Privacy a Fundamental Right ? – Article in EPW

First Define 'Privacy'

The problem with the nine judge ruling is that after proclaiming privacy as a fundamental right, it has not defined what is privacy. It is now left to all adjudicators to give multiple interpretations in order to understand the term, writes Shailesh Gandhi.

The judgment[1] of the nine judge bench of the Supreme Court on privacy has been hailed with much enthusiasm. The right to privacy question was referred to this bench after a clutch of petitions challenging the Aadhaar Act came up before a five judge bench.This article is an attempt to look at the consequences of the privacy ruling.

All laws and institutions in India are expected to be guided by the Constitution. To ensure that the Constitution can take changing circumstances into account Parliament has been given the authority to amend it in Article 368. The constituent assembly in its initial drafts had considered making the right to privacy a fundamental right. However, after extensive discussion, a conscious decision was taken not to do so.

An eight judge bench of the Supreme Court had clearly come to the conclusion that the right to privacy is not a fundamental right (M P Sharma vs Satish Chandra) DM Delhi)[2] in 1954. At

that time, most of the members of the constituent assembly were also around, and there does not appear to have been any significant dissent with this decision. Thus it appears that the clear and conscious decision of the Constitution makers and all the Supreme Court judges (since that bench comprised all of them) was that privacy was not a fundamental right. The Supreme Court has the authority to interpret the Constitution and the law, but the authority to amend both clearly lies only with Parliament. It is worth contemplating whether a bench with about 33% strength should consider superseding an earlier judgment given by one of 100% strength. Besides, the 1954 judgment appears to be in consonance with the deliberations of the constituent assembly.

In the current judgment the apex court has recorded on page 204 at para 144:

> *On 17 March 1947, K M Munshi submitted Draft articles on the fundamental rights and duties of citizens to the Sub-committee on fundamental rights. Among the rights of freedom proposed in clause 5 were the following*
>
> *…(f) the right to the inviolability of his home*
>
> *(g) the right to the secrecy of his correspondence,*
>
> *(h) the right to maintain his person secure by the law of the Union from exploitation in any manner contrary to law or public authority…".*

At para 148 on page 207 the apex court comes to the conclusion that

> *This discussion would indicate that there was a debate during the course of the drafting of the Constitution on the proposal to guarantee to every citizen the right to secrecy of correspondence in clause 9(d) and the protection to be*

secure against unreasonable searches and seizures in their persons houses, papers and assets. The objection to clause 9(d) was set out in the note of dissent of Sir Alladi Krishnaswamy Iyer and it was his view that the guarantee of secrecy of correspondence may lead to every private correspondence becoming a state paper……. The clause protecting the secrecy of correspondence was thus dropped on the ground that it would constitute a serious impediment in prosecutions while the protection against unreasonable searches and seizures was deleted on the ground that there were provisions in the Code of Criminal Procedure, 1898 covering the area. The debates of the Constituent Assembly indicate that the proposed inclusion (which was eventually dropped) was in two specific areas namely correspondence and searches and seizures. From this, it cannot be concluded that the Constituent Assembly had expressly resolved to reject the notion of the right to privacy as an integral element of the liberty and freedoms guaranteed by the fundamental rights.

I am not able to see this conclusion flowing from Munshi's draft which has been recorded at para144. The draft which has been quoted appears to prove that the constituent assembly took a conscious decision not to accord privacy the status of a fundamental right, and this was confirmed by the Supreme Court bench in 1954.

It is true that the Constitution has to evolve with changes in the world, international covenants and changing realities and expectations of the people. But it has clearly defined the roles of the three estates, and the legislative function has been given to Parliament, which draws its legitimacy directly from the citizens who elect its members. Just as a percentage of members is specified for a constitutional amendment in Parliament, should not a percentage of judges of the Supreme Court be required to overturn an earlier ruling of this

nature? There may be serious implications in future of such a transfer of powers.

What is Privacy?

It is evident that privacy is built into the common law in various ways. The real problem with the nine judge judgment is that after proclaiming privacy as a fundamental right, it has not defined what is privacy. It is now left to all adjudicators to give multiple interpretations to understand the term. Earlier in R Rajagopal vs State of TN[3] the Supreme Court had given a broad definition of privacy and its domain where it stated that:

> *The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone".*

A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. The Court could have defined this in a more precise way and then allowed some matters to be adjudicated. It must be appreciated that the right to privacy has a certain tension with Article 19 (1) (a) of the Constitution which guarantees that "All citizens shall have the right to freedom of speech and expression."

From this is drawn the freedom to publish and the right to information (RTI). What can be published in matters relating to citizens in the media is the same as information from public records which can be given in the right to information. The reasonable restrictions on the exercise of this are given in Article 19 (2) and can only be "in the interests of the

sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence." Which of these will apply to privacy? In most cases restrictions in the interest of "decency and morality" would have to be invoked for restricting publication or information in RTI in matters relating to privacy. The RTI Act also bars such information from being given under Section 8 (1) (j) which exempts information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

Parliament had laid down a simple acid test to determine which personal information should be denied under the RTI. If such information would assault "decency or morality" it would violate privacy and should not be given to Parliament also. Thus the R Rajagopal judgement and the RTI Act both are in consonance with Article 19 (2) of the Constitution. It would have been good if the Supreme Court had reiterated this or expanded it. Presently some of the information that is often denied under the RTI under Section 8 (1) (j) is as follows:

i) Allocation of subsidised plots to politicians, officers and judges.

ii) Beneficiaries of various subsidy and other welfare

schemes: There are many ghost beneficiaries. Some who are really wealthy also avail of these.

iii) Educational, caste, income certificates of people: There are instances where RTI has uncovered fake education certificates even of doctors working in government hospitals.

iv) Marks obtained in competitive exams: In many cases people with higher marks have not been chosen.

v) Foreign visits.

vi) Details regarding a public servant: memos, show cause notices, censure/punishment awarded, details of movable and immovable properties, details of investments, lending and borrowing from Banks and other financial institutions, and gifts received. These have been refused by the Supreme Court in the Girish Deshpande[4] judgment. On the other hand in the ADR-PUCL case the Supreme Court ruled that citizens have a right to know the assets and liabilities of those who want to become public servants (stand for elections).

vii) Income Tax returns: It is a fact that the affidavits of politicians who stand for elections are never verified with their IT returns. These are not given in RTI also.

Misinterpretation of RTI

In some instances when such information has been disclosed it has led to the exposure of corruption. One of the objectives of the RTI (stated in its preamble) is to curb corruption. Because of the varied positions taken by the public information officers (PIO), information commissioners and Courts, the law is grossly misinterpreted. In fact, many state governments have issued directives to all the PIOs not to disclose information about public servants. With this decision

of declaring privacy as a fundamental right without making any attempt to judicially define it, many wrong deeds will thus get protection. We must also understand that the same constraints will apply to the freedom to publish. If giving information about some matters is intrusion into privacy, then publication of it also cannot be permitted.

There are many more cases in which personal information is disclosed by some PIOs and denied by others on the basis of it being an invasion of privacy. All personal information does not constitute privacy. One of the most favourite exemptions to deny information is Section 8 (1) (j). In most cases the legal requirement of deciding whether it would be denied to Parliament is not applied. The right to privacy ends where the RTI and the right to publish starts. It is unfortunate that the nine member bench of the Supreme Court decided to proclaim privacy as a fundamental right, but did not take the responsibility of defining its domain. The PIOs, information commissioners and judges are now left to do this job on a "case to case" basis. There should be an attempt to make law as definitive as possible. It is evident that matters relating to a person's body, home, sexual preferences, religious or political beliefs, should generally be considered as issues relating to privacy. These could be justified by Article 19 (2) which permits reasonable restrictions on the basis of "decency or morality." However, with respect to a person's body there have been some divergent opinions. The most easily identifiable part of a person's body is the face. Can we now argue that taking a person's photo and disclosing it or publishing it is an invasion of privacy?

Aadhar and Privacy

One of the primary causes for this entire controversy regarding privacy has been the Aadhar card and the requirement for linking it with all other interactions with government. Most of those who read this article are likely to be in favour of the domain and importance of privacy being extended. The personal details taken for Aadhar, which may not be given in many other government records,- are the biometric identification in terms of fingerprints and iris scans. Everyone going out of the country (and a large percentage of readers of this article) give their biometric identity at the emigration counter. Universal requirement of the Aadhar card is likely to reduce benami transactions and ghost names of beneficiaries.

The argument was made before the Supreme Court that privacy is an elitist concern. The Supreme Court disagreed. Citizens have said that all their transactions may be connected with Aadhar. The fact that corruption is one of our major concerns cannot be denied. I guess we must also admit that our governments are unable to really curb this. We have a number of people having multiple PAN cards, floating shell companies, and taking illegal benefit of various welfare schemes and so on. A large number of private companies are registered at the residences of public servants. These actually snatch morsels from the mouths of the disadvantaged. There may be some inconvenience for some people and perhaps some embarrassment. Calling the house a castle and saying privacy is an essential part for a dignified life sounds really good. If this were possible without reducing the scope of the RTI and the freedom to publish it would be fine. There is a possibility that the right to privacy will be at the cost of the right to information. Sometime in the future the freedom to publish may also be curbed.

There are perhaps two competing issues in thinking of the desirability of Aadhar: Concern for privacy and the need to curb corruption and leakages in welfare schemes. Going by the talisman of Gandhiji one should consider which step is likely to benefit the poor. It appears evident to me that having an Aadhar card linked to most government transactions will benefit the poorest in at least getting basic amenities.

Conclusions

It appears that Supreme Court, has, in claiming to interpret the Constitution, read it to claim that a concept discarded by the constituent assembly was meant to be included. In this decision the Supreme Court should have defined privacy and its contours. When deciding on the definition of privacy Article 19 (2) must be kept in mind and the RTI and the freedom to publish must not be curbed beyond what the Constitution permits.

The greater good is likely to be served by having an Aadhar card.

Notes

1. http://supremecourtofindia.nic.in/pdf/LU/ALL%20WP(C)%20No.494%20of%202012%20Right%20to%20Privacy.pdfhttp://supremecourtofindia.nic.in/pdf/LU/ALL%20WP(C)%20No.494%20of%202012%20Right%20to%20Privacy.pdf

2. https://indiankanoon.org/doc/1306519/

3. https://indiankanoon.org/doc/501107/

4. https://indiankanoon.org/doc/160205361/

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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 executet, 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 is 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 politicos 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.

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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.satyamevajayate.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'.

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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.

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Deccan Herald Caged Ordeal

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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 Khatoon 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 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.

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