

Analysis of data – Law Commission Report

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SLUMFREE MUMBAI

Right to housing has been declared to be a basic right for all people, and yet, -particularly in the large urban centers,- it has been found almost impossible to implement this right meaningfully. I am reasonably familiar with the situation in Mumbai as also the frauds masquerading as solutions towards this problem. I shall attempt here to offer a tentative framework which could perhaps act as a starting point for this exercise. I know about Mumbai, and am therefore focusing on a solution for this City, but this could have some pointers to solutions in other urban centers as well. There will be flaws in the arguments advanced here; but I would urge the reader to think of changes which are necessary to remove the weaknesses in the proposal offered here. Perhaps we can use this to begin a journey towards finding a viable solution.

Let us start with an attempt to define the issue. It is evident that a significant inflow of people will keep coming to Mumbai and other urban centers, until we address the issue of providing livelihoods to people in the rural areas. In that case, we have to assume that cut-off dates, or any solution to restrict people coming to cities is not an option; these would be illegal and also impossible to implement. There have been various attempts to remove the problem of slums in Mumbai since 1971, but the only consistent result they have obtained

is an exponential increase in the slums. The conditions in which the slum dwellers live are dehumanizing, and these become big sources of support for crimes and corruption. The Slum Rehabilitation Scheme was brought in Maharashtra by the Shiv Sena –BJP in 1997 and basically, it sought to depend on the milk of human kindness of private builders to ensure low cost houses for the poor. To implement the scheme, a body called the Slum Redevelopment Authority (SRA) was set up with very vast powers. SRA was given the powers to declare any area as a Slum, and a Slum Redevelopment Scheme could be started there with the concurrence of 70% of the slum dwellers. SRA can take over any land and has virtually been given unchecked powers to deliver this laudable social objective. Traditionally, it has been looked after by the Chief Minister. The scheme is usually initiated by a builder. He has to show the concurrence of 70% of the slum dwellers residing in a location. The concept was that all slum dwellers who were staying in Mumbai before 1995, would be given free housing of 225 square feet (equal to 21 Sq.Mtr.) and an equivalent area could be built and sold by the builder to offset the construction of the free houses to be given to slum dwellers. If the land belonged to the Government it was given free, and if it belonged to a private person, some compensation would be given to him. The private builders do not have any significant milk of human kindness and are more often driven by vile greed. Hence the scheme has failed to make any significant contribution to the problem of housing for the poor. The scheme suffered from a few fatal flaws. First it promised a free house to people based on an arbitrary date on which they were in the City, which evidently lead to a mad scramble to become eligible for the free house. These tenements are worth 20 lacs to 2 crores at present prices, depending on the area![\[1\]](#) In any urban city, property prices are basically a function of land prices and vary largely depending on the area. On the other hand, construction cost variation is not really area-linked. For low cost housing the construction cost is likely to be around 20000 rupees per sq.mtr. . Thus the

equation works in a manner that the developer invests in the construction cost of two tenements-one to be given free for the slum dweller,-and the other which he is free to sell. He invests about 8.4 lacs[2] and could sell the property which is his share for 21 lacs to 210 lacs! It is obvious that the main contributor for prices for houses is the land price. The Slum redevelopment policy does not factor the question of land prices at all. Many other policies,-the market redevelopment policy, the Caretaker Policy and so on,- are designed without any reference to the hugely different land prices. Thus they are designed for arbitrariness and corruption. These invite the greed of human beings. When property prices were much lower in the first 15 years from the policy, the scheme did not attract too many takers. As the property prices have skyrocketed in the last few years, SRA has attracted all the greedy criminals to adopt a variety of ways to exploit this. If a slum dweller who came to Mumbai say in 1996 (this year keeps getting pushed forward) can change his data to prove he was in Mumbai a year earlier, he will be entitled to a free house worth 21 to 210 lacs! And what about the Citizen who came in 2001? He is expected to live in Mumbai in a slum, and so their tribe will grow. Some people have suggested that Indians who are not 'Mumbaikars' must be banned from staying in Mumbai. This is against the Constitution and is neither feasible nor desirable. It is also an irony that the same people who suggest such hair-brained policies, will welcome foreigners to come to Mumbai! Such approaches cannot work. The Courts in the meanwhile pronounce loftily that shelter is a basic right for everybody. At other times, they authorize demolition of slums! Overall the Courts are not solving any problems, only complicating them. With the present SRA schemes, the builders, politicians, officials and mafia have been able to earn fantastic amounts if they can increase the number of fake slum dwellers, take over Public lands by having even one hut there, coercing slum dwellers into acquiescing in their scheme and so on. Well known celebrities too have had their names registered as slum dwellers! By

introducing fake names, appropriating Public lands where there were no slums, canceling the names of the actual slum dwellers and so on, a great bonus of thousands of crores have been earned. Criminal complaints have been filed for forgery, intimidation, criminal assault, bribery, appropriation of Public lands. These cover almost all the sections of the Indian Penal Code with the Anti-Corruption Bureau, and various police stations across Mumbai. The State Government has officially taken a position that no Police investigations are taking place as required under the Criminal procedure Code since it would affect the morale of its officers! The State is openly implementing the Protection of Corruption Act.

Having looked at the present scenario, is there a solution which can address the right of people to get a house in Mumbai or such other Urban centers? I believe it is possible to achieve this and am suggesting a possible solution. Perhaps it could be the starting point for a rational search for a resolution. First let us look at the flaws in the present scheme. Any process, which seeks to confer ownership of property worth 21 lacs to 210 lacs gratis will give rise to dishonesty amongst Citizens and will be seen by those who do not get this largesse as unfair. It will create the desire to get this by any means. Since it has no rational basis for the profit of the developers, it tempts them to finding ways of illegally increasing their profits to absurd levels. This combination of greed of developers and Citizens is an ideal and fertile ground for spread of lawlessness and corruption. This in turn leads to a vested interest in this arrangement and its continuance amongst the Public servants, politicians and the mafia. We have arrived at a good recipe for designing corruption, and the attendant illegal activities. Let us first look at what I feel are the fundamental fatal flaws in the assumptions of the present Slum Rehabilitation Schemes. Firstly while we recognize the right of a Citizen to have shelter, it does not imply that this means the right to own a house for free. Secondly, as designed at present it is left to

private builders to execute, with no rational basis for the formula of this supposedly 'one for one free' scheme. Land as we all know has varying values depending on location, whereas construction cost variables are much lower. Also, any scheme which looks at arbitrarily conferring special rights on those who came before a particular date, is refusing to look at the issue of migration from rural to urban areas being a fact of life. Another aspect is that it discriminates against many young middle class persons, who chose not to stay in a slum, and work for most part of their lives to pay for a home.

Starting from identifying these issues, I am making the following assumptions to attempt developing a solutions:

1. We need to ensure shelter, not ownership of property.
2. Citizens in urban areas have some capability of paying and must be made to pay

for shelter. The fact is most families in slums are presently paying over 1000 rupees each month to the slumlords for their meager water and electricity.

3. In Mumbai,- and other urban centers,- poor will migrate to the cities. Hence any solution will have to think of those who come in future.
4. We need to build enough shelters so that a scarcity does not prevail.

My basic assumption is that if we provide shelters for about 1 crore people in Mumbai in the next five years, there would be no scarcity. If we build 20 lac tenements of an area of 23 sq. mtrs and 1500 dormitories of 1500 sq. mtrs. with a capacity to house 500 people each, we could meet the housing requirements for the next five years. This would take care of the needs for shelter for about 1.01 crore people. Scarcity of shelter could become history. If the average tenement houses 5 people this would mean a capability of housing 100 lac people in

tenements and 7.5 lac people in dormitories. Those who wish to stay in tenements could be asked to give Rs. 5000 as a refundable deposit and a lease rental of Rs. 1000 could be charged monthly, with an escalation of Rs. 100 each year for a period of 10 years. At the end of 10 years, people must be told that the lease conditions would be renegotiated. Some would hopefully move out into owned flats. It should be possible to maintain these tenements at Rs.200 per month which would leave a tidy sum which could be used to build more facilities ever year.

For dormitories people could come every evening and for 10 rupees a night, be given a covered shelter to sleep with a bed, toilets and a facility for a bath. At a cost of Rs.10 per person, it would be possible to pay for the maintenance cost of the dormitories A concept of this nature of providing shelters for the homeless exists in Countries like the US as well. Who should undertake this? The State must undertake this, and that is its job. It could get the construction done on contract basis, give the shelters to Citizens, maintain and collect the lease rents. So far, this is sounding like expressions of fond desires. Please read on with some patience. The total land area required for this would be 22.5 sq. kms.,- on an assumption of a FSI of 2.-spread over Mumbai. Presently according to most data slums are spread over a much larger area. The cost of construction,- assuming a reasonable Rs. 20000 per sq.mtr.,- will come to about 72375 crores. I am presenting this data in a tabular form below:

| | Numbers | Total Builtup Area | People accommodated | Construction cost @ 20000 per sq. mtr. In crores |
|-----------------------------|---------|--------------------|---------------------|--|
| Tenements (21 sq.mts. each) | 20 lacs | 420 lac sq. mtrs. | 100 lacs | 84000 |

| | | | | |
|--|-------------------------------|------------------------|------------|--------------|
| Dormitories (1500 sq. mtrs. Each) | 1500 for 500 persons each. | 22.5 lac sq. mtrs. | 7.5 lacs | 4500 |
| Total | | 442.5 lac sq. mtrs. | 107.5 lacs | 88500 crores |

At 2 FSI 482.5 lac sq.mtrs. would require 241.25 lac sq.mts. ie. 24.125 sq.kms. By most accounts the slums are spread over 10% of the 437 sq. kms. of Mumbai. This means that presently about 43 sq. kms. are already covered by slums. Thus the land is already available and occupied by slums. The projects could implemented in about half the present area where the slumdwellers are staying. Thus they could be close to the current dwellings. The dwellings could be given to people at a rent of Rs. 1000 per month and a deposit of Rs. 5000/-, for a ten year lease, with an increase in rent of Rs. 50 each year. The dormitories could be offered for Rs. 10 per day. One argument against this proposal is that Government cannot collect lease rentals. It can then be argued that Government is incapable of collecting taxes.

The State must undertake this project and get the construction done through contractors. So called Public-Private partnerships will only lead to a one-way transaction; the Public gives and the private developers take. The questions that naturally come to mind are:

1. Why will it not get hijacked by the affording class moving in?
2. Where will the money come from?

There are a large number of supposed low-cost houses which are used only by the rich, by combining the tenements. To the first question i think we need to look at designing the tenements in such a manner that they are for those who are

presently prepared to live in slums and are willing to forgo some aspirational needs. A private toilet is a strong aspiration for most home owners. The tenements built under such a scheme should have only common toilet blocks, be typically four storeyed-ground plus three and have no lifts. The tenements would be leased by Government, and no alterations of any kind should be permitted in the tenements. No painting or any change should be permitted and a coat of whitewash would be applied by the State every alternate year. Incidentally, the chawls in Mumbai have precisely these features, and have housed many people. I believe by refusing to allow all the aspirations of upward moving social classes, it would be possible to ensure it does not get hijacked by those who can afford to buy flats. There may also be other means of ensuring that the tenements cannot be combined. Refusal to confer ownership rights, and a strict adherence to laws,- which could even be specially framed to address the needs of such a scheme,- could make it possible to provide shelter in such abundance that nobody needs to be without shelter. Also, we need to enforce the conditions of lease very seriously, just as private owners of property do presently. We have the land, and it appears possible to provide for shelters for anyone who needs it in Mumbai. However, where will the money come from? I am suggesting one source which has been allowed to bleed Public revenue without any legal or moral justification.

Where is the money for this?

Using RTI i have obtained information from the City and Suburban Collectors that 650 acres of land in the island city and 620 acres in the suburbs have lessees whose leases have expired long back and they are being allowed to continue illegal occupation paying the original lease rents. The total

lease rent being paid by nearly 700 people occupying 1270 acres of land, without any legal right to occupy these Public lands is about 6 crores. If we get the right lease rent for our lands in Mumbai, we could get an additional 2750 crores. Since Maharashtra is over 700 times the size of Mumbai this figure is likely to be over 30000 crores for the whole State.. If we get our due revenue of even 20000 crores annually, we could execute the plan for housing one crore people. In the first 5 years we would need about 88500 crores, and our revenue could be about over 20,000 crores annually by getting our rightful share of revenue. The property belongs to us, and is presently in the hands of some lessees illegally, because of connivance and negligence of the Government. A few examples of these:

| | | | | Lease | Period | Expired |
|--|--------------|--|----------|------------------|--------|---------|
| | | | Area | Rent paid | years | In |
| | Area | Name of lessee | Sq.mtrs. | Rupees | | |
| | Colaba | Sterling Investment Corporation | 2217 | 1 | 21 | 1959 |
| | Mazgaon | Wallace flour Mills | 29345 | 76.81 | 99 | 1992 |
| | Mazagaon | Shapurji Palonji | 25507 | 1644.54 | 99 | 2002 |
| | Mazgaon | Shivdas Chapsi | 10047 | 6.57 | 99 | 1972 |
| | Byculla | Simplex Mills | 7836 | 48.81 | 99 | 1983 |
| | Malabar Hill | Prithvi Cotton Mills | 1132 | 3.53 | 99 | 1986 |
| | Dadar | Bharati Cine Enterprises | 3470 | 546.54 | 50 | 1976 |
| | Lower Parel | National Rayon Corporation | 4427 | 327.21 | 21 | 1985 |
| | Bandra | Gauri Khan & Shahrukh Khan | 2446 | 2325 | 30 | 1981 |

| | | | | | | |
|--|--------|-------------------------|-------|--------|----|------|
| | Bandra | Mrs. Gracy Martha Lopez | 27330 | 1400 | 30 | 1981 |
| | Juhu | Sun 'N Sand Hotel | 1036 | 1004.4 | 2 | 1970 |
| | | — | | | | |

I had filed a complaint with the Chief Secretary of Maharashtra in 2005. He argued that it was difficult for them to get favourable Court orders in these matters. I pointed out to him that the Government regularly acquires lands owned by Citizens even when Citizens do not wish to part with their lands, and hence the Government's claim that they cannot acquire their own land back was untenable. The solution lies in Citizens across the spectrum putting pressure on the political establishments of all parties to get us our rightful dues and resolve the issue of housing and slums. It can be done, and could be a fantastic opportunity for all Citizens. This matter can unite all Citizens, and give us a solution to our housing problems and after a few years,- give us a stream of additional revenue to improve our infrastructure. Similar schemes could be put in place in the other cities of Mumbai.

In December 2012 the Government has offered to sell the lands to those whose leases have expired at an effective discount of around 90%! I have filed a PIL in 2013 in the Bombay High Court against this attitude of the Government to give away people's lands. Instead of backing my plea to recover market rents and increase its revenue legitimately due to the citizens is opposing me!

This proposal appears to be a feasible if there is political will. If Citizens and civil society organizations pursue it with consistence, it can happen. We do not aspire to be a Shanghai,- but we can certainly become a humane Mumbai.

shailesh gandhi

Mera Bharat Mahaan..

Nahi Hai,

Per Yeh Dosh Mera Hai.

Note: 1 sq. mtr.= 10.7 sq.ft.

1 acre= 4087 sq. mtr.

[1] The value of a residential property of 21 sq.mtrs. in Mumbai will be in the range of 100000 to 1000000 per sq.mtr. ie. form 2.1 million to 21 million rupees for the flat.

[2] At a construction cost of Rs. 20,000 per sq.mtr.the construction cost of one tenement will be Rs. 4.2 lacs, thus for two tenements the cost would be Rs.8.4 lacs.

Satyendra Dubey

December 10, 2003

Satyendra Dubey was a 31-year-old IIT Kanpur civil engineering graduate working with the National Highways Authority of India and assigned to the prime minister's pet project, the Golden Quadrilateral, to connect the four corners of India. He was posted at Koderma, Jharkhand.

On discovering rampant corruption and poor implementation of work in the section where he had been posted, Dubey wrote to the prime minister exposing the irregularities. In the letter, received by the prime minister's office on November 11, 2002, he had named some companies. Fearing retribution, he had requested that his name be kept secret.

But PMO officials circulated his letter along with details of his identity among the bureaucracy. The number of notings on the file bear witness to this (*The Indian Express*, November 30, 2003). While the file was making the rounds, not one official thought about the threat Dubey was being exposed to.

Why officials in the PMO did not heed Dubey's request for anonymity is not known. But just over a year later, on November 27, 2003, he was murdered in Gaya, Bihar.

This is a clear signal to everyone that honesty in India has only one result – failure. An honest citizen must be prepared to forfeit one's life.

Satyendra Dubey's IIT status is being talked about for two reasons:

- IITians will band together to generate support for one of their kin.
- National and international attention is attracted by this name.

When the weakest person is hurt, our voices should rise the highest; and IITians are not the weakest.

But the main issue is not about Dubey having been an IITian, and therefore having had the choice of a better job or country.

When a citizen files a complaint or brings some wrongdoing before the local police, he believes that the police will protect him. The minimum expectation of a citizen from the

State is of a reasonable level of safety and protection for his body and life. The State is expected to ensure this at all levels.

The single aspect that differentiates Dubey's case is the fact that the PMO gave out details of his identity in spite of a specific request to the contrary.

The office of the highest executive authority in the country not only failed to provide him security, it almost seems to have commissioned his murder.

It is nobody's case that it is the prime minister's act; however, all of us have a reasonable expectation that the prime minister would act against the erring officials in his office immediately.

Else, we can only expect a powerful criminal response at all other levels. We would then have to give up even a pretension to being a nation with enforceable laws and a Constitution.

We cannot be party to a State which expects a citizen to be a martyr if he wishes to counter dishonesty.

We can persuade the next generation to stay in India only if they feel they can live safely and honestly.

The angst against Satyendra's murder must ensure a quick change for a better India. He is a symbol of an urge for an honest and ethical India. He has done more than his share; we must carry his ideals forward; otherwise we fail India and ourselves.

The best tribute can be a Whistleblower's Act. Most people are badly hurt by the corruption in our country. This is the time for them, along with various bodies and associations, to get together and initiate a movement for a more honest society and good governance.

Shailesh Gandhi is chairman of the IIT Bombay Alumni

Association.

RBI

Cobrapost Exclusive

Public Money for Private Profits: How the Public Sector Banks Bankroll such Moribund Companies as IVRCL to Play Havoc with both on Public Life and Money

By Shailesh Gandhi

New Delhi: Recently, an under-construction flyover collapsed in Kolkata on March 31, 2016 killing 27 people and injuring 80. The din the collapse raised, with politicians shamelessly throwing muck at each other, overshadowed some dark truths about India's public sector banks. Undoubtedly, IVRCL, which was constructing the flyover, has to be blamed for the shoddy construction quality and resultant loss of lives, but the public sector banks are no less culpable of financing the death warrant of those who died in what one of its top functionaries declared to be an "Act of God". Only six months before the collapse, a consortium of 18 banks led by IDBI had bankrolled the debt-ridden company by buying a majority stake in the almost insolvent company to square off its huge debt of Rs. 10,000 crore with accumulated losses of Rs. 2,000 crore by the end of the second quarter of the fiscal year gone by. Instead of recovering the debt by attaching its assets, these banks had extended a much-needed lifeline to the moribund company in what is known as strategic debt restructuring (SDR) which the RBI permits but curiously does not monitor. The consortium of lending banks had, in fact, approved a corporate

debt restructuring (CDR) package of Rs 7,350 crore for the Hyderabad-based company in June 2014. The package included a restructuring of term loans, working capital loans and fresh financial assistance. However, the package could not revive the company and the consortium took the SDR route.

Banks raise money by soliciting deposits from the general public or using other instruments available to them and use this public money to fund various projects of the corporate or business entities after due diligence. If a borrower fails to repay the money, a bank's primary concern is to ensure its profitability and safeguard the interests of its depositors. Until 1994, this was the prevailing view of the banks and the Reserve Bank of India (RBI). RBI had by its circular DBOD No.BC/CIS/47/20.16.002/94 dated April 23, 1994 directed all banks to send a report on their defaulters, which it would share with all banks and financial institutions (FIs), with two objectives:

1. To alert banks and financial institutions (FIs) and to put them on guard against borrowers who have defaulted in their dues to lending institutions.
2. To make public the names of the borrowers who have defaulted and against whom recovery suits have been filed by banks/FIs.

However, with the liberalization and unshackling of India's economy, a paradigm shift occurred in this shaming-the-defaulter policy. It is well known that there exists a corrupt and powerful nexus of bureaucrats, bankers and politicians which always works in the interest of big corporate borrowers. Gradually but steadily, a case was made out that if large borrowers fail to repay their debt, the lending banks must make a business decision for the revival and sustainability of the business! This flawed idea was propagated as the nation was made to believe that governments or their institutions are not capable of taking such business decisions and it is incumbent upon lending banks to help revive their ailing

borrowers, and to enable the lending institutions to take this call, instruments such as CDR and SDR were put in place by the RBI to allow defaulting corporate borrowers to laugh all their way to the bank. This is exactly what was done in the case of IVRCL, and there many big corporate borrowers who have been extended this facility.

From past experience, every banker worth his salt knows that once a business becomes a non-performing asset (NPA), the chances of recovery are slim. Thus, in order to do proper accounting of bad debts, banks would write off the borrowed money, and interest thereof, in a period of three years. It is interesting to note that from 1993 to 2009, the NPA figures fluctuated between Rs. 39000 crore and Rs. 56000 crore. In August 2001, the RBI set up a CDR Cell. CDR is nothing but [reorganization](#) of a company's outstanding debt. Under this arrangement, a borrower company is allowed more time to repay the debt, and the interest rates are cut to a minimum so as to reduce the burden of debt on the company. It is presumed that this would help a company to increase its ability to meet its obligations and come out of the red. Some part or whole of the debt may be written off by [creditors](#) for equity in the company. While CDR proved to be a useful device for the corporate defaulters to bolster their losing businesses with infusion of fresh funds at much cheaper rates without fear of being declared defaulters and recovery suits filed against them, this also allowed banks to show their books healthy as such debts were no longer taken as NPAs but as CDR.

However, the premise that such an instrument would not only help bring ailing corporate houses out of the red but would also lead to recovery of debt has fallen flat on its face. For instance, while NPAs stand at a staggering Rs. 3.6 lakh crore, the total debt locked in the form of CDR stands at no less a staggering figure of Rs. 4 lakh crore, out of which only Rs. 0.6 lakh crore has been recovered by the lending banks. Given the experience so far, the instrument is unlikely to pay off.

The RBI, instead of taking tough remedial measures to recover public money, has chosen to bury its face in the sand like an ostrich, as it stopped asking banks to report their NPAs to it in 2014!

When in 2015 it was realized that despite CDR, NPAs had ballooned to over Rs. 3.5 lakh crore, RBI devised another strategy to help defaulting corporate borrowers evade punitive action. Now, banks could take recourse to the strategic debt restructuring scheme, wherein a consortium of lenders converts a part of their loan in an ailing company into equity, with the consortium owning at least 51 per cent stake. The SDR scheme provides banks significant relaxation from the RBI rules for 18 months. Loans restructured under the scheme are not treated as non-performing assets and banks have to make low provisions of 5 per cent in most cases. This again enables banks to report lower NPAs and higher profits for 18 months. By making banks majority owners and replacing the existing management, the scheme gives lenders the powers to turnaround the ailing company, make it financially viable and recover their dues by selling the firm to a new promoter.

Contrary to RBI's expectations, SDR scheme has met the same fate as CDR. According to unconfirmed sources, the bad debt now locked in the form of SDR stands at more than Rs. 1 lakh crore and most of the losers are again the public sector banks. If we take into account Rs. 3.6 lakh crore of acknowledged NPAs together with Rs. 3.4 lakh crore in CDR and Rs. 1 lakh crore in SDR, the total outstanding bad debt adds up to Rs. 8 lakh crore, and public sector banks account for over 90 per cent. With a cumulative market cap of about Rs. 2.7 lakh crore, the bad debts of all the nationalized banks are over three times their worth.

In a landmark decision delivered on 16 December last year, the Supreme Court had ordered RBI to release information about its activities and the banks it is expected to regulate. The apex court had also upheld 11 orders of Central Information

Commissioner (10 of these were passed by the writer of this article) asking RBI to make information public with regard to investigations and audit reports of banks by RBI, warnings or advisory issued by RBI to banks, minutes of meetings of governing board and directors, top defaulters and grading of banks.

Rooting for transparency in its functioning and calling for more stringent measures to punish non-compliance, RBI Governor Raghuram Rajan said in his New Year message to his officers: "It has often been said that India is a weak state. Not only are we accused of not having the administrative capacity of ferreting out wrong doing, we do not punish the wrong-doer – unless he is small and weak. This belief feeds on itself. No one wants to go after the rich and well-connected wrong-doer, which means they get away with even more."

However, RBI has shown it does not care a fig about those words of transparency and accountability that its head had barely four months back pouted out, as it is refusing to share information with RTI requesters including this writer in clear violation of the Supreme Court order. It leaves no one in doubt on whose side the officialdom of the central bank stands.

(Shailesh Gandhi is former Central Information Commissioner)

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Political party funding

There is a lot of talk about the funding of political parties and the cancer of black money in our elections. It has now become accepted that black money will always be present in our electoral system and the issue cannot be resolved. Should parties which do not win a single seat be eligible to an incometax exemption? Should parties which do not contest any election be given an incometax exemption? It is well known that many of these parties are only laundries of black money. There are over 1850 registered political parties in India and their tribe is growing. Only 56 out of these are recognized as registered national or state parties. Should all of these be given a subsidy in terms of an incometax exemption.

It is worthwhile looking at the basic concept of giving incometax exemption and the argument that worthwhile activities will only take place if they are given tax exemptions. Firstly, is it desirable and necessary that more and more political parties should come up and hence the tax break? For a diverse nation like India perhaps 100 or two hundred parties could be justified, but over 1800 shows that most of them are not serious political parties. Would the nation benefit by having more than a hundred or two hundred parties? It may be argued that it would mean suppressing freedom of expression. Will freedom of expression flourish only if tax subsidies are given? I would also argue that by and large incometax exemptions become havens for corruption and arbitrariness. This applies also to the exemptions and subsidies given to trusts and corporates. Most desirable activities will take place for cause or profit and really will not depend on the existence of tax exemptions. If there is a demand and a business opportunity, business will go into it and if the tax subsidy is not given it will still pursue it. Similarly if some people wish to propagate a thought or do charity they will go forward with or without tax subsidies.

Mazdoor Kisan Shakti Sangh has built a robust institution without any tax sops. If somebody really wishes to propagate a ideology it can be done without any tax exemptions. The state must take its revenue and undertake various measures for the welfare of all. The tax subsidy is actually a revenue loss from the poorest man in India, since the money belongs to him.

I would therefore submit that there should be no incometax exemption for all political parties. If however it is felt necessary that the poorest man must finance them, the tax exemption should be limited only to the recognized registered parties.

While on this topic, I would like to touch on a linked subject, viz. financing of the political parties and elections. It is known to everyone that the black money requirements of the political parties for running their organizations and fighting elections is a major factor in the thriving black economy of our nation. We have tried to restrict the amount of money in the election and are aware that by this hypocritical position we are all living in a collusive national lie. There will be a rare elected candidate who will have spent only the amount mandated by law. Even if an honest candidate does not wish to engage in a illegal black transaction, he gets sucked into this whirlpool.

Political parties need a certain amount of white money to show the bare minimum expenditure to run the party. This is currently obtained by some white money donations and the rest by showing cash donations of less than Rs.20000. There is a proposal to reduce this amount to Rs. 2000. This will serve little purpose since this would only result in ten times more fake entries being required to be made with fake names.

Is there a solution to all this? I believe the following measures could go some way:

1. Remove all expenditure limits on elections, or have a

much larger amount being permitted.

2. Remove all incometax exemptions for political parties. If their revenue is more than their expenditure they should pay incometax.
3. Insist that all donations to political parties or electoral candidates will only be digital or by cheque. The PAN number or Aadhar number of all donors must be taken. It would be easy to devise a standard software in which all donation entries should be made. If there are multiple entries either with a PAN number or with a Aadhar number, it would give the total amount paid by a PAN number or Aadhar number.

The government is talking about going cashless and digital. Could they go digital and cashless in this ?

I believe a better India can be obtained by designing honesty into the system.

Shailesh Gandhi

Mumbai Mirror Open space

<http://www.mumbaimirror.com/mumbai/cover-story/Fight-back/articleshow/50583453.cms>

Our elected representatives in BMC have on 13 January passed what they call is an 'adoption policy' with respect to our Open Spaces. Many citizens heard about this proposal when the corporation's committee had passed it. We realized that it would deplete our limited open spaces. We also realized that

this was a way to gift away our property to private parties. Some citizens got together and called up many corporators to persuade them to drop this policy. We explained that there was just no logical reason for this. Many agreed that such a policy was not in the interests of citizens and assured us that they would oppose it. Not a single corporator could offer any logical reason for this policy, or explain the public interest in it. The key aspects of this 'adoption policy' are as follows:

1. BMC will ask corporates, NGOs and other institutions to take up the open grounds, -our gardens, play grounds and recreation grounds, - and 'adopt' them. These offers would be evaluated and corporates would be given preference.
2. The selected institution would then sign an agreement with BMC for five years.
3. The corporate would maintain the ground and only be allowed to put a small board in the ground.

What is the problem with this? Every citizen is aware that possession of property is *de facto* ownership. Given our legal system it is nearly impossible to get anyone to vacate a property. In this case, private legal rights would be created. Earlier under such a professed policy where parties were asked to take 'care' of open spaces private clubs have been built. In certain cases they are inaccessible to citizens. There are many gardens and grounds which have been fenced off. Once a private party is given the responsibility of spending money on the maintenance and also given legal possession of the ground, no clauses in agreements are adequate to get the property back. Even after the period of agreement is over parties have continued to hold on to these grounds.

What are the reasons being offered for passing such a policy:

1. BMC does not have the funds.

Citizens: This is false. The funds required to maintain the 1000 acres of open spaces will be around 200 crores and BMC has a budget larger than this which it is unable to spend. We are also aware that our BMC has a total budget of around 33000 crores.

2. BMC cannot maintain and supervise them well.

Citizens: There is some truth in this. A very simple solution is to ask the same institutions to who would be interested to 'adopt' to audit and monitor these spaces. In that case no legal rights are created, nor is it put in the possession of the private party. If an institution wants to really do service and maintain these grounds it would happily do this if its intentions were not malafide.

When we explained this to many corporators many of them agreed with our contention. The parties in the opposition in BMC and some BJP and Shiv Sena members also agreed to safeguard our interests. In the house, they forgot our conversations and brazenly passed this policy. Citizens who had called the corporators have recorded the gist of their conversation with corporators at www.satyamevjayate.info . One conversation with a prominent BJP corporator has been reported thus: "First said that the policy is basically right and may need some tweaking. After i explained that a policy which created private rights and required private expenditure on open spaces would lead to free gifting away of open spaces, he asked for a solution. I suggested that BMC should retain all rights and maintain these through contracts and give the auditing, monitoring and supervisory authority to NGOs, corporate and other private bodies. He appreciated the suggestion and said he would represent this."

The President of the same party had said that he would get the State assembly to pass a law which would make it impossible for BMC to give such lands away. Our elected representatives have let us down, and passed this policy to deprive us. Today

many reporters have tried to get the elected leaders to explain the reasons but are not getting any answers.

If a poor man cannot pay for the upkeep of a single room which he owns, he will not give rights and possession to anyone else to maintain it. What is the reason for BMC to do what even a single poor man will not? The answer is evident. What remains with BMC remains with citizens.

Citizens must protest against this if they wish to defend their open spaces and lands. They can do the following:

1. Call up corporators and tell them to recall the policy.
2. Send letters to the BMC Commissioner and ask him to reject this policy. He has the right to do this.
3. Send letters to the Chief Minister.

If we keep quiet and do nothing our future generation may not have open spaces and would have lost their property as well. We need to act to stop this 'Kidnapping Policy' masquerading as a 'adoption policy'.

Shailesh Gandhi

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Mumbai needs open spaces for our children to play and spend some leisure time; for senior citizens to take their walks and meet other friends. A large number of Mumbaikars are staying in extremely small sized dwellings and need these open spaces.

Digital Governance

Prime Minister Narendra Modi has announced his commitment for a Digital India, and demonstrated it by visiting Silicon Valley. I hope this happens soon, but there is smaller step which he can take within two years if he wishes.

All the government work is done on paper files. When a citizen goes to any office for some work, he is often told that the relevant file is unavailable. If he pays a bribe it becomes available. It is common knowledge that depending on the amount of the bribe in many offices a record in the file can be altered, replaced or lost. A significant percentage of corruption and inefficiency is a consequence of this method of keeping paper files. Many government offices create records which they cannot access after a few months! Most have computers which are usually used as electric typewriters. There is a fairly simple solution available. If all the work was done on computers and each day the default mode was that it would be displayed on the website, there could be a sea change in our governance. Only some information, which is thought to be exempt as per the RTI Act should not go on the website. If parliament proceedings can be telecast live, there is no reason why our executive cannot function in a transparent manner. Only with transparency can there be hope of accountability. If purchase orders of CWG ordering toilet paper rolls for Rs. 400 each had to be displayed on the website, such orders may not have been given. The fact that the information on decisions will be available transparently will itself curb some of the arbitrariness and corruption. Unfortunately, most powerful people subscribe to the idea of transparency for others and are reluctant to practice it themselves. The corrupt obviously dislike transparency, whereas the honest have the arrogance of believing they know best and informing citizens and exposing their actions hinders their work. This is the big challenge. Accountability will

automatically follow transparency. Corruption reduction and greater efficiency will be natural byproducts.

Information in various files and registers is usually collated manually. Errors in this consolidation are common and difficult to identify. If all government offices work only on computers and transmit files on intranet or internet the decision making process would be much faster. Transparency could be achieved by design if all the files, -except that which is thought to be exempt as per the RTI Act,- were to be displayed at the end of each day on websites. If any change is made or any record deleted it is possible to identify the person who did it and also what it was initially. Backup could be taken at regular intervals in a different city, so that even an earthquake would not be able to destroy the records. As for the argument that government servants cannot use computers or security issues cannot be handled, we merely need to look at our public sector banks to see that they are able to do this quite efficiently, with no major problem to the security of data, or their operations. India prides itself on superiority in Information Technology, but fails to use it effectively for governance. Reports could be extracted from the computerized data which could be as accurate as the data collected and decision making would be more efficient and reasoned. We would also save thousands of crores spent on paper, files, printing machines and cartridges, and the space for keeping the files. What is well known is that a greater amount and time is wasted on locating them, and many cannot be found.

Presently, thousands of crores are being spent by government on 'digitization'. This involves scanning all earlier files and sometimes even the files after they are closed. This has no real benefit, but is only an expense with no benefit. Besides, most government departments say they will go digital after all the files are scanned and this is never completed. If a decision was taken to go digital say by 2017 April, all

new files should be only on computers after that day, and only earlier files on which further work has to be done need to be scanned. Accountability to citizens is the rationale and foundation of democracy and this cannot be achieved unless transparency is built into our governance as a default mode. Digital working can achieve this and the Prime Minister only needs to decide on a timeframe of say two years to achieve this. We have the need, the benefits would be enormous and we would have a meaningful democracy, where government will have credibility and citizen's trust. Instead of piecemeal e-governance solutions, a commitment for digital governance would make a discernible change in our governance. There is really no obstacle to improving our governance and transparency and one hopes the Prime Minister will bite the bullet.

Shailesh Gandhi

Former Central Information Commissioner

Deccan Herald Caged Ordeal

6 September 2014, 06:05PM

By Shailesh Gandhi

One of the fundamental premises of our legal system is that a person is innocent until proved guilty. This implies that until a person's guilt is proved, he shall not be punished or incarcerated.

However, everywhere in the world there is one class of people who are kept in prisons though their guilt may not have been established by a process of law. These are the undertrials who may be innocent or guilty. All countries where a rule of law

prevails, try to keep the percentage of such undertrials low. In the USA, the percentage of undertrials is around 20 per cent of the prisoners.

In India, this figure is 65 to 70 per cent which places us amongst the worst 10 countries on this count. In simple terms, two of the three persons in our prisons have not been convicted. Most of them cannot obtain bail because of their poverty. Some of them are in prison for a term longer than the maximum sentence they would get if convicted! In our country, if a person is poor and is framed by the police, he may spend years in prison despite being innocent.

This is a direct consequence of a dysfunctional criminal justice system. 'Justice delayed is gross injustice'. It rewards the powerful criminals and penalises the honest and the poor. Parliament recognised the plight of the poor undertrials and amended the Criminal Procedure Code in 2005 by inserting Section 436A which states:

"The maximum period for which an undertrial prisoner can be detained: Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the court on his personal bond with or without sureties:"

Thus, there is a legal requirement to recognise when an undertrial has spent 50 per cent of the maximum term he is liable to be convicted for, and release him on furnishing a personal bond. Despite such a law being passed by the much maligned Parliamentarians, it has not offered substantial relief to the undertrials. Relief could be actualised if the prison authorities and the judicial system paid some attention to this. Both of them have failed to do so.

Our prisons are overcrowded and if Section 436A was properly implemented, it would reduce this inhuman over-crowding. Who is to blame for this? The primary failure is that of the judiciary and prison authorities. But, the blame must also be shared by civil society and media. We have become sensitive to the plight of animals in cages but have not shown the same empathy for our poor citizens who are being denied their rights and liberties. These poor undertrials are also in cages for no fault of theirs except poverty. In a very perverse manner, the state denies liberty to some unfortunate citizens whose only fault is that they are poor and hence cannot furnish bail bond.

What is the root cause for this plight of our undertrials? The primary cause is a judicial system which does not see the need for delivering justice within a reasonable time. The judiciary believes if it has to deliver good justice, it must not be held accountable for delivering it in a timely manner. In a Supreme Court judgment in Hussainara Khaton v. State of Bihar, Justice P N Bhagwati had observed, "No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21 of the Constitution.

Speedy trial needed

There can, therefore, be no doubt that speedy trial and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21." Despite this wisdom expressed in countless cases, the situation is only becoming worse and the citizen's fundamental right is being denied. This writer has shown that if courts accept the discipline of abiding by the discipline that almost no case should take more than double the average time, the maximum time at the three Courts would be 18 months, 60 months and 38 months in the Supreme Court, High Courts and lower courts, respectively. If the vacancies which are 15, 30 and over 20 per cent,

respectively, are filled, these periods could be reduced further. In all services except the judiciary, it is accepted that time-bound delivery is essential. Our present system does not even make an attempt to deal fairly and equitably with all cases. The right to justice without delay was recognised even in the Magna Carta in 1225. One hopes that the judiciary which asks for a time-bound commitment on various matters will accept its responsibility and commit itself..

Section 436A is an attempt to mitigate the pain and suffering of the undertrials. However, so far, this has not been very effective because of the general apathy in implementing it by the prisons and the judiciary. Some attempts have been made by RTI activists including this writer, to get the list of names of prisoners eligible for release under 436A but they have not had much success since the prison records in most states are not computerised. It is difficult to keep track and identify the eligible prisoners when operating records manually. Amnesty International India has been doing consistent work in this area in Delhi and Karnataka, but justice for these prisoners needs to become a national agenda if this relief is to be obtained for our fellow citizens.

The Central government recently showed some interest in implementing this relief. Parliament passed a law but it was not implemented. If we want the relief under Section 436A benefits the poor undertrials, citizens and media must take the responsibility of ensuring that prison records are computerised. Do we care for our poor compatriots who are in cages?

Source: [Deccan Herald](#)

Corporate Transparency

There is considerable debate on how corruption must be reduced in the government. It spawned a movement, - which shook the nation; - and subsequently a political party. Most organizations in Western countries do not have specific Vigilance departments, whereas most of our government departments cannot do so without these. Since the Vigilance departments are ineffective we have an Anti-corruption bureau. To ensure independent investigation we have a CBI. Since these are not adequate we have the CVC, and now the talk of a Lokpal as the panacea for corruption.

The objective of this article is to see whether a method can be evolved to curb the corruption which takes place by collusion between big business and government functionaries. This hurts the nation seriously, since it is now estimated to be in millions of dollars. As many people point out there are basically two types of corruption in government offices:

- Extortionist- where bribes are demanded for a legitimate service or as a price to avoid harassment.
- Collusive- where the giver is eager to give bribes so that he can indulge in an illegal act, or enrich himself at the cost of the public. This is usually of very large value and hurts public finances significantly.

This piece is an attempt to suggest that non-government action can lead to reduction of the second kind of corruption, which results in huge scams and great cost to public exchequer. Let me make an attempt to outline how this could be achieved. I am basing my suggestions on the following assumption:

A small percentage of the corporate would collapse if corruption were to be curtailed, since their profits depend on

them. A comparable number of corporates lose a lot of business opportunities to the former because of unwillingness to adopt unethical practices. Most of the corruption of the collusive kind is indulged in by the former. For corporate of the second kind, there is a business need to curtail the collusive corruption. Apart from this there may be a consideration of ethics and a genuine desire to curb corruption. If a few such companies decide to take active steps to curtail corruption, and are quite clear that they will not adopt this route of getting unfair or unjust advantage from the government, they can make a difference to the overall national scenario. Taking a proactive role to achieve this goal is in their business interest and could translate to higher profits.

Unfair advantages by collusive corruption are obtained by paying lower taxes or getting unfair reliefs in paying taxes. Another area is getting lands or other infrastructure in a manner which gives them an effective subsidy. One more avenue is to bid competitively for providing services or for public private partnerships, and subsequently changing the conditions to affect public interest adversely. The idea is that those who wish to promote honesty and look at it as their social responsibility publicly pledge to display all transactions with governments on their websites.

Companies could also declare a policy for disclosure in which they could declare that certain information, which may harm their commercial interests would not be displayed. This would be very little, which might harm the legitimate commercial interests of the companies. They could declare the kind of information in government transactions which they would not display and explain their reasons. Many business leaders regret the lack of transparency and the corruption in government. They can take the lead and demonstrate their willingness to be transparent and also to transform the nation. It would be very good if a few businesses got

together and announced their commitment to be transparent in their transactions with government. If they have taken a conscious decision to refuse the route of corruption to get undue advantage they would lose nothing and certainly gain respect from citizens and peers. Businesses may well argue that citizens should get the information from the government departments. These departments usually do not give information which would reveal favours despite this being a violation of their obligation in Right to Information Act.

There could be two benefits for companies who publicly announce and practice transparency in all transactions with government:

- They would be recognized by public for their commitment to transparency and corporate social responsibility.
- Over a period of time if more companies follow suit, it would create a pressure on others to accept this level of transparency.

As the law stands most of this information should be accessible to citizens from government departments using RTI, except that which is exempt. However when large corruption is involved, the information is usually denied and a citizen finds it difficult to battle this unjust denial.

Private action could have the potential of curbing corruption. I am hoping a few will take the lead. Corporates can make an effective contribution to bringing transparency and accountability and reducing corruption in the nation. Will some corporate take the lead? This could also be achieved if regulatory agencies, - like SEBI in India, - make it mandatory for all companies.

Shailesh Gandhi

Former Central Information Commissioner

Bhogilal Leherchand Memorial Speech

**Bhogilal Leherchand Memorial Speech
delivered at**

**Indian Merchant's Chamber on 9 December
2009.**

Simple Solutions to Get Good Governance

Fellow Citizens of India,

Over six decades back when we got independence, the first constituent assembly which framed our Constitution was elected by less than 2% of the population. We owe an eternal debt of gratitude to the framers of our Constitution who displayed great wisdom and vision in crafting the vision of India in which multiple cultures, languages and religions were to be woven in a harmonious manner to craft the idea of India. India, as we know it today, – with its present geographical boundaries, – had not existed earlier for any reasonable stretch of time as one political entity. What was attempted was the idea of India as a vibrant democracy which ensured in its constitution equal rights irrespective of gender, caste, religion or wealth. India was an idea, – a philosophy, – which was being moulded to reflect the aspirations and core beliefs of this ancient civilization. We must remember that the concept of one vote one person was really a very forward looking concept and there were enough debates and dissensions

in the Constituent assembly before this was accepted. This concept of India as a nation, – where all human beings are constitutionally ordained as equal, – is what we have been able to continue with. This Nation has been an elective democracy in which we have accepted the principles of equity and tried to create systems for getting a just society. As a central idea we accepted the principle of the sovereignty of every individual Citizen, and his right to elect his representative. However, this elective democracy did not become a true participatory democracy and hence the Swaraj that we dreamt of, did not come about. Elections and Constitution are necessary conditions for a democracy, but we missed the heart and essence of a true democracy;- the concept that each individual citizen is a sovereign in her own right who gives a part of the sovereignty to the State, in return for which she gets the rule of law. This concept has been missed in execution, but there is some hope that Right To Information may now establish this sovereignty of the individual citizen, and result in respect due to each individual citizen who is a sovereign of this country.

However, the ground reality has been that the delivery systems for citizens have been fairly poor and resulted in gross injustice and inequity becoming the order of the day. Citizens look at those who govern this country with suspicion, derision and anger and the icons of India belong to the world of films or cricket. There is little respect or faith in the people who lead the country's governance either in the political or the bureaucratic field. Citizens do not trust the Government or its functionaries. This is because there is a general failure of governance, and Citizens have stopped expecting that the Government will be able to deliver.

To illustrate this i would like to relate a simple story that has come before me in the last one year as a Commissioner. An eleven year old boy who had been sodomised by a policeman was

put in a children's home. Later on, the police took him out of the children's home, put a gun to his head and threatened to kill him unless he changed his statement. A complaint was made about this by a social worker and a vigilance enquiry was conducted. After one year the enquiry report accepted that the incident had occurred and blamed certain officials for it. In spite of these findings no action was taken but another enquiry was ordered. When the matter came before me the second enquiry has been going on for nearly two years. Our investigative mechanisms have been hijacked so that they deliver no results. An example at a much larger scale is the recently concluded Liberhan Commission which took seventeen years ensuring in the process, that it could deliver a report which would have no impact on any of those who were guilty of criminal acts. Enquiries by most vigilance bodies or Commissions have become an excuse to provide employment and perks to some people which maintain the façade of providing justice, without any tangible benefit to society. These ensure no accountability but help to protect injustice and the criminals.

We have now got used to accepting that nothing will work in Government in any reasonable period of time. The police will not register crimes; – there is almost a National policy not to register cognizable crimes. During the period 1982 to 2007 the cognizable crimes recorded in Mumbai stayed in a band of 32000 to 40000, while Mumbai's population went up by about 50%. This is not because police had become more effective, but due to fact that at the highest level there is a diktat that police stations must not register more crimes than the earlier year! This unwillingness to register cognizable crimes has afflicted police stations across the Nation. If a citizen applies for a ration card or permission at the Municipal Corporation or wants to report a crime, she feels helpless and angry since this becomes a major obstacle course for her. If she has a dispute and needs to file a suit, she avoids doing this since she shudders to think of the wait in the Courts. If

she makes a representation to the politician or the bureaucrat, she has no hope of getting redressal unless she can use influence, muscle power or money. The net result is that the privileged class corners much more than their legitimate share and the poor suffer the consequences.

Citizens who try and challenge the system and correct illegalities find it difficult to get any action taken against the wrongdoers. I want to quote an example which revealed this through RTI before me as a Commissioner:

A citizen asked about proof of whether a mobile tower which had been erected on top of an existing building, had been given permission as required under the law by the Municipal Corporation of Delhi. The information was that no permission had been given. The PIO promised to take action. But inspite of a complaint to the Municipal Commissioner and the Police Commissioner by me, no action has been taken to bring down the tower which could pose a hazard, endangering the lives of people staying in those buildings. The Corporation has revealed a startling fact that out of 4532 mobile towers in Delhi only 2015 have the requisite permissions and 2517 are without any permission! Thus it appears that large corporates are putting up the mobile towers on the terraces of existing buildings without the required permission from the MCD. These Corporates will glibly talk of Corporate Social Responsibility but do not obey the law.

The Additional Deputy Commissioner of Police undertook an inquiry and came to the conclusion that the police cannot take any action since all 'unauthorized development' in Delhi has been given official protection by the Delhi Government by Section 3(2) and (3) of the NCT of Delhi Laws (Special Provisions) Act, 2009. By this provision all unauthorized developments like mobile towers are given protection from any punitive action during the year 2009. I had heard about mafia

protection for illegal activities, but am surprised that protection is offered by the Government under the garb of a law!

Another aspect of this sordid story: To install a mobile tower there is a requirement of obtaining a stability certificate to ensure that the building is not likely to be endangered by putting additional load on top. Delhi Corporation has specified that the stability certificate will be accepted only if it is issued by one of the five agencies approved by it. One of the approved agencies is IIT Delhi. During the course of another hearing before me at the Commission, I have recorded, "The Appellant had pointed out there are two certificates issued for the same address. The PIO has stated that the faculty members in IIT issue a stability certificate based on the drawings provided by the client in which the address is mentioned. The PIO also stated that no records are maintained by the IIT of the drawings. The Commission has taken a look at the stability certificate provided by IIT which states, 'This building is safe and capable of resisting the forces and moments which may be increased or altered by reason of the additional structures for 15 meter three legged tower with GSM and MW antenna...'. The wording of this certificate appears to indicate that it is certifying the stability as existing, whereas the PIO states that it is a certificate based on a drawing with an address, which is not verified at all. Given the fact that the IIT does not maintain any copy of the drawing with itself, this process appears to have great potential for misuse. Statutory bodies which permit these towers and IIT would do well to take a look at these practices which may have the potential of endangering safety. Alternately people may discover that there is no need for such certification in which case it would be done away with." I am horrified that any engineer can issue a safety certificate for an existing building without even looking at it! In this case this was done by a faculty member of one of the most prestigious Institutions of our country.

I have written to the MCD Commissioner over ten weeks back, and a check at the ground level revealed that no action of any consequence has been initiated.

To me the foregoing gives an indication of some fundamental reasons for the steady decline in the rule of law. The key elements are:

1. Major Corporates, -all the mobile operators, – are flouting the laws by operating without the permissions in over 50% cases.
2. MCD will take no action against them.
3. The Delhi Government will offer protection to unauthorized activity by major Corporates by law.
4. A Premier academic institution, -IIT, – will issue safety certificates in a manner which is completely flawed and fraudulent.

This is a potent combination whereby conscious collusion and inactive passivity leads to a society where the rule of law is effectively subverted, leading to a decadent governance structure. There are numerous cases of this nature which expose a collaborative collusion by criminals and Government officials and yet no action is taken against those who break laws.

As an Information Commissioner i have had an opportunity of interacting with some of those who are at the head of the bureaucratic governing structure. I am also able to get some inkling of the way the political leadership acts. I get the feeling that most of those in power actually feel helpless to be able to make any significant change in the governance structure. Honest and capable officers feel disempowered to make any significant change. This is really a very frightening situation and it is necessary for us to try and see if there are some fundamental fatal flaws in our governance structure.

In the last two decades the government appears to have been abdicating its role in a fair number of important areas; – Infrastructure, education, health and in many other sectors the government has effectively stated that it does not have the capability to deliver. Hence the concept of giving up its role in these areas to the private sector; – what is euphemistically called public private partnership.

In no country of any reasonable size has the Government abdicated its role in providing the basic needs of its Citizens. If we look at the USA, over 90% of the children in schools study in government run schools. In India since the government is abdicating this role, the result is a complete absence of education and health facilities for the poor. The Municipal Corporation of Mumbai is closing its schools and giving the buildings over to NGOs and other private organizations, who are grabbing these gleefully. Since the government delivery system is very poor it is being assumed that the private sector will fill in the gap. It is unthinkable that the private sector will fulfill this role for those who are very poor. The growth of Naxalism or Maoism is an indicator of the failure of the Indian state to provide the minimum requirements of its Citizens. In the last decade the number of districts where some parts are controlled by the Maoists has grown from 20% to nearly one third of the districts in the country. An attempt was made to privatize policing in some of these areas in what was called the Salva Judum movement. The result of trying to implement this has been an unmitigated disaster which has led to the alienation of the citizens of those areas from the Government. Besides it appears to have actually helped the spread and strengthening of the Maoists by alienating the common Citizens. The Government's proposition of SEZ's and handing over large properties belonging to the people, to the private sector in the name of giving electricity distribution and airports to

the chosen private sector businessmen is slowly lead to greater alienation of the Citizens.

The State has no option but to deliver on a number of counts. The Government cannot wither away. If an attempt is made to reduce Government, the result will be an increase in criminal, terrorist and Maoist influences. If we accept that the State will have to deliver on a number of counts, how can we make it happen? From my limited experience of the past 15 months of looking at the government from within i have noticed certain basic fatal flaws which indicate why the government is not equipped to deliver. Basic administrative and office procedures in the government have perhaps been designed by the Britishers who did not trust the Indian officer. We have continued with this system which results in enormous paper pushing yielding little result. To give one example a government officer cannot apply for a passport unless official clearance is obtained from within the government. Hence, if a government officer realizes the need to travel for any personal work he often stops doing his work to find a way of pursing his papers to receive the clearance.

To give another example, i was invited to a two day conference in Bangladesh on Right to Information. A joint secretary of the Commission had to spend three full days pushing the file from table to table, and in this grand file journey it was sent to the PMO twice. Thus, when nobody is chasing the file the system is not designed to give a result within a short time. Another simple example i would like to quote is that a typical government file is tied on a cardboard, – with strings attached, – and every time a file has to be opened an officer unties the knot and ties it back again. This takes about 15 seconds per file and if a hardworking officer has to look at 100 files in a day, he will end up spending 25 minutes a day on just tying and untying strings. Besides, because of this method of keeping files, it is not possible to use filing

cabinets and these files have to be kept in stacks in cupboards leading to further wastage of time. The concept that an email can be sent to multiple people and their opinions or approvals can be obtained within hours is nonexistent. The file with the attached strings physically traveling from table to table collecting various handwritten notes and signatures ensures that decision making is slow and requires a lot of work.

The HR policies of our Governments are completely outlandish. Most promotions are by seniority only so that the young, – who are equipped to lead change are at the junior levels, – cannot bring about any change. Infact there is no system in place to even recognize good performance, let alone reward it. As a matter of fact most officers who try and drive change get marginalized or punished. Even the annual appraisal is done in a very casual way, whenever it is done. Even after 3 years about 24% of the IAS officer's Annual Confidential Reports are not even made! Postings and transfers are arbitrary and whimsical and are the major tools of reward and punishment by those in power.

In the last two decades the government has gone on a downsizing spree, with the result that the number of people available in government offices has been controlled and reduced. This has been done thoughtlessly, without any assessment of what they are expected to deliver. Since some work has still to be done, government departments are hiring young people through contractors. The young people hired through contractors are paid poorly, have no job security or career and hence are fairly de-motivated. Add to this the factor that they are paid very poorly and are sitting next to the government Babus who are paid very highly, and you have a sure recipe for a completely dysfunctional office. Besides, most of the practices of the contractors are in violation of the labour laws of the land.

One other factor that i must mention is the fact that because

of the government policy of downsizing the average age of government employee is pretty high. Out of 4500 IAS officers 1500 are in the age category of 25-45 whereas 3000 are in the age bracket of 45 to 60. Also most commissioners and regulators whose number must be in the range of 2000 to 3000 are above 55 years in age. Looked at from this perspective, nobody would believe that India has a predominant population of the youth. Let us also look at whether we are even providing enough people to perform the government's functions. The Central government in India employs 295 people per hundred thousand population while the USA employs 889 employees. The State Governments in the United States employ 6,314 persons per lac. In sharp contrast, Uttar Pradesh has 352; Bihar, 472; Orissa, 1,007; Chhattisgarh, 1,067; Maharashtra, 1,223; Punjab, 1,383 and Gujarat, 1,694.

To sum up:

1. We have outmoded office procedures and systems which belong to the last century.
2. Our Government offices are on the brink of computer illiteracy.
3. The staff is old and does not have much motivation to work and deliver.
4. Honest officers have to work with inadequate resources and lack of an environment which could help them to deliver.
5. Staffing is done without any application of mind and with untrained staff, some of which is on contract and have no stake in the system.
6. There is no way in which good officers who are young can make a useful contribution for change.
7. The number of staff deployed in our Governments is inadequate compared to our population.

Thus, we have outmoded administrative systems, a de-motivated

staff with low productivity and the number of people employed is also much less than required. If one had to design an administrative structure for an enemy country, one could not do better. I do not claim to give all the causes for administrative sloth, but am only giving some indications of this.

Can such an administrative structure ever deliver? If a poorly structured and designed Government cannot deliver on essential services, it is also unlikely to be able to deliver on security or against the terrorists or criminals. Poor governance affects the ability of a government and a Nation in many significant ways. Worldwide, organizations have changed the way in which work is done. Workflow designing, training of people, recognition and motivation of employees and paperless offices are the norm. Governments in our country do not even have employees who can use computers. Most Government offices have less than 50% staff who can use a computer. India has offered the world some of the top managers, but the Indian government has insulated itself from these. The talent and know-how are available, all it needs the Government's will to tap this. Designing the administrative structure to deliver and training of the staff are essential features. Designing accountability and enabling staff to deliver are essential. Corruption, inefficiency and insensitivity which are the hallmarks of our government, are the byproducts of a system which does not have the capability of delivering; these are not the root causes. Citizens usually perceive that corruption and the cussedness of the government servants and the political class is responsible for the problems they face. Perhaps the truth is that since the system is incapable of delivering, work is done selectively only when influence or money are used in a transaction. In other cases the job is just not done.

What then is a solution to this? The first requirement is that

the citizens must become aware of this fatal flaw in their governance structure. Today neither citizens nor media highlight this. 26/11 was a terrifying result of this lack of ability of governance to deliver in a time bound manner. 10 motivated terrorists were able to hold Mumbai and this country in their grip of terror for 62 hours. Citizen's anger was directed towards the politicians, and at the end of one year the only one who seemed to have lost power was central home minister Mr Shivraj Patil because he spent too much time on his wardrobe. Nothing else has really changed or improved, and i shudder to think of whether we would do much better if a similar threat faced us again. However, if citizens and media start demanding that the government devote its attention to improving its work flow and management practices, as also find a way of training its staff properly the governance structure will develop the capability and the muscle required to work with a greater degree of efficiency. Once the productivity and efficiency of the government improves, it must consciously reverse this senseless policy of downsizing and provide adequate numbers of employees who can then deliver the various services to the citizens. There is no shortcut or magic wand to get better governance. It is unlikely that the government will pay any attention to this and therefore a sustained campaign is required to bring awareness about these flaws. Citizens must engage their elected representatives at regular intervals and demand accountability and performance during frequent meetings. Our current practice of electing the candidates once in five years, and then abusing and cursing them for the balance period, will not yield any results. Even single citizens could take up the issues of misgovernance in a wide variety of areas.

As an example of what Citizens can do, i will take just one example in Maharashtra:

Let us look at the Maharashtra Government Servants regulation of Transfers and Prevention of delay in Discharge of Official

Duties Act 2005 notified as Act XXI of 2006. I am quoting a few important Sections of this Act:

Section 3 (1) For All India Service Officers and all Groups A, B and C State Government Servants or employees, the normal tenure in a post shall be three years

4(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May

There are exceptions for which the Chief Minister or a Minister has to give reasons if officers of group A or B are to be transferred in a manner which is not consonance with the Act.

10 (1) Every Government servant shall be bound to discharge his official duties and the official work assigned or pertaining to him most diligently and as expeditiously as feasible

Provided that, normally no file shall remain pending with any Government servant in the Department or office for more than seven working days

10 (2) Any wilful or intentional delay or negligence in the discharge of official duties or in carrying out the official work assigned or pertaining to such Government servant shall amount to dereliction of official duties and shall make such Government servant liable for appropriate disciplinary action under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 or any other relevant disciplinary rules applicable to such employee.

I had asked the Home department about the number of IPS officers transferred in each month from July 2006 to August 2007. The answer revealed that while 144 transfers were made during this period, all of them were made in months other than

April and May! In most cases the three year rule had also been violated. No action was taken against any officer for not clearing files within seven days. This law was brought about because of pressure by Shri Anna Hazare, but is not implemented. If a few hundred Citizens use RTI and public pressure to get the law enforced, we will see a change in the way Government functions. A greater accountability needs to be built in the administrative structure as also a greater amount of trust must be placed in the officers. When the trust is violated, we need systems which can enforce quick punishment. The Anti Corruption Bureau in Maharashtra registered an average of 471 cases all over Maharashtra during the period 2002 to 2005 and was able to get conviction of just 125 officers per year! If ACB is to have any meaningful impact the figure needs to go up by at least 100 times, since presently corruption is a no risk all profit activity. Citizens must focus on the systems which can give better Governance, rather than on individual instances. A 26/11 could occur because our governance system is poor; it is incapable of delivering. If we focus on getting an administrative and bureaucratic structure for better governance, it is possible to bring this change and to force the political class also to respond. This would need sustained pressure by Citizens. Our political class is not interested in a good administration, but we cannot get a better India without it. This is not a difficult task, but we must make it our agenda and pursue it relentlessly for a few years. The political class is not completely unaware about this. The Central Government set up an Administrative Reforms Committee but has chosen to forget most of its recommendations. These should be widely debated and the help of management professionals taken to get a more efficient structure. We need to pursue the objective of a better administrative structure. We can get a better administration if we make this our goal, without which our dream of a better India is not possible. We often criticize all others for the faults and flaws in our Nation; – the political class being our favourite whipping boys. We have to take the

responsibility to transform our Country. If we do not demand and work for a better administrative structure, we are unlikely to see any sustainable and long-lasting change. If we work towards this for a few years, we can get the good governance which we desire. It is not a very difficult goal, but will need Citizen's sustained pressure. This might sound boring, but unless we get a better governance structure, India will not become a better Country.

Citizens often wonder whether they can individually bring about big changes. I believe they can. If they believe they are the Sovereigns of this Nation, they must take the responsibility of a sovereign to improve the governance of their government. I would like to relate a small story. This happened a few thousand years back. It was Amavasya-the day when the night is dark in the absence of the moon. People had gathered at the beach to watch the sunset. The sunset is always a beautiful sight to watch, since the sky has various hues –blue, gold, orange and sometimes the wisps of white clouds. The sun was going down slowly while these people watched; – as people watched this lovely sight, the sun went down, down.... down; – and then only the last golden rim could be seen. People were watching and knew that in a few seconds the sun would have set. But something unusual happened. The sun did not go down. People watched for 20 seconds, 40 seconds, 100 seconds, but the sun did not set! It was frozen and sunset was not occurring. In a few minutes panic seized everyone and people were seized with great fear; something was going horribly wrong with nature and maybe a calamity would strike the world. Terror gripped the people. One little girl of six picked up courage and asked the sun: 'Lord Sun, why are you not going onward on your journey? We are worried since we fear some major calamity may befall us, if the routines of nature change.' The Sun answered, 'Today is Amavasya and once I leave, there will be complete darkness. I am worried about the complete darkness which will surround all of you.' There was a little lamp with some oil in it which heard this dilemma

of the Sun. It said, 'O Lord Sun, give me a spark and i will light up. Once there is some light it cannot be complete darkness.' The Sun gave the lamp a spark and then went down. This little lamp gave the spark to other little lamps, and the night brightened and lit up.

And that was the first Deepawali.

As i end, i want to share a personal slogan with you

Mera Bharat Mahaan...

We say everywhere, but we do not really believe it do we?

I therefore say

Mera Bharat Mahaan...

Nahi Hai,

Per Yeh Dosh Mera Hai.

shailesh gandhi

9 December 2009