

# Accountability

It is broadly defined as the obligation of those holding power to take responsibility for their behaviour and actions'. Essentially the term includes three main elements; answerability- the need for justification of actions; enforcement- the sanction that could be imposed if the action or justification of actions is found to be unsatisfactory; and responsiveness - the ability of those held accountable to respond to the demands made. Included, implicit, in these core elements is the notion of transparency, which is defined as 'the degree to which information is available to outsiders that enables them to make informed decisions and or to assess the information made available by insiders'. Defined such, the links between the two are said to be fashioned along two lines- transparency of information is instrumental for demanding accountability because without information individuals cannot know the operations of the state. Further, transparency of information is also seen as significant for motivating citizens to exercise 'voice' power. Voice power is defined as the capacity of citizens to pressurize the state/frontline officials in ensuring effective delivery of services. The role of transparency in strengthening voice has been given particular emphasis. That is, a greater transparency leads to more empowerment, which in the context of more participation amplifies 'voice' and the assertion of voice results in greater Accountability.

However, while transparency is an important ingredient for securing accountability, the link between the two is not automatic. Further the exercise of 'voice' which is seen as a critical element for cementing this relationship is conditioned by various factors. Transparency of information while providing the opportunities and the material basis for the exercise of voice is not sufficient in impelling citizens to pressurize officials in demanding the effective delivery of services. The extent to which measures to promote transparency can contribute towards strengthening voice, is dependent on 1) the manner and type of information displayed, and 2) the design of the transparency mechanism; including the responsiveness of the system and the Institutional space available for follow up action and the awareness on the part of the Citizenry of these avenues. Similarly while 'voice' is a necessary condition for accountability it alone is inadequate in delivering accountable relationships. Thus while citizens may be motivated to raise their demands it does not imply that power holders will be responsive to them. Factors which influence the translation of voice claims into effective accountability include; 1) the personal capacities of citizens 2) the nature of the political framework.

In the context of the relationship between transparency and voice, the capacity of individuals to make use of information and demand accountability is influenced principally by the manner in which information is provided, whether it is useful. If information is not made available in a reliable manner, average citizens would have to rely upon others for the demystification of information, resulting in the disempowerment of some groups over others. In addition to the criteria of reliability, Pritchett (2006) asserts that for improving service delivery, information displays should also be relevant and regularly updated. Hence for citizens to be able to use information to exert influence and demand accountability, transparency initiatives need to be targeted at providing information which is relevant, regular and disaggregated so as to be reliable at the local levels- where peoples' capacity to verify/ falsify the data are most valuable. Clear transparency by itself does not guarantee the exercise of voice on the part of citizens.

For citizens to protest against inadequacies and for authorities to sanction those Responsible, requires the availability of institutional space for lodging complaints and awareness on the part of the citizenry of these avenues.

The translation of voice power into effective accountability is further said to be Influenced by the personal capacities of those seeking to exercise power, their awareness of the issues and their levels of empowerment; second the institutional capacities and environment, which influence the extent to which citizens will be able to make claims for accountability. The capacity for individuals to exercise voice is governed by certain preconditions which include, 'a minimum level of awareness of entitlements and rights, the ways in which these are not being met and a degree of social political and financial power'.

Thus the poor whose status is characterized by a limited access to both financial and social political resources are the least likely to enable their voice to be heard.

Evaluating the ongoing effectiveness of public officials or public bodies ensures that they are performing to their full potential, providing value for money in the provision of public services, instilling confidence in the government and being responsive to the community they are meant to be serving.

#### **Horizontal vs. Vertical Accountability**

The prevailing view is that institutions of accountability, such as parliament and the judiciary, provide what is commonly termed horizontal accountability which is the capacity of state institutions to check abuses by other public agencies and branches of government, or the requirement for agencies to be accountable sideways. Vertical accountability is the means through which citizens, mass media and civil society seek to enforce standards of good performance on leaders and officials.

While parliament is a key institution in horizontal accountability, it is also important in vertical accountability. Citizens and civil society groups can seek the support of elected representatives to redress grievances and intervene in the case of inappropriate or inadequate action by government. In addition, through the use of committee investigations and public petitioning, parliamentary questions, parliament can provide a vehicle for public voice and a means through which citizens and civic groups can question government and seek parliamentary sanctioning where appropriate.

#### **Political versus Legal Accountability**

Parliament and the judiciary act as horizontal constitutional checks on the power of the executive. The role of these two institutions can be further delineated in that parliament holds the executive politically accountable, whilst the judiciary holds the executive legally accountable.

These classifications stem from the fact parliament is a political institution, while the judiciary can only adjudicate on legal issues. Together, they provide ongoing oversight in order to keep the government accountable throughout its term in office. They may also be aided by other institutions, such as supreme audit institutions, anti-corruption commissions (CVC), ombudsman (Lokpal and Lokayukta) offices and human rights bodies (NHRC).

Political accountability usually manifests itself in the concept of individual ministerial responsibility, which is the cornerstone of the notion of responsible government (see below).

In instances where there is a classic top-down, principal agent relationship, whereby the principal delegates to the agent, the agent is accountable to their direct superiors in the chain-of-command

and this constitutes a form of vertical accountability. For instance the public official answers to the department/ agency, the department answers to the minister, the minister answers to parliament (in particular in parliamentary systems), and parliament answers to citizens.

Parliament is again a key actor. In terms of holding government officials to account, parliament is the principal and the official the agent. Parliament, as principal, requires the government and its officials, as agents, to implement the laws, policies and programs it has approved – and holds the government and officials to account for their performance in this regard.

Parliament is also an agent, in that the electorate (the principal) elects legislators to enact laws and oversee government actions on their behalf. The electorate then hold legislators to account at election time and, in a few jurisdictions, through recall, where dissatisfied voters can recall their elected representative and vote for an alternative.

### **Social Accountability**

The prevailing view of social accountability is that it is an approach towards building accountability that relies on civic engagement, namely a situation whereby ordinary citizens and/or civil society organizations participate directly or indirectly in exacting accountability. Mechanisms of social accountability can be initiated and supported by the state, citizens or both, but very often they are demand-driven and operate from the bottom-up. It is generally accepted that social accountability mechanisms are an example of vertical accountability. However, a minority of commentators argue that, with respect to social accountability, a hierarchical relationship is generally lacking. Giving account to various stakeholders occurs basically on a voluntary basis with no intervention on the part of the principal. Therefore, social accountability would be a form of horizontal accountability. Social accountability initiatives are as varied and different as participatory budgeting, administrative procedures acts, social audits, and citizen report cards which all involve citizens in the oversight and control of government. This can be contrasted with government initiatives or entities, such as citizen advisory boards, which fulfill public functions. Often overlooked in considerations of social accountability is the role that legislators can play in providing weight to such grass roots accountability mechanisms. For example, a Member of Parliament can represent the concerns of his/her constituents by questioning a Minister during Question Hour in Parliament or by requesting information directly from a government ministry or department.

Parliaments are key actors in what has been termed the 'chain of accountability'. They are, along with the judiciary, the key institution of horizontal accountability, not only in their own right but also as the institution to which many autonomous accountability institutions report.

The central idea of accountability is : when decision-making power is transferred from a principal (e.g. the citizens) to an agent (e.g. government), there must be a mechanism in place for holding the agent to account for their decisions and if necessary for imposing sanctions, ultimately by removing the agent from power.

In the last 10 to 15 years, however, the concept of accountability has become central to democratic administration and public service delivery.

International donor communities are suggesting to focus on 'good governance'.

**Social Accountability**

Social Accountability implies the engagement of civic organizations to express demand for public services, and exact accountability from local service providers to improve service quality. Social accountability is being increasingly recognized by state and non-state institutions as a means of enhancing democratic governance and improving service delivery. It refers to a broad range of actions and mechanisms that citizen, communities, independent media and civil society. In recent years, the expanded use of participatory data collection and analysis tools, combined With enhanced space and opportunity for citizen and civil society engagement with the state, have led to a new generation of social accountability practices. These methods and tools are being increasingly used across different parts of India, South Asia, and the world. Some of the practices that have been applied are:

- Participatory Planning and Policy Formulation (Kerala);
- Participatory Budget Analysis(Gujarat);
- Participatory Expenditure Tracking System(Delhi, Rajasthan);
- Citizens' Surveys/Citizen Report Cards (Bangalore, Maharashtra);
- Citizen Charters(Andhra Pradesh, Karnataka); and
- Community Scorecards(Maharashtra, Andhra Pradesh)
- Bhagidari(Delhi)
- Social audits( AP, Rajasthan)

(The Government of Delhi has launched a unique scheme named Bhagidari which aims at involving people's participation in governance. The basic idea is to establish a dialogue between the stakeholders i.e. the Government Departments and citizens groups like Resident Welfare Associations (RWAs) and Market and Traders Associations (MTAs) in order to work out solutions to common civic problems.

This scheme has already achieved success in many areas. With a view to expand the participation of the Resident Welfare Associations, Government had also organized workshops in all the nine Revenue Districts. In the workshop the local officials of Delhi Vidyut Board, Delhi Jal Board, Delhi Police, Delhi Development Authority and the Municipal Corporation of Delhi sit with the representatives of the Resident Welfare Associations and deliberate upon local issues so as to find acceptable solutions to common problems facing the residents. This has facilitated a process of dialogue and discovery of joint solutions between the Resident Welfare Associations, Market Traders Associations, Civic agencies and public utility services.)

In addition to these methods and tools, many more exist such as campaigns for electoral reforms, public interest litigation, independent evaluation and so forth.

It has been well established that social accountability mechanisms can contribute to improved governance, accelerate development, create effectiveness through better service delivery and empowerment. The overall objective of these mechanisms is to promote transparency and accountability in the service delivery processes. The key areas for the use of social accountability methods are in:

- the preparation, implementation, monitoring and evaluation of poverty reduction strategies;
- government service delivery reform and public expenditure management processes;
- community-driven development programs; and

- sectoral interventions (e.g., in health, education, transport, water and sanitation, rural development and urban development programmes (and)

It is necessary to study the various challenges and vulnerabilities that come in way of institutionalizing social accountability and how possibly these can be tackled. Also an attempt needs to be made to identify the manner in which the existing institutional designs can be made more accountable and accurate. In addition to this, it is equally important to strengthen the citizen voice to empower the community to hold the system accountable and in turn take benefit of the various schemes and programmes.

However, critical to the success of Social Accountability initiatives is civil society and state capacities, and the synergy between the two. Ultimately, the effectiveness and sustainability of social accountability mechanisms is improved when they are “institutionalized”. This involves two things: first, the state as a ‘partner in progress’ in the broader accountability project, needs to render its own “internal” mechanisms in a way that makes it structurally amenable to accountability, and second, the state needs to identify and adopt mechanisms to facilitate and strengthen civic engagement and citizen voice. Accountability which is broadly defined as the obligation of those holding power to take responsibility for their behaviour and actions. This obligation might stem out of a moral-ethical need to account for one’s actions, or out of a legal requirement. It is a relational concept as it concerns the relationship between those that perform an action or deliver a service, i.e., the agent, and those on whom the action or service has an effect, i.e., the principal. In this sense, accountability is the leverage that the principal has over the agent.

Public accountability i.e., the need for the state to be accountable to its citizens stems out of the ‘social contract’ that the citizens share with the state. In a democracy, this contract is operationalized when citizens elect a government and invest the elected representatives with the power to govern them. The representatives in their turn, acting themselves and through bureaucrats and administrators are obliged to perform their duties of governance in a manner that keeps the citizens’ interests at heart. There are institutional provisions to ensure that the government respects this contract. On the one hand there are mechanisms for external accountability, or accountability directly to the citizens. In a democracy, elections are the chief instrument through which this is achieved. Citizen consultations, and citizen participation in design, implementation and monitoring of state’s services, are also examples of this. Alongside, there are also provisions for internal accountability - institutional checks and balances like constitutional separation of powers into Judiciary, Executive and Legislature, rational delegation of tasks and responsibilities, internal performance monitoring, and official oversight including bodies like Auditor General, Anti Corruption Bureaus and Vigilance Commissions are some examples. Public accountability is ensured when these two aspects of accountability are realized together.

Ensuring accountability in the public sector involves a two-step process or the ‘long route’ of accountability. First, the state needs to have a clear understanding of what its citizens want. For this to occur, citizens must be able to draw on the political process to hold the state (policy makers and politicians) to account. This relationship is referred to as ‘voice’. The state, in turn, acting as the representative of the people, must be able to transmit these demands to the actual



provider of services and ensure that providers perform their functions effectively. This relationship is the 'compact'.

Accountability is ensured when compact creates incentives such that the providers accurately and conscientiously follow the wishes of the policy makers, who, in turn, accurately reflect the voice of their constituents. By extension, this 'long route' of accountability fails when on the one hand, the state does not succeed in taking cognizance of its citizens' needs and demands and citizens have no mechanisms through which to articulate their voice (failure of voice), and on the other, when the state is unable to create incentives such that providers accurately and conscientiously fulfill their duties (failure of compact).

#### **Addressing Accountability Failures:**

Traditionally, efforts to improve accountability proceeded along these two axes - internal and external - largely independent of one another. On the external front, there have been electoral reforms, voter-awareness initiatives and so on, and on the internal front there have been efforts like reorganization of audit and account mechanisms. Important as they are, these efforts have had limited success in improving accountability in governance and service delivery. There are a number of reasons why. Elections as an instrument of accountability have some well known limitations, moreover, elections only hold elected officials accountable, whereas the vast majority of public officials are appointed bureaucrats and hence not subject to electoral processes. Reorganizing horizontal accountability channels on their part have limitations. It is impossible to monitor the almost infinite number of government actions (and inactions). Practices like bias and inefficient resource use lend themselves to investigation less easily than more express forms of corruption. Absence of second order accountability (who will watch the watchers?), lack of adequate funding and limited enforcement capacity all serve to further weaken these mechanisms.

In more recent years there has been an acknowledgement in the policy circles around the world, of these limitations in traditional accountability channels. Alongside was the recognition that citizen participation in state's activities could play an important role in strengthening accountability and responsiveness in service delivery. An increasing body of literature from around the world documented how participation of citizens in planning, implementation and monitoring of projects not only increased the effectiveness of public service delivery and made it more appropriate, but also increased accountability and reduced corruption.

Accordingly, societal participation in state's development activities was no longer seen as a 'bother', but was instead actively encouraged as a means to ensure responsiveness and accountability. However, this participation by citizens was of a limited nature in that it was confined to implementation of specific government projects. Measures for responsiveness were largely limited to citizen consultations, and those for accountability largely to monitoring of outputs. There was also a sense in which society was acting as a watchdog in ensuring government accountability. All of which underlined a certain "arms length" relationship between the state and the society. Autonomy from the state was deemed as fundamentally important not just for legitimacy of civil society in its proaccountability role, but also in the Weberian model of modern bureaucracies, which has been emulated in most developing countries, public-sector workers were as a principle to be insulated from citizens so as to maintain objectivity in public service - and this insulation was only sparingly conceded.

More recently, certain stream of research and practice has questioned this separation between the state and the society. Moving on from the arms-length relationship in pressuring the government from outside, this current stream of research argues that accountability is best obtained in “co-governance” spaces which blurs the boundary between the state and the society. These writings draw on experiences from around the world where citizen groups have been experimenting with inserting themselves more and more directly into the state apparatus: into its core functions and everyday workings, monitoring its hitherto opaque operations, and influencing policy from the inside. Participatory Budgeting in Porto Alegre, Brazil was one of the early experiences in this stream where instead of externally influencing the policy, ordinary citizens were inside the governmental apparatus, involved directly in the planning and supervision of public spending - activities normally under the exclusive purview of public officials. Some authors argue that this form of activism represents a ‘new accountability agenda’. A pioneering instance of this from India was the experience of Mazdoor Kisan Shakti Sangathan (MKSS) – a Rajasthan based grassroots organization - where citizens (as external actors) directly engage with institutions of internal accountability. MKSS employed ‘social audits’ to empower ordinary citizens to turn into auditors, and obtain access to the hitherto privileged state documents such as muster rolls, in order to expose malfeasance. This form of accountability has been called ‘hybrid’ accountability, and is remarkable in that it breaks the state’s monopoly over official oversight and legitimizes citizen-inclusion into hitherto exclusive affairs of the state.

Thus, over the years there has been an evolution of ways in which societal actors have engaged with the state indirectly and, increasingly, directly, to improve accountability in governance and service delivery - a process that has come to be known as ‘social accountability’: an approach towards ensuring accountability that relies on civic engagement, i.e. in which ordinary citizens and citizen groups participate directly or indirectly in exacting accountability. Social Accountability encompasses a broad range of actions and mechanisms that citizens, communities, independent media, and civil society organizations use to hold public officials and public servants accountable. This involves deploying tools like participatory budgeting, public expenditure tracking, citizen report cards, community scorecards, social audits, citizen charters, and so forth. Two prominent characteristics stand out in these tools and mechanisms. **First:** social accountability efforts work to enhance and integrate citizen voice into the everyday workings and decision-making processes of the state. There has, in this sense, been a shift from ‘vote’ to ‘voice’ is the principal accountability tool in the hands of the citizens. **Second:** central to social accountability efforts is transparency in governance. The main channel through which citizens are being empowered to demand accountability is through creation of, and access to, more information. So the recurrent theme seems to be: more information means more empowerment, which in the context of greater participation means more voice, which means greater accountability.

Social Accountability is being increasingly recognized worldwide as a means of enhancing democratic governance, improving service delivery, and empowering citizens. Accordingly governments around the world - from US and Brazil, to Uganda and South Africa, to Sri Lanka and New Zealand - are finding ways to facilitate citizen engagement and foster social accountability.

**Assessing accountability failures in Education and Health**

This discussion is on Social Accountability by analyzing the findings of the survey carried out to understand the nature of accountability failures in India and study potential ways of enhancing social accountability in two flagship schemes undertaken by the current government, namely the Sarva Shiksha Abhiyan (SSA) and the National Rural Health Mission (NRHM).

The focus of our analysis would be to situate these findings in the framework for accountability discussed earlier, with a view to underlining the basic point that although social accountability is about enhancing citizen voice and participation in service delivery, in order to realize it there are issues to be addressed within the compact – the institutional design itself – to make the system structurally and functionally built for accountability – a system where stronger voice can actually translate to better accountability. Through this analysis, it aims to highlight weaknesses in the current system.

**The Context:**

Between 2003-04 and 2006-07, the Central Government's annual budgetary allocations for Education increased by nearly 50% from Rs. 89732 crore to Rs. 134274 crore. Despite this, the state of school education in India continues to remain poor. Although the enrolment rates have gone up, the learning levels at schools continue to remain very low. ASER 2012 estimates that little less than 50% children in Std 5 cannot read a Std 2 text, whereas similar number of children in Standard 1 cannot recognize alphabets and a significant number of children in standard 2 cannot recognize numbers beyond 10. The fact that schools continue to receive funding and teachers access regular salaries despite this extremely poor performance is a clear indication the inability of the state and citizens to monitor performance and ensure enforceability on service providers. One of the most serious problem with schooling today is the rampant absenteeism among teachers: a national survey involving unannounced visits to measure teacher attendance revealed that 24% of teachers in India simply did not show up at school during class hours. Health tells a similar story. Central planned allocation to the Ministry of Health and Family Welfare since it was launched in 2005 has increased from 7677 crore to 13180 crore in 2008-09. This represents an increase of 79.8% percent in the last four years.

And yet there is a growing recognition that the system of public delivery of health services in India is in crisis. High absenteeism by doctors and health care staff, low quality in clinical care, low satisfaction levels, and rampant corruption are prevalent. A recent study by Das and Hammer on the quality of medical care in Delhi found that the competence levels of a public sector MBBS doctor in a PHC were so poor that there was as high as a 50:50 chance of the doctor recommending a seriously harmful therapy. Absenteeism rates among primary healthcare workers in India are the highest in the world at 40%, with Bihar topping the list at 60% (World Bank's Global Monitoring Report 2008).

An important reason for these appalling scenarios in both health and education has been the lack of accountability in our public services.

Government of India's flagship program in Education in which it aims to address these failures is the Sarva Shiksha Abhiyan (SSA). Launched in 2001, the programme aims to universalize elementary education (6-14 yrs of age) across the country by the year 2010. The National Rural Health Mission (NRHM) is the flagship program in the Health sector.



Launched in 2005, NRHM aims to address the failures in health service delivery by carrying out “necessary architectural correction in the basic health care delivery system”. Both of these schemes were taken up in the context of decentralization of the service delivery, with the core strategy being empowerment of local governments and community based organizations to manage, control and ensure accountability in public health and education services.

Social Accountability efforts work to enhance and integrate citizen *voice* into the everyday working and decision-making processes of the state. So any frame work for Social Accountability should include ‘facilitating and strengthening citizen *voice*’ as its principal component. Accountability in public service delivery is ensured when *voice* and *compact* work *together*. That is, not only do the politicians and policy makers need to take cognizance of what the citizens want, they should also then be able to invoke the more traditional accountability relationships via a rational delegation of tasks, creation of the right incentive structures and so forth, so that the service providers deliver the service properly. Thus for social accountability to be truly effective, the more traditional mechanisms to improve the compact must also be addressed. Addressing the compact involves getting the institutional design right, to make the system structurally and functionally built for accountability – a system where stronger voice can actually translate to better accountability.

In sum, social accountability in public service delivery is a product of two things working together: a system of institution designed in a manner that makes accountability structurally possible, and an informed and mobilized citizenry that can draw upon platforms for engagement to make accountability demands on the systems. That is, strong voice, in conjunction with strong compact.

### **Assessing accountability failures in Education and Health**

Let us situate the discussion on Social Accountability by analyzing the findings of the survey carried out to understand the nature of accountability failures in India, and study potential ways of enhancing social accountability in two flagship schemes undertaken by the current government, namely the *Sarva Shiksha Abhiyan* (SSA) and the National Rural Health Mission (NRHM).

The focus is to situate these findings in the framework for accountability with a view to underlining the basic point that although social accountability is about enhancing citizen *voice* and participation in service delivery, in order to realize it there are issues to be addressed within the *compact* – the institutional design itself - to make the system structurally and functionally built for accountability – a system where stronger voice can actually translate to better accountability. Through this analysis, we can highlight weaknesses in the current system.

We begin by setting SSA and NRHM against the backdrop of general failures in education and health service delivery in India. We then look briefly at the important institutional features of each scheme; particularly those that help us understand the various accountability relationships that exist in the corresponding sector. Following that we will look at the way in which these *de jure* features actually play out in practice. Here we draw on the findings of the survey of three states. We then step back and analyze these findings by situating them in failures of *voice* and *compact* in order to understand the more general failures in accountability in these two services.

**The Context:**

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**Institutional features of SSA:**

The central government lays down the key guidelines for implementation including financial norms. It is also responsible for setting standards and goals for the program through curriculum design, monitoring and evolution. It contributes nearly 70% of the funds in the SSA, and also runs revenue and financial sustainability assessments for the program.

Funds from the central government are devolved to the **state** government through **state level implementation societies**. The state society is an autonomous society set up for the specific purpose of implementing SSA and works in collaboration with the relevant line department in the state. The state society is the primary implementation unit for the scheme. It has a wide range of policy and operational responsibilities including fund transfers, monitoring, setting performance standards, developing a financial monitoring system, and allocation of funds across different levels of the service delivery chain. According to the guidelines, hiring of teachers is the responsibility of the state level societies. In many states (WB/Gujarat, Tamil Nadu) teachers are hired at the state level. However, in others (Orissa and Jharkhand for instance), these decisions have been developed to the Block or Gram Panchayat.

Funds from the state government are in turn devolved to the **district** administration. It is incharge of certain operational activities such as capacity building, training and developing funds to the schools based on norms determined by the central and state governments, setting up

Cluster Resource Centres (CRCs) and Block Resource Centers (BRCs), setting up of DIETs (District Institute of Education and Training), as well as undertaking monitoring and evaluation of functionaries as prescribed by state governments.

The BRC is a resource center where books, discussion papers etc are available. It is highly involved in the planning and organizing of workshops, review meetings, training of teachers and various SSA functionaries, monitoring of CRC activities, schools visits, supervision of civil works etc.

One level down, the CRC has a more hands-on approach: from monitoring school activities, visiting primary schools regularly, observing students notebooks, monitoring exams, discussing the results in VEC meetings, sharing achievement levels and problems at the BRC etc.

At the village level, the Village Education Committees (VEC) have been set up. The VEC lies at the heart of the day to day implementation and monitoring operations of the school. It is responsible for the actual expenditure of funds available for maintenance, repair and teaching materials etc. It is also responsible for the monitoring of teachers' and students' performance. In many states, the VEC's work in collaboration with the Gram Panchayat (GP).

The GP is responsible for appointing the VEC and usually, the GP President is a key signatory for all the VEC's financial transactions. Other GP responsibilities include hiring para-teachers. The VEC also develops village level plans and annual work plans on education to reflect local needs. These micro-plans are aggregated up at the district level and the state level where they are meant to provide the basis for expenditure assignments. In some states VECs are also responsible for monitoring the quality of the Mid-Day Meal Scheme in the school. The presence of VECs and their role in community mobilization, monitoring and information dissemination are crucial provisions towards a public accountability system inbuilt into the SSA norms.

### **How it plays out in practice:**

De facto principles aside, the deplorable state of school education is testament to the fact that not everything is working the way it was meant to. Some of these are due largely to indifferent implementation of the guidelines set up in policy, but a deeper analysis reveals that there are also some issues in institutional design itself which breeds inefficiencies. We will analyse these failures after listing out the de facto state of SSA implementation as revealed by this survey and some other surveys.

**1. Awareness of the programmes components:** Although the district level officials were fairly well aware of the SSA scheme and its components, at the panchayat level officials were largely unaware of many aspects of program implementation. Information, when it was available was mostly available on infrastructural aspects of service delivery, such as civil works rather than, for instance, quality of education. The communities themselves were largely ignorant about SSA, even of the existence of VECs.

In Bihar, fewer than 10% citizens interviewed had knowledge of the programs through the GPO, Gram Sabhas or GP members. Over 60% respondents did not know the objectives of the SSA in Uttarakhand and Bihar. However, over 70% respondents in Kerala, when asked if they had been informed of the benefits of the two programs, said yes. In Uttarakhand, though 53.3% GP members knew about the SSA, only 25.19% knew of the objectives of the program. Further, only 21.4% of GP members in Uttarakhand and 34% in Bihar actually knew when the program had been initiated in their jurisdictions.

The Kerala story is an interesting one, and needs to be understood in the broader context of Kerala's developmental history of greater participation of Panchayats and communities. The awareness of implementing officials in being able to carry out the implementation of the program depends crucially on the training they receive at the Block level. However, not all officials receive this training. What is perhaps more problematic is that even fewer find this training useful in carrying out their duties. Less than 30% officials in Uttarakhand and Kerala found the training received to be useful.

2. **VECs:** VECs, the cornerstone of decentralized model that SSA is based on, were on paper present everywhere, but in practice largely dysfunctional. In many cases the members did not know they were members of any committee. The meetings rarely happen, and when they do, hardly any constructive discussion about school quality takes place. As per the preliminary findings in nearly 60% of the study villages in both Uttarakhand and Bihar, the communities were not aware about VECs or its membership.
3. **High absenteeism and lack of effort from teachers:** As the statistics in the beginning of this section reveal, rampant absenteeism among teachers is a serious problem. Even when teachers are present, many of them are not engaged in teaching activities.
4. **Corruption and leakages:** The survey highlights that corruption continues to exist in the form of over-reporting of enrollment rates, leakages and over-claiming of budgeted meals in MDM-implementations, and politicization of teacher appointments.
5. **Monitoring failures:** A common underlying problem in most of these failures is the lack of effective monitoring of the programme. The VECs are the principal monitoring bodies at the local levels, but owing either to ignorance among its members of the roles and responsibilities, or to indifference, the VECs have in large part failed to deliver effectively. An important tool which monitoring authorities can use is the Social Audit, something which has been used in many states. However, a majority of implementation officials in the 3 states revealed that no such audits have been conducted in the program at all.
6. **Disconnect between needs and allocations:** Although on paper the village-level plans are meant to ensure the local needs get reflected in the expenditure assignments, in practice, in the process of aggregation of plans from various villages at the district and then at the state levels, the actual allocations and the restrictive headings under which they are prescribed for use (tied funds) effectively disconnect resource allocations from local needs. This is made worse by the fact that there are delays in release of funds, ending in last quarter rushes in fund release and the resulting inefficiencies in spending rushes.
7. **Quality/satisfaction:** The data from the satisfaction survey among beneficiaries of the SSA provides us with a mixed picture of the final analysis of this program. A majority of beneficiaries are 'somewhat satisfied', but this could be a limitation of the survey in terms of the way questions were asked.

### The National Rural Health Mission

Briefly, NRHM decentralized health service delivery. The **National** Mission Steering Group at the MoHFW and the Empowered Programme Committee (implementing agency) serve the purpose of outlining the broad framework and policy decisions of the NRHM. At the **State** level, the State Health Missions have the responsibility of oversight, policy matters, review of the progress of implementation, approval of the state health plans, co-ordination with NGOs etc.

The *district* is the key institutional unit for planning, budgeting and implementation of health services. The key role articulated here is the development of cross-sectoral health plans that integrate health concerns with determinants of health such as hygiene, sanitation, nutrition and safe drinking water. The plans are an *amalgamation* of village health plans, state and national plans and priorities, as well as other centrally sponsored schemes.

The Primary Health Centre is directly responsible to the elected representative of the Gram Panchayat where it is located. NRHM introduces a new community-based functionary called Accredited Social Health Activist (ASHA). The ASHA must primarily be a woman resident of the village, between 25-45 years of age, with formal education at least up to 8th class. She will be selected by the Village Health and Sanitation Committee (VHC) and the Gram Sabha.

ASHA will coordinate with ANM (Auxiliary Nurse and Midwife) and AWW (Anganwadi Worker) and be accountable to the Gram Panchayat. ASHA's role will be to promote good health practices and provide primary medical care for minor ailments. The government will provide a drug-kit to each ASHA to facilitate this new task. ASHA is not a paid employee, but will be compensated by the Panchayat on the basis of measurable outputs of services she performs.

NRHM mandates the creation of Village Health Committees that prepare health plans for the village which form a component of the district level health plan, and also have a direct role in monitoring of the service at local level.

A system of periodic *Jan Sunwais* at various levels to empower community members to engage in giving direct feedback and suggestions for improvement in public health services has been set up. It is compulsory for all the health institutions to prominently display information regarding grants received, medicines and vaccines in stock, services provided to the patients, user charges to be paid etc, as envisaged in the Right to Information Act. The requirements of audit apply to all NRHM activities.

### In practice:

While the NRHM was ostensibly aimed at architectural corrections in addressing the failures in public health delivery, like in SSA, the findings of the study indicate that not everything is working. The following points highlight the main problems:

1. **Awareness of program components:** The survey revealed a worrying lack of awareness about NRHM and its components. This was true not only among villagers at large, but also among the functionaries from the block level downwards who were supposed to be implementing the program. In the PPMT exercise in Tehri district in Uttarakhand, for instance, the health supervisors "categorically denied" any knowledge about the programme components. In Uttarakhand and Bihar, over 70% beneficiaries did not know the objectives of NRHM. In Uttarakhand, though 42.2% of *GP members* knew about the NRHM, only 17.78%



knew of the objectives of the program. Further, only 21.4% of *GP members* in Uttarakhand and 27% in Bihar actually knew when the program had been initiated in their jurisdictions. On the one hand this was due to inadequate or absent attempts at training of the officials, or more worryingly lack of interest among those officials insulated by political connections.

2. **VHCs:** In many villages, the survey found that the VHCs were not even formed, and where formed its supposed members either did not know that they were members of any committee, or were woefully unaware of what their responsibilities were in that role.
3. **Shortage of staff, high absenteeism, and lack of training:** Shortage of staff, including doctors emerged as the major problem, compounded by high rates of absenteeism. The staff present were found to be inadequately trained. In the survey, 46% of implementing officials had not received any training in Uttarakhand and Bihar, and 61% of those who did felt it had not been useful. On training, the story is similar to SSA, a large percentage of officials did not receive training to be able to carry out the effective implementation of the program. Also, over 60% of those who received training in Uttarakhand and Bihar did not think it was useful.
4. **Service quality remains poor:** The survey found that although in infrastructure development has been relatively good, the quality of service remains very poor. More than 91% of all beneficiaries in all 3 states could not get their problems in either program resolved. Once again, the results of the Citizen Satisfaction Report conducted in the survey leave an inconclusive picture in terms of the impact and implementation of the NRHM.
5. **Corruption:** The medicines prescribed were also ones that were not available in the hospital – the lack of transparency possibly hiding collusion between the medical officers and medical shops outside. Under the *Janani Suraksha Yojana* which gives cash incentives for women coming into the hospital for labour, bribes were being demanded by PHC officials handing out the cheques.
6. **Failures of ASHA:** the recruitment of ASHAs was politicized and far from transparent and consultative, further there was corruption among ASHAs forging addresses of pregnant women in order to capture the cash incentives.
7. **Monitoring failures:** a common underlying feature in most of these problems was a failure of *monitoring* mechanisms that are, ostensibly, present on paper. The VHCs in particular were entrusted with local community level monitoring and there were obvious failures in this due either to lack of participation by the members, or complete lack of responsibilities. Even the departmental monitoring was weak and ineffective, sometimes owing to a lack of coordination between project level staff and regular staff, sometimes to indifference and absenteeism by the concerned officials. Social Audit were not organized according to 76% of the NRHM program Officials. Over 68% of GP members in Uttarakhand and Bihar said that no independent appraisal of either scheme had been done.

Over 75% officials in all states responded negatively to the use of Social Audits by them during the implementation of the NRHM.

### Further issues in the two programs brought to light by the survey:

The survey also throws light on a variety of common problems shared by government programs. When asked if any PRI officials have made plans for the implementation of either the SSA or NRHM, 90 GP members (66.67%) in Uttarakhand and 59 respondents (64.84%) in Bihar said No. Over 96% PRI officials in Uttarakhand and over 90% in Bihar gave us no response to whether they even *record* the grievances of the people vis-à-vis the programs. Another interesting finding is reflected in figure 13 below. A large percentage of the Gram Panchayat members are in fact not involved in any significant activities related to service delivery.

### Analysing the failures in SSA and NRHM:

The accountability failures that are at the heart of these problems in SSA and NRHM can be understood in the context of the *voice* and *compact* framework of public accountability discussed earlier. Such delineation would be a first step towards identifying specific ways of addressing specific problems.

#### *Failures in voice:*

The voice failures correspond to **lack of awareness** among the members of VECs and VHCs **about their individual roles of responsibilities**, and about the programme features. Information, awareness and community mobilization are fundamental prerequisites for strengthening of citizen voice. Unless the citizens know what to expect, know what they are expected to do, and how to do what they are expected to do, and unless the citizens are mobilized to believe in their entitlements and power over the officials, and to act accordingly, it is futile to expect them to participate in any meaningful way in their pro-accountability role. The serious lack of monitoring and hence accountability is in large part due to lack of awareness or indifference among the community members. Effectiveness of voice is also contingent on the **information** on the basis of which the VECs and VHCs can make demands and propose changes. As is evident from the survey, the groups are not informed of budgets, expenditures, and quality outcomes. Therefore there is **no basis on which to plan** efficiently.

Further, the easiest way to express voice is through the Gram Panchayat, as this is the level of government closest to the people. But, as the institutional design story tells us, the **GP itself has limited powers and resources**. So even if voice were to be expressed to the GP, the effect would be minimal.

#### *Failures in compact:*

The compact failures on the other hand correspond to the institutional design of the program that has failed to create optimal delegation and incentive structure in which accountability is possible. For instance, take NRHM's **reporting structures**. In the present system ASHA is accountable to both the GP, its parent department, the Department of Family Welfare and Women and Child. Functionaries at the district health mission are also required to report to multiple departments at state level. 23% of program officials did not play any role in the planning of the scheme in their jurisdiction a crucial principle of accountability is that there be as few lines of accountability as possible in order to prevent contradictory orders and create confusion on the part of the provider. Another area in both SSA and NRHM where compact is failing is manifest in the rampant absenteeism among the teachers and doctors, an indication of underlying failures in incentive structures that allow such inefficiencies to persist. In many states, the GP in collaboration with the VECs has the power only to hire para- teachers, while the full-time teachers are still a state prerogative (In MP they have frozen the state cadre). Similarly, hiring and firing of the doctors is

at the state level, and thus far removed from where the monitoring is occurring (at the village level).

Failures in *compact* also serve to seriously weaken *voice*, which is supposed to be at the heart of both the schemes. In SSA, this takes the form of local level village plans not getting reflected in earnest in expenditure assignments from the state, because despite the provisions for village level annual work plans to be taken into account, the central government has set fairly **rigid guidelines on the basis of which plans and expenditure assignments are actually made**. These decisions are made on the basis of formulae applicable across all schools in the state without any scope for addressing cost disabilities (such as transportation costs) in particular regions. School performance, teacher attendance, teacher availability or even infrastructure needs are not reflected in expenditure decisions. When funds reach the school, they mostly come tied to specific expenditure items. Schools have little internal flexibility to plan and align expenditures to felt needs. As a result, **financing rarely reflects realities on the ground**. This is on top of the **skewed pacing of fund release**.

# Principal-agent problem

In political science and economics, the **principal-agent problem** or **agency dilemma** concerns the difficulties in motivating one party (the "agent"), to act in the best interests of another (the "principal") rather than in his or her own interests.

Common examples of this relationship include corporate management (agent) and shareholders (principal), or politicians (agent) and voters (principal). The problem arises where the two parties have different interests and asymmetric information (the agent having more information), such that the principal cannot directly ensure that the agent is always acting in its (the principal's) best interests, particularly when activities that are useful to the principal are costly to the agent. Moral hazard and conflict of interest may arise. The deviation from the principal's interest by the agent is called 'agency costs.'

Various mechanisms may be used to align the interests of the agent with those of the principal. In employment, employers (principal) may use piece rates/commissions, profit sharing, efficiency wages, performance measurement posting a bond, or the threat of termination of employment.

A principal-agent problem is "a dilemma that arises whenever one party (the principal) employs another (the agent) to a job for him." Contracting/acquisition/procurement whether for information technology, financial services, or any of a myriad of other support functions covered today under the broad lexicon of outsourcing would be subject to dilemmas of the principal-agent problem type. The problem: How to ensure that the agent acts in the best interests of the principal on whose behalf and with whose resources they (the agent) are employed. One of the most common means of attempting to align principal and agent interests is to design a contract with incentives that track to agent performance.

While incentive-based contracting has been in wide use throughout the Government- market space, either through the use of incentive fees or award fee contracts, the efficacy of its impact has been limited. Use of fee as a performance achievement tool (incentive) has often been limited in its impact because contractors have found creative ways to circumvent the impact on profits.

In other words, one person, the principal, hires an agent to perform tasks on his behalf but he cannot ensure that the agent performs them in precisely the way the principal would like. The decisions and the performance of the agent are impossible and or expensive to monitor and the incentives of the agent may differ from those of the principal.

An example drawn from the public sector might be the efficient and effective running of public services such as education, health and transport by private firms under regulation by government authorities

# Moral hazard

In economics and social science theory, a **moral hazard** is a situation where a party will have a tendency to take risks because the costs that could incur will not be felt by the party taking the risk. In other words, it is a tendency to be more willing to take a risk, knowing that the potential costs or burdens of taking such risk will be borne, in whole or in part, by others. A moral hazard may occur where the actions of one party may change to the detriment of another after a financial transaction has taken place.

Moral hazard arises because an individual or institution does not take the full consequences and responsibilities of its actions, and therefore has a tendency to act less carefully than it otherwise would, leaving another party to hold some responsibility for the consequences of those actions.

Economists explain moral hazard as a special case of information asymmetry, a situation in which one party in a transaction has more information than another. In particular, moral hazard may occur if a party that is insulated from risk has more information about its actions and intentions than the party paying for the negative consequences of the risk. More broadly, moral hazard occurs when the party with more information about its actions or intentions has a tendency or incentive to behave inappropriately from the perspective of the party with less information.

Moral hazard also arises in a principal-agent problem, where one party, called an agent, acts on behalf of another party, called the principal. The agent usually has more information about his or her actions or intentions than the principal does, because the principal usually cannot completely monitor the agent. The agent may have an incentive to act inappropriately (from the viewpoint of the principal) if the interests of the agent and the principal are not aligned.

## Discussion in the classroom

### Improving Governance in India

It is commonly recognized that corruption, which has become a universal phenomenon, unless kept in check, can undermine the citizen-government relation severely. It erodes legitimacy of the political system and the welfare state stands discredited. Common man feels that there is lack of political accountability – its criminalisation systemic weaknesses in corruption/grievance redressal machinery are the most important reasons for sustaining corruption in the country. Anaccountable government machinery may one of the chief causes for it.

The existing anti-corruption institutions are also not very effective lacking teeth and powers and not being independent. Besides, these institutions face problems with regard to paucity of staff and non-filling up of the vacancies, etc.

Improving Governance is a part of a development process. It is argued that corruption can be curbed by systematic changes in governance through introducing participation, transparency, accountability and probity in administration. The right to good governance is also considered as an essential part of the citizen's rights that one can expect from the government. Accordingly, a



number of initiatives have been taken by the government to incorporate citizen's concerns as inputs in the formulation of policy as well as in the quality and reliability of services. These can be brought through various tools, including the Citizens' Charters, Right to Information, e-Governance, Report Cards and Social Audits. Besides, each department have now developed its public grievance redress mechanism by appointing a senior officer as Director of Grievances' with the powers to call for files/papers relating to grievance. The public can approach him/her for the redress of its grievances. He/she is supposed to be available on every Wednesday between 1000 and 1300 hours.

**The Right to Information Act 2005** empowers the common man to know his entitlement to avail a particular public service, and redress the grievance, if any. It also includes the 'Right to be Heard and Consumer Education', i.e., educating the consumer about his rights. It is based on the rationale of "participatory, transparent and accountable governance". Under the Right to Information Act, public servants can also be questioned on their conduct and, thus, made them accountable.

**Electronic governance or e-Governance** is to ensure better transparency and services to the public. It disseminates information through an efficient, speedy and transparent process to the public and other agencies, and performs government administration activities. e-Governance can effectively be introduced through -

1. Computerization of all the public-dealing Departments, including the Police, Judiciary, transportation, and registration of properties.
2. Introduction of e-Procurement (preferably on the lines of KONEPS) in all public procurements and contracts
3. Introduction of 'Touch Screen System' showing pictures to avail particular service.
4. Replication of 'Lok Vani' software for redress of public grievances.
5. Strengthening the **infrastructure of e-governance** and enhancing the awareness about e-governance.

### **Transparency and Accountability**

Transparency and accountability are the main constituents of good governance, while good governance is a pre-condition to achieving human development which is the main concern or mission and the ultimate goal for all states' programmes and activities.

Transparency and accountability are interrelated concepts and mutually reinforcing. Without transparency there couldn't be any accountability. Unless there is accountability, transparency would be of no value. The existence of both conditions contributes to an effective, efficient and equitable management in public and private institutions.

Transparency in government mean an open government: government actions are explained; the accessibility of government services and information and the responsiveness of government to new ideas, demands and needs.

Open government is one where the business of government and administration is thrown open to all, at all levels, so as to ensure effective public participation, scrutiny and oversight. Transparency implies openness of both organisations and individuals constituting it and requires openness of information, processes, policy, decisions, actions and outcome. Process transparency

covers both internal business and supporting human resource, financial, and administrative processes; and external service delivery and regulation.

Openness through transparency becomes a means to greater civic participation in an enabled environment, where there is effective free flow of information both ways, to see through the working of the government; and to verify whether or not public servants are meeting their obligations to expectations of citizens. All the four components of accountability i.e. answerability, sanction, redress, and system improvement need information to account for unacceptable conduct, decisions, and actions. The gaps in conventional supply side accountability have led to the emergence of demand side accountability. "Social Accountability is the institutionalization of durable societal control over policies and their implementation. Civil society is progressively showing tremendous potential to participate directly in institutions of horizontal accountability. This can extend to all faces of development process, viz., planning (people's planning), programming, budgeting (budget analysis, participatory budgeting), release of funds (publication of funds released, public expenditure review), award of contracts (procurement watch, integrity pact), and monitoring of contracts (independent quality inspection). Post planning, this may extend to implementation (hospital advisory, management committees, community forest management), progress of implementation (corruption watch) and evaluation (citizen report card, community scorecards) and audit (public hearing, participatory audit, citizen audit request, monitoring of audit compliance, general law on social audit)". Open government can thus be said to have three components viz.

- Right to information
- Civic engagement in the processes of governance, and
- Accountability for what the government or the public servant says and does

In contemporary India, open government was first stressed in the landmark judgment of Justice P. N. Bhagwati of the Supreme Court of India in 1981, (*Gupta S.P. vs Union of India* (1982), where, besides giving a general description of open government he stressed the need for increased disclosure in matters relating to public affairs. Noting that open government means 'information available to the public with greater exposure of the functioning of government which would help assure the people a better and more efficient administration' he went on to describe Open Government in India to be, "the new democratic culture of an open society towards which every liberal democracy is moving and our country (India) should be no exception".

### **The Right to Information Act in 2005**

The passage of Right to Information Act in 2005 by Government of India (GoI) ensured timely response to citizen requests for government information, marking a paradigm shift in the citizen-government relationship in India. The Act sets out a practical regime of right to information for citizens. The main objectives of the law on RTI are: to operationalize the fundamental right to 3 information (deriving from Art.19.1.a); to set up systems and mechanisms that facilitate people's easy access to information; to promote transparency and accountability in governance; to minimize corruption and inefficiency in public offices and to ensure people's participation in governance and decision making. According section 2 (j), 'right to information' includes the right to

- Inspection of work, documents, records;

- Taking notes, extracts or certified copies of documents or records;
- Taking certified samples of material;
- Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

It is significant that the principle of open access to administrative documents has been defined as a right under section 3 and not merely an interpretative principle which can be invoked regardless of the purpose for which that right is exercised. The Act mandates both proactive and reactive supply of information, cataloguing, indexing and computerization of the appropriate records and their dissemination. In cases, where the right to information has been denied by a public official, sufficient information must be provided of the reasons of the refusal. That decision is always reviewable by the appellate authority and the State Information Commission. Right to information has to include the right to protected disclosure of sensitive information. As a prelude to a full-fledged legislation to protect whistle blowers a national resolution on the same has been issued empowering the Central Vigilance Commissioner.

#### **Participation/ Civic Engagement**

The constitutional method of political participation of people at the grass roots is achieved through the process of devolution to the lower echelons of governance. Even though the Government of India had initiated the process of devolution of powers as early as in the 1950's through the Panchayati Raj system, and introducing the element of participatory rural works programme through financial participation of beneficiaries, the Union Government brought in the 73rd and 74th amendments to the Constitution to more firmly institutionalize local governments as the third tier of the State.

One of the key objectives of local level Governments is to ensure that the process of planning for development in the country follows a bottom up participatory development approach. The best example of this is 'Peoples Planning' in Kerala. It also firmly established the place of gram sabha (village assembly) and ward committees in the towns, in the constitutional scheme of things. They meet to get information from the officers of the Grama Panchayat/ Municipalities as to the services they will render and the works they propose to do, discuss the budget and details of allocation of funds and also the details of the estimate and cost of materials of the works executed or proposed to be executed, to study the annual statement of accounts, the last audit notes and replies thereto, to suggest remedial measures and to report satisfactory completion of the works, to secure self discipline among members securing payment of their taxes and repayment of loans and to conduct social audit of works like the works under the Mahatma Gandhi National Rural Employment Guarantee programme .

Civic participation takes the form of informing; consulting; engaging; collaborating and empowering, as has been suggested by the International Association for Public Participation. In participatory governance, government has an obligation to provide information, receive feedback, receive complaints, give answers, enforce sanctions- disciplinary, civil, and criminal, empower citizens, confer rights on the citizen- civil, political, economic, and social; promote social capital, facilitate participation, promote collaboration; and be inclusive, equitable, responsive, open, transparent, and accountable to the people.

Civil society involvement and association with the government can relate to governance structures and functions, assets, resources, and fiscal and financial management systems, and such other internal operative business systems; and external service delivery processes and procedures. These may cover personnel management, fiscal and financial management and performance management. These in turn could relate to recruitment, placement, transfer, promotion and discipline in the area of personnel management; policy, regulation, planning, decision making, programming, budgeting, expenditure, accounting and audit in financial management, programme Implementation, service delivery, oversight and evaluation in performance management.

India is at different stages of this spectrum of participation in public affairs. A winning start has been made in the matter of right to information. Active citizen and civil society engagement in governance processes including decision making, is essential if one were to realize the objectives of good governance.

Among the key goals of community participation are:

- Improving technical efficiency by overcoming information asymmetry, providing communities with information on quality through various forms of monitoring and evaluation, and ensuring that service providers spend resources for necessary technical resources,
- Enhancing allocation efficiency through greater attention to the priorities of communities, increased transparency on budgets and public resources with public budgeting and public expenditures tracking systems, and reduction in 'rent seeking', and
- Tightening mechanisms of accountability involving increased transparency from community involvement with public sector agencies like community participation in school management, and community participation in public hearings etc.

Following are a few of the administrative accountability measures employed by government agencies in India for securing participation:

- Public disclosures
- A law on community participation to institutionalize citizen participation in local decision making Citizen charters stipulating standards of service delivery and for penalty for non compliance
- Conventional and on line help line for grievance redress
- Arrangements for feedback on services
- Whistle blower protection mechanism
- Public service Delivery legislation conferring right to public services with Grievance officer to quickly investigate and grant relief
- Ombudsman to independently enquire into complaints
- Chief /vigilance officer who reports directly to the government
- Integrity pacts for procurement
- Third party inspection of quality of works and supplies
- Independent evaluation studies

### **Social Media as Open Government instrument**

Technology is revolutionizing the way governments are being run. In this knowledge society the relationship between the citizen and government is mediated by information systems and their automation. Automation of government internal business and external regulation and service delivery is a must for any e government plan, a beginning towards which has been initiated through the National e -Government Plan. National Information Technology infrastructure and nationwide distributed database with public information infrastructure are under way.

Data bases in India suffer from non-standardization, incomplete data collection at all levels, poor quality and unreliability of data, inconsistency in the methodology and technology employed, absence of universal digitization capability, slow digitization of past data, issues of interoperability of systems etc.

In order to effectively solve these problems Government has initiatives like national policy on open standards which has been published for soliciting public comments.

In the meanwhile progress has been made, by the central and state governments, for progressive use of ICT including Geographic Information Systems (GIS) and satellite imagery to re-engineer transparency, participation and accountability as shown below:

1. Use of internet to facilitate open government
2. Government portals for information
3. Web based disclosure of information and pro-active publication
4. Electronic on line MIS and FMIS ensure that right information gets to the right people
5. Use of mobile phones and Wi-Fi to facilitate engagement
6. Computerized grievance redress mechanisms
7. E-petitions
8. 'Open for questions' programme
9. Access to process of service delivery and internal business processes as in OPEN

Social Media is being progressively used for seeking feedback from citizens; pronouncement of public policy; issue based as well as generic interaction and brand building or public relations. In order to encourage and enable government agencies to make use of web 2 technologies which is a dynamic medium of interaction the Department of Information Technology, GoI has released a draft social media strategy. The Framework & Guidelines for Use of Social Media for Government Organization hopes to help the government enhance its outreach, engage and interact with the Indian internet users. The Planning Commission of India has taken the initiative and put itself on Facebook with a page on the "Twelfth Plan," 2012 through 2017.

The Planning Commission and the National Innovation Council organised the first ever 'hackathon' on the 12th Five-Year Plan on April 6 and 7, 2013.

The hackathon, in which computer programmers and others collaborated on software projects, invited citizens to innovatively communicate the 12th Plan ((2012-17) through creative visualisations and software applications. The event was organised simultaneously in 11 locations across India 12th Plan is the product of unprecedented participation from Indian citizens and civil society to set out a vision for India's progress over the next five years.



Though the Right to Information Act (RTI) 2005 has become the governing law regarding public disclosure of governmental information and accessibility to public data, data-sharing policies in India are still complex in nature, as various provisions under law define and determine the scope of data provided. Taking note of this, the Department of Science & Technology (DST), Government of India, was assigned the task of developing a comprehensive National Policy for Data Sharing and Accessibility, by the cabinet, in June 2010.

According to the Report of Open Government Data in India, while government has initiated many e-governance initiatives, very few of them have resulted in publicly accessible databases. Fewer still of those publicly accessible databases are 'open' in terms of data reusability (technologically, in terms of machine readability and openness of formats), data reusability (legally), easy accessibility (via search engines, for persons with disabilities, etc.), and understandability (marked up with annotations and metadata). Putting out raw data will not suffice. To ensure the relevance of open government data, mechanisms have to be put in place to take its benefits to the common person and to marginalized communities, both by the government as well as by civil society organizations. Concrete steps on these lines will help realize the dream of Open data in the near future in India.

The Second Administrative Commission, Government of India has, after detailed studies into the working of government, made comprehensive recommendations in its detailed reports, among others, on the right to information, citizen centric service delivery, local government, e-Governance etc. Some of the recommendations relevant to this Paper, which are being followed up and will further the cause of transparency, improved citizen centric service delivery, and participatory governance, are listed below:

- Suo motu disclosures under the RTI Act, 2005 should not be confined to the seventeen items provided in Section 4(1) of that Act but other subjects where public interest exists should also be covered.
- Citizens' Charters should be made effective by stipulating the service levels and the remedy if these service levels are not met.
- Regular citizens' feedback, survey, and citizens' report cards should be evolved by all government organisations for gauging citizens' responses to their services. These should be used as inputs for improving organizational efficiency.
- Citizens should be actively involved in all stages of the welfare and development programs implemented by the government..
- Social audit should be made mandatory for all developmental programmes and be institutionalized for improving local service delivery.
- Evaluation tools for assessing the performance of local bodies should be devised wherein citizens should have a say in the evaluation.
- Reward schemes should be introduced to incentivize citizen's initiatives

Various Bills pending in the Parliament regarding judicial standards, public service delivery, electronic services, food security, land acquisition and RR have citizen participation provisions.

# Separation of Powers

The separation of powers is a model for the governance. The model was first developed in Ancient Greece and Rome. Under this model, the State is divided into branches, each with separate and independent powers and areas of responsibility so that no branch has more power than the other branches. The normal division of branches is into a legislature, an executive, and a judiciary.

Aristotle first mentioned the idea of a "mixed government" in his work Politics where he drew upon many of the constitutional forms in the city-states of Ancient Greece. The term is ascribed to French Enlightenment political philosopher Baron de Montesquieu. Montesquieu described division of political power among a legislature, an executive, and a judiciary. He based this model on the Constitution of the Roman Republic and the British constitutional system. Montesquieu took the view that the Roman Republic had powers separated so that no one could usurp complete power. In the British constitutional system, Montesquieu perceived a separation of powers among the monarch, Parliament, and the courts of law. Subsequent writers have noted that this was misleading because the United Kingdom had a very closely connected legislature and executive.

Montesquieu did specify that "the independence of the judiciary has to be real, and not apparent merely".

## **Comparison between Presidential and Parliamentary systems**

Constitutions with a high degree of separation of powers are found worldwide. The UK system is distinguished by a particular entwining of powers. India follows the British type (Westminster type). Complete separation of powers systems are almost always presidential, although theoretically this need not be the case.

Although the doctrine of separation of power plays a role in the United Kingdom's constitutional doctrine, the UK constitution is often described as having "a weak separation of powers" A. V. Dicey, despite its constitution being the one to which Montesquieu originally referred. For example, in the United Kingdom, the executive forms a subset of the legislature. The Prime Minister, the Chief Executive, sits as a member of the Parliament of the United Kingdom, either as a peer in the House of Lords or as an elected member of the House of Commons (by convention, and as a result of the supremacy of the Lower House, the Prime Minister now sits in the House of Commons) and can effectively be removed from office by a simple majority vote.

Under the concept of parliamentary sovereignty, Parliament can enact any primary legislation it chooses. However, the concept immediately becomes problematic when the question is asked;

"If parliament can do anything, can it bind its successors?". It is generally held that parliament can do no such thing.

### **Checks and balances**

To prevent one branch from becoming supreme, protect the "minority" from the majority, and to induce the branches to cooperate, government systems that employ a separation of powers need a way to balance each of the branches. Typically this was accomplished through a system of "checks and balances", the origin of which, like separation of powers itself, is specifically credited to Montesquieu. Checks and balances allow for a system based regulation that allows one branch to limit another, such as the power of Congress to alter the composition and jurisdiction of the federal courts.

Subsidiarity

Judicial legislation

Judicial governance

## SEBI at 25

The capital market regulator, the Securities and Exchange Board of India (SEBI), came into being in 1988 but acquired statutory powers only in 1992 with the passage of the SEBI Act. In 1995, it was conferred further powers through an amendment to the Act. It has had seven chairmen so far excluding the incumbent U. K. Sinha. In the pre-SEBI days, capital market regulation under the Securities Contracts Regulation Act vested loosely with the Controller of Capital Issues, functioning directly under the Ministry of Finance.

### Achievements

**Dematerialisation of shares:** The market regulator introduced dematerialised holding of shares and securities after the Depositories Act was passed in 1996, which did away with physical certificates that were prone to postal delays, theft and forgery, apart from making the settlement process slow and cumbersome. This also prevented the issue of fake share certificates floating in the market. It enabled electronic trading, with investors and traders even able to work from home.

**Faster settlement process:** Sebi is credited with quickly moving from a T+5 settlement cycle in 2001 to T+2 in 2003, or two days between the trade and shares being credited to the buyers' account, down from five. "Pushing for market development is one of Sebi's biggest achievements. Demat, T+2 settlement and the development of electronic markets are major achievements and we were ahead of several markets in all these fronts. With T+2, we are still ahead of the Western markets. The regulator is currently looking at reducing the settlement cycle to T+1, enabling investors and traders to take positions faster.

**Stronger and clearer regulations, orders:** In the early years, powerful brokers' lobbies controlled share price movements and could afford to ignore Sebi, according to analysts. That this is no longer the case is, in large part, because the quality of orders passed by Sebi.

Recent instances of this include the orders against two Saharagroup entities that were upheld in the Securities Appellate Tribunal and the Supreme Court.

**Fostering mutual fund industry:** While the Indian mutual fund industry has grown manifold from being a monopoly until the early 1990s—when Unit Trust of India, set up in 1964, was the only one—their reach remains low outside India's top 20 cities. The market regulator has taken several steps to increase the popularity of mutual fund products and prevent mis-selling of products by distributors. Some of the initiatives include widening the distribution network in rural India by roping in postal agents.

**Foreign institutional investors:** The Indian equity markets were opened to foreign institutional investors, or FIIs, in 1993 and they are now the key driving force behind stock movements. While the chunk of foreign money came in through offshore derivative instruments such as participatory notes (P-notes) where the identity of the end beneficiary is not traceable, Sebi has been consistently pushing to encourage holders of such securities to enter the market as registered FIIs.

### **Challenges**

**Enforcement processes:** Despite statutory powers on par with a civil court, Sebi hasn't made much headway when it comes to enforcement. In recent months, the regulator has been seeking to strengthen insider trading norms, expand its presence through branch offices, work with police and local enforcement agencies, improve corporate governance norms and boost control over deposit-taking firms.

**Talent pool and market intelligence:** The regulator needs to significantly improve its market intelligence, technology and talent pool in order to boost enforcement processes, protect investors, and allow the launch of more investment products without raising concerns regarding its ability to manage the resulting risks.

Sebi has about 600 employees while the enforcement department of the US Securities and Exchange Commission (SEC) alone has 1,000 people.

**Deepening capital markets:** Sebi needs to deepen the capital market. The regulator, along with the government, has taken several measures to widen the scope of investment for all categories of investors—retail, corporate, foreign institutional investors and high-networth individuals in capital markets. To create an equity culture, Sebi has simplified mutual fund investment norms; eased investment norms for initial public offerings (IPOs) and other public issues; unified know-your-client (KYC) norms; simplified disclosures by companies to help investors take informed decisions and most recently issued a discussion paper to introduce a mandatory safety net for retail investors in IPOs.

**Matching up to global standards** “Sebi is just too small to regulate such large industries as distributors, investment advisors and sub-brokers, not to mention Ponzi schemes.

### **Controversies**

**Ulips:** In 2010, Sebi issued showcase notices to a dozen life insurers and asked them to stop introducing unit-linked insurance plans, or Ulips, without its permission as these hybrid insurance products mimicked mutual fund schemes that are regulated under Sebi's collective investment scheme, or CIS, norms. The order gave rise to a battle between the capital markets regulator and the insurance regulator—Insurance Regulatory and Development Authority, or Irda. Government issued orders to keep Ulips under Irda. FSDC was set up to take up such regulatory issues..

**Sahara:** In November 2010, Sebi barred two Saharagroup firms from raising money from the public in any manner, citing violations of capital-raising norms. Another directive followed in June 2011, asking Sahara firms to return money to investors with 15% interest. This marked the beginning of a legal battle between the regulator and the company as the latter argued that since unlisted entities were raising funds, Sebi has no jurisdiction over them. The case was heard in the Securities and Appellate Tribunal and later went up to the Supreme Court, which directed Sahara to refund the money.

Regulation evolves over time, with the accumulation of case laws and precedents. Therefore, SEBI ought to be evaluated on yet another yardstick — the circumstances under which it came



into being, early handicaps it had to overcome in regulating well-entrenched entities like brokers, some of them, when SEBI came into being, were already more than 100 years old. The new regulator, the SEBI, had to start from scratch, there was nothing comparable to it before. It acquired legal status only after the 1992 stock market scam broke out. One of the important handicaps the institution faced was trained manpower. The culture of bringing in deputationists from the revenue services and banks has continued with deleterious consequences. Public sector bankers-turned regulators simply did not have the mindset to comprehend stock market activities. A crucial handicap that the SEBI has faced is in being able to match or at least meet half way the remuneration package offered by the sector it regulates. As a rule, regulation is less glamorous than, say, working for banks or financial services.

In the 25 years, the stock markets and the various intermediaries have been transformed beyond recognition. Yet, if one were to identify its most important accomplishment, it is being able to function with a reasonable degree of independence and professionalism given the major obstacles it faces.

## SEBI ordinance

Over the last two decades of SEBI's functioning, it has constantly updated securities laws to meet with market developments, whether it is in the primary markets (IPOs, QIPs, etc.) or in the secondary markets (insider trading, market manipulation, etc.). However, one principal problem has often been the lack of effective enforcement of these laws by SEBI. Robust substantive laws are no good until they are effectively enforced by the regulator.

This perceptible regulatory gap is now sought to be addressed through the ordinance route. In July 2003, the Union Cabinet approved and the President promulgated the Securities Laws (Amendment) Ordinance, 2013 which brings about significant changes, especially on the enforcement powers and authorities of SEBI. It has been primarily driven by lessons garnered from recent episodes involving securities law matters. The key ones are the Sahara case, the Saradha group scandal and the spate of insider trading cases decided by SEBI and heard and dealt with on appeal by the Securities Appellate Tribunal (SAT). Apart from a substantive change in the Ordinance relating to the expansion of the scope of collective investment schemes (CIS), all other changes are aimed at bolstering SEBI's investigative and enforcement powers.

The Ordinance brings about amendments to the triumvirate of securities laws in India, being (i) the SEBI Act, 1992, (ii) the Securities Contracts (Regulation) Act, 1956 and (iii) the Depositories Act, 1996. The key changes are as follows:

### **1. Collective Investment Schemes**

In order to obviate any doubt regarding SEBI's domain over innovative methods of raising funds from investors, the scope of the CIS has been clarified. Under section 11AA of the SEBI Act, which details the parameters of a CIS, it is now stated that "pooling of funds under any scheme or arrangement" involving a corpus of Rs. 100 crores or more shall be deemed to be a CIS whether or not it is registered with SEBI. Hence, registration with SEBI is not a prerequisite for such scheme to fall within the regulatory purview of SEBI.

## **2. Investigative Powers**

Section 11C of the SEBI Act that deals with investigation by SEBI has been bolstered by conferring additional powers to SEBI, to be exercised under the authority of its Chairman. These include search and seizure, recording of statements under oath, etc. that will add to the currently available powers.

Moreover, SEBI can call for information and records relevant for information, including telephone call data records. This had become a bone of contention in several insider trading cases where direct evidence is hardly available and SEBI has had to rely on circumstantial evidence. Considerable pressure was also imposed on SEBI through international developments where call records were the basis on which convictions were obtained in the US in the Rajaratnam and Rajat Gupta insider trading cases.

The power of SEBI is also extended to obtaining information from international sources through regulators in other countries with whom it has entered into an arrangement for sharing of information. This becomes relevant in indirect foreign investments through entities such as foreign institutional investors (FIIs) where the know-your-customer (KYC) norms may not have been implemented adequately by the entities involved.

## **3. Enforcement Methods / Remedies**

Even where SEBI has been successful in obtaining favourable outcomes in enforcing its regulation, often the consequences on violators have been less than desirable. A standing example of this (although somewhat exceptional) is the Sahara case where despite a favourable ruling from the Supreme Court, there have been delays and difficulties in successfully enforcing those orders against the persons guilty of non-compliance. These are sought to be rectified by the Ordinance by granting specific powers to SEBI to attach the violators' property, bank accounts, and also the arrest and detention of the violator in prison.

## **4. Special Courts**

In order to ensure that cases involving securities regulation that go to court are dealt with in a timely manner, the Ordinance envisages the establishment of special courts to handle such cases. This is especially because there has been no track record of criminal prosecution of securities offenders that may act as a deterrent in the markets. While this is understandable, the use of special courts and tribunals have often been susceptible to legal challenge, and it remains to be seen whether such impediments will be placed in the way of establishment and functioning of special courts for securities laws.

### **Summary:**

President Pranab Mukherjee in July 2013 promulgated an ordinance to provide more powers to market regulator Securities and Exchange Boards of India (Sebi) to tackle fraudulent investment schemes and to monitor call data records of persons or companies suspected of any wrong doing. The ordinance gives more powers to market regulator: legal backing to clamp down on unscrupulous entities that are using newer methods to fraud gullible investors. As per the amended law, Sebi can regulate any money pooling scheme worth Rs. 100 crore or more and attach assets in cases of non-compliance and can order "search and seizure operations". The market watchdog would now have powers to seek information, such as telephone call data records, from any persons or entities in respect to any securities transaction being investigated by it. The ordinance allows setting up of

special courts to speed up Sebi related cases. Establishment of special courts enabled by this Ordinance would fast – track the resolution of pending Sebi related cases. The amendments would clear the air over regulatory gaps and overlaps with regard to types of instruments used in raising funds. "Owing to new and innovative methods of raising funds from investors, such as art funds, time – share funds, emu / goat farming schemes, there has been regulatory gap / overlap regarding types of instruments / fund raising. Even though collective investment schemes come under the purview of Sebi, the regulator receives complaints against illegal fund raising activities of certain companies that claim they do not fall under the CIS Regulations.

Massive public outrage was witnessed in the wake of recent chit funds scam perpetrated by Kolkata – based Saradha group that defrauded thousands of investors of their hard earned money

## MSP for minor forest produce

GOI is expected to approve a mechanism that proposes a minimum support price for minor forest products such as bamboo, tendu leaves, mahua, sal and lac. The move is aimed at providing a safety net to millions of forest dwellers in the country who sell such products for a living.

The mechanism, proposed by the tribal affairs ministry, will assist in the marketing of 13 minor forest products by improving value addition and fixing a minimum support price (MSP). An estimated 100 million people, mainly tribal, depend on forests for their livelihood and food requirement. In most such areas, collection and sale of minor forest products account for 10%-70% of the population's earnings and 25%-50% of their food requirement.

Improving earnings would not only have an economic impact but also provide the basis of an official response to the stranglehold that Maoist rebels have in large swathes of forestland.

The idea of a mechanism to augment earnings from minor forest products has been in the works for long. In august 2010, two committees were set up to study the issue. Both panels T Haque Committee set up by the panchayati raj ministry and one headed by then member secretary Sudha Pillai "recommended "strategic government intervention" in the form of MSP for 13 minor forest products.

The proposal suggests creating a pricing cell in the Tribal Cooperative Marketing Development Federation of India Ltd to fix the MSP. State wise prices will be approved and announced by the tribal affairs ministry. State government will be free to fix a price higher than the benchmark. Prices will be revised every three years. The states will no longer have monopoly in procuring these products.

According to sources, a revolving fund has been proposed to facilitate payment for the first two years. Three quarters of the corpus of this fund will come from the Centre and remaining from the state.

## Cfr

Forest Rights Act (FRA), introduced in 2006 has two provisions for community forest rights. The Act gives communities the right to protect and manage forests under traditional use. It also allows communities to own, manage and sell bamboo, which it calls a minor forest produce. FRA recognises rights for settlement and farming in forest areas, and community rights over minor forest produce.

Mendha (Lekha) was the first village in the country to script community forest rights (CFR) success story under the Forest Rights Act (FRA) 2006 in 2011.

Mendha (Lekha) gram sabha was the first to be handed over transit passes (TPs) for sale of bamboo on April 27, 2011. Since then, 840 villages in Gadchiroli have been granted CFRs over non-timber forest produce.

Gram sabhas in Madhya Pradesh and Chhattisgarh are learning FRA lessons from Mendha (Lekha).

With over 4 lakh acre forest land granted under CFR, 50% has bamboo on it. CFRs have potential to change lives of people.

People's fight for rights first started with joint forest management committee (JFMC) in 1991. In the last two years, Mendha (Lekha) posted a turnover of Rs1.15 crore after selling 3.85 lakh bamboos in 1,116 hectare area. It is still left with Rs61.70 lakh after paying taxes and wages. They plan to spend 50% of it on forest management and 50% to develop the village and revive 'Ghotul'. A ghotul is a spacious tribal hut surrounded by earthen or wooden walls. It is an integral part of Gond tribal life in the Bastar region of Chhattisgarh and the neighboring areas in Maharashtra and Andhra Pradesh in India. It is a place for youths, an independent and autonomous "children's republic" as described by Verrier Elwin. The ghotul is central to social and religious life in Gond society. According to Gond legend, Lingo, the supreme deity, created the first ghotul

## Solar trade war

The United States' action of complaining against India in the World Trade Organisation over the Indian government's 'domestic content requirement' — for solar modules used in the projects awarded under the Jawaharlal Nehru National Solar Mission — has brought to the fore a major divide in the Indian solar industry.

In India, the total installed solar power capacity in India in 2010 was 18 MW. Today, it is 1,200 MW, and at least another 500 MW will be added this year. On the solar power equipment side, Indian manufacturers have capacity to produce about 1,900 MW of modules that will generate electricity when the sun's rays fall on them. Both these segments need to be nurtured. Indian manufacturers want protection against the much cheaper products from abroad, especially from the Chinese crystalline silicon manufacturers and the American 'thin film' manufacturers, both of whom often bring in cheap funding for their buyers. India has an ambitious target of 22,000

MW of solar capacity by 2022, and in the \$40 billion programme, domestic producers want a share.

The project developers stress that it is only smart to let them buy their equipment from the cheapest sources in the world, so that a culture of setting up solar plants develops first. Force them to buy locally, the costs will stunt the growth of the fledgling industry and neither the power producers nor the module makers will be in business.

Under the National Solar Mission (NSM), there is an obligation to source the content from inside India.

This domestic content requirement was only for projects awarded under the NSM and not for those set up under the various states' programmes. Notably, of the 1,200 MW of capacity in India today, about 850 MW has come under Gujarat's programme. Most of those putting up projects

Against this backdrop, India initiated anti-dumping investigations in November 2012 against manufacturers in China, USA, Taiwan and Malaysia, deferring to the pleas of the domestic manufacturing industry. The solar power generators were promptly up in arms. Now, the U.S. has taken India to WTO over the 'domestic content requirement' (DCR) under the NSM. India is likely to argue that the NSM is in the nature of government procurement — because the power is bought by a government-owned company. India is not a signatory to the Agreement on Government Procurement, hence, no violation.

Secondly, India will argue that the DCR rules have truly caused no damage to any overseas manufacturers, because it is applied on a very small portion of the country's goals, the rules do not cover states' programmes.

Indian government filed a request for information with the WTO relating to several state-level renewable energy and water infrastructure schemes that contain similar "local content requirements". The request for information from India, which is commonly seen as a precursor to a formal WTO complaint, asks for details on renewable energy schemes in Michigan, solar programmes in California and Texas, and water infrastructure projects in a number of states, including South Carolina, Pennsylvania, West Virginia and Alabama.

The US and the EU have both lodged complaints against China over allegedly unfair solar subsidy schemes

## 14<sup>th</sup> FC

Union Government in January 2013 constituted the 14th Finance Commission under former Reserve Bank of India (RBI) governor Yaga Venugopal Reddy. The commission under YV Reddy is going to primarily review finances of the governments keeping in mind the fiscal consolidation road map that was laid out by his predecessor Vijay Kelkar, the head of 13th finance Commission. The Commission would have three full-time members-

- Sushma Nath
- M. Govind Rao
- Sudipto Mundle

It would also have Abhijit Sen, the Member of Planning Commission as its part-time member. Also, Ajay Narayan Jha had been appointed Secretary to the Commission. The commission has to give its report by October next year and the recommendations will come into effect from April, 2015 for a five-year period. Terms of reference of the 14th Finance Commission-The FFC is asked to suggest changes to the Fiscal Responsibility and Budget Management (FRBM) Act, assess the impact of the proposed goods and services tax (GST) on government finances and also the mechanism to compensate states for revenue losses, if any. The FFC has also been asked to look at the need to insulate the pricing of public utility services - drinking water, irrigation, power and public transport from policy fluctuations through statutory provisions. FFC has also been asked to look at the level of subsidies needed for inclusive growth, and equitable sharing of subsidies between the Centre and the states.

## Core inflation

The Wholesale Price Index (WPI) consists of prices of primary articles, fuels and manufacturing articles, including metals. Generally, a decline in inflation tends to suggest a drop in the demand pressure. But, if inflation oscillates triggered by volatile global oil and commodity prices, we cannot draw meaningful conclusions about the demand strength in the economy.

A reliable measurement of economy's demand-side pressures should eliminate the effects of transitory supply shocks. Such a demand-side inflation measure arrived at by excluding certain components of the price index is called core inflation. Since March 2010, the Reserve Bank of India (RBI) has been using non-food manufacturing inflation (NFMI) as a core inflation measure for India. NFMI is computed by excluding the prices of primary articles, fuel group and processed food from the WPI.

In May 2013 (please update to November 2013), the wholesale price index (WPI)-based inflation fell to 4.7 per cent from 4.9 per cent a month ago. While overall inflation is now within the Reserve Bank of India's threshold level of five per cent, it is crucial for the monetary policy making to correctly gauge the underlying demand pressures in the economy. This is done by excluding the prices of commodities not directly influenced by domestic demand. For example, the prices of food and fuel items are swayed by fluctuations in supply, influenced by administrative price hikes, global prices, and value of the rupee. Measures of core inflation are often calculated by excluding such prices to measure demand momentum. The frequently-used measure of core inflation in India is non-food manufacturing inflation, which fell below three per cent in April for the first time since January 2010. In May, it fell further, to 2.4 per cent.



## IPRs

The Intellectual Property Appellate Board (IPAB) has revoked GlaxoSmithKline's patent in India for its breast cancer drug Tykerb, a decision that took its cue from a recent landmark Supreme Court ruling disallowing "repetitive patents" on the same drug.

The board has, however, upheld the patent for lapatinib, the original compound, citing innovative merit. IPAB ordered that the claimed invention, the salt version of the original drug, is "obvious" and, therefore, has been revoked.

This bears out India's policy stance that incremental inventions lacking "enhanced therapeutic efficacy" as assessed by the patenting authorities under Section 3(d) of the Patents Act won't qualify for patents. In April, the Supreme Court in a landmark ruling rejected Swiss drug-maker Novartis' plea for a patent for its anti-cancer drug Glivec — beta crystalline of a known molecule called imatinib mesylate — saying it lacked novelty and failed to meet the country's patenting standards.

Last year, India revoked three patents on grounds that included lack of novelty/inventive step. These were for Pfizer's cancer drug Sutent, Roche Holding's hepatitis C drug Pegasys, and Merck's asthma treatment aerosol suspension formulation.

## Compulsory licensing

The Intellectual Property Appellate Board (IPAB) earlier in 2013 upheld the grant of compulsory licence (CL) to the Hyderabad-based Natco Pharma Limited, a generic drug maker, to produce and market Nexavar, a patented cancer drug of multinational pharma major Bayer Corporation. The order will pave the way for reduction in the prices of costly life saving drugs. Various international conventions and Indian laws allowed the member countries to grant such compulsory licence in order to make medicine cheaply available to the public.

IPAB directed Natco to pay seven percent royalty.

Bayer obtained a patent in India in 2008 for Nexavar which cost Rs. 2.8 lakh for a pack of 120 tablets, equivalent to a month's dosage. Controller of Patents, Mumbai, granted the first-ever compulsory licence to Natco to make 'sorafenib tosylate', a generic version of Bayer's high-priced anti-cancer drug Nexavar. Natco was told to sell the pack at Rs. 8,800.

Bayer appealed against the Controller's order before the IPAB. Upholding the compulsory licence, the IPAB pointed out that even after obtaining patent, Bayer had not made the drug available on a large scale and at an affordable price within the stipulated time.

# Panchayat Raj Institutions

## **Participation at village level: Gram Sabha and Ward Sabha**

Article 243A gives constitutional recognition to the 'Gram Sabha' as 'a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of the Panchayat at the village level.' The Constitution further stipulates that a Gram Sabha may exercise such powers and perform such functions at the village level as the legislature of a State may, by law, provide. Gram Sabha is the key to self-governance and to transparent and accountable functioning of the Gram Panchayat. The Gram Sabha is the only forum that can ensure direct, participative democracy. It offers equal opportunity to all citizens of a village or cluster of villages to discuss and criticize, approve or reject proposals of the Panchayat executive and also assess its performance. It is the platform for effective social audit, which lies at the core of ensuring transparency and accountability in the functioning of the system.

Although the Gram Sabha forum has high potential for grounding democracy at the grassroots, facilitating socio-economic inclusion, participation in planning and implementation of development programmes and ensuring accountability of the Panchayat to the electors, it is generally seen that meetings of the Gram Sabhas are not held regularly and are marked by thin attendance particularly of women and marginalized groups. There is little discussion on the proposals put forward for approval by the Panchayat. Issues of common interest and of the marginalized sections are often not discussed.

The general perception is that the task before the Gram Sabha is approval of the lists of beneficiaries, approval for issue of utilization certificates and passing of the annual accounts. Panchayat heads bring their own supporters and potential beneficiaries to attend the meetings so that while the quorum is completed, most of the other electors keep away. Hence, a sense of cynicism has developed about the efficacy of Gram Sabha meetings. In fact, the ineffectual nature of Gram Sabhas in affected areas is stated to be one of the primary causes behind the rise of Left Wing Extremism in the Scheduled Areas & vicinity.

For the rural local governance to be effective, energizing Gram Sabhas is the real challenge. There is a need to evolve mechanisms for regular and meaningful meeting of the Gram Sabha, active participation of its members and monitoring its functioning. Good practices that provide for people's assemblies below the Gram Sabha such as Ward Sabha, Mahila Sabha and Bal Sabha should be promoted. Since the area and population of a Ward Sabha is smaller and commonality of interest greater, people would discuss with close involvement matters that they wish taken up through the Ward Member to the Gram Panchayat and evolve a consensus.

## **Gram Sabha and Social Audit**

Social audit is a close corollary of energetic Gram Sabha functioning. It would inculcate respect for downward accountability amongst elected representatives and government officials. If Gram Sabha keeps a close vigil on implementation and leakages, inefficiencies can be virtually eliminated. Gram Sabha can monitor & discuss attendance of government functionaries, functioning of schools, dispensaries, aganwadi centers, ration shops and other local institutions. Gram Sabha can discuss reports of the Standing Committees of the Gram Panchayat. Gram Sabha can also go through the list of beneficiaries under schemes such as Indira Awaas Yojana

(IAY), Antyodaya Anna Yojana (AAY) and National Old Pension Scheme. Gram Sabha can be an effective forum for familiarizing the electors with the provisions of RTI for eliciting information that they are unable to obtain in the normal course.

### **Energizing the Gram Sabha**

The scope of deliberations in the Gram Sabha meetings can be enhanced to make these more meaningful, such as:

- i. Gram Sabha can be an effective forum for information sharing on programmes, schemes, good practices and matters of common interest for which assistance from the State and Centre is available through different policies and programmes.
- ii. Gram Sabha can discuss issues such as (i) quality of life and Millennium Development Goals, (ii) social security, gender justice, female feticides, substance abuse (alcohol, tobacco and drugs), hygiene, nutrition, (iii) sustainable development, diversification of agriculture, better cropping practices, opportunities for improving incomes, drought/flood management, soil & water conservation, (iv) infrastructure development, etc.
- iii. Gram Sabha should fully participate in planning, implementation and performance review of various schemes viz. BRGF, MGNREGA, NRHM, SSA, ICDS, IWMP, RKVY etc. In preparing plan and shelf of projects, realistic assessment of resources should be made. All State Departments should clearly articulate the role of Gram Sabha in their Policy / Programme / Scheme.

The role & responsibilities of Sarpanch, Panch and Secretary should be clearly defined. A number of subjects have been devolved on the Panchayats by the various State Governments and Central Schemes. All these subjects cannot be discussed in the meeting of the Village Panchayat or the Gram Sabha. Attention of the Gram Sabha is often attracted to the most pressing challenges and issues at the time of the meeting. Many states, therefore, have formed subject-wise standing committees of the Panchayats to give a focused attention to their subject. Thus, Standing Committees on Agriculture, Health, Education and Water Supply and Sanitation are able to look after these particular subjects devolved to the Panchayats. The Standing Committee will formulate its own plan keeping the broad policy of the State and the local needs in mind. At present, the functioning of the Standing Committees is generally weak. Development of capacities of the elected members of the Standing Committees is needed. Additionally, the attitude of the official members for their better participation in functioning of the Standing Committees is also required.

### **Transparency and Accountability**

Improving accountability is one key pre-requisite for better functioning of the Panchayat. Accountability cannot be enforced if there is lack of transparency in functioning of the Panchayats. Steps need to be taken for improving access to information to the people. One immediate measure can be to make some disclosure voluntarily. Gram Panchayat could be required to publish by writing permanently on suitable walls or permanent display board in its office or in other public places:

- the list of beneficiaries for programmes
- a list of families being assisted
- a list of the rights under various Acts like MGNREGA, RTE, RTI, etc.
- progress of important programmes like MGNREGA every month as per prescribed format
- availability of services by the GPs like dispensary-hours, etc.

This will be apart from building capacities and sensitivity of the Panchayats in supplying information to the people as per their need.

### **Organizing the poor for their participation through Self Help Groups**

Self Help Groups (SHGs) have become powerful community organizations in some states with visibly effective social capital. They have gained space in the social and economic life of villages. The SHG system has also resulted in improvement of the financial situation of ordinary people, especially women, mainly through thrift and credit operations - thus providing security against vulnerability.

This is being achieved in Kerala through the association of Kudumbashree (Federation of the SHGs) with the Panchayats and also in West Bengal by involving the SHGs in Panchayats. Through economic activities, it has also brought in a modicum of economic development in the life of the poor. Their achieving minimum level of income will be crucial for being able to participate freely, which is essential for expansion of democracy. Because of the community-based and democratic functioning of SHGs and perceived efficiency, they have been used as extension mechanism as well as instruments in the delivery of services and implementation of projects. This is often done at the expense of the legitimate authority of PRIs, because officials are comfortable in dealing with interest groups. This tendency has aggravated as officials find dealing with political bodies like Local Governments quite messy and uncomfortable.

### **Women and Panchayats**

The President of India in her Address to the Parliament on in 2009 had mentioned the intent to provide fifty percent reservation for women in Panchayats as women suffer multiple deprivations of class, caste and gender. And, enhancing reservation in Panchayats will lead to more women entering the public sphere.

Accordingly, a Bill to amend Article 243D to provide 50 % reservation for women in seats and also offices of Chairpersons in all 3 tiers of Panchayats was introduced in the Lok Sabha. Presently, out of approx 28.18 lacs elected representatives of Panchayats, 36.87% (around 10 lacs) are women. With the proposed Constitutional (110<sup>th</sup>) Amendment, the number of elected women representatives (EWRs) is expected to rise to more than 14 lacs. A number of steps are necessary for empowerment of women, such as:

- A provision of women component plans in PRI budgets
- Linkages with SHGs in all levels of PRIs.
- Adequate training and capacity building of Elected Women Representatives (EWRs)
- Political parties to put up women candidates
- Women candidates be given opportunity to serve a full term
- Mahila Sabhas be encouraged to facilitate women's concerns and be raised on priorities in meetings of Gram/Ward Sabhas
- Separate quorum for women's participation in Gram/Ward Sabhas.

### **Devolution and Activity Mapping**

Devolution of 3Fs by the States are highly uneven across States. While across the key sectors, the State Panchayat laws mandate a role for the Panchayats, in most cases, the law is ambiguous enough to allow for both decentralized and centralized modes of programme- or service- delivery to co-exist. In some cases, where the states have clearly devolved such responsibilities to the Panchayats, these are either still largely being provided in a top-down manner through the state

civil service machinery or the ability of Panchayats to deliver these is limited because of the deficient financial and administrative powers and, therefore, services continue to fail the citizen. Doubts are often expressed about the capacity and accountability of PRIs. This is a vicious circle since, unless 3 Fs are devolved, the PRIs would not be able to prove their comparative advantage. Empowering Panchayats, with clear roles and authority assigned to different levels through activity mapping, is a strong incentive to build capacity and also to get other prerequisites for effective performance into place.

Clarity on the role and responsibilities of the Panchayats of different tiers is provided by the Activity Mapping which, thus, becomes an important step in the devolution of functions to the Panchayats.

Further, the 2nd ARC in its Sixth Report relating to the Local Governance, has recommended that there should be a clear cut delineation of functions for each level of the local governance. This is not a onetime exercise and has to be done continuously while working out locally relevant socioeconomic programmes, restructuring organizations and framing subject matter laws. It may be noted that the Activity Mapping does not imply that the subjects are devolved totally and wholesale. The Subjects or Sectors need to be unbundled and assigned to the different levels of Government on the basis of clear principles of public finance and public accountability, and above all, the governance principles of Subsidiarity, Democratic Decentralization and Citizen Centricity.

The result of good Activity Mapping would be to clearly identify where competence, authority and accountability lie. Good Activity Mapping would permit higher levels of Government to concentrate more on policy making, legislation, system building, addressing issues of equity & regional imbalances and effectively discharging oversight responsibilities. There is generally a strong case for giving the Gram Panchayats the responsibilities of asset creation, operation, and maintenance, while involving it in the planning process through the Gram Sabha; giving the middle tiers responsibilities for human capital development; and giving higher levels of government the responsibility of policy, standards and monitoring of outcomes.

The first step towards activity mapping is the unbundling of each Sector into services, activities and sub-activities to a level of disaggregation that is consistent with the devolution. For example:

- Rural Education, Health, Drinking Water and Sanitation are Sectors. Education would include services such as Primary, Secondary and Tertiary Education and Vocational Training.
- Services can be further unbundled into activities. For example: Basic education could be unbundled into activities such as:
  - identifying and recruiting persons with appropriate teaching skills
  - monitoring teacher attendance
  - procuring & maintaining an inventory of educational materials & equipments
  - setting up school buildings with adequate drinking water & sanitation facilities
  - repairing & maintaining existing schools and
  - Ensuring an even spread of teachers, wherever necessary.

The detailed Activity Map prepared by Kerala State could be a good reference-point for the Activity Mapping. The States could consider adopting this with suitable modifications taking into account the wide diversity in their size (area & population), devolution of functions, relationship between the 3 Tiers, capacity of PRIs, terrain, climate, etc.

Along with the activities to be devolved, some Institutions would have to be transferred to the Panchayats for maintenance and upkeep. Finally, the Activity Map will need to be issued in the form of a detailed Government Order (GO).

### **Parallel Bodies and the functioning of PRIs**

Policy prescriptions in consonance of economic efficacy led to development of alternative approaches to service delivery, natural resource management and poverty alleviation. These interventions led to development of parallel bodies to Panchayats. In any given gram Panchayat there are nearly ten parallel bodies comprising stake holders committees, user groups, self help groups, missions, DRDA etc. Some of them have statutory backing. Water Users Associations (WUA), School Educating Committees, (SEC) are examples of this variety. Other was creation of Government Orders like Vana Samrakshana Samithis or registered under society's act like Women Self Help Groups.

These bodies were supported as specialized agencies of various line departments for taking up specialized job; and due to the skepticism of policymakers and bureaucrats about the abilities of the local institutions. This skepticism appears to be a product of the rural reality of, illiteracy, poverty and caste ridden society. This was true of pre reform period. The situation has not become better with a greater awareness, literacy, e-governance etc.

Often, Parallel Bodies (PBs) are created for supposedly speedy implementation and greater accountability. However, there is little evidence to show that such PBs have avoided the evils including that of partisan politics, sharing of spoils, corruption and elite capture. 'Missions' (in particular) often bypassing mainstream programmes, create disconnect, duality, and alienation between the existing and the new structures and functions. PBs usurp the legitimate space of PRIs and demoralize the PRIs by virtue of their superior resource endowments, though such resources are available only during the lifetime of schemes. Arguments such as protection of funds from diversion have now weakened since advances in core banking systems, treasury computerization and connectivity can enable instantaneous, seamless and just-in-time transfer of funds directly to the implementing PRI.

Expenditures by PRIs can also be monitored on a real time basis thus doing away with the need for intermediate parallel bodies to manually transfer funds and collect, pool and analyse data on expenditures.

Ministries should, therefore, rapidly phase out such PBs from their schemes. If necessary, the technical & professional component of these PBs could be retained as Cells or Units within the PRIs, for carrying out their technical & professional functions.



**DRDA**

The government in mid-2013 announced disbanding of the three-decade-old District Rural Development Agency (DRDA), an organ responsible for overseeing implementation of anti-poverty programmes of rural development ministry.

The agency will now be rechristened and it will perform its role under zila parishads, the local elected bodies at the district level. DRDAs, which were set up as independent societies in 1980, would be attached and function as part of the zila parishads.

As of April 1, 2014, the DRDAs as constituted today under the Society's Act will not exist. The decision to disband the DRDA was taken on the recommendation of a committee constituted under the chairmanship of V Ramchandran with the objective of strengthening and professionalising DRDA to meet the challenge of rural development in the present context. Ramchandran panel had submitted its report in March 2012.

**PRI finances**

Over the last decade the own sources of revenue of PRIs have been less than ten percent of their expenditure. In contrast, more than 90 percent of their expenditure has been financed through CSS, ACA or other government grants; the major recipient of this source being the Gram Panchayats.

Data from the Thirteenth Finance Commission shows that Panchayat's own sources of revenue are very meager. 5 out of 25 states reported 'nil' as own sources of revenue of the Panchayats. Only in the three states – Goa, Kerala and Haryana – did the Panchayats report more than Rs. 100 per capita coming out of their own revenue-sources.

**Constitutional Provisions on Panchayat Finances**

The taxation power of the Panchayats essentially flow from Article 243H, which reads that "the Legislature of a State may, by law

- authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits
- provide for making such grants-in-aid to the Panchayat from the Consolidated Fund of the State; and
- provide for constitution of such funds for crediting all moneys received, respectively by or on behalf of the Panchayat and also for the withdrawal of such moneys there from as may be specified in the law."

Article 243-I of the Constitution mandates setting up of State Finance Commission (SFC) with the objective of reviewing the financial position of the Panchayats and making recommendations as to the principles which should govern the following:

- distribution between the States and Panchayats of the net proceeds of the taxes, duties, tolls and fees,
- determination of taxes, duties, tolls and fees to be assigned to Panchayats,
- grants-in-aid to the Panchayats, and
- measures needed to improve the financial position of the Panchayats.

The 2nd Administrative Reforms Commission (ARC), in its 6th Report titled 'Local Governance—An inspiring journey into the future' has drawn the following broad conclusions on Panchayat Finances:

- Panchayats are heavily dependent on grants from Union and State Governments.
- A major portion of grant from the Centre and States is scheme specific. Panchayats have limited discretion and flexibility in incurring expenditure.
- In most of the critical Eleventh Schedule matters like primary education, healthcare, water supply, sanitation and minor irrigation even now, the State Government is directly responsible for implementation of the relevant programmes and hence expenditure.
- Internal resource generation at the Panchayat level is weak. This is partly due to a thin tax domain and partly due to Panchayats' own reluctance in collecting revenue.
- Overall, a situation has been created where Panchayats have responsibility but grossly inadequate resources.

There is an imperative need for an effective fiscal decentralization so as to ensure that the finances available with the Panchayats match the transferred functions based on activity mapping for the devolution of 3Fs.

Further, there is a need to re-orient the regulatory and policy regime and give the Panchayats more tax-handles as also to ensure that the taxation powers given are effectively exercised since generating own revenue is the best way to increase autonomy, efficiency, credibility & accountability of Panchayats.

The Twelfth Finance Commission, on the basis of some studies, has suggested measures such as making it obligatory for PRIs to levy certain taxes, prescribing minimum revenue collection, levy of user charges, higher efficiency in tax collection, economy in expenditure and transparency in functioning.

### **Central Finance Commission (CFC) Devolutions**

The 13th CFC – has devolved Rs.63,150 crores on the PRIs over the period of next 5 years. The 13th FC has linked devolution to a share of divisible tax pool instead of fixed grants. The Commission has also allotted a performance grant subject to the fulfillment of stipulated conditions which are expected to bring about considerable improvement in the working of the Panchayats.

### **Panchayats and service delivery**

In case of service delivery, Panchayats have the responsibility to deliver some services like drinking water supply, local roads, lighting of streets on their own and delivery some of the services as entrusted to them by State/Central Governments in form of several schemes/programs. In the first case, again the lack of resources reduces their capability to provide any locally planned quick solution to the people's need. In case of second they need to work within the framework decided by State or Central Government. Panchayat's scope of functioning is still very limited in nature thus not much change has been granted responsibility to recruit Para-teachers and establish and maintain schools but in this case also a parallel bureaucratic departmental structure exists which work independently and not accountable to Panchayats.

**Current Status of Panchayat Infrastructure**

A large number of Gram Panchayats in the country do not have even full time Secretary. Around 25 percent of the Gram Panchayats do not have basic office buildings. A large no. of elected representatives of PRIs are not adequately educated, and know little about their roles & responsibilities, programmes, procedures, systems.

Often the Panchayat Functionaries for want of good, relevant & periodic training are not able to perform their functions. Elected representatives in particular need to be trained within 3 months of their election in their functional domain.

Although all the District and Intermediate Panchayats are connected with computers, only around 20% Gram Panchayats reported to be having computing facility. In some States, Village Panchayats do not have computing facility. Gujarat, Kerala, Tamil Nadu and West Bengal have done good work by providing computing facility to almost all the Gram Panchayats.

Information Technology (IT) needs to be primarily positioned as a decision making support system for Panchayats themselves—a tool for transparency, disclosure of information and social audit, a means for better and convergent delivery of services to citizens, improving internal management and efficiency of Panchayats, capacity building of representatives and officials of Panchayats, and a medium of e-procurement.

**Have the states implemented 73<sup>rd</sup> CAA provisions?**

The mandatory provisions specified in the Constitution have been implemented in the last two decades. All States (excluding Jharkhand, due to a court case) held regular elections through the State Election Commissions. All the States have implemented reservation for women, SCs and STs bringing almost 1.6 million representatives from these groups into elected positions in the Panchayats, making the Panchayats the nursery of future leadership. State Finance Commissions have been constituted and in many States, some of their recommendations have been acted upon. All the States (excluding Uttarakhand & Jharkhand) have constituted District Planning Committees and most have initiated decentralised planning processes.

However, the implementation of Constitutional provisions – in which were left to the discretion of the States – varies to a great extent. The most important aspect in strengthening of the Panchayats is the devolution of 3Fs (i.e. functions, funds and functionaries) related to the matters listed in the Eleventh Schedule of the Constitution. Another is the enablement of their function of preparing and implementing bottom up participatory plans for economic development and social justice. The States vary a great deal in both these respects. While some States have forged new paths, others are still to catch up. Of course, many States are trying out new approaches and mechanisms, and making corrections along the way.

**Why are the Panchayats are not delivering in many States**

**Lack of adequate devolution:** Many States have not taken adequate steps to devolve 3Fs to the PRIs to enable them to discharge their constitutionally stipulated function. Further, it is imperative that the PRIs have resources to match the responsibilities entrusted to them. While SFCs have submitted their recommendations, not many few States have implemented these or taken steps to ensure the PRI's fiscal viability.

**Excessive control by bureaucracy:** Wide powers of suspension and dismissal have been vested in the State bureaucracy, placing the PRIs in a position of disadvantage vis-a-vis even middle rung functionaries of the State Governments. In some States, even Gram Panchayats have been placed in a position of subordination: Gram Panchayat Sarpanches have to spend extraordinary amount of time visiting Block Offices for funds and/or technical approval. These interactions with the Block staff office distort the role of a Sarpanchs as elected representatives.

**Tied nature of funds:** This has two implications. The activities stated under a certain scheme are not always appropriate for all parts of the district. This results in unsuitable activities being promoted or an under-spend of the funds.

**Overwhelming dependency on government funding:** A review of money received and own source funds shows the overwhelming dependence of Panchayats on government funding. **Reluctance to use fiscal powers:** An important power devolved to GP is the right to levy tax on property, business, markets, fairs and also for services provided, like street lighting or public toilets, etc. Very few Panchayats use their fiscal power to levy new taxes. The argument given by Panchayat-heads is that it is difficult to levy tax on their own constituency, especially when they live within the community

**Status of the Gram Sabha:** Empowering the Gram Sabhas could have been a powerful weapon for transparency, accountability and for involvement of the marginalized sections. However, a number of the State Acts have not spelt the powers of Gram Sabhas nor have any procedures been laid down for the functioning of these bodies.

# Companies Bill 2012

With the passage of the Companies Bill, 2012, by Parliament on August 8, 2013, after 57 years, an overhauled company law has been made based on the recommendations of the expert committee under the chairmanship of JJ Irani (2004-05).

In the current national and international context, there is a need for a simpler legislation as 1956 law was cumbersome and the mandate of the Irani committee was to review the existing legislation and provide suggestions to simplify the current law, while at the same time bring it abreast with the needs of corporate India. Highlights:

**One-person company:** This new concept permits an individual to organise his/her business by setting up of a private company with only one shareholder. This form of a company is entirely new to India, though prevalent in other jurisdictions, and would facilitate small entrepreneurs to join the organised sector with such one-person companies.

**National Financial Reporting Authority:** the new Act proposes to have an apex authority to formulate accounting/auditing policies and standards and their enforcement and also to regulate the relevant accounting professions. It further aims:

- To monitor and enforce compliance with accounting standards
- To oversee quality of service by audit firms
- Can investigate members & firms registered under Chartered Accountants, 1949
- To have powers available to civil court under CPC

**Governance:** The new Act proposes to codify the requirements for appointment of independent directors, much beyond the current requirements stipulated for listed companies. Further, the role of the audit committee has been enlarged and duly codified as has the role of directors in companies. It is also proposed to permit holding board meetings through electronic means – a long overdue requirement in the current global context. All these new provisions are positive and would help enhance governance standards across India Inc. Also, it seeks to restrict compensation payable to independent directors by prohibiting issuance of ESPs to such independent directors. The first time we are seeing the term of independent directors' and secondly they have very clearly defined the roles and responsibilities. The maximum number of directors in a private company has been increased from 12 to 15, which can be increased further by special resolution.

**Corporate social responsibility (CSR):** This much-debated new provision mandates that companies with a certain size or with a certain minimum profit should constitute a specific committee of the board (with at least one independent director) to undertake CSR activities on a mandatory basis. Local areas where the company operates need to be given preference for such CSR spend. While the rationale of the government to encourage India Inc to increase their CSR activities is laudable, the mandatory requirement for CSR spending would appear to make this provision akin to a tax. Considering that past experience has shown that the government's own social spending has suggested enormous leakages, it is yet to be seen whether corporate CSR spending will succeed and reach the ultimate intended beneficiaries.

**Class-action suits:** The new Act seeks to institute a new provision for class-action suits by a specified number of shareholders/depositors against the company/its directors on account of mismanagement, fraud, etc. This is an important provision that would enable such stakeholders to seek suitable protective action against company/directors and also include claims for damages.

**Special courts:** It is proposed to now have special courts to deal with all violations under the new Act. This provision could be an effective mechanism to fast-track addressing violations under the new Act provided such special courts are set up in and, importantly, appropriately staffed to decide matters effectively.

While the new Act has 470 sections as compared to over 650 sections in the erstwhile law. However, in addition to the 470 sections, there is a considerable part of the new law (over 390 provisions), where the government would need to prescribe requirements or notify rules.

It will take about a year to come into force.

The new law will empower small shareholders, smoothen corporate governance and compell large companies to spend more on social welfare under the broad head of corporate social responsibility (CSR). It imposes checks and balances to prevent frauds, make corporate board room decisions transparent and hold auditors and directors more accountable. It will bring India's corporate governance framework in line with the changing business environment of the 21st century.

The focus of the bill is to enhance transparency and ensure fewer regulations, self reporting and disclosure. At least a third of a company's board should comprise of independent directors and at least one of the board members should be a woman, according to the new law.

All companies will have to move to a uniform financial year ending March 31. Only companies, which are holding or subsidiary arms of a foreign entity requiring consolidation outside India, can have a different financial year with the approval of Tribunal.

The new legislation has more provisions to guard the interests of employees. It mandates payment of two years' salary to employees in case a company shuts operations.

It will allow shareholders' associations to take legal action against companies' promoters and management through 'Class Action Suits' — a form of lawsuit where a large group of people collectively bring a claim to court. This acts as a deterrent to carry out a fraud by tailoring and influencing board decisions only to suit promoter and management interests.

The debut of class-action suits in India is being seen as a positive move as it empowers small shareholders to seek answers in case they feel that a company's management or its conduct of affairs is prejudicial to its interests or its members or depositors. And, the proposed law also puts



in place a more stringent regime for companies when they seek deposits from public. This will put a check on the menace of vanishing companies and fly-by-night operators.

In a novel move, the bill also makes it mandatory for company boards to have a woman representative, something that will give a greater representation to women in corporate decision-making.

It also makes it mandatory for firms to rotate auditors within a stipulated time – frame – a practice which public sector enterprises and banks currently adopt to ensure that the auditors and management do not get too close. Auditor to report any offence involving fraud to the Central government. Penalty of Rs. 1 lakh – 25 lakh in case of non-compliance.

### **SFIO**

Corporate fraud investigation body SFIO will have the power to carry out arrests in respect of certain offences of the Bill which attract the punishment for fraud. Those offences shall be cognisable and the persons accused of any such offence shall be released on bail subject to certain conditions provided in the relevant clause in the Bill. The Serious Fraud Investigation Office (SFIO) gets statutory status in line with the recommendations of the Vepa Kamesan Committee on strengthening the SFIO. The SFIO is under the administrative control of the Corporate Affairs Ministry.

The Serious Fraud Investigation Office (SFIO) is investigating 63 chit fund companies for alleged violations of the Companies Act. The Corporate Affairs Ministry, under which SFIO functions, looks into violations of Companies Act by firms. While cases of fraud and cheating by the chit fund companies are under investigation by police authorities and the Securities and Exchange Board of India (Sebi), in respect of 63 such companies, SFIO is also investigating matters relating primarily to violations of Companies Act, 1956. All the firms in the country are registered under the Companies Act 1956 and are required to comply with various norms as mandated by the legislation.

# Companies Law Gets A Comprehensive Makeover

The Rajya Sabha on Thursday passed the Companies Bill, 2011, completing the legislative process for the ambitious recast of the 56-year old law. The Bill has already been passed by the Lok Sabha and now needs just the sanction of the President to become a law. ET takes a look at some of the important concepts of the bill.

## Mandatory Spending on CSR

Companies have to spend at least 2% of its average net profit during three preceding years on Corporate Social Responsibility (CSR) activities

Amount has to be preferably spend near or around the areas the company operates

## Greater Responsibility of Auditors

Auditors to be appointed for 5 years, to be approved every year  
A person can audit a maximum of 20 companies

Auditors can face imprisonment up to one year for violating relevant provisions and pay damages for incorrect or misleading statements

## More Teeth to Independent Directors

Listed cos must have at least one-third independent directors

An independent director cannot hold more than two consecutive terms of 3 yrs

One independent director can represent small shareholders in listed cos

## More Teeth To SFIO

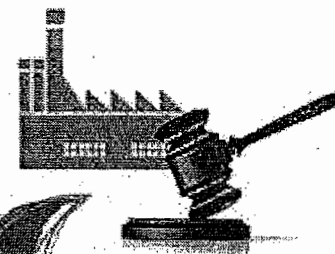
Statutory recognition to the Serious Fraud Investigation Office

It will have powers to arrest offenders

Once SFIO begins to investigate a case no other agency can be involved

## Framework For Faster Winding Up, Compromises And Arrangements

Cos law tribunal to have powers to sanction compromise among stakeholders



## NEW LAW IN NUMBERS

New bill is highly consolidated with 470 clauses down from earlier 658

The bill prescribes 33 new definitions 7 schedules against 16 in the old bill

## WHAT NEXT

The bill will go for President's assent

## NEW IDEAS IN THE COMPANIES BILL

One-Person Company  
AN individual can set up a 1-person company

Class Action Suits  
MEMBERS or depositors can file class action suits

Limits On Subsidiaries

INVESTMENT cos cannot have more than 2 layers of subsidiaries

GOVT can prescribe limits on layers of subsidiaries for other cos as well

NO limits on lateral subsidiaries

## Sweat Equity After Passing Resolution

National Company Law tribunal

SEPARATE tribunal to deal with disputes such as winding up, amalgamations, rehabilitation, reduction of share

Employee Protection In Failed Companies  
MUST pay 2 yrs' salary on winding up of ops

RIGHTS of workers to supersede those of secured creditors

Mandatory Women Directors

CERTAIN class of companies should have at least one women director on board

Fraud

FRAUD & wrongful gain has been defined for the 1st time