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 Vivekanada 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