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ON LOKPAL...

# Transparency Review

## Journal of Transparency Studies

### CIVIL SOCIETY, THE FIFTH PILLAR!

Dr N Bhaskara Rao

The recent events have seen civil society acquire a status of a Fifth Estate. Similar to the Fourth Estate status that media enjoys. Civil society earned that for the stellar role of individual citizens, as a community and as a network for common cause and national concern. Jantar Mantar or Ramlila congregations were not the first time that civil society has asserted and stood up to see that the Government works for the people. But they were a reminder of arrival of civil society as the Fifth pillar of our democracy.

Remember the way the Right to Information Act (RTI) came into being in 2005. Parliament passed it without any discussion but it was preceded by a decade long deliberations in the civil society and experimentation. Aruna Roy deserve kudos for that dignified pursuit along with Prabhat Joshi, Ajit Bhattacharjea and many others. I was a witness to the kind of prolonged discourses and revisions in the drafts of that Bill. As if in recognition of that positive contribution to deepen democracy and good governance, the National Advisory Committee was constituted in 2004 at the highest level of policy making with civil society activists as its members and taking active role. It is their initiative that helped shape NREGS and formulate bills to do with food security, right to education and communal violence, etc. All that has demonstrated that civil society can take proactive initiatives as well as correctives in the system. These are good examples for formal

arrival of civil society as the fifth pillar of a democratic state.

It is against this background that we need to see the recent “second freedom movement” against corruption by Anna Hazare. The massive support to it has not come overnight. Lokpal Bill has come handy to galvanize countrywide support because of years of dragging for obvious reasons - no matter which party government was in. The India Corruption Studies of CMS as well as the others too have contributed in easily mobilizing such an impressive response for the Lokpal Bill.

The role played by Mohandas Karamchand Gandhi, never holding any formal post, remains the best example for civil society contribution in policy making. I am also reminded of some earlier instances like N G Ranga’s anti-cooperative farming movement in late fifties using a post card in the wake of Avadi Congress – as a result Prime Minister Nehru had to change the course of that proposed Amendment. Based on years of research on public participation and Government responsiveness, I suggested to Mrs. Indira Gandhi a social audit model by independent professionals (1981 – 82) which idea she encouraged but could not take up. Rajiv Gandhi too tried briefly alongwith civil society activists. But after becoming the Prime Minister of India, he could not follow up. But with same note of mine on Social Audit approach, Rajesh Pilot constituted the first Social Audit Panel

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## **TRANSPARENCY STUDIES**

The Right to Information Act 2005 represents a historic breakthrough in recognising the citizen's democratic rights to monitor measures affecting the public good. Following adoption of the Act by the Parliament of India, the CMS has set up a Transparency Studies wing to document, examine and publicise the interrelation between governance and society in all its aspects. It facilitates dissemination of relevant material, confers with experts and field workers and networks with the media to promote implementation and awareness.

Priority is given to right to education, especially of children; right to work; right to justice and associated human and social rights, especially at the grassroots.



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(1993 – 96) with me, Justice P N Bhagwati, Kushwant Singh, B G Deshmukh and a couple of activists. One idea was to involve citizens in coming up with correctives in the system. We used “public hearings” across the country. (to gear up communication sector. In fact, that was the time when the sector, which otherwise was a close door affair, was opened up for public discourse and involvement in policies). But that did not become a mass movement as it could not be taken beyond an experimental scale. There are several such isolated experiments in different sectors by independent activists. Some of them succeeded in sensitizing the powers to give up a proposal or even to include an idea.

The RTI movement in the last six years had taken roots and is being sustained with a national network of about 5000 activists. This new cadre of RTI activists received further boost from new media, social networks ably pressed into service by people like Kejriwal and Sisodia as in the case of the latest India Against Corruption movement. That is how the campaign against corruption bothering most Indians across received instant support as never before and cutting across the divides.

But with the entry of Baba Ramdev the movement took a turn with core issue becoming secondary and Baba became the issue. In the constitutional scheme of things it is the legislature which has the responsibility for the laws of the land. As such the controversy should not be about civil society representatives becoming an alternative source for law making. The role of civil society remains important in ensuring that the work of legislators is people centered. RTI is a good example of that paradigm. As that Act was the initiative and endeavour of civil society, why not the Lokpal Bill with similar spirit. Aruna Roy emerged as civil society leader by way of experimentation and demonstration at the grassroots and converting those insights for replication on a national scale. That is how leaders of civil society emerge. Anna Hazare too had such a distinguishing standing. But the civil society does not involve only individuals who had access to news media, or activists of particular streams, but many others including academics, residents associations, trade unions and

groups of all hue who as volunteers debate towards finding a solution without a conflict of interest or without being motivated by external elements.

The issue today should be not undermining of one Estate by another or overlap of the roles. Our Constitution has rightly provided for “checks and balance” approach to ensure responsible and accountable good governance. In that model each pillar has a definitive role. The Legislature, the Judiciary, bureaucracy and the media operate with certain limits. This limit is what often is described as Lakshman Rekha in the process of striving for an over all and larger good from a citizen’s and futures perspective. Every one’s role is significant only when they discourse and decide transparently so that the process yields a better outcome.

Certain polarization in adversarial positions between the Government and some responsible members of civil society need to be understood in that larger passé that the country is in. There is an accumulated anguish and anger over politicians in particular and those in powers in general. A root cause for this situation is declining representative character of those getting to legislatures –they were being elected hardly by a quarter of people, they devote hardly any time for the concerns/ needs of people there and corruption that many of them are accused – all add to that pent up feelings.

Notwithstanding whether the Prime Minister and higher Judiciary are included or not in the purview of Lokpal, the civil society should sustain its role and broaden its scope not get blurred with party politics and stall the process. Of course, corruption has to be a continued concern and sustained pursuit of everyone. In that endeavour political functionaries, higher judiciary, bureaucracy and also the media should come under RTI or under Lokpal. They need to work in a spirit of checks and balance, transparently and responsively. By coming under RTI media revives itself as the Fourth Estate. Formal and informal role of civil society as the Fifth pillar should remain a unique feature of Indian democracy. Governments should recognize, respect and avail this strength. Civil society in turn should work so that elected ones become more representative and accountable.\*\*\*

# Is The Government Serious About Dealing With Corruption?

Team Anna

*The Lokpal is designed to be a comprehensive anti-corruption institution independent of the government, empowered to effectively investigate corruption of all public servants. But most of the critical elements in this vision have been rejected*

The latest draft report of the Comptroller and Auditor General of India (CAG) on hydrocarbon production sharing contracts and the transfer of oilfields to Reliance is only the latest of the mega scams to surface in the country. The breadth and depth of corruption in India is clear from the country's plunging ranking in Transparency International's global corruption survey. Corruption has come to affect every citizen in the country. Bribes have to be paid for ration cards, passports, building permits, and for doing even normal business. Street vendors and rickshaw pullers are forced to pay bribes for exercising their fundamental rights. Villagers are forced to pay bribes for getting their wages under the Mahatma Gandhi National Rural Employment Guarantee Act (NREGA) or for any other entitlements in other schemes. High-level corruption is plundering the public exchequer, distorting government policies, and creating a criminal mafia, which has come to dominate all institutions of power. Low-level corruption is making life impossible for common citizens.

A major reason for this rampant, widespread corruption is the lack of an independent, empowered, and accountable anti-corruption institution that can be trusted to credibly investigate complaints of corruption and prosecute the guilty. The Central Bureau of Investigation (CBI) is controlled by the very people who are the fountainheads of this corruption and is required to seek the permission of the very people who need to be investigated and prosecuted. The Central Vigilance Commissioner of India (CVC) is selected by the Prime Minister, the Home Minister, and the Leader of Opposition, who have a vested interest in ensuring that weak bureaucrats get selected. Moreover, the CVC has

only recommendatory powers and most of his or her recommendations are disregarded by the government, which wants to protect corrupt public servants. The courts take years to conclude trials and there is also considerable corruption in the judiciary because of the lack of accountability of the higher judiciary and the lack of an effective anti-corruption agency to investigate corruption within its ranks.

This is why we have been demanding the constitution of an independent Lokpal institution — which will be completely independent of the government, empowered to effectively investigate corruption of all public servants of the Central government, including the Prime Minister, the judiciary, etc. (with Lokayuktas in the States to investigate public servants of the State governments and local bodies), and accountable in multiple ways to ensure that any corruption in the Lokpal institution would be immediately investigated and action taken. This is exactly what is required by the United Nations Convention against Corruption (UNCAC), which has just been ratified by India after much delay.

In the Jan Lokpal Bill proposed by us, the 11-member Lokpal would be selected by a broad-based selection committee consisting of the Prime Minister, the Leader of Opposition, the Chief Election Commissioner of India (CEC), the CAG, two Judges of the Supreme Court, and two Chief Justices of the High Courts. The selection would be done transparently by first setting up a search committee consisting of retired CECs and CAGs who would first call for public nominations, then prepare a shortlist which would be put up on a website for public comments about the shortlisted candidates after which the selection committee would finally select the members.

**A major reason for this rampant, widespread corruption is the lack of an independent, empowered, and accountable anti-corruption institution that can be trusted to credibly investigate complaints of corruption and prosecute the guilty**

This 11-member Lokpal would have a full investigative agency under its control through which it would get complaints investigated. If corruption is found after investigation, the corrupt public servant would be prosecuted in special courts within the judicial system. The Bill provides that the number of special courts to try corruption cases would be increased to ensure that trials are completed within a year. Proceedings for removal of the corrupt public servant would also be initiated by the Vigilance Department under the Lokpal, which would give a full opportunity for hearing to the public servant. The Lokpal's final recommendation for penalty against the public servant would be binding on the government. This would ensure that the bosses of the corrupt public servants who are often complicit in their corruption cannot protect them, as is happening today.

The Lokpal would thus be a comprehensive anti-corruption institution independent of the government. The 11 members of the Lokpal would be accountable to the Supreme Court of India, which would examine complaints against them and order their removal. The investigative and vigilance machinery under the Lokpal would be accountable to independent complaints authorities created in each State, apart from to the Lokpal itself. Moreover, the Lokpal institution would be subject to a financial and performance audit by the CAG. Most importantly, the functioning of the Lokpal would be mandated to be transparent and the details of its investigations would be put up on its website. Also, the orders of the Lokpal would be subject to judicial review by the High Courts and the Supreme Court.

In the last two meetings of the Joint Drafting Committee (JDC), the Ministers representing the government rejected most of the critical elements in

this vision of the Lokpal. They see the Lokpal as an essentially 11-member institution where all decisions would have to be taken by these members themselves. Instead of a comprehensive anti-corruption machinery, they see it as an institution to look at a few cases of high-level corruption. Even there, they do not want the Prime Minister, the higher judiciary, and the Members of Parliament who take bribes for

voting or speaking in Parliament to be covered. Also, they want the Lokpal to be merely a recommendatory body like the CVC in matters relating to the removal of corrupt public servants.

They were neither willing to debate these issues publicly nor even willing to place the audio records of the meetings on a public website. They were also not prepared to debate these issues further between

us. It has therefore been decided that the Ministers would prepare their own draft and we would prepare our draft of the Lokpal Bill, each of which would be placed before the Cabinet, which would decide which Bill would be placed before Parliament.

We are repeatedly being told that laws have to be made by the elected representatives of the people and civil society has no role to play. This view shows an arrogance of power. Those running the government have forgotten that they are merely the representatives of the people and they must run the government and make laws as per their wishes. Therefore, while deciding which Lokpal Bill to pass, they must find out what the people want and, if they have any doubt about that, they can have a referendum on the disputed issues.

The people of this country are fed up with the all-pervasive massive corruption in the country and are determined to have a strong and independent Lokpal. Any government or party that goes against the wishes of the people will do it at its own peril.\*\*\*



*Courtesy: The Hindu (20 June 2011)*

# Neti, Neti

Aruna Roy & Nikhil Dey

*Just what is civil society? A hazy label that leaves us none the wiser*

In reply to a question about his views of “western civilisation”, Gandhi is said to have remarked: “It is a good idea!” The resurgence of “civil society” in the past two decades has led to similar ironic comments: “Are the rest then uncivil?” and the like. But there is a serious question that needs articulation and addressal to make the current debate meaningful. Just what is civil society, and how does classifying it help us deal with the contentious issues we face? For, membership in the club, obviously, is not based on good behaviour. As with all terms used to classify and label, the label itself needs to be unpacked.

At this point of high-profile “civil society activism”, its definition is muddled, and with good reason. If everything outside government is civil society, then it includes the RSS and the CPI (Maoist), the Lions, Rotarians, caste-based associations, including khap panchayats, human rights organisations, campaign and academic groups, corporate social responsibility organisations, private public partnerships (PPPS) and even individual crusaders like Irom Sharmila. The list could go on. While it is true that this categorisation probably excludes state actors, it is not clear whether it includes everyone else. There is, in fact, a history to this over-generalisation.

Four decades ago, those outside government who wanted to work for a cause were part of voluntary organisations (“VOs”). As registered societies under the Societies Registration Act proliferated, the term non-government organisation (NGO) became popular. Another misleading definition by

negation. The absurdity became evident as the category was found to be too broad, and narrower acronyms began to emerge, such as INGOs (international NGOs), ENGOs (environmental NGOs) and even GONGOs (government-organised non-governmental organisations)! Many cringed at being termed NGOs, and kept attempting to explain the plurality of organisations illogically grouped together.

NGO is now passe, the parlance of the times is ‘civil society’. The creation of such categories is

not innocent. It allows power structures to arbitrarily sideline participants. Civil society is a term used in debates in the west which greatly valued non-state players. It assumed more importance in Eastern Bloc countries—in totalitarian states where the Party was both the state and the people. A category that defined itself in

negation to both the

state and the Party was required. The Indian context is altogether different. In a democracy struggling to get the state to represent the people’s interest, the term civil society might be of little use. Is it useful, then, to understand this current anti-corruption upsurge?

What exactly is this civil society? More pertinently—who are they? The simplistic answer—formations outside state institutions—offers a litany of questions and answers none. Why then ‘civil society’? Merely because it allows the media to ignore the complexities and pass verdict. The broad spectrum of ideologies and strategies, sometimes conflicting under one definition, baffles



us. In short, we're using a category that leaves us poorer in our understanding. It might even be convenient for those who want to shape this anti-corruption campaign without looking at the details. When a term confuses more than it defines, it might be time to dispose of it.

Are Baba Ramdev and "Team Anna" part of the same formation? Should the media not focus on more pointed questions about whether the two campaigns are separate and whether they have the same demands. There are visible and pronounced differences between the demands that Baba Ramdev seemed to make in Delhi on June 4, and the arguments Anna Hazare brought for a stronger Jan Lokpal Bill. The debates around the specifics in the public domain will facilitate more meaningful discourse, providing the citizens an opportunity to make better informed choices.

Questions that delve into the political persuasions of the two groups are also relevant. The Ramdev

stir has turned into a platform for the RSS and its "parivar" to launch its own political campaign. When powerful political forces throw their weight behind a fledgling movement, the people will begin to question where exactly it will lead to. Pointed questions, and specific answers, will not permit us the use of terms such as civil society to obscure and confuse.

In another context, the questions put to the National Advisory Council (NAC) and the Joint Drafting Committee (JDC) regarding legitimacy and capacity to draft policy and laws (regardless of membership) need answers. In any case, the greater duty is to bring onboard and consider the amorphous views of civil society. Complex democratic societies do not come with binary perspectives of state and civil society. This plurality must be recognised to go beyond artificial consensus and engage in meaningful public discourse.\*\*\*

*Courtesy: The Outlook (20 June 2011)*

## There's Nothing Civil About It

Suhel Seth

*India must be ruled by its Parliament, not a motley crew from Jantar Mantar or Ramlila Maidan*

Over the last few months, we have seen a culture of 'fasts' develop in India. From social activists who have now renamed themselves 'civil society' to godmen who want to politicise everything including their own illegalities, the development is something that does not augur well for any democracy and certainly not ours. We are nurturing a demon that will continue to devour every edifice left of some of our institutions. What saddens me most is the level of discourse that is now part of the public domain. I cannot fathom how an Arvind Kejriwal speaks the way he does. He is not the arbiter of all morality in India. How can he make statements that are not just abusive but damning about a society that he represents and hopes to change?

By alleging falsehoods on both the people and the process that is responsible for creating the lokpal bill, we are allowing these people to hijack what must be a governmental agenda. I am tired of being told by these so-called 'civil society' members that it is their business to get things done if the government doesn't. Illogical and farcical.

We are all part of a system that allows us to choose our representatives. On top of that, we have a vibrant and free media. So what prevents the 'people' as it were, from taking up issues through these channels?

India has been in existence as a nation since 1947. Haven't we had bills passed before or are we awakening to a new dawn? I was aghast at the manner in which Ramdev held Delhi hostage. I kept wondering, when I gave him the right to represent me? What angered me even more was why my government was negotiating with self-styled representatives of the people? Is corruption new to India? Is it unique to us a nation? And will one bill change all that? Will the municipal worker stop asking for a bribe? Will we never need to pay cops just so they do their duty? Will there be no delays as far as the legal machinery is concerned? What is it that we are talking about?

Enough has been said about blackmail and how the government has been held to ransom. Equally distressing was the role that the BJP and the RSS played — political opportunists to the hilt. Is this

going to be the new way of defining an Opposition in India? To my mind, the personal remarks against Sonia Gandhi by Nitin Gadkari belonged to the gutter and not to someone who claims to head a political party. We have become so indecent that almost anything goes and no individual or institution is sacred. This cynicism and abuse will destroy India quicker than we can imagine. The tremors of this self-hatred are being felt abroad. In the many meetings with global editors, the first question I am asked is: 'Why is India so self-destructive?' Just when everything was going right for us, foreign direct investment has slowed down and investor confidence has waned.

I have always maintained that the role of civil society is to flag issues and then build sustainable pressure for governments to act. Blackmail is not a tool that helps countries legislate. It only opens doors to dubious people as we saw in the case of Ramdev. The Kejriwals of this world need to know

that unless elected, they are mere citizens and not law-makers. This distinction cannot be blurred the way it has been over the past few weeks. What is worse is the intolerance. Over the last many days, I have gone against the popular sentiment and been pilloried for it. I have been called a government stooge and a Congress agent. What I have found shocking is that very few in the media are analysing this ridiculous situation or taking a contrarian view. I hope they realise that sensationalism and populism do not make for sustainable legislation.

This country has to be run by India's Parliament, not by a motley crew that assembles periodically either at Jantar Mantar or the Ramlila Maidan. We are not some loose confederation of states run by independent warlords. We are a nation governed by a constitution. If we could lock up Binayak Sen for sedition, why are we silent on some of these civil society blokes who are causing even greater harm?\*\*\*

*Courtesy: Hindustan Times (21 June 2011)*

## **A Case For Effective Lokayuktas: Moving Beyond Half-Baked Solutions**

**Nripendra Misra & Tannu Singh**

**W**ays to curb corruption and thereby ensure probity and integrity in public life rightly seems to be the issue taking the centre stage and occupying priority in the minds of the citizenry at last. But to concentrate solely on the drafting of the Lokpal Bill and to expect that it would be able to arrest the growth of all forms of corruption at all levels is nothing short of a misconstruction. Along with the Lokpal Bill being drafted for the Centre, parallel democratic institution of Lokayuktas at the level of state, complementing and furthering the cause of checking corruption needs to be effectively brought into force with equal urgency and efficacy.

Lokayuktas as a overseer to check the rising cases of corruption at the level of the states, modeled on the lines of the Ombudsman institutions in the Scandanavian countries for the redressal of citizen's grievances, was proposed way back in 1966 by the First Administrative Reforms Commission (ARC). The National Commission for the Review of the Working of the Constitution in

2002 the Second Administrative Reforms Commission (ARC) of 2007 once again reiterated that the Constitution should make it obligatory on the part of state governments to establish the institution of Lokayukta and stipulate the general principles about its structure, power and functions. The present status is such that now even International bodies have started emphasizing the underlying need for determined actions towards effectively dealing with the deep-seated problem of corruption existing at multiple levels. The UN General Assembly, of which India is a party, recently adopted the resolution No. 58/4 on 31st of October 2003. The Article 36 of the Convention states clearly that, "Each State party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement."

As the creation of the office of Lokayukta Institution falls within the concurrent list, till now only these 19 states have enacted the Lokayuktas

Act. These are Gujarat, Madhya Pradesh, West Bengal, Karnataka, Chhattisgarh, Uttar Pradesh, Andhra Pradesh, Kerala, Maharashtra, Haryana, Jharkhand, Bihar, Delhi, Punjab, Uttarakhand, Assam, Orissa, Rajasthan and Himachal Pradesh. But this Act enacted in various states is not uniform, there being wide divergence as regards to jurisdiction over men and matters, over submission of property statements by public servants, over power of inspection, search and seizure of the properties of the Public Servants, and over matters of taking suo-moto cognizance in regards to relevant areas falling well within the jurisdiction of the Lokayukta.

In order to bridge over these discrepancies present in the various state Lokayukta Acts, it was proposed at many forums that a Model Draft Lokayukta Bill should be drafted by the Centre to be enacted as a Union Model Lokayukta Bill, which should then act as the guide for the states in drafting or further amending their version of the Lokayukta Act. One such Model Lokayukta Bill has been proposed recently at a colloquium of All India Lokayuktas/UpLokayuktas held at Bhopal in December 2010. This Bill is called the 'Mukhya Lokayukta & Lokayukta Bill' (the soft copy of this bill is available at <http://it.delhigovt.nic.in/writereaddata/Cir2011663.doc>). To have clearer

consolidated view of the wide discrepancies existing between the enacted Lokayukta Act of various states, the attached Table 1 compares the effectiveness of the Lokayukta Act of a few states in light of certain important indispensable powers envisioned within the 'Mukhya Lokayukta & Lokayukta Bill'.

The major highlights of this 'Mukhya Lokayukta & Lokayukta Bill' are in its coverage of jurisdiction the definition of Public Functionaries includes the chief ministers, ministers of the state legislature and all bureaucrats. The Selection process herein conducted through Governor in consultation with the Chief Minister and the leader of the opposition in State Legislature provides for an un-circuitous and unbiased way of selection, not unduly favoring the ruling party in any way. It gives power to the Lokayukta to take up suo-moto cognizance of cases. Further the Lokayukta has also been provided with suo-moto powers of investigation if after prelim enquiry he is satisfied that the grievance or allegation against the Public Functionary is sustained. As regards search and seizure, he may by a search warrant authorize any officer to search or carry out inspection empowered under the Code of Criminal Procedure, 1973. Moreover this bill conceives of the Lokayukta institution as a deemed court within the

**TABLE 1: COMPARISON OF THE RELATIVE POWERS OF VARIOUS STATE LOKAYUKTAS**

STATE	Mukhya Lokayukta & Lokayukta Bill	Karnataka	Madhya Pradesh	Himachal Pradesh	Chhattisgarh	Bihar	Gujarat
Do the Public Functionaries include civil servants, elected representatives & others?	YES	YES	YES	YES	YES	YES	YES
Is the appointing process transparent, consultative & clear?	YES	YES	YES	YES	NO	NO	NO
Does it have suo-moto powers of cognizance?	YES	YES	NO	NO	NO	YES	YES
Does it have suo-moto powers of investigation?	YES	YES	NO	NO	NO	YES	YES
Does it have independent investigating agency?	YES	YES	YES	NO	NO	NO	YES
Does it have suo-moto powers of prosecution?	YES	YES	NO	NO	NO	YES	NO
Does it have powers to enforce its recommendations?	YES	YES	YES	YES	YES	YES	NO
Does it have Judicial powers to punish for contempt of court?	YES	YES	YES	YES	NO	NO	NO
Does it have police powers?	YES	YES	YES	NO	NO	NO	NO
Does it have power to issue warrants for search & seizure?	YES	YES	YES	YES	NO	NO	YES
Does it have powers to call for annual asset statement from Public Functionaries?	NO	YES	NO	NO	NO	NO	NO

meaning of Contempt of Courts Act. Giving powers to check compliance, so as to ensure that the recommendations of the Lokayukta are not merely advisory with no binding clause, this Model Bill empowers the Lokayukta to send a report to the competent authority concerned that such injustice or hardship shall be remedied or redressed in such manner and within such time as may be specified in the report. And this report is not merely recommendatory, as it is an obligation on the part of the competent authority to intimate the Lokayukta within a stipulated time period the action taken on the report sent by the Lokayukta. In case the competent authority fails to intimate the Lokayukta on the action taken on the report within the permitted time, then Lokayukta has the authority to make a special report upon the case to the Governor. Striving further to provide limited powers of suo-moto persecution to the Lokayukta, this bill proposes that if after any investigation into any complaint the Lokayukta is satisfied that the Public Functionary has committed any criminal offence and should be prosecuted in a court of law for such offence, then he may pass an order to that effect and the appropriate authority or agency shall initiate prosecution of the Public Functionary concerned, and that no prior sanction of any authority is required for passing an order of such prosecution.

#### **Making way for the Ideal Institutionalization of Lokayuktas:**

From the reading of the above, what seems to emerge as a graver issue at hand is that the loopholes present in the various versions of diluted Lokayukta Acts of different states are paralyzing the functioning of this institution in addressing the very problem of corruption it is supposed to deal with as a primary focus.

To take a stock of the ideal picture, a few important enabling powers which are indispensable if we envisage a functionally effective Lokayukta Act. To start with, the definition of the Public Functionaries, which come within the purview of

this Act, should be well defined to include all politicians as well as all the public servants. Secondly there should be a definitive attempt towards checking that in the appointment, removal as well in the maintenance of the Lokayukta's office no unnecessary bias and discretion is granted to the ruling party, so that independent functioning of the institution is ensured in the long run. Suo-moto powers should be conferred on the Lokayuktas in matters of taking cognizance, investigation and prosecution, in case preliminary investigation indicates the commission of some substantive act of corruption. To ensure the above it is further required that Lokayuktas should have police powers; and also an independent investigating agency of its own taking orders directly and solely from the Lokayuktas in relation to the cases of corruption it is handling for the Lokayukta. Next there is an urgent need to make the recommendations of the Lokayukta binding in nature and not merely advisory through outlining concrete and corrective punitive actions in case of any non-compliance to the Lokayukta's recommendations. Judicial powers conferred on Lokayuktas for issuing warrants for the search and seizure in the furtherance of any investigation, as well as prohibition on any kind of outside judicial interference as far as the proceedings of the Lokayuktas are concerned will further establish its status of an independent body against corruption. Another important powers which will consolidate the position of the Lokayuktas as a central authority against corruption in the state, is the binding obligation on all Public Functionaries to submit annually a declaration of their assets and liabilities, this will also greatly facilitate the Lokayuktas in keeping a close tab on any incident of amassing of huge wealth through corrupt means by the Public Functionaries. Last but not the least, as advocated by the 2nd Administrative Reforms Committee Report and also strongly seconded by the Lokayuktas Conference there should be a comprehensive Bill for a uniform institution of Lokayukta in every state, based on Central legislation with constitutional back up. \*\*\*

# ***Suggestions of Mr. Venkatesh Nayak to Strengthen The Whistleblower Protection Regime In India***

**T**he Government of India has found it expedient to table *The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010* (the Bill/Whistleblower Bill). The Department related Standing Committee of Parliament on Personnel, Public Grievances, Law and Justice sought views from the people of India on the contents of the Bill after placing its contents in the public domain. CHRI prepared and disseminated a comparative study analysing the Bill from the point of view of international best practice standards. This study compared the Whistleblower Bill with the *Public Interest Disclosure and Protection of Informers Bill* (LCI Bill) prepared by the Law Commission of India in 2003. CHRI demonstrated how the Whistleblower Bill fell short of matching most of the international best practice standards as well as those recommended in the Law Commission's draft Bill.

Given below is a set of recommendations that have the potential of strengthening the protection regime that the Whistleblower Bill seeks to establish. The tabular format given below identifies major aspects of the Bill that need improvement and contains recommendations based on both national and international best practice standards and the rationale behind them. Where appropriate, reference will be made to the best practice adopted in one or more countries included in the comparative study mentioned above.

These recommendations are being made with the following objectives:

- providing a safe alternative to silence for the potential whistleblower and
- ensuring that the national motto: “*Satyamçva jayate*” (“truth alone triumphs”) is upheld.

**For full text of Bill & Nayak's analysis see [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)\*\*\***

## **Top Colleges, Largely For The Elite**

**David Leonhardt**

**T**he last four presidents of the United States each attended a highly selective college. All nine Supreme Court justices did, too, as did the chief executives of General Electric (Dartmouth), Goldman Sachs (Harvard), Wal-Mart (Georgia Tech), Exxon Mobil (Texas) and Google (Michigan).

Like it or not, these colleges have outsize influence on American society. So their admissions policies don't matter just to high school seniors; they're a matter of national interest.

More than seven years ago, a 44-year-old political scientist named Anthony Marx became the president of Amherst College, in western Massachusetts, and set out to change its admissions policies. Mr. Marx argued that elite colleges were neither as good nor as meritocratic as they could be, because they mostly overlooked lower-income students.

For all of the other ways that top colleges had become diverse, their student bodies remained shockingly affluent. At the University of Michigan,

more entering freshmen in 2003 came from families earning at least \$200,000 a year than came from the entire bottom half of the income distribution. At some private colleges, the numbers were even more extreme.

In his 2003 inaugural address, Mr. Marx — quoting from a speech President John F. Kennedy had given at Amherst — asked, “What good is a private college unless it is serving a great national purpose?”

Several years ago, William Bowen, a former president of Princeton, and two other researchers found that top colleges gave no admissions advantage to low-income students, despite claims to the contrary. Children of alumni received an advantage. Minorities (except Asians) and athletes received an even bigger advantage. But all else equal, a low-income applicant was no more likely to get in than a high-income applicant with the same SAT score. It's pretty hard to call that meritocracy.\*\*\*

*Courtesy: The New York Times (24 May 2011)*



## Six Years Of RTI

Dr N Bhaskara Rao

A frequently asked question is whether RTI has brought down corruption. This was also the theme of a one hour live Q-A session on TV-9 a regional channel had with me on June 18, 2011 the week RTI completed sixth year. To expect miracles in six years of an Act is perhaps what the questions meant. But then this RTI Act being unique it has demonstrated outcomes which no other Act had ever produced in such a short period. The RTI Act by itself does not end corruption. But it helps avoid, prevent corruption, trace or track the corrupt and bring them to book. Transparency that the Act achieves works as a deterrent against corruption. Threats to RTI activists are all over and many for their chasing one or other instance of corruption or illegal transaction. In fact, there were a dozen killings over these years. That by itself is an evidence for the impact of RTI Act on corruption. Scandals of corruption of various magnitudes and at national and state level that have come to open recently have their origins in a RTI application. Whistleblower Bill hopefully will provide for with explicit reference to RTI activists.

First, the number of applications filed under the Act in the first couple of years was much higher than what such a legislation prompted in countries like UK and USA. The Act is aimed at empowering citizens to ask, to seek, to expose the corrupt and inefficient. However, the number of those who applied under this Act from among women was disappointing when in fact problems concerning women are far more.

Second, the applications involve mostly conflict of interest rather the issues of concern to common people. As a result the number of applications on social justice, tribal welfare, child welfare, equity in those services were too few. The Government and political parties did too little to make people familiar with the modalities and in a local context.

The transparency regime today in the country is despite lukewarm response of the Government. There are nearly 5000 RTI activists now in the country and a million have filed application. Its implementation is more where civil society activists are more. Even academic community, including faculties at Universities have not taken the kind of interest in RTI movement and its implications to various sections of society they are expected. I advocated from the very outset that civil society activists, news media including the new media, academic bodies and socially concerned research organizations like CMS, could do much more in unleashing the potential of RTI movement.

RTI Act for sure has opened up the road to good governance. Going beyond empowering, RTI has lead to rights regime. We now have right to education, employment and now guarantee of public service. Already five states have enacted Acts guaranteeing public service (Bihar, Madhya Pradesh, Delhi, Punjab and Uttar Pradesh and even the Centre is considering).

RTI Act will help ensure their implementation too.

There is no coordination point or resource centre where experiences could be shared between States. Each State Information Commission being independent with its own budgets, has adopted different modes of implementation. Six years in the course of an Act is fairly good to come up with new thrusts in the implementation. But there is no evidence of that. The first batch of Commissioners in most States have retired and several new ones have come in. But there is no evidence that the States have realized what they could gain by having independent civil society activists rather than mostly retired civil servants.

No State Assembly had ever taken up the annual reports of State Commission for a discussion. There is no evidence of legislators taking interest in the

**Thanks to a new cadre of 5000 RTI activists, transparency regime is taking shape. Focus now should be to implement suo-moto provisions of the Act...**

implementation of RTI Act. For example, in Andhra Pradesh the Commission has been almost non-functioning for six months and there is no evidence that it will in the next six months. In Andhra Pradesh there is only the Chief Information Commissioner who took over as the outgoing Commissioners were relinquishing. No legislator or party had taken the initiative to expedite the process of appointing Commissioners.

The Government both in the States and at the Centre, appears insensitive to public mood. For, it continues from the very outset to water down the potential of the Act, the latest being total exclusion of CBI from the purview of the Act. Even Wajahat Habibullah, the first CIC of Central Information Commission was critical of such categorical decision. Similar has been the case with the judiciary. The former Chief Justice K G Balakrishnan tried his best, rather blatantly, to limit the application of the Act. Even political leaders, inside the Government and outside, had not come out to propagate the provisions of the Act besides mere issuing statements occasionally. But the UPA Government has been prompt in claiming RTI Act as its “achievement” in all its propaganda. At a time when the idea of bringing more services, including media, under jurisdiction of RTI Act, Government is trying to pull out some of its own departments as in the case of CBI.

Central Information Commission took several binding judgments that go a long way in realizing the potential of the Act. Habibullah, the first Chief Commissioner as well as his successor Satyanand Mishra, have shown what difference Information Commissions under RTI Act could make. Even more, Sailesh Gandhi, Central Information Commissioner coming from civil society background, had taken several such landmark judgments which

would stand out as examples for other Commissions in the States.

During the six years, the Government did little to publicize the Act and its provisions. Advertisements were issued hardly twice in six years – in June 2011 and at the end of the third year of the Act. The more recent one advertisement (June 2011) prominently linked “access to information block the road to corruption”. On proactive disclosures there are hardly any examples of Information Commissions taking initiatives using (Section 4(1)) as Human Rights Commissions had in many States. Even budgets are not disclosed. Toll free telephone number is not there in most States.

Transparency Review has published more than half a dozen review articles on RTI implementation in the past couple of years. One of that was on the kind of research on the utilization of the provisions of the RTI Act by various sections of society and with what implications. But as of now there is hardly any independent study on those aspects of RTI impact except the one by Shekhar Singh at the end of the fourth year and the one by CMS at the end of the second year.

There is no evidence of massive computerization that Government was supposed to have undertaken to ensure and in support of implementation of RTI Act. This was expected to speed up response of PIOs in responding to queries and also suo-moto declarations with updated information. Only then we could say that the transparency regime has set in.

Notwithstanding the contentious issues, the recent nationwide debate on Lokpal Bill, should help give a further boost to RTI movement in the country. RTI revelations hopefully will become a source of proactive initiatives by the Lokpal.\*\*\*

## **Exempting CBI From RTI Counter-Productive: Habibullah**

**Tanu Sharma**

**D**ays after the government placed the CBI under the category of organisations “exempt” from the RTI Act, the country’s first Chief Information Commissioner Wajahat Habibullah has “requested” Prime Minister Manmohan Singh to let the Central agency remain within the ambit of the transparency Act as “public interest would best be served by keeping these

bodies transparent and accountable within the limits of the law”.

However, the CBI has defended the move of taking the agency out of the purview of the RTI saying it investigates cases which have a great impact on the security of the state, including the financial security.

“Transparency in the functioning of the CBI within the limits prescribed by the law is the most desirable

means for ensuring its accountability,” Habibullah, who heads the National Commission for Minorities, wrote in his letter to the PM. Terming the move to keep CBI out of RTI “counter productive” in the light of prevalent mood in the country against corruption, he said, “To the best of my memory, there has been no instance where there has been a grievous leakage of sensitive information disclosed to the detriment of the effectiveness or the performance of the CBI.”

The government following a decision of the Committee of Secretaries had put the CBI at No 23 in the second schedule of Section 24 of the RTI Act. According to Section 24, only “security” and “intelligence” agencies qualify for such exclusion, Habibullah claimed, arguing that the CBI, being the premier agency mandated to investigate allegations of corruption, “cannot be at any rate excluded under this sub-section”.

Justifying his argument against exclusion of the CBI from the RTI ambit, he said: “The CBI is not involved in collecting intelligence of any kind, nor does it perform any security-related duties unlike other law

enforcement agencies.” He added that the CBI investigates serious economic frauds and crimes under the IPC, referred to it by the Centre or the state governments or by courts.

“The CBI does not fit the criterion laid down for organisations that may be exempted from the general obligation of transparency,” he explained.

However, CBI officials countered the argument, saying, “It is misplaced perception that the CBI does only investigation and prosecution-related work and is not involved in duties related to intelligence and security of the nation unlike other law-enforcement agencies.”

According to the CBI officials, the exemptions provided under Section 8 of the Act against disclosure of information relating to under-investigation and under-trial cases “are not adequate to safeguard the interests of the protection of information in cases pertaining to security of the country with which the CBI is involved”. However, Habibullah has said that “adequate safeguards” are provided under Section 8 of the RTI Act.\*\*\*

*Courtesy: Indian Express (21 June 2011)*

#### **AN INTERVIEW WITH SATYANANDA MISHRA**

## **‘Excessive Transparency At The Cost Of System Undesirable’**

**Nistula Hebbbar**

*The Chief Information Commissioner of India, Satyananda Mishra, is the arbiter of transparency in the country as the apex court of appeal on Right to Information (RTI) applications. He speaks to Nistula Hebbbar on the law he is meant to uphold, the government’s continued hold on information and why he thinks the Jan Lokpal draft is a disaster. Excerpts:*

**L**et us begin with the latest controversy regarding RTI, which is over the access to CBI inquiries. What is your stand on the matter?

For a member of this commission to give an opinion is not desirable because we adjudicate cases in which CBI is a party. Any opinion therefore will prejudice my work. It is like asking whether the IB or the CRPF should be included in the second schedule. On a more generic point, everyone should keep in mind that Section 24 of the Act does not give blanket exemption to any institution.

Human rights violations and cases of corruption are reasons enough for disclosure. A case in point is the Barack missiles acquisition papers which were sought from the Navy.

**There have been several cases of violence against RTI activists in states like Maharashtra. As CIC what steps would you recommend to halt this trend.**

Let us face it, I do not have police powers to protect people who are seeking information. Having said that, it is well within the power of state governments to ask local administration officials like the district magistrates and the superintendent of police to keep an eye out on known activists in an area. For example, not every information seeker is an activist. Activists are those who are seeking information for a public purpose, like

on mining and land mafia. These people are easy to identify and it won't take much of an effort to provide some watchfulness over these people. Other than that, there is precious little that can be done.

**You've been in this post for nearly two years now. In your experience, is the government responsive to RTI?**

I would say there is a marginal improvement but, by and large, government departments, without exception, think that the RTI is a nuisance and information, in most cases, is given reluctantly, only because the law mandates it.

**Which are the departments which get most requests?**

These are still departments which have most public dealing like the Railways, the MCD and the passport office. Another trend is that a large number of requests are for loan settlements undertaken by banks. Most defaulters, who hear of favourable settlements of loans with other defaulters, want information. The banks are reluctant to disclose this as each defaulter has a different capacity for repayment. Say if a bank managed to recover R38 crore from a defaulter for a loan of R100 crore because the collateral was a heavily litigated property, it closes the file. In another case where the collateral is fully realizable, it may hold out for a better deal.

The defaulter in question, however, wants the best possible terms for himself too. We have received too many requests on these. I have told banks that even if you do not want to commit on full disclosure, then at least publish reasons why a particular settlement was reached.

Banks have said that it is a business tactic and that it is not proper for them to disclose terms of foreclosure.

**It had been alleged earlier that the RTI was used mainly by government servants to gain access to their colleagues' Annual Confidential Reports (ACRs) rather than transparency in governance. Has that come down?**

We still get requests for access to ACRs and also for every major appointment in the government. For example, we just disposed of cases where the Appointment Committee of the Cabinet had been petitioned for information over the appointment of the CMD of Air India, or Trai members or telecom commission members. But as a rule now a full bench of the CIC has ruled that the ACRs of "x" should not be disclosed to "y". I feel that if there is anything called personal information, then your ACR falls in that category more than anything. It will undermine authority in the government system.

It is the same criticism I have for the JanLokpal draft. The draft says that every complaint should be put online and investigated. But before conclusions are reached, if complaints are publicised this will lead to a trial by public opinion. After which, whether any substance is found in the complaint or not, reputations will be destroyed and authority undermined.

Excessive transparency at the cost of the system is not desirable.\*\*\*

*Courtesy: The Financial Express (27 June 2011)*

## **Now, File RTI Online On MCD's Website**

**Risha Chitlangia**

**N**ow, you can file an RTI with the Municipal Corporation of Delhi (MCD) sitting at home. What's more, you could also track its progress online.

Last week, the civic agency activated the RTI link on its website, making the RTI filing process less cumbersome. It also provided for online payment through credit card. Ever since, 60 applications have been received.

"One has to only select the department, give his/her details like email-id or telephone number and type the questions. The application will be sent directly to the concerned PIO. And since all our departments are now online, the replies could be processed in less time," said Deep Mathur, director, press and information, MCD.

Every RTI applicant will be given a unique ID and password through which he/she can track the RTI. The reply will be emailed to the applicant.\*\*\*

*Courtesy: The Times of India (28 June 2011)*



## Silencing The Media

Jyotirmoy Dey, Editor, Special Investigation, *Mid-Day*, was not the first journalist to be shot dead this year in India. Umesh Rajput from the Hindi daily, *Nai Duniya*, was killed near Raipur in Chhattisgarh on January 23, and earlier on December 20, 2010 Sushil Pathak of *Dainik Bhaskar* in Bilaspur. In 2011 alone, there have been 14 instances of attacks on journalists according to a report from 'The Free Speech Hub' of thehoo.org. On May 19, Dey's colleague Tarakant Dwivedi was arrested under the Official Secrets Act by the Government Railway Police (GRP) for an article written over a year ago in another newspaper on the poor storage conditions of hi-tech weapons bought after the 26/11 attack. However, the gunning down of Dey in broad daylight by four unidentified men has rattled a media inured to gangland killings. The police believe it was 'the work of professionals,' presumably hired guns connected to the underworld. But the big question is who was behind the killing and so far no one has been arrested. Journalists and media-houses have been attacked with impunity and since the 1990s cases have dragged on forever without any convictions. Coming to Mr. Dwivedi's aid after his arrest, Dey had met Maharashtra Home Minister R.R. Patil and called attention to a rather sensitive Anti Corruption

Bureau (ACB) report on the mafia-police nexus. The incident underscores the need for some kind of special protection for journalists covering the mafia and conducting investigations on their own. Dey had reported on diesel adulteration in a big way and on alleged links between the mafia and the police.

The Maharashtra government has been promising a law that makes attacks on journalists a non-bailable offence. That may not be the solution. It is crucial to implement existing laws and make sure the guilty are punished. Dey was no stranger to threats and took them head on. His death last Saturday comes soon after a gruesome murder of four men, turning the spotlight back on the pathetic law enforcement in Mumbai. The underworld in the city now is complemented by a powerful builders' lobby, which allegedly has a measure of political and official patronage. Dey's murder can have a chilling effect on the media and to ensure that journalists truly have space and freedom of expression, the government needs to be much more attentive to crime, the factors behind it, and its links, if any, with sections of the official establishment. The state should conduct a transparent and speedy investigation into Dey's murder and, belying its dismal track record, demonstrate that at least now it means business.\*\*\*

*Courtesy: Editorial The Hindu (14 June 2011)*

## Freedom Of The Press And Journalistic Ethics

Markandey Katju

*Freedom is important, so is responsibility. In countries like India, the media have a responsibility to fight backward ideas such as casteism and communalism, and help the people fight poverty and other social evils*

Freedom of the press and journalistic ethics is an important topic today in India — with the word 'press' encompassing the electronic media also. There should be a serious discussion on the topic. That discussion should include issues of the responsibilities of the press, since the media have become very prominent and very powerful.

In India, freedom of the press has been treated as part of the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution,

vide Brij Bhushan and Another vs. The State of Delhi, AIR 1950 SC 129 and Sakal Papers (P) Ltd vs. Union of India, AIR 1962 SC 305, among others. However, as mentioned in Article 19(2), reasonable restrictions can be placed on this right, in the interest of the sovereignty and integrity of India, the security of the state, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Hence, freedom of the media is not an absolute freedom.

The importance of the freedom of the press lies in the fact that for most citizens the prospect of personal familiarity with newsworthy events is unrealistic. In seeking out news, the media therefore act for the public at large. It is the means by which people receive free flow of information and ideas, which is essential to intelligent self-governance, that is, democracy.

For a proper functioning of democracy it is essential that citizens are kept informed about news from various parts of the country and even abroad, because only then can they form rational opinions. A citizen surely cannot be expected personally to gather news to enable him or her to form such opinions. Hence, the media play an important role in a democracy and serve as an agency of the people to gather news for them. It is for this reason that freedom of the press has been emphasised in all democratic countries, while it was not permitted in feudal or totalitarian regimes.

In India, the media have played a historical role in providing information to the people about social and economic evils. The media have informed the people about the tremendous poverty in the country, the suicide of farmers in various States, the so-called honour killings in many places by Khap panchayats, corruption, and so on. For this, the media in India deserve kudos.

However, the media have a great responsibility also to see that the news they present is accurate and serve the interest of the people. If the media convey false news that may harm the reputation of a person or a section of society, it may do great damage since reputation is a valuable asset for a person. Even if the media subsequently correct a statement, the damage done may be irreparable. Hence, the media should take care to carefully investigate any news item before reporting it.

I know of a case where the photograph of a High Court judge, who was known to be upright, was shown on a TV channel along with that of a known criminal. The allegation against the judge was that he had acquired some land at a low price misusing his office. But my own inquiries (as part of which I met and asked questions to that judge and many others) revealed that he had acquired the land not in any discretionary quota but in the open market at the market price.

Also, sometimes the media present twisted or distorted news that may contain an element of truth but also an element of untruth. This, too, should be avoided because a half-truth can be more dangerous than a total lie. The media should avoid giving any slant to news, and avoid sensationalism and yellow journalism. Only then will they gain the respect of the people and fulfil their true role in a democracy.

Recently, reports were published of paid news — which involves someone paying a newspaper and getting something favourable to him published. If this is correct, it is most improper. Editors should curb this practice.

Media comments on pending cases, especially on criminal cases where the life or liberty of a citizen is involved, are a delicate issue and should be carefully considered. After all, judges are human beings too, and sometimes it may be difficult for them not to be influenced by such news. The British law is that when a case is sub judice, no comment can be made on it, whereas U.S. law permits such comment. In India we may have to take an intermediate view on this issue: while on the one hand we have a written Constitution that guarantees freedom of speech in Article 19(1)(a) — which the unwritten British Constitution does not — the life and liberty of a citizen is a fundamental right guaranteed by Article 21 and should not lightly be jeopardised. Hence, a balanced view has to be taken on this.

Also, often the media publish correct news but place too much emphasis on frivolous news such as those concerning the activities of film stars, models, cricketers and so on, while giving very little prominence to much more important issues that are basically socio-economic in nature.

What do we see on television these days? Some channels show film stars, pop music, disco-dancing and fashion parades (often with scantily clad young women), astrology, or cricket. Is it not a cruel irony and an affront to our poor people that so much time and resources are spent on such things? What have the Indian masses, who are facing terrible economic problems, to do with such things?

Historically, the media have been organs of the people against feudal oppression. In Europe, the media played a major role in transforming a feudal society into a modern one. The print media played a role in preparing for, and during, the British, American and French Revolutions. The print media were used by writers such as Rousseau, Voltaire, Thomas Paine, Junius and John Wilkes in the people's fight against feudalism and despotism. Everyone knows of the great stir created by Thomas Paine's pamphlet 'Common Sense' during the American Revolution, or of the letters of Junius during the reign of the despotic George III.

The media became powerful tools in the hands of the people then because they could not express themselves through the established organs of power: those organs were in the hands of feudal and despotic rulers. Hence, the people had to create new organs that would serve them. It is for this reason that that

the print media became known as the Fourth Estate. In Europe and America, they represented the voice of the future, in contrast to the feudal or despotic organs that wanted to preserve the status quo in society. In the 20th century, other types of media emerged: radio, television and the Internet.

What should be the media's role? This is a matter of great importance to India as it faces massive problems of poverty, unemployment, corruption, price rise and so on.

To my mind, in underdeveloped countries like India the media have a great responsibility to fight backward ideas such as casteism and communalism, and help the people in their struggle against poverty and other social evils. Since a large section of the people is backward and ignorant, it is all the more necessary that modern ideas are brought to them and their backwardness removed so that they become part of enlightened India. The media have a great responsibility in this respect.\*\*\*

*Courtesy: The Hindu (3 June 2011)*

## Self-Regulation Revisited

P N Vasanti

***NBSA found that TV9 had violated clauses 5, 6 and 9 of the NBA code of ethics and ordered TV9 ordered to display an apology for the story on its channel for a fixed duration during peak hours***

The first half of this year has seen a significant triumph for self-regulation initiatives by Indian broadcasters. Industry-led peer groups have taken up initiatives that have given new momentum to the sector.

Recently, in response to numerous email complaints sent to the channel as well as the News Broadcasters Association (NBA), the News Broadcasting Standards Authority (NBSA) took "suo motu" cognizance of a programme titled *Gay Culture Rampant in Hyderabad*, aired by TV9 in February and accused of having sensationalized the issue. After receiving TV9's defence, justice J.S. Verma of NBSA issued his decision on Sunday, holding that TV9 had violated clauses 5 (sex and nudity), 6 (privacy) and 9 (sting operations) of the NBA code of ethics. TV9 was ordered to display an apology for the story on its channel for a fixed duration during peak hours. In addition, TV9 was also fined Rs 1 lakh to be paid to NBSA.

Even though NBSA is not an "official" adjudicatory body, the order is a welcome move for citizens' rights to privacy and dignity. Another reason why this order is so important is that it demonstrates the viability of NBSA—a voluntary self-regulatory industry body—as an expedient channel of redress for the public. By delivering its decision within a month of the date of the incident, NBA has succeeded in inspiring the public's confidence in its mission to serve as a truly impartial regulator of broadcast news in India.

Constituted in 2007, NBA has 20 leading news and current affairs broadcasters (comprising 45 news and current affairs channels) as its members. NBA presents a unified voice before the government on matters relating to news and current affairs broadcasters in India. It was formed to promote and protect the interests of

India's television news broadcasters and was the first to adopt a voluntary code of ethics.

Discussions on broadcast content standards have been on since 2005, when the ministry of information and broadcasting constituted a formal committee to draft conventions for the sector. This committee was created after immense pressure from the courts and civil society groups who felt that broadcasters were testing the limits and the law of the country through provocative and sensational programming.

After a comprehensive consultative process of over three years, this committee, consisting of 40 stakeholders from government, civil society, non-governmental organizations and industry, submitted its report, along with suggested self-regulation guidelines for the broadcasting sector. As a part of this committee and the subgroup set up to draft these guidelines, I had the privilege to be involved in this debate since inception to submission in 2008.

However, since then, there has been a stalemate on efforts to formalize or accept any content regulation. The good news is that the Indian Broadcasting Foundation (IBF) announced earlier this month the adoption of the committee's work and unanimously approved a "self-regulatory content guidelines and complaints redressal mechanism" for all non-news and current affairs television channels, including general entertainment, children and special interest channels. The guidelines will be applicable from 1 June and will provide the channels guiding principles for content programming along with a redressal mechanism for bona fide complaints from viewers.

Established in 1999, IBF is one of the earlier associations set up to promote the interests of the Indian television industry. IBF comprises major broadcasters

running more than 250 TV channels and enjoys a unique position as the accredited spokesman of the broadcasting industry. IBF has from time to time been taking up various issues affecting the broadcast industry with the concerned authorities.

The self-regulatory content guidelines and complaint redressal mechanism sets out principles, guidelines and ethical practices to guide the broadcasting service provider in conforming with the programme code prescribed under the Cable Television Networks (Regulations) Act, 1995, irrespective of the medium or platform used for broadcasting the programme.

The redressal mechanism will be a two-tier process: providing viewers an opportunity to complain first at the broadcaster/channel level and in the event of no response or an unsatisfactory one by the broadcaster/channel, the complainant can approach the Broadcasting Content

Complaints Council (BCCC) at the industry level, which will have 13 members. The council is headed by justice A.P. Shah, a former chief justice of the Delhi high court, and will consist of four non-broadcaster members, four members from national-level statutory commissions and four broadcaster members.

The two major broadcasting associations—IBF and NBA—have reiterated and demonstrated their commitment to self-regulation. Of course, there is still a long way to go—many broadcasters are not part of these two groups, and, more importantly, the guidelines need to be implemented. Most media professionals, specially regional and local broadcasters, are still unaware of the guidelines. Public discussion among peers on the norms, with illustrations of ongoing violations will help orient other broadcasters towards becoming more responsible and accountable members of the media.\*\*\*

*Courtesy: The Mint (26 May 2011)*

## After All The Hard Work, A Village Waits For Its Radio

Chinki Sinha

*Rural Development Ministry rewards Cheeded in Andhra Pradesh with community radio frequency for proper implementation of schemes*

**T**he 935 people in this tiny village are waiting to tune in to their own radio frequency, a reward they have been promised for their good work.

Cheeded, in Ranga Reddy district of Andhra Pradesh, will be the first village in the country to be rewarded with a set of radio frequency for its work in the implementation of rural development schemes such as NHRM, NREGA and those related to education.

For six months, volunteers with the Ministry of Rural Development—village-based cadres under the Bharat Nirman project who act as a bridge between the administration and the people—worked on the needs of the village. They even prohibited liquor sale in the village as they figured villagers spent an average of Rs 10,000 a day on alcohol.

The volunteers worked with primary health clinics to ensure better health and nutrition for the villagers, got the state government to agree to their demand of digging wells in the village (something that had been prohibited by the state in view of the rampant corruption) and got funds for constructing toilets in each household.

For all this work, the Rural Development ministry has decided to reward the village with its own community radio station. It is an incentive that will be extended to other such villages that score in terms of implementing development schemes under the ministry.

K Chandramouli, Commissioner of the Andhra Pradesh Academy of Rural Development, said the radio frequency incentive was in line with the ministry's aim of eliminating gaps in communication between the government and the beneficiaries.

“The community radio plan instills a sense of ownership among the villagers. Community radio is about concerns that both the listener and the speaker share. Why would a villager in a remote village want to know about the Prime Minister's visit to Mauritius or Shah Rukh Khan's tour of the US,” said Chandramouli. “For instance, the speaker can announce a programme where a woman from a particular village can share her experiences about borrowing money and setting up some industry.”

Community radio stations have a reception range of 40-50 km and villages in that radius can tune in. An exclusive set of frequency will be given to the villages that become eligible.

In Andhra, villages like Jaheerabad and Tirupathi have their own community radios set up by NGOs. These radio stations acted as a catalyst for development as villagers were made aware of the rural schemes through programmes broadcast on radio. The success of these radio stations encouraged the ministry to award radio frequencies to model villages. It takes Rs 20,000 to set up a community radio station and the funds will be

allocated from the ministry's Lab-to-Land project, which focuses on ensuring that development schemes reach people and not just remain on paper because of lack of awareness.

Of the six villages in Andhra Pradesh that have their radio frequency sets, Cheeded will be the first to win one.

"It is not just radio, it is community action. In seven months, the kind of churning that took place in these villages is an indicator of the success of the Bharat Nirman programme," Niten Chandar, Joint Secretary in the ministry, said.

Chandar said the 'Bharat Nirman Volunteers' scheme will ensure the right implementation of all schemes and programmes. Already, 20,000 volunteers have been trained in 40 blocks across the country. "These Bharat Nirman volunteers will see if their village meets the objectives and we will decide on the basis of their reports," he said.

"It is ambitious but we are hopeful it will work," an official said.

Meanwhile, Cheeded is waiting to tune in.\*\*\*

*Courtesy: Indina Express (3 June 2011)*

## **Tuning In: Radio Makes Us Happier Than TV, Web**

**T**uning in to the good old radio makes people happier and gives them higher energy levels than watching TV or browsing the internet, a new study has found.

In the British study, based on a survey, radio come out top, beating both TV and online, with respondents recording a 100% lift in happiness and 300% boost to their energy levels when listening to a radio show.\*\*\*

*Courtesy: Times of India (30 June 2011)*

## **Role Of Media In Providing Justice**

**Bhaskar Phukan**

**N**ews media, especially electronic media has come to play a new role in the judicial arena of the country. The fruitful role of news media in the matter of providing justice to the weaker section of the society and helping in fighting against injustice meted out to the poor by the rich and the powerful is not new. But today with the advantage of an audio-visual impact that the electronic media is armed with, it has become easier to make the voice of those who have been wronged reach the proper ears easier.

Since the days of yore media has been raising its voice against injustice meted out to the weak. Take the instance of those under trial prisoners in Bhagalpur jail in the early seventies. On the suspicion of being dacoits six persons were punished by jail authorities and that too in an inhuman manner. They were blinded by pouring acid on their eyes. The national press rose against this criminal act on the part of police officials of Bhagalpur Jail. The police officials were prosecuted and the victims were paid adequate compensation.

Again take the case of a help-less women named Kamala from Rajasthan. In a clear case that amounted to slave trading, a relative of this helpless women had sole her to a powerful person. If was at the behest of the national press, mainly *The Indian Express* and its correspondent Arun Shouries that the entire episode come to light and the women was rescued from the clutches of human traffickers.

In the present circumstances with induction of satellite news channels in hundreds, it has become possible to bring any significant incident in audio visual as well as live manner to the viewers. The impact created by an audio-visual display of an event is sure to score over the narration in a newspaper with the help of written words.

Take the case of long pending Jessica Lall's murder where the lady bartender who was shot dead by an influential young man named Manu Sharma. By virtue of being the son of a powerful minister of Haryana he succeeded in turning the verdict of the case in his favour at the lower court. The police was managed in such a way that not an iota of proof could be produced in the court against the culprit and the influential young man was declared not guilty by the court and was allowed to walk out of jail scot free. But the news papers and the electronic media were not impressed and repeated media interference coupled with arousal of public opinion at the initiative of the electronic media instrumented the case to be reopened in the Delhi High Court and the result is known to almost every body. The Delhi High Court pronounced life imprisonment for Manu Sharma. The accused appealed to the Supreme Court and the Supreme Court upheld the sentence. The all powerful son of a minister in the Tihar Jail like any other criminal.

Next take the case of molestation of a 14-year-old budding tennis player of Chandigarh in 1989. Ruchika Girhotra was molested within the arena of Chandigarh

Tennis Club by none other than a custodian of security for the public – a police official of the rank of a DIG of Haryana police. Ruchika, an upcoming tennis player refused to take if lying down an acted against it by filing a suit against the police official. The powerful policeman kept no stone unturned to unarm the young girl using all means, mostly foul. He framed Ruchika's brother in a care lifting case and put him through the streets of Chandigarh. Next he threatened her family with dire consequences if the case against him was not withdrawn. When the parents of Ruchika refused to oblige he saw it that the girl was expelled from the school, she studied in. unable to withstand the shock the young girl committed suicide.

The case was gathering dust for long 20 years when a news channel *Times Now* took up the matter and brought it to the focus. After continuous coverage given to the injustice to the girl and her family, finally in 2010 SPS Rathor, who interestingly was promoted to the rank of DGP during the year of the trial with the blessings of powerful ministerial lobby was arrested and now he is living like an ordinary prisoner at a Chandigarh jail with his pension and bravery medals withdrawn from him.

India today can boast of numerous scams mostly financial and that too the ones that involved billions of rupees. 2G Spectrum Scam, CWG Scam, Swiss Bank Black Money Scam involve astronomical sums of

money. Without raising of the voice by the electronic media perhaps all these scams would have gone unnoticed citizen. But thanks again to the media mainly a particular news channel that all these three scams were brought to light. One minister, an all powerful sport organizer and a lady member of Parliament are behind bars for their involvement in the scams.

Coming nearer, the one thousand crore North Cachher Hills Scam was unearthed by none other than a national weekly. The reports published in the weekly was out rightly denied by the Chief Minister of Assam, but after discussions in various electronic news channels of Assam, barring one owned by a powerful minister things came to proper light and the CM had no other way but to go for an enquiry by the CBI.

It is often alleged that the electronic media usually is prone to making a mountain out of a molehill and it usually sensationalized the events to raise TRP. But one must understand that it is part of their marketing strategy to attract public attention. TRP is the most essential criteria for survival of satellite channel like circulation of a news paper. But restricting our discussion to the aspect of dispensing of justice it can safely be said that these channels have succeeded to a great extent in the matter of making available justice to the weak and bring the powerful to justice.\*\*\*

*Courtesy: Assam Tribune (3 June 2011)*

## **Govt Hikes FDI Limit In Carriage Services**

**T**he government has "broadly" agreed to increase the foreign direct investment (FDI) limit to 74 per cent for broadcast carriage services in view of the sector requiring huge investment to keep pace with its "burgeoning growth."

The Union Ministry of Information and Broadcasting has agreed to increase the FDI limit to benefit direct-to-home (DTH), internet protocol TV,

mobile TV, headend-in-the-sky and teleport platforms, following a recommendation by the Telecom Regulatory Authority of India (Trai), official sources said. The ministry was of the view that increase in the foreign investment limit would bring uniformity in the FDI ceiling in carriage services. The ceiling was so was 49 per cent with a 20 per cent cap on FDI for DTH. \*\*\*

*Courtesy: Deccan Herald (30 May 2011)*

## **Violent Shows Lead To Sleep Disorder In Kids**

**P**arents please take note: Allowing young children watch violent programmes, especially after 7pm, may interfere with their sleep, a new study has suggested.

The study by researchers from the Seattle Children's Research Institute in the US found that watching TV programmes during the day that depict violence was associated with increased sleep problems in children aged three to five years. It's also found

that watching TV after 7pm was linked with increased sleep problems, regardless of whether the shows were violent or not.

The findings add to a growing body of research that children's media use can disrupt their sleep. It's concerning, because sleep troubles early in life may increase the risk of problems later on, including obesity and failure at school, the researchers said.\*\*\*

*Courtesy: The Times of India (29 June 2011)*

## Want Your Child To Shed Fat? Switch Off Junk Food Ads On TV

Television ads for junk food really do make children hunger for those treats, especially if they watch a lot of television, according to a study. The findings, published in *Pediatrics*, come amid growing calls to ban junk food advertisements aimed at children in order to combat obesity most recently from American Academy of Pediatrics, which issued a policy statement on junk food ads on Monday.

In tests with 6- to 13-year olds, researchers led by Emma Boyland of the University of Liverpool in the UK found that a DVD featuring commercials for fast food and junk food seemed to whet children's appetites for sweet and high-fat fare. "Exposure to

television food commercials enhanced high television viewers' preferences for branded foods and increased reported preferences for all food items (branded and unbranded) relative to the low television viewers," she wrote.

The children involved in the research reported a greater desire for sweet and fatty foods after viewing the junk-food ads compared to days when they watched commercials for toys. This was especially true for children who usually watched a lot of TV in their everyday lives, with "a lot" defined by the researchers as over 21 hours a week.\*\*\*

*Courtesy: The Times of India (29 June 2011)*

## India Asked Google To Block Content Critical Of Government

Vinay Kumar

Are Indians allowed to use the Internet to criticise politicians and officials? If Google's latest 'Transparency Report' is any indication, the police in some States don't seem to think so. In the last six months of 2010, law enforcement agencies across India asked the web search company to remove YouTube videos and a blog "that were critical of Chief Ministers and senior officials of different States." Google says it did not comply with these requests.

In all, Google received 67 content removal requests from India between July and December 2010, covering a total of 282 items. Six of these requests were from courts and the rest from the executive, police and others.

The search engine said that 22 per cent of removal requests were fully or partially complied with, and the rest declined. It also received 1,699 "user data requests" from the government — euphemism for the police wanting a peek into the search and usage habits of targeted individuals — and complied with 79 per cent of these. However, no details were given.

Giving the break-up of the "content removal requests" from India, the search engine said that of

the 50 requests for removal of items from its web search, 15 pertained to defamation and 16 to national security. It was requested to remove one item from Google Images and two from Google Profiles which pertained to pornography. From YouTube videos, the search engine got 199 removal requests.

A comparison of requests received by Google from other countries during the same period shows the number of content removal requests increased by 83 per cent from Argentina as compared to the previous reporting period.

While the number of user data removal requests from India increased by as much as 123 per cent, Australian requests went up by 72 per cent and Hong Kong's by 80 per cent.

From Italy, the search engine received a request from the Central Police for the removal of a YouTube video that criticised Prime Minister Silvio Berlusconi and simulated his assassination with a gun at the end of the video. Thailand asked Google to remove 43 pieces of content "because they were mocking or criticising the king in violation of Thai lèse-majesté laws." The company restricted Thai users from accessing these videos.\*\*\*

*Courtesy: The Hindu (29 June 2011)*

# 'Small Screen Or Big, And How Soon?

Varada Bhat

A new battle front has opened between multiplexes and big-banner production and distribution houses. Ignoring the revenue concerns of the multiplexes, the latter — Eros, UTV Motion Pictures, Reliance Big Pictures, Viacom 18 Motion Pictures and Yash Raj Films—want to release their new films on television short-ly after their theatrical release.

According to industry sources, the past two weeks saw a series of meetings between the Multiplex Association of India, apex body of the leading multiplex companies, and top production companies. However, there has been no headway.

“The window between re-lease and TV premiere is narrowing. As a result, cinema halls are losing opportunities to make money from a film. Leave alone small-budget films, even multi-star cast films air on TV within a few weeks of the theatrical release,” said a multiplex official.

Leading multiplex exhibitors have opposed this. “There was a visible dip in box office collections, as most broadcasters announce their television premiere immediately after the release. We will have to watch out for any adverse impact this trend has on the exhibition business,” said the top executive of a Mumbai-based multiplex chain.

The release window has shrunk to two to four months in the past six months from the earlier seven to nine months, he explained. For instance, UTV's *Tees MaarKhan*, starring Akshay Kumar, released on December 24 last year and had the television premiere on March 27. Similarly, *Guzaar-ish*, *No One Killed Jessica*, *An-jaana Anjaani*, *Band Bhaaja Baarat* and *Dabangg* have all been released within nine weeks of their theatrical re-lease.

The development comes right after the three-month cricket season (ICC World Cup and Indian Premier League) forced several producers to postpone new movies to the second half of the year. Most of multiplex operators in the last quarter reported huge dips in profit. Cinemax, for instance, posted a Rs 2.2 crore

loss in the January-March quarter, compared to profit of Rs 4.4 crore last year in the same period.

## DEFENCE

Production houses explain pre-selling movie deals with broadcasters helps them to de-risk their investment on a movie, as cable and satellite rights provide guaranteed re-turns. For instance, last year, UTV had sold *Guzaarish* and *Tees Maar Khan* to Colors. *Da-bangg* was also pre-sold to Colors by Shree Ashtavinayak Cinevision.

“Although theatrical collections form the major chunk of box office revenue, we are gradually de-risking the model. We are trying to pre-sell the

maximum rights pre-release, from satellite, home-video and merchandising,” said Kamal Jain, Group CFO, Eros International.

The Ficci-KPMG 2011 Entertainment

**THE FFCO-KPMG 2011  
Entertainment and Media report notes that most production houses are trying to reduce their dependence on box office collections and looking at other platforms for revenue streams**

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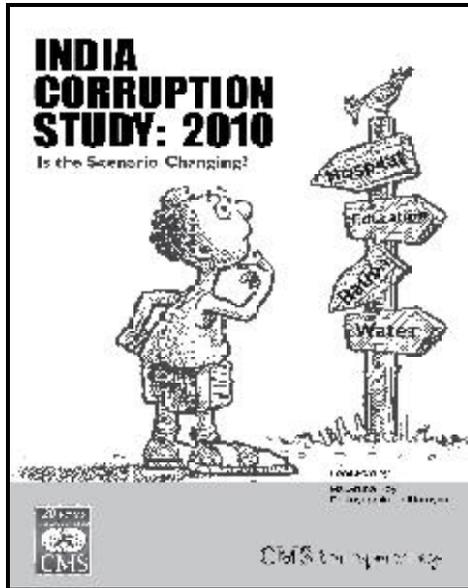
“In 2009, as much as 76 per cent of revenues came from domestic theatrical collections. In 2010, its share declined to 74 per cent and cable and satellite rights increased to 10 per cent in 2010 from seven per cent earlier,” said the report.

Last October, multiplex operators had opposed it when production houses decided to release on the direct-to-home (DTH) platform within a week of a movie's release. For instance, UTV's *Main Aur Mrs Khanna*, starring Salman Khan and Kareena Kapoor, was available on DTH platforms after five days of re-lease. Some of the latest films like *Tanu Weds Manu*, *Saat Khoon Maaf* and *Patiata House*, have had at least 100,000 payers each on the DTH platform.

“Instead of spending Rs 200-300 per person in a multiplex, the entire family can watch it at Rs 50 on *xi/e* DTH platform,” said a senior DTH official.\*\*\*

*Courtesy: Business Standard (10 June 2011)*

## INDIA CORRUPTION STUDY (ICS) 2010



This is the seventh edition of studies undertaken by CMS since 2000 and fourth in the last five years. CMS has been constantly experimenting with the research methodology to focus on regions and sections of the society that desire specific attention on the extent of corruption in public services. The present report, based on ICS 2010 undertaken by CMS, focuses on household level survey in rural areas of twelve states. The four public services covered in this round are public distribution system (PDS), school education (up to class 12th), water supply services and hospital services.

This report brings out, first, general perception (P) of rural India about corruption in public services and in specific context of the four public services. The second section discusses rural households experience (E) again in general and specific context of each of the four public services. The third section brings out the estimation (E) of bribe amount paid by rural households of the twelve states in the four public services covered in ICS 2010.

Further, to bring out a comparative picture, the present report has compared with ICS 2005 round data of only rural households of the eleven states, covered during the round. Tripura was not visited during ICS 2005. For highlights: [www.cmsindia.org](http://www.cmsindia.org)

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