Governance and Polity

Thursday, May 30 2013, 1:16 PM

Separation of Powers Between Various Organs

MINIMUM QUALIFICATION FOR JOURNALISTS

- Information and Broadcasting Minister recently proposed licences, qualifications and common entrance examinations for journalists.
- Journalists in India have no special rights. Unlike the United States, freedom of the press in the country does not flow from any special provision or amendment to the Constitution, but from the right to free speech and expression.
- Article 19(1) (a) of the Indian Constitution confers this right subject only to reasonable restrictions specified in Article 19(2).
- Therefore, this proposal is to try to circumscribe and limit the fundamental right to freedom of speech and expression.
- Dissemination of information might be the business of some news organisations, but it is also an essential part of the everyday activities of countless Indians who talk, post, upload or tweet what they see, hear, sense or think.
- What distinguishes journalists employed by a news organisation and private individuals taking advantage of social media and personal communication channels to disseminate information is not the nature of their work, but the public standing and credibility that they command.
- Any attempt to prescribe licences and qualifications for journalists will necessarily end up limiting what ordinary citizens can do.
- As in other democracies, newspapers in India do not require a licence to operate. In authoritarian or managed democracies, where press licensing is the norm, the threat of a cancelled licence is often enough to ensure the media toes the official line. If journalists are to be given licences, newspaper licensing may not be far behind.

- All of this is not to say that news organisations need make no effort to improve the standards of their journalism. In the race to be the first to break the news, television channels, and sometimes newspapers too, often get their facts wrong and the context mixed-up.
- The Minister wants the minimum qualification to apply equally to subject experts contributing to a news organisation, reckoning that they would not resent the requirement.
- But, as the best journalism schools have already realised, practice, not theory, makes a good journalist.

TRAI V/S NEWS BROADCASTERS

- In March, TRAI decided to enforce the 12-minute per hour advertisement cap rule, which is part of the original licensing agreement signed by the broadcasters but has not been enforced.
- According to a TRAI source, this was preceded by long consultations. For at least a year and a half, the industry has known about TRAI's intent. The aim is to improve the "quality of consumer experience" and "service."
- But channels say this would make their operations unsustainable. In May, the Indian Broadcasting Foundation asked TRAI for 'regulatory forbearance'. The regulator agreed that between July and September entertainment channels could have 16 minutes of ads, while news channels could telecast 20 minutes of ads.
- However TRAI noted that certain channels were repeatedly showing ads beyond the limit prescribed during the transition. So TRAI had filed a complaint on August 16 with the Delhi Chief Metropolitan Magistrate against 14 channels seeking criminal prosecution for non-compliance.
- However, in a decision that has come as a breather to news broadcasters, the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) has restrained the Telecom Regulatory Authority of India (TRAI) from taking coercive action against channels for non-compliance of the 12-minute ad-cap rule.
- While the order does not stay TRAI's decision to enforce a 12 minute ad-cap from October 1, it deprives the regulator from any power to take action, which will give leeway to channels.

ANALYSIS

- The Telecom Regulatory Authority of India (TRAI) is being unreasonably insistent on enforcing a cap of 12 minutes per hour on TV advertising, an ill-conceived policy. cartelisation needs to be checked by CCI
- The market is perfectly capable of negotiating the proportion of advertising to programming. An unacceptably high rate would discourage viewers and the resulting dip in revenue and influence would serve as an automatic disincentive.
- Advertising, which partly or wholly pays for programming, may be seen as a cost levied on the viewer's time and attention. Limiting advertising is not very far removed from state-controlled product pricing, unacceptable in a democracy committed to liberalisation.
- TRAI's objective of providing better service to viewers is unexceptionable, but it forgets that viewers are capable of deciding their acceptable dose of advertising.
- Besides, advertising bodies have always argued that ads are of social and economic value, helping viewers to make informed choices. This is not wholly true, but some advertising is indeed designed for public service and may be counted as a form of programming.
- On the issue of seeking criminal prosecution of channels, TRAI seems to have gone overboard, but it would be unfair to blame it for going by the rule-book.
- The regulator is acting on behalf of consumers, who form the silent majority, rather than the vocal media businesses, which constitute a minority.
- At stake is not freedom of expression, but the bottom line, which is in trouble because of structural factors. Many news channels have a top-heavy model with distorted salary patterns. News networks have expanded way beyond their means. Their credibility is at an all-time low.
- A skewed television rating system allowed them to project greater reach than they had; expanding measurement to smaller towns is already reflecting different — and more realistic — viewership patterns.

The gloomy economic environment is not helping. Many channels made a conscious decision to move towards integrated newsrooms to take advantage of technology.

- To only blame the TRAI decision for recent job-cuts — as is being done to exert pressure on it to pull back — is disingenuous.

TRAI ON FDI IN BROADCASTING

- The Telecom Regulatory Authority of India (TRAI)has recommended raising the foreign direct investment (FDI) limit for broadcast carriage services up to 100% and for uplinking of 'news and current affairs' TV channels and FM radio services up to 49%.
- Broadcast carriage services, for which the telecom regulator has recommended 100% FDI, include DTH, HITS, IPTV, mobile TV, teleports, cable networks and multi-system operators.
- The information and broadcasting ministry had in July sent a reference to the telecom regulator, asking it to examine a finance ministry proposal for increasing FDI limits in media.
- TRAI's recommendations broadly pertain to three segments of the broadcasting sector — broadcast carriage services, television content services and FM radio services.
- Currently, only 26% FDI is allowed in uplinking of news and current affairs channels and FM radio services.
- It has also been recommended that the FIPB approval process be streamlined and made time-bound.

Electoral Reforms

Party Funding

1. Allow open contributions to individual candidates. Currently, our laws allow people to contribute to parties and not individual candidates. This only results in centralising the control of party funds and weakening the connection between citizen and candidate.
2. Low limits ignore the numerous legitimate expenses associated with campaigning.
    1. In the private sector, a marketing campaign aiming to reach 20 lakh people may cost at least Rs 100 per person. But to reach 20 lakh voters, politicians cannot spend more than Rs 2 per voter!
    2. Therefore, across the board, parties have tried to cope by favouring candidates with black money and the networks and capability to expend those resources.

CBI Autonomy Affidavit

1. Executive interference
    1. Accountability Commission: A 3-member Accountability Commission of retired Supreme Court judges to act as an independent ombudsman to examine complaints against it. CVC will be its ex-officio member. It will insulate the CBI's probe from external influence and may also oversee its investigation in certain circumstances. It will be mandated to inquire into allegations of misbehavior, impropriety against CBI officers including the director.
    2. Director of Prosecution: The director of prosecution, who reports to the law minister, will continue to have the powers to scrutinize CBI chargesheet once the investigation is over. He will be responsible for prosecution of CBI cases and will continue to be appointed by the Centre on the recommendation of a selection committee headed by the CVC. The other members of the committee will be the DoPT secretary, home secretary and law secretary. The CBI director will be the member-convener of the committee.
    3. CVC would have the power of superintendence and administration over the CBI for cases to be probed under the PoCA. The Centre would be vested with the power in other matters.
2. Sanction
    1. Proposal
        1. It would be examined only by a committee of secretaries, including Secretary (Personnel), CVC, Secretary of the ministry concerned. It will give a decision within 90 days post which sanction would be deemed given.
        2. The order regarding sanction would also contain in detail the reasons behind the decision as well.
    2. Current practice
        1. The matter is first examined by the minister concerned and, after his refusal, comes to the committee of secretaries (not including the CVC). Now ministers will be kept out of it.
        2. There is no time limit for the grant / rejection of sanctions.
3. CBI director
    1. Proposal
        1. He would be appointed through a collegium consisting of the Prime Minister, the Leader of the Opposition in the Lok Sabha and the Chief Justice of India.
        2. His tenure would be a minimum of 2 years and he will not be transfered without the consent of this collegium.
        3. Only the President would have the authority to remove or suspend the director, on a reference by the CVC for misbehavior or incapacity.
    2. Current practice
        1. A committee comprising the CVC, VCs, MIA secretary, and Public Grievances secretary takes into consideration the views of the outgoing director and then recommends a panel of eligible IPS officers. The centre then picks one of the names.
4. Financial powers of the CBI Director

1. They would be increased at par with those of the head of the CRPF director general.

Separation of Powers: Legislature vs Executive

Office of Profit

1. Constitutional scheme
    1. Legislators can't hold any office of profit under the government other than an office declared by the legislature by law not to disqualify its holder.
    2. The underlying idea was to obviate a conflict of interest between executive duties and legislative functions. The principle is that such a person cannot exercise his functions independently of the executive.
2. Misuse in India
    1. In countries like Britain, such fusion of executive and legislature is not, by and large, leading to corruption or patronage. That is because such a political culture has been evolved there.
    2. In our case, public office is perceived to be an extension of one's property. That is why, sometimes, public offices are a source of huge corruption and a means of extending patronage.
    3. Constitutional provisions relating to office of profit have been violated in spirit over the years even when the letter is adhered to. Legislatures kept on expanding the list of exemptions from disqualification only to protect holders of certain offices from time to time.
3. Recommendations
    1. Often, the crude criterion applied is whether or not the office carries a remuneration. But the real criteria should be whether executive authority is exercised by the office or not.
    2. Committees of a purely advisory nature can be constituted with legislators irrespective of the remuneration and perks associated with such an office.
    3. But appointment in statutory or non-statutory executive authorities including positions on the governing boards of public undertakings with direct decision making powers undoubtedly violate separation of powers.
    4. If a serving Minister, by virtue of office, is a member of certain organizations like the Planning Commission, where close coordination and integration with the executive is vital, it shall not be treated as office of profit.

MPLADS Scheme

1. The argument advanced that legislators do not directly handle public funds under these schemes, as these are under the control of the District Magistrate is flawed. In fact, no Minister directly handles public money. Even the officials do not personally handle cash, except the treasury officials and disbursing officers.
2. Making day-to-day decisions on expenditure after the legislature has approved the budget, is a key executive function.
3. These funds should have actually gone to the PRIs.

Dispute Resolution Mechanisms and Instiutions

Judiciary

Structure and Organization

Functioning

Judicial Reforms

Audio Recording of Court Proceedings

1. Argument is it could lead to swifter dispensation of justice.
2. If the government is able to provide the necessary infrastructure, then there is no problem. But doing so would be a big challenge.

3. Sometimes arguments in a single case go on for days. Recording such lengthy arguments, will it help?
4. Quality of audio recording is also an issue. So perhaps it should serve as a secondary tool and primary should remain the stenos.

Gag on Judges' Observations in the Judicial (Standards and Accountability) Bill

1. Sometimes, in order to elicit a good answer from the counsel, the judge may pose several questions. That does not mean that the judge is casting aspersions. The effort is only to get the correct answer from the counsel.
2. The SC is trying to convey to the subordinate judiciary that the judge has to be interactive. Such a gag order goes against the spirit.
3. Unless a judge expresses his views, how will the arguing counsel know whether or not the judge is accepting his arguments.
4. The interaction between the judge and the counsel is not the decision of the judge. There is no need to flash news on the basis of what the judge observes in court. What is needed is media code of conduct.

Issue of Judicial Overreach

1. When Parliament passes a law, somebody may approach a court and then the court has to see if the law is constitutional.
2. If there is no legislation on a particular subject, the court can suggest certain guidelines (for example, Vishakha guidelines).
3. This perception is growing because of the cases of alleged scams that are coming before the courts.

On the Collegium

1. Names of kith and kin of sitting and retired judges are routinely recommended.
    1. Once the collegium makes its recommendation, the matter goes to the government, which can question any name and seek reconsideration. The only thing is such objection must not be due to politics.
2. Extraneous considerations such as caste, religion, political considerations, personal quid pro quo have crept into the system.
3. The system is opaque, no one outside knows what criteria are there for selection.
4. The real issue is not who appoints the judges but how they are appointed. Irrespective of whether it is the executive, the judiciary or a commission, as long as the process is opaque and appointments are made on personal considerations, we will continue to have variations of the same problems. The crucial need is to evolve objective criteria and usher in transparency in the process.
5. Data relating to members of the judiciary seeking elevation to higher judiciary should be available online, available to the public.
6. We can follow a version of the UK system where all assessment criteria are well defined and assessment is evidence based. If there is not enough evidence to support a person's candidature, he/she is not considered.

<u>The Judicial Appointments Commission Bill, 2013</u>

Establishment and composition of Commission

1. The Commission shall be chaired by the CJI and shall comprise of two other senior most Judges of the Supreme Court, the Union Minister for Law, and two eminent persons to be nominated by the collegium.
2. The collegium comprises the Prime Minister, the CJI and Leader of Opposition of the Lok Sabha. The eminent members will retain membership for a three year period and are not eligible for re nomination.

Functions of Commission

1. Its mandate includes recommending persons for appointment as Chief Justice of India and transfers of all judges.
2. The procedure for recommendation with respect to appointment of High Court Judges includes eliciting views of the Governor, Chief Minister and Chief Justice of High Court of the concerned state, in writing.

Reference to Commission for filling up of vacancies

1. Upon the arising of a vacancy in the High Court and Supreme Court, references to the Commission shall be made by the Central Government.
    1. In the case of vacancy due to the completion of term, reference shall be made two months prior to the date of occurrence of vacancy.
    2. In the case of vacancy due to the death, resignation, reference shall be made within a period of two months from the date of occurrence of vacancy.

The Constitution (One Hundred and Twentieth Amendment) Bill, 2013

1. The Bill seeks to enable equal participation of Judiciary and Executive, make the appointment process more accountable and ensure greater transparency and objectivity in the appointments to the higher judiciary.
2. Amendment of 124 (2)
    1. Providing for appointment of Judges to the higher judiciary, by the President, after consultation with Judges of the Supreme Court and High Courts in the states.
3. Insertion of new article 124A to provide for
    1. Parliament to make a law that provides the manner of appointment to higher judiciary.
    2. Judicial Appointments Commission to be setup.
    3. JAC law to lay down the following features of the Commission: (i) the composition, (ii) the appointment, qualifications, conditions of service and tenure of the Chairperson and Members, (iii) the functions, (iv) procedure to be followed, (v) other necessary matters.

Ministries and Departments of Government

Structure and Organization

Governance Reforms

Strengths of the Existing System

1. Time tested system: Adherence to rules and established norms, well developed institutions.
2. Stability: Permanent civil service has provided continuity and stability during the transfer of power from one elected government to the other. This has contributed to the maturing of our democracy.
3. Political neutrality: Many important institutions which are politically neutral have evolved.
4. National integration: Public servants working in Government of India as well as its attached and subordinate offices have developed a national outlook transcending parochial boundaries. This has contributed to strengthening national integration.

Weaknesses of the Existing System

1. Undue emphasis on routine functions: The Ministries are often unable to focus on their policy analysis and policy making functions due to the large volume of routine work. This leads to national priorities not receiving due attention.
2. Procedures and not outcomes are important.
3. Lack of separation of policy making, implementation and regulatory functions.
4. Proliferation of Ministries/Departments: The creation of a large number of Ministries and Departments has led to illogical division of work and lack of an integrated approach even on closely related subjects. Ministries often carve out exclusive turfs and tend to work in isolated silos.
5. An extended hierarchy with too many levels: It leads to examination of issues at many levels causing delays, corruption and lack of accountability.
6. Risk avoidance.
7. Absence of coordination.
8. Fragmentation of functions: There has been a general trend to divide and subdivide functions making delivery of services inefficient and time-consuming.

Core Principles of Reforming Government Structure

1. Government should only focus on its core areas.

2. Decentralization based on the principle of subsidiarity.
3. Integration of functions and subjects. Subjects which are closely inter related should be dealt with together.
4. Separation of policy making from implementation: Ministries should concentrate on policy making while delegating the implementation to specialized agencies.
5. Agency based system: Improved coordination. Agency based system should be created.
6. Reducing hierarchies. This will improve efficiency and accountability.
7. Flatter organizational structure for enhanced team work.
8. Increasing inter-ministerial coordination: It would also be unrealistic to expect for curtailment in the size of the Council of Ministers in an era of coalition politics. Instead, a more pragmatic approach would be to retain the existing size but increase the level of coordination among the departments by providing for a senior Cabinet Minister to head each of the 20-25 closely related Departments. Individual departments or any combination of these could be headed as required by the Coordinating/First Minister, other Cabinet Minister(s)/Minister(s) of State.

Functioning

Pressure Groups and Formal / Informal Associations

Their Role in Polity

Media Reforms

TRAI Regulations

1. It plans to recommend the creation of an 'institutional buffer between corporate owners and newspaper management'. This is to ensure that corporate ownership of media must be separated from editorial management as the media serves public interest. There is no problem with corporates investing in or owning media houses for profits. But the problem arises when the corporate wants to abuse the media it controls to project a colored point of view for vested interests. There is conflict of interest here.
2. TRAI will also suggest ways to restrict cross-media ownership in line with practices in most other democracies. Certain media houses have interests in all forms — television, print, and radio — which led to "horizontal integration. TRAI is contemplating a "two out of three rule", whereby a media house could have interests in two of three mediums among print, TV or radio.

Statutory Bodies

Issues With Functioning of Statutory Commissions

Should Different Commissions be Merged with NHRC?

1. Idea is to merge all Commissions into a comprehensive Human Rights Commission with separate Divisions for Scheduled Castes, Scheduled Tribes, Women and Children. Chairpersons of the NCM, NCSC, NCST and NCW are members of NHRC for the discharge of various functions except inquiring into a complaint.
2. Yes - merge them
    1. Overlapping jurisdictions and duplication
        - Multiplicity of commissions leads problems of overlapping jurisdictions and even duplication of efforts in dealing with complaints. Sometimes different commissions may even contradict each other. Example is the clash between NCM and NHRC on Assam riots.
        - To prevent overlapping jurisdictions and duplication, laws are there. For example, NHRC cannot inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.
        - But in the absence of networking and regular interaction between different commissions, implementation of the law is difficult and duplication exists especially at the preliminary stage.
        - There is a need to provide a more meaningful and continuous mode of interaction between the various commissions - both at the national and the state levels. Common electronic databases and networks should be created. Common standards need to be defined.

3. No - don't merge
    1. The existence of a different dedicated Commissions' should enable each one of them to look into specific complaints and areas thereby ensuring speedy action.
    2. Merger in larger States and at the national level is impracticable and would fail to adequately address the special problems of different disadvantaged groups. However, such a merger may be possible in case of some of the smaller States.

Limited Capacity of the Commissions

1. These institutions are handicapped because they receive a very large number of complaints while their capacity to deal with them is very limited.
2. These commissions have to depend upon the government to provide them with staff and funds. The secretariat of these commissions is not under their control but under the executive's.
3. These commissions do not have adequate field staff, and mainly depends on temporary hires on contract basis for their work.

Lack of Institutionalization

1. The chairperson's role has been crucial in deciding the focus of each successive commission. Their functioning reflects the perception of the chairperson about their role.
2. No mechanisms have been developed to institutionalise the body and each successive commission seems to be working more or less independent of the previous one.
    1. For example, in NCW the work on the Domestic Violence Bill was started in 1992-93; nothing was heard of it till the Annual Report of 1999-2000, which demanded a comprehensive legislation on domestic violence without reference to earlier processes.
3. Their recommendations have been more protective and rehabilitative in nature with little emphasis on the structural aspects. Any analysis of budgetary allocations has been sadly lacking.

Process of Appointment

1. Clear and objective criteria are not laid down for the appointments to these commissions. Also the appointments are solely the prerogative of the executive (except for NHRC and CVC where a selection committee is there but it is dominated by the executive) with nobody outside knowing on what basis such appointments were made.
2. Over time, it has been observed that most of the appointments are politically motivated. There have also been issues like appointments of people with serious corruption allegations against them. Activists with long track record of social work are not appointed while active politicians are. This compromises on the autonomy.

Lack of Adequate Followup Mechanism on Recommendations

1. Lack of implementation powers
    1. These Commissions can only make recommendations in their reports which are to be laid before Parliament.
    2. Naturally their effectiveness depends on the action taken on such recommendations.
2. Long delays in laying down the reports in the parliament
    1. The recommendations of the report are circulated to the concerned offices by the nodal ministry of the commission.
    2. The comments furnished by them are included in the Action Taken Report, which is placed before the Parliament indicating whether the recommendation is accepted or not accepted and, if accepted, what action is being taken. If no final decision has been taken on a particular recommendation, the comment inserted is that it is under consideration.
    3. Thus there is time lag between submission of the reports by the Commissions and their placement before the Parliament and quite sometime is taken in collecting comments of concerned government agencies. The time lag in case of National Commission for SCs and STs is as long as three years.
3. Government apathy towards the recommendations
    1. Usually on the recommendations radically divergent from status quo, the bureaucratic tendency is to deflect or reject it. They don't even mention the grounds for rejection in detail.
4. Parliamentary apathy towards the reports
    1. By getting the reports laid down in the parliament, the idea was that during the discussion on the report, some MPs may raise the question of non-acceptance of important recommendations. The

matter may even be picked up by the Media or civil society which may also build up public opinion for its acceptance.
2. But the reality is that reports do not come up for discussion at all. This is partly because by the time reports are submitted with ATRs, they are dated and at times lose their contextual relevance.
3. There is need for creating a separate Parliamentary Standing Committee for deliberating on the reports of these Commissions.

The National Human Rights Commission

Powers & Functions

1. Inquiry powers
    1. To inquire, suo motu or on the basis of a petition or on a direction of a court, into a complaint of human rights violation.
    2. With regard to inquiries into complaints, it has similar powers of a civil court i.e. summon attendance, require production of any document and ask for oaths. Proceedings before it are deemed to be judicial proceedings.
    3. Additionally, it can require any person to furnish information in relation to the inquiry.
    4. It has search and seizure powers.
    5. It can take aid of any government agency for its investigations upon their concurrence.
    6. As an outcome of its investigation, it can recommend to the concerned government to pay compensation to the victim and/or to initiate prosecution proceedings against the offender.
2. To intervene in any human rights case pending before a court. It may also approach the SC and the HCs for relief.
3. To visit any jail or any other state institutions to see the living conditions of the inmates and make recommendations.
4. To review the constitutional and legal safeguards for human rights and make recommendations.
5. To review the factors that inhibit human rights and make recommendations.
6. To study international treaties on human rights and make recommendations.
7. To promote human rights research.
8. To spread human rights awareness.
9. To encourage NGOs working for human rights.

Composition

1. The members are selected by a selection committee comprising of PM, speaker and deputy chairman, home minister, leaders of opposition in HoP and CoS.
2. It consists of a retired CJI as chairman, a serving or retired judge of SC as member, one serving or retired chief justice of a high court, 2 eminent people having knowledge and experience in human rights, chairpersons of minorities commission, SC commission, ST commission and women commission.
3. A NHRC chairman or a member can't be removed unless the president dismisses them on grounds of proved misbehavior ascertained by SC after the president asks it to conduct an enquiry.

Positive Points of NHRC

1. Easy accessibility to the Commission. Anyone can approach NHRC through telephone, letter, application, mobile phone or internet. All the documents, reports, newsletters, speeches, etc. of the Commission are also available on this website.
2. NHRC has worked immensely to create awareness among public through seminars, workshops, lectures, literature, NGOs. The rising number of complaints on human rights violations only proves the fact that awareness is growing about NHRC.
3. The Commission has succeeded in getting the human rights education included in the curriculum.
4. Many recommendations made by NHRC have been implemented by the public authorities. These include bonded and child labor, narco analysis, mental health, manual scavenging, endosulfan, rights of physically challenged etc.
5. The Commission has been instrumental in persuading states to set up Human Rights Commissions and twenty states have set up the State Human Rights Commissions.

Negative Points of NHRC (UN Panel)

1. The lack of pluralism in its composition: There is dominance of the judiciary in its composition. The UN panel rejected the suggestion that such restrictions were justified because of the quasi judicial functions performed by the NHRC. Pointing out that this is "but one of the 10 functions" enumerated in the NHRC law.
2. Lack of independent investigation: 2 key posts in the NHRC — secretary general and director general of investigations — would have to be filled by those who come on deputation from within the government. Complaints given to the NHRC were entrusted to the police which either didn't investigate at all or investigated after substantial delay and in a biased manner.
3. Little engagement with human rights defenders.
4. Lack of independence: The NHRC is currently required to report to the Ministry of Home Affairs. There are serious question marks over the selection process.

The National Minorities Commission

Composition

1. It consists of a Chairperson, a Vice Chairperson and five Members to be nominated by the Central Government from amongst persons of eminence; provided that five Members including the Chairperson shall be from amongst the minority communities.

Powers and Functions

1. To review the constitutional and legal safeguards for minorities and make recommendations.
2. Inquiry powers
    1. To inquire, suo motu or on the basis of a petition or on a direction of a court, into a complaint of human rights violation.
    2. With regard to inquiries into complaints, it has similar powers of a civil court i.e. summon attendance, require production of any document and ask for oaths. Proceedings before it are deemed to be judicial proceedings.
    3. Additionally, it can require any person to furnish information in relation to the inquiry.
    4. It has search and seizure powers.
    5. It can take aid of any government agency for its investigations upon their concurrence.
    6. As an outcome of its investigation, it can recommend to the concerned government to pay compensation to the victim and/or to initiate prosecution proceedings against the offender.

Specific Constitutional Safeguards for Minorities

1. Art 29 (1): Right of any section of the citizens to conserve its distinct language, script or culture.
2. Art 29 (2): Restriction on denial of admission to any citizen, to any educational institution maintained or aided by the State, on grounds only of religion, race, caste, language or any of them.
3. Art 30 (1): Right of all minorities, whether based on religion or language, to establish and administer educational institutions of their choice.
    1. They are exempted from the admission policies of the state even if aided.
    2. They are exempted from RTE.
4. Art 30 (2): Freedom from discrimination on the ground that any educational institution is under the management of a minority, in the matter of receiving aid from the State.
5. Art 31: If any land is taken from a minority institution, then full compensation is payable.
6. Art 347: Special provision relating to the language spoken by a section of the population of any State.
7. Art 350 A: Provision for facilities for instruction in the mother-tongue at primary stage.
8. Art 350 B: Special Officer for Linguistic Minorities.

National Commission for Women

Composition

1. It consists of a chairperson and 5 members of eminence (all appointed by government) and at least one will be from SC and one from ST.

Powers & Functions

1. It monitors working of safeguards and laws for women and make recommendations.
2. It investigates complaints (including suo moto). While investigating it has all the powers of a civil court i.e. summoning presence, requiring production of evidence, ask for oaths and affidavits.
3. It inspects jail and other state institutions to see the condition of women inmates and make recommendations.
4. It funds litigation in issues involving large number of women.
5. Its reports are laid down before parliament (state legislature if a state is concerned) along with explanation on action taken and reasons of non-acceptance.
6. To promote awareness on women issues.
7. To promote research on women issues.
8. To encourage NGOs working on women issues.
9. The NCW is to be consulted by the government on all important policy issues concerning women. It is to participate and advise in the planning process on issues concerning women.

Report Card of NCW Functioning (apart from the common issues)

1. The denial of the scale and nature of sexual violence in Gujarat 2002.
2. The statement of a member of the commission on the Mangalore pub attack case.
3. The statement that being called "sexy" should be taken as a compliment.
4. The statement asking girls not to ape the west blindly after a girl was publicly molested in Guwahati.
5. On AFSPA and police violence, all commissions have been sadly silent.

CIC

SC ON APPOINTMENT IN CIC

- The Supreme Court has recalled its judgment on the Right to Information Act holding that only retired judges or those having law qualification could be appointed as Information Commissioners at the Central Information Commission and at the State level commissions.
- Earlier, the Bench had held that for effectively performing the functions and exercising the powers of the Information Commission, "there is a requirement of a judicial mind and, therefore, persons eligible for appointment should preferably have judicial background and possess judicial acumen and experience."
- In its recent judgment, SC said that it is for Parliament to consider whether appointment of judicial members in the Information Commissions will improve their functioning and as Sections 12(5) and 15(5) of the RTI Act do not provide for appointment of judicial members in the Information Commissions, this direction was an apparent error. Sections 12(5) and 15(5) of the Act, however, provide for appointment of persons with wide knowledge and experience in law.
- The Bench said: "While deciding whether a citizen should or should not get a particular information 'which is held by or under the control of any public authority,' the Information Commission does not decide a dispute between two or more parties concerning their legal rights but their right to get information in the possession of a public authority. This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions."
- The Bench gave the following declarations and directions. "We declare that Sections 12(5) and 15(5) of the Act are not ultra vires the Constitution. We declare that Sections 12(6) and 15(6) do not debar a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or a person holding any other office of profit or connected with any political party or carrying on any business or pursuing any profession from being considered for appointment as Chief Information Commissioner or Information Commissioners, but after such appointment, he has to discontinue as MP or MLA, or
- The Bench said: "We further direct that persons of eminence in public life with wide knowledge and experience in all the fields mentioned in Sections 12(5) and 15(5) of the Act, namely, law, science and technology, social service, management, journalism, mass media or administration and governance, be considered by the Committees under Sections 12(3) and 15(3) of the Act for such appointment."

- The Bench said, "The committees concerned while making recommendations to the President or to the Governor, as the case may be, for appointment of the Chief Information Commissioner and Information Commissioners must mention against the name of each candidate recommended the facts to indicate his eminence in public life and his knowledge and experience in the particular field. These facts must be accessible to the citizens as part of their right to information under the Act after the appointment is made."

ANALYSIS

- By recalling its directions and declarations issued a year ago on the appointment of Information Commissioners under the Right to Information Act, the Supreme Court has ensured that there will be no frustrating complications in the working of this path-breaking law.
- The court's determination in a review petition that Information Commissions do not exercise judicial powers and in fact discharge administrative functions confirms what the RTI community has emphasised all along — that the elegant law is designed to minimise discretionary interpretation and exempts only a select list of subjects from disclosure.
- Moreover, the Commissions are not tribunals or bodies to which judicial powers have been transferred. The
  - The only test to be met in such circumstances is that of public interest, and Commissioners with a distinguished record in the social sector would find no difficulty in arriving at a decision.
  - Regrettably, the Centre and the States have not been neutral about choosing people for the job. As the court has pointed out, people from various disciplines such as law, science, social service, journalism, and administration with undisputed eminence must be selected.
  - Naturally, this means widening the gene pool beyond former bureaucrats and establishment loyalists. That the process must be open to scrutiny has been reiterated by the Supreme Court and it will doubtless be closely monitored by a rights-conscious citizenry.

Issues with CIC

1. A high number of cases are pending before the CIC. Information sought through RTI applications is often most relevant at a particular time. If an appeal before the CIC routinely takes more than a year to be heard, citizens may not find it imperative to turn to it.
2. Another problem is the CIC's inability to ensure compliance with its orders. The CIC does not have contempt powers and the only way in which it can ensure compliance is to use its power to impose a penalty.

Bringing Political Parties Under RTI

The Order

1. It ruled that political parties are public authorities under RTI.
2. The national parties should appoint mandatory information authorities.
3. They should also disclose information under relevant sections of RTI.
4. The decision would definitely have been encouraged by the trust deficit the general public has with politicians and the political parties.

The Rationale Behind the Order

1. Political parties perform public duty.
2. Public funding
    1. The act states that a non-government organisation substantially financed, directly or indirectly by funds provided by the appropriate government, is also included in the definition of a public authority.
    2. They receive substantial public funding in the form of subsidised land and building, income tax exemptions, free airtime on radio and TV.
3. Established by Election Commission
    1. The Act of states that any institution can be declared a public authority if it is established through the Constitution, legislative action or by notification by an "appropriate government".
    2. CIC interpreted the term appropriate government as the Election Commission whose registration is needed for a political party to be recognized as such.

Order is Good

1. Transparency will increase the confidence of the people in public institutions. Citizens should have a right to know about the political parties which run their government.
2. It will also strengthen intra party democracy.
3. It has been argued that political parties will now have to be accountable to the commission. The RTI is a citizen empowerment tool, not a commission empowerment one.

Order is Bad

1. Issues in enforcement
    1. There is limited scope for the enforcement of the penalty clauses.
    2. The person who would be appointed as PIO would hardly be dependent upon monthly salary and his work as PIO will not determine his career progression in politics.
    3. Therefore, a maximum penalty of Rs 25,000 would hardly act as a deterrent. Nor will there be any fear of jeopardising his career in politics.
    4. If persons with criminal records are appointed PIOs, who will dare approach them for accessing information.
2. Counter action by parliament
    1. Parties may bring an ordinance or pass an act to overturn this order.
3. Impractical
    1. RTI makes extensive demands on public authorities for not just financial transparency but also transparency of decision-making and exercise of authority. In the case of political parties, financial transparency must be separated from decision-making and other processes of a political party.
    2. RTI, without accompanying electoral reforms, will adversely affect cash contributions or will further discourage parties from reporting them.

RTI Ruling as a Window of Opportunity for Electoral Reforms

1. RTI, without accompanying electoral reforms, will adversely affect cash contributions or will further discourage parties from reporting them.
2. If political parties are so vital to India's democratic functioning that they can be considered public authorities, then it is only logical that the state should fund them in a befitting manner.
3. State funding will strengthen less wealthy but more worthy activists when they demand party tickets.
4. With regards to costs, state funding cost estimates have ranged from only Rs. 5,000 crores to Rs. 10,000 crores.
5. Further, parties should only be able to receive state funding if they meet some criteria of transparency and accountability — this will spur them to improve their internal processes including record-keeping and disclosure.
6. Germany provides parties matching grants, to the extent of the amount they raise from private sources. It does not limit contributions or expenditure, and requires disclosure of only large donors. Over time, this has resulted in parties raising private funds mostly through small contributions and membership dues.

National Commission for Protection of Child Rights (2007)

Functions and Powers

1. To review the safeguards for protection of children and make recommendations.
2. To inquire into complaints (suo moto also) and make recommendations.
3. To visit any juvenile home or other state / NGO institutions meant for children to see the condition of inmates and make recommendations.
4. Its other powers are same as NCW.

National Consumer Disputes Redressal Commission

CVC

Appointment

1. The selection committee consists of the Prime Minister, the Home Minister and the Leader of the Opposition

in the Lok Sabha.

Power, Functions and Responsibilities

1. The CVC advises the union government on all matters pertaining to the maintenance of integrity in administration.
2. It exercises superintendence over the working of the CBI in cases referred to it.

Regulatory Bodies

Indian Medical Council

Appointment

Power, Functions and Responsibilities

Quasi-Judicial Bodies

The Press Council of India functions under
the Press Council Act, 1978. It is a statutory, quasi-judicial body

Appointment

Power, Functions and Responsibilities

Important Aspects of Governance

Transparency and Accountability

Citizen Charters

E-Governance

m-Governance

Main measures laid down by Department of Information Technology (DoIT)

- Web sites of all Government Departments and Agencies shall be made mobile-compliant, using the "One Web" approach.
- Open standards shall be adopted for mobile applications for ensuring the inter operability of applications across various operating systems and devices as per the Government Policy on Open Standards for e-Governance.
- Uniform/ single pre-designated numbers (long and short codes) shall be used for mobile-based services to ensure convenience.
- All Government Departments and Agencies shall develop and deploy mobile applications for providing all their public services through mobile devices to the extent feasible on the mobile platform. They shall also specify the service levels for such services.

To ensure adoption and implementation of the framework in time bound manner the government will develop Mobile Service Delivery Gateway (MSDG) that is the core infrastructure for enabling the availability of public services in through mobile devices.

Issues with mGovernment

- Wireless and mobile networks and related infrastructure, as well as software, must be developed
- To increase citizen participation and provide citizen-oriented services, governments need to offer easy access to mGovernment information in alternative forms
- Mobile phone numbers and mobile devices are relatively easily hacked and wireless networks are vulnerable because they use public airwaves to send signals
- Adopted legislation for data and information practices that spell out the rights of citizens and the responsibilities of the data holders (government)

Suggestions for mGovernment Development

- Perfecting mGovernment relevant laws, regulations and standards
- Establishing the information security system of mGovernment
- Rebuilding and optimizing the administrative business processes
- Strengthening the evaluation of eGovernment

Applications

E-Governance is Not About 'e', its About Governance

Computerisation of Land Records

Land Records

This issue is back on the agenda now because of two main reasons. First, land markets in several parts of the country have

exploded. Land prices in these regional markets — all of urban India and large rural areas like Punjab and Haryana — are the highest in the world. Generating revenue from this market is now a serious concern again. Second, the old process of land acquisition has broken down. The state has been forced to develop a new land acquisition bill (circulating for two years now). Private sector players are demanding ever larger quantities of land for purchase or acquisition. The entire process of land conversion — from agricultural to other use — is held up if land titles are unclear or disputed.

There is a real possibility that a process that tries to formalise land title claims may unleash disputes and litigation on a massive scale. Many conflicting claims of land ownership remain simmering. Rivals often work out informal arrangements, avoiding full-scale legal disputes. But if the situation changes — if the claims have to be settled one way or another because they have to be inscribed for good on maps and cadastres that represent finality, a permanent settlement so to speak, then every simmering and "adjusted" dispute has to come out in the open. Because anyone who does not stake a claim then will for ever lose her claim.

1. Project
    1. Torrens system is based on 4 principles:
        1. Principle of a single window to handle land records.
        2. The “mirror” principle, which states that, at any given time, land records mirror the ground reality.
        3. The “curtain” principle, which refers to the fact that the record of title is a true depiction of the ownership status, mutation is automatic following registration and title is a conclusive proof of ownership.
        4. Principle of title insurance - the title is guaranteed for its correctness and the party concerned is indemnified against any loss arising because of inaccuracy in this regard.
    2. The aim was complete digitization with extensive surveys by the end of 12th FYP and Torrens system by the end of 13th FYP.
2. 2 major problems remain. Firstly, the maps in use are totally outdated and secondly, the titles indicated in relation to the land are not up-to-date.
3. Several departments are involved in managing land records in most of the States, and the citizen has to approach more than one agency for complete land records, e.g., Revenue Department for textual records and mutations; Survey & Settlement (or Consolidation) Department for the maps; Registration Department for verification of encumbrances and registration of transfer, mortgage, etc. These departments work in a stand-alone manner, and updating of records by any one of them makes the records of the others outdated.
4. The programme includes two CSS:
    1. Strengthening of Revenue Administration & Updating of Land Records
    2. Computerization of Land Records.
    3. The major components of the programme are computerization of all land records including textual and spatial records and mutations, survey/re-survey and updation of all survey & settlement records.

- Status
    1. In most States, land record computerization has been limited to the issue of Records of Rights (RoR). Mutation, which is a more complex process, has been computerized in only a handful of states. No State in India has reached a stage which integrates the functioning of the 3 departments.
    2. Outdated records were being computerized and scanned.
    3. Even basic computerized delivery has not reached the entire population. It is restricted to taluka level and many districts continue in manual mode.
- Analysis of failure
    1. The scheme failed to address the main problem in case of land records i.e. the land records do not reflect the factual ground reality.
    2. The most important activity for updation of land records, i.e., survey was neglected by most of the States.
    3. Modern technology can be of assistance in quickly carrying out the measurements of land. But, unless mechanisms are put in place to ensure that any change in titles is quickly captured by the land records, any amount of ICT would not provide optimal solutions. Therefore, the existing mechanism for updating land records which includes multiplicity of departments and obsolete processes would need to be reformed.
    4. There are bound to be disputes where land titles are concerned. All state land records laws provide for a dispute resolution mechanism – the revenue courts. Over time, the functioning of this mechanism has left much to be desired. There is urgent need to build the capability of this mechanism.
    5. In many cases, even basic process reforms like simplification and rationalizing of forms, and putting in

place an appointment and queue management system have not been undertaken.
6. Computerisation of existing land records without corroborating it with the actual field position only led to perpetuation of existing loopholes and errors and hence more litigation. So the scheme failed to even take off.
7. Funds were thinly spread.
8. There was no time frame to finish the scheme.
9. System of monitoring and evaluation was not provided for.
10. In case of urban lands, the situation is graver as records are virtually non-existent. The NLRMP does not cover urban lands. Growth in urbanization would result in continuous conversion of rural land into urban land. Thus, there cannot be two systems for management of rural and urban lands.

Passport & Visa MMP

1. In the case of passports, the reduction in the waiting time is very marginal as only submission of application was partially computerized leaving most of the back-end process in their old inefficient form.
2. Passport Seva Project: It contracts private service providers for digitisation of the entire passport services. It is expected that the process for issue of a new passport would be expedited to three working days subject to police verification. Passports applied under the '*tatkal*' scheme would be dispatched the same day, subject to address and police verification. While the Ministry of External Affairs (MEA) would continue to perform the sovereign function such as verification and grant of passport, all peripheral activities would be done by the private service provider.

National E-Governance Plan

1. Role of local governments
    1. There is no role for the local governments in the implementation of the plan and not even at kiosk level.
    2. Monitoring bodies of elected local body representatives should be set up to monitor the implementation of the plan.
    3. PRIs should also spread awareness among the people about the services being offered and encourage them to utilize them.
2. Business process restructuring and capacity building issues
    1. The MMPs have the potential of creating a direct impact on citizens since they provide high volume G2C services. Unfortunately, these are the very sectors where progress in implementation is lagging.
    2. The most critical bottleneck is delay in business process restructuring and insufficient capacity building.
    3. The large scale of the transactions involved, prevalence of outdated and cumbersome procedures, inertia and resistance to change, the overhang of old and outdated records are other issues.
3. Project management issues
    1. There is lack of clear demarcation of responsibility among the project authorities
    2. Most of the State level e-Governance projects are still at the conceptual stage.
        1. Many of the projects have pre-maturely gone ahead with the ICT component without first prioritizing the governance reforms that are a pre-requisite. This would result in automation of the existing inefficiencies in the system .

Core Principles for a Successful E-Governance Project

1. Public trust
    1. Clarity of Purpose
        - It should be based on what citizens need rather than what the technology can achieve.
    2. It must deliver substantial visible benefits, specially single window grievance redressal as in LokVani in UP, Gyandoot in MP or single window facility to pay taxes and bills, to the end users.
    3. Benchmarks for service delivery need to be created and communicated to the users.
    4. It must have mechanisms to win public trust like giving them a chance to review the computerized records, having a screen facing them, use of local language.
2. Accountability
    1. People must be held accountable for their actions.

2. Proper security mechanisms, including digital signature, biometrics as in the Bhoomi Project in Karnataka, should be there at each layer so as to fix accountability.

3. Scope of the project
    1. Fearing that new systems may not deliver, managers tend to continue manual systems in parallel, and thus there is no incentive for staff to switch over to the new system. But it must not run as a secondary system, along with the paper based system. Rather focus must be to make it the only system as soon as possible.
    2. Scaling up should be attempted only after the success of pilot projects. Systems should have the flexibility to incorporate changes mid-way
    3. The user charges should not be high so as to deter the users. Still self-sustainable projects have a higher chance of success.
4. Project management
    1. Implementation
        - The project management team must have an empowered leader with a dedicated team. Such a team must be given sufficient time to finish its work.
    2. Planning
        - E-preparedness of the organization must be kept in mind while planning for projects and fixing time frames.
        - Reinventing the wheel should be prevented. Projects must learn from the success and failures of the previous e-governance processes.
        - At present various projects are ad hoc and unrelated to each other. Many are vendor driven and not scalable. So common standards and platforms should be evolved.
    3. Evaluation
        - There should be a precise definition of the parameters against which any future evaluation would be done.
        - Periodic evaluations against such parameters should be conducted.
5. Process re-engineering
    1. Environment building
        - Assessment of changes to be made in the legal framework needs to be done in advance.
        - As the task involves redesigning of governmental processes at various levels, it would require strong political support at all levels.
        - Government personnel would have to be incentivised to change old habits and acquire new skills. Ownership by the staff is essential and adequate stress should be laid on generating interest among the staff members.
        - Organizational capacity building is absolutely essential. It includes reforms in recruitment and personnel policies, out-sourcing, re-engineering internal processes, delegation of authority, creation of enabling legal framework, developing MIS and proper incentive systems.
        - In the public, awareness needs to be created so that there is a constant demand for reforms.
        - Effective grievance redressal mechanism needs to be built in the process.
    2. There should be end to end computerization. But in projects such as payment of bills, filing of returns, e-procurement, waiting for computerization in government departments is not needed to start the project.
    3. G2B projects
        - Entire e-procurement processes must be designed to avoid human interface i.e., supplier and buyer interaction.
        - They must provide anonymity and level playing field to all vendors.
        - There should be automatic bid evaluation based on the evaluation parameters given to the system to eliminate subjectivity.
        - Tender documents containing all details are hosted on the website and be freely downloadable by all.
        - They don't require extensive back end computerization and hence can be easily taken up.
6. Supporting infrastructure
    1. Power supply, literacy, connectivity, and backend support are the essential pre-requisites.
    2. Adequate redundancy and backups should be provided specially to meet with disaster challenges.

Personnel Issues in Implementation of E-Governance Projects

1. Threats of job losses increase resistance.
2. Employees resist retraining.
3. Government staff may resent external staff. It helps a great deal if external staff have the time and patience to talk to employees.
4. High level support doesn't ensure staff buy in. Staff can come in only when they see benefits from moving to a new system.
5. Staff are unenthusiastic when credit is not shared: A common perception is that an e-government project is an IT department project and if the project is successful, the IT department will get all the credit.

6. Fearing that new systems may not deliver, managers tend to continue manual systems in parallel, and thus there is no incentive for staff to switch over to the new system.

E-Mitra Project in Rajasthan

1. There are two major components – 'back office processing' and 'service counters'. Back office processing includes computerization of participating departments and establishing a mini data centre at the district level. Private partners (Local Service Providers) run the kiosks/ service counters.
2. It is in PPP mode. In case of collection of bills, the Local Service Provider does not charge the citizen, but gets reimbursement from the concerned organization.

National e-Governance Plan

Project

1. It comprises of 31 Mission Mode Projects (MMPs) and 10 components. Various MMPs are owned and spearheaded by the concerned ministries.
2. Physical Architecture
    1. Data Centers
    2. NoFN - 2Mbps network connectivity to each Panchayat.
    3. Kiosks at the front end. 1 for each 6 village cluster following honey comb structure. Kiosks to have a PC along with basic support equipment like printer, scanner and UPS.
3. G2C Services to be Offered
    1. Land records
    2. Registration of vehicles
    3. Issue of certificates
    4. Employment exchange
    5. Ration cards
    6. Electoral services
    7. Pension schemes
    8. Issue of licenses
    9. Public grievance
    10. Payment of bills

Mission Mode Projects

1. MCA 21: The MMP is in its post-implementation stage and is providing electronic services to the Companies for their related activities such as allocation and change of name, incorporation, online payment of registration charges, change in address of registered office, viewing of public records and other related services. It also makes public the company related data.
2. Pension: A website provides updated information on government pension rules and regulations; helps facilitating registration of grievances; enables monitoring timely sanction of pension; maintains a database of pensioners.
3. Income Tax: It offers services including facility for downloading of various forms, online submission of applications for PAN, tracking the applications, e-filing of Income Tax Returns, e-filing of TDS returns, online payment of taxes, issue of refunds.
4. Passport, Visa and Immigration: The e-services being offered under the MMP include re-issue of Passport, issue of duplicate Passport, issue of Tatkal Passport, change in name, address, ECNR/ ECR suspensions, passport status enquiry etc.
5. Central Excise: The important e-services being offered include e-filing of Import and Export documentation, electronic processing of declarations, facilities for e-filing of Central Excise and Service Tax returns, e-registration services, digital signatures, e-payment of Customs Duties.
6. Banking: It includes Electronic Central Registry and One India One Account for Public Sector Banks.
7. UID.
8. e-Office: The functioning of government offices would be computerized.

9. Insurance: The MMP is an industry initiative (by public sector insurance companies). The MMP aims at facilitating customer services, automating grievance redressal mechanism and, creating a database.

Integrated MMPs

1. e-Courts: The first phase includes building computer infrastructure in the lower courts and upgrading it at High Courts and the Supreme Court. The second phase of the MMP includes providing services like availability of copies of judgments, e-filing of cases, video conferencing of outstation witnesses, issue of notices to clients through e-mail.
2. Electronic Data Interchange/e-Trade (EDI): It aims at facilitating electronic data interchange amongst various agencies involved in the process of imports and exports. It offers services like electronic filing and clearance of EXIM documents and e-Payments of duties.
3. India Portal: It provides a single window access to information about governments at all levels, in a multilingual form.
4. e-Procurement: This MMP of the Ministry of Commerce aims at rolling-out IT-enabled procurement by government departments.
5. Road Transport: This MMP proposes to offer many e-Services like vehicle registration, driving licenses and Smart Card based registration certificates to citizens.
6. Agriculture: The MMP aims at providing information regarding farm practices, market trends, agricultural and technical know-how. It has two components i.e. AGRISNET and AGMARKNET. AGMARKNET aims at creating an information network which will capture/update information at various mandis. AGRISNET aims at back-end computerization of State Agriculture departments
7. e-District: This MMP aims at delivery of high volume, citizen-centric services through kiosks. These would primarily be services not covered by other specific MMPs. A minimum of 7 services will be delivered in every State.

Analysis of NeGP

1. The Institutional Structure
    1. It has become essential to ensure that the numerous projects being implemented by the different governments and departments are consistent with a broad policy and adhere to common standards.
    2. This requires empowered institutional arrangements to oversee the projects.
2. Role of local governments
    1. There is no role for the local governments in the implementation of the plan and not even at kiosk level.
    2. Monitoring bodies of elected local body representatives should be set up to monitor the implementation of the plan.
    3. PRIs should also spread awareness among the people about the services being offered and encourage them to utilize them.
3. Business process restructuring and capacity building issues
    1. The MMPs have the potential of creating a direct impact on citizens since they provide high volume G2C services. Unfortunately, these are the very sectors where progress in implementation is lagging.
    2. The most critical bottleneck is delay in business process restructuring and insufficient capacity building.
    3. The large scale of the transactions involved, prevalence of outdated and cumbersome procedures, inertia and resistance to change, the overhang of old and outdated records are other issues.
4. Project management issues
    1. There is lack of clear demarcation of responsibility among the project authorities
    2. Most of the State level e-Governance projects are still at the conceptual stage.
    3. Many of the projects have pre-maturely gone ahead with the ICT component without first prioritizing the governance reforms that are a pre-requisite. This would result in automation of the existing inefficiencies in the system .

Status of Implementation

1. Status of MMPs: Out of the 31 MMPs, 14 MMPs are delivering the full range of services while 9 have started delivering some services to the citizens.
2. e-TAAL: It is a web portal which aggregates and analyses the statistics of e-governance projects including MMPs on a real time basis. It is expected to enhance the outcome focus of e-Governance programs.
3. Mobile Seva: It is a unique countrywide initiative on mobile governance to provide public services to the

citizens through mobile phones. As on date, 444 departments are on it offering over 200 services. A mobile AppStore has also been launched with 153 applications.

4. NoFN: Pilot has been conducted and rollout is in progress.
5. e-Gov AppStore: It will host successful e-governance applications which can be replicated by all government departments intending to implement e-Gov initiatives, thereby saving immense time and costs.
6. e-Procurement: All departments have been directed to switch over to it.
7. Meghraj: This is the new Government of India cloud (GI Cloud) computing environment to be created at the national level. It will bring the benefits of cloud computing.
8. National e-Governance Academy: To promote research, documentation, training, this academy will be opened.

SC ON AADHAR

- The Supreme Court issued an interim order on a public interest litigation challenging certain aspects of the UID Aadhaar project. The interim order brings out two main points:
    - (1) Aadhaar enrolment of immigrants living in India without proper papers should not be done, and
    - (2) Central and State governments must not deny essential services and benefits solely on the basis of non-enrolment in the project.
- The first point concerns the Aadhaar system itself. An Aadhaar applicant needs to provide proof of identity (including age) and address using one of several approved documents, such as an electoral photo identity card or passport, before his/her biometrics are captured. But very poor people, for example pavement dwellers, may have no identity document with proof of age, and certainly no address. However, the Aadhaar system caters to such people with the Registrar (State government) notifying a trained introducer who, in effect, contacts the enrolment centre staff, vouching for the person who states that he is Mr. X of so-and-so address is indeed Mr. X of that address.
- Thus, the biometrics captured are shown to belong to Mr. X with those details. In practice, the introducer may know only a fraction of the people without such documents who apply for the Aadhaar card by sight or acquaintance, and he/she could unwittingly introduce an immigrant without proper documentation. Even if the introducer knows Mr. X by sight or acquaintance, he has really no means to know whether he is a citizen or a legal resident.
- The apex court's order that immigrants without proper documentation must not be enrolled effectively puts introducers "out-of-business," and thus the poor who have no documents cannot be enrolled.

Models
Successes, Potential and Limitations

Civil Services
Role in a Democracy

1. FIXED TENURE FOR BUREAUCRATS: SC

- The Supreme Court directed the Centre and the States to set up a **Civil Services Board (CSB)** for the management of transfers, postings, inquiries, process of promotion, reward, punishment and disciplinary matters.
- This measure is to insulate the bureaucracy from political interference and to put an end to frequent transfers of civil servants by political bosses.
- The Bench asked Parliament to enact a **Civil Services Act under Article 309** of the Constitution setting up a CSB, "which can guide and advise the political executive transfer and postings, disciplinary action, etc."
- The Bench directed the Centre, State governments and the Union Territories to constitute such Boards "within three months, if not already constituted, till the Parliament brings in a proper Legislation in setting up CSB.
- Deprecating repeated transfers, the Bench said minimum assured tenure ensures efficient service delivery and also increased efficiency.
- The Bench directed the Centre, States and Union Territories to issue appropriate directions to secure providing of minimum tenure of service to various civil servants, within three months.

Civil services Board

- It consists of high ranking service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State level, could be a better alternative to guide and advise the State government on all service matters, especially on transfers, postings and disciplinary action, etc., though their views also could be overruled, by the political executive, but by recording reasons, which would ensure good governance, transparency and accountability in governmental functions.

Cases: **T.S.R. Subramanian vs. Union of India.**

- This case was brought by 80 retired bureaucrats who asked the Court to order the government to implement three specific recommendations that had been put forward by a number of expert committees over the years that were aimed at reforming the civil service:
    - Create an independent civil service board at the centre and in the states for promotions and transfers of bureaucrats;
    - Provide fixed tenure in postings to civil servants (to give them some protection against indiscriminate or biased transfer by politicians);
    - Require all civil servants to record all directions they receive from their administrative superiors, and also from political authorities or business interests.

PRAKASH SINGH CASE

- The **seven directions** were:

1. Constitute a State Security Commission to ensure that the State government does not exercise unwarranted influence or pressure on the police
    - Lay down broad policy guidelines
    - Evaluate the performance of the State police.

2. Ensure that the DGP is appointed through a merit-based, transparent process and secure a minimum tenure of two years.

3. Ensure that other officers on operational duties (including SPs and Station House officers) are also provided a minimum two-year tenure.
4. Separate investigation, and law and order functions.
5. Set up a Police Establishment Board to decide transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers above the rank of DSP.
6. Set up a Police Complaints Authority at the State level to inquire into public complaints against officers of and above the rank of DSP in cases of serious misconduct including custodial death, grievous hurt, or rape in police custody, and at district levels to inquire into complaints against personnel below the rank of DSP in cases of serious misconduct.
7. Set up a National Security Commission at the Union level to prepare a panel for selection and placement of chiefs of the central police organisations with a minimum tenure of two years.

Relationship with the Political Leadership

Constitutionally Envisioned Scheme

1. The secretary has to advise the minister impartially and fearlessly and tell him about the legality of his orders and suggest that either such orders not be given or that they be suitably modified.
2. The minister may have the mandate of the people to govern, but the secretary has an equivalent constitutional mandate to advise the Minister.
3. Once his advice has been suitably considered, unless the minister passes an illegal order, the secretary is bound to implement it without bias and fear or favor. The minister, on his part, is required to support the secretary who is implementing his order.

Status

1. Loss of political neutrality
    1. In the initial years after Independence, relations between Ministers and civil servants were characterized by mutual respect and understanding of each other's respective roles, with neither encroaching upon the other's domain.
    2. However, in subsequent years, matters started changing for the worse. While some civil servants did not render objective and impartial advice to their Ministers, often some Ministers began to resent advice that did not fit in with short-term political interests.
    3. There was also a tendency for some Ministers to focus more on routine administrative matters such as transfers in preference to policy making.
    4. As a result, 'political neutrality' which was the hallmark of the civil service in the pre-Independence era as well as in the period right after Independence, was gradually eroded.
2. Discharge of delegated functions
    1. There is an increasing tendency in government departments to centralize authority and also after having first delegated authority downwards, to interfere in decision making of the subordinate functionaries.
    2. There is a perception that downward delegation of responsibilities will lead to abuse and more corruption. But the correct way is to institute mechanisms to prevent that.

Challenges

1. Defining accountability
    1. Civil servants in India are accountable to the ministers, but in practice, the accountability is vague and of a generalised nature. Since there is no system of ex ante specification of accountability, the relationship between the minister and the civil servants is essentially issue-sensitive and civil servants deal with the ministers as the issues present themselves.
    2. The accountability relationship can be anything from all pervasive to minimalistic and it is left to the incumbent minister to interpret it in a manner that is most convenient to him/her. This leads to either collusive relationship or to discord, both of which can adversely affect the administration.
    3. Thus there is an urgent need to codify this relationship preferably by enacting a law.
    4. Accountability can be defined in the relationship only in an output - outcome framework. Outputs are specific services that the civil servants deliver, and therefore, the civil servants should be held accountable for the delivery of key results, which becomes the basis for evaluation of their performance. This can be achieved through agreements with the minister specifying the performance targets. These performance agreements should be put in the public domain. They should have clearly spelt out objective and measurable goals.
    5. Outcome is the success in achieving social goals and the political executive decides what outputs should be included so that the desired outcomes can be achieved. In such a scheme, the political executive becomes accountable to the people for the outcome.
2. Transfers and postings
    1. Arbitrary transfers and postings of civil servants by the ministers in utter disregard of the tenure policies, concern about disruption of public services delivery, concern about implementation of developmental programmes. Such transfers are made on the basis of caste, religion, money, favoritism. This leads to splitting up of bureaucracy and its demoralization.
    2. Transfer and tenure policies must be developed in an independent manner and any premature transfer should be based on publicly disclosed sound administrative grounds which should be spelt out in the transfer order itself.
    3. An officer should be given a fixed tenure of at least three years and given annual performance targets.
    4. Civil Services Authorities should be made statutory and autonomous. If the government does not agree with the

recommendations of the Authority, he will have to record his reasons in writing.
5. An officer transferred before his normal tenure can agitate the matter before an Ombudsman.

3. Ministerial interference in operations

    1. Ministers issue instructions, formal or informal, to influence the decisions of the bureaucracy often intruding in their domains.
    2. It has also been observed that officers, instead of taking decisions on their own, look up to the ministers for informal instructions.
    3. Several states have created an institution of 'District Incharge Minister' to review the development activities in the district who routinely exceed their mandate intrude in the officer's domain. These practices are unhealthy.

1. Appointments/Recruitment to the Civil Services
    1. While the UPSC enjoys an untarnished reputation for having developed a fair and transparent recruitment system, the same cannot be said for most of the SPSCs.
    2. In addition, large number of recruitments is done by departments under their control of the government directly. It is essential to lay down certain principles/norms for such recruitments.

Advantages of a Permanent Civil Service

1. The spoils system has the propensity to degenerate into a system of patronage, nepotism and corruption.
2. Public policy is a complex exercise requiring in-depth knowledge and expertise in public affairs. A permanent civil service develops expertise as well as institutional memory for effective policy making.
3. A permanent and impartial civil service is more likely to assess the long-term social payoffs of any policy.
4. A permanent civil service helps to ensure uniformity in public administration and also acts as a unifying force particularly in vast and culturally diverse nations.

Prosecution of Civil Servants

Article 311

1. No civil servant shall be dismissed by an authority subordinate to that by which he was appointed.
2. No such person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard.
3. Provided further that this clause shall not apply
    1. where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
    2. where the authority empowered is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
    3. where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

Art 309 and Art 310

1. Article 309: Legislature may regulate the recruitment and conditions of service of civil services.
2. Article 310: Civil servants hold office during the pleasure of the President / Governor.

Other Protections

1. CBI can not conduct any investigation except with the previous approval of the Central Government where such allegation relates to the employees of the Central Government of the level of Joint Secretary and above or equivalent position in CPSUs.
2. Sanction for prosecution of a public servant is required from an authority not lower than that competent to remove him.
3. A case under the PoCA can only be registered by the CBI or the anti-corruption agency of a state and not by the civil police.
4. Only a special judge is competent to take cognizance of an offence of corruption.

Debate - Remove Art 311

1. Complicated procedures have arisen out of this article which have in practice shielded the guilty. These complicated safeguards also lead to inordinate delays and render even most well meant legislations and institutions like CVC ineffective.
2. Judicial decisions too have crowded out the real intent of Article 311 and shielded the guilty. Procedure has become more important than the substance. Removing the article would render such judgments void.
3. Such a provision is not available in any of the democratic countries including the UK.
4. This article was drafted at a time when due to post-colonial administrative upheavals, it was felt necessary to prescribe certain guarantees to the bureaucracy. In the present scenario, this is not necessary. Government is no longer the only significant source of employment. Indeed, in the present debate of even providing outcome oriented contractual appointments puts a question mark on the desirability of the permanency in the civil services. The role of Government as a model employer cannot override public good.
5. When Sardar Patel argued for protection of civil servants, the intention was clearly to embolden senior civil servants to render impartial and frank advice to the political executive without fear of retribution. But the compulsions of equal treatment of all public servants and judicial pronouncements have made such a protection applicable to everybody and this has crated a climate of excessive security hampering efficiency and work culture.

Debate - Do not Remove Art 311

1. It subjects the doctrine of pleasure contained in the preceding Article 310 to certain safeguards and checks arbitrary action on executive's part. India doesn't have a spoils system.
2. Safeguard of an opportunity of being heard has been held to be a fundamental principle of natural justice. It is argued that even if Art 311 is not there, natural justice cannot be compromised and the aggrieved party can get relief from the courts. But experience of past 6 decades shows that executive has scant regard for the spirit of the law and inordinate delays and large number of cases may arise out of the confusing situation.
3. The requirement that only an authority which is the appointing authority or superior can impose a punishment also appears reasonable as the government follows a hierarchical structure.
4. It is the rules governing disciplinary enquiries, and not Article 311 itself, that are responsible for the delays.

The Balanced Approach

1. Article 311 of the Constitution should be repealed. Simultaneously, Article 310 of the Constitution should also be repealed. Suitable legislation to protect civil servants from arbitrary actions of the executive should be provided under Article 309.

Debate - Need for Sanctions

1. Officers at senior levels have important decision making roles. While taking these decisions they should be able to do so without any fear. Exposing them could have a demoralizing effect and encourage them most of the time to be risk averse.
2. It can be argued that if at all the sanction protection is to be given, the power should vest with an independent body like the CVC, which can take an objective stand. So the government has decided to create a committee of secretaries involving the CVC to grant sanctions within 90 days beyond which the sanction would be deemed to have been granted.

Removal from Service: Criminality vs Incompetence

1. The standard for probity in public life should be not only conviction in a criminal court but propriety as determined by suitable independent institutions specifically constituted for the purpose .
2. It may not always be possible to establish the criminal offence in a court (for lowering service delivery standards in return of personal favors) but the government servant can still be removed from service on grounds of incompetence.

Removal from Service: Criminality vs Administrative Action

1. Criminal conviction requires "beyond reasonable doubt". Administrative action does not require 'beyond reasonable doubt'. It requires "the preponderance of probability." (A fair probability of corruption by the official is sufficient.)

Disciplinary Proceedings

1. Issues
    1. "Inquiry" as prescribed under Article 311 which often tends to become like a full fledged court proceeding should be replaced by a “meeting” or interview to discuss the charges made out against him.
    2. Minor penalty can be imposed after calling for and considering the explanation of the accused employee. Major Penalties can be imposed only after a detailed inquiry.
2. Recommendations
    1. The new Civil Services Law should set out only the minimum statutary disciplinary and dismissal procedures required to satisfy the criteria of natural justice leaving the details of the procedure to be followed to the respective departments.
    2. The penalty of dismissal or removal of a public servant should only be imposed by an authority three levels higher than the present post held by that public servant whereas all other penalties may be imposed by an authority who is two levels higher.
    3. The charges against the government servant should be communicated to him in writing.
    4. The inquiry process should be based to the maximum extent possible on documentary rather than oral evidence.
    5. Fixed and brief time limits should be prescribed for admission and denial of documents from both sides followed by a meeting / interview to give the government servant a chance to respond to the charges.
    6. Preponderance of probabilities rather than beyond reasonable doubt would be the standard of evidence required for the inquiry authority to reach his/her conclusions.
    7. Imposition of major penalties should be recommended by a committee in order to ensure objectivity.

Issues in Civil Services Reforms

Attitudinal Issues

1. Issues
    1. Civil servants still believe in the Hegelian prescription that they represent the universal interest of the society. Hegel argued that the most important institution in the state was the bureaucracy which represented the absolutely universal interests of the state. The exercise of power by the bureaucracy was a mission sanctioned by God.
    2. It believes that its authority is derived not from the mandate of the people but from an immutable corpus of rules that it has prescribed for itself. It has no need to give due regards to the aspirations of the people and rule of law.
    3. With reforms, the role of private sector and civil society has increased immensely. So the civil servants need to view them as partners instead of asserting their own pre-eminence.

Result Orientation

1. Issues
    1. Civil Service in India is more concerned with the internal processes than with results.
    2. There is too much focus on amount of inputs used - whether the full budget is used or not. As a result outcomes get neglected and civil servants are not held accountable for the results.
    3. The structures are based on hierarchies and there are a large number of veto points.
    4. To compound it, the size and the number of ministries and departments have proliferated and diminished the capacities of the individual civil servants to fulfill their responsibilities.
2. Recommendations
    1. Devolution: Achievement of results would require substantial devolution of managerial authority to the implementing levels. This would require giving civil servants in the implementing agencies greater flexibility and incentives to achieve results as well as relaxing the existing central controls.
    2. Accountability: The counterpart of devolution should be more accountability. This can be achieved through agreements with the minister specifying the performance targets. These performance agreements should be put in the public domain. They should have clearly spelt out objective and measurable goals.

Resistance to Change

1. Issues
    1. The perception is that they resist change as they are wedded to their privileges and prospects. Thus they have prevented us from realizing the full benefits of the 73rd and 74th Amendments since it clashes with their own authority.

2. They also resist simplification of procedures which is a pre-requisite for introduction of e-governance since it would undermine their importance.

Accountability

1. Accountability mechanisms can be horizontal which refer to those located within the government and vertical which are those outside it and include the media, civil society and citizens.
2. Disciplinary action against non performing officers is a rarity and is a long process.
3. The life-long job security further leads to distorted incentive structure.
4. While the performance of government organizations and their sub-units are periodically subjected to in-depth reviews, seldom are efforts made to link organizational performance to the performance of an individual civil servant.

Exit Mechanisms

1. Issues
    1. At present, rarely does a civil servant get dismissed from service or is punished on grounds of incompetence.
2. Recommendations
    1. It is necessary that all civil servants undergo a rigorous assessment of performance, at regular intervals, and on the basis of such evaluation a civil servant can be retired compulsorily. The compulsory retirement can happen say after 20 years.
    2. New appointments should be made only for a fixed period, say 20 years, after which if the performance is not satisfactory, he can be removed. Such provisions are there in armed forces.

Separation of Policy Making and Implementation Tasks

1. Issues
    1. The policy formulation function of senior civil servants needs to be distinguished from the policy implementation function. Currently due to diverse workload, their most important function, of tendering policy advice to the ministers, often gets neglected.
2. Recommendations
    1. There is a need for a separation of policy formulation and implementation responsibilities by extensive restructuring.
    2. Flatter structures and outcome oriented agencies need to be created and powers delegated downwards.

Field Postings of Officers during the Initial Part of Their Career

1. There have been instances where state governments have posted the officers during his early career to the Secretariat instead of the field. This is not in the public interest since it is necessary for an officer to have adequate experience in the field. So no secretariat postings should be given for first 10 years at least.

Domain Competency

1. Issues
    1. The increasingly complexity of challenges today demand higher levels of knowledge and deeper insights from public servants. This would mean that civil servants - especially in policy making positions - should possesses in-depth knowledge of the sector.
    2. Domain competence is distinct from specialised technical knowledge in that it refers to a broad understanding of the relevant field and more importantly managerial abilities derived from practical experience in that field.
    3. There is considerable confusion about the concept of domain competence. It is generally discussed in the context of the ministry an officer may be best suited for. Domain competence actually refers to functions and not Ministries.
2. Recommendations
    1. Assigning specific domains to civil servants early in their career and retaining them in the assigned domain is an important reform.
    2. Steps need to be taken to assign civil servants at the start of their mid-career to specific domains. Domain assignment at this stage of the career would also be appropriate because when the officer is eligible to be at the level of Joint Secretary he/she would have had at least three to four years exposure to a domain.
    3. These domains should strike a right balance between flexibility and needs for specialized expertise and need to be defined suitably. Some domains could be: general administration, urban development, rural development, security, financial management, infrastructure, human resource development, natural resource management.

Deputation of Public Servants Into Private Sector

1. Conflict of interest possible even after retirement.
2. Quid pro quo assignments in private sector mean only a small number of civil servants holding assignments in certain 'sought after' sectors will benefit. A vast majority of civil servants, especially those working in the social sector and sectors like rural development, will perhaps not be affected by such a policy. This could result in an increasing reluctance by government servants to work in these crucial social sectors.
3. In India, civil servants have created a number of post-retirement jobs, including those in regulators, which they can conveniently latch on to once they retire from their jobs. This seems preferable to civil servants moving into the private sector.

Motivating Civil Servants

1. Issues
    1. Civil servants today adopt a 'minimalist' approach in their functioning, and confine their work to disposing of files making no special effort at resolving problems. They rarely walk that 'extra mile'.
    2. There is hardly any performance for pay incentive available to them. Natural increases in salary are very much guaranteed to government employees. This leads to a situation where employees do not exert themselves.
    3. There is no external motivation for risk-taking and delivering a higher level of performance, because though the risk-taking is punished if things go wrong, it is not rewarded if things improve.
    4. Poor working conditions.
    5. Unfair personnel policies.
    6. Excess supervision.
    7. Absence of fair-play and transparency in the government system.
    8. Lack of opportunity for self-expression.
    9. Political interference into officers' jurisdiction.
2. Recommendations
    1. Performance based monetary incentives.
    2. Recognition: Though national awards are given to those civil servants who have made outstanding contributions to public service but the criteria and process are opaque and frequently misused. Padma awards should be given more frequently to serving civil servants. Selection for such awards is made through an objective and transparent mechanism because the value of such awards should not get compromised by either subjectivity or lack of transparency. Other awards should be instituted.
    3. Job enrichment: Delegation should be made a part of the performance appraisal at each suitable level.
    4. Linking career prospects with performance: Arbitrary political actions must stop.

Civil Services Bill

Draft Public Services Bill, 2007

1. Appointment to public services to be based on the principle of merit.
2. Transfers before the specified tenure should be for valid reasons to be recorded in writing. The normal tenure of all public servants shall not be less than two years.
3. It proposes the constitution of a Civil Services Authority.
    1. It shall aid and advise the Central Government in all matters concerning the management of civil servants.
    2. Review the adoption, adherence to and implementation of the Civil Service Values and send reports to the Central Government.
    3. Assign domains to all officers of the All India Services and the Central Civil Services on completion of 13 years of service.
    4. Formulate norms and guidelines for appointments at 'Senior Management Level' in Government of India.
    5. Evaluate and recommend names of officers for posting at the 'Senior Management Level' in Government of India.
    6. Identify the posts at 'Senior Management Level' in Government of India which could be thrown open for recruitment from all sources.
    7. Fix the tenure for posts at the 'Senior Management Level' in Government of India.
    8. Submit an annual report to Parliament.
4. It includes public service values and the Code of Ethics.
5. The Bill enjoins government to prepare a Public Service Management Code with the aim to develop civil services into a

professional, merit-based institution, maintain high levels of excellence. It provides for ACRs to be made public. It provides for periodic pay and incentives review, training, guidelines for promotions.
6. It enjoins the government to define the relationship between the political executive and civil services.

Desired Qualities of a Civil Services Bill

1. It acts as a legal basis for the legislature to express the important values and culture it wants in the civil service.
2. It has a mechanism by which government decisions can be implemented.
3. It has a framework for setting out the role and powers of the heads of the agencies and departments.
4. It spells out the relationship between civil services and political leadership in a clear and transparent way.
5. It lets civil servants know clearly what is expected of them.
6. It deals with important aspects like transfers, performance management, civil services authority, postings, entry to senior executive service.
7. It contains public service standards and ethical values and how they should be applied.

Analysis of the Draft Public Services Bill, 2007

1. Name: The term public servant has a much wider connotation. So the name of the Bill should be changed to Civil Services Bill.
2. Appointment to Public Services: It makes the principle of merit (subject to reservations), fair and transparent competition as the guiding principles for appointments. It would be better to prescribe that all appointments including in PSUs, various boards, whether permanent or short-term or contractual should be made on this basis.
3. Public service values and Code: The Bill can list down an exhaustive set of values clearly, currently it doesn't.
4. Performance management system: The Bill can lay down the guidelines and principles to be followed while devising performance management systems.
5. Functions of the Central Civil Services Authority: Its recommendations should be made binding. If the government rejects it, written reasons should be given and made public.
6. Creation of executive agencies in government: Government should be authorized to create executive agencies. The role of the ministries should primarily be on policy formulation while implementation should be left to the executive agencies.

Civil Services Authority

1. There should be an independent authority to deal with matters of assignment of domains, empanelment of officers, fixing tenures for various posts, appointments and transfers, deciding on posts which could be advertised for lateral entry.
2. It should be given a statutory backing and clear objective criterion should be laid down for its membership. Serving government servants or politicians should not be appointed to it.
3. The members should be appointed by a collegium in a transparent manner.
4. The authority should be given personnel and financial autonomy as well.

Placement at the Top Management Level

Senior Executive Service

1. It comprises of a group of civil servants who are appointed to top-level positions across ministries, departments and agencies.
2. It usually occupies policy-making positions or heads major operating agencies or line departments.
3. It works closely with the political executive.
4. It constitutes a very small fraction of the civil service.
5. It is bound by a distinctive set of ethical standards such as values and code of conduct.

Position Based SES

1. The position-based SES as in Australia, New Zealand, UK is more open because appointments to senior positions are made from a wider pool comprising all civil servants as well as those applicants from the private sector. Its openness is its basic strength.

SES in India

1. Present system
    1. India has a career-based SES system where SES consists solely of civil servants. At the early middle stage of their careers, the appointments to the level of Joint Secretary in GoI are made based on the process of empanelment.
2. Weaknesses in the present system
    1. It depends solely on the ACRs of the officers. It is widely known that there is a tendency for the reporting officers to adopt a 'soft' approach in their assessments with the deficiencies often going unreported.
    2. By relying only on the ACRs, it overlooks the future potential of an officer.
    3. Selection is made without either interviewing the officers or testing them formally.
    4. Those who are not empanelled are not given any reasons and have no right of formal appeal.
    5. An officer not empanelled as Joint Secretary normally spends the rest of his/her career in the state government and is not usually empanelled later for Additional Secretary or a Secretary in the Government of India. By implication, the process suggests that officers who are not considered suitable for working in senior positions in Government of India are considered good enough to work in the state governments. Promotions to senior positions in the state governments are largely on the basis of seniority, and there is often insufficient consideration of merit or performance.
3. Advantages of a career based system in general
    1. Its closed nature develops a common value system and camaraderie which facilitates excellent communication across the governmental spectrum.
    2. Senior positions require a unique mix of specialized knowledge, general administration and field level experience in implementation. While making policies, their implementation issues must be kept in mind. Career based SES provides this unique mix.
4. Weaknesses of a career based system in general
    1. The assurance of a secure career path has been held to be the career-based system's biggest lacuna.
    2. It has discouraged initiative by reducing competition in the higher echelons of government.
5. Reforms suggested
    1. It has been argued that lateral entry from the market should also be encouraged at the higher management levels as this would bring in corporate exposure as well as specialized knowledge which may not always be available with career civil servants.
    2. Domain competence should also be considered for postings at the joint secretary level.
6. Weaknesses of a progress based SES in general
    1. Lack of sufficient and suitable talent in the private sector.
    2. Operational difficulties of fresh recruitment for SES and consequent demoralization of the civil services.
    3. Potential conflict of interest between the private sector and the public sector.

Performance Management System

Present System of Performance Management in Government

1. Focus on inputs
    1. Systems in government are oriented towards input usage- how much resources, staff and facilities are deployed and whether such deployment is in accordance with rules and regulations. The main performance measure thus is the amount of money spent and the success of the schemes, programmes and projects is generally evaluated in terms of the inputs consumed.
    2. This fails to take into account the results obtained. Civil servants are rarely held accountable for the outcomes.
2. Conventional closed system of ACR
    1. The significant feature of this method is the complete secrecy of the exercise, both in process and results and only adverse remarks are communicated to the officer.
    2. It lacks in quantification of targets and evaluation against achievement of targets.
    3. Unclear performance standards, possible bias, political influence mean a state of confusion. Performance appraisal forms are generic.
    4. It becomes meaningless in cases where postings are decided on other factors and there are frequent transfers.
    5. No attempt is made to align personal goals with the departmental goals.
    6. Large span of supervision of government officers means writing the ACRs of so many officers who they may not even personally recognize.
    7. Since the present system shares only an adverse grading, a civil servant remains unaware about how

he/she is rated in his/her work.

8. Many reporting officers pay little attention to distinguish good and average workers while grading them. Consequently, most Government officials end up getting very good/outstanding grading which is considered “good for promotion” and hence there is no motivation for real performers.
9. The system of deciding on representations against an adverse entry sometimes take so long that reporting officers avoid giving an adverse entry. Many a time, for want of evidence against the reported civil servant, the reporting officer is in a defensive position and thus unable to justify his/her adverse remarks.

Reforming the Existing Personnel Performance Appraisal System

1. Making appraisal more consultative and transparent.
    1. Consultations while goal setting in the beginning of the year.
    2. Quarterly / mid year reviews and path correction.
    3. Full annual performance appraisal report including the overall grade and assessment of integrity should be disclosed.
2. Performance appraisal formats to be job specific
    1. The performance appraisal format should have three sections - (i) a generic section that meets the requirements of a particular service to which the officer belongs, (ii) another section based on the requirements of the department in which he is working, and (iii) a final section which captures the specific requirements and targets relating to the post that the officer is holding.
3. Formulating guidelines for assigning numerical rating
    1. The present system follows a grading system that rated officers in categories ranging from ‘average’, ‘good’ and ‘very good’ to ‘outstanding’.
    2. The new PAR format for All India Service Officers replaces this with an improved rating system wherein officers are assigned a numerical grade from 0 to 10 for different parameters.
    3. While this is an improvement on the old system, the numerical gradings secured by the officers still depend on the subjective evaluation made by the reporting and reviewing officers. It is quite possible that officers of similar competence and performance may be assigned different numerical grades depending on the reporting officer.
    4. DoPT should formulate detailed guidelines to guide assigning numerical ratings process. Necessary training should be given to the reporting officers.
4. 360 degree evaluation
    1. This should be incorporated in the performance management system.

District Administration

Current Mandate

1. Head of Land and Revenue Administration, including responsibility for district finance.
2. Overall supervision of law and order and security and some say in the police matters.
3. Licensing and Regulatory Authority in respect of the various special laws such as Arms in the district.
4. Conduct of elections – for Parliament, State Legislature and Local Bodies.
5. Officer-in-charge of Disaster Management.
6. Chief Information and Grievance Redressal Officer of the district.
7. Guardian of public lands with the responsibility to prevent and remove encroachments.
8. Public service delivery by acting as Chairman for parastatals and various standing and inter-departmental committees.
9. Facilitation of interaction between civil society and the State Government;
10. Handling issues of local cadre management such as recruitment, in-service training and promotion.
11. Institution used by the state governments to control the PRIs.

View: Restrict the Role of Collector

1. With the establishment of PRIs and Municipal bodies it is imperative that the devolution of decision making to local levels should be carried out in true spirit. The collector should be ultimately made responsible to the local bodies.
2. Strong traditions linked with this institution and its recognition in the public mind as the prime mover of governance at the district level would tend to impede growth of any other authority at that level.
3. The office currently has widespread functions without well defined roles. This results in lack of clarity and diffusion of the Collector’s responsibilities.

4. There is no need to assign any role to the Collector in respect of activities which are transferred to the PRIs.

View: Preserving the Role of Collector

1. It is equally imperative that the unique administrative experience, expertise and credibility of the office of the District Collector built up over a period of two hundred years is properly utilized.

Recommendations

1. There is a need to redefine clearly his job. It should consist of:
    1. A well defined set of exclusive activities as a functionary of the State Government.
    2. The general work of coordination with various departments / agencies of the State and the Union Governments at the district level.
    3. In the interim period till the time the local elected Institutions mature - as the CEO of the proposed District Council. Each district would ultimately have a District Council comprising of representatives of both rural and urban bodies. The District Collector-cum-Chief Officer would have dual responsibility and would be fully accountable to the elected District Government on all local matters, and to the State Government on all regulatory matters not delegated to the District Government.
2. Grievance redressal, vigilance and implementation of citizen charters should be his responsibility. He should be given strong MIS and IT based tools for monitoring various programmes.
3. E-governance initiatives in the district should be his responsibility.
4. Tour inspection notes and district gazetteers should be his responsibility.
5. Interaction with the civil society groups should be his responsibility.
6. Disaster response should be his responsibility.
7. Line departments which don't fall under the domain of PRIs should be his responsibility.

Public Order in a Democracy

Established Order vs Public Order

1. In a liberal democracy every citizen has a right to dissent and the expression of such dissent need not in itself breach public order.
2. In a democratic society, a situation viewed as a public disorder by one stakeholder may not be disorder for another stakeholder. For example, if a dominant section of society indulges in degrading forms of exploitation of the underprivileged sections, the resultant protests by the latter are often perceived by law enforcement agencies as public disorder.
3. This brings us to the distinction between ‘established order’ and ‘public order’. Established order may not always be as per the tenets of the rule of law. Perpetuating established order does not necessarily constitute public order in a society governed by democratic norms and the rule of law.
4. The law enforcement machinery often tends to concentrate on maintaining status quo, since, for them, public order means ‘absence of any disturbance’.

Law and Order vs Public Order vs Security of State Issues

1. Every situation in which the security of the State is threatened is a public order problem. Similarly, all situations which lead to public disorder, are necessarily law and order problems also. But all law and order problems are not public order problems.
2. Thus, petty clashes between two individual are minor in nature with no impact on public order. But widespread violent clashes between two or more groups, such as communal riots, would pose grave threats to public order. A major terrorist activity could be classified as a public order problem impinging on the security of the State.

Tolerance to Breach of Laws

1. When it comes to ending a practice such as, say, animal sacrifice, persuasion and education and not use of force against strong public sentiment, are called for.
2. The problem in such cases is where to draw the line. If a law is violated with impunity, even if it is a minor law, should the State remain a mute spectator and condone violations promoting a culture of lawlessness? Or, should the State risk triggering a major public order crisis in its effort to enforce a law whose gains are minimal and risks are huge?
3. The answer lies in two broad approaches.
    1. First, the State should resist the temptation to over-legislate except in crucial areas which constitute the essence of constitutional values or prevent significant public loss or promote vital public good. Persuasion, public education and

social movements are the desirable routes to social change in such cases.

2. Second, if such laws do exist, effective enforcement on case-to-case basis through prosecution of offenders is the better route and not the thoughtless precipitation of a public confrontation. If indeed a confrontation is called for, there must be adequate preparation, sufficient deployment of security forces, massive public campaign and preventive action in order to avert major rioting and loss of life.

History of IPS

1. IPS was earlier called Indian Imperial Police.

Box 3.3 :Some Recommendations of the Indian Police Commission 1902

a. The police force should consist of a European Service, a Provincial Service, an Upper Subordinate Service and a Lower Subordinate Service.
b. Large provinces should be divided into ranges and a DIG to be placed in charge of each range.
c. A Criminal Investigation Department should be constituted in each province.
d. The recruitment to the European Service should be by competitive exam to be held in England.
e. It is of paramount importance to develop and foster the existing village police.
f. Detention of suspects without formal arrest is illegal and must be rigorously suppressed.
g. For every district a police inspector should be appointed as Public Prosecutor.
h. There should be a single Police Act for the whole of India.
i. District Magistrate should not interfere in the matters of discipline.

Issues in implementing Prakash Singh Reforms

1. Appointment of DGP
    1. Implementation of the Directive to involve UPSC in the empanelment process (for the post of DGP) is beyond the scope and authority of the state governments.
2. Fixed tenor for DGP
    1. Regarding the direction to provide a minimum tenure of two years to DGP, irrespective of the date of superannuation, the state governments projected their inability in its implementation on the ground that the said subject belongs to the domain of the All India Service Rules, which are framed by the Union Government.
3. Police Complaints Authority
    1. Practical difficulties were expressed by some of the states of smaller size for establishing separate district level Police Complaints Authorities.
    2. Some States, particularly Uttar Pradesh, put forward the view that the existing multiplicity of authorities for Police accountability (such as National Human Rights Commission, State Human Rights Commission, SC/ST Commission, Women's Commission and Minorities Commission etc.) obviates the necessity of having one more separate mechanism for police accountability, in the form of Police Complaints Authority.
    3. The civil society representatives, on the other hand, expressed the view that all those multiple authorities did not have binding powers and also that there was need to have a body solely focusing on police misconduct, as envisaged in the Supreme Court directive.

State	State Security Commission	DGP Selection and Tenure	Tenure of Other Officers	Separation of Law and Order and	Police Establishment Board	Police Complaint Authority

				Investigation		
Supreme Court Guidelines	1. Binding. 2. Headed by CM/HM, DGP secretary, other members independent. 3. Lay down broad guidelines. 4. Evaluate police performance. 5. Prepare report to be laid down in Legass. 5. Idea is to prevent unwarranted political interference.	1. From amongst 3 seniormost officers empaneled by UPSC. 2. Min tenor of 2 years irrespective of retirement. 3. To be removed before period only upon consultation with SSC and on certain clearly defined grounds only.	1. Minimum 2 years tenor.	Separation of the two.	1. PEB to decide on transfers / postings / service matters of DySP and below. 2. Recommend for SP and above. 3. Departmental body only with DGP and four other seniormost officers. 4. Govt. to normally accept recos. else explain in writing. 5. To act as appeal against arbitrary transfers. 6. Review police functioning.	1. Setup at district level and state level. 2. Headed by judges whose name would be forwarded by CJ.
Rajasthan (Act)	Constituted, but only advisory.	Done, but 1. No UPSC. 2. No need to consult SSC before removing.	Done.	Special Investigation units to be created at PS level.	Constitued, but 1. Can only form guidelines for DySP and below. 2. Nothing for SP and above. 3. No appeals.	Created, but no independence.

2nd ARC Police Recommendations

1. Too many functions assigned
    1. One of the major problems is clubbing a variety of disparate functions in a single police force and concentrating all authority at one level. A single, monolithic force now discharges several functions.
    2. As a result, the core functions are often neglected. Second, accountability is greatly diluted. Third, the skills and resources required for each function are unique and a combination of often unrelated functions undermines both morale and professional competence.
2. Self-esteem of Policemen
    1. A constable can generally expect only one promotion in a life time and normally retires as a head constable. Constables have become ‘machines’ carrying out the directions of their superiors with little application of mind or initiative. Constant political interference in transfers, placements and crime investigation, long and difficult working hours, the menial duties they are often forced to perform as orderlies to senior officers.
    2. Recruitment in most states is at several levels – constabulary, sub-inspector, deputy superintendent of police, and the Indian Police Service. Several tiers of recruitment have diminished opportunities for promotion.
    3. Further, the removal of the orderly system would also help the constabulary focus on their prime duty, policing. The orderly system should also be immediately abolished.
3. State Security Commission
    1. Constitution of a statutory Commission in each state to be called the State Security Commission. This Commission was to lay down broad policy guidelines, evaluate performance of state police and function

as a forum for appeal from police officers and also review the functioning of the police in the state