

THE ADMINISTRATOR

Journal of LBSNAA

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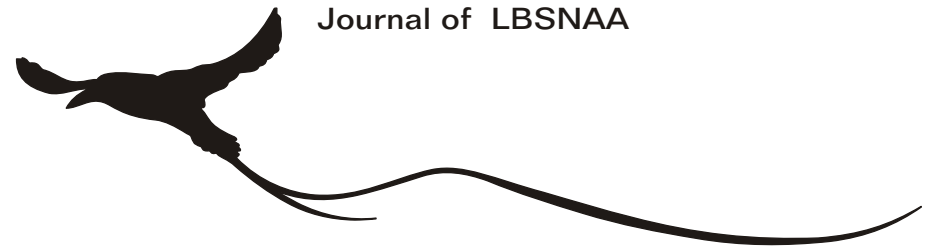
Volume 51, 2010
Number 1



Lal Bahadur Shastri National Academy of Administration

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Acknowledgement

We are grateful to Mr. K.J.S. Chatrath, a retired IAS officer of Orissa Cadre, for his help and guidance in bringing out this volume



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Lal Bahadur Shastri National Academy of Administration



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Lal Bahadur Shastri National Academy of Administration, Mussoorie (Uttarakhand)

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Published by : SOFTRAIN

Lal Bahadur Shastri National Academy of Administration, Mussoorie (Uttarakhand)

Printed in India at Print Vision, Dehradun - 248 001

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THE DEMISE OF ANNUAL CONFIDENTIAL REPORTS

Prabodh Saxena*

Abstract

The article presents a narrative account of how the Annual Confidential Report (ACR) came to transform itself into Annual Performance Appraisal Report (APAR). The ACR is one document that has travelled the historic journey from secrecy to transparency without much notice but the widespread ramifications of this silent change cannot be missed. The article captures how this route was traversed. It also focuses on how in the last few years appraisal of the officers have come to be regarded as falling within the domain of natural justice and fair play, duly supported by an age where right to information is a celebrated concept. The concept of appraisal as it is evolving may lead to holistic changes not just in procedures and policies of administrative governance but will have decisive impact on the mindset of the officers.

The culture of transparency ushered in by the Right to Information Act, 2005 (for short, the RTI Act) challenged many bastions of confidentiality built over centuries and brought them crumbling down. The latest to succumb to the onslaught is the age old closely guarded document which was considered so secret that its middle name was confidential. The reference, here is, to Annual Confidential Report (ACR(s)). The May 2009 circular of Department of Personnel and Training (DoPT) has sounded the death knell for ACRs¹. The demise of ACRs is now official and in their new “avatar they are called Annual Performance Appraisal Reports (APARs). The omission of the word confidential is deliberate and pregnant with meaning. The entire concept has undergone a revolutionary change and this article will trace the developments that led to it.

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¹O.M.No. 21011/1/2005-Estt (A) (Pt-II) dated May 14, 2009

The history of ACR writing:

ACRs are an ever present element in the consciousness of millions of government employees. At times news of a bad ACR sent shivers down the spine of vulnerable officers on the verge of promotion. It has been an intrinsic and important tool of the administrative strategy of carrot and stick. While, at times, it has been the only effective instrument of instilling the fear of God among errant, undisciplined and politically connected subordinates, there are unending instances of ACRs been used for revenge, exploitation and rent seeking.

This system of evaluation of the performance, conduct and character of public servants has a long and chequered history. Until 1834, the principle of promotion in career was wholly based on seniority which was determined by the date of entry in the service. This principle was departed from by an order of the Governor General in Council passed on January 28, 1834. The order laid down that appointment to a vacant post would not be on the basis of seniority alone. In consideration of competence and qualification, a junior might supersede a senior. This order laid the foundation for ACRs, previously known as character rolls. In the beginning it was an open official record, but later it was made secret and finally made confidential.

ACR is primarily a performance evaluation report of a public servant, written by his/her immediate superior. In addition to observation on performance, it also contains specific remarks on the character, conduct and integrity of the officer reported upon. The performance, towards the end, is summed up through a grading system of (i) Outstanding (ii) Very good (iii) Good (iv) Average (v) Fair or (vi) Poor. The officer reported upon has no access to the ACRs except when he/she receives an adverse remark giving him/her a right to represent².

Confidentiality of ACR after the RTI Act:

After the RTI Act, there was a rush of applicants wanting to see a copy of their ACRs. Beleaguered Central Public Information Officers (CPIO) approached DoPT for clarification. DoPT issued another Office Memorandum³ to reiterate that ACR is a confidential document and the Official Secrets Act, 1923, is not

completely superseded by the RTI Act. It, nonetheless, clarified that Sub-Section (2) of Section 8 the RTI Act⁴ gives a discretion to the Public Authority to disclose or not to disclose the ACRs of an officer to himself or to any other applicant and that when a Public Authority decides to disclose the ACRs, it should satisfy itself that the public interest in disclosure of ACR outweighs the harm to the protected interests. In practice, DoPT maintained that the disclosure of ACRs may endanger the lives/interests of the reporting/reviewing/countersigning officers and accordingly justified non-disclosure under Section 8(1)(g)⁵ of the RTI Act.

Central Information Commission clears the air:

Appeals started reaching Central Information Commission (hereinafter, the Commission) once CPIO and Appellate Authorities rejected the request for photocopies of ACRs. Considering the importance of the matter, the Commission constituted a Division Bench in the case of *Gopal Kumar Vs. Maj. Gen. Gautam Dutt, DGW, Army HQ*⁶. After deliberating in detail, the Division Bench held on July 13, 2006 that confidentiality of the ACRs is in the interest of the health and harmony of the organisation. The relevant portion of the Decision is as under:

“In regard to the annual confidential report of any officer, it is in our view that what is contained therein is undoubtedly 'personal information' about that employee. The ACRs are protected from disclosure because arguably such disclosure could seriously harm interpersonal relationship in a given organization. Further, the ACR notings represent an interaction based on trust and confidence between the officers involved in initiating, reviewing or accepting the ACRs. These officers could be seriously embarrassed and even compromised if their notings are made public. Thus, there are reasonable grounds to protect all such information through a proper classification under the Official Secrets

⁴Section 8(2) of the RTI Act says, “Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests”.

⁵Section 8(1)(g) allows withholding of information, “the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes”.

⁶ Appeal No.CIC/AT/A/2006/00069

² O.M. No 51/5/72 Ests (A) dated May 10, 1972 issued by Department of Personnel of Cabinet Secretariat, DoPT OM No. 21011/4/87[Estt.'A'] dated September 11, 1987 etc.²

³ OM No.10/20/2006-IR dated September 21, 2007

Act. No public purpose is going to be served by disclosing this information. On the contrary, it may lead to harming public interest in terms of compromising objectivity of assessment which is the core and the substance of the ACR which may result from the uneasiness of the Reporting, Reviewing and the Accepting officers from the knowledge that their comments were no longer confidential. The ACRs are used by the public authorities for promotions, placement and grading etc of the officers, which are strictly house keeping and man management functions of any organization. A certain amount of confidentiality insulates these actions from competing pressures and thereby promotes objectivity. We, therefore, are of the view that apart from personal information, ACRs of officers and employees need not be disclosed because they do not contribute to any public interest. It is also possible that many officers may not like their assessment by superiors to go into the hands of all and sundry. If the reports are good, these may attract envy and if these are bad, ridicule and derision. Either way it affects the employee as well as the organization he works for. On balance, therefore, confidentiality of this information serves a larger purpose which far out-strips the arguments for its disclosure.”

However, even in the case of *Gopal Kumar supra* the Commission recognized that there are forceful arguments for a system of open assessment of employees working for an organization, but that should be as a result of a conscious decision by the organization concerned and must be part of an overall systemic change.⁷ Till that happens, it was the view of the Commission that confidentiality of annual assessment of the employees of an organization should be allowed to be maintained, if that was the norm in that organization.

Based on the above decision of the Division Bench, a similar view was taken by the Commission in two other cases, namely *Anil Kumar Vs. Department of Telecommunications*⁸ and *H.K. Bansal Vs. Ministry of Communications*⁹. Both

appeals were dismissed. In several other decisions, the Commission has held that the disclosure of ACR is exempt under Section 8(1)(e)¹⁰ of the RTI Act, unless the competent authority is satisfied that a larger public interest warrants disclosure of such information.

The Glasnost :

The Government of India started the process of *glasnost* in 2007 with All India Services (Performance Appraisal Report) Rules 2007 (in short, the AIS (PAR) Rules 2007¹¹), with the objective, as it proclaimed, that performance appraisal should be used as a tool for career planning and training, rather than a mere judgmental exercise¹². It matched these words with the statutory requirement of disclosure of the full performance appraisal report, including the overall grade and assessment of integrity to the officer reported upon after finalization by the accepting authority. It gave the option to the officer reported upon to give his comments on the assessment in terms of attributes, work output and competency. If the comments are accepted, performance appraisal report would be modified correspondingly and the decision and final grading will be communicated to the officer. If still not satisfied, the officer reported has a right to represent his case before the Referral Board but the representation has to be confined to errors of facts. The decision of the Referral Board shall be final but the officer reported upon can still prefer a memorial to the President.

This, though restricted to the All India Services, was a complete divorce from a century old system that considered secrecy as of paramount and non negotiable importance. The change was so sudden and sweeping that its ramifications have not yet been fully grasped.. It is only now when the officers are actually seeing it in operation, that they have started appreciating this historic development.

¹⁰Section 8(1) (e) exempts from disclosure the “information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information”.

¹¹Notified on March 14, 2007. The AIS (PAR) Rules 2007 envisage that a work plan for the year will be prepared by the officer at the beginning of the year. It is to be approved by the superior and finalized by April 30. The work plan should be reviewed during the month of September/October as a mid-year exercise and realigned by October 31. It obliges the officer reported upon to indicate specific areas in which he/she feels the need to upgrade skills and attend training programs and mandates the Reporting Officer that he/she should record the integrity of the officer to be recorded upon not only in relation to matters relating to financial integrity but also the moral and intellectual integrity of the officer.

¹² L This was based on the recommendations of Committee constituted under the Chairmanship of Lt Gen. (Retd.) Surinder Nath in 2002.

⁷ Emphasis mine

⁸Appeal No.59/ICPB/2006-C.No.PBA/06/86, decided on July 31,2006

⁹Appeal No.83/ICPB/2006-C.No.PBC/06/89, decided on September 25,2006

The Supreme Court verdict heralded the Change for non AIS officials :

In 2008, came the decision of Supreme Court in the case of *Dev Dutt Vs Union of India & Ors*¹³ (hereinafter, referred to as the Dev Dutt's case). This decision changed the rules of disclosure of grading to an employee. In this case, Shri Dev Dutt was an Executive Engineer in the Border Roads Engineering Service, which is governed by the Border Roads Engineering Service Group 'A' Rules. He was promoted as Executive Engineer on February 22, 1988 and was eligible to be considered for promotion to the post of Superintending Engineer on completion of 5 years in the grade of Executive Engineer, which he completed on February 21, 1993. Accordingly, his name was included in the list of candidates eligible for promotion. The Departmental Promotion Committee (popularly called the DPC) found that Shri Dev Dutt was not eligible for promotion and selected his juniors and promoted them to the rank of Superintending Engineer. The reason for this was that the benchmark grade for the Superintending Engineer was 'Very Good' for the last five years but Shri Dev Dutt had only 'Good' entry for the year 1993-94, due to which he was not considered for promotion. Even though 'Good' entry for the year 1993-94 was not an adverse entry but the effect of this entry was that promotion was denied to Shri Dev Dutt. It is in this context that the Supreme Court has observed as follows:-

“Thus, in this situation, the 'Good' entry, in fact, is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant; it is the effect which the entry is having which determines whether it is an adverse entry or not. It is, thus, the rigours of the entry which is important, not the phraseology. The grant of 'Good' entry is of no satisfaction to the incumbent; it, in fact, makes him ineligible for promotion or has adverse effect on his chances.”

The Supreme Court has further observed in the judgment as follows:-

“In our opinion, **every entry** (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a benchmark or not.

¹³(2008)8SCC725

Even if there is no benchmark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit), a person having a 'good' or 'average' or 'fair' entry certainly has less chances of being selected than a person having a 'very good' or 'outstanding' entry.

In most services, there is a gradation of entries, which is usually as follows:

- (i) Outstanding
- (ii) Very good
- (iii) Good
- (iv) Average
- (v) Fair
- (vi) Poor

A person getting any of the entries at items (ii) to (vi) should be communicated the entry so that he has an opportunity of making a representation praying for its upgradation, and such a representation must be decided fairly and within a reasonable period by the concerned authority. If we hold that only 'poor' entry is to be communicated, the consequences may be that persons getting 'fair', 'average', 'good' or 'very good' entries will not be able to represent for its upgradation, and this may subsequently adversely affect their chances or promotion (or get some other benefit).”

Raising the pitch-ACR writing falls within the ambit of natural justice

The movement towards disclosure of ACRs is driven by new meaning and interpretation being given to the concept of natural justice in the Dev Dutt's case. This could be done as the rules of natural justice are not codified nor are they unvarying in all situations. They are flexible. However if they have to be summarized in one word, than that would be 'fairness'. Lord Esher M.R. in *Voinet Vs. Barrett*¹⁴, observed: "Natural justice is the natural sense of what is right and wrong."

Originally there were said to be only two principles of natural justice, namely:

- a) the rule against bias (*Nemo debet esse judex in propria causa*), and
- b) the right to be heard (*audi alteram partem*).

¹⁴(1885) 55 L.J. QB 39

However, subsequently in *A. K. Kraipak & Ors. Vs. Union of India & Ors.*¹⁵, a Constitution Bench of Supreme Court added a third rule that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. Later the Court linked the issue of natural justice to administrative decision making also¹⁶. In 2007, in the case *State of Maharashtra Vs. Public Concern for Governance Trust & Ors.*¹⁷, the Supreme Court made the emphatic observation that when an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play.

Thus, in the course of years many subsidiary rules came to be added to the original rules of natural justice. In fact, the Courts have continuously expanded its scope. In the Dev Dutt's case, communication of grading in an ACR was considered in light of natural justice to a public servant. The Court felt that if promotion is denied to a public servant without him knowing the reason for it, then it is definitely wrong. It is apt to quote Justice Markandey Katju, "In our opinion, our natural sense of what is right and wrong tells us that it was wrong on the part of the respondent in not communicating the 'good' entry to the appellant since he was thereby deprived of the right to make a representation against it, which if allowed would have entitled him to be considered for promotion to the post of Superintending Engineer. One may not have the right to promotion, but one has the right to be considered for promotion, and this right of the appellant was violated in the present case".

The Dev Dutt's case, accordingly lays down, that principles of natural justice requires that all entries in the ACR of a public servant, (except in case of the military service);

- a) must be communicated to him within a reasonable period so that he can make a representation for its upgradation. As principle of non-arbitrariness in State action is envisaged by Article 14 of the Constitution¹⁸, Article 14¹⁹ will override all rules or government orders to the contrary,

- b) when the entry is communicated to him, the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period.
- c) the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar.

The Court stressed on these requirements as it expected the State to be a model employer acting fairly towards its employees and believed that fairness to public servants would translate into good governance for the public.

Governments reaction to the Dev Dutt's case

It is understood that Cabinet Secretariat called a meeting to discuss the implications of the order, sought opinion from Attorney General and filed a review petition in the Apex Court which was dismissed. Soon, the matter came up again before a 3 Judge Bench of the Supreme Court, headed by Chief Justice of India, in a case titled *Abhijit Ghosh Dastidar Vs. Union of India & Ors.*²⁰ Confirming the ratio laid down in Dev Dutt's case, the Court observed that, "In our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution". It left Government with no option but to honour the directions concerning communication of grading.

The Supreme Court Retracts

The decision in the Dev Dutt's case is of May 12, 2008 and given by a Single Judge. After 4 months, on September 16, 2008, a Division Bench (DB) of Supreme court in the case of *K.M. Mishra Vs. Central Bank of India & Ors*²¹, gave a contrary decision. In this case, the appellant had 'Excellent' ratings and in the year 1995, he had 'Very Good'. It was argued that the rating 'Good' for the year 1996-97 was thus a climb down and it was incumbent upon the authorities to intimate the appellant about his ratings for the two years in

¹⁵ AIR 1970 SC 150

¹⁶ See K. I. Shephard & Ors. Vs. Union of India & Ors AIR 1988 SC 686 and Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant AIR 2001 SC 24,

¹⁷ 2007 (3) SCC 587

¹⁸ The Supreme Court in *Menaka Gandhi Vs. UOI & Anr*, AIR 1978 SC 597, has held that arbitrariness violates Article 14 of the Constitution

¹⁹ Article 14 of the Constitution guarantees that the State shall not deny to any person equality before the law or the equal protection of the laws.

²⁰ S.L.P (C) NO 26556 of 2004. Date of Decision October 22, 2008.

²¹ 2008 (9) SCC 1202

question. Since no intimation was given to the appellant the ratings for those two years should not have been taken into account and instead the ratings for the earlier years should have been considered for the purpose of promotion. The Supreme Court rejected the argument citing the DB decision of the Supreme Court in the case of *Satya Narain Shukla Vs Union of India*²². The Judges in the K.M. Mishra case quoted the following para from the decision of Satya Narain Shukla's case

“The appellant also argued that the remarks made in the ACR were not communicated to him. It was also urged by the appellant that this Court should direct the authorities to streamline the whole procedure so that even remarks like “good” or “very good” made in ACRs should be made compulsorily communicable to the officers concerned so that an officer may not lose his chance of empanelment at a subsequent point of his service. In our view, it is not our function to issue such directions. It is for the Government to consider how to streamline the procedure for selection. We can only examine if the procedure for selection as adopted by the Government is unconstitutional or otherwise illegal or vitiated by arbitrariness and *mala fides*.”

In a matter involving a similar question of law in *Union of India Vs. A.K. Goel & Ors*²³, the Supreme Court took note of the apparent conflict between the earlier decision of a Single Judge of the Court in Dev Dutt's case on one hand and the judgements of DB of Supreme Court in Satya Narain Shukla and K.M. Mishra cases on the other hand and by its Order dated March 29, 2010 the DB of the Court has referred these appeals to a Larger Bench. How the Court made no reference of confirmation of Dev Dutt's case by a 3 Judge Bench, headed by Chief Justice of India, in *Abhijit Ghosh Dastidar Vs. Union of India & Ors*²⁴ is not clear.

Effect of developments in Supreme Court on DoPT Instructions on ACRs with Below Benchmark Grading

As a follow up of action required after Dev Dutt's case, DoPT issued OM²⁵ on April 13, 2010 on the subject of ACRs with below benchmark grading

considered in past DPCs. It laid down that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DPC contain final grading which are below the benchmark for his next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any, within 15 days of such communication. The representation is to be decided by the competent authority as per provisions in para 2 of the aforesaid O.M. In terms of decision in Devdutt's case, if consequent to a representation, upgradation is allowed by the competent authority, the employee is to be considered for promotion retrospectively by the DPC.

In less than a fortnight, DoPT issued another OM²⁶ on April 27, 2010, making a reference to OM of April 13, 2010, and advised ministries and departments that wherever petitions have been filed in the Courts to grant relief on the basis of the Dev Dutt case, the latest Orders of the Supreme Court in A.K. Goel's case may be brought to the notice of the Court. Without saying so, DoPT has virtually superseded its OM of April 10, 2010 in so far as relief to employees securing upgradation on representation is concerned

Initially CIC approach was half-hearted:

The Supreme Court's decision in Dev Dutt's case relates to communication of entries made in the ACRs, more particularly, the grade assigned to an employee. This still left the issue as to whether copies of the ACRs (photostat or certified) could be issued to an employee under the RTI Act. The matter came up before the Commission again and this time the Appellant, armed with the Dev Dutt's order, thought that he will be able to convince the Commission to overrule its previous decision.

The contention was examined by the Commission in the case of *Ms. J.D. Sahay Chief Commissioner of Income Tax-I Ahmedabad Vs. Ministry of Finance, Department of Revenue*.²⁷ The appellant applied for empanelment/appointment to the post of Member, Central Board of Direct Taxes twice in May 2006 and November 2006, but was not selected. Aggrieved by non-selection, the appellant, by her two RTI applications, sought certain information which could throw light on the reason for her non-selection. Subsequently, through a third RTI application, she applied for copies of Reporting and

²² 006 (9) SCC 69 (81). Decision on May 11, 2005 The Court dismissed the writ of Mr. Satya Narain Shukla, a IAS officer of 1967 batch of UP Cadre, who had challenged his exclusion from empanelment as Additional Secretary and subsequently as Secretary to Government of India.

²³ Civil Appeal Civil No. 2872 of 2010

²⁴ Refer to discussion under the heading Government's Reaction to Dev Dutt's case.

²⁵ No 21011/1/2010-Estt.A

²⁶ No 21011/1/2010-Estt.A

²⁷ Appeal No.CIC/AT/A/2008/00027 & 00033.

Reviewing Officers' comments/gradation in the last 10 ACRs for the year ending March 31, 1996, to the year ending March 31, 2006, which was taken into account at the time of panel formation. The CPIO denied the request concerning disclosure of ACR for the last 10 years claiming exemption under Section 8(1)(j)²⁸ of the RTI Act. The Appellate Authority upholding the decision stated that ACRs have long been kept confidential to put on record "frank comments" of the senior officers in respect of performance of the juniors.

The Single Bench felt that since the case concerns a sensitive issue such as empanelment of officers and disclosure obligation of ACRs and the Commission's directions on such matters could have wider ramifications, the same should be heard by a larger Bench. Consequently, the matter was referred to the Full Bench (FB). The FB framed the following issue:

"Whether the case of the appellant so far as it relates to disclosure of gradation in ACR for the last 10 years is covered by the judgment of the Supreme Court²⁹ relied on by the appellant?"

In its decision on February 6, 2009, after paying tribute to the RTI Act, the FB observed that after the decision in Dev Dutt's case, the disclosure of ACR cannot be held to be exempted any more. However, the decision of the Apex Court is to be implemented by the concerned Public Authorities and in case any applicant is aggrieved with action or inaction of the concerned Public Authority, he can take up the matter with the Apex Court. It restrained itself from making any comment regarding change in view of the Commission on the ACRs in light of the Dev Dutt's case as the FB of the Commission was seized of the issue in another case, namely, *P.K. Sarin v Directorate General of Works Central Public Works Department (CPWD)*³⁰ (hereinafter referred to as Sarin's case)

In Sarin's case, the Appellant appears to have been denied promotion from Assistant Engineer to the rank of Executive Engineer based on the entry made in his ACR for the relevant period. *Prima-facie* the facts of this case

²⁸Section 8(1) (j) exempts from disclosure, "information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information".

²⁹Dev Dutt's case.

³⁰Appeal No. CIC/WB/A/2007/00422, decided on February 19, 2009.

appear to be similar with that of the Dev Dutt's case. In both the cases, civil consequences have ensued as a result of non-communication of ACR. The Commission, in its decision of February 19, 2009 was of the view that it is for the concerned public authority to take the view and act in accordance with the law laid down in the Dev Dutt's case. The Commission decided to confine itself to the question as to whether the ACRs are liable to be disclosed under the RTI Act in the context of Dev Dutt's case. The Commission directed the CPIO to communicate the entries in the ACRs to the appellant for the period asked for by him but made it clear that, "this does not however imply that it will necessarily be desirable to provide either a photocopy or a certified copy of the ACRs to a public servant. Similarly, one cannot seek an ACR of some one else. Such disclosure would be permissible only when the larger public interest so warrants."³¹

The current practice in CIC³²:

Though the FB decision in Sarin's case was clear, yet few Commissioners started authorizing disclosure of full ACR, relying ironically on the same decision. Ms. Annapurna Dixit, Information Commissioner, in the two cases decided on February 27 2009, namely, *Ravi Kumar Sepra Vs. Publication Division*³³ and *Dr. Punita K Siodhi Vs. MoHFW*³⁴ directed that in view of the decision in Dev Dutt's and Sarin's case, certified photocopies of the ACRs shall be duly provided to the appellant. She reiterated the decision in the cases of *Mr. M. R. Garg Vs. Dept of Post, Muzaffarnagar*,³⁵ dated March 13, 2009 and *N Sivaraj Vs. Dept of Posts-Coimbatore*- dated April 20, 2009³⁶.

Similarly another Information Commissioner, Shri Shailesh Gandhi in two cases between the same parties, namely, *Subhash Chand Gupta Vs. MCD*³⁷, decided on March 25 2009, directed the CPIO to give copies of all his ACRs to the appellant. However in a later decision *JS Solkhe Vs. National Institute of Technology Kurukshetra*,³⁸ decided on May 22 2009, Shri Shailesh Gandhi

³¹Emphas is mine. See Para 26 Of the decision.

³²For position in respect of State government employees, readers are advised to refer to instructions of respective State governments and decisions of competent State Information Commissions.

³³CIC/AD/A/X/09/00061

³⁴CIC/AD/A/X/09/000134

³⁵CIC/AD/C/2008/00141

³⁶CIC/AD/A/09/00247

³⁷CIC/WB/A/2008/001712/SG/2409 and CIC/WB/A/2008/00172/SG

³⁸CIC/SG/A/2009/000365/3388

reversed his position on ACRs and rejected the argument of the appellant that since ACRs could be given to the Parliament if sought, the same could not be denied to him. This time he based his decision on the earlier decision by a two member bench of the Commission in the case of *Gopal Kumar Vs. Maj. Gen. Gautam Dutt, DGW, Army HQ*³⁹. Surprisingly, he made no mention of subsequent FB decision of Sarin's case and also of Supreme Court's decision in Dev Dutt's case.

It can now be safely deduced that the Commission has, for all practical purposes, adopted the following approach post Sarin's case⁴⁰

- a. disclosure of ACR or PAR of public employees had been authorized to be disclosed to the employee to whom the reports might pertain, and
- b. such disclosure to third-parties is excluded unless it is necessitated by a larger public interest

And the Government delivers:

The Courts and Commission have always exhorted the government to make the performance appraisal system more transparent. The Government of India made the first move when it enacted the AIS (PAR) Rules, 2007. The Second Administrative Reform Commission in its 10th Report submitted in November 2008⁴¹ strongly advocated that provisions similar to AIS (PAR) Rules 2007 for promoting transparency needed to be introduced in respect of all Services/organizations for effective performance management.⁴² In 2009, the government decided to go for a major revamp of appraisal system for the other services under the Union Government taking into account the decisions of Supreme Court and recommendation of the second Administrative Reform Commission⁴³. The new system of communicating

³⁹Appeal No.CIC/AT/A/2006/00069. Discussed in detail under the heading Central Information Commission clears the air.

⁴⁰May see decision of A.N. Tewari, Central Information Commissioner in *Shri K.G. Luke vs. Central Excise & Service Tax*, Appeal No. CIC/AT/A/2010/000026 dated March 5, 2010.

⁴¹Refurbishing of Personnel Administration-Scaling New Heights

⁴²*Ibid.* Para 11.15 in the chapter of Performance Management System.

⁴³O.M No. 21011/1/2005-Estt (A) (Pt-II), dated May 14, 2009. The provisions, processes and procedure is similar to the AIS(PAR) Rules, 2007.

the entries in the APAR is made applicable prospectively with effect from the reporting period 2008-09, to be initiated after April 1, 2009⁴⁴.

Conclusion:

It is surprising that such a path breaking shift in the policy of public administration has gone unreported. There is hardly any discussion on this fundamental change. The movement is not only towards a new system of measuring performance but also of reorienting the mindset of bureaucracy deeply entrenched in hierarchical set up. The need to make bureaucratic structure more transparent, open to discussion and scrutiny had often been felt, more so since these values characterize the progressive bureaucratic ethos in other parts of Asia. The recommendations of various Committees and Commissions on Administrative Reforms have also contributed to evolution of this approach. The Supreme Court orders also compelled the Government to revisit its stand on disclosing the gradings of the ACRs. However, the credit rightfully belongs to a new environment of transparency and accountability that is engulfing all spheres of public administration ever since the enactment of historic RTI Act. To have transparent and accountable governance, charity has to begin at home. There is no doubt that the demise of confidentiality of annual appraisal reports will not be mourned.

⁴⁴There have been instructions separately issued for Public Sector employees. State governments will have to notify it independently for its employees.

COMPARING HEALTH SYSTEMS IN CHINA & INDIA: LESSONS FOR HEALTH POLICY IN LOW INCOME COUNTRIES

Alok Kumar*

Abstract

Health policy makers in developing, low income countries are often faced with difficult choices and tradeoffs in allocating the rather limited resources at their disposal. This paper analyzes the varied approaches taken by the Governments of China and India which resulted in differential levels of gain in health indicators. An attempt has been made to synthesize policy implications for health policy analysts in developing countries that would optimize the health outcomes for a given budgetary allocation. .

Introduction:

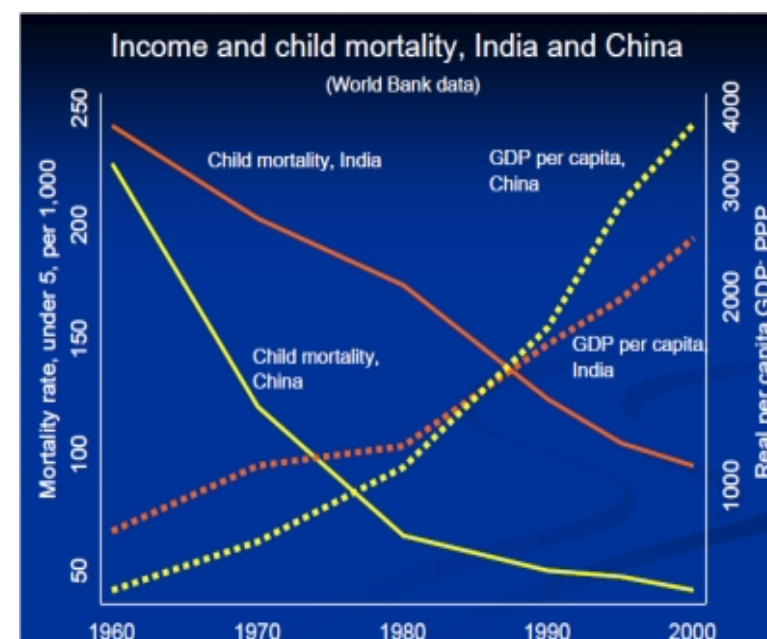
Health policy makers in developing, low income countries are often faced with difficult choices and tradeoffs in allocating the rather limited resources at their disposal. It is therefore imperative to get these allocation decisions right since any inefficiency on this count is likely to have a detrimental effect on achievements of health goals.

China and India faced similar situation as they embarked upon their endeavour to rebuild their national health systems following their liberation from colonial rule in late 1940s. However the approaches followed by them were radically different. China, at least in the initial years, opted for an egalitarian public health focussed approach relying on a government organized, managed and financed health care delivery system. India's approach to organizing its health system, on the other hand, placed a far greater reliance on market forces with a focus on curative medical services. The outcomes have been decidedly in favour of China (see Table 1 Appendix), though the gap has been narrowing down of late. What is even more remarkable about the Chinese performance is that the impressive health

gains were registered despite starting from a lower base and having a lower per capita GDP of the two. Deaton (2004) has offered a vivid pictorial description of this phenomenon, which I reproduce below (Figure1). Though the figures are till 2000 only, they surely indicate the pattern.

What can explain this phenomenon? Was it because of the dominant role played by the government in one and the free interplay of market forces on the other? Why has the gap been narrowing down in the recent years? This paper seeks to draw generalized lessons for possible design approaches to an effective health system capable of achieving population health goals in developing low income economies.

Before we proceed further, a caveat is in order. Admittedly, the health outcomes are a function of health care systems as well as non-medical determinants of health (such as education levels, culture, nutrition, lifestyles etc.). However, for the purpose of the present paper, we shall restrict our focus to the principal policy levers of the health care system, which can be altered in the short and medium term to influence health outcomes. Specifically, we shall consider the aspects relating to financing, organization, regulation, payment incentives and behaviour and the manner in which they have a bearing upon the health status of a nation.



(Source: Deaton, 2004, slide 25)

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This paper is organized as follows. Section 2 will dwell upon the evolution of health systems in India and China from 1950 to the early years of the millennium. In Section 3, we shall make comparative assessment of the two health systems on parameters such as financing, protection from financial due to ill-health, access, equity and efficiency. In Section 4 we draw policy lessons borne out the discussion in the previous sections. Finally we conclude.

Evolution of the Chinese and Indian Health Systems

China (1950- 1979):

The evolution of the Chinese health system can be divided into two distinct phases. The first phase (1950-1979) is characterized by the classic government owned, managed and funded health care system. Private practice was completely banned and all providers were employees of the state. The health care delivery system in the rural areas was organized and delivered through a Cooperative Medical System (CMS) which was an integrated part of the overall collective agriculture production system and social services. It was designed as a bottom up three-tier system. The lowest rung comprised of the village health posts manned by the so called “Barefoot Doctors”¹ who provided basic preventive and rudimentary curative care. Patients in need of additional treatment were referred to Township or Community Health Centres (CHCs). Finally, county/ district hospitals provided specialized care to only the most sick patients. In rare cases, the patient was referred to tertiary facilities in urban areas.

The financing of the CMS generally took the form of a pre-payment health plan with contributions from members², the commune collective welfare fund³ and subsidies from the upper level governments (Hsiao et al., 1995). In the urban areas, access to health services was ensured through government run facilities that charged a very nominal “registration fee” for treatment (Ma et al., 2008)

¹Health care practitioners with a very elementary level of health care training. They were paid for their work at the village health posts out of the commune revenues

²The annual premium was very low, about 4- 8 Yuan (0.5-2% of the peasant family's annual income).

³A portion of the income from the collective agriculture was kept aside for the commune's Collective Welfare Fund. The subsidy from the government was largely for equipment support and drugs.

The strong political commitment to health goals, the near universal availability and access to health services combined with mass movements and information campaigns to disseminate public health knowledge led to astounding results. The life expectancy almost doubled (35 to 68 years). Infant mortality dropped dramatically from 200 to 34 per 1000 live births (Blumenthal et al., 2005). By 1980, China was already experiencing the epidemiological transition common in many developed countries, though its per capita GDP was well below those standards (Ma et al., 2008)

China (1980 onwards):

However, following the launch of economic reforms and the introduction of the individual responsibility system in agriculture, the main source of financing the CMS namely the welfare fund supported by the community farming system - disappeared. As a result, villages were forced to dissolve their CMSs. Within a decade, the percentage of villages covered by CMS fell down from a level of 90% to 4.8% in 1989. The Barefoot doctors either took up alternate farming jobs or opted for private practice (Hsiao et al., 1995). The collapse of the CMS due to abolition of communes, the consequent drying of resources from social financing coupled with reduction of government budgetary support to health resulted in the proportion of out of pocket expenses (OOP) zooming up from 20% in 1978 to 58% in 2000 (Ma et al., 2008).

Though the ownership still continues to be predominantly public⁴ and the pricing of health services are tightly controlled by the Government, the pressure on the hospitals to raise a substantial portion of their budgets through user fees implies that the incentive faced by the health providers is the same as that of a for profit entity. Hence it would be fair to say that while the organization of health delivery system is public in form, the incentive structure makes it private in spirit. Predictably, the focus of care shifted from preventive to the curative.

Thus, during this phase even as people became wealthier, there were definite signs of deceleration in health gains. As Lindelow et al., 2005 aptly summarize:

“China's legendary performance on child mortality appears to have started unravelling. The annual rate of decline has fallen

⁴ A study by Liu et al., 2006 reveals that in 2002 only 12% of the hospitals and 4% of the health professionals were in the private sector

dramatically, despite the fact that other East Asia countries some of whom have achieved similar low rates have seen accelerations in their rates of decline...There are concerns over communicable diseases, including HIV/AIDS and SARS. Whether utilization of services among the sick has fallen is unclear from the studies to date. Overall utilization levels of providers seem to have fallen in the 1990"

India:

Like China, India adopted a similar 3 tier health system for their rural population. At the lowest level, Sub Centres (SC) was entrusted with the responsibility of public health related knowledge dissemination services. The next level Primary Health Centres (PHCs) manned by qualified doctors were envisaged to provide an integrated curative and preventive health care to the rural population. The top tier of Community Health Centres (CHCs) /District Hospitals offered specialized care. This system was funded fully by the government and operated by government appointed health functionaries.

However there were important differences. Private sector was allowed to coexist, and over the years has expanded its services so that it now plays the dominant role in health care delivery. Secondly, it laid a much greater emphasis on curative aspect of health services. Thirdly, unlike the leadership role played by the Chinese Government in organizing the health system delivery in China, the Indian government adopted a hands-off approach to regulation of this sector.

Despite the ambitious goals to provide inexpensive public health care to the people, the resources provided by the government (about 1% of the GDP up to 2000) were inconsistent with the level of commitment. As a result, the public health facilities were left chronically under-resourced, under-staffed and overcrowded (Mullan, 2006). The problem was further compounded by poor management, rampant absenteeism, low quality of service, overly centralized and inflexible planning and poor logistics in supply of medicine and drugs (Peters et al., 2002). Although the public sector provision of health care is almost free, utilization levels have remained extremely low with 20% outpatient and 45% inpatient care being availed of in these facilities (Mavalankar et al., 2006).

That there was a neglect of public health is reflected by the fact that public health services, which existed as a separate department prior to independence, was merged with the medical services in the 1950s. Further the elite succeeded in diverting a substantial proportion of the health budgets for expanding subsidized medical training and high-end tertiary medical services (Das Gupta, 2005). The focus on curative services meant that the curative specializations were given a higher priority over public health specializations. Consequently, the demand for as well as the supply of public health professionals atrophied. The atrophy was further fuelled by declining budgetary support for public health positions and activities⁵, while expanding the curative services for which there was stronger electoral demand⁶.

The inability of public institutions in fulfilling the need for health care services has resulted in a large number of profit driven private providers with an inherent preference for high potential curative over low margin basic care services- occupying that space. The private sector now dominates the health system with 70% of all hospitals, about 75% of the qualified doctors working in this domain, capturing 77.4% of all health expenditure (Ma et al., 2008). Despite such a vast array of private sector health facilities, the state has largely adopted a *laissez faire* approach towards their regulation. This market anarchy has led to an extreme heterogeneity in providers' pricing and quality of service.

On the one end of the spectrum are an extremely heterogeneous group of rural medical practitioners (RMPs)⁷ - dabbling in systems of medicine that go well beyond their levels of qualification and training. They are prepared to work in rural areas and urban slums where qualified doctors are unwilling to set up practice. Hence their services are accessible, affordable, and acceptable; even if the quality of their advice may be suspect. On the other

⁵For instance, see Quadeer (2000) quoted in Ma et al.(2008), p9. The spending on the control of communicable diseases declined as a proportion of total budgetary allocation on health from 17% to 4% between 1950s and 1990s

⁶Since in preventive health, success by definition, is more intangible and therefore difficult to sell to the electorate. Das Gupta points out that East Asian countries with authoritative regimes have been much more successful in harvesting health gains by directing their scarce resources to public health efforts.

⁷Indian counterparts to the "barefoot doctors". Some of them are trained in traditional systems of medicine. Others are traditional healers and herbalists. Unlike China, their services have been hitherto ignored by the Government.

end are for profit corporate hospitals that provide health care services that can meet most international quality benchmarks but the prices are such as to exclude virtually all but the richest section of the population. Unable to ensure full occupancy, these five star medical facilities are promoting “medical tourism” by attracting foreign patients for treatment. This is nothing short of being tragic, given the widespread unmet demand for medical services within the country.

Further the political commitment shown by the top political leaderships to health related issues in China was largely non-existent in India. Unwillingness on the part of the Government to wield any coercive power (even for legitimate causes) ensured that the private and public health systems remained largely disparate and un-integrated. Freedom of choice for citizens meant that referral system was observed more in its breach.

A combination of these factors has resulted in relatively modest health gains in India. Although the epidemiological transition has begun to take place here as well, communicable diseases still account for over 40% of deaths. Even in the very recent past, the immunization rates were at a dismal 62% (much below that China 93%) and an estimated 7% Disability Adjusted Life Years (DALYs) are lost on account of vaccine preventable diseases. (Ma et al., 2008)

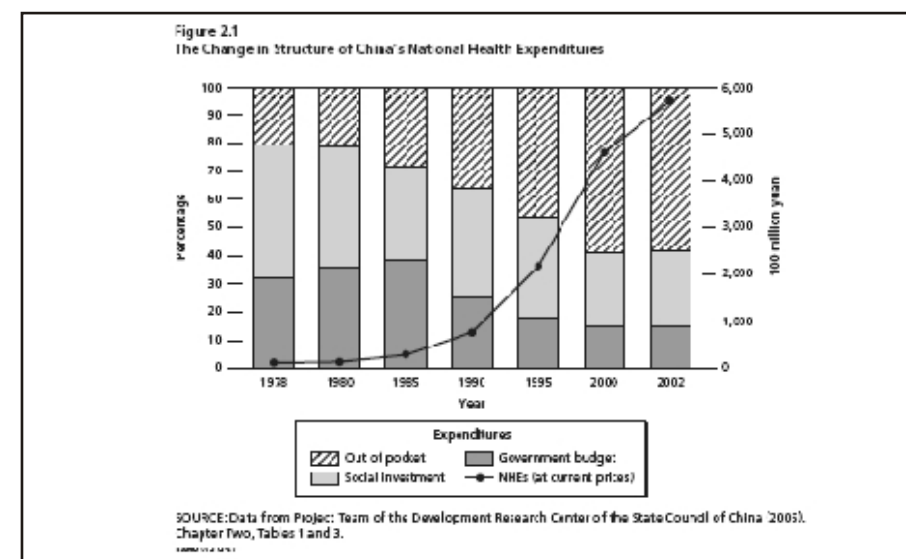
A Comparative Analysis

Financing :

The current levels of health expenditure at 4.5% and 3.6% of GDP for China and India respectively are quite low not only by the high income country benchmark (10.3% of GDP) but also compares unfavourably against emerging economies like Mexico (6.5%) and Brazil (8.6%). On a per capita basis, this amounts to \$112 for China and \$35 for India which is pitifully low by the standards of \$4752 for high income countries⁸. (All figures are from Mass, 2009)

As discussed earlier, the predominant source of financing health care in pre-reform China was from government budgets and social insurance spending, accounting for about 80 % of total health expenditure. Both these sources

have been declining in the post reform period with the dissolution of CMS in rural areas and the reduction in the level of government budgetary support to health facilities in general⁹. This has led to higher burden of health expenditure on individuals with OOP expenses zooming up over two and half times, from a level of 20% in 1978 to about 58% by 2002



On the other hand health care in India has largely been financed by OOP private spending in the absence of any form of social insurance spending and the meagre governmental spending on health. Public spending on health in India gradually accelerated from 0.22% in 1950-51 to 1.05% during the mid-1980s, and has stagnated at around 0.9% of the GDP during the later years (Sujata Rao et al., 2005). Government spending as a proportion of GDP has hovered around 20.25 percent during the past two decades, of which the level of spending on preventive/ promotive health care is only 4% - the rest is spent on public curative care (Yip et al., 2008). However, the fact that over 90% of this is spent in recurring expenditures such as wages, pension liabilities, drugs and other consumables greatly constrains the Government's course of action.

⁸Incorporating corrections for the Purchasing Power Parity the figures are \$236, \$95 & \$4112 for China India and High income countries respectively.

⁹As a proportion to the total health expenditure. Government has permitted hospitals to charge high user fee to ensure that a large part of the expenditure is recovered, thereby limiting fiscal commitment on the part of the Government

As a result of low priority accorded to health, which has been treated as consumption good rather than a productive good, the Governments have under invested in the health sector. As a result households have to bear more than a fair share of health expenditure, which is predominantly financed through the highly regressive OOP expenses¹⁰. This is high not only relative to OECD countries¹¹ but also in comparison to some of the developing economies¹². This not only exposes their population particularly the sickest and the poorest among them to financial shocks arising out of health expenses but also results in serious inequities in access to health care, since access to care in such a financing mode is determined by the ability to pay.

Financial protection against risks of catastrophic illness:

The overall impact of financial burden of illness remains very high and this is all the more for the poor since their spending on healthcare tends to be a much higher proportion of their incomes. For instance, the poorest quintile spent 40% of their income on health care in India where as the richest spent only 2.4% of theirs (Varatharajan et al, 2003). In rural China, the poorest quintile spends 27% of their income on medical expenses as compared to 7.7% by the richest quintile. (Yip et al, 2008).

Yip et al. (2008) have cited studies showing how medical expenses are responsible for pushing people below the poverty line (US\$1.08 per day). Health expenditures were responsible for increasing the percentage of people below the poverty line by nearly 20 percent in China, from 13.7 percent to 16.2 percent. In India, the corresponding figure is about 12%, but that is not much of a solace since the poverty rate base at which this is calculated is alarmingly high at 31.8%.

Access:

Although the stated goal of both governments is to ensure universal access to health services regardless of individual financial status, their chosen strategies have been largely ineffective in achieving this goal¹³. The barriers to access of health services include physical (timely availability of care) as well as financial obstacles. On the physical side the access has been limited on account of shortage of health care infrastructure and availability of trained manpower, particularly in rural areas. For instance Liu 2004 points out that

¹⁰ The extent of reliance on OOP as a percentage of health expenditure in China is 54.7% and India 74.6% [Mass, 2009]

¹¹ This figure for UK is 10%, for US it is 13% [Pauly et al. 2006]

¹² For instance the OOP as a % of total health expenses was 29% for Thailand and 15% for Mozambique (WHO 2006) as quoted in Ma et al., 2008

¹³ In China, this statement is true for the post 1979 period.

over the period 1980-2000, the number of township clinics in rural China declined by 14% while the number of large city based hospitals increased by 56%. Similarly, between 1980 and 1989, the number of health care professionals in the urban facilities increased by 235%, while primary health care workers in the rural areas declined by 36% (Liu, Hsiao et al 1999). Likewise in India, there is a serious shortage of public run primary health care infrastructure in rural areas with a shortfall of 16% on a normative basis in the number of PHCs/ SCs and a whopping 58% in case of the CHCs (Mavalankar et al, 2006). De Costa et al. 2007 report that while 72% of India's population is rural, over 75% of the doctors are based in urban areas.

Since the access to health services has been rationed by the ability to pay, there are considerable inequalities in consumption of health inputs by income class. Prima facie, the situation in China appears to be worse on this metric than India. Of those reporting an illness in the lowest income group in China, roughly 22% did not seek outpatient care in 2003 due to financial difficulties up from around 14% in 1993 (Yip et al., 2008, Appendix 2A). By contrast, in India this proportion was about 10% in 2004 up from about 8% in 1995-96. In addition to 36% patients who sought early discharge from hospitals due to lack of affordability, about 27% percent of low income respondents in China cited financial hardship as the reason for not seeking in-patient care despite being advised by a physician to do so.

Equity:

The financing mix of health care results in inequities in access by income, urban rural residency and by region. The inequities in access are also reflected in outcomes. For instance, the overall health outcomes in China and India mask considerable regional inequities, as would be apparent from the following table:

	Poorest Province		Richest Province		Best Performing province	
	IMR ¹⁴	LEB ¹⁵	IMR	LEB	IMR	LEB
China	60	<40	5	75	5	75
India	80	40	40	65	12	73

Source: (Yip et al. 2008, Exhibits 2 & 3, p 925)

¹⁰ The extent of reliance on OOP as a percentage of health expenditure in China is 54.7% and India 74.6% [Mass, 2009]

¹¹ This figure for UK is 10%, for US it is 13% [Pauly et al. 2006]

¹⁴ Infant Mortality Rate: Infant deaths per 1000 livebirths

¹⁵ Life Expectancy at Birth [years]

Data suggests that the raw measures of inter provincial inequalities have increased over 1980-2000 for China, where as it remained unchanged for India. The gap in urban rural health infrastructure has been discussed earlier. China National Health Survey 2003 found that 55.9% of their urban residence had insurance coverage, while for rural areas this was only 21.4% (Yip et al., 2008). Within this, the distribution of coverage is skewed in favour of the rich. In India, the IMR is 41.3% lower in urban areas as compared to rural areas. Besides, the health indicators of the disadvantaged social groups are considerably poorer than national averages (Mavalankar et al., 2006, Tables III & IV). Evidence of the extent of the inequitable access to facilities in India has been analyzed in a report by Mahal et al., 2001 where they report that the poorest 20 percent of the population are only able to access about 10 percent of the total net public subsidy on health.

Efficiency:

The inefficiencies in the health system of both countries arise out of market failures, but even more so on account of government failures. The fee for service (FFS) is the predominant mode of paying for health care in both countries. As the decider (doctor), is not the purchaser (patient), one source of inefficiency arises out of the perverse incentives of the provider to indulge in over prescribing the use high cost new technology interventions and expensive medication. This not only drives up the cost of health care, it sometimes may be deleterious from the point of long term health of the patient. Poorly informed patients being oversupplied with antibiotics and steroids by obliging doctors have long term adverse consequences for the whole system.

As mentioned earlier, China's public providers face private incentives. With reduced government subsidies and increased emphasis on meeting revenue targets¹⁶ through user fees, they function akin to for profit providers. This is further complicated by the insistence of the Government upon a distorted price schedule in which basic services are charged below cost and allows hospitals to make a higher margin on high tech interventions and drugs. The providers therefore have perverse incentives for over prescribing costly procedures and medicine. Not surprisingly, Meng et al., 2005 have found that 52% of the Chinese health care spending goes to purchase of drugs as compared to 19% for the OECD countries. Caesarean sections account for 40-50% of child births in China as compared to 25% births in US and Canada

(Anderson 2004). Similar behaviour is exhibited by the private providers in India, who face similar incentives. While systematic studies of the extent of overuse of medicine and interventions are not available, case studies do suggest that private practitioners prescribe more medicine than their public sector counterparts¹⁷.

A major source of inefficiency in India arises out of the poor incentives received by the government providers. Since the salary paid to health professionals is independent of the number of patient or their visits, this payment mode provides no economic incentive for the providers to service their client. This gets worsened by poor monitoring, with little or no chance of being punished for laxity. Thirdly, the lack of organized "voice" on the part of the poor patients and their inability to hold an errant provider responsible means that there is a complete lack of accountability on the part of the public health providers. Thus the vast network of public remains grossly underutilized (Mavalankar et al., 2006)

Fragmentation in the decision making in health systems among the national, provincial and local governments is another source of technical and allocative inefficiencies in both these countries. For instance, in the absence of any central directive regarding the respective roles, many provinces have tried to develop equivalents of the US Centre for Disease Control and Production (CDC) resulting in undue replication. In India, the disconnect between the provisioning of basic health care services and the central government's intervention in vertical disease control programmes (such as Polio eradication) or Family Planning has often led to disruptions in routine immunizations and routine health services (Devadasan et al., 2007).

Policy Lessons:

*"Focusing on clinical services while neglecting services that reduce exposure to disease is like mopping up the floor continuously while leaving the tap running"*¹⁸. The first lesson that emerges from the successes in improving the health status of the population in pre-reform China is that focussing on public health pays. There is a very high return on investments in preventive services such as vector control, immunization and public health knowledge dissemination to bring about desirable changes in behaviour. By reducing the communicable disease burden, which has a higher incidence among the poor more than the rich, it is also equity enhancing. Therefore, the first charge on health

¹⁷Mean cost of drugs dispensed or prescribed by private doctors was two times as much as the public sector doctors, some of which may have been due to over-prescription (Bhatia et al., 2004)

¹⁸Paraphrased from Garrett, Laurie Betrayal of Trust

¹⁶Yip et al., 2008 point out that government subsidies now contribute to less than 10% of the hospital revenues

expenditure in a country with limited resources should be on preventive/promotive health care.

Pre-reform China shows the catalyzing role that a centralized planning mechanism within the Government can play in organizing, regulating and integrating the key elements of a health system. In particular, it could help direct the resources financial, physical and human -to priority areas. But it is also true that the government needs to be sufficiently authoritarian to enforce compliance.¹⁹ Perhaps, this may be more difficult to achieve in democratic regimes. But democracy cannot be an excuse to justify the market anarchy created due to India's *laissez faire* approach to regulation of private providers. This has led to a complete break down of the referral system, overloading the tertiary facilities and rendering the basic care facilities almost redundant. There is complete lack of integration between the preventive and the curative set-ups. The highly uneven quality of service provision in India also highlights the need for effective regulation to control quality standards, even when private providers are permitted to play a dominant role in service provision.

Reliance on market exchange to dictate the allocation of health resources is likely to be biased in favour of costly curative medical care rather than low cost but highly effective preventive care. Owing to the public good characteristics of many aspects of preventive care approach, market would tend to under provide such goods as sanitation and hygiene, vector control, dissemination of public health knowledge and safe drinking water. This would limit the possibility of health care gains as is amply reflected by the experience in India and post-reform China. Hence, in view of the potential for market failures in the health sector, it is important to underline the need for a Centralized planning mechanism within Governments to prioritize allocations, particularly when there is a severe resource crunch

Government's role in the health system does not necessarily imply government control. The procurement and provisioning functions of health services can and should be separated and entrusted to different entities. While operational management of health facilities can be left to the private sector, managed care organizations could be entrusted to procure services at competitive rates. The Government funding could be spent on the principle of "money follows the patient" that would give the right incentives to the providers- public or private to provide services to the satisfaction of the client.

The fifth key lesson that emerges is that developing economies have limited public resources which are grossly insufficient in financing the total expenditure in health services. Thus communities shall be called upon to share some- perhaps a large - proportion of the burden of health expenditure. Chinese success with the prepaid CMS, despite its limitations²⁰, provides an important lesson that a mechanism of risk-pooling for redistribution of benefits between the rich and the poor, between the healthy and the sick is necessary if the goal of equitable access to health care regardless of their ability to pay is to be achieved. The conditions of "social solidarity" are unlikely to emerge from a free play of market forces and have to be government mandated. Therefore, there is an imperative for the government to play a catalyzing role in developing some form of social insurance for health financing, if the commitment to an egalitarian health system is not merely a rhetorical one. If communist China can achieve a near universal coverage (howsoever rudimentary it may have been) at a per capita PPP level of \$500, there is no reason why financial constraints can be cited as a pretext for not implementing such a scheme.

Another key lesson to draw is that both the systems need to urgently consider the inefficiencies arising out of the misaligned payment incentives to the providers, both in the public and the private sector. As disease burdens shift more and more from communicable to non-communicable diseases and the demand for more costly curative medical services goes up, it would become increasingly difficult to contain rising health costs and dislodge the vested interests from milking the system. It is, therefore, imperative to take a close look at inefficiencies arising out of payment incentives and other causes.

Conclusion:

China and India - with over a third of the world's population between them- have recently experienced rapid economic growth. But increasing growth rates have also been accompanied by growing income inequalities that have caused concern among the top political leaderships of the two countries. The ever-widening socio-economic gap between high- and low-income households poses challenges to achieving the societal goal of equal health status and access to health care. Both the Chinese and Indian Governments are committed to infusing sizeable additional funding (about 1-2% of the GDP) in the health sector. Both countries now have to decide how best to channel the additional funds and which services to use them for. But money alone will not be sufficient to deliver effective, high-quality care nor achieve

¹⁹Yip et al., 2008 point out that government subsidies now contribute to less than 10% of the hospital revenues

²⁰A small risk pooling base, poor managerial skills at the village level and abuse by corrupt officials.

gains in health outcomes unless accompanied by explicit policies to ensure that the increased funding is utilized efficiently. It needs to be channelized through appropriate financing and risk pooling mechanisms to increase access and cater to the needs of the poor and the rural segments of the population. Unless careful thought is given to reforming the delivery systems, strengthening regulatory systems and evolving the right payment incentives,

Appendix: Table1

Parameter	China	India
Population (Billion)	1.32	1.12
GDP per capita (\$)	2432	1046
Expenditure on Health as% of GDP	4.5	3.6
Per Capita expenditure on health (of which Government share) in \$ at Official Exchange Rate	112 (51)	35 (9)
Life Expectancy at Birth [years]	72	62
CMR age <5yrs/ 1000 persons	31	85
MMR (per 100,000 women)	56	540
Underweight babies proportion (%)	6.8	43.2
Death rate per 100,000 persons	701.5	988.8
(a) Communicable diseases/ Maternal/ Perinatal or Nutritional Conditions	83.7	401.9
(b) Non Communicable diseases	541.4	486.9
(c) Injuries	76.3	100
Immunization rates	93%	62%
Access to Sanitation facilities	65%	28%
Hospital Beds per 10,000 Population	22	3
Births Attended by skilled personnel (%)	98	47

(Source: Mass 2009 and Ma et al., 2008)

the cost effectiveness of additional spending would remain doubtful.

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INDIA'S MALNUTRITION -TRAPPED WITHIN TWO CYCLES

Veena S. Rao*

Abstract

The Paper examines the manifestations and causes of Malnutrition in India and how it is firmly trapped between two Concentric Cycles-The Inter-generational Cycle of Malnutrition and the Cycle of Calorie Protein and Micro-nutrient Deficit (CPMD) and Poverty. Both cycles intersect at several points and perpetuate each other. The Paper goes into a situation analysis of current policies and programmes and examines the existing gaps within them, and lists Essential Interventions that must form the minimum strategy to address Malnutrition, making a special point that they must be simultaneous and must cover the entire life cycle of women and children to make immediate impact within one generation. A Pilot Project based on this principle resulting in insignificant improvement of the nutritional status of the population validates the hypothesis. The Paper concludes with the suggestion that only an overarching High Level Committee led by the Prime Minister or the Planning Commission that can assemble and monitor the interventions of the key sectoral Ministries can provide a solution.

India's malnutrition has reached emergency proportions, both in terms of percentage and absolute numbers. About 50% of India's population suffers from protein-calorie/micronutrient malnutrition, and India is home to almost one-third of the world's undernourished children¹.

But malnutrition is a silent and invisible epidemic where even the sufferers of malnutrition are not aware of their affliction. Hence, there is neither demand from the afflicted to the State for addressing it, nor do policy makers accord it high priority in the national development agenda.

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¹ Lawrence Haddad; Lifting the Curse: Overcoming Persistent Malnutrition in India, IDS Bulletin Volume 40, Number 4, July 2009

Important direct indicators for judging the nutritional status of a society are:

Infant Mortality Rate (IMR), Under Five Mortality Rate, Maternal Mortality Rate (MMR), Chronic Energy Deficiency (CED) and Anaemia among women and men, Anaemia among Children, Low Birth Weight (LBW), Stunting/ Wasting/ Underweight among children, Immunization Status/ and Vitamin A coverage of Children.

Indirect and subtle causes that aggravate malnutrition are: lack of awareness and information, low socio-economic status of women, gender discrimination across the life cycle, female illiteracy, low access to safe drinking water, poor personal hygiene and lack of sanitation, the last two being the most direct of the indirect causes. Many causes are associated with poverty, though not necessarily caused by it.

In spite of India's spectacular economic growth, its nutritional indicators remaining stubbornly poor with slow rate of progress. (Table 1a), giving it the nomenclature of an 'Economic powerhouse and nutritional weakling'¹²,

Table 1a

	NFHS 2 (1998-99)	NFHS 3 (2005-06)	Other surveys					USA*		Nigeria*		China*		Bangladesh*	
			SRS 2003	SRS 2005	SRS 2007	SRS 2009	SRS 2004-06 MMR	1996	2007	1996	2007	1996	2007	1996	2007
Low Birth Weight Babies (LBW)	N.A.	21.5 30.0*						8	8	16	14	9	4	50	36
Infant Mortality Rate (IMR)	67.6	57		58	55	53			6	84	100	44	23	106	54
Under 5 Mortality Rate	94.9	74.3							7	191	194	43	27	117	73
Children under 3 who are Stunted	45.5	38.4													
Children under 3 who are Wasted	15.5	19.1													
Children under 3 who are Underweight	47	45.9							2	36	29	17	8	66	48
Maternal Mortality Ratio (MMR)	540	N.A.	301				254	17	11	1000	1100	95	45	850	570

* Human Development Report, UNDP, 1996 and 2007

² ibid

Table 1b

Indicators		NFHS 2 (1998-99) %	NFHS 3 (2005-06) %
Children 12-35 months who have received Vitamin-A dose in last 6 months		17.1	21
Anaemia among Children		74.2	79.2
Vaccination coverage (basic - all)		42.0	43.5
Anaemia among Women	Ever married women (15-49yrs.)	51.8	56.2
	Pregnant Women (15-49 yrs.)	49.7	57.9
Chronic Energy Deficiency - Body Mass index, Men		N.A.	28.1
Chronic Energy Deficiency - Body Mass index, Women		36.2	33
Safe Drinking Water		62.3	87.9
Sanitation		36	44.6

Dr Haddad adds, "International evidence shows that for every 3-4% increase in per capita income, undernutrition rates as measured by low underweight rates should decline by 1%. For India, this relationship does not seem to hold. Income increases do not seem to move nutrition status significantly, even though they seem to translate through to declining poverty rates."³

What then differentiates India's malnutrition that it still remains chronic and insulated from the gains of economic growth?

India's malnutrition lies trapped between two Concentric Cycles-the Intergenerational Cycle of Malnutrition and the Cycle of Calorie, Protein and Micronutrient Deficit, (CPMD) and Poverty (Appendix), both intersecting and perpetuating each other at several points.

The Intergenerational Cycle of Malnutrition firmly binds low birth weight babies to stunted, underweight or wasted children, leading to anaemic, underweight adolescent girls, who become malnourished mothers and in-turn give birth to low birth weight babies, perpetuating the cycle of malnutrition.

Simply put, it works like this. A new born with low birth weight (less than 2.5 kg) has a high risk of dying in early infancy⁴. On survival, deprivation of

³ Lawrence Haddad; Lifting the Curse: Overcoming Persistent Malnutrition in India, IDS Bulletin Volume 40, Number 4, July 2009

⁴ Neonatal mortality rate is 30% higher for a smaller than average baby and 183% higher for a very small baby -NFHS 3

colostrum, a rich source of nutrients and the first administration of antibodies for providing immunity⁵ increases the neonate's risk to infection. Lack of exclusive breast feeding for the first six months⁶, delayed and sub-optimal complementary feeding (in terms of quantity, quality and frequency) beyond 6 months⁷ further aggravates undernutrition. Complementary food prepared in an unhygienic environment leads to infections and diarrhoea. Poverty, lack of information and superstition are important factors that account for these negative nutritional practices that are more pronounced towards a girl child as she is likely to face discrimination from within and outside the family even relating to intra-food distribution, health care and access to education. She will in all probability grow to be an anaemic, malnourished adolescent with a below normal BMI, be married before 18 years of age⁸, and have quick, repeated pregnancies. Her weight gain during pregnancy will be inadequate, the foetus will suffer from Intrauterine Growth Retardation and be born a low birth weight baby.

In the "*Commentary: The Asian Enigma*",⁹ the authors succinctly sum up that higher prevalence of low birth weight in India is the key factor causing higher malnutrition than Africa. (1/6 babies born in Sub-Saharan Africa are LBW as against 1/3 in India.) LBW reflects "the condition of women, and particularly their health and nutrition, not only during pregnancy but over the whole of their childhood and young lives."¹⁰ Evidence indicates that African women gain around the ideal 10 kilos of weight during pregnancy as against South Asian women who gain around 5 kilos only, with anaemia rates almost half of Indian women. As to why child malnutrition rates are greater than the incidence of Low Birth Weight, the Commentary suggests that "social conditions that lie behind low birth weight continue to affect the nutritional well being of the small child," and that 'the quality of perhaps the most important determinant of a child's proper growth viz., child care suffers along with the quality of women's own lives.'

⁵ Only 23.4% of children under 3 years of age were breast fed within one hour of birth - NFHS 3

⁶ < 50% infants are exclusively breast fed for the first six months NFHS 3

⁷ Only 55.8% of children in the age group of 6-9 months received semi-solid food and breast milk - NFHS 3

⁸ 44.5% women in the age group of 20-24 years are married before the age of 18 years - NFHS 3

⁹ Commentary: The Asian Enigma: Progress of Nations, 1996, Vulimiri Ramalingaswami, Urban Jonsson and Jon Rhode, UNICEF NY

¹⁰ A view reiterated by Amartya Sen; India: Development and Participation, OUP 2002, Page 336.

The other vicious Concentric Cycle of Calorie, Protein and Micronutrient Deficit, (CPMD) and Poverty afflicts at least 30% of India's households,¹¹ cutting across all age groups.¹² Evidence indicates that per capita calorie consumption for rural India has not improved in spite of economic growth.¹³

This cycle has an extremely negative impact both on the quality of human resources and their capabilities, and on economic growth. CPMD leads to low working capacity among adults and consequently low income generation, perpetuating the cycle of poverty and CPMD. It also causes morbidity, lower resistance to disease and capacity to recover from illness, further reducing earning capacity and productivity in adults. Among children, it reduces physical/ cognitive growth and learning capability, causes morbidity and mortality, added health care costs to families or the State, and in all probability such children who reach adulthood will again be entrapped in the vicious concentric cycles of malnutrition and poverty.

Based on the NNMB repeat surveys that about 30% of households consume less than 70% of energy requirement¹⁴, it is calculated that each individual loses Rs. 30 per day (4 hours of man day lost each day) on account of calorie/energy deficit, and India loses US \$29 Billion annually (4% GDP) in man hours lost due to malnutrition. (4% GDP)¹⁵ These findings are generally corroborated by data from NNMB Technical Reports 20, 21 and 22¹⁶.

Compounding both cycles are diverse and heterogeneous aggravating factors ranging from Physical Factors, such as, hunger, calorie-protein-micronutrient deficit, infection and disease; Socio-economic and Historical Factors, such as, poverty and low income, illiteracy and lack of skills, lack of information and awareness even within poverty purchasing power; Attitudinal, lack of awareness/superstition regarding proper maternal/child care and feeding practices, gender discrimination in community and family even in intra-family food consumption, early

¹¹ NNMB repeat surveys 1988-90 and 1996-97

¹² NNMB Technical Reports 20, 21, 22

¹³ NSSO rounds 1993-94, 1999-2000, 2004-05. Report on the State of Food Insecurity in Rural India, MS Swaminathan Research Foundation - WFP, 2008, Pages 31- 32

¹⁴ Calorie deficit data of NNMB repeat surveys 1988-99, and 1996-97 is generally corroborated by data from NNMB Technical Reports 20, 21 and 22.

¹⁵ Veena S Rao, Malnutrition an Emergency: What it Costs the Nation, CAPART 2008, Pages 24-30

¹⁶ Report 20 is a Special Report on the Diet and Nutritional Status of Adolescents, 2000; Report 21-Diet and Nutritional Status of Rural Population, 2002; Report 22-Prevalence of Micronutrient Deficiencies, 2003. Complete Reports are available at www.nnmbindia.org/downloads

marriage of girls and frequent pregnancies; and Governance related, such as, inadequate and poor healthcare service delivery systems for children and women, low access to safe drinking water and hygienic sanitation.

To add to its complexity, malnutrition in a person remains largely invisible until it is too late. Because of lack of information and awareness, its visible manifestations, viz., under-weight, anaemia or low body mass index are not widely noticed or considered serious health concerns by the family or community, but merely accepted as natural physical traits or the result of poverty. Adults with CED and anaemia attribute their lower energy levels and morbidity to poverty and hard physical labour.¹⁷ The invisibility of malnutrition, juxtaposed as it is with several visible crises, such as floods, drought, or epidemics, could perhaps be the reason for both demand and supply side apathy.

In this context, the question as to why India's malnutrition situation is not improving in spite of economic growth, and why several on-going programmes have failed to make significant impact would get clearer answers.

Situational Analysis of Current Policies and Programmes

- (a) India today has no National Programme to combat Malnutrition. Several programmes¹⁸ address certain aspects of it, but no comprehensive national programme with the direct objective of combating malnutrition exists in the country. One gets the distinct impression that from the Fifth Five Year Plan onwards, the ICDS, a programme meant for Integrated Child Development Services, (one component of which is supplementary nutrition), came to be indelibly perceived by government and other agencies as the national programme to address malnutrition. This misplaced belief could perhaps be the reason as to why a National Programme in Mission Mode for Combating Malnutrition has not emerged. A simple examination of the Concentric Cycles and compounding factors clearly indicates that any strategy to combat malnutrition in India must go far beyond the ICDS design and encompass multiple inter-sectoral interventions. Presently, in the absence of seamless

¹⁷ This has been confirmed by the author through interviews with parents of underweight/stunted children and adolescents

¹⁸ Mid Day Meal Programme, Kishori Shakti Yojana, Vitamin A Supplementation Programme, National Nutritional Anaemia Control Programme, and the National Iodine Deficiency Disorder Control Programme

and simultaneous interventions, the gains accruing from the existing, dispersed and sometimes isolated interventions are lost on account of absence of other critical interventions.

- (b) As already stated, India's malnourished are trapped in the Inter-generational Cycle and the Cycle of Calorie Protein Micronutrient Deficit, (CPMD) and Poverty. However, the current policies and programmes do not address malnutrition inter-generationally or aim to specifically address the CPMD, except in general through the TPDS system, the coverage, content and efficiency of which forms subject of an ongoing debate in the context of the proposed Food Security Act. Even assuming that the TPDS¹⁹ is working efficiently at full coverage, it only provides for cereals and in some States pulses and sugar. While this may provide a subsistence diet for the poor, it does not provide nutritional security of adequate calorie-protein and micronutrients required to combat malnutrition.
- (c) There is inadequate awareness and information regarding proper nutritional practices amongst the population, both above and below the poverty line. The percentage of people suffering from malnutrition/ anaemia clearly exceeds the percentage of people below the Poverty Line, indicating that at least 10-15% of the population suffer not because of poverty, but lack of awareness and information. Despite recommendations in the 3rd, 5th and 11th Five Year Plans, and the National Nutrition Policy 1993, no public nutritional awareness programme has yet been launched, especially targeting the poor, regarding proper nutritional practices within their purchasing power.
- (d) Certain crucial prescriptions of the National Nutrition Policy, 1993, the governing document on the subject have not yet been translated into National Programmes, viz., popularization of low cost nutritious foods, reaching the adolescent girl, fortification of essential foods and control of micronutrient deficiencies amongst vulnerable groups.
- (e) Programmatically, no single intervention can eradicate malnutrition. The package of interventions must be widely inter-sectoral so as to address at least a majority of the causes listed in the concentric cycles; they must be simultaneous so that the benefit of

¹⁹ Targeted Public Distribution System

one intervention is not lost on account of the absence of another; and they must cover the entire life cycle of women and children to create an immediate impact within one generation on the nutritional status of the three critical links of malnutrition, namely, children, adolescent girls, and women. Since the subject is so inter-sectoral, vertically and horizontally, setting up a functional and effective coordination and monitoring mechanism between the key nutrition impacting Ministries (whose first priority would be their own substantive mandates) viz., Women and Child Development, Food, Agriculture, Health, Education, Rural Development, Drinking Water and Sanitation, Panchayati Raj etc., continues to be a major governance deficit.

Escaping from the Vicious Concentric Cycles: Essential Interventions

In 2007, Dr. M.S. Swaminathan assembled under his leadership the Coalition for Sustainable Nutrition Security in India, a think tank representing experts, academics, activists, NGOs, government and international agencies. In February 2008, the Coalition requested an Expert Task Force to review nutrition security in India in order to highlight the urgent need to address high levels of malnutrition in India; develop recommendations for priority actions based on evidence and programming experience; and help build awareness, capacity and commitment among policy and programme leaders for implementation of the recommendations.

The Coalition after extensive debate, consultation and research on existing evidence based data recently concluded two consensus Papers: "Reducing Malnutrition in Infants and Young Children in India"²⁰ and "Essential Interventions for Improving Girls' and Women's Nutrition in India"²¹ The Papers capture and exhaustively enumerate seamless essential interventions to be taken by Government, NGOs, PRIs and PPP to address malnutrition in India.

Sixteen Essential Interventions emerging from these Documents are:

1. Timely initiation of breastfeeding within one hour of birth
2. Exclusive breastfeeding during the first six months of life
3. Timely introduction of complementary foods at six months

4. Age-appropriate complementary feeding, adequate in terms of quality, quantity and frequency for children 6-24 months
5. Safe handling of complementary foods and hygienic complementary feeding practices
6. Full immunization and bi-annual vitamin A supplementation with deworming
7. Frequent, appropriate, and active feeding for children during and after illness, including oral rehydration with zinc supplementation during diarrhoea
8. Timely and quality therapeutic feeding and care for all children with severe acute malnutrition
9. Improved food and nutrient intake for adolescent girls particularly to prevent anaemia
10. Improved food and nutrient intake for adult women, including during pregnancy and lactation
11. Improved quantity and quality of food and nutrient intake (Focusing on girls under two, adolescents, pregnant women and lactating mothers)
12. Prevention and Management of Micronutrient Deficiencies, particularly Anaemia in Adolescent Girls and Women
13. Improved Sanitation and Hygiene practices and access to safe drinking water
14. Universalization of Female Education and Completion of Secondary Schooling for Girls
15. Increased Access to Basic Health Services
16. Improved Gender Equity

(Awareness Generation, Gender Equity, Community Participation and Social Inclusion, and Community Monitoring are cross-cutting themes across all interventions.)

The Essential Interventions, on the face of it, might appear rather simple and ordinary, stated several times before, with most of them already forming part of ongoing programmes. However, a closer look at the list would reveal that every direct, indirect and compounding cause of malnutrition as depicted in the two Concentric Cycles has been addressed, covering the entire spectrum of Physical, Socio-economic and Historical, Attitudinal and

²⁰ Complete text available at www.nutritioncoalition.in

²¹ *ibid*

Governance related factors.

A Pilot Project based on merely some of the food based and awareness generation components to address the concentric cycles, following the inter-generational approach has been implemented by the author covering all children 0-6 years, adolescent girls and pregnant and lactating women in 50 villages each of two chronically malnourished, tribal Blocks of Jawhar and Mokhada in Thane District, Maharashtra through the production of energy-rich nutrition-dense foods prepared by women SHGs and consumption by the targeted groups.²²

The data after 19 months of implementation records significant improvement in the nutritional indicators of all children 0-6 years, adolescent girls and pregnant and lactating women, the most notable findings being reduction in low birth babies and infant mortality by more than 50%, and complete elimination of Grade 3 and 4 malnutrition.²³

The table below states some findings.

Indicators	Jawhar		Mokhada	
	Baseline, (Sep. 07)	After 19 months (May 09)	Baseline, (Sep. 07)	After 19 months (May 09)
LBW	23.74%	9.7%	32.40%	12.46%
IMR	10.49%	4.8%	9.8%	2.06%
CMR	2.09%	0.23%	3.7%	1.03%

What Next

Despite pronouncements by the Prime Minister in his last three Independence Day speeches regarding combating malnutrition, India has not yet formulated a strategy in terms of a quantified framework.

It can only be assumed that the daunting inter-sectorality and heterogeneity of the interventions are so mired in bureaucratic procedures and lost among primary sectoral priorities of the concerned Ministries, that the nodal Ministry for Women and Child Development dealing with Nutrition requires facilitation from an overarching coordination mechanism to be able to tightly integrate and monitor the multiple heterogenous interventions into a cohesive programmatic strategy, which must then percolate to the grassroots.

The author has persistently advocated that a High Level Committee be appointed and led by the Prime Minister or the Planning Commission with the specific objective of drawing up a roadmap for combating malnutrition in

a time bound manner with quantified, monitorable targets, robust monitoring mechanisms and proper accountability. This would require administrative skill and innovation in weaving the essential interventions in a tightly integrated manner and ensuring that they operate simultaneously at the grassroots, where the action lies. Most interventions are mandated in ongoing programmes, but are not adequately operationalized. Programmatic gaps must be filled by new interventions, and coverage must be universalized through awareness generation and demand creation. Non functioning interventions and agencies must be substituted by innovative functional alternatives. This presupposes a combination of political will, serious strategy direction and high level oversight, efficient execution and accountability, social inclusion, grassroots participation and involvement. Only then can India break the two concentric cycles of malnutrition and make the impact sustainable enough to ensure a higher quality and more productive life to be inherited by the next generation.

¹ PM'S Independence Day Speech, 2009

"It is our ardent desire that not even a single citizen of India should ever go hungry. This is the reason why we have promised a food security law under which every family living below the poverty line will get a fixed amount of foodgrains every month at concessional rates. It is also our national resolve to root out malnutrition from our country. In this effort, special care will be taken of the needs of women and children. We will endeavour to extend the benefit of ICDS to every child below the age of six years in the country by March 2012."

PM's Independence Day Speech, 2008

"Today, while speaking about the achievements of our Government, I wish to make one more promise. We have done much, but I realize that there is more to do. The problem of malnutrition is a curse that we must remove. Our efforts to provide every child with access to education and to improve health care services for all citizens will continue...."

PM's Independence Day Speech, 2007

"The problem of malnutrition is a matter of national shame. We have tried to address it by making the mid-day meal universal and massively expanding the anganwadi system. However, success requires sustained effort at the grassroots. Infants need to be breast-fed, have access to safe drinking water and health care. We need the active involvement of the community and panchayats to see that what we spend reaches our children. I appeal to the nation to resolve and work hard to eradicate malnutrition within five years."

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AID EFFECTIVENESS IN HEALTH - CAN SWAp SWEEP THE MESS?

Arti Ahuja *

Abstract

The article examines in depth the funding of health programmes and their effectiveness. The multiplicity of both donors and the types of aid, have given rise to a host of problems. SWAp has come in as a possible solution. Its potential, strengths and weaknesses to address the emergent issues are discussed in the article.

Background

Aid to developing countries, both in the form of grants and loans has been growing in recent years, reaching about \$ 104 Billion in 2006 [OECD 2007]. Although still insufficient in terms of volumes, [it is still .31% of the Gross National Income of donor countries as against the target of .70% set by the UN]; the effectiveness of whatever is given is also undermined by the multiplicity of both donors and type of aid. Emerging donors have joined the community, while in the past 50 years no major institution has exited the aid market through closure or merger. As a consequence, there are considerably more donors in existence today over 40 bilateral agencies, 15 UN system agencies, and 20 global and regional financial institutions [Besanzon, 2003], than when the share of aid in GDP was more. As the number of donors and the volume of aid are set to grow, so do transaction costs for developing countries by requiring them to manage multiple programmes using different donor procedures [OECD 2006].

These transaction costs arise because most multilateral and bilateral aid agencies funding public health programs in a country often run their own projects or programs in different areas. Driven by unique and disparate donor philosophies and interests, most of these are either subject/disease based vertical or geographical area based programs impacting limited areas of health systems. In any case they do not provide a holistic solution, but an

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incremental one, leaving significant gaps in some areas while creating unnecessary overlaps in others, especially facilities and human resources. Increasingly, global attention is being drawn to the inherent inefficiency of the international aid architecture and the consequent priority setting in national health systems.

The issue:

This situation has arisen primarily because the donor agencies are themselves structured in different ways. Some of it is to do with the way they were conceived and set up, the way they have evolved and how much their management structures permit flexibility of operations and decentralized decision making within their own organization. Over time, even though their funds may be directed to the same group of countries, the donors have become almost separate entities as far as the borrower/recipient is concerned, with their separate procedural and operational requirements. Thus, precious resources get frittered away, purely due to procedural reasons, leading to a lack of aid effectiveness. From the borrower's standpoint, this duplicates effort, detracts from efficiency, creates lopsided priorities depending on the "strength" of the agency and takes away useful management time and effort. This high cost of managing aid is evidenced by some facts in 2005, donors fielded 10,453 missions in 34 countries

- an average of 307 missions per country per year; and only 9 percent of donors undertook mutual assessments of progress [OECD, 2006, p33, 55]. It is not only national, but also district level agencies that suffer from this deluge of managing aid. Annexure I shows the amount of valuable time district level health staff in Tanzania devote to hosting missions and report writing. Lack of harmonization among donors is cited as the root of this high time cost [WHO 2007].

Aid effectiveness in health: Where do we stand today?

It has become evident that improving health system performance does not come from increasing inputs alone. Management of these resources is equally important in ensuring the desired outcomes. There are cross cutting governance and management issues with deep impact on the way countries run their affairs, at least in the health sector. The recipient countries are often strapped for money to carry out health reforms that also have long gestation periods and whose results may be seen after some years. Thus there is congruence between elected governments and donors to go in for quick fix solutions where efforts are apparent and results are visible to their

constituencies. This has led to distorted resource allocations, witness the debate on the overfunding of some diseases while PHCs are under funded etc. While the recipient country must ensure proper allocations, it is often unable to do so as its funding inputs are determined by the donor although some negotiations do take place, but the bargaining positions are not the same hence the need for just allocations at the donor community level. Thus, firstly, global resources need to be directed to the right areas, and secondly, they need to be managed well. For both to be ensured, both donors and recipients have to work jointly global resource allocation thus has to be as much a fair process as national resource allocation, and feasible strategies to achieve this will need to be found.

In order to ensure just global resource allocation and use, and also enable developing countries to focus their resources and take up serious health sector reform, a reorientation of donor coordination and effort is needed, especially when the countries are heavily aid dependant. A recent approach, called the sector wide approach [SWAp] has been proposed as a strategy. A SWAp [ODI, 2001] is a process in which donor funding for the sector supports a single policy and expenditure programme, under government leadership, and by adopting common approaches across the sector. It is generally accompanied by efforts to strengthen government procedures for disbursement and accountability. Arguments for supporting a sector wide approach as opposed to the traditional project approach are: reduced duplication, lower transaction costs, increased equity and sustainability, and improved aid effectiveness and health sector efficiency. Basically, four key areas are strengthened which have implications for public health: country leadership and ownership, institutional and management capacity, flow of resources, and monitoring and evaluation. Hence a sector wide approach as opposed to a differentiated, disjointed, project based one appears to provide a viable solution to the current inefficiencies in both directing and managing aid, thereby strengthening aid effectiveness.

Using a sector wide approach : the argument of ethics

Ensuring that aid is managed and utilized effectively rests on the assumption of providing a level playing field to the recipient country. Donors do not, however, work together to lessen transaction costs for the recipients; and rather impose different processes and time requirements on the recipients. This implicitly ensures that the desired results are not achieved, as the developing countries often do not have the system capacity to effectively

manage conflicting and disparate donor requirements. Thus the issue of the ethics of the present aid architecture which hinders aid effectiveness due systemic deficiencies comes into play. This is unethical especially in the case of loans as the countries also get limited in their repayment capacity if they are hamstrung in drawing the best out of the projects.

For the global community of donors, justice in resource allocation hinges on ensuring accountability in decision making. Ethical theorists now postulate the general conditions that a process of decision making must meet if it is to yield outcomes that are perceived as fair and legitimate. In order to ensure accountability for fairness, there should be publicity, relevance, provision for revision and appeals and regulation [Daniels, 2007]. Taken together, adherence to these conditions makes it possible to “assess health plan and public agency decisions in the light of wider societal views about fairness”. Thus, taking a country scenario, the donors plus the national government must follow the fair process to ensure accountability. In other words, ensuring the fairness in donor aid allocation and management requires publicity, relevance and a provision of appeals and regulation. At a national level this will imply pooling of donor funds, appropriate publicity about their intended use, assessing their relevance and ensuring that there is accountability. At the global level, a similar process needs to be ensured at a larger level, with close monitoring by a regulator to ensure that it is carried out.

Ensuring aid effectiveness through SWAp: the response

Concerns about donor coordination are not new, and a multi sector, multidisciplinary, long term development vision approach, as well as country leadership in designing the 'architecture' of local donor cooperation has been emphasized [Wolfensohn, 1999]. However action did not move beyond platitudes and occasional efforts at coordination till the Paris Declaration on aid effectiveness, 2005, which forms a watershed. It is an international agreement to which over one hundred ministers and heads of agencies adhered and committed their countries and organizations. The objective is to increase efforts in harmonization, alignment and managing aid for results with a set of monitor able actions and indicators [Annexure II, Paris declaration, OECD]. Specifically it was agreed to give special attention to “increasing complementarity, sector wide and programme based approaches; expanding use of delegated cooperation; and reducing the number of project implementation units and better integrating them into ministries”. Thus the requirements of publicity and relevance in the fair

process requirements seem to have entered the process of aid management even though not explicitly.

The regulation or monitoring of aid effectiveness targets has in the meantime, been taken up by the global community which encompasses not just countries, but also private interest groups and NGOs. In February 2007, government officials and development experts from more than 40 developing countries, donor agencies, private companies and NGOs concluded the Third Roundtable on “Managing for Development Results” in Hanoi with a call for stronger action to improve the number and quality of development results achieved with international aid. This will be followed up in the Third High Level Forum on Aid Effectiveness scheduled to be hosted in Accra in September 2008. The OECD Working Party on Aid Effectiveness regularly monitors the targets and achievements of the Paris declaration. Recently, 26 NGOs have also called on donors to produce an annual report charting their progress on reducing conditionality [UN2005].

The civil society organizations have also injected the issue of democracy and rights in the language of effectiveness. Increasingly, NGOs have been championing a rights based approach specifically, including space for organized efforts of the poor to claim and promote their rights [Reality of aid report 2008], and prioritizing accountability to citizens. Similarly, a greater role for Civil Society Organizations is being sought on grounds of ensuring greater accountability [World Vision, 2008]. Thus, in order to ensure transparency and accountability to taxpayers and maximize the impact of aid [Garner et al, 2000], the realization is growing that it is important for donors and countries to establish an open process to evaluate and synthesize evidence around sector wide approaches and other major policy decisions relating to international aid.

Is SWAp workable?

To date, the strategy has been tried in various forms in different countries, but the evidence is generally mixed [Hutton et al, 2004], both because SWAps take a long time to be set up and also because compliance of the Paris declaration is recent and tardy. In a few countries, such as Mozambique, Tanzania, Uganda, and Vietnam, governments and development partners have made solid progress; however this process is not so much a result of the Paris declaration as an outcome of years of governmental efforts in setting out priorities on development assistance, an effective implementation process, a mature government donor aid relationship, and a well functioning aid coordination mechanism focused on operational issues [WB GMR, 2006].

Overall, major donors acknowledge the importance of a sectorized approach by noting that operations yield good results when they support a country formulated, broadly owned sector strategy with clear objectives [WB ARDE, 2006]. Specifically, SWAp in Ghana was a success as resources to the health sector were channeled through a common Health Fund, with common financial management and procurement systems for all contributing partners. For operationalizing SWAps, UNDP has collated/helped in developing various Management Information Systems such as: aid MIS, aid management platform, development assistance database, development cooperation database, ministry of finance external finance database for Egypt called “Decode” [UNDP Devaid 2008] etc.

Conclusion and recommendations:

The need for sector wide donor coordination seems to be gaining ascendancy in the discourse on international aid effectiveness. The concern has got concretized in the Paris declaration. However, in spite of the seemingly impressive strides made in the global community for a sector wide approach, SWAp as an operational philosophy is at different stages of ownership within different donor agencies [UNFPA 2005]. There is some resistance as donors are required to give up the right to select which projects to finance and replace evaluation of discrete projects by joint reviews of sectoral performance [Cassels, 1997]. Even where progress has been made through SWAps, these efforts rarely align the sector with the overall macroeconomic framework or address cross-sectoral issues [WHO 2007]. However in evaluating the success, it must be kept in mind that the baseline indicators themselves are very low [Annexure III] and it will take time to achieve targets. For example, in 2005, only 18% of donor missions were coordinated as against the target of 100%.

On the other hand, it speaks of the usefulness of the sector wide approach that from its initial focus in health and education, it is now also being used in areas of infrastructure, roads, water, agriculture/rural development etc [WB ARDE 2006]. To ensure macroeconomic and cross-sectoral convergence, more broad based action is needed to ensure aid effectiveness and accountability of both parties to each other. Accordingly the following recommendations are made:

- At present donor aid evaluations are done within their own organizations and then shared with the recipients. This leads to both time and knowledge lags in corrective action by recipients. To be

useful to recipient countries, donor performance monitoring and evaluation can take place jointly at the country level. Thus SWAp must evolve from achieving process convergence to outcome convergence.

- Donors often have no mechanism by which to jointly inform recipients of future action plans. In consequence, constrained in terms of critical data. Ensuring this will also meet the requirement of publicity and relevance in a just process.
- In many cases the full amount of aid does not go to the recipient country. Instead, high proportions of economic decision making in the more aiddependent countries is severely expenditures are made directly to the suppliers of goods and services to aid agencies some funds also go to foreign consultants, notably from the donor country. Decisions as to the uses and recipients of such “direct funds” are made exclusively by the donors [Walford, 2003]. In Tanzania, where efforts have been made to transfer ownership of development programmes from aid donors to the government, only 30 per cent of aid was estimated to flow through the government budget in fiscal year 1999 (Government of Tanzania/World Bank, 1999). To correct this, the donors can have common consultants, technical assistance and service contracts beyond just SWAp. This will reduce both the costs of procurement and management for recipients.
- There is also the need to have predictable and reliable resource inflows than to have large flows that are highly erratic and uncertain. Countries that are heavily dependant on aid could be given budgetary flexibility, making adequate provision against corruption and leakages, to bridge funding gaps. Alternately, donors could mutually agree to pace their fund flow [Helleiner, 2000]
- The success of donor coordination, especially in sector wide approach will have to be evaluated against a standard framework, something like the one suggested at Annexure IV. This will of course, be subject to adoption by all parties concerned. It will aid in a more objective evaluation of the approach, and based on the results, the national strategy could be modified.

To conclude, in spite of the initial hiccups, there is no doubt that there is a climate of purposeful movement towards donor coordination in making aid

more effective. The international agreement on achieving the Millennium Development Goals has provided an impetus to not frittering away precious resources in developing countries and strengthened the resolve of accelerating the effectiveness and accountability of international aid through empowering recipient nations. Many in the donor community believe that the MDGs provide clear crosscountry benchmarks and associated pressure for positive emulation, as well as monitorable progress indicators that serve to increase donor accountability for results [Rogerston, 2004]. The process has accelerated with the Paris declaration. With the inclusion of NGOs and the rights based approach, greater accountability, both from recipients and donors can be expected. This will provide a further fillip to dovetail international aid efforts and manage aid through uniform structures like SWAp that reduce transaction costs for countries and make aid more effective in achieving global and national goals. The opportunities exist, time is ripe and both parties feel the need for greater cooperation with sincere effort and less posturing, the world might just see the dawn of an egalitarian relationship and a more ethical allocation and use of funds meant for the poor of the world.

Annexure I



Source : WHO, 2007, Working Paper 9

Annexure II

Indicators of Progress

To be measured nationally and monitored internationally

OWNERSHIP		TARGET FOR 2010
1	Partners have operational development strategies — Number of countries with national development strategies (including PRSs) that have clear strategic priorities linked to a medium-term expenditure framework and reflected in annual budgets.	At least 75% of partner countries have operational development strategies.
ALIGNMENT		TARGETS FOR 2010
2	Reliable country systems — Number of partner countries that have procurement and public financial management systems that either (a) adhere to broadly accepted good practices or (b) have a reform programme in place to achieve these.	(a) Public financial management — Half of partner countries move up at least one measure (i.e., 0.5 points) on the PFM/ CPIA (Country Policy and Institutional Assessment) scale of performance. (b) Procurement — One-third of partner countries move up at least one measure (i.e., from D to C, C to B or B to A) on the four-point scale used to assess performance for this indicator.
3	Aid flows are aligned on national priorities — Percent of aid flows to the government sector that is reported on partners' national budgets.	Halve the gap — halve the proportion of aid flows to government sector not reported on government's budget(s) (with at least 85% reported on budget).
4	Strengthen capacity by co-ordinated support — Percent of donor capacity-development support provided through co-ordinated programmes consistent with partners' national development strategies.	50% of technical co-operation flows are implemented through co-ordinated programmes consistent with national development strategies.
5a	Use of country public financial management systems — Percent of donors and of aid flows that use public financial management systems in partner countries, which either (a) adhere to broadly accepted good practices or (b) have a reform programme in place to achieve these.	PERCENT OF DONORS
		Score* Target
		5+ All donors use partner countries' PFM systems.
		3.5 to 4.5 90% of donors use partner countries' PFM systems.
5b	Use of country procurement systems — Percent of donors and of aid flows that use partner country procurement systems which either (a) adhere to broadly accepted good practices or (b) have a reform programme in place to achieve these.	PERCENT OF AID FLOWS
		Score* Target
		5+ A two-thirds reduction in the % of aid to the public sector not using partner countries' PFM systems.
		3.5 to 4.5 A one-third reduction in the % of aid to the public sector not using partner countries' PFM systems.
6	Strengthen capacity by avoiding parallel implementation structures — Number of parallel project implementation units (PIUs) per country.	PERCENT OF DONORS
		Score* Target
		A All donors use partner countries' procurement systems.
		B 90% of donors use partner countries' procurement systems.
7	Aid is more predictable — Percent of aid disbursements released according to agreed schedules in annual or multi-year frameworks.	PERCENT OF AID FLOWS
		Score* Target
		A A two-thirds reduction in the % of aid to the public sector not using partner countries' procurement systems.
		B A one-third reduction in the % of aid to the public sector not using partner countries' procurement systems.
8	Aid is untied — Percent of bilateral aid that is untied.	Continued progress over time.

Annexure IV

Examples of indicators for evaluating a SWAp at country level

Expected Impact of a SWAp	Indicators (to be tailored to country issues)
Purpose: To achieve better use of resources (both public and private) and hence better results in the [health] sector	<ul style="list-style-type: none"> - Sector monitoring indicators should show results in terms of health and PRS objectives - Assessment of resource use in the sector as a whole (e.g. better value from private spending on health because more private spending is channelled through insurance schemes; less duplication between Government and NGO services; rise in the proportion of qualified midwives working outside the capital city)
Intermediate objective 1: Policies and plans are implemented in line with agreed plans/priorities	<ul style="list-style-type: none"> - Government has kept to the agreed expenditure patterns for the resources it controls - Public Expenditure patterns against key influencing objectives (e.g. a rising share of Government & donor resources were spent in the 20 poorest districts; no increase in public spending on referral hospitals). - Government has implemented sensitive policies or strategies agreed in the sector strategy (e.g. hospital rationalisation; contracting to NGOs; exempting the poor; planned regulation and stewardship implemented; public investment plans adapted to allow for private providers)
Intermediate objective 2: Greater efficiency in use of resources	<ul style="list-style-type: none"> - Administrative efficiency improved (e.g. lower spending on project offices and staff; less duplication of efforts) - Technical efficiency improved (e.g. equipment provision is coordinated and reflects the essential package)
Outcome 1: More Government commitment to and national ownership of development plans.	<ul style="list-style-type: none"> - Government feels ownership and accepts the agreed priorities for allocation (qualitative assessment required?) - Other stakeholders feel they have an influence on sector policy and plans (qualitative assessment required?) - Stakeholders participate in planning (e.g. local private providers involved in district planning)
Outcome 2: 'Better' policy and resource allocation for the whole sector	<ul style="list-style-type: none"> - The sector policy and strategy includes priorities of donors, (e.g. emphasis on poverty reduction and efforts to reach the poor; specific measures to address maternal mortality have been implemented; Family Planning services expanded) - Mechanisms are in place and effective to constrain inappropriate investments (e.g. proposal to build costly new hospitals was shelved) - Realistic and active strategies to maximise benefit of private sector (e.g. rationalisation of public services when private nearby; drug quality control reduced fake drugs availability; public knowledge of appropriate treatment) - Balance of resources is more appropriate (e.g. less spent on repetitive training courses; more on staff remuneration)
Outcome 3: Better value from aid transaction costs/efforts, while strengthening national systems and capacity	<ul style="list-style-type: none"> - The 10 top MOH officials spend less time meeting donors individually and attending project reviews - Planning capacity is improved (e.g. National Health Accounts are available and used in assessing the role of the private sector) - The health budget captures donor resources as well as domestic resources - Systems have been strengthened, (e.g. District accounting skills improved; monitoring of service uptake by the poor and under-served groups in place) - The procurement process achieves reasonable prices (by world standards) and delivery times

Notes: Many of the indicators may already be included in the sector monitoring framework. This focuses on impact indicators; evaluation could also include SWAp process indicators (e.g. quality of consultation process, share of external resources in the pooled fund).

9	Use of common arrangements or procedures — Percent of aid provided as programme-based approaches.	66% of aid flows are provided in the context of programme-based approaches.
10	Encourage shared analysis — Percent of (a) field missions and/or (b) country analytic work, including diagnostic reviews that are joint.	(a) 40% of donor missions to the field are joint. (b) 66% of country analytic work is joint.
MANAGING FOR RESULTS		TARGET FOR 2010
11	Results-oriented frameworks — Number of countries with transparent and monitorable performance assessment frameworks to assess progress against (a) the national development strategies and (b) sector programmes.	Reduce the gap by one-third — Reduce the proportion of countries without transparent and monitorable performance assessment frameworks by one-third.
MUTUAL ACCOUNTABILITY		TARGET FOR 2010
12	Mutual accountability — Number of partner countries that undertake mutual assessments of progress in implementing agreed commitments on aid effectiveness including those in this Declaration.	All partner countries have mutual assessment reviews in place.

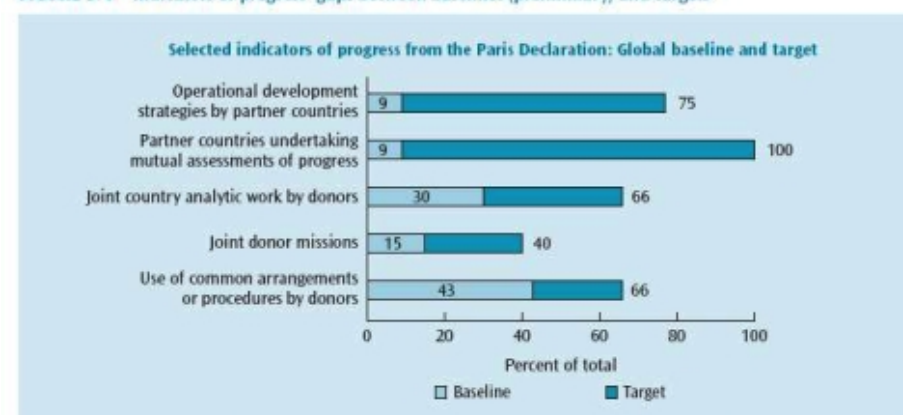
Important Note: In accordance with paragraph 9 of the Declaration, the partnership of donors and partner countries hosted by the DAC (Working Party on Aid Effectiveness) comprising OECD/DAC members, partner countries and multilateral institutions, met twice, on 30-31 May 2005 and on 7-8 July 2005 to adopt, and review where appropriate, the targets for the twelve Indicators of Progress. At these meetings an agreement was reached on the targets presented under Section III of the present Declaration. This agreement is subject to reservations by one donor on (a) the methodology for assessing the quality of locally-managed procurement systems (relating to targets 2b and 5b) and (b) the acceptable quality of public financial management reform programmes (relating to target 5a.ii). Further discussions are underway to address these issues. The targets, including the reservation, have been notified to the Chairs of the High-level Plenary Meeting of the 59th General Assembly of the United Nations in a letter of 9 September 2005 by Mr. Richard Manning, Chair of the OECD Development Assistance Committee (DAC).

Note on Indicator 5: Scores for Indicator 5 are determined by the methodology used to measure quality of procurement and public financial management systems under Indicator 2 above.

Source; OECD Paris Declaration on aid effectiveness, 2005

Annexure III

FIGURE 3.4 Indicators of progress: gaps between baselines (preliminary) and targets



Source: OECD 2005.

Note: Comprehensive baselines will be established in 2006.

Source: Walford 2003

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MODERNIZING INDIA'S LAND RECORDS MANAGEMENT SYSTEM

Rita Sinha *

Abstract

The author describes the state of Land Record Management, the lacunae in the previous schemes and the need for improvement. This is followed by an overview of the new system being introduced to modernize the Land Record Management in the country.

Introduction

In pre-independent India, land revenue was one of the main sources of revenue for the Treasury. The Government, therefore, took pains to ensure that land records were kept in a continuously updated condition. In the post-Independence era, as India's economy grew, the industrial and service sectors became more important sources of revenue. Besides, the cost of collecting land revenue soon exceeded the revenue itself in several States and was, therefore, abolished. With the decline of the importance of land revenue, the entire land revenue management system fell into a state of neglect and apathy, leaving the land revenue records outdated and chaotic.

However, it was slowly realized that although the Treasury did not gain revenue directly from the land, it still remained an important element in the development process of the country. Poorly maintained land records affected many areas of governance and led to inefficiency, corruption and harassment to the citizen. Still, State Governments were reluctant to invest heavily in an area where results are slow to come and the benefits are not immediately visible.

Previous schemes

The conference of State Revenue Ministers in 1985 brought to the fore the pathetic state of the Revenue machinery in the States and requested for

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intervention by the Government of India. In response, the Central Government floated two schemes, namely, Strengthening of Revenue Administration and Updating of Land Records (SRA&ULR) and the Computerization of Land Records (CLR). Under these schemes, support was provided to the States and Union territories for strengthening of the land records maintenance infrastructure, adoption of modern survey and information technology for updating and computerization of both textual and spatial records, digitization of maps, training and capacity building.

The Schemes were operative for about twenty years, but the progress was very slow, unevenly distributed and did not yield the expected results. The choice of activities was left to the States and UTs, most of whom chose activities that strengthened revenue administration but not necessarily helped in updation of land records. This “hamper-of-activities” approach led to eddying; each activity was a goal in itself rather than a step in the systematic, ladder-like approach towards achieving updated land records.

The way the schemes were framed, the exit modes were not defined; nor were technology options for survey firmed up; neither was the system of monitoring emphatically spelt out. Further, both the schemes of CLR and SRA&ULR excluded interconnectivity, geographic information system (GIS) mapping, connectivity with banks and treasuries, and Registration the last of which is a vital link in updating the land records.

National Land Records Modernization Programme (NLRMP)

Keeping in view the above position, these two Centrally-sponsored schemes of Computerization of Land Records (CLR) and Strengthening of Revenue Administration and Updating of Land Records (SRA&ULR) were merged and replaced with a modified Centrally-sponsored scheme on 21st August, 2008 in the shape of the National Land Records Modernization Programme (NLRMP). The NLRMP combines the key components of the two schemes, adds new components such as integration of textual and spatial records, computerization of Registration and inter-connectivity between Revenue and Registration systems, firming up of modern technology options for survey and core GIS. This integrated and enhanced scheme has as its ultimate goal the introduction of conclusive titling with title guarantee in the country, instead of the present land titling system which provides merely for Registration of deeds and documents and “presumptive” property titles.

The conclusive titling system is based on four fundamental principles, viz.:

- (i) A single agency to handle property records.
- (ii) Operation of the “Mirror” principle, i.e., at any given moment, the property records mirror ground reality and are “real-time records”.
- (iii) Application of the “Curtain” principle. The record of a title depicts the conclusive ownership status and the legacy data. Transfer of title takes place from one titleholder to the next through registration.
- (iv) There is title guarantee and insurance for indemnifying the property holder against any loss arising due to inaccuracies in the title registration.

At present in India, several agencies handle land records in the States/UTs. The Revenue Department usually prepares and maintains the textual records; the Survey and Settlement Department prepares and maintains the maps; the Registration Department does verification of encumbrances and registration of transfer, mortgage, etc. of property. A few States have a Consolidation Department in lieu of a Survey and Settlement Department. In some of the States, the local bodies have been empowered to do undisputed mutations. The urban local bodies update property records for purposes of taxation in urban areas. Merging these departments into a single agency is, in many cases, administratively and politically difficult.

The tedious manual processes of survey and of the system of property record management have resulted in outdated maps. There are also vast arrears of textual data entries and mutations in most States. The result is that the records do not usually reflect the ground reality and, hence, cannot be said to be “real-time records”.

At present, registration of deeds and documents in India requires probing into past ownerships and transactions of properties, usually of the previous thirty years, to establish non-encumbrance due to the system of “presumptive” titles.

Due to inaccuracies in the RoRs, the Government is not in a position currently to give title guarantee and indemnification against loss arising from faulty RoRs.

The NLRMP seeks to put in place the first three principles of conclusive titling. Title guarantee will follow once these three principles have been put in place.

Programme Components:

This programme has four major components (i) computerization of property records; (ii) survey and preparation of maps using modern technologies, (iii) computerization of the Registration process and (iv) training and capacity building. The district has been taken to be the unit and all activities have to converge in a district so that it is ready for titling to be introduced. Public-private partnerships (PPP) are an integral part of the Programme.

Each of the components mentioned above has further sub-components, namely:

- (a) Computerization of property records: data entry/re-entry/data conversion of textual records; digitization of cadastral maps and Field Measurement Books (FMBs); integration of textual and spatial data; updating of pending mutation cases and their computerization; computerization and scanning of old records; establishment of Data centres; setting up of modern record rooms/land records management centres.
- (b) Survey and Settlement: scanning of old survey maps using flat-bed scanners; setting up the ground-control point library; survey/re-survey and ground truthing using any one or a combination of the following technologies:
 - (I) High Resolution Satellite Imagery (HRSI) with ground truthing.
 - (ii) Aerial photography (orthophoto) with ground truthing.
 - (iii) Pure ground method using Total Station (TS) and Differential Global Positioning System (DGPS).
- (c) Computerization of the Registration process: computerization of Sub-Registrar's Offices (SROs); computerization of legacy data; computerization of valuation details; integration of registration and land records maintenance systems; automatic issue of mutation notices following registration.
- (d) Training and Capacity Building
 - Currently, DoLR sponsors training for survey in Survey of India at Hyderabad; for computerization, digitization and registration through National Informatics Centre (NIC) in the States/UTs; for

HRSI, in National Remote Sensing Centre (NRSC), Hyderabad. The Department has formulated a plan for setting up NLRMP Cells in State Training Institutions. In-principle approval has been obtained for setting up a National Institute for training in NLRMP.

The funding pattern by the Central Government is as follows:

- Computerization of land records (100% Central funding)
- Survey/Resurvey (50% Central funding to States, 100% to Uts)
- Computerization of Registration (25% Central funding to States, 100% to Uts)
- Training & capacity building (100% Central funding)
- Setting up of Modern Record Rooms (50% Central funding to States, 100% to Uts)
- Core GIS (100% Central funding)

It is hoped that all States will be covered in a span of eight years from its commencement under the NLRMP. So far, the programme has been sanctioned in 121 districts in 25 States/Union Territories.

Expected benefits from the NLRMP:

Maintenance of land records will shift from being merely a tool of governance to providing citizen services.

- Citizen services:
 - “Real-time” title records will be available to the citizens for multiple uses.
 - Time for obtaining Records of Rights and maps will be drastically reduced and will be well-defined.
 - Single window service will be available to the citizens.
 - Land disputes and litigation will be significantly reduced.
 - Free accessibility to the computerized records will reduce interface between the citizen and the Govt. functionaries thereby curtailing harassment to the citizen.
 - Issue of various certificates and other attribute data at the doorstep of the citizen through kiosks in the PPP mode.

- Market value and legacy encumbrance information on properties will be available on the Internet enabling automatic and automated transfer of title upon registration once titling is introduced.

Contribution towards good governance through the land information system (LIS):

- The ultimate goal is to link the conclusive titles to the development process, such as e-credit, determining location of new projects, infrastructure such as schools, hospitals, roads, bridges etc., watershed management and so on.
- Any programme, such as land acquisition or disaster management, requiring information of property owners will be better implemented after updation of records and having location-specific data available in a GIS format.
- Correct cadastral data will enable the Government to formulate better policies since data of small and marginal farmers and other attribute data will be available. Multiple cropped areas will be also visible in the GIS format and policies can be framed to preserve such areas, thereby ensuring food security.

The roadmap for the land management system

- (i) Introduction of conclusive titling in the country with title guarantee.
- (ii) Along with titling, development of electronic plan lodgment, or E-Plan so that citizens can file applications for titles or title change electronically.
- (iii) Create a Common Spatial Information Initiative (CS2i) to start preparing for State Land Information Systems (SLIS) and National Land Information System (NLIS). The CS2i will be a body that will collect information from all departments which are to be placed in the public domain and prepare the material in a format that can be utilized by Information Technology for GIS layering with the cadastral map forming the basic layer.
- (iv) Initiate the functioning of Continuously Operating Reference Stations (CORS) for establishing the virtual control point library to supplement the ground control point library (GCPL).

INTELLECTUAL PROPERTY RIGHTS AND DEVELOPMENT: STRATEGIES FOR DEVELOPING COUNTRIES

Anuradha Sharma Chagti *

Abstract

This paper analyses the consequences of stronger Intellectual Property Rights (IPR) regimes in developing countries, especially those with low technology activity. The literature espouses various benefits of stronger IPR regimes. Though these debates are appropriate there are issues with regard to implementation of copyrights and related rights; patents; agriculture and genetic resources; and traditional knowledge, folklore and geographical indications in countries which are still not highly developed. The present ground realities leave no option for the developing countries but to adopt some level of IPR protection. Keeping in view their current levels of socio-economic development and political compulsions these levels may vary. The paper presents strategies for developing countries in the field of IPRs.

Introduction

Intellectual Property Rights (IPRs) became economically and politically very important for developing countries after the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) was concluded during the Uruguay Round of negotiations in 1994. This Agreement incorporated IPRs into the multilateral trading system. Since then their relationship with a wide range of public policy issues has elicited great concern over their pervasive role in people's lives and in society in general. They are frequently mentioned in discussions and debates on topics as diverse as education, health, trade, industrial policy, traditional knowledge, IT and media industries. In a knowledge-based economy, an understanding of IPRs is indispensable to informed policy making in all areas of human development. Intellectual Property refers to the creation of human intellect. These could be ideas or expressions or devices. As per the Convention establishing the

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World Intellectual Property Organization (WIPO), '*intellectual property*' shall include the rights relating to:

- Literary, artistic and scientific works;
- Performances of performing artists, phonograms, and broadcasts;
- Inventions in all fields of human endeavour;
- Scientific discoveries; industrial designs;
- Trademarks, service marks, and commercial names and designations;
- Protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. (World Intellectual Property Rights Treaties, n.d.)

¹Rationale of Protection

Like movable and immovable properties, intellectual property is also the result of effort by one or more human beings, with or without using equipments or machines. Therefore, like the producers of the two other forms of property, the creators of Intellectual Property also have the right to insist on payment for the product of their labor or for the labor itself (James, 2006). Remuneration for creators of Intellectual Property became economically significant when cheap, multiple copies of a work could be made and it made sense for the creator to be rewarded for his/her intellectual effort and be protected from potential free riders.

History of IP Law

The concept of Intellectual Property goes back to very ancient times. Authors complained about the theft of their works in the Greek and Roman times (Stewart, 1989). Potter's marks were recognized more than 2000 years ago in Rome as distinguishing marks of the producer (Torremans, 2001). Legal protection for intellectual property goes back to the Middle Ages. In the fifteenth century, Venice had a law protecting patents (Torremans, 2001). In 1449, a patent was granted for the glass making process in England. After the invention of printing with movable typefaces by Gutenberg, many countries of Europe, including England, introduced legal restrictions on printing, which led to the emergence of modern copyright legislation. The Statute of Anne of 1709 is known as the mother of all copyright laws. In modern

jurisprudence the emergence of international harmonized laws on Intellectual Property can be traced to the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works of 1886 (James, 2006).

TRIPS Agreement

The Agreement on Trade Related Aspects of Intellectual Property Rights of 1994 made protection of IP an enforceable obligation of the member states of the World Trade Organization. The objective of the Agreement was to reduce distortions and impediments to international trade, and to ensure that, while effective and adequate protection of intellectual property rights is needed, measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade (Preamble). It encompassed within its purview standards concerning the availability, scope and use of Copyrights and Related Rights, Trademarks, Geographical Indications, Industrial Designs Patents, layout designs of Integrated Circuits, protection of undisclosed information and control of Anti-Competitive practices in Contractual Licenses.

This paper focuses only on copyrights and related rights, geographical indications and patents from the above regimes and agriculture and genetic resources and traditional knowledge and folklore which are as yet not considered within the ambit of this regime but are currently of great importance and are affected by IPR issues and need protection.

IPR regimes affect different countries in varied ways. The focus of the paper is on countries with low technology activity. The classification of the countries has been drawn from the UNCTAD-ICTDS Project on IPRs and Sustainable Development (Lall, 2003), which has divided various countries into groups based on their *technological activity, industrial performance and technology imports*. The low technological activity group is the third tier of countries and comprises 58 very diverse countries. The Project assumed that these countries are likely to have both significant costs and potential long-term benefits from stricter patents, depending on the level of domestic technological capabilities and their reliance on formal technology inflows. Those that are building their innovation systems on the basis of local firms copying foreign technology and importing technologies at arm's length would gain less than those with a strong trans-national corporation (TNC)

presence. This group has large countries with heavy industrial sectors like China, India and Egypt, along with dynamic export oriented economies like Thailand and Indonesia and some countries with small industrial sectors and weak industrial exporters.

Consequences of IPR Protection for Developing Countries

A review of the literature presents the following consequences of IPR protection for developing countries. However most of this literature reflects the views of the developed world:

1. **Innovations:** According to the ICTSD – UNCTAD Project on IPRs and Sustainable Development (Lall, 2003) there is stimulation of private innovation with stronger IPR regimes. The importance of this rises with the pace of technical change and with the ‘imitability’ of new technology, particularly in such activities as software. It also grows with globalization, which leads innovators to gear their R&D to the world rather than national markets. This leads to increases in the use of the new knowledge in productive activity, leads to higher incomes, employment, and competitiveness for the economy as a whole. This is a step to the dissemination of new knowledge to other agents and increases local diffusion by providing an enforceable legal framework. This is likely to be of special significance for technology-intensive products and activities, where innovators are averse to selling technology to countries with weak IPRs, where leakage is a real possibility. Finally there is the stimulation of innovation by other enterprises based on information or on seeing the application of the innovation.
2. **The needs of developing countries:** Chen and Puttitanun (2005) have found that developed and developing countries have different technological needs. If protection of IPRs is absent, developed countries would lack the incentives to develop the technology largely needed by the developing countries. Further, firms from developed countries may react to the lack of IPRs in the developing countries by making their technologies more difficult to imitate, which can result in lower research productivity and in less efficient research, technology and less innovation. Also even if greater protection of IPRs does not directly benefit the developing countries, it could still increase world welfare, therefore there are gains from international cooperation that tightens IPRs in developing countries.
3. **Socio-economic consequences:** Finger and Schuler (2004) have stated that the lack of enforcement of IPRs in the domestic economy orients activity towards foreign markets, where such protection is available, or towards the high end of the home market. Here the artist is protected from the unauthorized copying by the uniqueness of his or her skill and appreciation of his or her customers for the objects that skill can render. This can move capital and skill out of the country. Another consequence of weak IPR regime is increase in piracy and counterfeiting. These cost the national governments heavily in tax revenues, as they are mostly clandestine businesses and mostly conducted in the informal/black markets.
4. **Trade:** Governments all over the world compete fiercely to attract foreign direct investment, hoping that multinational corporations will bring new technologies, management skills, and marketing know-how. The data available indicate that investors in sectors relying heavily on protection of intellectual property (like pharmaceuticals) are deterred by a weak IPR regime in a potential host country. There is also some evidence that weak IPR protection may discourage all investors, not just those in the sensitive sectors. Second, the lack of IPR protection deters investors from undertaking local production and encourages them to focus on distribution of imported products. This effect is present in all sectors, and is not limited to only those sectors that rely heavily on IPR protection (Javorik, 2005). Long term benefits would accrue to developing countries like a strong foundation for sophisticated business structures; economies without advanced technological capabilities may by strengthening enforcement, stimulate global innovation adding to effective demand for new products; and stronger enforcement will stimulate greater technology transfer (Maskus, 2000).
5. **Security and Safety:** The World Intellectual Property Organization (n.d. (a)) estimates an alarming increase in piracy and counterfeiting activities due to weak IPR protection and an escalating harm to national economies. On a global scale, these activities are estimated to represent between 5% and 7% of world trade. Many experts predict the problems of piracy and counterfeiting will become worse as the pace of globalization quickens. Advances in new technologies allow almost exact reproductions of original products, and the internationalization of economies and the worldwide demands for certain products and brands

have also resulted in a globalization of fake products. Over the years a number of incidents have been reported where counterfeit or pirated products have caused major accidents (WIPO, 2004). 6. **C r i m e :** According to INTERPOL, Intellectual Property Crime (IPC) represents one aspect of the informal economy (black market) which operates parallel to the formal economy. This is a consequence of weak IPR protection in many countries. IPC includes the manufacturing, transporting, storing and sale of counterfeit or pirated goods and is generally organized and controlled by criminals or criminal organizations due to the relatively low level of risk and comparatively high level of profit. Most terrorist groups benefit indirectly from funds remitted to them from sympathizers and militants involved in IPC. Intellectual property theft is likely to become a more important source of financing for terrorist groups because it is low risk/high return (Noble, 2003)

Developing Countries and Controversies on IPRs

At present the major controversies in the role of Intellectual Property Rights in developing countries are in the field of Copyrights, Patents, Agriculture and Genetic Resources, and Traditional Knowledge, Folklore and Geographical Indications. This paper focuses on issues and strategies in these areas.

Copyrights and Related Rights

Copyright aims at providing protection to authors (writers, artists, music composers, etc.) on their creations or “works” including computer software. There are ‘fair use’ provisions in the laws but the owner of copyright is given the exclusive right to make copies, issue copies, perform or show the work in public or translate the work. These rights are inherent rights and do not need any registration.

Copyright is drawing special attention not only because millions of poor people still lack access to books and other copyrighted works, but because the last decade has seen rapid advances in information and communication technologies, transforming the production, dissemination and storage of information (CIPR, 2002). Access to the Internet in developing countries is still limited, although growing rapidly in most countries. The Internet provides an unrivalled means of low cost access to knowledge and information required by developing countries, when their access to books and journals is severely restricted by lack of resources. Higher IPR protection

can have potentially damaging consequences for poor people. For instance, the cost of software is a major problem for developing countries, and the reason for the high level of illicit copying and access to certain works at a fraction of the price of the original. Copyright can also be a barrier to the further development of software that is specifically adapted to local needs and requirements.

It is true that there are examples of developing countries, which have benefited from copyright protection like the Indian software and film industry, but most developing countries, particularly smaller ones, are overwhelmingly importers of copyrighted materials, and the main beneficiaries of stricter IPR regimes are therefore foreign rights holders. The operation of the copyright system as a whole may impose more costs than benefits for the developing countries (CIPR, 2002). The “fair use” provisions have generally not proved adequate to meet the needs of developing countries, particularly in the field of education. For example South African health care lecturers who want to distribute non-governmental printed materials (on a non-profit basis) to their students about HIV and sex education must often pay copyright royalty charges to large multinational publishing companies for this ‘privilege’. How can it be right to charge burdensome ‘first world’ copyright royalty charges to students or teachers in South Africa who want to read and teach about this condition and how to limit its further spread (Story, 2002)?

Patents

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. A patent owner has the right to decide who may — or may not — use the patented invention for the period in which the invention is protected. The patent owner licenses or sells the right to the invention to someone else (WIPO, n.d.(b)).

A number of studies have been conducted to assess the impact of patent protection in developing countries. The main reasons expounded by the developed countries for stricter patent regimes have been that patent protection helps in promoting innovation, encourages companies from developed countries to start production and R&D activities in developing countries, thus helping in FDI and technology transfer and thereby helping in their economic and technological development and it protects the

country from pressure during bilateral agreements. However, the evidence of these benefits has been ambiguous. Edwin Mansfield in his study conducted on 100 industries found that in 12 types of industries patent protection was not essential, in 3 industries (petroleum, machinery, and fabricated metal products) essential for the development and introduction of about 10-20% of their inventions. Only in 2 industries, pharmaceuticals and chemicals, were patents judged essential for 80% of the innovations (Shiva, 1997). Mansfield, Schwartz and Wagner (1981) demonstrated the above through their study on 100 industries. They found that about 60% of the patented innovations in their sample were imitated within four years. Further a patent frequently does not result in a 17-year monopoly over the relevant innovation. Patents do tend to increase imitation costs, within the drug industry, but excluding drugs, patent protection did not seem essential for the development and introduction of at least three-fourths of the patented innovations studied by them. Thus the claim of patent requirement for all industries does not stand. Further, Schneider (2004), in the study of international trade, economic growth and IPRs of developed and developing countries, found that IPRs have a stronger impact on domestic innovation for developed countries and might even negatively impact innovation in developing countries. These results suggest that most innovation in developing countries may actually be imitation or adaptive in nature. Therefore, providing stronger IPRs protects foreign firms at the expense of local firms.

Carlos Correa (2002) has pointed out that developing countries account for only 4% of the world R&D expenditure. As a result these countries are strongly dependent on the transfer of technology from developed countries. The effect of stronger patent laws may be manifested in terms of the prices of the goods and technologies. For example, medicines sold in India are up to 3,010 percent, cheaper than the same pharmaceutical drugs sold in developed countries (Mathews, 2002). It does not mean that patents will not stimulate R&D in developing countries, particularly in those that are more advanced in the industrialization process. It only means that the development of new invention will be out of reach for most countries. Though the provision of compulsory licensing on public health grounds is present in the TRIPs agreement (Mathews, 2002), the changes in intellectual property rights regimes may affect the bargaining positions of potential contracting parties and make access to technology more problematic as

developed countries may force economically weaker countries to pay more.

Agriculture and Genetic Resources

The TRIPS agreement requires that countries provide some level of IP protection to plant varieties, either patents or other kinds of protection, called *sui generis*ⁱ. They must also allow microorganisms to be patentable. The *sui generis* systems of plant variety protection (PVP) have not been particularly effective at stimulating research on crops in general, and particularly for the kind of crops grown by poor farmers. (Shiva, 1997; Srinivasan, 2003). Systems of PVP designed for the needs of commercial agriculture in the developed countries (such as provided for in the UPOV Convention) also pose a threat to the practices of many farmers in developing countries of reusing, exchanging and informally selling seeds, and may not be appropriate in developing countries without significant commercial agriculture.

The question is whether to use patents for protecting plant varieties. Patents are commonly used in developed countries both to protect plant varieties, and to protect genetic material incorporated in plants. Because they offer a stronger form of protection than most PVP systems they may offer a stronger incentive to research, particularly in developed countries, and the multinational agrochemical companies regard them as important. However, patents also pose a threat to farmers' traditional practices of reuse and exchange. Moreover, the proliferation of genetic patents owned by different companies has led to costly disputes, and difficulties in pursuing research without infringing other companies' patents. There is evidence that patents are one factor contributing to the rapid concentration in the agricultural biotechnology field, with adverse effects on the degree of competition (CIPR, 2002). Industrial patents allow others to use a product, but deny them the right to make it. Since seed makes itself, a strong utility patent for seed implies that a farmer purchasing patented seed would have the right to use (to grow) the seed, but not to make it (to save and replant). The farmer who saves and replants the seeds of a patented or protected plant variety will be violating the law (Shiva, 1997). Shiva has further argued that patents, unlike plant breeders' rights, are very broad based and allow monopoly rights over individual genes and even characteristics. Patents allow for multiple claims that may cover not only whole plants but plant parts and processes as well. An example of this was the patent granted in USA to a biotechnology

company, Sungene, for a sunflower variety with very high oleic acid content. Sungene notified sunflower breeders that the development of any variety high in oleic acid would be considered an infringement of its patent.

Another threat to further research arises from the private sector research giants who have consolidated their positions through IP driven mergers and acquisitions. For example, the merger between Ciba Geigy and Sandoz to form Novartis has allowed Novartis to emerge as an industry leader in agbiotech. Likewise, the Zeneca group strengthened its IP portfolio through its acquisition of Mogen in 1997. These groups have also engaged in significant litigations to protect their rights (Thomas, 2005). These litigations have led to the formation of “patent thickets” which Shapiro (as cited in Thomas, 2005) defines as “a dense web of overlapping intellectual property rights that a company must hack its way through in order to actually commercialize new technology”.

Traditional Knowledge, Folklore and Geographical Indications

Traditional knowledge refers to tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. Traditional knowledge at the moment is not covered independently under any law, however, various cases of patents are being granted to mostly medicinal plants, whose healing capabilities have been known to communities for years. This has raised the issue of their protection. In developing countries, up to 80% of the population depends on traditional medicines to meet their healthcare needs. In addition, knowledge of the healing properties of plants has been the source of many modern medicines. The cases of Turmeric, Neem, Hoodia and Ayahuasca are illustrative cases (CIPR, 2002). More important is the remuneration to the community, which holds this knowledge. Pharmaceutical companies after obtaining patents are selling the same drugs to the developing countries at high prices.

There have also been cases of folklore (music, art, culture) being pirated from communities and sold by groups in the developed countries. The example of Germany rock group Enigma’s unauthorized use of Taiwanese traditional musical work without their knowledge is an illustrative example. IP protection comes only when the knowledge is fixed, and this raises an issue that needs to be addressed by developing countries (Story, 2002).

One more aspect of this regime is Geographical Indications that identify the origins of a product as a mark of quality and provenance. These are region

specific like Basmati Rice, Darjeeling Tea and Andaman Pepper. The economic consequences of Geographical Indications for a developing country are difficult to assess. The main economic benefit of geographical indications would be to act as a quality mark, which will play a part in enhancing export markets and revenues. CIPR (2002) has also suggested that geographical indications may be of particular interest to a number of developing countries who might have, or might be able to achieve, a comparative advantage in agricultural products and processed foods and beverages. Ground Realities for Consideration of Developing Countries

Before any strategies for adopting IPR regimes are suggested for developing countries a few factors must be kept in mind. First, the TRIPs Agreement is a reality and the countries have to comply with its stipulations. Second, the TRIPs Agreement does not advocate a ‘one size fit all’ regime. It has a staggered schedule for countries according to their level of development. Third, the multinational companies who had lobbied for the inclusion of IPRs in the TRIPs were expecting immediate results from the negotiations. The staggered schedule has resulted in developed countries beginning on a bilateral basis to suggest that developing countries should adopt the standards of TRIPs earlier than later. Fourth, IPR protection in some fields is essential for the socio-economic development of the countries themselves. It is important that the countries protect their innovations and bio-resources. It is also imperative to stop piracy and counterfeiting activities to control IP crime and also to collect revenue for works produced in the formal markets. Fifth, in the short term stricter IPR laws will lead to higher prices for imported products and new technologies, loss of economic activity by the closure of imitative activity, and possible abuse of protection by right holder like raising prices (Lall, 2003). Finally, weak IPRs played a vital role in the technological development of Korea and Taiwan, two leading Asian Tigers. They are the best recent examples of the use of copying and reverse engineering to build competitive and innovative technology-intensive industrial sectors. They used the opportunities offered effectively because of investments in skill development, strong export orientation, ample inflows of foreign capital goods, and strong government incentives for R&D. Most of the Transnational Corporation assemblies in Taiwan and Korea were isolated into export promotion units, which were not affected by the IPR regimes there. In recent years Korea and Taiwan have also moved to strong IPR regimes, partly under pressure from trading partners but also because

the enterprises in these countries have now reached the technological stage where they need greater protection (Lall, 2003). Another interesting example has been illustrated by You and Katayama (2005) who found that the patent and trademark registration system does not necessarily function effectively in China. On the contrary, a subsystem such as patent and trademark registration could be providing a means of local imitation and in this way could be facilitating technology transfer/diffusion. For a product to be patented, detailed production information relating to it is required to be made public. By utilizing such information, imitators could successfully reproduce the product with relatively few resources. At the same time, a product registered for trademark is considered a profitable product, hence the risk of its being imitated increases.

Strategies for Developing Countries

Developing countries are far from homogeneous and the determinants of IPR policies will vary accordingly between countries. Policies required in countries with a relatively advanced technological capability where most poor people happen to live, for instance India or China, may well differ from those in other countries with weak capabilities. The impact of IP policies on poor people will also vary according to socio-economic circumstances.

Copyright and Related Rights

Developing countries vary in the level of the status of their copyright industries. This is reflected on one hand in the success of the Indian software industry and on the other hand in the countries like Benin and Chad who, although they have been members of the Berne Convention for decades and have not seen significant increases in their national copyright-based industries or in the level of copyright-protected works being created by their people. The availability of copyright protection may be a necessary but not a sufficient condition for the development of viable domestic industries in the publishing, entertainment and software sectors in developing countries. Many other factors are important for the sustained development of such copyright-based industries. Taking the publishing industry in Africa as an example, factors such as the unpredictability of textbook purchasing by governments and donors, weak management skills in local firms, high costs for printing equipment and paper, and poor access to finance are likely to continue to act as very severe constraints in many countries. Moreover, given the small market size of many developing countries, the availability of copyright protection may be most significant from a commercial standpoint

in export markets rather than domestically, notwithstanding the fact that authors and companies from developing countries may face insurmountable costs when action to enforce their rights in such markets is required. In larger developing countries like India, China, Brazil or Egypt, copyright protection in the domestic market is clearly of considerable importance to national publishing, film, and music and software industries (CIPR, 2002).

In knowledge-based economies the emerging need for growth in developing countries will be access to knowledge. The high cost of access to knowledge, whether in the form of books, software, or on the Internet, is an impediment to knowledge-based growth. It is therefore important that these countries adopt policies whereby access to knowledge is made available to their masses through libraries, universities and other educational institutions by giving those exemptions under national copyright laws. A reasonable number of copies of materials should be allowed under the fair use provisions for educational and public health needs. Publishers from developed countries should be addressed to provide books and software at lower rates. As an incentive, the countries should offer protection from piracy. In case of software, open source software should be encouraged to increase the access to and use of computers. National copyright laws should allow reverse engineering in the initial phase to enable local need specific software to be developed. In the field of music, art and cinematographic films, countries should encourage their creators to form collective management societies to protect interests not only in the national but also international field. However, it may be cautioned here that in countries with a small base of domestic copyright industries, the collective management societies might actually be collecting more revenue for the foreign copyright holders than the domestic ones (CIPR, 2002).

In the field of databases, WIPO is pressuring the countries to sign the WIPO Copyright Treaty, which is TRIPS plus in its protection. A report by the Commission on Intellectual Property Rights (2002) concluded that the developing countries should not sign the treaty in its present form, as it will not be in their interests. The Commission has propounded the following reasons. First, the WIPO Copyright Treaty clarifies copyright holders' exclusive rights over material in the on-line environment and specifically calls for countries to provide effective legal remedies against the circumvention of technological protection measures restricting types of access that are not authorized by the copyright holder or permitted in

national law. An important concern here is that developing countries will come under pressure, for instance in the context of bilateral agreements with developed countries, to accede to the WIPO Copyright treaty, or even to adopt stricter prohibitions against circumvention of technological protection systems and thereby reducing the scope of traditional “fair use” in digital media. Second, certain quarters of the “content” industries are calling for governments to enact legislation that require manufacturers of computer technology to build-in devices to prevent unauthorized copying of digital works. Third, specifically in relation to scientific or technical electronic databases, it is possible that developing countries will be encouraged to adopt a special regime of IP protection, in addition to the limited protection already provided under TRIPS and the Berne convention. A strengthening of IP protection for databases at the international level, whilst encouraging more investment in new commercial database products and services, may at the same time greatly reduce the access of scientists and researchers in developing countries to the data they contain because they will often lack the financial means to pay for the necessary subscriptions.

Patents

It is very important for developing countries to define what can be patented, facilitate competition, include safeguards against abuse of patents and encourage local innovation. Patents affect developing countries in two main areas – patents for biotechnology and pharmaceuticals. The question of whether the patents are to be provided for biotechnology has to be carefully decided and it should be made sure that patents when granted are only for uses set out in the patent and should not be transferable to other uses which at that time maybe be undiscovered. For example, where patents are granted over genes for a specific purpose they should not be transferable to other purposes later on. While allowing patents developing countries should also make sure that they do not hinder further research. Following examples illustrate instances of patents blocking research. Geneticist Mary-Claire King’s research on cancer led to the identification of a correlation between breast cancer and a tract of DNA, which was named “BRCA1” or the “breast cancer gene” in 1990. In 1994, Myriad Genetics, a biotechnology firm based in Salt Lake City, applied for and got a patent on the breast cancer gene. Myriad used the patent for developing a test, not for finding a cure. Since then, Myriad has been given eight patents for cancer genes. For Myriad, this means a US\$150-200 million market in the United States alone. For the 40,000

women who die of breast cancer annually, there is no cure from the breast cancer gene patent. In fact, even the screening has become less accessible as public laboratories, such as the University of Pennsylvania Genetics Diagnostics Laboratory, are forced to pay royalties. Similarly, blocking new research through patents on genes is hindering new cures for HIV/AIDS. The CCR 5 gene has been identified as coding for a receptor, and can be helpful in developing a cellular “block” against HIV/AIDS, which has infected more than 40 million people. However, a Maryland biotech company called Human Genome Science (HGS) has patented CCR 5, without knowing its functions (Shiva, 2004)ⁱⁱ. Any use of it would be its infringement.

As far as issues of public health are concerned developing countries can adopt strategies like Brazil or India. Brazil has taken the lead in developing domestic capacity to produce HIV/ AIDS drugs at low cost. The government relied on two particular articles of its 1997 industrial property law to advance the fulfillment of its national health objectives. It authorized compulsory licenses in the case of national health emergencies which allows it to authorize local producers to produce generic drugs needed to fight a national health emergency or to import from a generic producer elsewhere, despite patent protection. While Brazil has not actually used this law to issue a compulsory license, it has frequently used the threat of a compulsory license to facilitate fairer negotiations with pharmaceutical companies regarding the terms of licensing to Brazilian companies and the prices of drugs in Brazil (Wade, 2003). Indian Patent law of 1970 allowed for only process patents on pharmaceuticals. This led to build up of indigenous capacity, self –reliance in medicine and the ability of the government to control the prices and keep them low (Shiva, 2004).

Developing countries should also encourage civil society to take up issues of public health in the international fora. The death toll in Africa from HIV/AIDS created one of the greatest international public health crises in history. By bringing details of this crisis before mass Western public, NGOs forced companies and governments to respond with various initiatives, including a dialogue in the Council for TRIPS concerning the impact of TRIPS on the sovereign capacity of States to pass public health measures to meet the crisis (Drahos, 2002).

Developing countries have to keep in mind the issues of the benefit or the loss to their population when patents are granted to diagnostic, therapeutic and

surgical methods for the treatment of humans and animals; plants and animals and microorganisms; computer programs and business methods; new uses of known products; plant varieties and genetic material. However the Least Developed Countries should delay providing protection for pharmaceutical products until at least 2016ⁱⁱⁱ. Those who currently provide protection for such products should seriously consider amending their legislation (CIPR, 2002).

Agriculture and Genetic Resources

Developing countries need to adopt a sui generis system for protection of their agriculture and genetic resources and not allow patenting of animals and plants as is allowed under TRIPS, because of the restrictions patents may place on use of seed by farmers and researchers. Developing countries are home to a large variety of genetic resources and are highly dependent on their agriculture. The patent protection system lays a large number of restrictions on use of seeds for reuse, sale and sharing both by farmers and researchers. This is highly injurious to the well being of their farmers and plant breeders who in many cases are the farmers themselves. Another factor that the developing countries have to guard against is the destruction of their genetic resources through monocultures promoted by large multinational agro corporations.

Some of the initiatives that can be explored by these countries are listed here. Developing countries with limited technological capacity should adopt a restrictive definition of the term “microorganism.” Countries that have, or wish to develop, biotechnology-related industries may wish to provide certain types of patent protection in this area. If they do so, specific exceptions to the exclusive rights, for plant breeding and research, should be established. The extent to which patent rights extend to the progeny or multiplied product of the patented invention should also be examined and a clear exception provided for farmers to reuse seeds. (CIPR, 2002)

Because of the growing concentration in the seed industry, public sector research on agriculture, and its international component, should be strengthened and better funded. The objective should be to ensure that research is oriented to the needs of poor farmers; that public sector varieties are available to provide competition for private sector varieties; and that the world’s plant genetic resource heritage is maintained. (CIPR, 2002)

Thomas (2005) has illustrated how governments, researchers and universities have taken various steps to obviate the obstacles created by large multinationals always ready to litigate on the matter. These include the Public Sector Intellectual Property Resources for Agriculture (PIPRA) initiative, the Centre for the Application of Molecular Biology to International Agriculture (CAMBIA), and the African Agricultural Technology Foundation (AATF). The PIPRA initiative of some U.S. universities operates in a co-operative framework and advocates the retention of rights to use the technology for research purposes while licensing commercial use. Another unique venture planned by the PIPRA is to develop an IP asset database, which provides an overview of IPRs currently held by public-sector research institutions, including up-to-date information on the licensing status of agbiotech patents.

CAMBIA, a non-profit public-sector agricultural research institution in Australia, launched the open-source approach that favors patenting but licenses technologies with an Open General License (OGL). The CAMBIA license allows patenting of technologies, yet it is like an OGL since it allows anyone to use the technology for non-commercial research as long as improvements are shared with rest of the world.

The public-private collaboration model of the AATF reinforces the importance of agbiotech to food security and the need to provide scientists with technologies having the Freedom to Operate. The food security of a large population in developing countries is dependant upon research that came out by mostly publicly funded research organizations in developing countries. Effective patenting and licensing strategies will have to be devised by these institutions if they are to fulfill their missions. The capacity building of scientists in developing countries essential to enable them to deal with IP and transfer of technology is also required.

Traditional Knowledge, Folklore and Geographical Indications

It is imperative for the developing countries to define and document their traditional knowledge, but it is easier said than done. India has taken a lead in this and a Traditional Knowledge Digital Library (TKDL) was undertaken to document all the written and unwritten texts about the Indian traditional medicine systems, including the plants used and their uses. Traditional knowledge by definition is that which is undocumented and in many terms belongs to the whole community. This is the reason that its violations are

easier. A rigid legislation encompassing knowledge and folklore may not be the answer, but it is important that the debate on whether it should be covered under copyrights or a sui generis system be settled soon. The patent offices, copyright registries (where they exist) and the international copyright societies should have copies of these to prevent violations. This would help in protecting traditional knowledge. Another important issue to be addressed is control over the knowledge and remuneration to communities whose knowledge is being exploited. All these need to be done immediately to stop further erosion of these valuable community treasures. For geographical indications, each country should maintain its register of geographical indications and stress for one on the international level, too. This will help in defending cases on patents granted to their products by other countries.

Various countries have adopted different methods to protect their traditional knowledge, folklore and geographical indications. Australia created a nation certification trademark for Aboriginal and Torres Strait Islander artists in Australia. This Label of Authenticity is intended to help promote the marketing of the art and cultural products and deter the sale of products falsely claiming to be of Aboriginal Origin. In Colombia, a specific provision of law prohibits registration of the signs consisting of names of indigenous and Afro-American communities, which constitute an expression of their culture, without the explicit authorization of the Communities in question or the request by the communities themselves. Vietnam has granted a patent for a traditional preparation of medicinal plants used to help fight drug-addiction, and a trademark registered for a traditional balm made of medicinal plants (the plant name is Truong Son). Venezuela and Vietnam protect traditional knowledge through geographical indications. Sui Generis systems have been devised by Brazil, Costa Rica, Guatemala, Panama, Philippines, Samoa, Peru and Thailand (O'Connor, 2003).

Institutional Capacity

All the strategies above would only be successful if there is the political will and the institutional capacity to implement them. Developing countries need to build awareness among their populace about the rationale and consequences of IPR on the various facets of life. Only legislation on IPRs is not enough. It has to be followed by the efficient executive and judicial

actions where need be. Researchers, academics, and civil society have to be engaged in this debate to help protect societies from exploitation while promoting and encouraging innovation.

Conclusions

Intellectual Property Rights are one of the major concerns of developing world policy makers in the post TRIPs era. Despite the benefits propounded by advocates of stronger IPR regimes, the issues facing developing countries at different levels of development vary according to their social, economic and technological levels. In the knowledge-based economies of the present day world issues in copyright and patents are crucial for the developing world. However, issues regarding application of present IPR regimes or *sui generis* to agriculture and genetic resources, and traditional knowledge, folklore and geographical indications which are implicitly not covered under the TRIPs Agreement need to be examined critically as they affect the food security and health of large populations in developing countries.

Developing countries need to form strategies learning from the experience of sister nations while keeping in mind the obligations of the TRIPs Agreement and the pressures from the developed world. Successful implementation of the chosen strategies will depend inter alia on the awareness created among the stakeholders about the role and relevance of IPRs. The expressed intention needs to be backed by institutional capacity to legislate, execute and enforce these policies.

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End Notes

ⁱ “*Sui Generis*” means “Being the only example of its kind, unique.”

ⁱⁱ Examples in this paragraph have been quoted from Shiva, 2004

ⁱⁱⁱ WTO had agreed to defer TRIPs implementation in Least Developed countries till 2016 under its staggered schedule and these countries should utilize the time to protect and build their industry. They should resist pressure from developed countries till that time. (CIPR, 2002).

COMMUNITY LED REJUVENATION OF TRADITIONAL DRINKING WATER SOURCES -A CASE STUDY OF HAMIRPUR DISTRICT (HP)

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Abstract

Availability and access to safe and clean drinking water is a basic human right and an important obligation of the government. In addition to the creation of new sources for providing drinking water, the maintenance and rejuvenation of traditional water sources is a big necessity in rural areas of our country. The present article mentions a case study of how traditional drinking water sources have been restored and rejuvenated in district Hamirpur of Himachal Pradesh integrating water, health, hygiene and sanitation factors with the active involvement of the local community in their construction and maintenance; which has improved the drinking water access of thousands of villagers in a significant manner.

Perhaps the biggest requirement of mankind today living in this era of fast depleting resources is water in general, and drinking water in particular. The availability and access to safe and clean drinking water is a basic human right of all citizens. Water is a public good and every person has the right to demand drinking water. It is the lifeline activity of the Government to ensure that this basic need of the people is met. To increase economic productivity and improve public health, there is an urgent need to immediately enhance access to safe and adequate drinking water and Government should give highest priority to the meeting of this basic need for the most vulnerable and deprived groups in the society¹.

Provision of safe drinking water is a basic necessity. Rural drinking water supply is a State subject and has been included in the Eleventh Schedule of

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¹National Rural Drinking Water Programme: *Movement Towards Ensuring People's Drinking Water Security in Rural India*, Framework for Implementation 2009-2012, Department of Drinking Water Supply, Ministry of Rural Development, Government of India, p.11.

the Constitution among the subjects that may be entrusted to Panchayats by the States². Historically, drinking water supply in the rural areas in India has been outside the government's sphere of influence. Community-managed open wells, private wells, ponds and small-scale irrigation reservoirs have often been the main traditional sources of rural drinking water. The first government-installed rural water supply schemes were implemented in the 1950s as part of the Government policy to provide basic drinking water supply facilities to the rural population. Since then, the involvement of Government has increased with corresponding decrease in the role of communities in the rural water supply sector³.

Ensuring equity in availability of safe drinking water with regard to gender, socially and economically weaker sections of the society, school children, socially vulnerable groups such as pregnant and lactating mothers, especially disabled and senior citizens etc. has been one of the prime concerns while drafting the Eleventh Plan Document. It was also decided that the major issues which need tackling during this period are problems of sustainability, water availability and supply, poor water quality, centralized vs. decentralized approaches⁴. In order to give effect to these issues, National Rural Drinking Water Programme has grounded since 1.4.2009, whose objectives are to enable the rural community/households to have access to safe drinking water on sustainable basis. To achieve the objective, this Programme also aims at adoption of appropriate technology, capacity building, awareness generation on various aspects of drinking water and various measures for sustainability of drinking water sources and systems⁵.

Among important aspects suggested by the Government of India, are the moving away from over-dependence on single source to multiple sources through conjunctive use of surface water, ground water and rain water harvesting and also encouragement to water conservation methods including revival of traditional water bodies⁶.

²Annual Report, 2008-2009, Ministry of Rural Development, Government of India, p.169.

³Foreword, 'National Rural Drinking Water Programme: Movement Towards Ensuring People's Drinking Water Security in Rural India', Framework for Implementation 2009-2012, Department of Drinking Water Supply, Ministry of Rural Development, Government of India, p.3.

⁴Annual Report, 2008-2009, op.cit., p.xiv.

⁵Monitoring and Evaluation of Rural Development Programmes, Ministry of Rural Development, Government of India, 2009, p.10.

⁶Ibid, p.11.

Convergence

Convergence is perceived to be a process that brings together existing schemes and resources and not a new scheme with additional overheads and additional budgets. The basic premise of planning is decentralisation and community participation with a central role for the Panchayati Raj Institutions (PRIs), specially the Gram Sabha and the Gram Panchayat. Convergence is expected to create value addition through resource and activity synergies as well as infusion of professional quality in planning and implementation⁷. There are a number of programmes/projects/schemes implemented by the Government of India and State Governments with the goal of improving the standard of living of the people. National Rural Health Mission, Sarva Shiksha Abhiyan, Midday Meal programme, Mahatma Gandhi National Rural Employment Guarantee Scheme (MNRGS), Twelfth Finance Commission, Backward Regions Grant Fund, Integrated Community Development Scheme (ICDS) etc. are some of the programmes/schemes which the rural water supply programme should strive to achieve convergence with⁸.

Drinking water is the prime necessity of life. When we look at the pre-Independence days, the source of water was community-based surface water with little or no treatment available. After Independence, the government took over the responsibility and established the Public Health Engineering Department. Until 1970s, ground water was exploited for drinking and agriculture. The scenario changed when the country faced droughts and resultant drinking water shortage during the 1980s. Hydrological factor of the ground changed and the availability of drinking water in the country became a serious issue. We are dependent on ground water in the rural areas which is contaminated with fluoride and arsenic in various states. Contamination of the available water is also one of the major problems. Water is available but it is contaminated by defecation in the open and mishandling of the water bodies by the rural communities. If we improve the sanitation system in rural areas, 50-60 per cent of the water contamination problem will be solved. We have grossly neglected the natural water bodies. The question is not only of the availability of water but the quality of water

⁷Background Note, National Conference of Project Directors of District Rural Development Agencies, Ministry of Rural Development, Government of India, 2010, p.3

⁸Ibid., p.37.

also. We should plan to move from overdependence on a single source of drinking water to multiple sources in order to reduce risk and slippage⁹. We should try to reduce dependence on ground water and revive existing water bodies, and create a new surface system¹⁰.

Drinking water supply in Himachal Pradesh

As per the 1991 Census, all the 16,997 villages in the State were provided with safe drinking water facilities by March, 1994. Thereafter the focus shifted from village to habitation. With the coming in force of National Rural Drinking Water supply guidelines w.e.f. 1.4.2009, after realignment/mapping of habitations, there are 53,205 habitations in the State. Out of these, 19,473 habitations (7,632 habitations with population coverage >0 and <100 and 11,841 habitations with 0 population coverage) are having inadequate drinking water. (See Table 1) The criteria of coverage of habitations has been changed to population coverage to ensure water security at household level. All these 19,473 habitations will be covered in a phase manner by March 2012 in line with the guidelines of the Government of India¹¹.

Table 1: Drinking Water Availability Among Habitations In H.P.

Total No. of habitations	Habitations with 100% population coverage	Habitations with population coverage >0 & <100	Habitations with 0 population coverage	Total
53,205	33,732	7,632	11,841	19,473
	63.41%	14.34%	22.25%	36.59%

Source: Draft Annual Plan 2010-11, Planning Department, Government of Himachal Pradesh, Shimla, p.358.

Rejuvenation Of Traditional Drinking Water Sources In District Hamirpur

Government of Himachal Pradesh have been laying utmost importance to conservation and rejuvenation of traditional water sources and as they are the primary source of supply of drinking water to the thousands of people at the grass root. Hamirpur is the smallest district of Himachal Pradesh area

⁹Idem.

¹⁰Shantha Sheela Nair, *gfiles*, Vol. 2, Issue 1, April 2008, pp.1-5.

¹¹*Draft Annual Plan 2010-11*, Planning Department, Government of Himachal Pradesh, Shimla, pp.357-358.

wise with a total population of 4.12 lacs as per the 2001 Census. It has 229 Gram Panchayats in six Development Blocks out of which at least four have perpetually remained dry over a period of time. However, this small district in Himachal Pradesh, a traditionally dry area that has experienced water woes for several years, is showing India how to conserve water¹².

District Hamirpur has taken a leap in the facelift of thousands of traditional water sources in all its 229 Gram Panchayats through MNREGS in the year 2009-10. District Administration Hamirpur, with the active community involvement of Panchayati Raj institutions and with the technical support of Block Development offices has repaired, restored and rejuvenated 666 traditional water sources in the district and that too in a short span of six months at a total cost of Rs. 257.39 lacs benefitting 666 villages and 38,145 household families. This initiative has not only refurbished and rejuvenated the traditional water sources of the district but has also provided 1,25,515 mandays of employment to the local villages. *An effort to integrate drinking water with sanitation health and employment was made in this entire strategy which has yielded great results.*

Table 2 : Expenditure, Employment and Beneficiaries of Drinking Water Rejuvenation Campaign

Sr. No.	Name of Development Block	Expenditure (Rs. in Lacs)	Mandays generated	No. of households benefitted	No. of Gram Panchayats covered	No. of villages covered
1.	Hamirpur	38.93	22,788	3,588	24	107
2.	Bamson	92.40	50,397	7,625	46	200
3.	Sujanpur	25.52	10,468	7,301	20	85
4.	Nadaun	41.91	22,861	3,063	58	82
5.	Bhoranj	16.04	4,480	8,943	33	80
6.	Bijhari	42.59	14,521	7,625	48	112
	Total	257.39	1,25,515	38,145	229	666

Source: Primary data from Deputy Commissioner's Office, Hamirpur

¹²Dry district shows a nation how to get wet', *Hindustan Times*, June 5, 2010.

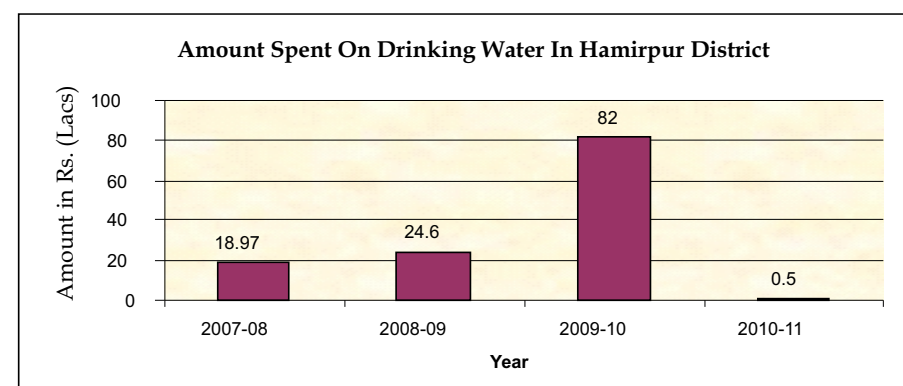
A meeting of various stakeholders was convened by the author as Deputy Commissioner, Hamirpur in the month of September, 2009 wherein it was decided that almost all the traditional water sources of the district i.e. *boulies*, wells and *khatries* in the villages on common lands should be covered under this project. Instructions were issued to the local Panchayat Secretaries and Sahayaks to personally visit each and every traditional water source and identify its specific requirement of repair and restoration. *It was emphasized that not only the traditional water sources be cleaned and repaired, but two other things laying of roof and fixing of gates should also be done.*

To tackle water scarcity, villagers in the district were also encouraged to began harvesting rain water in *khatriis* (deep pits) lined with impervious rocks, several years ago. This simple form of water conservation caught the eye of district administration which launched a water conservation drive in the region¹³. *Khatriis* are mainly found in districts of Hamirpur, Mandi and Kangra of Himachal Pradesh, and are still in use round the year and serving the people of high altitude areas of these districts. In these *khatriis*, rain water is collected by harnessing water from roofs with the help of tins. This water is mainly used for washing clothes, utensils and for drinking by animals. Most of these *khatriis* are kept under lock and key as every family has its own *khatri*. Since there are meager permanent water resources in the area, people used to wait for the arrival of rain for their needs. With the early arrival of summer, the use of *khatriis* has increased as the water level in other sources has gone down for want of rains during the last winter season¹⁴.

A total of 666 traditional water sources comprising of 380 *boulies*, 134 wells and 152 *khatries* were identified in 6 Development Blocks- Hamirpur, Bamson, Sujanpur, Nadaun, Bhoranj and Bijhari in district Hamirpur. A total project shelf of Rs.257.39 lacs was approved through MNREGS for execution through the concerned panchayats. The conservation of water and rejuvenation of traditional water sources has been listed as the top most priority even by the Government of India in its guidelines of MNREGS works. A time frame of 6 months to complete this entire work before 31st March, 2010 was given and regular monitoring of the progress made in this regard was done by the Deputy Commissioner to ensure that these water sources are *refurbished before the onset of summer season 2010* when the drinking water availability is at a premium which is dealt with by deploying water tankers. In the previous years, huge amounts were being spent on providing drinking water to the villagers by purchasing water through tankers as is shown in the Diagram below.

¹³Idem.

¹⁴Water being kept under lock and key in khatriis', *Pioneer*, June 5, 2010.



Source: District Revenue Office, Hamirpur

Some suggestive designs for the *boulies* etc. were procured from the Irrigation & Public Health Department and made available to the panchayats to provide them technical assistance.

Table 3 : Details of rejuvenated traditional water sources

Sr. No.	Name of Block	No. of Traditional water sources	Boulies			Wells			Khatriis		
			Gate fixed	Roof laid	Repaired	Gate fixed	Roof laid	Repaired	Gate fixed	Roof laid	Repaired
1.	Hamirpur	107	65	70	92	7	12	12	3	--	3
2.	Bamson	200	53	50	67	44	35	55	69	--	78
3.	Sujanpur	85	8	8	12	1	1	2	45	--	71
4.	Nadaun	82	15	24	57	5	20	25	--	--	--
5.	Bhoranj	80	11	31	52	8	12	28	--	--	--
6.	Bijhari	112	83	77	100	7	5	12	--	--	--
Total		666	235	260	380	72	85	134	117	--	152

Source: Primary data from Deputy Commissioner Office, Hamirpur

Apart from repair of 380 *boulies*, 134 wells and 152 *khatries* in the district, gates have been fixed in 235 *boulies*, 72 wells and 117 *khatries* totaling 424 gates. The advantage of fixing gates on these water sources is to prevent the entry of animals etc. into these sources polluting the drinking water, and also to check unscrupulous and wasteful utilization of precious drinking water. Though such sources prove to be very useful in fulfilling water needs of people, especially during scarcity in summer months, contamination in some of these sources had led to spread of water-borne diseases in the past.

Spread of diseases like diarrhea, viral fever etc. are quite common among people using water from these sources and hundreds of people were infected in the past few years¹⁵. The benefit of laying roofs of *boulies* and wells is to prevent tree leaves etc. entering and getting deposited in such sources. Bamson Block, which was traditionally considered as the most water scarcity Block in the district, was given utmost thrust and resultantly 200 water sources out of total of 666 in the district have been rejuvenated in this Block itself. 112 traditional water sources in Bijhari Block, 107 in Hamirpur, 85 in Sujampur, 82 in Nadaun and 80 in Bhoranj Blocks were also rejuvenated. *A total of 38,145 households out of 94,811 households of the district, i.e. 40% of the households will be directly benefitted by this initiative in 666 villages of 229 gram panchayats.* The local panchayats and communities were motivated not only to associate themselves with this project but also to maintain them in future from sustainability point of view. Since people's participation is very important in making such schemes successful, their participation at every level was ensured and most of the schemes were built and maintained by the gram panchayats or other local bodies¹⁶. *A separate provision of water for animals or washing clothes has been made in most of the boulies so as to restrict the water in main boulies strictly for drinking purposes.*

The above implementation involved community planning, community implementation and community maintenance. All the departments linked to water conservation were brought under one umbrella to avoid duplication of work. This is giving us good results and we can monitor the works well¹⁷.

Concluding Observations

A look at any of such traditional water sources now reflects the picture of change as now all these traditional water sources are full of clean drinking water in hygienic conditions. This has not only improved sanitation but also the general health of thousands of citizens in rural areas. In the summer season of 2010, upto June, very little amount (less than Rs.1 lac) has been spent on purchasing water through tankers (though comparatively better rainfall during the year is also attributable to this). The local villagers are

now happy that now they have access to safe and clean drinking water right in their vicinity considering the fact that the availability of clean drinking water is an all the more challenging task in a hilly State like Himachal. This initiative seems to be a step in right direction. The success of the initiative gives positive signals for sustainability and replicability elsewhere to ensure easy, timely and all-weather access to clean drinking water to our rural brothers and sisters. It also shows how restoring and rejuvenating our traditional drinking water sources is possible with active involvement of the local communities and grassroots level planning and execution.

¹⁵ '666 traditional water sources rejuvenated', *The Tribune*, Shimla, April 4, 2010.

¹⁶ 'Groundwater level improves in Hamirpur', *The Tribune*, Shimla, April 28, 2010.

¹⁷ 'MNREGS helps community earn besides saving water', *Hindustan Times*, June 6, 2010.

THE IAS OFFICER PREDATOR OR VICTIM?

N.C. Saxena*

Abstract

The author has examined the general negative public perception about the IAS in a systematic manner. He has also suggested a way forward to improve the situation.

According to a recent survey¹ on 12 Asian economies done by the Hong Kong based Political and Economic Risk Consultancy, India's "suffocating bureaucracy" was ranked² the least-efficient, and working with the country's civil servants was described as a "slow and painful" process. 'They are a power centre in their own right at both the national and state levels, and are extremely resistant to reform that affects them or the way they go about their duties,' the report said.

India's own Second Administrative Reforms Commission is no less scathing in its criticism:

The state apparatus is generally perceived to be largely inefficient with most functionaries serving no useful purpose. The bureaucracy is generally seen to be tardy, inefficient and unresponsive. Corruption is all-pervasive, eating into the vitals of our system, undermining economic growth, distorting competition and disproportionately hurting the poor and marginalized citizens. Criminalization of politics continues unchecked, with money and muscle power playing a large role in elections. In general there is a high degree of volatility in society on account of unfulfilled

expectations and poor delivery. Abuse of authority at all levels in all organs of state has become the bane of our democracy.'

The poor shape of India's bureaucracy has also resulted in indifferent progress on the Millennium Development Goals (MDGs). High growth notwithstanding, India seems to have failed on two fronts. First, social indicators of health, nutrition, hygiene, and quality of education are either stagnant or moving very slowly. And secondly, a large number of marginalised and disadvantaged people have either not gained from development, or in many cases have actually been harmed from the process. Weak governance, manifesting itself in poor service delivery, uncaring leadership, and uncoordinated and wasteful public expenditure, are the key factors impinging on development and social indicators.

Political compulsions and bureaucracy

In a well-functioning democracy, the political process would ideally find answers to governance problems. Political pressure can be healthy if it results in greater demand on administration for efficiency and better services to the people. Pressures properly regulated and wisely tempered, improve the spirit of administration and help to keep it on an even keel, but this is not happening in India.

There is a growing belief, widely shared among the political and bureaucratic elite in government, that the state is an arena where public office is to be used for private ends. Immediate political pressures for distribution of patronage are so intense that there is no time or inclination for the ministers and bureaucrats to do conceptual thinking, to design good programmes, weed out those that are not functioning well, and monitor the programmes with a view to improve the effectiveness of delivery. At the same time elections require funds which have to come through the looting of the Government treasury.

The political system in many states is accountable not to the people but to those who are behind the individual Members of the state level Legislative Assemblies (MLAs); these are often contractors, mafia, corrupt bureaucrats, and manipulators who have made money through the political system, and are therefore interested in the continuation of chaos and patronage based administration. The fact that half of the politicians in some states are either

*The author is a former IAS officer. He is currently a Commissioner to the Hon'ble Supreme Court of India

¹Times of India, 3rd June 2009

²Ranking by most efficient to least efficient economies: Singapore, Hong Kong, Thailand, South Korea, Japan, Malaysia, Taiwan, Vietnam, China, Philippines, Indonesia and India.

criminals or have strong criminal links and thus have no faith in the rule of law further compounds the problem.

The state resources are the most valued prize for both politicians and their constituencies, which leads to a client patron relationship between the holders of state power and those seeking favours. Patronage is controlled by individuals, not established institutions bound to follow set procedures. Where power is highly personalised and weakly institutionalised, the decision making process is replaced by arbitrary and behind-the-scene transactions. In such an environment, exercise of power for its clients demands fudging of rules, dependence upon corrupt civil servants, plundering of the public treasury, and decay of governance. When fence starts eating the field, there is little chance of development reaching the poor.

On the eve of India's Independence, Winston Churchill had said, 'Power will go to the hands of rascals, rogues and freebooters. All Indian leaders will be of low calibre and men of straw. They will have sweet tongues and silly hearts. They will fight among themselves for power and India will be lost in political squabbles'. What appeared as a scandalous outburst then may be called an understatement now!

Impact on the IAS

In almost all states people see the bureaucracy as wooden, disinterested in public welfare, and corrupt. Bright men and women join the IAS, but adverse work environment, constant political interference, frequent and often meaningless transfers, and corruption below and above them, all leads to the death of idealism, and encourages them too to misuse their authority. Disillusionment and greed, and not need, is the driving force behind graft amongst civil servants.

A young IAS officer from Bihar described³ the predicament of honest officers in the following terms:-

'As Project Director (PD) I was handling rural development funds and it was often a problem to release money to the sub-district Blocks and Panchayats (elected village councils). This was so because the Block Development

Officer (BDO) or the *Mukhia* (elected panchayat president) would immediately take up 'n' number of schemes and distribute the total money as advance to either his own relatives who act as agents or *Abhikartas* (Junior Engineers) in employment schemes or the muscle men or petty contractors of the local MLA. If any action is proposed against the BDO or the *Mukhia* a report has to be sent to the Minister who often does not take any action. This further emboldens the BDO while the Collector/ PD gets demoralised. Upright officers have been systematically marginalised by the indulgent political masters who expect a committed bureaucracy. Committed officers enjoy outstanding CRs (annual confidential reports) and foreign training, while upright officers are sidelined in useless departments like *Rajbhasha* (Official Language), Protocol etc. When they apply for GOI deputation, all kinds of hindrances are created. This is done to break the upright officer and make him submissive and more committed.'

The IAS serves the state but the state structure is itself getting increasingly dysfunctional and divorced from public interest. In some north Indian states parallel authority structures and Mafia gangs have emerged. Tribal regions in central and north-east India are out of bounds for normal administration. In such a situation it is no surprise if the bureaucracy too is in bad shape.

Over the years, whatever little virtues the IAS possessed - integrity, political neutrality, courage and high morale - are showing signs of decay. Many civil servants are deeply involved in partisan politics: they are preoccupied with it, penetrated by it, and now participate individually and collectively in it. This is understandable, though unfortunate, because between expression of the will of the State (represented by politicians) and the execution of that will (through the administrators) there cannot be any long term dichotomy. In other words, a model in which politicians would be casteist, corrupt and will harbour criminals, whereas civil servants will continue to be efficient, responsive to public needs and change-agents cannot be sustained indefinitely. In the long run administrative and political values have to coincide.

³Planning Commission, 2000, Mid Term appraisal of the 9th Plan, Govt of India

While defending the continuation of the all India Services, Sardar Patel had said, "they are as good as we are". At that time it was taken as a compliment that the civil service was being compared with statesmen who had won freedom for the country. One does not know how many civil servants will like to be told today that they are like politicians. But things have moved a full circle, and perhaps many of them behave like politicians- the English speaking politicians- corrupt, with short term targets, narrow horizons, feudal outlook, disrespect for norms, contributing nothing to the welfare of the nation, empty promises, and no action.

Internal problems within the IAS

Lack of professionalism - A high degree of professionalism ought to be the dominant characteristic of a modern bureaucracy. The fatal failing of the Indian bureaucracy has been its low level of professional competence. The IAS officer spends more than half of his tenure on policy desks where domain knowledge is a vital prerequisite. However in the present environment there is no incentive for a young civil servant to acquire knowledge or improve his skills. There is thus an exponential growth in both, his ignorance and arrogance. It is said that in the house of an IAS officer one would find only three books - the railway timetable, because he is always being shunted from one post to the other, a film magazine because that is his level of interest, and of course, the civil list - that describes the service hierarchy! An important factor which contributes to the surrender of senior officers before political masters is the total lack of any market value and lack of alternative employment potential. Beyond government they have no future, because their talents are so few. Most IAS officers thus end up as dead wood within a few years of joining the service and their genius lies only in manipulation and jockeying for positions within government.

Creation of redundant posts - Due to the control that the IAS lobby exerts on the system, a large number of redundant posts in the super-time and superior scales have been created to ensure them quick promotions. Often a senior post has been split, thus diluting and diminishing the scale of responsibilities attached with the post. For instance, in some states against the post of one Chief Secretary, there are many officers now in equivalent but far less important posts drawing the same salary. In one state, previously where one officer used to be the Secretary of Medical and Health, now there are five officers doing the job of one, four are in-charge of health, family

planning, medical, and medical education respectively, whereas the fifth one as Principal Secretary oversees the work of these four Secretaries!

This has apparently been done to avoid demoralisation due to stagnation, but the net result has been just the opposite. First, it leads to cut throat competition within the service to grab the important slots. The old camaraderie has vanished. Instances are not lacking when IAS officers wanting plum job have gone to the politicians denigrating their competitors. Second, this no-holds-barred competition is then exploited by politicians in playing up one against the other leading to officers becoming more pliable. Third, for IAS officers in the marginalised positions government seems remote, heartless and more unjust now than ever before. Many have gone to the Tribunals and Courts for promotions and postings, a phenomenon that was unheard of two decades ago.

Perverse incentives are not the only factor undermining the effectiveness of the bureaucracy. Its composition is also skewed. For instance, in most states, about 70% of all government employees are support staff unrelated to public service drivers, peons and clerks. Key public services education, healthcare, police and judiciary- are starved of people, whereas many wings are overstaffed.

Structure of reward and punishment - It may be recalled that even in the 1970's the officers exerted pressure on the system to move to what they thought were more glamorous positions. Some decades back, when "useless" posts were almost non-existent, an informal hierarchy of jobs had existed. The Secretary Industries, as also every one else, thought that he was holding a more important job than the Secretary Social Welfare although they drew the same salary. A collector of a large district felt humiliated if he was transferred as Director of Tribal Development.

The difference between then and now is that previously civil servants had clear ideas about the type of behaviour that would be rewarded or punished; furthermore, control over that, and judgment about it, was in the hands of the civil service itself. Now, the structure of reward and punishment is decidedly and squarely in the hands of the politicians, who therefore cannot be displeased. Today many Legislative Assemblies meet only for 20 to 30 days in a year. MLAs are not interested in legislative functions, they all want a share in the executive! Most of the time they interfere in the role of other

wings of Government with no sense of accountability, but they have nuisance value for back-door influencing in decision making. Such back seat driving means informal control over the bureaucracy, but it promotes irresponsible decision making and encourages corruption. The traditional separation between the executive and the legislature has disappeared in India. This has meant erosion of internal discipline and emergence of the district MLAs as the real boss for the Collector.

Poor service delivery - To be fair to the modern brand of politicians, it must be admitted that except for high integrity, neutrality towards party politics, and provision of minimal administrative services in times of emergency, the civil service even in the past had little to commend for itself. Efficiency in the civil services was always very narrowly defined; it was in terms of contempt for politics and adherence to rules, but never in terms of increased public satisfaction. In such a scenario of low institutional capability it is unfair to expect that the political processes would be totally free from populism or sectarianism. Because of the inability of the system to deliver, politicians do not perceive good governance as feasible or even important for getting votes. No chief minister seems to be saying to his constituents: 'within three months all canals would run on time, you would get 10 hours of electricity, rations would be available for the poor, you apply for a license today and within a month it would reach your doors, your grievances will be promptly attended to, etc.' One reason why he does not say so is the total lack of faith on the part of voters in such promises which need delivery through the administrative apparatus. Ministers too are conscious of the limitations of the system, and realize that such promises cannot be delivered.

It is here that the civil service has failed miserably. Politics is after all 'art of the possible', and if the civil service is no longer able to ensure service delivery, politicians are forced to resort to identity based politics in order to reach at least some sections to keep the faith of the voter alive in the political system.

Although many civil servants hold the view that it is the nature of politics which largely determines the nature of the civil service and the ends to which it would be put, and therefore civil service reforms cannot succeed in isolation, causation is also in the other direction. Non-performing administration leaves little choice to the politicians but to resort to populist rhetoric and sectarian strategies.

Rather than try to improve the delivery system, many IAS officers are compromising with the rot and accepting a diminished role for themselves by becoming agents of exploitation in a state structure which now resembles more like the one in the medieval period - authoritarian, brutal, directionless, and callous to the needs of the poor. A few competent and ambitious civil servants would be able to rise above all this, by joining the UN and other such organisations. Their material success will further fuel the desire of the ordinary members of the service to enrich themselves by hook or by crook. In the process they would become totally indistinguishable from other rent seeking parasites - politicians, Inspectors and middlemen. Perhaps they had not imagined that they would end up like this at the time of joining the service. Stagnation in their intellectual capabilities and a decline in self-esteem will further demoralise them. Disillusionment and corruption are thus likely to coexist in the IAS for quite sometime to come.

How to stem the rot?

Government of India transferred almost four trillion Rupees in 2008-09 to the states. If even half of it was to be sent to the sixty million poor families (at 28% as the cut off line for poverty, 300 million poor would be equivalent to roughly 60 million households) directly by money order, they would receive more than 90 Rupees a day! It proves that public expenditure needs to be effectively translated into public goods and services that reach the poor for it to have an impact on poverty and social outcomes. Unfortunately different kinds of distortions can come in the way of resource allocations reaching the intended beneficiaries.

Although there has been a growing realisation among some chief ministers on the need to improve governance, only a few have been able to translate this into concrete action. This would necessarily involve keeping the MLAs and Ministers under check, which is difficult when the state is under a coalition regime, or the ruling party is constrained by a thin margin in the Assembly, or is divided into factions. In many other states even Chief Ministers seem to be averse to professionalizing administration.

When neither politics nor state administration has the capacity for self-correction, only external pressure can coerce states to take hard decisions that will hit at their money making tactics. In the Indian situation (where foreign donors provide very little aid to the states as compared with what is

provided by the Centre) this can come only from the Centre, backed by strong civil society and media action.

Conditions under which the civil servants operate in the social sector Ministries in Government of India (GOI) are somewhat different from the work environment prevailing in the states. First, the central government Joint Secretary does not control field staff and is therefore free from the pressures of transfers and postings. Second, his/her tenure in GOI is for five years, which facilitates growth of professionalism. In the states, when officers fear that they would be transferred within six months there is hardly any incentive to perform. Third, central government officials are more in touch with experts, donors and specialists, and therefore are under peer group pressure to learn their subject and be able to converse with the specialists on equal terms. In some cases, where GOI Ministries (such as in Education and lately in Health) have started behaving like donors and make states be answerable for results, results in the field are more satisfactory than in the Ministries, such as Tribal Affairs, Food & Civil Supplies, and Women & Child Development, where they are content with just release of funds or food grain with little monitoring of outcomes.

Therefore the enhanced control by the Centre on social sector expenditure should provide a window of opportunity to put some pressure on the states to improve their administration and service delivery. Some of the ways it can be achieved are discussed below.

Focus on outcomes - At present officials at all levels spend a great deal of time in collecting and submitting information, but these are not used for taking corrective and remedial action or for analysis, but only for forwarding it to a higher level, or for answering Parliament/ Assembly Questions. Equally, state governments do not discourage reporting of inflated figures from the districts, which again renders monitoring ineffective. As data is often not verified or collected through independent sources, no action is taken against officers indulging in bogus reporting. The practice is so widely prevalent in all the states, that the overall percentage of malnourished children, in case of 0-3 years according to the data reaching GOI from the field is 8 per cent (with only one per cent children severely malnourished), as against 46 per cent (with 17 per cent children severely malnourished) reported by an independent survey sponsored by GOI. The field officials are

thus able to escape from any sense of accountability in reducing malnutrition.

The situation can easily be corrected by asking the state governments to show greater transparency of the district and centre records by putting them on a website, and by frequent field inspections by an independent team of experts, nutritionists, and grassroots workers. The Centre should also pull up the states for not recognising almost 90% of the severely malnourished children.

Fiscal transfers - Very little of the GOI transfer of roughly Rs 4 trillion Rupees (this amount does not include subsidies, such as on food, kerosene, and fertilizers) annually to the states is linked with performance and good delivery. The concept of good governance needs to be translated into a quantifiable annual index on the basis of certain agreed indicators, and central transfers should be linked to such an index⁴.

Accountability - As a consequence of its colonial heritage as well as the hierarchical social system administrative accountability in India was always internal and upwards, and the civil service's accountability to the public had been very limited. With politicisation and declining discipline, internal accountability stands seriously eroded, while accountability via legislative review and the legal system has not been sufficiently effective. Often too much interference by Judiciary (as in Bihar) in day to day administration further cripples administration. But strengthening internal administrative accountability is rarely sufficient, because internal controls are often ineffective especially when the social ethos tolerates collusion between supervisors and subordinates.

'Outward accountability', therefore, is essential for greater responsiveness to the needs of the public and thus to improve service quality. Departments such as the Police and Rural Development, which have more dealings with the people, should be assessed annually by an independent team consisting of professionals such as journalists, retired judges, academicians, activists, NGOs, and even retired government servants. These should look at their policies and performance, and suggest constructive steps for their

⁴It is informally learnt that the 13th Finance Commission has recommended giving additional funds to states who do well on certain indicators, such as IMR, forest cover, etc. This would be a good beginning, if the suggestion is accepted by GOI.

improvement. At present the system of inspections is elaborate but often precludes the possibility of a 'fresh look' as they are totally governmental and rigid. The system should be made more open so that the civil service can gain from the expertise of outsiders in the mode of donor agency evaluations of projects. It is heartening to note that GOI has already started doing so for some of its flagship programmes, such as in education and health. Petitions under the Right to Information Act (RTI) have also empowered citizens, but its use is still dominated by civil servants on personnel issues of appointments and promotions.

Priorities for enhancing both internal and external civil service accountability should include: improved information systems and accountability for inputs; better audit; face-to-face meetings with consumers and user groups; publishing budget summaries in a form accessible to the public; a stronger performance evaluation system; scrutiny and active use of quarterly and annual reports; and selective use of contractual appointments.

One way to bring in accountability is to start the system of holding public hearings in matters pertaining to the works handled by each office. Prominent social workers and NGOs should be associated with this exercise for more productive results. The teams would undertake surveys of quality of service delivery in key areas; scrutinize policies, programmes and delivery mechanisms. Civil servant's views on work constraints and reporting fraud and corruption should be elicited. The reviews conducted should also form the basis of time bound changes and improvements which should be monitored.

Needless to say that such comprehensive reforms need for their sustenance strong political and administrative will from the top. In its absence, reforms remain only on paper. Accountability has to be induced; it cannot be decreed by fiat. Accountability is a result of a complex set of incentives, transparency in processes and decision making, and checks and balances at various levels of government. Thus, the Prime Minister, his senior colleagues and the IAS in GOI have to put their weight behind new accountability systems and review it from time to time.

Personnel issues

Appointments and transfers are two well-known areas where the evolution

of firm criteria can be easily circumvented in the name of administrative efficacy. Even if the fiscal climate does not allow large numbers of new appointments, a game of musical chairs through transfers can always bring in huge rentals to corrupt officials and politicians. As tenures shorten both efficiency and accountability suffer. In U.P., the average tenure of an IAS officer in the last five years is said to be as low as four months!

The topic of reducing political interference is a sensitive one, for the right to transfer government servants is clearly vested within the political leadership of the States under Article 310 of the Indian Constitution, which maintains that civil servants serve at the "pleasure" of the ruling authorities. Yet few would disagree that this power is often abused by both government servants and politicians -- the former in seeking prime postings, and the latter for making civil service pliable. The prime concern of the political executive now is not to make policies but to manage jobs and favourable postings for their constituents. This means a high degree of centralisation at the level of the state government and little accountability.

Several reforms are needed here. Powers of transfers of all class II officers should be with Head of the Department, and not with government. At least for higher ranks of the civil services e.g. Chief Secretary and the Police Chief, postings may be made contractual for a fixed period of at least two years (as is being done in GOI for Secretaries in the Ministries of Home, Defence, and Finance), and officers be monetarily compensated if removed before the period of the contract without their consent or explanation.

Stability index should be calculated for important posts, such as Secretaries, Deputy Commissioners, and District Superintendent of Police. An average of at least two years for each group needs to be fixed, so that although government would be free to transfer an officer before two years⁵ without calling for his explanation, the average must be maintained above two years. This would mean that for every short tenure some one else must have a sufficiently long tenure to maintain the average.

At the same time it must be recognized that some posts would have more attraction for the employees than others. These may be due to better location

⁵GOI has accepted this suggestion, and has made changes in the IAS Rules, however the choice of posts for which this would be applicable has been left to the states. Predictably, no state has declared any post under the new Rules.

where good schools or cheap government housing is available, more challenges, the pull of private practice for doctors, or simply more opportunities to make money. Except for the Indian Foreign Service, no other service categorises posts according to its demand so as to ensure that everyone gets a fair chance to serve on both important and difficult (such as in remote and tribal areas) assignments. One should categorise posts in each department according to the nature of duties and geographical location into A, B and C posts, and chart out the kind of mix that should dictate the average officer's span of career. At least for IAS officers, one should be able to know through websites that total transparency is being observed and whether some 'well connected' officials have not been able to get 'plum' postings and avoid difficult areas.

Summing up

A good civil service is necessary but not sufficient for good governance; a bad civil service is sufficient but not necessary for bad governance. Thus, a dilapidated civil service has been a key factor in Africa's economic decline. Conversely, a strong civil service is one of several reasons why in several east Asian economies, especially Japan, Singapore, and South Korea, authoritarianism has co-existed with excellent economic performance. It can be argued that the link between authoritarianism and economic decline, so evident in Africa, has been inoperative in these Asian countries largely because of their strong civil service. Greater responsiveness and openness can legitimately be demanded of public administrations in many East Asian countries. Clearly, civil service systems in most East Asian countries cannot be considered a problem; they are, rather, an important part of the solution to these countries' other problems.

The situation in many Indian states which are responsible for achieving the Millennium Development Goals is different. A vast gap exists between the stated and unstated objectives. On paper the avowed objective of government is to give clean administration and work for the poor, but lucrative posts are auctioned to the highest bidder. Corruption is rampant. People have unfortunately accepted the position as *fait accompli* and resigned themselves to their fate. They too tend to seek short cuts and exploit the system by breaking rules or approaching mafia gangs and politicians for favours.

Governance reforms are intractable under a 'kleptocracy' that exploits national wealth for its own benefit and is, by definition, uninterested in transparency and accountability. A pliable and unskilled civil service is actually desirable from its point of view--public employees dependent on the regime's discretionary largesse are forced to become corrupt, cannot quit their jobs, and reluctantly become the regime's accomplices. Providing financial assistance from GOI to such states without linking it with performance and reforms would be a waste of resources. In all other cases, reform is manageable, albeit difficult, complex, and slow. Therefore, considering that the states would need external pressure on them to improve outcomes, certain control by GOI over the IAS and policy domain in social sector is necessary, till such time that the states show signs of improvement in governance.

PROGRAM AGREEMENTS IN MALAYSIA: INSTRUMENT FOR ENHANCING GOVERNMENT PERFORMANCE AND ACCOUNTABILITY

Dr. Prajapati Trivedi *

Abstract

In 1990 Malaysia introduced “Program Agreements” in the government agencies as part of an effort to re-invent the concept of budgeting and change its focus from an input-based annual activity to a performance-based exercise. The new system was modestly termed as the “Modified Budgeting System (MBS).” However the modifications made to the existing system were anything but modest. In one sweep, the new system brought Malaysia at par with best practice in public sector management.

The concept of Program Agreement is straightforward. It is an annual contractual agreement between implementing agencies and Treasury's Budget Division and it outlines the inputs, outputs and impact of a particular program or activity. The performance of the implementing agency is evaluated at the end of each fiscal year against the targets for output and impact. If the performance of the agency is beyond the acceptable variance range specified in the Program Agreement, the agency is obliged to prepare an “Exception Report” to explain the variance.

The strength of the program agreements derives from the fact that they are part of an integrated system of public management in Malaysia. They are intertwined with the budgeting system in the Treasury and the planning system in the Economic Planning Unit. Performance agreements have to be viewed as part of a package of reforms such as the drive for quality and client satisfaction in the government. The former is sought to be implemented by requiring all government agencies to obtain ISO 9000 certification and the latter by requiring all government agencies to develop Client Charters.

Malaysian program agreements are consistent with similar efforts in a large number of OECD countries. The attempt in all reforming bureaucracies is to make the managers manage and also let the managers manage. That is, while holding managers accountable for management (and results), the successful

reformed systems ensure that the managers have enough flexibility to deliver the results. Thus, program agreements in Malaysia have adopted a generalized approach to budget management. The government departments are given expenditure targets and asked to specify programs and activities consistent with Malaysia's Vision 2020. They are also given flexibility to shift spending between certain items as long as they are within the overall limit set by the expenditure target. This innovation in public management has moved the focus from monitoring line items in the budget to monitoring performance indicators and results.

At a technical level, student of performance agreements can point to some structural weaknesses in the way these performance agreements are designed. Yet, they have succeeded because of the so called audit effect agents shape up their behavior even when the system is not perfect because they believe that the system is monitoring their performance. Because agents believe, it becomes a self-fulfilling prophecy in the short run. However, for long-run sustainability it is important to rectify these technical flaws in the design of performance agreements. In comparison to similar efforts by other countries, program agreements in Malaysia are ahead of the US attempts and behind the effort in New Zealand.

In 1990 Malaysia introduced “Program Agreements” in the government agencies as part of an effort to re-invent the concept of budgeting and change its focus from an input-based annual activity to a performance-based exercise. The new system was modestly termed as the “Modified Budgeting System (MBS).” However, as we shall see in this paper, the modifications made to the existing system were anything but modest.

Key Distinguishing Features of MBS : An Overview

In one sweep, the new system brought Malaysia at par with best practice in public sector management. While the details of the system are mentioned in later sections, it is worth noting at the outset the following key features of the MBS:

a. Program Agreement as the Corner Stone of the MBS

The concept of Program Agreement is straightforward. It is an annual contractual agreement between implementing agencies and Treasury's Budget Division and it outlines the inputs, outputs and impact of a particular program or activity. The performance of the implementing agency is evaluated at the end of each fiscal year against the targets for output and impact. If the performance of the agency is beyond the acceptable variance

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levels specified in the Program Agreement, the agency is obliged to prepare an “Exception Report” to explain the variance.

Program agreements are variously known as “Performance Agreements,” “Results Agreement,” “Performance Contracts,” “Framework Agreements,” “Commitment for Results,” etc. They represent the culmination of a long tradition of the central role of evaluation in public policy*. Whether from theory or from practice, the message is the same: What gets measured gets done. In large institutions, public and private, things are counted, and whatever is counted, counts.

Typically, public agencies are either not clear about their goals or are aiming at the wrong goals. The lack of clarity of goals can be attributed to the fact that most public agencies have to deal with multiple principals who have multiple (and often conflicting) objectives. This leads to a fuzziness in the agencies' perception of what is expected from them. The simple act of defining performance measures is enlightening for many public organizations. When they have to define the outcomes they want and appropriate benchmarks to measure those outcomes, this confusion is brought into the open. People begin to ask the right questions, to redefine the problem they are trying to solve, and to diagnose that problem anew.

The theoretical case for performance evaluation in government agencies is supported by the positive results that have accrued whenever an evaluation system has been implemented in the government. As the following example shows, this is true regardless of the level at which it is implemented.

During New York City's fiscal crisis in the 1970s, an independent foundation developed a method, called Scorecard, to measure the cleanliness of streets. It then sent out volunteers every month to rate each of 6,000 streets. The sanitation department had always focused on inputs: How many trucks were assigned to each district? How many men were needed on each truck? Now it began to look at the Scorecard information, which rated outcomes: How clean was each street? Using this information, it reassigned its street cleaners and began to reward crews that made the greatest improvements. By 1986, the percentage of streets rated “filthy” had declined from 43 to 4 percent. Nearly 75 percent were rated “acceptably clean.”*

*For example, see: Carter (1983), Wholey (1983), Picciotto and Weisner (1998), Popovich (1998), Sarji (1996) and Gore (1993).

*For more examples and details, see: World Development Report 2004.

b. Ex-Ante Expenditure Targets

The Expenditure Targets (ET) are set through a combination of top-down and bottoms-up process. At the beginning of the budget cycle, the Treasury provides each ministry with budgetary allocation in the form of a numerical target known as ET for the operating budget for the existing policies. This gives a clear signal regarding government's fiscal policy position and increases financial discipline by forcing ministries to decide on their priorities and trade-offs within the overall budget constraint. It avoids the perverse consequences of the usual poker game under the traditional budgeting system, in which ministries ask for an amount much greater than their real need, and thus force the treasury to slash these request in a more or less arbitrary manner. This has the unintended perverse effect of the treasury ending up implicitly deciding the trade-offs and priorities for the ministries.

c. Generalized Approach to Expenditure Control

MBS represents a more generalized approach to expenditure control which provides for stricter aggregate controls while reducing, eliminating or rationalizing detailed controls. This approach has in fact resulted not only in significant savings to the Malaysian Treasury, but also significant reduction in red-tape and consequent time wasted in giving specific approvals. On the other hand, it has given greater incentives and opportunity for managers to seek and implement a resource mix that will improve program performance.

d. Decentralized Management Philosophy

MBS is based on the following management principles:

- Managers nearest to where the results are produced should be given as much autonomy and authority as practicable; and
- Autonomy/Authority must match Accountability.

Figure shows the direction of trade-offs. The upper levels of management have to delegate authority and greater operational autonomy to the lower levels in the hierarchy in order to demand greater accountability for results and expect improved performance.

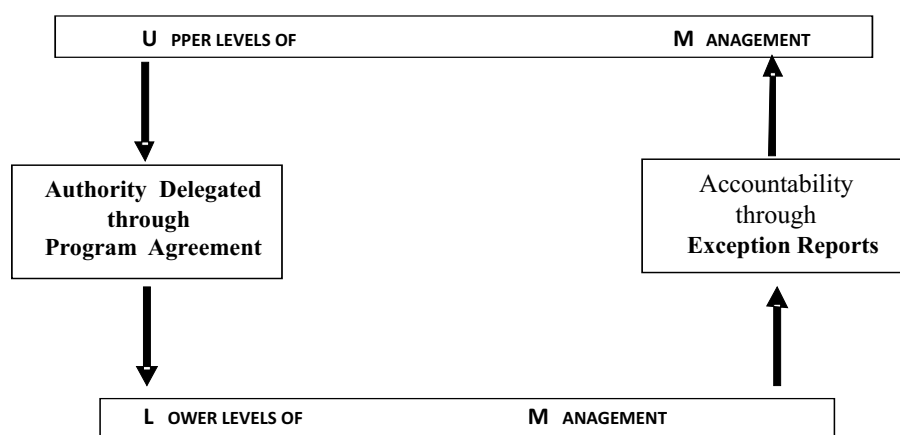


Figure 1: Program Agreements —Accountability for Autonomy

Program Agreements and the MBS Process

To fully understand the MBS, it is important to understand that its effectiveness derives from the fact that it is linked closely to the planning process in Malaysia. In fact, the budgeting system and the planning system are mutually reinforcing. This is perhaps the key to the success of both systems.

Malaysia's unprecedented growth and dramatic reduction in poverty should make all developing countries take notice of their systems. Malaysia is the only developing country that declared that it wants to be a developed country and is on track to becoming one. It has done this with long spells of surplus budgets and a good record of plan implementation. In fact, it managed to have a soft landing during the East Asian Crisis because of the flexibility and breathing space provided by these prudent policies and sound public management systems.

The agency responsible for preparing plans since 1961 is called the Economic Planning Unit (EPU) and it reports directly to the Prime Minister*. EPU prepares long term plans called Outline Perspective Plans (OPPs) and medium term Five Year Development Plans. Currently Malaysia is operating under the Third Outline Perspective Plan (OPP3) covering the period 2001-2010. This OPP3 marks the second phase of Malaysia's journey to realize

* Prior to 1961, planning was done by the Treasury.

Vision 2020. In 1991, the Malaysian Prime Minister enunciated Malaysia's desire to become a developed country by 2020. The EPU was given the challenge to devise a strategy to convert this vision into reality.

Since 1961, EPU has prepared eight five year plans and three perspective plans. The perspective plans specify the overarching social, political and economic goals which have to be achieved to make Malaysia a fully developed country by 2020. Five year plans specify the medium term policies required to realize the vision expressed in the long term perspective plans. The priority given to various strategic goals depends on the specific circumstance prevailing in the country at a particular time. Figure 2 illustrates the relationship between various plans and the Vision 2020 in Malaysia.

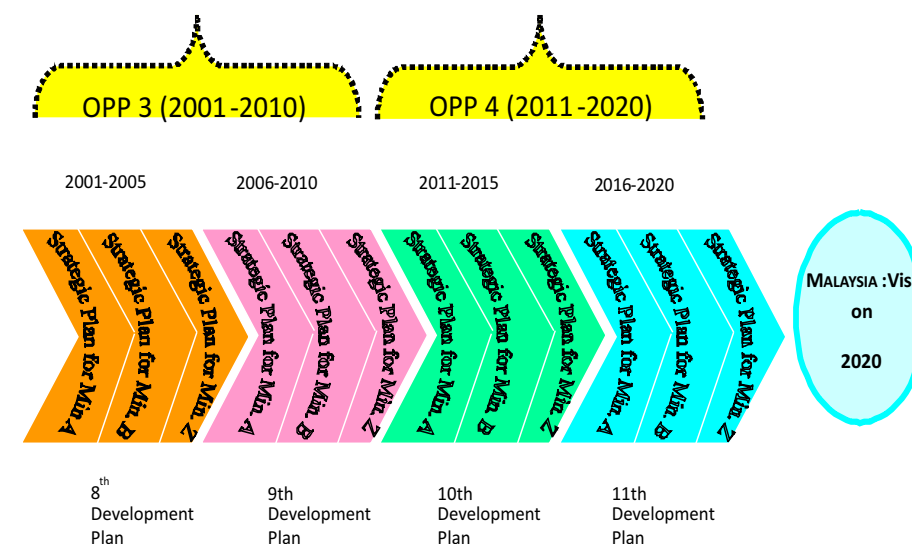


Figure 2: Relationship between Vision 2020 and Plans

Many countries make plans but few transform them into reality. The MBS played a key role in making this conversion possible in Malaysia. Within MBS, program agreements provided the necessary foundation for the success. This relationship between planning and budgeting becomes clear when we look at the various steps in the annual planning and budgeting cycle:

Step 1:**Call for proposals for projects and program to be executed during the next Five Year Plan**

Before the start of the next five year plan, Economic Planning Unit compiles the list of projects and programs received from various ministries and determines the demand side for the resources. The ministries and agencies send proposals before knowing the exact size of the total envelope but base it on the past trends and changing national priorities.

Step 2:**Determine the Overall Resource Envelope for the Plan Period**

The Economic Planning Unit (Macroeconomics Division) works out the resource availability (for development projects and associated recurrent expenditure) during the forthcoming Plan period. This estimate does not include recurrent expenditure for on-going projects and has to be consistent with the relevant Perspective Plan and Vision 2020. EPU uses iterative macroeconomic modeling to determine the resource envelope for the Plan.

Step 3:**Determine Sectoral Allocations for the Plan Period**

The Economic Planning Unit (Sectoral Division) allocates the resources among various sectors by looking at future needs and past performance of the sectors. The plan allocation for development expenditures and associated programs/projects, once approved, become sacrosanct and are expected to be funded unless there is a shortage of predicted revenues. There is no explicit ranking of programs and projects at this stage. The concerned parties, though, do have an implicit idea of the relative importance of the projects.

Step 4:**Announcement of Expenditure Targets**

A Budget Call Circular is issued at this point. It outlines past trends, future projections and Expenditure Targets for each ministry. It acts as a guidance document for drafting Program Agreements and also contains “Threshold” limits for respective ministries. All new budgetary proposals arising out of

new policy initiatives must exceed this threshold limit to be considered by the budget committee at the Treasury. If the threshold limit is RM 50,000 and the cost of the proposal is RM 150,000, then the agency will get 100,000 from the Treasury and will have to fund RM 50,000 from its savings. The rationale behind this concept is to provide incentives to agencies for finding ways to effect savings and encourage them to make only serious proposals. That is, agencies have to put their money where their mouth is.

Expenditure Targets include recurrent expenditure for new policies and projects in addition to the recurrent expenditure for planned projects and development expenditure approved earlier.

Step 5:**Preparation of Budget Proposals**

This step involves internal discussions and decisions within each ministry. Sub-Expenditure Targets are decided and each ministry sends a Call circular internally asking various units to submit proposals.

Each ministry also decides on its Long-term Strategic Plan. This includes Long-term, Medium Term and Short-term targets. Malaysia has moved to a multi year budgetary framework and thus each ministry is required to submit annual targets for two years. Ministries look at the following in developing their budget requirements:

- Continuation of existing policies. These include all programs and activities that have been approved by the Treasury and the Cabinet and are currently under implementation.
- New Policy initiatives for the year that involve new programs and activities, new posts, new areas of maintenance, new training programs, etc.
- One-offs that are a non-recurring expenditure. Examples would include expenditure items such as shifting of the office, office renovation, asset purchase, etc. However, new policies and one-offs can not be aggregated to attain the threshold level.
- Savings proposals for the year. These are existing policies that are proposed to be discontinued, reduced or replaced. This could be

either because the policy has achieved its objective or is no longer appropriate. If the saving proposal is from the agency, it is allowed to use the savings until the limit of the threshold mentioned in Step 4. Thus if the savings is RM 30,000, the agency can use the money for the threshold requirement for the new proposal. In our example, it was RM 50,000. However, if the savings is equal to RM 80,000, the agency can use only RM 50,000 and has to return RM 30,000 to the Treasury.

Incidentally, if the savings proposal is made by the Treasury during the review, agency loses all the proposed savings for that year as well as in the future. Thus, agencies are incentivized to reveal savings opportunities on their own.

Step 6:

Preparation of Program Agreements

This step starts with a review of the previous Program Agreement for which data is available. In view of the past performance and future requirements (as per the strategic plan for the agency), new activities are added or saving proposals made for the proposed Program Agreement for the next fiscal year. That is, ministries put their budget proposal in the form of a Program Agreement. As we shall see later, the focus in presenting Program Agreements is on what value can the nation expect for requested budgetary support.

Step 7:

Review of the Program Agreements by MOF

The review of performance agreements involves both the budget officers from MOF and sectoral experts from EPU. They look for consistency of the proposals in the Program Agreement with the Plan and emerging national priorities. They examine and approve new proposals, savings proposals and one-offs.

Step 8

Review of the Budget (Program Agreements) by the Cabinet

Each member of the Cabinet examines all Performance Agreements to

ensure that there is cross-sectoral consistency among policies. These comments and proposed changes are forwarded to respective agencies with instructions to incorporate proposed modifications.

Step 9:

Approval by the Parliament

The Performance Agreement Documents are presented to the Parliament as part of the budgetary papers for approval and information.

Step 10:

Final submission of Program Agreements to the MOF

Once the budget is approved, final signed copies are submitted to MOF for follow-up and monitoring.

Appraisal of program agreements in Malaysia

a. Strengths

Most informed observers agree that the Malaysian system of public sector management is at the forefront of such systems worldwide. As already mentioned, the budgeting system is acknowledged to be at par with best practice in OECD. Program Agreements are an integral part of the budgetary system and are also examples of good practice. In what follows, reasons for this well-deserved reputation are summarized.

- (i) There is no magic involved in creating an effective performance improvement system. Governments that are truly concerned about better performance (i.e. enhanced economy, efficiency, effectiveness and service quality) are always in search for systemic incentives for improving performance. Many governments have found that creating such incentives implies a shift in performance management framework from “administration model” to “management model” and from “bureaucracies” to market-oriented systems.”

Malaysia decided that if it was to be a developed country, it had to re-orient its public administration and make it consistent with best practice in OECD countries. The policy makers were convinced that an inefficient public sector can not be an effective partner for the

private sector. Thus upgrading management of public sector was a necessary condition to promote effective public-private partnerships.

As can be seen in Figure 3, Malaysia moved from having a traditional system for public management to the top of the league of reforming countries*.

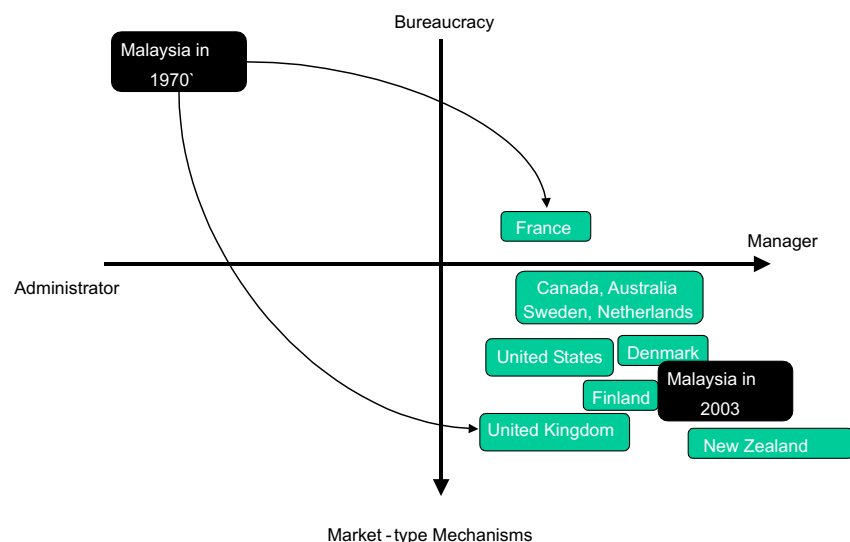


Figure 3: Trends in Public Sector Management in Malaysia

The two dimensions used for classifying public sector reforms in various countries are defined as follows:

- **From Administrator Model to Management Model :** The management model represents an internal culture of making managers manage, as opposed to the administrator model which values compliance to rigid pre-determined rules and regulations. The shift to the management model in Malaysia represents an attempt to empower managers. It requires them to take greater responsibility and gives them greater operational freedom while holding them accountable for results. Malaysia has implemented many techniques that are generally used to achieve this transformation in public sector systems and culture. These

techniques include: mandatory strategic planning by government agencies, explicit target setting, devolved resource management, performance monitoring and reporting, and regular evaluations using benchmarked data.

- **From Bureaucratic Model to Market Model :** The market model represents greater use of market type mechanisms, as opposed to the bureaucratic model, which operates country's public services as a monopoly provider. The aim of such reforms is to let the managers manage on terms similar to their private sector counterparts. To promote performance orientation, countries have used a range of techniques such as: competitive tendering and contracting out, cost recovery, accrual accounting, privatization and performance contracts. Malaysia has made effective use of all these techniques.

As can be seen from Figure 3, few OECD countries are ahead of Malaysia in terms of these reforms. There will be more details on the comparison with other countries in later sections of this paper.

- Malaysians succeeded in implementing an integrated system of performance management in the government. They succeeded because they did not focus on one aspect of performance while ignoring others. As happens so often in many attempts at civil service reforms, attention to one aspect of the system, say, wage and salary reforms, results in transient and illusory gains. Such partial efforts create the famous waterbed effect where water is squeezed from one end and accumulates at the other end. Malaysia used several systems in tandem to ensure that a multi-dimensional approach was put in place to deal with a multi-faceted problem. In addition to having a well defined link between development budget (core responsibility of EPU) and the operational budget (core responsibility of Treasury), systems dealing directly with quality of government services and procedures were introduced in parallel.

The key systems that are worth mentioning are the requirement for ISO 9000 certification from all government agencies in Malaysia. This was done to insure that results were being achieved along with the development of sound internal procedures for doing business. The ISO 9000 certification has forced government agencies to

* Based on case studies of ten countries conducted by Public Management Service of OECD. See OECD (1997).

undertake business process re-engineering and document all internal procedures. This certification will ensure that there is continuity in business and performance is sustainable.

Together with this procedural innovation, Malaysia has devised its own variety of Citizen's Charters. In these Client Charters, government agencies are required to explicitly outline the level of service an ordinary citizen can expect from the agency. Agencies that do a good job of meeting their commitments to public service are given a "Quality Mark" by the Prime Minister. These initiatives to fight public sector inefficiency will remind some people about the debates of yesteryears about the appropriate development strategy to fight poverty. There were those who argued for the "trickle down" effect while others argued for a direct attack on poverty. System wide initiatives like MBS and Program Agreements bring long term benefits in terms of increased efficiency. However, it takes sometime for the efficiency to trickle down to all levels in the government. Whereas, Client Charters and Quality Mark initiatives represent a direct attack on public sector inefficiency at the grass-roots level.

In addition, Malaysia set up an Implementation Coordination Unit directly under the Prime Minister's office. This unit has devised an advanced system of monitoring project implementation. The latest version of this system is called Project Monitoring System II. It is an internet based system for real time monitoring and follow-up of implementation of government funded projects.

Finally, MAMPU (Malaysian Administrative Modernization and Management Unit) was asked to examine and suggest remedies for existing administrative bottlenecks and outdated business procedures and practices. Consequently, MAMPU has issued a series of circulars directing government departments to reform and adopt modern business practices.

Thus, taken together, there was massive attack on public sector inefficiency from all sides.

- (iii) The new system corrected several weaknesses of the Program Performance Budgeting System (PPBS). From 1957 till 1968, Malaysia had a traditional budgeting system. When PPBS was introduced in

1969, it represented a great leap forward. It was supposed to have re-oriented budgeting exercise towards performance and results. Government departments were asked to identify programs and activities and undertake performance evaluation. In spite of the progress made, there remained major weaknesses in the implementation of the program. For example, the focus in PPBS continued to be on line items and not on the achievements of objectives, outputs and impacts of the program and activities. The approach in preparation of the budget under PPBS used to be primarily "bottom up" rather than top down. Thus, a large number of proposals submitted by individual agencies added up to be substantially more than the available resources. However, it has to be noted that it was the introduction of PPBS in 1969 that laid the foundation for the introduction of MBS in 1969.

Malaysians have always shown great appreciation for an effective financial management system. Thus, they have constantly improved their budgeting and performance system in light of international experience. In 1969 PPBS represented state-of-the-art and in 1989 MBS incorporated the key elements of the contemporary international best practice. In fact, this desire to constantly upgrade key management systems in government has led them to recently adopt a two year budget framework.

b. Weaknesses

The achievements of Malaysia in this area are so impressive that it is hard to find the heart to point weaknesses. But as believers and supporters of the system, it is necessary to highlight the weakness and point ways to make a good system even better. The key areas for further scrutiny and improvement can be summarized as follows:

- (i) **Lack of prioritization of programs and activities :** Program Agreements do not include a prioritization of programs and activities. For example, if a ministry has several programs, they are all considered equally important. This is inconsistent with the strategic approach of the MBS and the Program Agreements. The essence of strategy is selectivity and prioritization. In solving a problem (or in addressing a particular need of citizens) not all

solutions are equally effective. Therefore, it is entirely possible that at the end of the year, a ministry may have performed flawlessly in less important areas and failed in important areas. The current system under MBS does not distinguish between various exception reports. Exception report in one area is as important as an exception report in another area. In fact, an unintended perverse consequence of this flaw is to let the budget officer exercise subjective discretion at the end of the year.

To correct this flaw, students of performance agreements would like to see explicit priorities for the various functions mentioned under maintenance of the Federal Roads agreed on an ex-ante basis. Even if the subtasks are equally important, it is useful to give them equal weights explicitly.

Table 1: Illustrative Prioritization of Functions

FUNCTIONS	WEIGHTS
i) Normal Maintenance	50
a. Patching road holes	20
b. Grass cutting	5
c. Cleaning drains and bridges	10
d. Regrading of earth roads	5
e. Painting road lines	10
ii) Scheduled Maintenance	30
a. Road Resurfacing	15
b. Road Widening	10
c. Road Shoulder Resurfacing	5
iii) Specific Maintenance	20
a. New technology for pavement	5
b. Road Gardens	2
c. Ferry Maintenance	7
d. Emergency Maintenance	6

This method of prioritization provides explicit guidance to the implementers about the relative priorities of the various tasks. This

is not only fair but also essential for a scientific performance evaluation. Attaching explicit weights to various performance criteria sends a clear signal to managers about the priorities of the policy makers.

- (ii) **Lack of sensitivity to deviations in target values:** Program Agreements in Malaysia specify a “Tolerable Variance Range.” However, experience in designing such system suggests that this type of specification is too rigid. For example, let us assume that a public official subject to the Program Agreement realized that he or she was going to miss the target for length of roads patched (in KMs) by more than the tolerable variance range of 1 KM. The current design of the Program Agreement does not distinguish a shortfall of 10% from the range versus a shortfall of 30%. Both will generate an exception report. There is no further penalty associated with the magnitude of the shortfall. It is similar to treating a loss of 100RM equal in importance to a loss of 1000,000 RM.

In addition, students of Performance Agreements would suggest that these documents should specify an explicit range of variation. Table 2 gives an illustration for one of the indicator in the Program Agreement.

Table 2 : An Example of a More Refined Performance Scale

Criterion	Unit	Weight	Criterion Values				
			5 Excellent	4 Very Good	3 Good	2 Fair	1 poor
Length of the road patched	KM	15	2480	2400	2347	2000	1950

The above range of criteria values provides incentive to managers to ensure that they do their best to achieve a value as close to the target as possible. It also provides incentives to exceed the target.

- (iii) **Incomplete coverage of performance areas:** Program Agreements in Malaysia cover only those areas for which funding is required

from the Treasury. Thus, there is a great danger that the performance of areas that do not require government funding may get overlooked.

- (iv) **Difficult to get an overview of the agency performance :** The Program Agreement documents are very bulky and detailed. There is no attempt made to create an index that can give a summary view of the relative performance of various agencies.

Annex III contains a methodology that includes the features mentioned above (relative weights and a scale to measure deviations from the targets) as well a way to calculate a weighted index of performance. Malaysia needs to give serious consideration to adopting relevant elements of this methodology.

Some may question the need to change the methodology. They may argue that there is no need to fix the methodology as it appears to be yielding desired results. Unfortunately, experience suggests that in the short run most systems for performance enhancement are likely to yield good results because of the so called phenomenon of “audit effect.” This effect represents the change in behavior of an agent whenever a principal introduces a new system to monitor agent's behavior. The agent in the short run does not want to take chances, thus responds in a desirable manner. As the weaknesses of the system become clear, the agent starts to shirk effort. Thus, even a flawed system can yield desirable results in the short run. Experienced policy makers are aware of this phenomenon and thus use this window of opportunity provided by the audit effect to improve the system and keep the agent motivated to perform.

Benchmarking Program Agreements In Malaysia : International Comparisons

The Malaysian program agreements are clearly ahead of similar attempts in the developing countries. When comparing to OECD countries, it would be fair to rank the Malaysian attempt somewhere between similar efforts in US and New Zealand. To illustrate this point, the next two sections argue that, on balance, Malaysian attempt is ahead of similar attempts in US but behind those in New Zealand.

a. Comparison with Performance Agreements in the US Government

Background:

Performance Agreements in the US government are intended to be a written agreement between the president of the United States and various cabinet department secretaries. This document describes the mutual responsibilities of the two parties to the agreement. The following paragraph from the introduction to various performance agreements* signed by the president with a select group of departmental secretaries succinctly describes the concept.

“The American people deserve a government that works better and costs less. The departments and agencies of the federal government hold vital keys to improving performance and to restoring the faith of the American people in their government. Many changes will need to take place for this broad goal to be realized. The purpose of performance agreements with senior officials is to establish clarity and consensus about the priorities for departmental management. They are intended to improve the management of the Executive Branch and are not intended to create any legally enforceable rights. From these agreements should flow the program management priorities of the departments. These agreements represent a beginning, a basis of continuous improvement as we reinvent our government to meet the needs and expectations of the American people.”

The origins of this policy lie in the pioneering Government Performance and Results Act of 1993 (GPRA). This act requires that at least ten federal agencies launch three-year pilot projects, beginning in fiscal 1994, to develop measures of progress. Each pilot project was to develop annual performance plans that specified measurable goals. The agencies were to produce annual reports showing how they were doing on those measures. At least five pilots would also test so called managerial flexibility waivers which exempt them

*Annex IV gives the 1994 Performance Agreement between President Bill Clinton and the Secretary of the Interior, Mr. Bruce Babbitt.

from some administrative regulations to help them perform even better. In exchange for greater flexibility, these agencies were to set higher performance targets. This is exactly the process of measured deregulation (we agree to deregulate you if you agree to be held accountable) that must be the basis of an empowered and accountable government.

GPRA requires that, after learning from the pilot programs, all federal agencies must develop five-year strategic plans linked to measurable outcomes. By 1999, every agency was expected to craft detailed annual performance plans that is, plans that describe what they intend to *achieve*, not plans that detail how many pencils they will buy or how many people they will hire. The agencies will have to report their successes and failures in meeting those goals; however, GPRA allows the Office of Management and Budget (OMB) to exempt very small agencies from these requirements

Comparisons and Contrasts

The basic concept behind the two approaches in Malaysia and US is very similar. Yet, there are important difference. As is clear from the sample Performance Agreement from the US (enclosed in Annex IV), the attempt in the US government was to hold the very top responsible for the outcomes of the departments activities. Unlike, the Malaysian case, the performance agreements in the US are at a much higher level of strategic responsibility. They involve signature not only from the secretary of the department signing the performance agreement, but also signatures of other secretaries as well. Thus, there is an attempt to create a shared understanding (and collective responsibility) of the mission, goals and objectives of each government department. This high-level clarity is essential to guide the functionaries at lower levels in the government.

Unlike Malaysia, the details of the performance agreements for sub units is left to the individual secretary and is not included in the documents submitted to the President of the US. Thus, the performance agreements in the US are not as detailed (or cluttered) as is the case in Malaysia.

The US performance agreements are also very comprehensive. They are clearly meant to focus on the entire set of mandated activities of respective departments. Malaysian instruments, as mentioned earlier, focus on the items that require funding from the treasury.

The power of Malaysian system derives from the fact that there is a close

linkage between performance targets and the budget allocation. Ultimately, without the appropriate backing of mandates with resources, performance targets remain an illusive dream. Malaysian system also scores over the US in terms of its sustainability. There is always a risk in holding the every top accountable. If they do not perform, it is embarrassing to take action against them. In some sense it may even reflect on the President. Thus, when the going got tough in the US, the enthusiasm for rigorous evaluation of achievements against the performance targets waned. Perhaps, the US system was well ahead of its time and hence Malaysians get a higher score in having a practical and workable system in place.

Finally, it is worth noting that both systems suffer from the technical flaws mentioned above in section 3 (b). Thus, those countries attempting to design a similar system should keep these flaws in mind.

b. Comparison with New Zealand's System of Performance Management

Background:

New Zealand is the first country that comes to mind whenever reference is made to performance evaluation of core government activities. It has become the most celebrated benchmark for judging reforms to improve performance in core government administration. Not only are the reforms in New Zealand impressive for their scope and depth of coverage, they are also notable for the boldness and swiftness with which they were executed.

Performance evaluation of core administration is only one aspect of the overall reform of government machinery in New Zealand. However, it is one of the reform's most important elements and has provided the necessary impetus for all other aspects. It is easy to see why this is the case. The ultimate goal of the reform was to improve performance in core government administration. To achieve this, it was necessary to define the term *performance* and devise a system to determine whether performance was improving or deteriorating.

The motivation for reform can be traced to two main sources. First, the new Labor government that came to power after nine years realized that the existing government machinery and the managerial system would be slow to respond to new policy priorities. Second, the enormous improvements in efficiency and quality of service that resulted from the transformation of

commercial activities of the government departments following the enactment of State-Owned Enterprise Act in 1986 led advisors to search for a framework that would bring analogous incentives for efficiency to the activities of other government entities and departments.

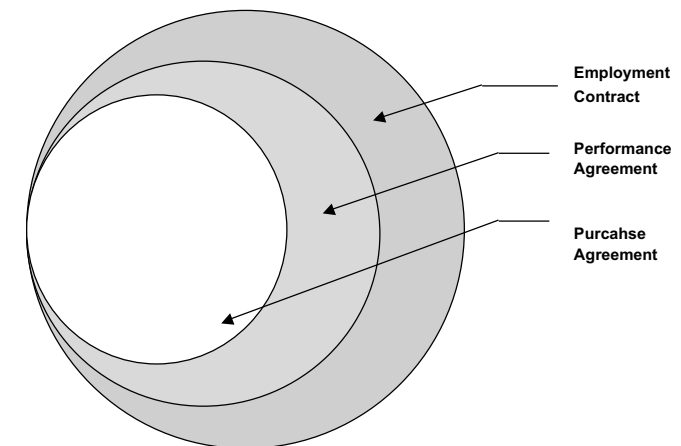
Before turning to a description of performance agreements in New Zealand reforms, it is useful to note the prevailing problems of the core government administration at the time reforms were introduced. These problems are wonderfully transcendental; they exist in most governmental systems around the world. For sure, these problems existed in Malaysia. Examples of these problems include:

- The objectives of government departments were not clearly specified.
- The respective responsibilities of politicians and civil servants were confused, so that lines of accountability and responsibility were never clear. There were few sanctions for poor performance. The system was designed for micro-management and control of inputs rather than performance in the production of effective public services.
- The control systems administered by central agencies curtailed freedom to manage effectively, leading to poor central decision making about matters that could have been managed more efficiently in a decentralized way. These control systems generally destroyed incentive to perform.
- The structures of the government departments lacked focus and grouped functions in ways that undermined performance. Information was suppressed, and cross-subsidies between different activities were concealed in some cases deliberately, but in most simply as a consequence of the system. There were conflicts of interest for example, departments giving advice about the regulation of activities in which they were directly involved and this lack of focus in structures weakened incentives to perform effectively.
- Accounting systems did not measure total resource use and thus created incentives for poor resource use.
- Ministers made detailed decisions about the internal management

of departments for which they did not have adequate knowledge and suitable incentives.

While these problems can be found in almost any conventional bureaucracy in the world, the response of the reformers in New Zealand was radically different from the traditional approaches to civil service reform. At the core, the new system focused on increasing accountability and autonomy by using various types of performance contracts for evaluating the performance of the heads of the government departments (known as Chief Executives).

Chief executive's performance in New Zealand is evaluated with reference to three instruments. Figure 4 depicts the relationship between the three instruments. These instruments are part of an integrated system of accountability. The Employment Contract includes a commitment for drawing up an annual Performance Agreement which, in turn, includes that year's Purchase Agreement. In what follows, each instrument is described in detail.



a. Employment Contract

Employment Contract is for five years with a possibility of extension based on performance. It also enumerates the possibility of receiving performance bonuses for performance above expectations, or of being criticized or dismissed for performance below expectations. As a condition of employment, chief executives are required to sign an annual Performance Agreement against which the State Services Commissioner evaluates their performance.

The contract of employment of the chief executive is a formal legal contract subject to normal provisions of New Zealand's labor and contract laws. The essential principles underlying these laws are concerned with equity and due process.

b. Performance Agreement

Each chief executive is required to complete an annual performance agreement with his/her responsible minister. The purpose of the performance agreement is to assist the chief executive to achieve the responsible minister's and Government's objectives by defining what the minister expects from the chief executive. It provides a basis for specification and the appraisal of chief executives performance in terms of the Key Result Areas (KRAs).

c. Purchase Agreement

The annual purchase agreement between the minister and the chief executive sets out the outputs to be delivered by the department or government agency. The purpose of this agreement is to allow the minister to:

- determine which outputs to purchase;
- agree to appropriate cost, quantity and quality standards for desired outputs;
- make comparisons with other providers where possible;
- hold provider accountable for delivery of the specified output.

In addition to the outputs that will be purchased by the minister, the document sets out the terms and conditions surrounding the purchase, such as procedures for monitoring, amending and reporting.

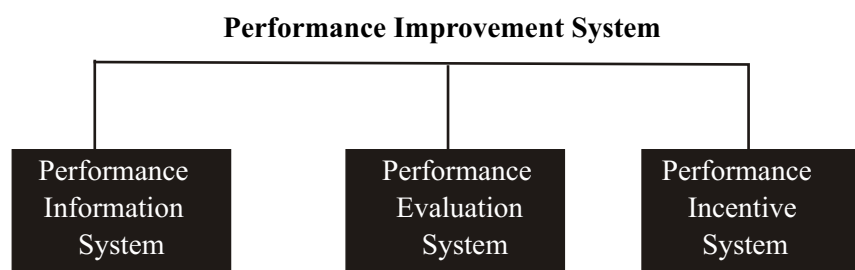


Figure 5: Elements of a Performance Improvement System

Comparisons and Contrasts with Malaysia:

Compared to the Malaysian system, the public management system New Zealand is wider in scope and much more rigorous in its application. The Malaysian program agreements are, first and foremost, an accessory to the budgetary system. Thus, the scope of program agreements in Malaysia is determined by the requirements of an effective budgetary system. Malaysians use other systems (e.g., ISO 9000 certification for government agencies, client charters, MAMPU circulars, etc.) to ensure overall performance management. New Zealand, on the other hand, uses the contractual approach for managing almost all aspects of public sector activities.

International experience suggests that performance improvement in government requires reform of the following three interrelated sub-systems:

- a.. **Performance Information System** : Without proper information regarding the activities of the government agencies, it is impossible to even begin to evaluate performance, much less improve performance. However, an adequate performance information system does not imply collection of huge amounts of data. A thoughtfully designed information system allows evaluators timely access to necessary information in an appropriate format. Often, a properly designed system reduces the data overload on agencies. When evaluators are not sure about what matters most, they tend to collect as much information as they can to insure against the risk of not having the necessary data when required.
- b. **Performance Evaluation System** : Once an evaluator has the necessary information, it is possible to design an effective evaluation system. Availability of data, however, does not automatically guarantee a sound evaluation system.
- c. **Performance Incentive System** : Civil servants and bureaucrats, like most other people, respond to incentives. No matter how sophisticated an information and evaluation system you may design, if you do not link the evaluation to the welfare of the agency managers, you cannot expect to improve performance. It is not necessary for the incentives to be monetary, but it is necessary to have incentives.

The reforms in New Zealand emphasized all three sub-systems. Whereas, in Malaysia the emphasis was more on the performance evaluation and information systems related to budgets. The incentive systems were relatively underemphasized in Malaysia. Of course, the reform of the evaluation systems and the information systems had an indirect and desirable effect on the incentive structures. However, it is important to tackle the issue of incentives explicitly.

Key Lessons of experience for other Countries

The lessons from Malaysia can be divided into two categories. The first category includes those lessons that are common to all public policies in all countries. These “Meta Lessons” are lessons of “lessons of experience.” A review of sections on lessons of experience from a wide range of countries dealing with an equally diverse range of public policy issues suggests that certain lessons are repeated with predictable frequency. These lessons can be called meta lessons of experience.

Relevant Meta Lessons :

- (i) Existence of solid and sustained political commitment is essential for success. The credit has to go to the longevity of current Prime Minister's tenure and his undivided attention to financial affairs. Even today, Prime Minister of Malaysia has kept the Finance portfolio with him. This has several advantages in the Malaysian context. First, the opposition to reforms means opposition to Prime Minister and hence decreases the chances of the opposition prevailing to reverse them. Second, the exceptions reports in theory go to the Prime Minister and thus program agreements are taken much more seriously. The incentive effect of this arrangement compensates for the lack of an explicit incentive system. Finally, Prime Minister's involvement has allowed the government to develop and effectively implement other complementary reforms (ISO 9000 Certification, Client Charters, etc.). The fact that the Economic Planning Unit (EPU) is also under the Prime Minister's Office has made it easier to coordinate between planning and finance. In many countries the rivalry between finance and planning paralyzes and otherwise sound system on paper.
- (ii) It is essential to adapt new concepts to suit the local conditions. Malaysia never copied any system blindly. They adapted the key features of various successful models to suit their unique local conditions. The system was therefore well understood and matched

the level of sophistication in the government. The choice of the term MBS was also a very wise one. It emphasized continuity and downplayed the change.

- (iii) Success of implementation efforts for most reforms depends on the concomitant training effort. Huge emphasis was placed on training and development in Malaysia. There was a concerted effort to train people in the use of MBS. It was done jointly by the Treasury and a public administration academy known as INTAN.
- (iv) Gradual implementation of major reforms improves the chances of their success. The new system in Malaysia was introduced gradually. MBS was pilot tested in three ministries in 1990 (Ministry of Health, Ministry of Works and the Ministry of Social Welfare). In 1994 all federal ministries and departments implemented MBS and program agreements. The Federal Statutory and Quasi Government agencies followed suit in 1996.

Other Specific Lessons:

- (v) It is not necessary to have perfect performance agreement documents to get the desired impact. This is a specific example of the classic meta lesson: best should not be allowed to become the enemy of the better. As mentioned earlier, the introduction of a performance agreement system (albeit imperfect), has a salutary effect on performance. This is known as the audit effect in the principal-agent literature. Thus, it is not worth waiting to perfect a performance management system. In fact, improvement of the system should be a continuous process. Truly successful systems try to overhaul themselves automatically and with regularity.
- (vi) Performance improvement requires a multi-dimensional effort. It is not possible to improve performance in government by focusing on any one system. The search for a magic bullet is not very rewarding. Malaysians have tried to tackle public sector efficiency from different angles. They have introduced several complementary systems to ensure that inefficiency does not travel from one part of the system to the other the water bed effect.
- (vii) It is important to focus on improving all three sub-systems of a performance improvement system performance information system, performance evaluation system and performance incentive system. Malaysian case also shows that there are various ways of

achieving the same result. In New Zealand an explicit incentive system was put in place via the employment contracts for the department heads. In Malaysia, the same effect was perhaps achieved by placing the Finance Ministry under the Prime Minister. Even when the Finance Ministry was not under the Prime Minister, latter was extremely engaged in the affairs of the Finance Ministry.

(viii) Accountability for results works only when it is accompanied by increased autonomy. The traditional systems in developing countries tend to focus on accountability for procedures. This is not a guarantee that results will be forthcoming. Even if the government changes its focus to toward accountability for results, it has to have the courage to grant appropriate autonomy to the managers. The generalized approach to expenditure control was a key element for the success of the MBS and program agreements.

Concluding Comments

All things considered, program agreements in Malaysia represent a good example of a practical way to bring in accountability for results in the government. The discussion in the paper is summarized in Table 3. Key aspects of the policy are evaluated on a 5-point scale where “1” represents poor performance and “5” represents excellent performance. The composite score of 4.15 represents an extremely good overall score for the performance agreement policy.

Table 3: Summary Evaluation of the Program Agreements in Malaysia

Criterion	Weight	Achievement on 1-5 Scale (Raw Score)	Weighted Score
(i) Consistency with international best practice			
a. Information system	.10	3.5	.35
b. Evaluation system	.30	4.0	1.20
c. Incentive system	.10	3.5	.35
(ii) Scope of the policy	.10	3.0	.30
(iii) Linkages (and consistency) with other public policies	.20	5.0	1.00
(iv) Implementation strategy			
a. Sequencing, length of gestation period, etc.	.05	4.5	.225
b. Explicit and implicit political support	.10	5.0	.50
(v) Training Strategy	.05	4.5	.225
Total =	1.00		
COMPOSITE SCORE= 4.15			

(Note: 5 = Excellent; 1= Poor)

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