

CHAPTER 6

EXECUTIVE AND PUBLIC ADMINISTRATION

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EXECUTIVE AND PUBLIC ADMINISTRATION

The Constitution and articulation of goals of governance

6.1 The Constitution of India has clearly articulated the social and economic goals and has specified agents for achieving the promised social revolution. Matters concerning formation and working of the executive agencies (both political and civil) are spelt out. Citizens have been assured that the Executive together with other organs of the State (Legislature & Judiciary) would uphold their rights and remove the inequities from which the anti-democratic forces derive their sustenance. Good Governance, it was hoped, would transform the social, political and economic life of the people, within the framework of democracy.

Conceptual Weaknesses & failure to ensure Socio-Economic goals

¹ See also the Consultation Papers on “Efficacy of Public Audit System in India : C&AG”, “Probity in Governance” and “Liability of State in Tort” in Volume II (Book I) and the Background Paper on “Some ideas in Governance” in Volume II (Book- 3).

6.2.1 In the beginning the constitutional arrangements relating to governance worked more or less to general satisfaction and provided the people with a fairly safe and secure life. However, as time passed their inadequacies have become evident and Government has lost its élan as it has failed to live up to the expectations of the Constitution to give real substance to the policies designed to promote social well being. Even the most modest expectations have remained unfulfilled.

6.2.2 The present situation is characterised by a pervasive disenchantment with the way things have worked out. It is futile to debate whether it is the institutions provided by the Constitution that have failed or whether the men who work these Institutions have failed. While we cannot abolish the men and the women who command the strategic heights of governance, we can improve and update the present Institutions, which have developed visible fault lines.

6.2.3 Inability to ensure the socio-economic goals cannot be attributable to scarcity of resources but to the failure of Governance. It is the insufficient attention paid to such a transformation that has deepened the fissures between the people and the administration. The failure to regenerate society lay in the basic conceptual weakness that encouraged the untested assumption that people are best served when the ruling classes originate, execute and administer policies, plans and programmes for their welfare from above. This misconceived paternalism has reinforced the tyranny of the *status quo* and has gravely weakened forces of change. The 'Law and Order' pre-occupation of the bureaucratic mind has led to the entrenchment of the system that the Constitution had promised to transform.

6.2.4 Another fundamental flaw vitiating governance emanated from the lack of conviction that the consent of the people is the basis of democratic government. The over-arching theme, a legacy from the colonial days, that people remain a passive category subjects rather than citizens remained firmly rooted on official mind. People were aroused only at intervals of five years or there about to choose their rulers and to go back again to a life of political passivity. Political mobilisation of masses mostly remained neglected. This produced all manner of infirmities and has given rise to alienation of the people from the political system.

6.2.5 Rights of the people are inalienable. The words "**We, the people**" signify not only the moral and historical insight of founding fathers but they serve to reaffirm they are the

source of all constitutional authority and that the test of Good Governance was measure of people's well being. However, the functionaries of the State have failed to realize that they are servants of the people and not their masters. Test of a vibrant democracy is the degree of success in calling its Executive to be accountable to the people.

6.2.6 The new administrative class, working under the mesmeric spell of colonial attitudes, was reluctant to consider the people as citizens. They continued to treat them as subjects or '*ryots*' both owing allegiance to a superior master. This denial robbed them of power and made it possible for the Executive to diminish the significance of the people. It is the possession of power that gives people control over their destiny and authority over those whom they have chosen to serve them.

6.2.7 Another fundamental flaw in governance outlined above is inherent in the centralized nature of the Indian State which lays down the parameters of the administration. There is an indissoluble link between the two. This was evident when the norms of colonial administration, with their long ancestry, came early to stamp their features on the post-independence dispensation. Colonial administration had created a top-down system of command and obedience in which State and local units of government were treated as subordinate to the Central Government. There is no reason why the Central Government should have large and unwieldy ministries handling subjects like education, health, agriculture, rural development, social welfare, industry, power, etc. when these areas can more conveniently and appropriately be handled at the State, regional or district levels. The Centre can at best be a clearing house of ideas and knowledge but for it to be actually involved in shaping policy and in allocation of resources is an over-lapping of jurisdiction. Reallocation of subjects from the three Lists given in the Seventh Schedule could be looked into in this context. Downsizing of the Government should also follow. Big Governments are not always conducive to efficiency and promptness. People should know where the buck stops. But it should always be kept in view that when the Centre does not hold, societies become polarised.

6.2.8 Democracy implies intellectual acceptance of the position that self government is better than even good governance. Unless self government is ensured by clear devolution of power from the centre to the periphery, people are prevented from participation in Governance. They can not eliminate arbitrariness in executive actions which generally tilts the balance in favour of the privileged. Moreover the 'top-down' state of affairs does not legitimise 'self-government' which is of primordial value. 'Top-down' administration stifles public initiative. To make people effective they must consciously enjoy and assert their constitutional entitlements and not

be mere supplicants for or objects of administrative largesse. That is the rationale of the 73rd and 74th amendments to the Constitution. A strong sense of public duty comes from empowerment. People's attitude changes from one of obedience to authority to active participation in governance. It is only when the gap between the executive and the people is narrowed down through decentralisation that democratisation can occur. The whole configuration of governance changes if democratic order is conceived not as a 'once in five year ritual' of changing the guard but as a continuous renewal of democratic life from a knowledgeable and participative citizen body. A citizen as a political and social unit could alone take responsibility for transformation of the state of the society. The essence of the matter is that there should be effective participative democracy at all levels; once people become the fountainhead of power, their role in governance becomes meaningful and effective. It encourages an active sense of public duty, replacing emphasis from authority and obedience to active participation. **The Commission holds that while improving the nature and institutional response of administration to the challenges of democracy is imperative, the system can deliver the goods only through devolution, decentralisation and democratisation thereby narrowing the gap between the base of the polity and the super structure.**

Devolution, Decentralisation and Democratisation

6.3 The new architecture of governance has to be built on the basis of devolution of authority, responsibility and resources to appropriate levels. If corresponding dispersion of resources and personnel is not accompanied with devolution of authority it perpetuates mentality of dependency. Resources do not mean only financial resources. Human resources are as important. Experience shows that monitored and supervised by the local authorities, who are also their employers, the professionals at the district and local levels have performed better. If a primary school teacher looks to a distant education director for his promotion or any other improvement in his conditions of service, he is not going to be accountable and responsive to the needs of the local community he is supposed to serve. This simple example brings to the fore the question of the present structure of social and economic services and how it needs to be remodelled or refashioned to bring it in line with the requirements of the age of decentralization.

There is no reason why the District Councils cannot recruit, train, manage cadres of school teachers, supervisors, administrators for primary and secondary education leaving the areas of high speciality to professionals like curriculum developers. Coordination functions can be handled by regional or state level bodies. Similar logic can be applied in regard to other services which are needed at the district levels and it can be extended upwards to the State level.

District as the unit of Development Administration & Planning

6.4.1 What is urgently required at this juncture is a straightforward recognition at the highest policy level that a district is a basic unit of planning for development – social, cultural, economic and human. **Functions, finances, and functionaries relating to such programmes would have to be placed under the direct supervision and command of elected bodies at the district levels of operation to give content and substance to the different programmes of development and public welfare. This would to a substantial degree, correct the existing distortions and make officials directly answerable to the people to ensure proper implementation of development programmes under the direct scrutiny of people.**

6.4.2 Land is the most valuable natural resource whose planning and development offer major prospects for increases in output and incomes for the people, especially for those who are near or below the poverty line. For efficient land planning and optimum use, it is essential that there be clarity and certainty about title to land. In India land records are in a very poor shape and there is maximum litigation in the rural areas about ownership. It has been estimated by reputed agencies that India loses 1.3 per cent economic growth as a result of disputed land titles, which inhibits supply of capital and credit for agriculture. It is therefore exceedingly important that a fundamental change is brought about in the way land records are maintained. At present land records are presumptive in character. In August 1989, the Supreme Court stated that “revenue records are not documents of title”. Millions of productive man-hours are lost in time

consuming litigation. **The Commission recommends that we move to a system where the State guarantees the title to land after carrying out extensive land surveys and computerizing the land records. It will take some time but the results would be beneficial for investment in land. This will be a major step forward in revitalizing land administration in the country as it would enable Right to access, Right to use, Right to enforce decisions regarding land.** Similar rationalization of records relating to individuals rights in properties other than **privately held lands (which are held in common)** would improve operational efficiency which left unattended foment unrest. The Commission is of the view that a coherent public policy addressed to the modern methods of management would contribute to better use of assets and raise dynamic forces of individual creativity. Run away expansion in bureaucratic apparatus of the State would also get curtailed by new management system.

Civil Society

6.5.1 Dispersal of power through local autonomy maximizes opportunities for popular participation and helps change the nature of the relationship between the State and civil society. Instead of being merely passive recipients of welfare, citizens become active agents. A democratic society cannot function properly if everything in it is left only to the State or even to statutory bodies. Statutory action itself will be infructuous if it is not underpinned by voluntary action. The exercise of political power through civil society opens the way for concomitant democracy. Civil society consists of open and secular institutions that mediate between the citizen and the State. In the absence of civil society, the State machinery and civil servants become the dominant **repository** of power. The modern idea of civil government requires emergence of civil society which would make people self-reliant rather than remain dependent on State institutions and subject to their all pervasive control.

6.5.2 One of the marked weakness of the present regime has been its failure to effectively play its role in the socializing process. It has failed to use the machinery of the state to create a

society of equals founded on the principles of social justice, secularism and eradication of casteism. In this regard, the situation of the Dalits and backward castes points to glaring failure of the state. In spite of several programmes launched by it, the state has failed to energetically lift up the Dalits and members of other lower castes and also failed to liberate a large sections of society from gender [discrimination](#). As the executive has overwhelmingly identified itself with the stratified sections of the privileged few, it remained insensitive to the calamities that befell the weaker sections of the society and reluctantly took steps to repel the most injurious actions perpetrated against them. Large sections of these people remained docile, submissive, passive and tame. Piecemeal changes improved the conditions slightly, but the very spirit of the people by which the Constitution was to be sustained continued to rap.

6.5.3 It is the civil society that has to take the lead in helping create a society based on principles of social justice, secularism and non-casteist approaches to social action. It should be one of the serious endeavours of civil society to strengthen the mosaic of India's pluralism and not let it be broken up lest endless tensions and increasing violence come in the way of peoples' progress. In India the relationship between the civil society and the State may have moved some distance from distrust and antagonism to a more tolerant status but the continuing ambivalence comes in the way of a full blown cooperation for chosen ends.

6.5.4 The procedures and the processes adopted for executing policies supposedly designed to help the poorer sections to regain control over their social and economic circumstances have accentuated the distance between the haves and the have-nots. The barriers come not only from old vested interests but also from new sources of privilege. The instrumentalities of the State appear substantially inadequate to cope with the challenge of change. In fact some of the institutional devices intended to be remedial measures against inequities had regressive consequences reinforcing socio-economic barriers. In several cases, programmes adopted by the administration to handle issues of inequity failed to deliver. Bureaucracy cannot deliver unless countervailing power of the interest group most directly involved is harnessed. **The**

Commission recommends that energetic efforts be made to establish a pattern of cooperative relationship between the State and associations, NGOs and other voluntary bodies to launch a concerted effort to regenerate the springs of progressive social change. State and civil society are not to be treated antithetical but complementary.

Administrative Reforms and All India Services

6.6.1 The structural problem of two of the All India Services, namely, the Indian Administrative Service and the Indian Police Service, is that they were founded on the imperial idea of territorial control. It was at the district level that the Raj became an operational reality. This colonial idea was not abandoned when the country became independent for reasons which emerge clearly from the Constituent Assembly debates. Thus the present structure of the All India Services would appear to be incompatible with the development of full fledged democratic representative government at the district level. In plain language it means that 'law and order' has also to be brought within the ambit of the elected district panchayat which is constitutionally entrusted with responsibility for developmental activity. It is only thus that public service at the district level would acquire significance and be the real stepping stone for political leadership at higher levels.

6.6.2 The absence of clear cut relationship between the people and the state functionaries is responsible for much which has gone wrong. All this happened because, inadvertently or otherwise, we allowed the colonial legacy of administration to continue to hold sway in the post-independence era as well. For instance, the change of nomenclature from ICS to IAS did not even constitute a cosmetic change. The so-called 'steel frame' of the British Empire became the role model for the fledgling IAS fraternity. The '*guru mantra*' of the old guard, viz, the I.C.S., was the maintenance of the *status quo* and the new guard, viz. the IAS, was only too willing to oblige and follow suit. It is a naïve hope to expect status quoist to initiate or welcome changes

for a variety of reasons. First, they have a vested interest in perpetuating their dominant advantageous position along with the privileges flowing from it. Second, being bureaucrats rather than intellectual leaders, they lack the vision and imagination to devise new and innovative policies, preferring to tread the beaten track, follow precedents and to continue familiar programmes.

6.6.3 The end of the imperial continuum in the administrative set up may require a different conception of the generalist services. The brightest university graduates who wish to enter the Indian Administrative Service could then be trained in a variety of subjects having to do with the economic and financial administration of the States and the Union and policy making in higher branches of administration such as security, science and technology, international trade, international monetary system, alternative approaches to energy and environmental issues, social and economic issues connected with affirmative action, etc. to constitute a truly elite corps of administrators. They would be mobile within defined fields but would not perform the present generalist jig of moving from animal husbandry to defence or to women welfare which makes a total mockery of any concept of administrative policy making in the present age of knowledge explosion.

Modernizing the Civil Services – Creation of new services & curtailment of undue safeguards

6.7.1 Arbitrary and questionable methods of appointments, promotions and transfers of officers by political superiors also led to corrosion of the moral basis of its independence. It has strengthened the temptation in services to collusive practices with politicians to avoid the inconvenience of transfers and to gain advantages by ingratiating themselves to political masters. They would do the politicians' biddings rather than adhere to rules. Lest the situation becomes more vicious, it is necessary that a better arrangement be conceived under the Constitution. The question of appointments, transfers and placements is not to be left to the discretion of the

politicians or administrative bosses but be entrusted to independent and autonomous boards. **The Commission, therefore, recommends that the questions of personnel policy including placements, promotions, transfers and fast-track advancements on the basis of forward-looking career management policies and techniques should be managed by autonomous Personnel Boards for assisting the high level political authorities in making key decisions. Such civil service boards should be constituted under statutory provisions.** They should be expected to function like the UPSC. Reputed management experts from institutes of management, well known for their excellence, should be inducted into these boards to provide a broad based pool of expertise. The principle is not to take politics out of personnel policy but to make knowledge and information institutionally available to the political decision-makers on the basis of appropriate parliamentary legislation under article 309. **The sanctity of parliamentary legislation under article 309 is needed to counteract the publicly known trends of the play of unhealthy and destabilizing influences in the management of public services in general and higher civil services in particular.**

6.7.2 Above a certain level--say the Joint Secretary level--all posts should be open for recruitment from a wide variety of sources including the open market. We should specialize some of the generalists and generalize some of the specialists through proper career management which has to be freed from day to day political manipulation and influence peddling.

6.7.3 Social audit of official working would be another way of developing accountability and answerability. **Officials, before starting their career, in addition to the taking of an oath of loyalty to the Constitution, should swear to abide by the basic principles of good governance. This would give renewed sense of commitment by the executives to the basic tenets of the Constitution.** It is important to recognize that change in existing policies and procedures will not come from the initiatives of those who stand to benefit from the existing arrangements. It needs the combined efforts of political avant-garde, activists in diverse fields,

academic, and civil society institutions to generate pressures for change. Otherwise institutional decay will proceed apace with distressing consequences.

6.7.4 Systematic debasement as a consequence of high handed conduct by certain sections of the executive has seriously dented the moral authority of the government. The functioning of the civil and police services have been far from satisfactory. Hence a negative perception of the Police that it ill serves the people has become deeply rooted in the psyche. The letter of the law may have been observed, but the spirit has been emasculated. Corruption and illegality have vitiated the course of justice. All this has contributed to a massive decline in the prestige of the public office. Evidence of moral and professional failure of administrative apparatus is too overwhelming to ignore. Yet the services have remained largely immune from imposition of penalties due to the complicated procedures that have grown out of the constitutional guarantee against arbitrary and vindictive action (article 311). The constitutional safeguards have in practice acted to shield the guilty against swift and certain punishment for abuse of public office for private gain. A major corollary has been erosion of accountability. **It has accordingly become necessary to re-visit the issue of constitutional safeguards under article 311 to ensure that the honest and efficient officials are given the requisite protection but the dishonest are not allowed to prosper in office. A comprehensive examination of the entire corpus of administrative jurisprudence has to be undertaken to rationalize and simplify the procedure of administrative and legal action and to bring the theory and practice of security of tenure in line with the experience of the last more than 50 years.** The need is not to discourage the good people; the need is to discourage the bad people which objective can be served only by sufficient and speedy procedures to bring the guilty to the book.

6.7.5 The present methods of evaluation of performance need drastic reform. At present neither the quantity nor the quality of output of individuals and collective units is properly measured. The result is that the good, the bad and the indifferent are all lumped together. Mostly chronology determines who goes ahead and who does not. **The civil service regulations**

need to be changed radically in the light of contemporary administrative theory to introduce modern evaluation methodology.

6.7.6 The administrative structure and systems have to be consciously redesigned to give appropriate recognition to the professional and technical services so that they may play their due role in modernizing our economy and society. **The specialist should not be required to play second fiddle to the generalist at the top. Conceptually we need to develop a collegiate style of administrative management where the leader is an energizer and a facilitator, and not an oracle delivering verdicts from a high pedestal.**

6.7.7 **It is essential to bring forward a parliamentary Bill under article 312(1) and to have it extensively debated in professional circles as well as by the general public.**

6.7.8 The professional bodies like the Institution of Engineers, the Chartered Accountants, Medical Council, Bar Council of India, etc. which could have played a vital role in buttressing the role of civil society in governance have been content to act as lobbyists fighting for benefits to their constituency but not much else beyond narrow self-interest. Thus we have arrived at a situation in the judicial administration where courts are deemed to exist for judges and lawyers and not for the public seeking justice.

Central Administrative Tribunal

6.8 The Central Administrative Tribunal and various State Administrative Tribunals were established under the Administrative Tribunals Act, 1985 which was enacted in pursuance of

article 323A of the Constitution. Since their decisions are subject to the supervisory jurisdiction of the High Courts, a suggestion was made that the institutions of these tribunals had not served the purpose for which they were established. The Commission examined the matter with reference to the actual results and felt that there is a case for their continuance.

Union Public Service Commission

6.9 The Commission has carefully examined the suggestions made by a delegation of UPSC Members led by their Chairperson in regard to the proviso to article 320, the jurisdiction of the UPSC and its reports, the rank of the UPSC Members, the composition of UPSC and its powers regarding recruitment of its own personnel. It feels that some suggestions like laying of the UPSC reports on the table of each House of Parliament can be implemented through executive orders. Others depend on development of healthy conventions regulating the relations between the UPSC and the executive branch. The Commission does not see any need for change in the existing provisions concerning the UPSC (or other Public Service Commissions).

The Right to Information

6.10 Major assumption behind a new style of governance is the citizen's access to information. Much of the common man's distress and helplessness could be traced to his lack of access to information and lack of knowledge of decision-making processes. He remains ignorant and unaware of the processes which vitally affect his interest. Government procedures and regulations shrouded in a veil of secrecy do not allow the clients to know how their cases are being handled. They shy away from questioning officers handling their cases because of the latter's snobbish attitude and bow-wow style. **Right to information should be guaranteed and needs to be given real substance. In this regard, government must assume a major**

responsibility and mobilize skills to ensure flow of information to citizens. The traditional insistence on secrecy should be discarded. In fact, we should have an oath of transparency in place of an oath of secrecy. Administration should become transparent and participatory. Right to information can usher in many benefits, such as speedy disposal of cases, minimizing manipulative and dilatory tactics of the babudom, and, last but most importantly, putting a considerable check on graft and corruption.

Freedom of Information Bill, 2000

6.11 The object of the Freedom of Information Bill, 2000 now pending before Parliament is to promote transparency in government activity. The public has a right to know what decisions are being taken and why. Dissemination of information about policies and actions in the public realm leads to a more accountable government. This deserves full support. **The Commission recommends that the Union Government should take steps to move the Parliament for early enactment of the Freedom of Information Legislation. It will be a major step forward in strengthening the values of a free and democratic society.**

The Challenge of Globalisation

6.12 The advent of globalisation presents a new series of challenges to the administration. Activated by technological improvements, a new international relationship of our interests across issues and boundaries has come into being. Trade and financial developments have tightened to mesh the economic linkages across boundaries and regardless of preferences. The new state of affairs just cannot be wished away but must be engaged with. We should build up expertise to ensure that the interests of our country and the people are not overwhelmed by the forces of

globalisation. We must evolve our foreign and domestic policies to control our future. We cannot mortgage our interests nor can our security be left to the mercy of others. Government cannot abdicate its responsibility to affect international events and conditions to our advantage. Without the capacity to handle this new situation, we would be striking empty postures and would fail to seize the opportunity to develop in the context of globalisation. The executive of the State should learn to anticipate global developments and endow our policy with more knowledge-packed inputs to handle them to our advantage. At the same time, the aim has to be to tap the wellsprings of patriotism and give our people a sense of patriotic duty to harness the energy for economic and social development to spearhead programmes and develop national pride and self-confidence. Mass political education and raising of political consciousness become inescapable. This is the task to be performed by political parties. **To remain actively involved in new development programmes the people would also need the support of well organized, well prepared, knowledge-oriented personnel and well thought out policies. Think-tanks and organized intellectual groups would have to be promoted through state funding, etc. without abridging their autonomy.**

6.12.1 The survival and competitiveness in the emerging global economic order requires resources that are knowledge based and outcomes which are knowledge driven. **It is, therefore, recommended that the Union Government having regard to the importance of the higher scientific and technological research should have an apex body called the National Science and Technology Commission as an umbrella organization for policy making, planning, promoting and funding of higher scientific and technological research. This is necessary that such a body should have the Prime Minister as its Head.** However, National Commission on Science and Technology will retain the distinct identity from the Departments/Organization of Atomic Energy, Space, Defence Research and Development, Scientific and Industrial Research, Bio-Technology, Ocean Development, etc. Their present internal structures, some of whom have the management structure of Commissions with delegated powers, will not be disturbed but the Commission will deal with overall common issues bringing about greater co-ordination and integration in planning, promoting, policy making, funding and securing unified vision of the future and the future technologies. **The**

Commission should also take into account the funding priorities in the private sector and provide over all policy guidance. The principal functions will include evaluation of science and technology policy for the country, evaluation of the models of appropriate managerial structures in scientific/research organizations and responsibility for rationalizing allocation of funds. The Commission, therefore, recommends that a funding pattern for investment of about 2% of the GNP exclusively for scientific and technological research and development needs to be examined.

Common Market

6.13 A major achievement since the attainment of freedom has been the creation of a common Indian market that approaches in size to some of the biggest markets in the world. This is the foundation of our political unity. Anything that weakens or threatens to weaken or destroy India's political unity has to be prevented. Therefore, no unit of the Union can be empowered to weaken the foundation of the common market. However the Commission has recommended certain measures in para 8.8.2 to remove the barriers to smooth flow of goods and services which would reflect a seamless flow of inter-state trade and commerce.

Duality in Foreign and Domestic Policies

6.14 The structural problems of foreign policy would be to constantly aim at making the best possible use of the international order and use it to our advantage. **In the country's governance, the duality of foreign and domestic policy should end.** The two should not be antithetical. A serious effort is required to combine the two to recast relations and launch a creative initiative to achieve strategic partnerships the world over on the principles of interdependence without domestic interests being relegated to the background. **This calls for a**

thorough change in the form, working and structuring of Foreign Affairs mechanisms including the External Affairs Ministry. Foreign policy implementation is now more than mere diplomacy. It calls for cutting through the mind-set of a generation.

The Institution of the Prime Minister

6.15 The question of prerogative of the Prime Minister in the Parliamentary System to advise the dissolution of the House was raised. It was urged that one of the methods of restoring stability and cohesion of functioning in Parliamentary system of Government was to strengthen the Institution of the Prime Minister and one of the ways of doing so is to empower the Prime Minister to advise dissolution of the House whenever he thinks that House has exhausted its mandate and a fresh appeal to the electorate is called for. The proposition as raised contemplates such a power in the Prime Minister even after he has lost confidence of the House. This proposition has the familiar ring of the Parliamentary convention in Britain. One learned Member was strongly of the view that recognition of such a power in the Prime Minister would impart much needed stability to the political system in the country and would enable the Leader of the House to address determinedly towards issues of development, national security etc.

On a consideration of the matter, the Commission is of the view that the present constitutional position needs no modification.

Probity in Governance

6.16.1 Integrity, in the widest sense of the term, in the holders of public offices is what distinguishes a good public administration from a bad one. There may be other indicators but in the absence of integrity other competencies are not capable of yielding the desired results. Integrity is much more than financial honesty in official dealings. Unless public office is regarded as a trust that a public servant holds for public good, even the most enlightened policies for promoting the welfare of the society will not work. How to restore this ethical and moral dimension to public life in India is one of the most crucial issues of governance at present.

6.16.2 We cannot hope to succeed in this endeavour if we rely solely on legislation. For instance, the spirit of cooperative, team work, helping the deprived and the weak to obtain the protection and the benefit of the law require a vigorous social and political movement to really become part of our work culture and social behaviour. However, we should at the same time block some of the escape routes that the dishonest find to their advantage in the existing laws.

6.16.3 One of the measures adopted in several western countries to fight corruption and mal-administration is enactment of Public Interest Disclosure Acts which are popularly called the Whistle-blower Acts. **Similar law may be enacted in India also. The Act must ensure that the informants are protected against retribution and any form of discrimination for reporting what they perceived to be wrong-doing, i.e., for *bona fide* disclosures which may ultimately turn out to be not entirely or substantially true.**

Misfeasance in Public Office

6.17 The current situation is that public servants cannot be held personally responsible for their arbitrary, malicious, and outrageously unfair actions that cause injury to the public and loss to the State. A person can be detained illegally and subjected to unauthorised violence in

custody, resulting in death, without any individual being called to account and having to pay damages for his patently illegal and arbitrary action. Other such examples can be cited. There is no law at present that defines the principles on the basis of which misfeasance can be rendered punishable. Time has come to consider framing a law that would place responsibility on public servants for damages/compensation for patently *mala fide* actions. The basis for action under the law may be an audit report or a report by a commission, committee or body competent to examine the relevant facts. **The Commission recommends that the Government examine the proposal for enacting a comprehensive law to provide that where public servants cause loss to the State by their *mala fide* actions or omissions, they would be made liable to make good the loss caused and, in addition, would be liable for damages.**

Liability in Tort

6.18 The Commission had issued a consultation paper on ‘Liability of State in Tort’ for eliciting public opinion. After considering the responses and fully discussing the matter, the Commission decided that no recommendation in regard to the suggestions made in the consultation paper was necessary.

Benami Transactions (Prohibition) Act, 1988

6.19 This law was enacted to penalise public servants and others who acquire property in a clandestine manner out of ill gotten money. The property thus acquired stands in the name of others but the real beneficiary is the person who has used illegitimate funds to acquire it. The law provides that *benami* properties can be acquired by the government without any compensation. But this provision which is under Section 5 can be implemented only if rules are made under Section 8 for prescribing the authority, the manner and procedure for acquiring

benami properties by the State. Such rules have not been made so far. **The Commission recommends that the Union Government frame rules, without further loss of time, under Section 8 of the Benami Transactions (Prohibition) Act, 1988 for acquiring *benami* property and that a law be enacted to provide for forfeiture of benami property of corrupt public servants as well as non-public servants.**

Confiscation of illegally acquired assets

6.20.1 The Supreme Court has urged in *Delhi Development Authority v. Skipper Construction Co. (P) Ltd*

2., a well known case of abuse of authority and corruption, that “...a law providing for forfeiture of properties acquired by holders of public offices (including the offices/posts in the public sector corporations) by indulging in corrupt and illegal acts and deals, is a crying necessity in the present stage of our society.” **The Commission recommends that Government examine enacting a law for confiscation of illegally acquired assets on the lines suggested by the Supreme Court.**

6.20.2 **There is perhaps no need to set up an additional independent Authority to determine this issue of confiscation. There is already, under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, (SAFEMA) 1976, a Tribunal to deal with similar situation arising out of other statutes. The same Tribunal may be conferred additional jurisdiction to determine cases of confiscation arising out of the Benami Transactions (Prohibition) Act, 1988 and the Prevention of Corruption Act, 1988, (as may**

be amended) and other legislations which empower confiscation of illegally acquired assets. The Tribunal will exercise distinct and separate jurisdictions under separate statutes.

6.20.3 The Commission also recommends that the Prevention of Corruption Act, 1988 be amended to provide for confiscation of the property of a public servant who is found to be in possession of property disproportionate to his/her known sources of income and is convicted for the said offence. In this case, the law should shift the burden of proof to the public servant who was convicted. In other words, the presumption should be that the disproportionate assets found in possession of the convicted public servant were acquired by him by corrupt or illegal means. A proof of preponderance of probability shall be sufficient for confiscation of the property. The Commission recommends that the law should lay down that the standard of proof in determining whether a person has been benefited from an offence and for determining the amount in which a confiscation order is to be made, is that which is applicable to civil cases, i.e. a mere preponderance of probability only. A useful analogy may be seen in Section 2(8) of the Drug Trafficking Act 1994 in United Kingdom.

Lok Pal Bill

6.21.1 The Lok Pal Bill has a long and chequered history. An agency like the Lok Pal would help forces working for a cleaner government. The most recent Bill introduced in Parliament is the Lok Pal Bill 2001, introduced in the Lok Sabha on 14 August, 2001. It follows the pattern of the 1998 Bill especially insofar as it includes the Prime Minister within its purview. The Commission has carefully examined the point relating to the inclusion of the Prime Minister within the jurisdiction of Lok Pal. In the parliamentary system, the Prime Minister occupies a unique position. He is the kingpin of the entire governmental structure. It is his personality, his image and his leadership that drives the government and, indeed, other major institutions of the

State. Major threats of destabilisation and subversion of democratic governments cannot be ignored. In this context, the Prime Minister as the symbol of the stability and continuity of the regime, should not be exposed to the risks of well orchestrated and well planned attempts to malign his image and reputation on which the entire functioning of government depends. The entire structure can be undermined by malicious character assassination. **The Commission recommends that the Constitution should provide for appointment of Lok Pal. It also recommends that the Prime Minister should be kept out of the purview of the Lok Pal.**

6.21.2 With the above amendment, the Lok Pal Bill needs to be expeditiously considered and passed by Parliament. If possible, it may be further strengthened by providing that its findings should be final and form the basis for action by government. The Commission thinks that a start should immediately be made on the basis of the Bill. Let experience be gained of working a high level body to enforce standards of rectitude and propriety in the conduct of public affairs.

Central Vigilance Commission

6.22 The Commission recommends that the Central Vigilance Commission Bill, already introduced in Parliament, be passed as speedily as possible.

Status of Lokayuktas

6.23.1 The Conference of the Lokayuktas and Upa-Lokayuktas at their Sixth All India Conference had passed a resolution requesting this Commission to take up for consideration the issue of conferment of a constitutional status on the institution of Lokayuktas and Upa-Lokayuktas.

6.23.2 After considering the matter, **the Commission recommends that the Constitution should contain a provision obliging the States to establish the institution of Lokayuktas in their respective jurisdictions in accordance with the legislation of the appropriate legislatures.**

Commissions of Inquiry

6.24.1 The Commissions of Inquiry Act, 1952 enables both the State and Central Governments to appoint Commissions of Inquiry to inquire into and report on definite matters of public importance within a specified time. The Commission has noted that even though these Commissions have to submit their report in a specified time, yet they take unduly long time in submission of their report. Such delays cause disillusionment and loss of faith of the people in such Commissions of Inquiry.

6.24.2 **It is, therefore, recommended that when once a Commission of inquiry is constituted under the Commissions of Inquiry Act, 1952 or otherwise, the Government should consult the Chairperson of the Commission in respect of time required for completion / finalisation of the report. Once such a time is specified, the Commission should adhere to it. It is also recommended that Action Taken Report should be**

announced by the Government within a period of three months from the date of submission of the report.
