## (4)E-preparedness and Step-wise Approach:

Steps are mentioned below:

- i. **E-preparedness:** A clear assessment of actual e-preparedness of an organization should be first carried out while conceptualizing any project. Efforts should be made to enhance the e-preparedness to the desired levels.
- ii. **Identification of e-Governance projects by each organization/entity:** Each organization would have to identify areas/activities falling under its functional domain which could benefit from e-Governance. This identification has to be based on the needs of the citizens.

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iii. **Prioritization:** Once the e-Governance projects to be undertaken by an organization have been identified, they would require to be prioritized.

iv. **Business process re-engineering:** each e-Governance initiative would have to be accompanied by a step-by-step analysis of the governmental processes involved and tested on the anvil of simplicity and desirability. This would lead to redesign of processes using technology. Thus, this exercise would form the backbone of e-Governance initiatives.

v. **Developing technological solutions:** Every e-Governance initiative would require its own technological solution. However, there would be commonalities across Union, State and local government levels. This would require standardization of basic requirements, adoption of interoperable platforms and creation of data storage and retrieval systems. In the end, the technological solution would have to be modified according to the specific needs of the organization with the help of field experts.

vi. **Implementation of e-Governance projects:**

- Only when the above-mentioned steps have been undertaken should e-Governance projects be implemented.
- This may be in the form of a pilot project initially, testing the technological solution and the procedural and functional inputs.
- However, the business process re-engineering should be such that once the e-Governance project has been successfully tested on a pilot basis, the scaled up system should be able to make e-Governance irreversible, i.e. it should not relapse into the pre-e-Governance mode.
- Thus, each pilot project should invariably be evaluated and the lessons learnt including why it did not lead to scaling up. Failed projects should be redesigned to remove shortcomings. This would ensure that organizations do not become a graveyard of pilot projects.
- 

**(5) Disciplined Way of Working:**

e-Governance requires a disciplined and systematic way of working in organizations. Most technologies pre-suppose a set of rational behaviour on the part of users. This element needs to be emphasized during the capacity building as well as in the life cycle of the project.

#### **(6)Monitoring and Evaluation:**

Close monitoring of e-Governance projects is necessary in both the pilot phase as well as during the actual working of the up-scaled project

1. However, apart from periodic monitoring of e-Governance initiatives in the post-implementation stage, there would also be need for evaluation of the impact of such initiatives through independent agencies against parameters which would determine whether the objectives have been achieved or not.

#### **(7)Developing Secure, Fail-safe Systems and Disaster Recovery Systems:**

- the technological architecture on which such applications are mounted would need to be made not only secure but also fail-safe.
- Incorporations of 'safe mode' in times of crisis.
- depositories and 'mirrors' would need to be created with sound disaster recovery modules with adequate security features to prevent loss of data and collapse of the system.
- Assurance that transactions are secure and the privacy of citizens is not compromised. Over and above, these systems would also need to be insulated from the possibility of cyber-attacks, hacking etc.

#### **(8)Sustainability::**

- e-Governance initiatives need to be sustainable.
- Once Established should not be allowed to relapse on grounds of expediency.
- To achieve it ::

- o Financially sustainable designing.
- o Simplicity of use
- o Saving the time and money.
- o Solving administrative objectives.

**(9)Allowing for Horizontal Applicability::**

- A coordinating mechanism is needed to prevent cases of re-inventing the wheel.
- Past experience has shown that a number of States have undertaken e-Governance projects to address similar concerns.
- To make e-Governance more cost effective and successful, successes need to be adopted across States and organizations thereby minimizing costly repetitions and in many cases, failures.

**(10)Development of Local Language Interfaces::**

- As India is a multilingual society, e-Governance initiatives need to provide citizen interfaces in the respective local language.
- Thus, displays and keys should be based on localized interfaces and multi-media instructions should be commonly used to make the interface accessible in rural areas, where low literacy rates can be an obstacle.

**(11)e-Governance – a Continuing Process:**

- e-Governance represents a paradigm shift in the field of governance reforms
- Bringing it about would have to be a continuing process which would require many adjustments.

**It has been well said that e-Governance is a journey and not a destination.**

A few pilot projects in different regions may be taken up in a cluster of villages using SMART cards. Such SMART cards should store information about the person's identity (including biometrics) and should have the capacity of recording transactions under NREGA and even authorize payments

### **Implementing e-Governance Reforms**

#### **The Challenge:**

e-Governance, has to be citizen-friendly. Delivery of services to citizens is considered a primary function of the government. In a democratic nation of over one billion people like India, e-Governance should enable seamless access to information and seamless flow of information across the state and central government in the federal set up. No country has so far implemented an e-Governance system for one billion people. It is a big challenge before us."

-A.P.J Abdul Kalam

There is first of all a need for building an environment within government organizations at various levels which is conducive to e-Governance.

**Building a congenial environment is a sine qua non for successful implementation of e-Governance initiatives. This should be achieved by (Reco)**

- o Creating and displaying a **will to change** within the government

- Providing political support at the highest level
- Incentivising e-Governance and overcoming the resistance to change within government
- Creating awareness in the public with a view to generating a demand for change.
- *Training and capacity building:* Training would have to be imparted to government officials starting right from the cutting edge level so that any apprehensions of intrusive technology is removed and e-Governance is accepted as an achievable and desirable target

➤ Identification of e-Governance Projects and Prioritisation::

- The Organisation for Economic Co-operation and Development (OECD) has defined four stages of e-government, each one more demanding than the next.<sup>66</sup> These are:
  - *Information:* putting information on web-sites
  - *Interaction:* allowing citizens to enquire about services, procedures etc. and filling up forms and submitting them online
  - *Transaction:* allowing payments online
  - *Transformation:* a mix of all the above and allowing the citizen to participate in governance through ICT.
- The basic approach in case of e-Governance projects should be to focus on 'KISS': 'Keep it Small and Simple' principle.
- ○ Recommendations
- a. Government organizations/departments at Union and State Government levels need to identify e-Governance initiatives which could be undertaken within their functional domain, keeping the needs of the citizens in mind. Such initiatives may be categorized as follows:
  - i. Initiatives which would provide timely and useful information to the citizens.
  - ii. Initiatives which would not require the creation of a database for providing useful services to the citizens. This may include initiatives where database may be created prospectively without waiting for the updation of historical data.

- iii. Initiatives which allow for making elementary online transactions including payment for services.

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- o iv. Initiatives which require verification of information/data submitted online.
  - o v. Initiatives which require creation and integration of complex databases.
- b. Instead of implementing all such initiatives at one go, these should be implemented after prioritizing them on the basis of ease of implementation, which would generally follow the categories mentioned above in that order. However, suitable modifications in their prioritization may be made by organizations/departments on the basis of the needs of and likely impact on citizens.
- o c. Respective Departments of Information Technology at the Union and State Government levels should coordinate between organizations and provide technical support if needed, in the task of identification and prioritisation.

#### Reprocесing:

#### Recommendations

- a. For every function a government organisation performs and every service or information it is required to provide, there should be a step-by-step analysis of each process to ensure its rationality and simplicity.
- b. Such analysis should incorporate the viewpoints of all stakeholders, while maintaining the citizen-centricity of the exercise.
- c. After identifying steps which are redundant or which require simplification, and which are adaptable to e-Governance, the provisions of the law, rules, regulations, instructions, codes, manuals etc. which form their basis should also be identified.
- d. Following this exercise, governmental forms, processes and structures should be re-designed to make them adaptable to e-Governance, backed by procedural, institutional and legal changes.

#### Capacity Building and Creating Awareness

- Individual development
  - a. External adaptation and survival
    - i. mission, strategies and goals

ii. means to achieve the goals which includes selection of appropriate management structures, processes, procedures, systems of incentives and rewards etc.

iii. measurement, which involves establishing appropriate key result areas or criteria to determine how well individuals and teams are accomplishing their goals.

b. Internal integration:-

Internal integration is about establishing harmonious and effective working relationships in the organization, which involves identifying means of communication to develop shared values, power and status of groups and individuals, and rewards and punishment for encouraging desirable behaviour and discouraging undesirable behaviour

• Organizational development

- Organisational capacity building would include designing appropriate structures within the organisation, re-engineering internal processes, delegation of authority and responsibility, creation of enabling legal framework, developing management information systems, institutionalising reward and punishment systems and adopting sound human resource management practices.

**RECOMMENDATIONS**

- a. Capacity building efforts must attend to both the organizational capacity building as also the professional and skills upgradation of individuals associated with the implementation of e-Governance projects.
- b. Each government organization must conduct a capacity assessment which should form the basis for training their personnel. Such capacity assessment may be carried out by the State Department of Information Technology in case of State Governments; and the Union Department of Information Technology in the Centre. Organisations should prepare a roadmap for enhancing the capabilities of both their employees and the organization.
- c. A network of training institutions needs to be created in the States with the Administrative Training Institutes at the apex. The Administrative Training Institutes in various States should take up capacity building programmes in e-Governance, by establishing strong e-Governance wings. ATIs need to be strengthened under the NeGP.
- d. State Governments should operationalise the Capacity Building Roadmap (CBRMs), under the overall guidance and support of the DIT, Government of India.
- e. Lessons learnt from previous successful e-Governance initiatives should be incorporated in training programmes.

- For example, the Bhoomi project in Karnataka showed how a well-defined training plan made a major contribution to project success. Under a well-planned and well executed training programme, more than 10,000 government officials and over 700 village officials were trained on data preparation and validation process extending to a period of 60 weeks.
- f. The recommendations made by the Commission in its Second Report entitled 'Unlocking Human Capital' in paragraph (5.2.1.6) should be adopted for creating awareness among people with regard to e-Governance initiatives.
- Awareness generation programmes should be taken up by all State Governments. *The publicity and guidance material should be available in local languages. The effectiveness of these programmes should be measured through independent sample surveys.*
- Intensive use of All India Radio and Doordarshan should be made in local languages as is done in the case of Sarva Shiksha Abhiyan and National Rural Health Mission.

### Developing Technological Solutions

#### What is Enterprise Architecture:

Enterprise Architecture (EA) is the process of translating business vision and strategy into effective enterprise change by creating, communicating and improving the key principles and models that describe the enterprise's future state and enable its evolution. The scope of the enterprise architecture includes the people, processes, information and technology of the enterprise, and their relationships to one another and to the external environment. Enterprise architects compose holistic solutions that address the business challenges of the enterprise and support the governance needed to implement them

#### Recommendations:

- a. Develop a national e-Governance 'enterprise architecture' framework as has been done in some countries.
- b. Promote the use of 'enterprise architecture' in the successful implementation of e-Governance initiatives; this would require building capacity of top level managers in all government organizations.

### Implementation:

- Recommendations

- All organizations should carry out a periodic independent evaluation of the information available on their websites from the citizens perspective and then redesign their websites on the basis of the feedback obtained.
- Each government organization should prepare a time-bound plan for providing of transactional information through their websites. To begin with, this could be done by updating the websites at regular intervals, while at the same time, re-engineering the back-end processes and putting them on computer networks. Ultimately, all the back-end processes should be computerized.
- Complex e-Governance projects should be planned and implemented like any major project having several parts / components for which Project Management capability should be developed in-house.
- Implementation of e-Governance projects would involve a detailed 'project management' exercise which would consist of the following activities:
  - Breaking up entire e-Governance projects into components/activities
  - Planning each activity in detail
  - Allocating resources, both human and financial
  - Commencement of activities as per the plan and continuous tracking
  - Need-based mid-course correction
- While implementing transformational programmes like the NeGP, it is essential to recognise of the importance of a structured approach to Change Management – the people side of transformation. It is necessary for Government agencies, especially the nodal Ministries and the Administrative Reforms and IT Departments, to design appropriate Change Management Strategies and Plans to accompany the e-Governance implementation.

### Monitoring and Evaluations:

#### **Recommendations**

- a. Monitoring of e-Governance projects should be done by the implementing organization during implementation in the manner in which project monitoring is done for large infrastructure projects. Even after the project has been implemented,

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## **1.National Rural Health Mission (NRHM)-**

### **National Rural Health Mission – The Vision**

- The National Rural Health Mission (2005-12) seeks to provide effective healthcare to rural population throughout the country with special focus on 18 states, which have weak public health indicators and/or weak infrastructure.
- These 18 States are Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Himachal Pradesh, Jharkhand, Jammu and Kashmir, Manipur, Mizoram, Meghalaya, Madhya Pradesh, Nagaland, Orissa, Rajasthan, Sikkim, Tripura, Uttarakhand and Uttar Pradesh.
- The Mission is an articulation of the commitment of the Government to raise public spending on Health from 0.9% of GDP to 2-3% of GDP.
- It aims to undertake architectural correction of the health system to enable it to effectively handle increased allocations and promote policies that strengthen public health management and service delivery in the country.
- It has as its key components provision of a female health activist in each village; a village health plan prepared through a local team headed by the Health & Sanitation Committee of the Panchayat; strengthening of the rural hospital for effective curative care and made measurable and accountable to the community through Indian Public Health Standards (IPHS); and integration of vertical Health & Family Welfare Programmes and Funds for optimal utilization of funds and infrastructure and strengthening delivery of primary healthcare.
- It seeks to revitalize local health traditions and mainstream AYUSH into the public health system.
- It aims at effective integration of health concerns with determinants of health like sanitation & hygiene, nutrition, and safe drinking water through a District Plan for Health.
- It seeks decentralization of programmes for district management of health.
- It seeks to address the inter-State and inter-district disparities, especially among the 18 high focus States, including unmet needs for public health infrastructure.
- It shall define time-bound goals and report publicly on their progress.
- It seeks to improve access of rural people, especially poor women and children, to equitable, affordable, accountable and effective primary healthcare.

### **Role of Panchayati Raj Institutions in NRHM**

The Mission envisages the following roles for PRIs:

- States to indicate in their MoUs the commitment for devolution of funds, functionaries and programmes for health to PRIs.
- The District Health Mission (DHM) to be led by the Zila Parishad. The DHM will control, guide and manage all public health institutions in the district, Sub-centres, PHCs and CHCs.
- Accredited Social Health Activists (ASHAs) would be selected by and be accountable to the Village Panchayat.
- The Village Health Committee of the Panchayat would prepare the Village Health Plan, and promote intersectoral integration.
- Each Sub-centre will have an Untied Fund for local action @ Rs. 10,000 per annum. This Fund will be deposited in a joint Bank Account of the Auxiliary Nurse Midwife (ANM) & Sarpanch and operated by the ANM, in consultation with the Village Health Committee.
- PRI involvement in Rogi Kalyan Samitis for good hospital management.
- Provision of training to members of PRIs.

## **2. Accelerated Rural Water Supply Programme (ARWSP)**

This programme has been in existence since 1972-73. The basic objective of the programme is to provide safe drinking water to people living in all rural areas of the country in a sustainable and equitable manner.

State Governments have been given the liberty to select the agency for implementation of this programme. It could be the Public Health and Engineering Department (PHED), the State Department of Rural Development or any other pārastatal. In some of the States this work has been assigned to the Water and Sewerage Board.

With a view to promoting involvement of user groups/Panchayats in the selection and implementation of drinking water schemes and for subsequent operation and maintenance (O&M), State Governments were asked to sign an Memorandum of Understanding (MoU) with the Government of India before commencement of the XIth Plan.

However, so far no State has signed the MoU with the Union Government.

## **3. Sarva Siksha Abhiyan (SSA)**

SSA seems to universalize elementary education through community ownership of the system. The programme addresses primary schools and non formal education centres all of which are located in the village or in the neighbourhood.

It was expected that in the rural areas, Panchayats in general and Gram Panchayats in particular would have critical roles to play in this programme.

but they do not seem to have been given any crucial responsibility in respect of management, monitoring and supervision of the school system.

The Commission is of the view that integrating SSA with the PRI system is necessary not only for getting better outcomes from the project, but also for sustainability of processes and the institutions introduced by it.

#### **4. Integrated Child Development Scheme (ICDS)**

ICDS is today one of the largest global programmes covering early childhood development.

The main objective of the programme is to improve nutrition and health care status of these children, to reduce incidents of mortality, malnutrition and the school dropouts rate and finally to enhance the capability of the mother and the family to look after the child.

From the days of its initiation, ICDS has been a departmentally run programme. Each State has a separate management structure consisting of a State Coordinator/Department Secretary, Child Development Project Officer (CDPO) at the Block level, Supervisors and the Anganwadi Centre Personnel. Involvement of the three tier Panchayats in ICDS has so far been nil. Inspite of this programme being in existence for such a long time, there have been conflicting views on its impact. There is a feeling that somehow the scheme has remained distant from the beneficiaries; people have not yet owned it. The guidelines of the programme therefore call for a review to give an effective role to the Panchayats, particularly the Village Panchayats in its functioning.

#### **5. Mid-day Meal Programme**

A national programme of nutritional support to primary education was formally launched in 1995. The objective of the programme is to support universalisation of primary education by increasing enrolment and retention and also to improve the nutritional status of children, studying in primary classes of Government, Local Body and Aided Schools.

Many of the States have not involved the Village Panchayats in managing this programme, even though most of them have devolved primary education to these institutions.

Disassociation of the Panchayats from this important programme has caused an institutional vacuum; implementing agencies at the micro levels have been left alone. There is no agency for regular monitoring of the programme.

**Recommendations:**

- a. The Commission while endorsing the views of the Expert Group on Planning at the Grass roots Level as given at Annexure-IV(2) to this Report, recommends that there has to be territorial/jurisdictional/ functional convergence in implementing Centrally Sponsored Schemes.
- b. The centrality of PRIs in these schemes must be ensured if they are to deal with matters listed in the Eleventh Schedule.
  - (i) In all such schemes, the Gram/Ward Sabha should be accepted as the most important/cutting edge participatory body for implementation, monitoring and audit of the programmes.
  - (ii) Programme committees dealing with functions under the Eleventh Schedule and working exclusively in rural areas need to be subsumed by the respective Panchayats and their standing bodies. Some others having wider roles may need to be restructured to have an organic relationship with the Panchayats.
  - (iii) In the programmes, where the activities percolate to areas and habitations below a Panchayat/Ward level, a small local centre committee should be formed to support these activities. This Centre committee should be only a deliberative body with responsibility to provide regular feedback to the Gram Sabha/Ward Sabha and be accountable to it.
- c. The Ministry sanctioning the programme should issue only broad guidelines leaving scope for implementational flexibility so as to ensure local relevance through active involvement of the Panchayats.
- d. All Centrally Sponsored Programmes should have properly demarcated goals and there should be a mechanism to assess their socio-economic impact over a given period of time. The NSSO may be suitably strengthened and assigned this task.

**Information Education and Communication – IEC**

Information, Education and Communication (IEC) are generally identified as powerful tools for creating awareness, mobilising people and imparting knowledge and skills to them. Thus, the print media, the electronic media and other modes of communication like folk dramas plays etc. are important tools which could be utilised for creating awareness about the Panchayati Raj Institutions, their functioning, importance of

peoples' participation, concept of social audit and for ensuring accountability and transparency.

To make people in rural areas aware about the functioning of the PRIs and their role in it, such rural broadcasting would have to be done in the local language(s) in use at the district level.

**Recommendations:**

- a. A multi-pronged approach using different modes of communication like the print media, the visual media, electronic media, folk art and plays etc. should be adopted to disseminate information and create awareness about Panchayati Raj. It should be ensured that there is a convergence in approach to achieve synergies and maximise reach.
- b. The Union Ministry of Information and Broadcasting should devise a mechanism in consultation with the Union Ministry of Panchayati Raj, Ministry of Rural Development and Ministry of Agriculture and other concerned Ministries for effectively implementing this activity.
- c. Rural broadcasting should become a full-fledged independent activity of the All India Radio. Rural broadcasting units should be based in the districts and the broadcasts should be primarily in the local language(s) prevalent in the district. These programmes should focus on issues related to Panchayati Raj Institutions, rural development, agriculture, Right to Information and relevant ones on public health, sanitation, education etc

**5. Role of Panchayats in Delivery of Services**

Development is not just a basket of new investments and programmes but it is also a means to deliver quality public services to citizens.

So far, the quality of public services made available to the citizens in the rural areas has not been satisfactory. With proper design and effective decentralization, many of these services could be improved substantially.

**Approach of the Planning Commission in promoting access to Health and Education in the Eleventh Five Year Plan**

- Achieving the 11th Plan targets for health and education requires a greatly expanded role for the state in these areas. This is because access to essential public services such as health, education, clean drinking water, and sanitation is not an automatic outcome of rising incomes. It calls for deliberate public intervention to ensure delivery of these services. It is in this context that the National Rural Health Mission has been launched in order to improve the access and availability of quality health care, sanitation, and

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