

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 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.

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 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 Unites 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

Acceptance speech while receiving M.R. Pai award

Unhealthy State of Public Sector Banks

Acceptance Speech at M.R.Pai AWARD FUNCTION

ON 6TH MAY 2016

- **SHAILESH GANDHI – RTI Activist and Former Central Information Commissioner**
- Fellow citizens of India,
- I am indeed thankful to Punjab & Maharashtra Bank and to the All India Bank Depositors Association for conferring this award. I feel humbled. R. Pai was the Royalty of Activism. He was known as a consumer activist but beyond consumers he was really an idol who inspired a whole lot of people. I did not have the good fortune of meeting Mr. Pai, but around 18- 20 years back I had once called him. We had a very lengthy telephone discussion where he gave me his suggestions and gave me very valuable guidance.
- I perceive we are heading for a very serious problem

with respect to our banks; particularly the nationalized banks. I don't think they are aware of this, therefore I will take the liberty of putting across my viewpoint about what is happening.

- Today I would like to share with you some information about this Reserve Bank judgement by the Supreme Court and some related matters. I had given my orders in 2011 and 2012. RBI and others got stays from High Courts and in 2015 the Supreme Court took all these eleven cases itself. Ten of these had been decided by me, and one had been decided by Mr. Satyananda Mishra. Before this landmark judgment of the Supreme Court on 16 December 2015, upholding the Information Commission's to disclose information in eleven cases, there is only one instance of the apex court ordering information to be disclosed.
- What did this judgment cover? Citizens using RTI had sought information primarily on 5 points: Investigations and Audit Reports of bank by RBI; warnings and advisories given to banks; minutes of meeting of governing boards; top defaulters and grading of banks. These were some of the things which had been denied in RTI and this came to me in a host of different cases. RBI does Audit Reports but they are considered to be secret. Who are these Audit Reports for? Who does Reserve Bank of India represent except citizens of India? When I had dealt with each case, I could see no reason for denial as per the Right to Information Act. The banks and the Reserve Bank were of course claiming that disclosure of this will lead to economic deprivation of this nation's interest. I had written there, and I repeat that if the economy of this nation is going to depend on whether we expose the truth or not then I think our economy must be in very bad state. Even then transparency is our best option.
- If you hide all this, and Reserve Bank makes a mistake or is corrupt the entire nation will pay. To believe that the citizen who is mature enough to elect this

government,- who gives legitimacy to the government, which Reserve Bank represents – is incapable of making mature judgment is flawed. The argument that the citizen is incapable of understanding the financial sector and hence must not be given the truth is unacceptable. The denial of information to citizens has to be covered by the exemption of Section 8 of the RTI Act. These are in consonance with Article 19 (2) of our Constitution which defines reasonable restrictions which can be imposed on our fundamental right of expression. The claim to keep the information secret was not covered by the exemptions in the RTI Act and the Supreme Court has upheld this view.

- Let us look at this a little closely to unravel what is happening to our nationalized banks and their health. Why is there a reluctance to share the truth? In 1994, Reserve Bank of India had issued a circular which directed banks “to make public the names of the borrowers who have defaulted and against whom suits have filed by banks”. This required all banks to expose defaulters so that everybody would know and defaulters maybe shamed. This followed the basic principle that the bank’s primary responsibility is to safeguard the interests of its depositors. Then slowly we find the change coming for which we must question our regulator as well. From 1993 to 2002 the Non Performing Assets (NPA) of the bank,- which are likely bad debts,- were in the range of Rs. 38,000-50,000 crores. They would go up and come down and then a funny thing happens: Reserve Bank and other banks began to see that these bad debts were rising. The Non Performing assets have to be written off in next three years Profit & Loss so that the true financial position of the banks is known.
- When they realized that the truth was looking bad, they came up with an interesting label called Corporate Debt Restructuring (CDR). They said instead of calling it NPA if you should think the business is good,-basically a

large, well connected borrower,- refer the case to a CDR cell. What is the CDR cell? CDR cell is no legal entity. It does not report to the Reserve Bank of India, and is a collective of banks which takes a decision on which NPAs should be labeled CDR to avoid the label of NPA. This CDR group of people who are beyond RTI, beyond laws of this nation, claim they are an informal club with nineteen employees. It is housed in IDBI and sixteen of the employees are on deputation from public sector banks. They have until now converted 4 lakh crores of NPAs into CDRs, just by labeling them thus. These loans are rescheduled and at times the interest is forgiven. The Non Performing Assets of banks are about 3.6 lakh crores. The Khap Panchayat of CDR has 'restructured' 4 lakh crores NPAs by labeling them as Corporate Debt Restructuring. Out of this only Rs. 60,000 crores have actually come back.

- They began to feel a little uncomfortable, as some of us started questioning the CDR cell and insisting that they are covered by RTI. My appeal is pending with the Central Information Commission. Since the CDR label had been used for over 4 lac crores of NPAs, they felt the need for a new label. Innovatively they called it Strategic Debt Restructuring (SDR). What is Strategic Debt Restructuring supposed to do? The debt is restructured by all the lenders and upto 25 years the loan can be extended to the borrower! Initial installments may be waived so that there is no default on books. Interest can also be reduced. Depositors pay money because they get interest for that. There is a cost that bank incurs, interest is not profit. Therefore if interest is written-off something is going wrong. There is no official estimate of the amount of NPAs mislabeled as SDR. Rough estimates are there that this may be already between Rs. 1-2 lakh crores. Today we don't talk even of tens of thousands, we talk of Rs. 1 lakh crores, Rs. 2 lakh crore One lakh crores has twelve

zeroes.

- About 12 years back the total Non Performing Assets and there was only one name for likely bad debts: Non Performing Assets. Banks were expected to write these off in their books in three years, unless the borrower paid during this period. These were about 4% of the total deposits of the banking sector. Primarily most of these bad debts are with the nationalized banks. Now if I count the CDR which has not come back and the SDR and what is recognized is Non Performing Assets, the total is somewhere in the region of about Rs. 8-9 lakh crores which represents over 9% of the total deposits of the banking sector. Out of about 9 lakh crores of likely bad debts only about half are being acknowledged. The rest are being swept under the carpet in the name of restructuring. How is the Strategic Debt Restructuring happening? Loan repayments are being extended to 25 years and interest reduced. At times the loan repayment is postponed so that only in future will it have to be recognized as a bad debt. More dangerously the bank is often expected to swap the debt for equity shares in the defaulting company. We have accepted that the public sector should not get into business, but under SDR PSU Banks are supposed to forget the loan amount and take equity in a company which is defaulting on repayments!
- Let me give you a recent example to illustrate the Himalayan blunder of this route. On 31 March 2016 the under construction Vivekananda flyover collapsed in Kolkotta killing 21 people. Who will have to pay for that collapse and for the people who died? The citizens of India will have to pay because just 6 months back 51% of the equity has been swapped for debt with the company IVRCL using the smart label of SDR. Primarily business is a concept where an entrepreneur risks his money, borrows from elsewhere. He may tap the equity market where those who participate are looking for high rewards, but are also conscious of the risk. If you make

a windfall profit, the profit is yours, if you make a loss the loss is yours. We have now come up with this brilliant economic theory. It says borrowers of Rs. 5000, 50,000, 5 lakhs, 50 lakhs, 50 crores must repay. If they are unable to repay due to any reasons, -personal illness, death, loss of job, non-payment by debtors, - steps should be taken immediately to safeguard the banks money. The bank's primary duty is towards depositors firstly, and secondly to its shareholders. But if you borrow over Rs. 2,000-5,000 crores then the bank must make a judgement of whether you made a mistake in your calculation, forecasts, or whether it is just bad luck. You are an honest person but you are hit with bad luck then the bank must restructure all the loans. It's the bank which is supposed to see that you succeed in business. Windfall profits are for the entrepreneur, losses must be shared by the depositors of banks.

- If we continue with this game of mislabeling the bad debts of our public sector banks with more innovative labeling in another decade our bad debts, -with various labels, -may become 18-20% of the deposits. The entire PSU Bank sector may be finished. It will become like Air India, which you can't sell, or make it viable. The nation will pay for it through taxes. Every citizen and the poorest man in this nation, -including the little girl in Vidarbha who is probably starving or dying, -will pay to ensure that the large borrowers over Rs. 5,000 crores will continue with their jets and villas, because they are such nice and elegant people. This is a matter of grave concern for this nation. Transparency everywhere will lead to accountability and citizens as monitors will be the watchdogs.
- I was very thrilled with the new year's message given by Reserve Bank Governor. It almost reflected what I and the Supreme Court had said. The Supreme Court judgement came on 16th December 2015, and the Governor sent the new

year message after a fortnight saying: "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. If we are to have strong sustainable growth, this culture of impunity should stop. Importantly, this does not mean being against riches or business, as some would like to portray, but being against wrong-doing. ...

... there is a sense that we do not enforce compliance. Are we allowing regulated entities to get away year after year with poor practices even though these are noted during inspections/scrutinizes ? Should we become more intolerant of sloppy practices at regulated entities, so that these do not result in massive scams years later? Should we haul up accountants who do not flag issues they should detect? My sense is that we need a continuing conversation about tightening both detection as well as penalties for non-compliance throughout the hierarchy.... Finally, we are embedded in a changing community. What was OK in the past is no longer all right when the public demands transparency and better governance from public organisations. ... Transparency and good governance are ways to protect ourselves from roving enquiries – everyone should recognise that an effective regulator has enemies, and like Caesar's wife, should be above all suspicion." I wrote an article praising the Governor and saying RBI is acknowledging and accepting the truth and its responsibility to citizens. Three months later the tune has changed. Information which was ordered by the Supreme Court to be disclosed is not being given by the Reserve Bank of India. When a major institution and regulator of this nation does not follow Supreme Court's order, it's a very sad and disturbing situation. I had

asked them for information which the Supreme Court had ordered to be given and they have replied that the matter is before the Supreme Court. There is no review petition filed by the Reserve Bank of India. When the Reserve Bank of India was asked for the list of defaulters by the apex court, they have given it as a sealed envelope and said this should not be released but they have not challenged the Supreme Court judgement. Is this the way the largest regulator in India should conduct itself by defying the orders of the Supreme Court?

- I am not blaming the current Governor. Perhaps everyone feels he is inheriting a set of problems created by someone else. During his tenure he doesn't want the problem to come so he postpones it but this is not the way you can run a nation. We will really come to deep sorrow if we continue thus.
- Before I end here is a small thing I would like to warn you about. The Right to Information appears to be facing a serious threat. Thrice before in 2006, 2009 and 2013 the then government sought to amend the law. We agitated and managed to stall the move by the government all three times. In April, 2016 all the political parties across the spectrum appeared to have come together in parliament. The Samajwadi Party MP, Naresh Aggarwal said "The RTI Act was passed by Indian parliament because of the pressure from the United States of America."
- No, this is not a laughing matter my friends it's an insult to my nation's parliament. It's an absolute insult in public of my nation's parliament and India, and nobody is bothered. The other members of parliament did not even raise an objection. Praful Patel said "har paanwadi or chaiwallah is asking for information in RTI". Do we need to tutor these people that this is a democracy run on our behalf? We the people of India own this nation. Democracy is a rule of the people, for the people, by the people and these MPs don't understand

this. Rajiv Shukla of the Congress also supported it and the government minister also said they will consider these views. I happened to be on the TV debate after that and there was somebody from Nitish Kumar's party who kept saying that they want to strengthen Right to Information. I kept pleading: 'We don't want any strengthening, just leave it there'. But it may not be easy and I am suggesting that all of us will have to do something actively on both these issues. I think it is upto citizens to put pressure on Reserve Bank of India and the political system to move towards more transparency and accountability.

- Active Citizenship is the fundamental basis on which a nation can grow. Let us stop complaining about our leaders and expect them to deliver everything. The citizens of this nation who must take responsibility. We use the word *Lok Shahi* to describe our democracy. *Lok Shahi* means *logon ki shahenshahi*. Each one of us must feel and believe he is a badshah or a begum but then the responsibility is also ours. Unfortunately most of us have abdicated our responsibility. Most times we just crib about what is wrong. I am suggesting to all of you that we need to take up Active Citizenship. And if we do this, we can change this nation. We can make this a nation that everybody will be proud of: a fairer, equitable and prosperous nation. But if you don't do that it will not happen. This will not happen until we take the responsibility. I am hoping a lot of us will start taking this responsibility.
- And my final appeal is to your patriotism. Patriotism is not a question of merely standing up when the national anthem is being sung or saluting our flag. These are useful symbols. Patriotism is something deeper. We must feel for our nation and decide to do something actively to make it better. I the sovereign citizen of India am responsible.

Thank you friends. Thank you.

Why our govt. does not work

In Satyamev Jayate

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