



IAS 100

A Civil Services Chronicle Initiative

ACCOUNTABILITY AND CONTROL



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INTRODUCTION

The concept of administrative accountability implies that administrators are obliged to give a satisfactory account of what they do and in what manner they exercise the powers conferred on them. Its main aim is to check arbitrariness in administrative actions and improve administrative efficiency and effectiveness.

Accountability is one of the three important pillars of a trust society, the other two being participation and transparency. Each of these three pillars is the reason of other and also follows each other. Further, normally each of these pillars exists alongwith each other. Thus discussion of one necessarily follows references to others.

The foundation of this concept however is the democracy vs bureaucracy debate. This debate unfolds the argument that in a democracy citizens are at the central point of governance - which exists to safeguard the rights and liberties of the citizens however governance operates through bureaucracy which is a institution built on the premise that efficient and effective bureaucracy mandatorily needs some operational autonomy which creates a differential power structure and in turn erodes citizens' freedom upto a certain extent within a society. This debate further extends to the secrecy vs openness argument. The openness argument believes that transparency in administration is the key to good governance while the secrecy argument believes that excessive transparency makes the system so much prone to scrutiny that effectiveness and working itself becomes difficult and in some cases even impossible. Thus if we are for democracy and openness our truly democratic society should have no place for an institution like bureaucracy-which creates power differences and defeats the very reason for which it exists in a democracy.

But bureaucracy is the instrument of governance which if jettisoned would turn the modern society into a Stateless society, which could give birth to problems of even greater

magnitude and character in the absence of any regulation enforcing structure, especially at the current levels of human evolution. Thus bureaucracy should necessarily exist and is hence accepted by the modern societies as necessary evil. But this evil cannot be let loose to exercise arbitrary discretion, it has to be put under checks and balances so that its negative tendencies are curtailed and beneficence is unleashed. Thus is born the concept of accountability and control alongwith its core challenge of balancing bureaucratic autonomy with citizens' rights and liberties.

Thus the primary issue in accountability and control is to how to balance administrative accountability with administrative discretion or how to use the instruments of accountability so that rights and liberties of the citizens are safeguarded but at the same time powers in operational autonomy stemming out of administrative discretion is also not curbed.

Another rationale of administrative accountability lies in the role which the administrators play in policy making and that is the informational dimension of accountability. The bureaucracy is the institution which implements the policy of the government on the field. Therefore the bureaucrats are the best people to provide onsite inputs and draw the attention of the policy makers towards the practical problems confronting regulatory or developmental functions. Moreover, the citizens have confidence in the administrative structure of the government which makes them frank in venting their problems to them. Thus inordinate delays are avoided which would have otherwise taken place if the citizens had to wait for the political representatives everytime to air their problems. The mechanism of administrative accountability thus helps to play a vital role in addressing the issues within this phenomenon.

Thus another important issue which is an integral part of accountability and control is how to make the bureaucracy sufficiently responsive and articulate towards the problems of the citizens. How to improve the mindset and the

functioning of bureaucracy on the ground so that the overall implementation becomes more effective?

Administrative accountability is enforced by various types of controls. The public servants are made accountable to different agencies which exercise control over them. The purpose of control draws out from the rationale of accountability i.e., exercise of their powers and discretion in accordance with laws, formal rules and regulations, and established procedures and conventions.

Broadly speaking there are two types of administrative control viz. internal control i.e. control exercised on the administration from within the administrative machinery and external control i.e., control exercised on the administration from beyond the administration. There are various methods of exercising control from within the administrative machinery viz.

1. Administrative hierarchy.
2. Administrative leadership.
3. Professional standards.
4. Efficiency surveys.
5. Annual confidential report.
6. Enquiries and investigations.
7. Personnel norms.

Methods of exercising external control over administration are:

1. Executive control.
2. Legislative control.
3. Judicial control.
4. Civil society groups or citizens.

EXECUTIVE CONTROL OVER ADMINISTRATION

Executive control in the external sense refers to the control exercised by the political executive over the permanent executive or bureaucracy. There are various ways in which political control over bureaucracy manifests itself viz. policy making, budgetary system, personnel management, delegated legislation, ordinances, civil service codes, etc. Some are discussed below:

Political Direction (Policy-making): In India, the Cabinet formulates administrative policies and enjoys the power of direction, supervision and coordination with regard to its implementation. The minister, who is in-charge

of one or more departments, lays down the departmental policy and directs, supervises and coordinates its implementation by the administrators. Thus, though political direction, the Minister controls the operations of administrative agencies working under his ministry/department(s). The departmental officials are directly and totally responsible to the minister. In the USA, the same function is performed by the President and his secretaries.

Budgetary System: The executive controls the administration through budgetary system. It formulates the budget, gets it enacted by the Parliament, and allocates the necessary funds to the administrative agencies to meet their expenditure. In all such activities, the Ministry of Finance (which is the central financial agency of the Government of India) plays an important role. It exercises financial control over administration in the following ways.

- (i) Approval of policies and programmes in principle.
- (ii) Acceptance of provision in the budget estimates.
- (iii) Sanctioning expenditure.
- (iv) Providing financial advice through the Integrated Financial Advisor.
- (v) Reappropriation of grants (i.e., transfer for funds from one sub-head to another).
- (vi) Internal audit system.
- (vii) Prescribing a financial code to be followed by the spending authorities.

Appointment and Removal (Personnel Management and Control): This is the most effective means of executive control over administration. The executive plays an important role in personnel management and control and enjoys the power of appointment and removal of top administrators. In this function, the executive (in India) is assisted by the Department of Personnel and Training, the Ministry of Finance, and the UPSC. The Department of Personnel and Training is the central personnel agency in India and plays a major role in personnel management and control. At the highest level, the ministers play an important role in the selection and appointment of secretaries and heads of departments. Thus they (i.e., ministers) exercise full control over the administration of departments under their charge through such appointees.

In the USA also, though the President has to seek the approval of Senate for effecting appointments to top posts, he has the exclusive

power of removing them from office. The Office of Personnel Management (OPM) in the US plays an important role in personnel management and control.

Delegated Legislation: Also known as the executive legislation, it is an important tool in the hands of the executive to exercise control over administration. The Parliament makes laws in skeleton forms and authorizes the executive to fill in minor detail. Therefore, the executive makes rules, regulations and by-laws which have to be observed by the administrators in execution of the law concerned.

Ordinances: The Constitution of India authorizes the chief executive, that is, the President to promulgate ordinances during the recess (interval) of Parliament to meet situation demanding immediate action. An ordinance is as authoritative and powerful as an act of Parliament and hence, governs the functioning of administration.

Civil Service Code: The executive has prescribed a civil service code to be observed and followed by the administrators in the exercise of their official powers. It consists of a set of conduct rules which prevent the administrators from misutilising their powers for personal ends. The important among such rules in India are as follows.

- (a) All-India Services (Conduct) Rules, 1954
- (b) Central Civil Services (Conduct) Rules, 1955
- (c) Railway Services (Conduct) Rules, 1956

The deal with various thing like loyalty to the state, obeying the official ordes of the superiors, political activities of civil servants, financial transactions of civil servants, marital restrictions, and others.

Staff Agencies: The executive also exercise control over administration through staff agencies. The important staff agencies in India are the Department of Administrative Reforms, the Planning Commission, the Cabinet Secretariat and the Prime Minister's Office. Mooney said that a staff agency is "an expansion of the personality of the executive. It means more eyes, more eyes, more ears and more hands to aid him in forming and carrying out his plans." Thus, the staff agencies exercise influence and indirect control over the administrative agencies and play an important role in coordinating their policies and programmes.

Appeal to Public Opinion: The administrative system, (i.e., civil services or bureaucracy) whether in the USA or the UK or India, is status quo oriented and hence resists change. It does not receive new policies, plans, programmes and projects formulated by the executive with positive mindedness. In fact, the various organs of the administrative machinery, in the words of pfiffner and Presthus, "seek to strengthen their position vis-à-vis other agencies, and the executive, by alliances with legislature and pressure groups, as well as by calculated support building campaigns directed at the general public. They develop vested interests not only in programme areas, but equally in established ways of doing things, which enhance the self-consciousness and strategic position of the bureaucracy." Due to this, the bureaucracy resists new programmes and methods as they threaten its (bureaucracy's) strong position. Under such circumstances, the executive appeals to the public opinion.

However the major issue in this section remains the complexity of minister-civil servant relationship wherein we have to examine as to what is the environment in which the two of them function and what are the guiding factors which shape the relationship and what should be the ideal course in which such relationship should move. The issue culminates into the argument between Neutral bureaucracy vs Committed bureaucracy or 'politicized' bureaucracy.

Herein we discuss the core issue of accountability and control (i.e., how to ensure that the bureaucracy operates with legality, efficiency and effectiveness while its operational autonomy and morale is not curbed excessively under the influence of controls) in the light of political influences which are an essential feature of administrative bureaucracy. The political environment under which the bureaucracy functions both helps and curtails its freedom. Political control of bureaucracy makes it immune to direct public scrutiny as the bureaucracy functions under ministerial responsibility and remains anonymous behind the political executive. However this very anonymity sometimes comes at the expense of political neutrality which frequently comes under pressure and the bureaucrats start serving the political party in power rather than the constitution for which they had sworned. Compromise on political neutrality brings in the

casualty of another cherished bureaucratic value of impartiality. Thus the trinity of political neutrality, anonymity and impartiality which makes bureaucracy the useful machine it is gets jeopardized under the influence of political influence. So whether bureaucracy should be made a totally autonomous institution free from any political control? The answer is no, because such an unanswerable disposition would unleash the evil of absolutism sleeping within the bureaucracy.

Thus another issue within the complicated issue of minister-civil servant relationship is as to how to preserve the proverbial neutrality, anonymity and impartiality of the bureaucracy while operating under the influence of the political executive or how to keep the bureaucracy efficient and effective despite the wavering political environment in which it functions.

The first step to examine the minister-civil servant relationship is to identify the factors which determine the nature of relationship between minister and civil servant.

The conventional view of public administration is based upon the dichotomy of politics and administration i.e., administration and politics should be kept separate. Politics or policy making is the proper activity of the legislative bodies and administration is the proper activity of administrators who carry out policies. It is opposed to any political role of the civil servants. It visualizes the relationship between the administrator and the politician in terms of a neat division of labor – the politician formulates the policy and the administrator executes it. The bureaucrat acts as pure advisor to his political master, presents facts of the case, suggests lines of action and implications of alternative policies. It is the prerogative of the political master to decide the policy. The bureaucrat is expected to implement the policy faithfully, whatever the decision. He is to be anonymous and neutral in the discharge of his duty. He is expected to render impartial advice without fear or favor. The doctrine of neutrality and anonymity has been one of the fundamental tenets of the Weberian bureaucracy.

The planners in India too subscribed to the Weberian ideal of neutral civil service. An impersonal, strictly rule-bound, neutral bureaucracy was expected not only to provide the necessary administrative objectivity but also

enhance the democratic principle of equality and provide protection from arbitrary rule by adhering to the concept of neutrality. The traditional concept of neutrality, however, has been challenged on many grounds. The earlier concept of separation of politics and administration in watertight compartments is considered no more valid. The role of the Civil Service has been changing from being a mere agent of the political executive to that of collaboration with it. The involvement of bureaucracy in political arena is now widely prevalent.

This breakdown of the theory of neutrality has come about because of a number of reasons:

1. The processes of policy making are no longer confined to the political executive. The truth is that the bureaucrats play an important role in policy formulation, perceived to be the exclusive preserve of elected politicians. This has happened because the statutes passed by the parliament are not clear enough. The legislative behavior follows no consistent pattern. Whereas, some measures are too detailed, some only identify the problem. The minister is rarely an expert in the work of his department or the techniques of public administration. He merely has general ideas in line with the political ideology of his party, but he often is not sure as to what is the best solution to a particular problem. He is therefore, forced to rely on his permanent staff for facts and advice. In effect then, it is the Administrator who has the major role in framing the policy.
2. The decline of neutrality can be attributed to the demands and pressures of coalition politics. In coalition governments, ministers are busy in the power game and maneuvering for their survival, and have neither time nor inclination to guide, direct and control their department or bureaucracy. Also at times, the legislative process is so stormy and full of diverse views that a statute passed incorporates a number of contradictory policy guidelines. The necessity of reaching a compromise solution to hold the coalition together leads the legislators to use vague language and the administrator has to use his own judgment to interpret the policy. Therefore,

bureaucracy has clearly made inroads in policy making and despite the regulations governing the civil servants they have been politicized considerably.

3. According to some political commentators, the classical theory of civil service neutrality presupposes agreement on principles fundamental to democracy. In other words, neutral, value-free bureaucracy is possible only in a society where consensus exists on values; but in transitional societies like India, where dissent and conflict exist; it is too much to expect anyone to be neutral.
4. Especially for a developing country like India where speedy socio-economic development has to be steadily pushed through, the nature and character of bureaucracy assumes special significance. The involvement of civil servants in numerous decisions be it the location of a steel plant or a school building in a village, makes them partners in development along with the politicians. Their value preferences get inextricably mixed up with technical advice. In the context of large-scale welfare programs therefore, absolute neutrality is not practically possible.

Thus the idea of committed bureaucracy comes into picture which stands for a certain commitment to the goals and objectives of the state. Moreover, neutrality cannot be allowed to degenerate into disinterestedness. The successful carrying out of developmental tasks requires on the part of administrators not only qualities of initiative and leadership but also a sense of emotional integration with the policies and programs and identification with the interests of the common man. Thus the idea of bureaucracy as a neutral instrument in the conduct of public affairs stood refuted as the concept of politics-administration dichotomy.

The concept of 'committed bureaucracy' was however much contested in the political and administrative circles. It was alleged that it would degenerate into what is called as 'politicized bureaucracy' i.e., it would destroy the character of the neutral bureaucracy and would create a breed of pliable civil servants who would always say "Yes Minister" and would be ready to crawl when asked to bend by their political masters. In practice however those fears of the critics have come to life, commitment has indeed assumed the perverted form of politicization and

sycophancy. Very often it is seen that bureaucracy simply acts according to the dictates of the political executive without any independent examination of issues.

This trend of excessive politicization of bureaucracy can be attributed to the ever-growing political interference in the affairs of administration. Political interference and committed/neutral administration cannot co-exist. While the administrators do not perceive their role in policy making as subservient to the political leaders because of their knowledge and expertise, yet they have to conform to the prerequisites of representative politics. The political leaders claim to be the true representatives of the people and thus claim to know the values of the people. Because of their superior position they succeed in dictating the terms to the bureaucrats. The bureaucrats who are not obliging enough soon find themselves in trouble. The political masters have many means of coercion—both overt and covert. Political interference in all matters including those where the statutory power is vested in the civil servants is a constant phenomenon. There are numerous instances of use of transfers, promotion, supersession and compulsory retirement from service by elected politicians as tools to silence the voice of dissent and expression of difference of opinion.

Moreover, politicization works the other way round also. Many administrators use political influence or forge alliance with the politician to brighten their own career prospects. They take advantage of the amateur politician; exploit his weakness particularly in times of a fluid political situation and turn out to be autonomous and irresponsible. This is an equally grim scenario.

What emerges out of the analysis is that whether there is collision or collusion between the political executive and the bureaucracy, in both cases it leads to organizational imbalance and ultimately the governance suffers.

Commission's Views

Expressing concern over the deteriorating administrative standards, the government appointed the Administrative Reforms Commission (ARC) in 1966 to conduct a comprehensive study of the administrative system and suggest remedies. The two most important areas touched upon by the ARC in its reports were: (a) Minister – Civil Servants

relationship, wherein the ARC emphasized the need for the de-politicization of the services, and (b) the creation of a climate and culture of administration that would help assert the growth of healthy personal relationship between Civil Servants and Minister. The ARC took cognizance of the fact that proper relationship between the political executive and bureaucracy is a matter of highest importance to the administrative performance of government. It observed that the existing pattern of relationship was different from what was envisaged. More and more cases of deviation were coming to notice. For instance the extent of bureaucratic involvement in politics was exceptionally high, there was frequent use of transfers and postings to manipulate bureaucracy, there was unholy nexus between politicians and bureaucracy, etc. which was taking its toll on administrative efficiency.

Therefore, corrective measures were required to restore the health of the system.

The ARC stressed on the urgency to prevent bureaucracy's aggressive role in politics and also on the need to check arbitrary interference of politicians in administrative affairs. It believed that both Minister and Civil Servants must appreciate rather than belittle each others' work and attempt maximum accommodation of one another's views. On the part of the political executive there should be, in the words of the ARC,

- A. Proper understanding of the administrative functions and recognition of its professional nature.
- B. Little interference as possible in service matters, e.g. postings, transfers, promotions, etc.
- C. No requests for departures from declared and approved policies to suit individual cases.

Similarly, on the part of the civil service it asserts:

- A. There must be a sincere and honest attempt to find out what the political head wants and make the necessary adjustment in policies and procedures to suit his wishes.
- B. Readiness to fall in line with his political chief in all matters, unless strong grounds indicate a different course.

In other words, it means an emotional and mental acceptance by the bureaucracy of the

ideology of the government policy to be executed by it.

Despite the valuable recommendations made by the ARC to streamline the relationship between the minister and the civil servants, nothing much seems to have changed because of political and administrative apathy. Making the matters worse is the growth in recent times of a nexus between the politicians, criminals, police and the civil servants rooted in the considerations of "mutuality of benefit". An increasing use of money and muscle power by political parties in winning elections is of common knowledge. Since the muscle power is mostly provided by the mafia and the criminals, a close nexus prevails between the politicians and the criminals resulting in "criminalization of politics". This has been the main conclusion of the Vohra Committee Report of 1993 submitted by the then Home Secretary, Mr. N.N. Vohra which was set up to look into the criminalization of politics. The report observed that the mafia and the criminals enjoyed the patronage of politicians and the protection of government functionaries. It pointed out how the nexus was virtually running a parallel government, pushing the state apparatus into irrelevance. Here the two elites – political and administrative, join hands and become not only thick friends but also grand thieves. Such a nexus is detrimental to public interest. Therefore, it was felt that corrective steps must be taken to ensure that this evil nexus is curbed.

With this objective in mind, the Prime Minister inaugurated a Conference of Chief Secretaries in November 1996 on 'An Agenda for an Effective and Responsive Administration.

The Conference emphasized the need for bringing about transformation in public services so as to make them more effective, clean, accountable and citizen friendly. The Conference also highlighted the necessity of adopting the code of ethics for public services which not only regulates the role of the civil servants but also specifies the relationship between the employees in public services and politicians, so that the basic commitment of the civil servants towards the welfare of the public and the principles enshrined in the Constitution is reiterated.

Further, the 2nd ARC in its report on Personnel administration emphasized on a need to safeguard the political neutrality and

impartiality of the civil services for which it believes that the onus lies equally on the political executive as well as the civil service

This aspect is recommended to be included in the Code of Ethics for Ministers as well as the Code of Conduct for Public Servants. Further the Commission reiterated 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 favoring or harming someone" and "obstruction of justice" should be classified as an offence under the Act. This would lead to the protection of honest and upright civil servants against arbitrary political interference. Moreover it also stressed upon the essentiality to lay down certain norms for recruitment in government to avoid complaints of favoritism, 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) Minimization, 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 are envisaged in the new Civil Services Bill which the commission has suggested the government to bring.

Having said all this the real fruits of the efforts can come only if the government implements these recommendations which is in itself is an issue of concern as any such move is interpreted in the political circles as a move to dilute political control over administration which is a taboo in the political class of India. Further beyond the limitations of organization and structures there have been numerous instances of upright civil servants driven by morals that have resisted all the attempts of politicization and held their ground defying fears of manipulation by transfers, promotions, postings, etc. So ultimately structures and statutes could only help up to a limited extent and primarily it is the men of conscience who could really help in bringing good governance to the people.

LEGISLATIVE CONTROL OVER THE EXECUTIVE

~~Legislative control over administration implies~~ the control of parliament over the government as officials cannot be directly held accountable to the parliament owing to the principle of ministerial responsibility and anonymity. Legislative control over administration is exercised by means of several tools like law making, question hour (interpellations), zero hour, half an hour discussion, short duration discussion, calling attention motion, adjournment motion, no confidence motion, censure motion, budgetary system, etc. Further there are also means to exercise more specific control through parliamentary committees like Public Accounts Committee, Estimates committee, Committee on Public Undertakings, Committee on Subordinate Legislation, Committee on Government Assurances, Departmental Standing Committees, etc. Some are discussed below as:

- **Zero Hour:** Unlike the Question Hour, the Zero Hour is not mentioned in the rules of procedure. Thus it is an informal device available to the members of the parliament to raise matters without any prior notice. The Zero Hour starts immediately after the Question Hour and lasts until the agenda for the day (i.e., regular business of the House) is taken up. In other words, the time gap between the Question Hour and the agenda is known as Zero Hour. It is an Indian innovation in the field of parliamentary procedures and has been in existence since 1962.
- **Half-an-Hour Discussion:** It is meant for raising a discussion on a matter of sufficient public importance which has been subjected to a lot of debate and the answer to which needs elucidation on a matter of fact. The Speaker can allot three days in a week for such discussions. There is no formal motion or voting before the House.
- **Short Duration Discussion:** It is also known as two hour discussion as the time allotted for such a discussion should not exceed two hours. The members of the Parliament can raise such discussions on a matter of urgent public importance. The Speaker can allot two days in a week for

such discussions. There is neither a formal motion before the house nor voting. This device has been in existence since 1953.

- **Other Discussions:** In addition to the above discussions, there are various other occasions available to the members of Parliament to raise discussions and debates to examine and criticize the administration for its lapses and failures. These include the following:
 - a. Inaugural speech of the President (i.e., Motion of Thanks)
 - b. Introduction of several bills for enactment of laws (i.e. debates on legislation)
 - c. Introduction and passing of resolutions on matters of general public interest
- **Calling Attention:** It is a notice introduced in the Parliament by a member to call the attention of a minister to a matter of urgent public importance and to seek an authoritative statement from him on that matter. Like the Zero Hour, it is also an Indian innovation in the parliamentary procedure and has been in existence since 1954. However, unlike the Zero Hour, it is mentioned in the rules of procedure.
- **Adjournment Motion:** It is introduced in the Parliament to draw attention of the House to a matter of urgent public importance. This motion needs the support of 50 members to be admitted. As it interrupts the normal business of the House, it is regarded as an extraordinary device. It involves an element of censure against the government and hence Rajya Sabha is not permitted to make use of this device.

The discussion on an adjournment motion should last for not less than two hours and thirty minutes. The right to move a motion for an adjournment of the business of the House is subject to the following restrictions:

1. It should raise a matter which is definite, factual urgent and of public importance;
 2. It should not cover more than one matter;
 3. It should be restricted to a specific matter of recent occurrence and should not be framed in general terms;
 4. It should not raise a question of privilege;
 5. It should not revive discussion on a matter that has been discussed in the same session;
6. It should not deal with any matter that is under adjudication by a court; and
 7. It should not raise any question that can be raised on a distinct motion.
- **No Confidence Motion:** Article 75 of the Constitution states that the Council of Ministers shall be collectively responsible to the Lok Sabha. It means that the ministry stays in office so long as it enjoys confidence of the majority of the members of the Lok Sabha. In other words, the Lok Sabha can remove the ministry from office by passing the No Confidence Motion. The motion needs the support of 50 members to be admitted.
 - **Budgetary System:** This is the most important technique of parliamentary control over administration. The Parliament controls the revenues and expenditures of the government through enactment of the budget. It is the ultimate authority to sanction the raising and spending of government funds. It can criticize the policies and actions of the government and point out the lapses and failures of administration during the process of enactment of the budget.
- Unless the Appropriation Bill and the Finance Bill are passed, the executive cannot incur expenditure and collect taxes respectively. (For details see chapter on “Financial Administration”)
- **Audit System:** This is an important tool of parliamentary control over administration. The Comptroller and Auditor General of India (CAG), on behalf of the Parliament, audits the accounts of government and submits an annual ‘Audit Report’ about the financial transactions of the government. The report of CAG highlights the improper, illegal, unwise, uneconomical and irregular expenditures of the government. The CAG is an agent of the Parliament and is responsible only to it (i.e., Parliament). Thus the financial accountability of the government to the Parliament is secured through the audit Report of the CAG.
 - **Public Accounts Committee:** This committee was set up first in India in 1921 under the provisions of the Government of India Act of 1919 and has since been in existence. At present it consists of 22

members (15 from the Lok Sabha and 7 from the Rajya Sabha). The members are elected by the Parliament every year from amongst its members according to the principle of proportional representation by means of the single transferable vote. Thus, all parties get due representation in it. The term of office of the members is one year. A minister cannot be elected as a member of the Committee. The Chairman of the Committee is appointed by the Speaker from amongst its members. Until 1966-67, the Chairman of the Committee belonged to the ruling party. However, since then (i.e., 1967) a convention has developed whereby the Chairman of the committee is selected invariably from the Opposition.

The function of the Committee is to examine the annual audit reports of the Comptroller and Auditor General of India (CAG) which are laid before the Parliament by the President. In this function the Committee is assisted by the CAG.

The CAG submits three audit reports to the president, namely, audit report on appropriation accounts, audit report on finance accounts and audit report on public undertakings.

The committee examines public expenditure not only from the legal and formal point of view to discover technical irregularities but also from the point of view of economy, prudence, wisdom and propriety to bring out the cases of waste, loss, corruption, extravagance, inefficiency and nugatory expenses.

In more detail the functions of the committee are:

1. To examine the appropriation accounts and the finance accounts of the Union government and any other accounts laid before the Lok Sabha. The appropriation accounts compare the actual expenditure with the expenditure sanctioned by the Parliament through the appropriation Act, while the finance accounts show the annual receipts and disbursements of the Union Government.
2. In scrutinizing the appropriation accounts and the audit report of CAG on it, the Committee has to satisfy itself that:
 - (a) The money that has been disbursed was legally available for the applied service or purpose;

- (b) The expenditure conforms to the authority that governs it; and
 - (c) Every re-appropriation has been made in accordance with the related rules.
3. To examine the accounts of state corporations, trading concerns and manufacturing projects and the audit report of CAG on them (except those public undertakings which are allotted to the committee on public undertakings.)
 4. To examine the accounts of autonomous and semi-autonomous bodies, the audit of which is conducted by the CAG.
 5. To consider the report of the CAG relating to an audit of any receipt or to examine the accounts of stores and stocks.
 6. To examine the money spent on any service during a financial year in excess of the amount granted by the Lok Sabha for that purpose.

On the role played by the Committee, Ashok Chanda observed: "Over a period of years, the Committee has entirely fulfilled the expectation that it should develop into a powerful force in the control of public expenditure. It may be claimed that the traditions established and conventions developed by the Public Accounts Committee conform to the highest traditions of a parliamentary democracy."

However, the effectiveness of the role of the Committee is limited by the following:

- (a) It is not concerned with the questions of policy in broader sense.
- (b) It conducts a post-mortem examination of accounts (showing the expenditure already incurred).
- (c) It cannot intervene in the matters of day-to-day administration.
- (d) Its recommendations are advisory and not binding on the ministries.
- (e) It is not vested with the power of disallowance of expenditures by the departments.
- (f) It is not an executive body and hence, cannot issue an order. Only the Parliament can take a final decision on its findings.

Estimates Committee: The origins of this committee can be traced to the Standing Financial Committee setup in 1921. The first Estimates Committee in the post-independence era was constituted in 1950 on the recommendation of

John Marhai, the then Finance Minister. Originally, it had 25 members but in 1956 its membership was raised to 30. All the thirty members are from Lok Sabha only. The Rajya Sabha has no representation in this Committee. These members are elected by the Lok Sabha every year from amongst its members, according to the principles of proportional representation by means of a single transferable vote. Thus, all parties get due representation in it. The term of office is one year. A minister cannot be elected as a member of the Committee. The Chairman of the Committee is appointed by the Speaker from amongst its members. The Chairman of the Committee is invariably from the ruling party.

The function of the Committee is to examine the estimates included in the budget and suggest 'economies' in public expenditure. Hence, it has been described as a 'continuous economy committee.'

In more detail, the functions of the Committee are:

- (a) To report what economics, improvements in organization, efficiency and administrative reforms consistent with the policy underlying the estimates may be affected.
- (b) To suggest alternative policies in order to bring about efficiency and economy in administration.
- (c) To examine whether the money is well laid out within the limits of the policy implied in the estimates.
- (d) To suggest the form in which the estimates shall be presented to Parliament:

The Committee shall not exercise its functions in relation to such public undertakings as are allotted to the Committee on Public Undertakings.

The Committee may continue the examination of the estimates from time to time, throughout the financial year and report to the House as its examination proceeds. It shall not be incumbent on the Committee to examine the entire estimates of any one year. The demands for grants may be finally voted despite the fact that the Committee has made no report.

However, the effectiveness of the role of the committee is limited by the following:

- (i) It examines the budget estimates only after they have been voted by the

Parliament, and not before that.

- (ii) It cannot question the policy laid down by the Parliament.
- (iii) Its recommendations are advisory and not binding on the ministries.
- (iv) It examines every year only certain selected ministries and departments. Thus, by rotation, it would cover all of them over a number of years.
- (v) It lacks the expert assistance of the CAG which is available to the Public Accounts Committee.
- (vi) Its work is in the nature of a post-mortem

- ***Committee on Public Undertakings:*** This Committee was created in 1964 on the recommendation of the Krishna Menon Committee. Originally, it had 15 members (10 from the Lok Sabha and 5 from the Rajya Sabha). But in 1974, its membership was raised to 22 (15 from the Lok Sabha and 7 from the Rajya Sabha). The members are elected by the Parliament every year from amongst its members according to the principle of proportional representation by means of a single transferable vote. Thus, all parties get due representation in it. The term of office of the members is one year. A minister cannot be elected as a member of the Committee. The Chairman of the Committee is appointed by the Speaker from amongst its members who are drawn from the Lok Sabha only. Thus, the members of the Committee who are from the Rajya Sabha cannot be appointed as the Chairman.

The functions of the Committee are:

- (a) To examine the reports and accounts of public undertakings.
- (b) To examine the reports, if any, of the Comptroller and Auditor-General on public undertakings.
- (c) To examine, in the context of autonomy and efficiency of public undertakings, whether the affairs of the public undertakings are being managed in accordance with sound business principles and prudent commercial practices.
- (d) To exercise such other functions vested in the Committee on Public Accounts and the Committee on Estimates in relation to

public undertakings as may be allotted to the Committee by the Speaker from time to time.

The Committee shall not examine and investigate any of the following:

- (i) Matters of major government policy as distinct from business or commercial functions of the Public undertakings.
- (ii) Matters of day-to-day administration.
- (iii) Matters for the consideration of which machinery is established by any special statute under which a particular public undertaking is established.

Further, the effectiveness of the role of the Committee is limited by the following:

- (a) It cannot take up the examination of more than ten to twelve public undertakings in a year.
- (b) Its work is in the nature of a post-mortem.
- (c) It does not look into technical matters as its members are not technical experts.
- (d) Its recommendations are advisory and not binding on the ministries.
- ***Committee on Subordinate Legislation:*** This Committee was constituted in 1953. It consists of 15 members including the Chairman, who are nominated by the Speaker. The term of office of the members is one year. A minister cannot be nominated as a member of the Committee. The Chairman of the Committee is drawn from the Opposition.

The function of the Committee is to examine and report to the Lok Sabha, whether the powers to make regulations rules sub-rules, by-laws and others, conferred by the Constitution or delegated by the Parliament to the executive, are being properly exercised by it. Each regulation, rule, sub-rule, by-law and others, is technically known as 'Order'. After each such order is laid before the Lok Sabha, the Committee shall consider.

- (i) Whether it is in accord with the general objects of the Constitution or the act pursuant to which it is made.
- (ii) Whether it contains matter, which in the opinion of the committee, should more properly be dealt within an act of parliament.
- (iii) Whether it contains imposition of any

tax.

- (iv) Whether it directly or indirectly bars the jurisdiction of the courts.
- (v) Whether it gives retrospective effect to any of the provisions in respect of which the Constitution or the act does not expressly give any such power.
- (vi) Whether it involves expenditure from the Consolidated Fund of India or the public revenues.
- (vii) Whether it appears to make some unusual or unexpected use of the powers conferred by the Constitution or the act pursuant to which it is made.
- (viii) Whether there appears to have been unjustifiable delay in its publication or in laying it before the parliament.
- (ix) Whether for any reason its form or purport calls for any elucidation.

- ***Committee on Government Assurances:*** This Committee was constituted in 1953. It consists of 15 members including the Chairman, who are nominated by the speaker. The term of office of members is one year. A minister cannot be nominated as a member of the Committee.

The function of the Committee is to examine the assurances, promises, undertakings, and so on, given by ministers from time to time on the floor of the Lok Sabha, and to report on:

- (a) The extent to which such assurances, promises, undertakings have been implemented.
- (b) Whether such implementation has taken place within the minimum time necessary for the purpose.

- ***Departmental Standing Committees:*** There are 24 Departmentally Related Standing Committees covering under their jurisdiction all the Ministries/Departments of the Government of India. Each of these Committees consists of 31 Members - 21 from Lok Sabha and 10 from Rajya Sabha to be nominated by the Speaker, Lok Sabha and the Chairman, Rajya Sabha, respectively. Provided that a member appointed as a Minister, shall not be nominated as, or continue as, a member of any Committee. The term of Office of these Committees does not exceed one year.

A full-fledged system of 17 Departmentally Related Standing Committees came into being

in April, 1993. Some examples: Committee on Commerce; Committee on Home Affairs; Committee on Human Resource Development, etc.

Till 13th Lok Sabha, each Standing Committee consisted of not more than 45 members 30 to be nominated by the Speaker from amongst the members of Lok Sabha and 15 to be nominated by the Chairman, Rajya Sabha from amongst the members of Rajya Sabha. However, with restructuring of DRSCs in July, 2004 each DRSC consists of 31 Members - 21 from Lok Sabha and 10 from Rajya Sabha.

With reference to the Ministries/Departments under their purview, the functions of these Standing Committees are:-

- a) to consider the Demands for Grants of the related Ministries/Departments and report thereon. The report shall not suggest anything of the nature of cut motions;
- b) to examine Bills, pertaining to the related Ministries/Departments, referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon;
- c) to consider the annual reports of the Ministries/Departments and report thereon; and
- d) to consider national basic long term policy documents presented to the Houses, if referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon:

The Standing Committees does not consider matters of day-to-day administration of the related Ministries/Departments and the recommendations of these committees are advisory in nature and hence, not binding on Parliament.

The following procedure shall be followed by each of the Standing Committees in its consideration of the Demands for Grants and making a report thereon to the Houses, after the general discussion on the Budget in the Houses is over, and the Houses are adjourned for a fixed period:-

- a) the Committee shall consider the Demands for Grants of the related Ministries during the aforesaid period;
- b) the Committee shall make its report within the specified period;

- c) There shall be a separate report on the Demands for Grants of each Ministry;
- d) The demand for grants shall be considered by the House with respect to the reports of the Standing Committee.

The following procedure shall be followed by each of the Standing Committees in examining a Bill and making a report thereon:-

- a) the Committee shall examine only such Bills introduced in either of the Houses as are referred to it by the Chairman or the Speaker, as the case may be; and
- b) the Committee shall consider the general principles and clauses of such Bills and shall make report thereon within such time as may be specified by the Chairman or the Speaker, as the case may be.

The Departmentally Related Standing Committee System is a path-breaking endeavour of the Parliamentary surveillance over administration. With the emphasis of their functioning to concentrate on long-term plans, policies guiding the working of the Executive, these Committees provide necessary direction, guidance and inputs for broad policy formulations and in achievement of the long-term national perspective by the Executive.

The merits of the standing committee system in the Parliament are:-

- (i) Their proceedings are devoid of any party bias.
- (ii) The procedure adopted by them is more flexible than in the Lok Sabha.
- (iii) The system makes parliamentary control over executive much more detailed, close, continuous, in-depth and comprehensive.
- (iv) The system ensures economy and efficiency in public expenditure as the ministries/Departments would now be more careful in formulating their demands.
- (v) They facilitate opportunities to all the members of Parliament to participate and understand the functioning of the government and contribute to it.
- (vi) They can avail of expert opinion or public opinion to make the reports. They are authorized to invite experts and eminent persons to testify before them and incorporate their opinions in their reports.
- (vii) The opposition parties and the Rajya Sabha can now play a greater role in

exercising financial control over the executive.

However the major issue in this section is the limitations and ineffectiveness of various tools of legislative control. This issue however pans out to the argument as to whether the legislature is able to exercise effective control over the executive or not.

The legislative control over administration in parliamentary countries like India is more theoretical than practical. In reality, the control is not as effective as it ought to be. The legislative control over the government in India could not be termed as strong and there are various reasons for it. The first and foremost is the nature of our parliamentary form of government wherein the council of ministers is drawn out from the group that holds the majority in the parliament. Moreover all the decisions in a parliamentary form of government are taken by the majority therefore as long as the council of ministers enjoys the support of the majority there is hardly anything substantial that the parliament could do to control the executive. Further there are other reasons which come into picture as per situation and settings viz.

1. In India the size of administration has grown so large in terms of volume of work and complexity that the parliament has neither the time nor the expertise to control the administration.
2. The technical nature of some issues like the financial grants is beyond the full and proper understanding of the laymen parliamentarians. Further the increased recourse to 'Guillotine' has reduced the scope of financial control.
3. The increased importance of 'delegated legislation' has further reduced the powers of the parliament in making the details of the law. This has in fact increased the powers of the bureaucracy which is now, more free to hide the devil in the details.
4. The frequent disruptions in the working of the parliament due to political reasons or other reasons by the opposition or otherwise further compress the limited time available to the parliament for functions of scrutiny and control of the acts of the executive.
5. The frequent promulgation of ordinances by the President further dilutes the powers

of the parliament in legislation and scrutiny.

6. The most concerning reason however is the extensive limitations imposed on the role and functioning of the parliamentary committees which have been reduced to an eyewash due to the following reasons:
 - a) They are only made to make a post mortem analysis of the work, which makes the preventive aspect of control over the executive difficult.
 - b) They are not allowed to question the policy decisions of the government.
 - c) It can hardly look into the technical matters as its members are drawn from the members of the parliament who hardly have any understanding of technical matters.
 - d) Their recommendations are of advisory nature and are not binding on the parliament.

Thus the parliamentary committees end up with hardly any ground to make meaningful contribution to the process of legislative control.

However this opinion is not acceptable to Paul. H. Appleby who is still very critical to the parliamentary control in India. He writes that the members of parliament greatly exaggerate the importance of the report of the CAG. This in turn increases timidity of public servants at all levels, making them unwilling to take initiatives and for actions and subsequently unwilling to take responsibility of their decisions, forcing decisions to be made by a slow and cumbersome process of reference and conference in which everybody finally shares some part of responsibility of making the decision, not enough gets done and what gets done is done too slowly.

Moreover the parliament seems strangely inclined to make too ready concessions to some of the self interest demands of some pressure groups from the business community and other areas and enforce corresponding changes in government's decisions. Further the parliament's endorsement of the formerly small and narrow approach of the public service commission to its own functions in the mistaken belief that this strengthens the merit system, undermines the responsibility of the ministries and thereby, undermines the responsibility of the parliament.

Finally he targets the apprehensions of the parliamentarians behind their reluctance to

delegate their powers of detail. This creates a possessive culture right down the hierarchy from ministers to secretaries to managing directors to others, thus creating too much control which actually becomes ineffective and stagnated due to this inhibitionists mindset, defeating its very purpose.

Further more in present context the role of coalition politics also increases the degree of legislative control over administration. We have seen several times in the past that when the ruling party is dependent on some other party for majority in the Parliament, it becomes more responsive at least in the sense that it is found to become more sensitive to the concerns indicated by the coalition partner, however this increased efficacy seems to be working other ways when any member from the coalition partner is alleged to be involved in some irregularities. In such cases the same coalition constraints which had increased the degree of legislative control is found to demolish the norms of legislative control and the administration/executive/government starts protecting the partner defying all the legislative norms.

Another factor which seems to work in favor of increasing the degree of legislative control over the administration in the present times is the increased role of the media. Mass media in India has grown and developed very rapidly in India especially in the past decade. The growth of 24x7 news channels and the increased penetration of satellite television in the country has vested great powers in the media to create public opinion. The media keeps the people and the leaders informed about the activities of the government continuously. The MPs have been found to use media reports frequently in the debates of the parliament. Several sting operations have exposed not only the people in the government but also people in the exclusive public domain and have forced them to answer and explain their actions. However if we are to quantify the achievements of the media the only major effect it can produce is in the creation of a public opinion in case of any gross violation of the constitution or public interest by the government, which could have any impact at the time of elections.

Thus it is difficult to say conclusively as to whether the legislature is able to exercise optimum levels of control over the executive. However there is much which the legislature

could do particularly by its powers of framing new laws and regulations. For example the second ARC has recommended a Code of Ethics for Civil Servants under which:

- A. A set of 'Public Service Values' towards which all public servants should aspire, should be defined and made applicable to all tiers of Government and para Government organizations. Any transgression of these values should be treated as misconduct, inviting punishment.
- B. A code of Ethics for Regulators in form of a comprehensive and enforceable code of conduct should be prescribed for all professions with statutory backing.
- C. An ethical Framework for Ministers. In addition to the existing Code of Conduct for Ministers, there should be a Code of Ethics to provide guidance on how Ministers should uphold the highest standards of constitutional and ethical conduct in the performance of their duties.
- D. Dedicated units should be set up in the offices of the Prime Minister and the Chief Ministers to monitor the observance of the Code of Ethics and the Code of Conduct. The unit should also be empowered to receive public complaints regarding violation of the Code of Conduct.
- E. 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.
- F. An annual report with regard to the observance of these Codes should be submitted to the appropriate legislature. This report should include specific cases of violations, if any, and the action taken thereon.
- G. The Code of Ethics, the Code of Conduct and the annual report should be put in the public domain.

Apart from these, there are other very important recommendations related to the Lokpal/Lokayukta, revision of the constitutional protection available to the civil servants under Article 311, review of the definition of office of profit, recasting of the Benami Transactions act and the Anti Corruption act, etc. If parliament

could bring effective and meaningful legislations on these vital matters concerning the role and the functioning of the executive, it will go very far in strengthening accountability and control of the executive and thus ensuring good governance.

JUDICIAL CONTROL OVER ADMINISTRATION

It refers to the powers of the courts to keep the administrative acts within the limits of law. It also implies the right of an aggrieved citizen to challenge the wrongful acts of administrators in a court of law. Judicial protection is available to the citizens vis-à-vis actions of the permanent executive/bureaucracy and the political executive/ministers. Judicial control is also available to the citizens vis-à-vis actions of the legislature in form of judicial review. Unlike the executive control and legislative control which is exercised by the executive and legislature on behalf of the people, judicial control can be availed by the citizens directly from the courts. Apart from the Governors of the states and the President of India who cannot be sued for their official acts, everyone else can be sued in the court of law subject to little or more exceptions.

Judiciary is the guardian of the sanctity of the constitution so any act of administration or the legislature is subject to judicial review if there is any doubt regarding their consonance with the constitution. Judiciary can interfere in the administrative acts under the following circumstances:

1. **Lack of jurisdiction**, that is, when the administrator acts without authority or beyond the scope of his authority or outside the geographical limits of his authority. It is technically called 'overfeasance'.
2. **Error of law**, that is, when the administrator misinterprets the law and thus imposes upon the citizen, obligations which are not required by the content of law. It is technically called misfeasance.
3. **Error in fact finding**, that is, when the administrator makes a mistake in the discovery of facts and acts on wrong presumptions.
4. **Abuse of authority**, that is, when the administrator uses his authority (or power of discretion) vindictively to harm some person. It is technically called as

malfeasance.

5. **Error of procedure**, that is, when the administrator does not follow the laid down procedure.

Further, the judiciary exercises control over administration through the following methods or techniques:

1. Judicial review.
2. Statutory appeal.
3. Suits against the government.
4. Suits against public officials.
5. Extraordinary remedies which are effected through the following six writs:
 - a) Habeas Corpus.
 - b) Mandamus.
 - c) Prohibition.
 - d) Certiorari.
 - e) Quo Warranto.
 - f) Injunction.

Some are discussed below as:

Judicial Review: It is the power of the courts to be violative of the Constitution (ultra vires), they can be declared as illegal, unconstitutional and invalid by the courts. The scope of judicial review in the USA is much wider than in Britain. India falls in between the two due to the constitutional and statutory limitations (on the scope of judicial review).

Statutory Appeal: The parliamentary statute (i.e. law or act) may itself provide that in a specific type of administrative act, the aggrieved citizen will have the right of appeal to the courts. Under such circumstances, the statutory appeal is possible.

Suits Against Government: In India, Article 300 of the Constitution governs the suability of the state. It states that the Union Government and State Government can be sued, subject to the provisions of the law made by the Parliament and the state legislature respectively. The state is suable in contracts. This means that the contractual liability of the Union Government and the State Government is same as that of an individual under the ordinary law of contract. However, in case of torts, the position is different (a tort is a wrongful action or injury for which a

suit for damages lies). In this regard, a distinction is made between the sovereign and non-sovereign functions of the state. The state, for the tortuous acts of its servants, can be sued only in case of its non sovereign functions but not in case of its sovereign function.

In Britain, there has been tradition immunity of the state (i.e., Crown) from any legal liability for any action. Suits against government in contract or tort were severely restricted. Such restrictions were relaxed and the situation was improved by the Crown Proceeding Act of 1947. The present position in Britain is that the State can be sued for the wrongful acts of its officials whether in contracts or torts, with some exceptions.

In the USA, subject to a few exceptions, the state cannot be sued in cases pertaining to torts. In other words, the State (either federal government or state government) is immune from the tortuous liability of its servants, except in few cases.

In France, where the system of 'Droit Administratif' prevails, the state assumes responsibility for the official actions of its servants and compensate the citizens for any loss suffered by them. The aggrieved citizens can directly sue the state in the 'administrative courts' and get the damages awarded. (For details see 'France' under Administrative System chapter).

Suits Against Public Officials: In India, the President and the state governors enjoy personal immunity from legal liability for their acts. During their term of office, they are immune from any criminal proceedings, even in respect of their personal acts. They cannot be arrested or imprisoned. However, after giving two months' notice, civil proceedings can be instituted against them during their term of office in respect of their personal acts. The ministers do not enjoy such immunities and hence they can be sued in ordinary courts like common citizens for crimes as well as torts.

Under the Judicial Officer's Protection Act of 1850, the judicial officers are immune from any liability in respect of their acts and hence cannot be used.

The civil servants are conferred personal immunity from legal liability for official contracts by the Article 299 of the Constitution of India. In other cases, the liability of the officials is the

same as of any ordinary citizen. Civil proceedings can be instituted against them for anything done in their official capacity after giving a two months notice. As regards criminal liabilities, proceedings can be instituted against them for acts done in their official capacity with prior permission from the government.

The Monarch in Britain and the President in the USA enjoy immunity from legal liability. The legally accepted phrase in Britain is. 'The King can do no wrong.' Hence he cannot be sued in any court of law.

Extraordinary Remedies: These consist of the following six kinds of writs issued by the courts.

- (i) **Habeas Corpus:** It literally means "to have the body of." It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it. The court will set the imprisoned person free if the detention is illegal. This writ is a bulwark of individual liberty against arbitrary detention.
- (ii) **Mandamus:** It literally means 'we command'. It is a command issued by the court to a public official asking him to perform his official duties which he has failed to perform.
- (iii) **Prohibition:** It literally means 'to forbid'. It is issued by a higher court to a lower court when the latter exceeds its jurisdiction. It can be issued only against judicial and quasi-judicial authorities and not against administrative authorities. Hence, its importance as a tool of judicial control over administration is highly restricted.
- (iv) **Certiorari:** It literally means 'to be certified' It is issued by a higher court to a lower court for transferring the records of proceedings of a case pending with it, for the purpose of determining the legality of its proceedings or for giving fuller and a more satisfactory effect to them than could be done in the lower court. Thus, unlike the Prohibition which is only preventive, the Certiorari is both preventive as well as curative like Prohibition. It can be issued only against judicial and quasi-judicial authorities and not against administrative authorities.
- (v) **Quo Warranto:** It literally means 'by

what authority or warrant.' It is issued by the courts to enquire into the legality of claim of a person to a public office. Therefore, it prevents illegal assumption of public office by a person.

- (vi) **Injunction:** It is issued by the court asking a person to do a thing or refrain from doing it. Thus, it is of two kinds viz., mandatory and preventive. The mandatory injunction resembles the writ of Mandamus but it is different. As put by M.P. Sharma, "Mandamus cannot be issued against private persons while the injunction is primarily a process of private law and only rarely a remedy in administrative law. Mandamus is a remedy of common law while injunction is the strong arm of equity."

Similarly, preventive injunction resembles the writ of Prohibition but it is different. In the words of M.P. Sharma, "Injunction is directed to the litigant parties while prohibition to the court itself. Also, while injunction recognizes the jurisdiction of the court in which the proceedings are pending, prohibition strikes at such jurisdiction."

Writs in India

The following points can be noted in this context.

- (i) The courts can issue all the above mentioned writs. However, only the first five are mentioned in the Constitution of India.
- (ii) Article 32 of the Constitution authorizes the Supreme Court to issue writs for the enforcement of the Fundamental Rights of citizens guaranteed to them by the Constitution.
- (iii) Article 226 of the Constitution authorizes High Courts to issue the writs not only for the enforcement of the Fundamental Rights of citizens guaranteed by the Constitution but also for other purposes. The writ jurisdiction of High Courts is wider than that of the Supreme Court.
- (iv) Parliament (under Article 32) can empower any other court to issue these writs. Since no such provision has been made so far, only the Supreme Court and the High Courts can issue the writs and not any other court.

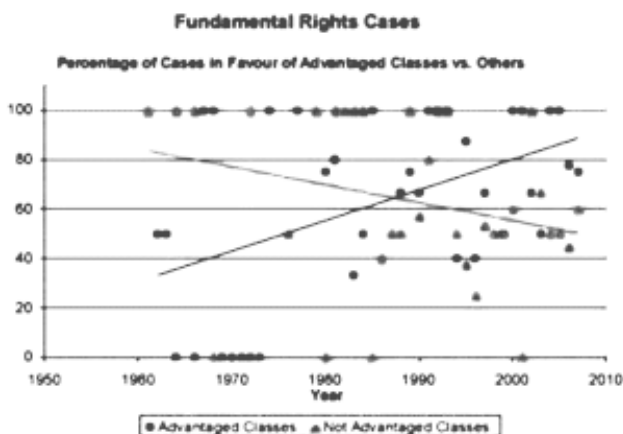
Despite all the mechanisms in place the most important issue in this section remains as to whether the judiciary has been able to discharge its function of ensuring that the administrative actions are performed within the spirit of constitution and good governance is delivered to the citizens even at the bottom level. The more influential opinion goes against the efficacy of the judiciary in this sense, which has been attributed to a number of reasons which have been instrumental in reducing the effectiveness of judicial control over administration:

1. The judiciary cannot intervene in administrative process on its own. The courts intervene only when the aggrieved citizen takes the matter before them. Therefore, the judiciary lacks the suo moto power.
2. The control exercised by the courts is in the nature of a post mortem control, that is, they intervene after the damage is done to the citizen by the administrative acts.
3. All administrative acts are not subject to judicial control as the parliament may exclude certain matters from the jurisdiction of the courts. For example the ninth schedule items. Moreover there also certain Self denying ordinances of the judiciary by which the judiciary denies itself jurisdiction in certain matters on its own accord.
4. The judicial process is slow and cumbersome as well as very expensive which makes almost impossible for the common man to seek judicial remedies to his woes. Further, the judges being legal experts cannot fully properly understand the technical nature of administrative acts which further adds to the dilatoriness of the judicial pronouncements.
5. The volume, variety, and complexity of administration have increased due to welfare orientation of the state which has imposed serious limitations on the capacity of the courts to review each and every administrative act affecting the citizens.
6. Further, off late there have been certain instances where judges even in the higher judiciary have been found to act in collusion with the corrupt officers and the related establishment. Though till date no judge of the higher judiciary in India has

been impeached but there have been serious allegations of misappropriations against several of them like Justice Soumitra Sen of the Calcutta High Court or Justice Dinakaran of the Sikkim High Court, to name a few of them.

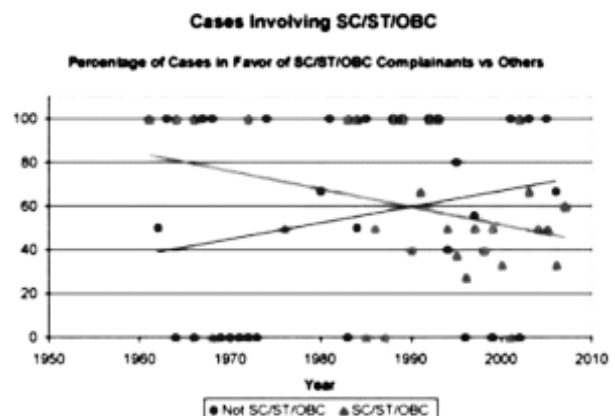
7. The lack of clear definition of separation of powers between the legislature-executive and the judiciary. Following which the confrontation of the judiciary with the legislature and the limitations of judicial activism in this area, sets another impediment in the road to judicial control over administration. On the one hand the parliamentary privileges are not explicitly defined because of which sometimes the parliament gets offended by the pronouncements of the judiciary and on the other the laws related to contempt of court are primitive and vague which sometimes create unwarranted offences of the judiciary by the legislature and the executive.

Further, these reasons could be concretized into three important sub issues which are at the core of all what is said and done in this reference. One is the inherent weaknesses in the constitution itself related to the separation of powers between the judiciary-executive and the legislature which stimulates as well as restrains judicial activism. Another is the powers of the courts related to the contempt proceedings which have time and again restrained the scrutiny of the 'irregular' judges and also restricted the legislature and the executive from initiating any type reforms in the judiciary. Third is the irresponsible behavior of the people while dealing with the judicial instruments of PILs, which have further added to the volumes of cases with the judiciary.



Foremost is the vague issue of separation of

powers whereby the judiciary constantly faces the challenge of balancing the duty of protecting the constitution at the same time not interfering with the domain of rights of the legislature and the executive. This problem surfaces itself every now and then. For example in the Cash for query scam some years ago, when the expulsion of the MPs from the parliament was challenged in the supreme court, the apex court issued notice to the parliament, which was taken as an offence against the parliament by the speaker Mr. Somnath Chatterjee who refused to answer the notice of the Supreme Court on the grounds that expulsion of the MPs was an exclusive right of the parliament to which it is not accountable to the courts. The Supreme Court later upheld the expulsion of the MPs and also the rights of the Parliament vis-à-vis expulsion of the MPs, however attached the issue to the provisions of judicial review. However, it is not the judiciary which is always the infringer, even the legislature and the executive have at times shown their



reluctance to obey the judiciary for example the famous ceiling and demolition case of Delhi where both the legislature and the executive conspired to offset the judicial orders to subvert it by passing several legislations and executive orders. Further on the issue of implementing the directions of the judiciary in response to a PIL on initiating Police reforms the executive has been trying to hide behind the immunity from judicial scrutiny, it possess regarding policy decisions.

Thus there have been cases of accidental or deliberate infringement of the fine line separation of the domain of operations of the legislature, judiciary and the executive by either organ of the state, however this problem is not one of those which could be sorted out by one legislation, pronouncement or an executive order, rather it is something which evolves over the period of

time and is contingent on the collective conscience of the society which is in itself in the process of evolution. However we must always be ready to give the society a chance and keep accommodating and assimilating new ideas which address to the needs of changing times.

The other major sub-issue is related to the question as to what should be the nature and structure of the powers of the courts related to contempt proceedings. The answer of this question is very vital as it has its relations with the process of judicial reforms including the prime issues of reducing dilatoriness in judicial process and the idealizing the conduct of the judges. Both these matters are of utmost importance if we have to maintain the vitality of the judiciary in the process of extracting accountability from the other two organs of the state and ensuring good governance. The sitting judge of the Supreme Court, Markandeya Katju in his one of the articles in THE HINDU wrote that the test to determine whether an act amounts to contempt of court or not is that as to whether it makes the functioning of the judges impossible or extremely difficult. He further writes that, much of our contempt law is a hangover from the British rule, but under British rule, India was not free and democratic. He quotes the words of the Doyen of Indian Bar, Fali Nariman who said that the offence of scandalizing the court is a mercurial jurisdiction in which there are no rules and no constraints. He further mentions about the reasons for the uncertainty in the law of contempt of court. In the Contempt of Court Act, 1971, there was no definition of what constitutes scandalizing the court, or what prejudices, or interferes with the course of justice. In a monarchy, the judge really exercises the delegated functions of the king, and for this he requires dignity and majesty as a king must have to get obedience from his subjects. But in a democracy there is no need for judges to vindicate their authority or pomp. Their authority will come from the public confidence. He finally concludes that the best shield and armor of a judge is his reputation of integrity, impartiality and learning. An upright judge will hardly ever need to use the contempt power in his judicial career.

Encouraged by views like this, the government garnered the courage to initiate the process of judicial reform which was earlier assumed the exclusive domain of the judiciary itself. In the same reference the 98th

Constitutional Amendment bill, 2003 was prepared which ought to establish a National Judicial Council (NJC). The NJC was supposed to be presided by the CJI as its chairperson, two seniormost judges of the Supreme Court, union minister of law and justice and an eminent citizen as its members. The following functions were primarily envisaged for the NJC:

1. Recommend names for appointment of judges of the Supreme Court and High Court including the Chief Justice of the High Court.
2. Recommend for transfer of judges of High Courts.
3. To formulate a code of ethics for the judges.
4. To enquire suo-moto or on complaint the cases of misconduct and 'deviant' behavior of judges and advise the CJI or the CJHC accordingly after advice.

Further the 2nd ARC has also recommended for the constitution of the NJC as part of the ethical framework for the Judiciary. To quote its words:

1. A National Judicial Council should be constituted, in line with universally accepted principles where the appointment of members of the judiciary should be by a collegium having representation of the executive, legislature and judiciary. The Council should have the following composition:
 - The Vice-President as Chairperson of the Council
 - The Prime Minister
 - The Speaker of the Lok Sabha
 - The Chief Justice of India
 - The Law Minister
 - The Leader of the Opposition in the Lok Sabha
 - The Leader of the Opposition in the Rajya Sabha

In matters relating to the appointment and oversight of High Court Judges, the Council will also include the following members:

- The Chief Minister of the concerned State.
 - The Chief Justice of the concerned High Court.
2. The National Judicial Council should be authorized to lay down the code of

conduct for judges, including the subordinate judiciary.

3. The National Judicial Council should be entrusted with the task of recommending appointments of Supreme Court and High Court Judges.
4. It should also be entrusted the task of oversight of the judges, and should be empowered to enquire into alleged misconduct and impose minor penalties. It can also recommend removal of a judge if so warranted.
5. Based on the recommendations of the NJC, the President should have the powers to remove a Supreme Court or High Court Judge.
6. Article 124 of the Constitution may be amended to provide for the National Judicial Council. A similar change will have to be made to Article 217. Also, since the Council is to have the authority to oversee and discipline judges, further changes will need to be made to Article 217.
7. A Judge of the Supreme Court should be designated as the Judicial Values Commissioner. He/She should be assigned the task of enforcing the code of conduct. Similar arrangement should also be made in the High Courts.

However there are differences within the judiciary and the civil society over the need and effectiveness of the proposed NJC. For example, the earlier chief justice of India, K.G. Balakrishnan when asked as to whether the CJI should be subjected to the authority of the NJC, he replied that the impeachment proceedings already exist in the constitution to take care of it. And whether judges should be required to file annual statement of assets, he replied that it should not be compulsory. Given the dispensation which we are imagining of making honesty and integrity of the judges, their most potent weapon in place of contempt of powers, as per the views of justice Katju, this statement of the ex-CJI surely does not make things better.

The other major sub issue is that of excessive judicial delays. However this is not an issue which could be purely linked to contempt power of the courts. Though the Courts themselves owe a major part of the responsibility; that is taking hardly any serious initiative on an issue which

was believed to be the exclusive domain of the judiciary, but definitely the other organs of the state also could not shy away from their part of the responsibility and could have made a substantial contribution to tackle this problem. This issue has particular importance vis-à-vis the poor because, it is them who are most severely affected by the inefficacy of the judiciary in granting justice. As a result they tend to get attracted to extremist ideologies and tend to take law in their own hands. Further, there are opportunity costs elsewhere due to judicial delays. Pranab Mukherjee says that if the judicial process can be expedited it could make a difference of around 1-2% to the GDP of the country. Administration could be held accountable to the judiciary only when people have faith in the judicial system and they bring their grievances to the judiciary.

The following factors could be attributed as the reasons of excessive judicial delays in India, apart from the ones already discussed:

1. We do not have adequate number of Courts and judges.
2. There is no adequate funding for creating sufficient facilities in the legal system.
3. The procedure in Courts is too technical.
4. Appointments are not based on merit and there is favoritism and political influence too in the course.
5. Standards in profession are degrading and we need to concentrate on legal education.
6. There is no co-operation between Centre and the States to address the issue.
7. The Court systems still not computerized to the extent needed and lesser application of e-Governance, etc. in the legal system.

The recent National Conference on “The National Consultation for strengthening the judiciary towards reducing the Pendency and Delays” provided the perfect platform for a thought on examining and conducting a post mortem on the issues of pendency and arrears. The “vision statement” contained appreciable changes in the structure of courts. The most far reaching is the concept of “Contract judges” envisaged to decide backlog cases. About 15,000 trial judges and 700 high court judges would work in three shifts deciding the legality of contracts, etc. The vision is to eliminate the thought of pendency and arrears and securing speedy justice. However, whether the contract

judges would be able to function within the prescribed “procedural” limits and deliver judgments in a better and faster manner is doubtful. Similarly the very concept of “contract judges” goes against the jurisprudential existence of judges in a society, who is considered as an epitome of justice.

Further, the measures like Plea bargaining and Lok Adalats have already been initiated to reduce the pendency load over the judiciary. Latest in this line is Nyaya Panchayat which is a body of dispute resolution at village level. Nyaya Panchayats can be endowed with functions based on broad principles of natural justice and can tend to remain procedurally as simple as possible. They can be given civil and minor criminal jurisdiction. But they should never follow civil and criminal procedure code in toto. The 14th Law Commission report has already recommended for the revitalization of the Nyaya Panchayats in line with the Art. 39-A of the constitution. However the proposed Nyaya Panchayat bill has been blocked by the Law ministry on the grounds that members of Nyaya Panchayats, designated as an alternative dispute redressal mechanism at the grassroots level, do not have any legal or judicial background. Sources stated that it was felt that delegation of judicial powers to local elected representatives could promote Khap panchayat-like establishments.

The third important issue is that related to the PILs which are otherwise an instrument to enforce accountability of the executive on issues of public interest. In Indian law, public interest litigation means litigation for the protection of the public interest. It is not necessary, for the exercise of the court’s jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public interest litigation is the power given to the public by courts through judicial activism. Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognizance of the matter and proceed suo moto or cases can commence on the petition of any public-spirited individual. The major concerns related to this very potent instrument of enforcing accountability of the executive and the legislature to public interest are twofold. One is the sporadic violations of the provisions of separation of power which it tends to bring about (already examined) and the other is the ‘misuse’

of PILs by the litigants increasing the volume of litigation with the judiciary. To put things in perspective the issue is as to whether the PIL cases continue to benefit the poor and disadvantaged, or have lifestyle issues become predominant as middle classes have learned to dress up their concerns as PIL. Moreover, judges are not manifestly less disposed to the interests of the poor and marginalized than they were two decades ago during the “heroic” years when PIL originated.

An analysis of data from 1997-07 shows that the frequency of PIL cases has remained relatively constant over the past ten years. There were about 260 PIL cases instituted per year, on average, compared to about sixty thousand cases per year overall – including both admissions and regular matters – based on data publicly available in the Supreme Court’s “Court News” publication. On average, about 0.4 per cent of “cases” before the Court involve PILs.

It is hard to identify PIL cases as such in online databases, but one can analyze the charge of middle class bias by examining outcomes of cases involving Fundamental Rights claims. The first figure below graphs win rates, for claimants who were and were not members of advantaged classes, for the subsets of Supreme Court Fundamental Rights cases related to women’s and children’s rights to caste concerns. It shows that the average annual win rate for claimants from advantaged classes was below that of claimants who were not from advantaged classes until the late 1980s. Today, claimants from advantaged classes have higher win rates than claimants not from advantaged classes. For example, advantaged class claimants had a 73 percent probability of winning a Fundamental Rights claim for cases in which an order or decision was rendered from years 2000-08, whereas the win rate for claimants not from advantaged classes for the same years was 47 per cent. For the 1990s, rates were 68 per cent and 47 per cent, respectively. However, in the years prior to 1990, claimants not from advantaged classes enjoyed higher success rates than those from advantaged classes. The differences for the 1990s and 2000s are significantly different from each other, based on a simple chi-square test and a simple probit estimation.

Similarly, in the subset of cases involving SC/ST/OBC concerns, claimants who were not from

SC/ST/OBC began to have higher average annual win rates than those who were starting around 1990.

These findings here are consistent with the claim that judicial receptivity in the Supreme Court to Fundamental Rights claims made on behalf of poor and excluded individuals has declined in recent years. Though this data needs further research but we can upto a large extent draw our conclusions regarding the prevalence of the middle class bias.

Thus, though mired by several challenges the judiciary in India has been successful to a considerable extent in extracting accountability from the executive and upholding public interests especially through the PILs, a legendary example of this is the Delhi vehicular pollution debate, the Delhi Health Minister claimed that air pollution did not increase the risks of heart or lung disease, the Delhi government said that the timely installation of Compressed Natural Gas (CNG) stations would be impossible, the Ministry of Petroleum and Natural Gas argued that CNG bus conversion would not be sustainable in the long run, producers of commercial vehicles stated that the conversion to CNG was not economically cost-effective, and others argued that CNG is explosive. The court, largely by empowering certain technical committees, played a significant role in helping to ascertain accurate information on these issues and made sure that CNG conversion not only happens but becomes a case study of how judicial activism could help in not only enforcing accountability of the executive but also make sure that public interests are upheld which is the ultimate aim of accountability and control.

CITIZEN AND ADMINISTRATION

Apart from the three organs of the State, which enforce accountability and control on the administration on behalf of the citizen, there are also other mechanisms available by which the citizens could voice their grievances against the administration directly. These mechanisms are called by different names in different countries, for example Ombudsman in the Scandinavian countries, the Administrative courts in France, the Parliamentary Commissioner in the UK, and the Procurator system in the Ex-Soviet Union. A similar system was envisaged in India by the 1st ARC in the name of Lokpal for ministers and secretaries both at the state and central level and

Lokayukta at the state level, to entertain complaints against the rest of the bureaucracy.

Although the traditional means of control are at their place, yet there is a need felt to create another mechanism for the accountability of the executive mainly because of the following reasons:

1. The huge size of administration which is growing day by day has become difficult to check by the existing control mechanisms. Further, the nature of administrative discretion is fast changing in the fast changing environment which requires technical expertise to understand and control.
2. The increase in the phenomenon of delegated legislation again because of the growing size and complexity of the government along with increased administrative discretion and administrative adjudication in matters of implementation.

Thus in order to ensure that such administrative acts are carried out in the spirit of the Constitution and to uphold public interests there was a need for such institutional devices.

As part of the Indian response to the need, the Santhanam Committee recommended for the formation of CVC in 1964. As part of the process, vigilance cells in several government departments and PSUs were formed. CVC receives complaints directly from aggrieved, apart from press reports, allegations made by MPs. On receiving complaint it may ask the concerned ministry/department to conduct inquiry or ask the CBI to conduct inquiry. However its jurisdiction is limited to complaints against gazetted officers and officers of equivalent status and is no parallel to the Scandinavian institution of Ombudsman. Thus the 1st ARC came up with the idea of Lokpal and Lokayukta. Though such institutions could not be established at the central level but different states established their own Lokayuktas known by different names in different states and covering different functionaries at different levels, but yet performing similar functions i.e., to entertain grievances of the citizens against the administration.

However the prime issue in this section again is as to whether such Ombudsman like systems are effective enough to justify their existence or they are merely other ineffective state institutions and as to what can be done so that these institutions become more effective.

The working of Lokayukta institution shows that despite statutory provisions the office of the Up-Lokayukta has not been functioning in states like U.P., Rajasthan, Assam and Delhi. The number of complaints received and disposed off by the office of the Lokayayukta greatly varies from state to state. Part of explanation for this variance lies in the jurisdiction of Lokayuktas. Some of the Lokayuktas deal only with cases of allegations whereas others deal with both allegations and grievance cases.

In all the states written complaints are required from the complainants by the Lokayukta office for investigation. If the complaint takes the form of an allegation, the office insists on the filing of an affidavit. Experience tells that most of the complainants especially of rural areas, lost interest once they were asked to file affidavit.

Data shows that in its initial years of functioning a large number of complaints had to be rejected *prima facie* by the Lokayuktas for want of jurisdiction and also because many of them were anonymous, pseudonymous, and trivial in nature or not made on prescribed forms or were submitted without affidavits. The attitude of the Lokayuktas towards such complaints has not been uniform. Some pursued it under the *suo-moto* powers given to them under the Acts while a few others first ignored them. Some of the Lokayuktas adopted another practice for some of the cases which fell outside their jurisdiction by sending them to the Heads of the Departments concerned for necessary action at their level. Since the complaint was referred by a high functionary, it quickly attracted the attention of officers and in a substantial number of cases the grievances of the complaints were redressed. It was observed that those departments of the government which are intimately connected with public dealings e.g. of Public works, Health, Irrigation, Home, Civil supplies, etc. attracted large number of complaints and grievances in the office of the Lokayukta.

The working of this system also shows that the Lokayukta organisation took up numerous and varied types of cases in which relief could be granted to the complainants. One such particular area is grievance regarding non-payment of pension and other retirement benefits to government employees. The intervention of the Lokayukta brought relief to very humble and low paid public servants like village school teachers, constables, peons, clerks, etc. The

Lokayukta provided relief to the complainants also in such grievance cases as changing a non-working electricity transformer, removal of maladministration in the working of the school and allotment of house to a flood victim. The mediatory role of Lokayukta between the complainant and the government servant/departments led to the settlement of the problem to the satisfaction of the complainant. In all such cases the Lokayukta organization was perhaps guided by the Ombudsman practice in different countries, whose main job is to redress the grievances of the people.

Most of Lokayuktas and Up-Lokayuktas have recommended more or less similar types of punishment such as reduction in rank, retirement/removal from office, stoppage of annual increments and censure, etc. The Governments in a majority of cases accepted these recommendations. In some cases, however the concerned persons took their case to the High Courts and Tribunals. Instances are not lacking also when the respective state governments on their part modified the recommendations of the Lokayukta and made the punishment less stringent.

Thus, if we try to make an evaluation of the institution of the Lokayukta, we would find that apart from some instances of success the Lokayukta organization has too many shortcomings viz. there is no uniformity in the Acts of different states; recommendations of the Lokayuktas are not acceptable to the competent authorities; many areas of administration are outside the jurisdiction of Lokayukta; every state has fixed time limit for lodging a complaint; in some states like Maharashtra, the identity of the defaulters is not disclosed; some states have prescribed fee for lodging complaints, for example M.P. is one of them. This hampers the work of Lokayuktas. Other problems are non-cooperative attitude of the authorities, lack of independent investigating authority, requirement of prior sanction of the government in some cases and indifferent attitude of the state governments. Experience regarding the functioning of the Lokayukta institution at the level of states has not been similar. Whereas the Lokayuktas in states like M.P. and A.P. have achieved greater success in dealing with cases of corruption but this cannot be said about other states. In general the Lokayukta scheme has been regarded more as a failure in dealing with corruption cases.

Nevertheless, to improve its functioning further and to minimize its frailties, it is required to tone up the state administration itself by making it more responsive, accountable, transparent, efficient and effective. To increase the efficiency and effectiveness of the institution it is necessary to adopt the uniform "Model Lokayukta Bill" as formulated by the Implementation Committee constituted by the All India Lokayukta Conference. Besides, there should be time bound programme for redressal of grievances; members of the subordinate judiciary should also be within the purview of the Lokayukta Act; publicity about the office of the Lokayuktas should be enhanced and training institutions should be imparted with the knowledge of the working of the Lokayuktas. There should be some kind of time limit within which the enquiry must be completed and strict time limit within which the recommendations must be implemented. Lokayukta must necessarily have the power to punish a person for committing contempt. A legislative committee on Lokayukta for making the institution more relevant and effective is required. The question of operational autonomy is being raised. The need of coordination amongst agencies/institutions functioning in the area of redressal of public grievances is strongly recommended.

The Second ARC also recommended for the amendment of the Constitution to provide for a Rashtriya Lokayukta. It also recommended that it be made obligatory for all states to set up Uplokyuktas and that their structure, power and functions be governed by common principles. Moreover, efforts should be made to bring the Lokayukta closer to the people, for example a practice which has gradually become a regular feature of the Lokayukta organization in various states is the holding of grievance redressal camps at Division and District headquarters. The idea behind such camps appears to take the Lokayukta to the people if they cannot come to him, such initiatives should be appreciated and encouraged more and more. Only then we could believe to have taken a significant step in ensuring real accountability of the administration to the people.

ROLE OF MEDIA

The media has a very vital role to play in a democracy. Especially in a democracy because

democracy survives on public opinion and it is the creation of public opinion which is the prerogative of the media. Particularly in a situation where people are not organized, it is the job of the media to comprehend and reflect public opinion. Further, the media is also instrumental in grievance redressal of the people beyond the institutions of the State, where the institutions of the State have erred, again by building public opinion. Moreover media also serves as the link between the people and the State, by airing the views of the civil society for the State to understand, by educating people regarding the agenda of the State and finally by extracting accountability from the State for the people as in a democracy ultimate sovereignty lies with the people. Thus media is rightly called the fourth estate of the society and has a major role to play in the good governance movement spearheaded by public participation in the contemporary era.

However the important issue in this section again is as to whether the contemporary media has been reasonably successful in performing its duties particularly that of extracting accountability from the State for the public. This issue pans out into the debate between media sympathizers and media critics.

Critics argue that media in current times is driven by vested interests and the rich and influential use the platform to extract mileage for themselves and further their own political or commercial interests. This point could be best described by the happenings which occurred between Reliance Industries and Nusli Wadia at the time of emergency and the role which The Indian Express played in 'exposing' the 'unfair trade practices' of Reliance Industries. Not only the Goenkas but most of the media houses of India are driven by some or the other political or business groups and their affiliations come at the costs of media freedom and neutrality.

Further media is also accused of running behind yellow journalism to earn more and more money and in the process compromising on the professional ethics of media. Be it newspapers, magazines or electronic media all of them could be found to be filled with events from cricket, astrology, cinema and about personal lives of the celebrities depicted in a scandal mongering manner. Further even if it contains any news they are covered in the most sensational manner, trying to create anxiety, fear and frenzied

reactions in the public. At the same time real issues which are of vital importance are either not covered or covered just for the sake of it, for example, the issue of farmers' suicides has been around since 1997 but other than some selected media houses, most of the visible media has either not covered it or has accorded only scant attention to it. Moreover, media has been also blamed of improper treatment i.e., not portraying the issues in the most holistic sense and frequently falling short of explaining the details in a reasonably critical manner. As a result the functionalities of bringing an issue in the public domain are not addressed properly. For example, the issue of media trials in which it seems as if media knows all the facts even before the evidence is tested under the light of law and whatever it pronounces is the final judgment. For example, in case of Abhinav Bharat activities the media accused the RSS for its involvement before the law could take its own course. Otherwise, in terms of holistic analysis the issue of the effects of futures market on the farmers, consumers and the entire production-consumption chain of agriculture is yet to be explored despite the presence of this issue in the public domain for a reasonable amount of time. This is an issue which has bothered particularly the intelligentsia and the politicians of course in different senses, while the intelligentsia complains of insufficient criticality, the politicians complain of frequently being misinterpreted and being quoted out of context. This could be either attributed to the deficiencies of skills in the journalists or the factors of implicit biases or yellow journalism as already mentioned above.

Nevertheless sympathizers of media not only explain the reasons of the shortfall of media on various accounts, but also find areas to appreciate the work of the media. For example on the issue of insufficient criticality the sympathizers raise another issue of insufficient media freedom especially in the context of law of contempt of courts, corporate ownerships, excessive commercialization and demands of the market and above all influence peddling from the rich and powerful lobbies in the society, all this in a composite manner make the neutral and professional operation of the media almost impossible. On the issue of media trials they feel that media has been instrumental in bringing justice to those people who have been wronged by the institutions of the State. The role of media

in getting justice for the families of Jessica Lal and Priyadarshini Mattoo has been commended even by the courts. Further it was the media which brought the farmers suicide into limelight and made it a national issue, only after which the governments and other non - state institutions swung into action. Moreover, the media does not target honest legislatures and judges for baseless criticism, it only brings the allegations into the public domain and galvanizes the institutional machinery to take action.

Thus, it is difficult to label the media either way, it is neither totally irresponsible and unethical nor it is totally neutral and professional, it is actually a mixed bag of both these attributes, what we need to do is to carve out a space for the media in which its 'deviant' characteristics are evened out and its noble attributes are amplified and this could be achieved only if media is subjected to some sort of regulation. The present body of the Press Council of India (PCI) only enforces a moral code of conduct, it has no coercive powers. Thus, there is a need for a fresh regulatory body which shall strive to provide that space to the media. Although it will be confronted with a big challenge of balancing freedom of speech of the media with the goal of disciplining its content but we need to take a start by letting such an enforceable code of conduct to evolve in the public domain after extensive deliberations and consultations of which the media itself may be a party. Only then the media can become the true reflection of the public opinion and become instrumental in holding the State accountable for its actions before the people.

ROLE OF INTEREST GROUPS AND VOLUNTARY ORGANIZATIONS

The media also serves as a mouth piece of interest groups who also have their role vis-à-vis public opinion. The interest groups perform the four fold function of interest identification followed by interest consolidation proceeded by interest articulation i.e., exerting pressure for their demands and finally the culminating act of interest maximization which matures into the hard bargaining which is done to extract their interests out of the establishment. For instance the graduated sugar policy in India is an excellent illustration of how the interest group politics work. The sugar policy incorporates into itself

two prices one the price of sugar for the PDS and two the price of sugar in the open market. The procurement of sugarcane from the farmers is done at one price keeping the interests of the farmers into account, further this cane is sold to the sugar mills at a different price keeping the interests of the mill owners into consideration, lastly the procurement of processed sugar is done by the government from the mill owners at another price and sold to the customers of the PDS at a third price which again incorporates subsidy keeping the interests of the PDS customers into account. Thus the government has to pamper the interests of the three interest groups viz. producers, mill owners and the PDS customers involved in the production-processing-consumption chain at the expense of its exchequer.

The pluralists argue that, interest groups represent the diverse interests present in the society and provide expert information and perspectives that help in policy making and maintaining the vibrancy of the democracy. Further, the interest groups crystallize into political parties and help in extracting accountability from the executive. However, critics of pluralism argue that the interest groups over represent the wealthy in the society and provide self serving and biased information that warp policy making. Further, they restrain the powers of the state rather than extracting accountability from it and ensuring that the benefits of prosperity are evenly distributed by the State among its citizens. Moreover interest groups tend to become autonomous and over the period of time tend to implement their own political agenda. For example some of the religious organizations of the minorities take themselves to be the custodians of the religion and even question the authority of the state by posing questions such as to why should the state interfere in the personal laws of a religion.

Thus interest groups though an essential component of the democratic system must be allowed to operate in a regulated environment themselves and should take up some form of accountability which is a necessary constituent for operating in the public domain.

The nurseries of interest groups are in fact the voluntary organizations, which crystallize or mature into interest groups over the period of time, therefore they need a special reference here. Voluntary organizations are non state

institutions which operate in the society for achieving diverse goals viz. socio-economic protection of civil rights, environmental protection, promoting certain economic activities, overall sustainable development etc.

They are a common feature in a democracy as democratic setup guarantees freedom of association to its citizens. They operate either independently or in partnership with the State or other non State actors. There are reasons for the efficiency of voluntary organizations over the bureaucracy viz. they operate in a relatively free environment not mired by excessive rules and regulations. The people running the organization may not be public servants and they operate on nongovernmental funds. Further, they are close to the issues and problems of the people as they do not carry a top down governmental agenda to follow, this puts them in a better position to both suggest solutions as well as carry out the solutions. The Private Voluntary Organization (PVO) movement has been quite a phenomenon in our country and is responsible for ushering the reforms movements in all the institutions of the society be it political, economic, cultural or religious.

However there is also a flipside to this phenomenon and the foremost aspect is that the voluntary organizations may not always look into public interest, and because of this reason the issue of their accountability to the government arises. Many of the voluntary organizations have been found to accumulate huge disproportionate assets in the name of community service. In the same reference the monitoring of the flow of foreign funds has assumed importance, many voluntary organizations are used as conduits to bring black money back to the country i.e., money laundering. Sometimes several voluntary organizations like SIMI have also been found to receive money from the extremist and anti-India organizations overseas. Moreover, many voluntary organizations in our country are so rich and influential that it becomes very important for the State to keep monitoring the orientation of their activities for their conformity to the public interest, for example the Tirupati – Tirumala Devasthanam Mandir Trust. Further, there are other weaknesses also viz. those organizations which depend on membership funding tend to become unviable over a period of time, the volunteers lose interest due to nonprofit orientation and consequently the

working of the organization suffers. This phenomenon is clearly visible in the working of the voluntary organizations operating in the health sector in our country.

Thus in order to ensure that the voluntary organizations perform their role in the best of their spirits and in consonance with public interest, there has to be a mechanism of regulating them. For example there have been suggestions regarding the auditing of the foreign funds received by the voluntary organizations by a CA recognized by the government; however these are localized solutions which only address a small part of the bigger issue of regulation of the voluntary organizations. What is needed is to create such a regulatory body that shall provide a holistic operating environment to the voluntary sector but at the same time also restrain itself from questioning the very nature of voluntarism as excessive governmental interference has the potential to dilute the very voluntary character of the organizations. Only then we can expect the voluntary organizations and interest groups to function alongside the government for protecting, upholding and proliferating public interest and alongside the people in extracting accountability from the government and administration.

ROLE OF CIVIL SOCIETY IN ENFORCING ACCOUNTABILITY AND CONTROL OVER ADMINISTRATION

Civil society is a term which covers the totality of voluntary civic and social organizations, media, interest groups and institutions that form the basis of a functioning society as distinct from the force-backed structures of a State (regardless of that state's political system) and commercial institutions of the Market.

The presence of a healthy and vibrant civil society is the hallmark of a healthy democracy. It is the nursery in which new ideas take their roots and grow, which are the basis of a dynamic democratic society. It is also the forum where we brainstorm and find solutions to complex questions. Civil society institutions also act as alternatives to the State in delivering welfare and developmental services to the community. But most importantly they serve as institutions which enforce accountability and control to the activities of the State by means of developing a public opinion which decides as to what

direction the society and the institutions of the society should be moving.

Even the State and the Market are institutions churned out of the civil society, however in the present context civil society is understood as extra-State and extra-Market institutions.

The role of civil society has been extensively discussed and have hogged the limelight in contemporary times because of the across the spectrum acceptability and appreciation of the participatory approach as a valuable instrument in delivering sustainable results in almost all the activities of the State and also the Market. Moreover some experts also believe that the role of civil society in the present context is bigger than that of a partner to the State and the Market rather it has been increasingly seen as an alternative to them out of the disillusionment from the institutions of the State and the Market. Barry Knight, Hope Chigudu, and Rajesh Tandon in their book 'Reviving democracy': Citizens at the heart of Governance write that the progenitor of the concept of civil society is the global collapse of confidence in politics, evidenced by falling turnouts in elections, increasing and towering inequalities between the rich and poor and the alienation of billions of ordinary people visible in their apathetic withdrawal or in violence and disorder. The findings from the first world to the third world countries amply confirm that, people are demanding better and decent lives for themselves and others and despite their criticism of failing, incompetent and corrupt governments, they want their governments to meet basic needs and to administer the processes of the State fairly and lawfully, it is here that the civil society emerges as an alternative.

However the most important issue in this section is as to whether civil society institutions are free from the dysfunctionalities plaguing the State and the Markets. Are they free from the malaise of corruption and inequality? Could they be presumed as absolutely fair and neutral institutions?

International NGOs are criticized for preaching democracy and failing to practice the same internally, and for simply not listening to the people very people whom they purport to help. Privately locally recruited staff often complain about the latter's attitude of racial and cultural superiority. Further civil society groups have also been seen to be mired by double

standards. For example, no mention has been made in the media about that the Danish newspaper 'Jyllands-Posten' which had provoked so much controversy with cartoons of the Prophet Mohammad some years ago had earlier decided not to publish a cartoon lampooning the Christ. Moreover, there have been numerous allegations of corruption and money laundering associated with the NGOs, involved in developmental and welfare activities, all over the world. Thus we can conclude and say that civil society groups are yet another stock of the inefficient institutions similar to the State which are nothing but a reflection of the inefficiencies and negativities prevalent in the nursery of the society itself.

This viewpoint is not acceptable to the civil society groups. They attribute the allegations of inefficiencies and corruption to the environment in which they operate and the role of the other actors with whom they interact. They believe that the area of influence of the civil society groups is limited due to their limited access to money and power. For example civil society groups are often constrained by the paucity of the funds due to their limited indulgence in commercial activities, further their activities are curtailed by the oppressive authority of the state, which under the guise of regulation and upholding of public interests not only interferes with the normal functioning of the civil society but also actually obstructs it. For example, expert observers acknowledge that the campaigners against arms trade have far less influence than the arms corporations, who have almost unlimited access to the governments. Moreover, everybody knows how the efforts of the environmental groups like Green Peace on whaling or global warming have been time and again trumped by the powerful vested interests within the governments and also beyond them. In case of India, civil society groups accuse the rich and powerful lobbies of hijacking the draft of the Recognition of the Forests Rights Bill to shift the benefits from the Scheduled Tribes and other traditional dwellers to the elites who happen to control the administering apparatus and industrial setup.

Thus, it needs to be acknowledged that civil society groups like any other structure coming out of the society inherits its strengths and limitations from the society which are manifested in different hues and colors under different contexts. What needs to be done is not wage an

academic debate over whether civil society groups are efficient and useful but to accept the accompanying positives and negatives as realities which come with the package, and work to create an atmosphere in which they can assert themselves freely and honestly without any pressures and constraints, and contribute in their own way in fighting the challenges which the process of change has to offer.

CITIZEN CHARTERS

Citizen Charters are standards of service, laid down by the government for public and private sector bodies to which organizations have to conform, while delivering service to the citizens. The basic objective of the Citizens' Charter is to vest into the hands of the citizen an instrument by which he could extract accountability from the State for the nature and quality of public service he receives from the State. The Citizen Charter movement is in itself a result of the accountability which the citizens enforce over the State vis-à-vis the public services offered by the State. Therefore, both the reason as well as the consequence of the Citizens Charter movement is accountability and is thus inseparable from it.

The important aspects to be discussed in this section are as to what are the founding pillars of the Citizens' Charter movement and whether the citizens' charter movement is working as per the expectations, if not what are the areas in which improvements should be incorporated so as to ensure that it continues to remain an effective instrument to hold the executive accountable for its actions .

The Citizens' Charter movement as originally framed, is based on six principle attributes:

- (i) **Quality:** Improving the quality of services;
- (ii) **Choice:** Wherever possible;
- (iii) **Standards:** Specifying what to expect and how to act if standards are not met;
- (iv) **Value:** For the taxpayers' money;
- (v) **Accountability:** Vis-à-Vis individuals and organisations; and
- (vi) **Transparency:** Vis-à-Vis rules, procedures, schemes and grievances.

The Citizen Charter movement was pioneered in UK in 1991 when they were first formulated under the Conservative regime of the Prime Minister John Major, with the above

mentioned goals as its guiding force. These charters were to include first, standards of services as well as time limits that the public could reasonably expect for service delivery, avenues of grievance redress, and a provision for independent scrutiny through the involvement of citizens and consumer groups. A committee headed by John Major and certain other distinguished personalities from across the society, was responsible for operationalizations. The PMO was to monitor the progress and submit a report to the parliament. The PMO's report contained comparative estimates and checkmark awards for personnel. If the standards were not met, punishment in form of monetary compensation (5 to 75) pounds was imposed. On the same lines similar initiatives were conceived in other countries as well for example: 'The Citizen Now Not Later' campaign by Philippines Civil Service or the Malaysian Administration Modernization and Management Planning Unit (MAMPU) in Malaysia under which the client charters were made and penalties were imposed on failures. By and large all these initiatives approximated the UK model with some or the other modifications. A comparison however of the major Citizens' Charter initiatives show that the service quality approach is embedded in them in different degrees. Once a decision is taken to make public services citizen-centric, the customer focus of the Total Quality Management (TQM) variety cannot be far behind. In fact, the Citizens' Charter approach has several things in common with TQM. Both begin by focusing on meeting customer/citizen requirements. Other key common elements are conformance to standards, stakeholder involvement and continuous improvement.

In case of India, in the Conference of Chief Ministers of various States and Union Territories held on 24 May, 1997 in New Delhi, presided over by the Prime Minister of India, an "Action Plan for Effective and Responsive Government" at the Centre and State levels was adopted. One of the major decisions at that Conference was that the Central and State Governments would formulate Citizens' Charters, starting with those sectors that have a large public interface (e.g. Railways, Telecom, Posts, Public Distribution Systems). These Charters were required to include standards of service and time limits that the public can reasonably expect, avenues of grievance redress and a provision for independent scrutiny with the involvement of citizen and consumer groups.

Department of Administrative Reforms and Public Grievances in Government of India (DARPG) initiated the task of coordinating, formulating and operationalizing Citizens' Charters. Guidelines for formulating the Charters as well as a list of do's and don'ts were communicated to various government departments/organizations to enable them to bring out focused and effective charters. For the formulation of the Charters, the government agencies at the Centre and State levels were advised to constitute a task force with representation from users, senior management and the cutting edge staff. A Handbook on Citizen's Charter has been developed by the Department and sent to all the State Governments/UT Administrations.

However the importance of ascertaining whether the citizen's charters were working as per the vision of their conception was realized and as a result an evaluation exercise had to be carried out which would identify the shortcomings and their reasons, following which steps could be taken to overcome them.

In the same reference in the year 2002-03, DARPG engaged a professional agency to develop a standardised model for internal and external evaluation of Citizens' Charters in a more effective, quantifiable and objective manner. This agency also carried out evaluation of implementation of Charters in 5 Central Government Organizations and 15 Departments / Organizations of States of Andhra Pradesh, Maharashtra and Uttar Pradesh. This Agency was also required to suggest methods for increasing awareness, both within the organization and among the users, and to suggest possible methods for orientation of management and the staff in the task of formulating and deploying Charters.

As per the report of evaluation carried out by the Agency, major findings were:-

- (i) In majority of cases Charters were not formulated through a consultative process;
- (ii) By and large service providers are not familiar with the philosophy, goals and main features of the Charter;
- (iii) Adequate publicity to the Charters had not been given in any of the Departments evaluated. In most Departments, the Charters are only in the initial or middle stage of implementation; and
- (iv) No funds have been specifically earmarked for awareness generation of Citizens' Charter or for orientation of

staff on various components of the Charter.

Key recommendations, inter alia, include:-

(i) need for citizens and staff to be consulted at every stage of formulation of the Charter, (ii) orientation of staff about the salient features and goals/objectives of the Charter; vision and mission statement of the department; and skills such as team building, problem solving, handling of grievances and communication skills, (iii) need for creation of database on consumer grievances and redress, (iv) need for wider publicity of the Charter through print media, posters, banners, leaflets, handbills, brochures, local newspapers, etc. and also through electronic media, (v) earmarking of specific budgets for awareness generation and orientation of staff, and (vi) replication of best practices in this field.

Following the recommendations of the agency and with the objective of generating awareness among the citizens as well as government functionaries of the commitments of various organizations enshrined in their Citizens' Charter, the Department of Administrative Reforms and Public Grievances brought out a Compendium of abridged versions of all Citizens' Charters in Government of India in a book as well as in CD form on 14 May, 2003. The Compendium contains the operative standards and quality of services proposed to be provided as also the public grievance redress mechanism as committed in the Citizens' Charters. The Compendium also contains the names, addresses, telephone numbers, and e-mail addresses of nodal officers for Citizens' Charters in Central Government Ministries/Departments/Organizations and also the list of website addresses of concerned Ministry/Department/Organization.

The Compendium shall not only be useful to the citizens for ready reference, but will also enable them to critically review the functioning of these organizations. This would also help the organizations to compare the standards set by them, vis-à-vis, those set by other organizations. Further, four Regional Seminars on Citizens' Charters were organized during the year 2001-02, with a view to bring national and state level organisations along with other stakeholders including NGOs, intelligentsia, media, etc. on the same platform and to share experiences in formulation and implementation of Citizens' Charter. These seminars were organized at Administrative Staff College of India, Hyderabad,

Lal Bahadur Shastri National Academy of Administration, Mussoorie, R.C.V.P. Noronha Academy of Administration, Bhopal and Assam Administrative Staff College, Guwahati. In all, 24 State Governments/UT Administrations and 15 Central Government Departments/Organizations participated.

On the basis of the feedback received and experience gained in these seminars, it was decided to organize separate Capacity Building Workshops with specific focus on (i) formulation of Charter (ii) effective implementation of Charter and (iii) enhancing the capacity of trainers available at State Administrative Training Institutes/Central Civil Services Staff Colleges. Further, Information and Facilitation Counter (IFC) were set up by selected Central Government organizations to provide information to citizens about their programs/schemes, rules and procedures, etc. as well as status of cases/applications. An IFC also acts as a nodal point for redress of public grievances.

In India, the DARPG identified a professional agency to develop an appropriate Charter Mark scheme. This scheme will encourage and reward improvement in public service delivery with reference to the commitments and standards notified in the Charter. The 'Charter Mark' is proposed to be awarded after assessment by an independent panel of judges. This would not only give a sense of achievement to the organization awarded the Charter Mark but also promote a spirit of competitiveness amongst various organizations that have issued Citizens' Charter and generating awareness among citizens. A prototype has been developed by the professional agency and is in the process of validation in identified Departments/Organizations.

Further, the second ARC has also given its recommendations in the same lines prescribing for the blanket application of the Citizens Charter scheme however tailor cut to the needs of the independent unit in consultations with the civil society and subject to independent periodic evaluations so that accountability of the civil servants is ensured through the process of citizen's participation. The implementation of Citizens' Charter however is an on-going exercise because it has to reflect the extensive and continual changes taking place in the domain of public services. Especially, after the passage of the Right to Information Act, 2005 (already discussed in development administration) the instrument of Citizen's Charter has assumed a renewed vigour as the two of them in combination can go a long

way in enforcing the accountability of not only the executive but the entire state apparatus vis-à-vis public interests.

SOCIAL AUDIT

Social Audit or Public Audit is a process in which, details of the resource, both financial and non-financial, used by public agencies for development initiatives are shared with the people, often through a public platform. Social Audit allows people to enforce accountability and transparency, providing the ultimate users an opportunity to scrutinize development initiatives.

The principal issue in this section however is as to what are the essential prerequisites of the process of social audit and whether the instrument of social audit is serving its functionalities, as expected, on the ground and what could be done to make this instrument of enforcing accountability on public functionaries sharper.

Let us examine the above issues with the help of a case study mentioned by the vision foundation in its report on Social Audit to the Planning Commission. This was an initiative by Mazdoor Kisaan Shakti Sangathan (MKSS), Rajasthan and was called as HAMARA PAISA HAMARA HISAB. This and several other similar initiatives also served as building blocks which ultimately matured into the enactment of the RTI Act, 2005. The MKSS, born in 1990, is a big grassroots organization that grew out of a local struggle for minimum wages and its ideology is that change for the local people will only come through a political process.

People in Rajasthan have always had difficulty getting paid the minimum wage. Politicians would always promise to secure the minimum wage in return for votes. However, these promises never translated into lasting change and, over time campaigners realized that they had to obtain the relevant documentation, in particular the muster rolls. The right to information and the right to survive thus became united in peoples' minds. The campaign initially, demanded to see the muster rolls, but was met with refusal on the grounds that these were 'secret documents'. These refusals led to a long agitation for the right to access information. By 1994, the MKSS hit upon a new, empowering strategy, based on the idea of a Jan Sunwai or 'public hearing'. The MKSS brought people

together and simply read out official documents that they had procured, either through surreptitious means or from officials who had no idea of their import. The documents related to construction records for school buildings, panchayat bhawans, patwari bhawans, dams, bridges and other local structures.

A serious effort was made to ensure that the debate was transparent and accessible to the outside world. The government boycotted the first four hearings. To ensure openness and publicity, anyone could attend and an independent outsider chaired each hearing. Local officials and public representatives were invited, including those likely to be criticized. Despite the expense, the proceedings were videotaped. This deterred speakers from misrepresenting information and put them on oath as they knew what they said could be referred to later. When the records were read out it was sometimes immediately obvious that they contained false information. Examples were items like bills for the transport of materials over 6 km when the real distance was only 1 km, or people listed on the muster rolls who lived in other cities or were dead. The documentation also proved that corrupt officials and others were siphoning money and that minimum wages were being paid only on paper. The exploitation of the poor in two ways — by denial of their minimum wages and through corruption by some of the village middle class — was revealed at the Jan Sunwais in front of the entire village.

People who would have been intimidated on their own now had a platform where they could speak out. This process also brought together the poor and sections of the middle class who had not previously supported them but now spoke out against corruption, which they realized hurt them too. The MKSS in Rajasthan demanded and got information on minimum wages and government infrastructure programs, sparking off, in the process, a national movement for freedom of information. After a long battle, the government announced a change in the Panchayat Act, so that the people could inspect local documents pertaining to developmental works.

The above case study brings to fore the following major points:

1. The basic input to the process is information availability – willingness of the Government Officials to provide information and ability

of people to ask questions. Thus Social audit can only be imagined in conjugation with the right to information vested in the people. We cannot imagine social audit without the right to information, further the effectiveness of the right to information is diluted if we do not pair up the information with social audit. The quality of social audit is in direct semblance with the quality of information or in other words the effectiveness of the Social Audit largely depends upon how well the people are satisfied with what they get under their right to information. Thus social audit is a recent phenomenon in India, which has started taking roots only after the RTI-2005 was passed. Moreover, the evolution of social audit has a special significance in view of the responsibility reposed by the 73rd and 74th amendment acts on the local governments under which one of the important functions of the local governments is the monitoring and evaluation of the developmental and other activities conducted in their areas particularly with government funds.

2. This examination brings to fore another prerequisite which is as crucial as information, and that is the capacities of the people to acquire information, to process the information into usable form, to scrutinize the information, to crystallize the issues and to question the responsible staff on matters of concern. This is of ultimate importance because information in itself is of no use until the people are in a position to utilize it effectively. This point is relevant both in the sense of technical skills of the people to understand and process the information and the socio-political skills of the people to overcome the resistances if any posed by the secretive tendencies of the state or by some other people or groups guided by their vested interests.
3. Most importantly the fact that capacity building whether it is technical, organizational or socio-political is an exercise which hardly needs any dedicated training program, rather it is something which grows on its own over the period of time provided the people start participating in finding solutions to their problems themselves and they are guided by some able and dedicated leadership at least in the initial stages.

Thus we zero down on the twin issues of information and the capacities of the people, as the most crucial aspects relevant for the success of the whole exercise of social audit. Further, objective analyses of various case studies also reveal that the success of the social audit in any environment revolves around the quality, availability, affordability, accessibility and usability of information and capacities vis-à-vis people.

Presently, the process of Social Audit has become a regular feature of most of the government programs both in the rural and the urban areas. The process of social audit starts with the seeking of the program related relevant information by the people from the concerned government departments under the RTI act. This information is then processed and converted to usable form after which it is subjected to scrutiny by the people. The results of the scrutiny are shared in a common platform with the authorities and the people. Elaborate discussions take place on the issues which crop up during the course of scrutiny wherein the responsible government functionaries are subjected to questioning to explain their stand on the issues. If the explanations are found to be genuine corrective remedies are evolved and suggested to be executed, however if the explanations are not found to be satisfactory penal actions are imposed there and then.

Presently, this initiative is in its infancy and is carried out at the lowest levels under the leadership of some NGO. Moreover, there have been two major concerns starving the process of its best results. One of them is of course the limited penetration of NGOs willing to interfere in initiating the process of Social Audit both at the territorial level as well as the coverage of programs level. Still numerous hinterlands are waiting for some leadership to evolve and show them the potentialities of this instrument which have been made available to them by the RTI act-2005. Although, the Gram Panchayats has been assigned this job to conduct social audit of various government programs from time to time, but the Gram Panchayat functionaries are yet to appreciate the wide potentials of Social Audit. Further apart from some important programs like MNREGA there have been very few instances involving the use of social audit.

Secondly there have several reports of the collusion between the NGO people or the Gram

Panchayat functionaries, responsible for the social audit exercise, with the local politicians or the local bureaucracy or the local contractors. The people responsible for social audit, in collusion with the local politicians, have started using it as an instrument to extract money from the local bureaucracy or the local contractor by threatening them with complaints of non fulfillment of the 'watertight' norms of the developmental works. This phenomenon is both concerning and saddening as if the local leadership itself which has been entrusted the job of extracting accountability for the people through these instruments, start indulging in such malpractices there is hardly any way out for the ordinary poor man in the village or on the street.

Thus, we feel that the corrective strategy has to be a twofold exercise. One there is a need to galvanize the Panchayati Raj functionaries along with the NGOs to come forward and bring honest and effective leadership at the grassroot levels, so as to ensure accountability of the government functionaries. Further, on the part of the administration, the government should start deliberations to bring about a legislation which would introduce some sort of regulation on the Panchayati Raj functionaries as well as on the NGOs operating especially in the rural areas which normally stay away from media scrutiny. For example, permitting the CAG to audit the accounts of the PRIs and putting them on the internet could be the first step in this direction.



