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. Inspite 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 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 get conviction of just 125 officers per year! If ACB is to have any meaningful impact the figure needs to go up by atleast 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