

Ethics and Good Governance
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I am grateful to Justice Dhires Narayan Chowdhury; — he knew my father and brother and was once counsel for the Election Commission of India — Arunabh — whom I met in Delhi and instantly took to — and Srimati Biraja Chowdhury for inviting me here today to commemorate the late Dr. Amitabh Chowdhury's 36th birthday. I am also honoured to be asked to deliver the Second Dr. Amitabh Memorial Lecture. The subject chosen is "Ethics and Good governance", which affects us all.

But first a word on Amitabh, by all accounts a consummate specialist in heart surgery who died in an accident two years ago at 33. Instances of abbreviated brilliance are not rare and are usually remembered within the privacy of the family. However Amitabh draws us all because he was also a warm friendly soul celebrating the joy of others, particularly patients. He also had the complementing natural humility to be called "brother" by the sisters in his hospital. We would like him to be happy wherever he may be.

Indians are so inured to evanescent governance that those who are better off have learned to live without it.

In the countryside UNCTAD reports show sharply diminishing returns on Indian farming with no European kind of compensatory payments, production or area-wise. And barely a day passes without media coverage on farmers committing suicide. All this with grossly over-exploited and nearly depleted underground water resources as well as utterly exhausted land, both toxicated with inorganic fertilizers and pesticides. India was 120th in a global ranking on water quality in the third world water forum in Kyoto in March 2002. From this near- wasted environment sapped for the metropolis, its lugubrious, once- proud and self- sufficient inhabitant's troop to the city for a crust of bread or a windfall.

In the metropolis itself, water tankers in mid-monsoon and diesel gensets and inverters are the rule; roads are crumbled ,encroached upon, and flooded

with the first rain for blocked drainage; the environment is polluted by an increasingly copious melange of wheeled vehicles; pestiferous VIP's snarl traffic , and bumptious red-lighted officialdom rudely muscles through it; the pedestrian is crowded out ; space is filled with litter ; crime stalks and strikes at will ; agitations disrupt life for days together.

The best example of the omnipresent government of yesterday's shirking its responsibility is its refusing more funds and personnel to a vastly extended postal service that somehow accesses every remote hamlet and obscure slum out of sheer professional pride. The government is withdrawing even from the very little it has done in education and health — just when Indian professionals and sub-professionals are proving they have an edge over most others, and for the first time are decisively tilting the economy upwards. While free and compulsory education within 10 years (i.e. by 1959) for children up to 14 is one of the directive principles of state policy in the constitution, more than a third of the population is still illiterate. The quality of life indices in the annual UNDP report indicate that in totality India is somewhere at the bottom of the heap, behind even an impoverished Bangladesh , at least on birthrate , infant mortality and child nutrition. India is also one of the most corrupt countries according to Transparency International.

Most important, however, is the growing physical atrophication of the state, already extending to Bihar and militancy-ridden portions of half of the provinces of the union. This is clearly a failure of overarching union and state politics to engage in the realisation of local aspirations and the resolution of sub-statal conflicts. But whatever the reasons , there are now competitive .even antagonistic , para-statal power structures in place, which inevitably have to be negotiated with and accommodated in any peace agreement, no matter how pig-headedly the Home Ministry persists with unavailing police repression. There is no better reflection of the unhealthiness of the Indian state than the mushroom growth of police and paramilitary forces when government employment everywhere else, including the regular armed forces, is shrinking.

But how does one explain an 8% growth of the economy? The phenomenal boom, as everyone knows, is from the IT industry which mercifully escaped interference from a government which was too dumb to comprehend it. If the non-intervention had been a conscious decision of the government, it would have been a different matter. Yet every government slips in the 8% when advertising its achievements.

Were we, with our own countrymen governing, once better off? Local bodies, which touch the life of the citizen much more intimately and frequently than the central or state government — especially in rural India — are ironically the creation of the British, and not the gift of our suddenly rediscovered republican traditions. Self-governing panchayats and municipalities were a

colonial government's positive response to a general demand for local autonomy, a political space, howsoever limited for hundreds of millions of Indians otherwise excluded from their own governance. And these bodies were well-watered and nourished. Indians slaked their thirst for power in these political oases and lived up to their part of the bargain. Some of our finest artists in governance were apprenticed in the district boards and municipalities.

There is no better example than Chakravarti Rajagopalachari or Rajaji, incomparable criminal lawyer and the only Indian governor general of independent India. As chairman of the Salem municipality — in the then Madras presidency — he not only brought its finances from the red to the black and increased its assets, but appointed “untouchables” to operate public taps. An ingenious way of cocking a snook at the caste system.

As prime minister of Madras presidency he introduced debt relief that severed the farmer from his debt once he had paid towards the principal and interest an amount twice the sum borrowed. Sales tax, aimed at shifting the financial burden from the rural poor to the urban middle class, was introduced for the first time in Asia.

As West Bengal governor he performed the miracle of putting Mahatma Gandhi and Suhrawardy together to stop the communal carnage.

Srikrishan Sinha, the first and only competent chief minister of Bihar— and let it be recalled that an expert called Appleby, albeit American, then considered Bihar the best administered state in India— began as chairman of the Barbigha district board. Rural roads, rest houses and dispensaries in Bihar have been put down by district boards, not the PWD or health department.

Unfortunately, at independence the political leadership migrated to union and state headquarters and there concentrated all state power, while also literally vacuuming out every local initiative and shred of authority as it left. Local bodies had suddenly been reduced to chaff.

But there was reasonably effective governance at the union and state levels till the early 60's, even though the emphasis had shifted from good governance to big government. Competent governance was achieved by professionals in harmony and mutual respect with the ICS and the then IAS. Governance maintained a local presence through an undiluted and highly-charged district administration which still had the vitality to ensure that no-one died of starvation, to enforce law and order, and to collect land revenue. The separation of the judiciary from the executive at sub-divisional level came about in Palamau district of Bihar when I was posted there in 1963-64, and for all the respect and friendship I still have for my colleagues of the judiciary, separation did not help me discharge my police and revenue responsibilities.

How did we come to such an abysmal present? Though things held together till Nehru departed, the decline had begun with big government soon after independence. Mahatma Gandhi was assassinated in 1948. With India having just exited colonial bondage and with Gandhi and his confederation of villages paradigm out of the way, Nehru was justifiably in a hurry to get along with the rapid but equitable economic and social development of the country. But the moment he chose the Soviet route of catalysing core -sector and basic industries , and five year planning — whatever its merits or demerits— he had walked into insurmountable problems of governance. The decision was an imposition on the people of India who had not been consulted and whose constitution , completed just a year earlier , did not contemplate such an arrangement. Public resentment would grow in time. The agency for development, the planning commission, had to be an extra-constitutional body, and it did not mesh with the country's federal, republican structure. Projects and priorities from the planning commission and their stereotyping stifled innovation and initiative in the states. And from being equally important as the union under the constitution, the states were reduced to begging for plan outlays from the commission. There was a mismatch between the states' annual plan outlays and budget allocations— the one depending on the recommendations of the planning commission, the other an amalgam of the recommendations of the finance commission, a constitutional body, and revenue mobilization efforts of the union and the states. Usually budget provisions were well short of plan allocations. There was also no synchronization of the plan accounting format and the traditional budgeting dispensation. Plan funds invariably came at the end of the financial year, and therefore could neither be sensibly nor anything like completely spent. But while unused plan outlay could spill over to the following year, money unspent by 31st March was lost forever.

Among other things, planning involved taxation, heavy public investment, exclusion of the private sector from certain areas, controls, permits, restraining consumption, increasing savings, import restrictions and substitutions. A competent maintenance administration soon got beyond its depth handling all these intricacies. On the one hand a highly restrictive regime had to be brought about without seeming to be repressive. (This was impossible considering there were vast sums of money to be made by a few functionaries misusing their discretion.) On the other hand there were project execution delays and cost overruns, inferior technologies, poor quality products, worker productivity and discipline problems, pricing difficulties and so on. In monopolistic or oligopolistic circumstances the market price-product yardstick of efficiency was either missing or nearly so. Prices were usually on a cost-plus basis, and these accommodated much inefficiency and corruption.

In the rural areas, community development, conceptually a laudable cost or effort-sharing in schemes or assets between the government and the beneficiary was largely nullified because the beneficiary's contribution was rarely

forthcoming. The beneficiary either thought the scheme or asset — highly standardized and thrust from above— was of limited use or believed he did not need to stir or pay for anything as the government was there to give him a free ride. Both intolerable negatives for a developing country. In the event there was much ado about very little and incalculable misuse of resources, with little public involvement. Yet no-one, official or non-official was accountable for it all.

However the rot really manifested itself after Nehru. Congress monopoly of political power had come to an end, and so too the dominance of the middle class in public affairs. The opening of the sluices of electoral competition deluged the polity with rude politicians who cared little for the ethos of democracy and were to make politics their profession. The most extreme among them were the excluded and under-privileged of past aeons who saw in political representation the only opportunity for upward social and economic mobility, and unabashedly forced the machinery of the state for the purpose. Their values soon became everybody else's, Indian politics comfortably settling down to the lowest common denominator.

The new class of political representative lost interest in and abdicated its legislative functions. Legislation was after all about social architecture, and it had neither the education nor patience nor interest for anything so serious. Instant power was what the representative sought, and he quickly usurped the functions of the civil servant, directly if he was a minister and indirectly if not. Ministers soon started stuffing their departments with their own bureaucrats and contractors. Retainers were needed equally in the field, and convenient DMs and SPs were slotted into place. Lower loyal officials, thugs and goons to capture booths at elections were integrated into a self-perpetuating system. The cumulative dross had to be kept out of the range of the law. The ramifications left no organ of the state or social group untainted.

Political parties in Andhra Pradesh have been fighting to the death over new irrigation projects that are going to be massive civil works conveying very little water. For the reason that the canals are out of all proportion to the river water available. The water is not the point, the works justifying their own existence while also providing a bottomless sink for public funds. The wastage in Andhra Pradesh will, of course, be a trifle compared to the one that is going to be associated with the countrywide interlinking of rivers project. But public funds down the drain will be just the visible part of the problem. As you, living by the Brahmaputra, and I, having spent much harrowing time pitching rocks into the flooded Ganga, Kosi, and Mahananda know, irrigation engineers comprehend little of river controlling beyond embankments, revelments and spurs. They have yet to understand and connect siltation patterns, earthquake effects and fluvial changes of course. Apart from relating dam storage levels to threatened or actual flooding upstream or downstream. Indeed there have been a number of storage level mis-manipulation tragedies in south India this monsoon alone.

How did the civil servants react to the decomposition of the polity ? Most of them repudiated ministers, who understood governance as irresponsible rule within the departmental realm, and many were side-lined and some harassed. But a surprising number of the “bright boys” were co-opted and enthusiastically joined the party. In the field DMs and SPs, even when nominees of ministers became, in many states, the highest bidders for their districts. The British had auctioned zamindaris, so weren’t ministers really treading a tradition? Having bought the lease for a district, a collector could no longer be shifted no matter how many riots or starvation deaths he had seen. Here at last was the end to district administration and accountability and the death of a great governing institution.

Fortunately the world does not end with India, nor India with Indian governance. Ethics as moral principles peculiar to each profession have evolved over time in civilized society and are now not only well understood but in most parts of the world, universalized. Doctors have their Hippocratic oath ; lawyers must not divulge privileged communications from their clients or take up briefs against those they had earlier represented; the police must discover how to implement the law firmly but humanely; judges need to distance themselves from the political executive, legislature and public, and interpret the law equally and impartially; soldiers are not allowed to desert or switch sides or ill-treat prisoners of war; manufacturers are not supposed to sell products for which there are going to be no spares or servicing facilities; traders are required to be as punctilious about weight and quality as any successful smuggler; for any self-regarding assassin it’s full delivery or money back.

The chain of social obligations holds pretty well and modern life goes on. Even in India it does so, though a trifle more slackly... We drink reasonably milky milk; our cars don’t fall apart as easily as they once did; doctors fussy us with overmedication and riddle us with side effects, but often cure us of what we originally complained about; lawyers keep faith with their clients while procrastinating and continuing cases beyond one’s lifetime..... Our experience of governments however, is that they are an egregious let down. While computerization has taken the harassment out of filing income tax returns and paying government dues, no self-respecting person would contact a police station unless on a matter of life and death. And you will be among the beatific few if, when you’re dying, you have a no dues certificate from the PWD or have not been visited with a notice for absurd, astronomical dues from the electricity department or local municipality.

Are there no ethics for governance? In British times and the post-independence fifties and sixties, the ethics of the permanent executive, which effectively governed India, were the most comprehensive and rigorous:- distance from the political executive, while being required to work closely with it; distance from political parties, the private sector, foreign governments, universities, international organizations, and the whole gamut of institutions in a

position to offer preferment; fairness, and where there were laws and policies, implementing them dispassionately however one was personally inclined; not dealing with any person or matter in which one had a interest or transacting personal business with anyone one had dealt with officially; not trading official favours to politicians or persons of the private sector for post-retirement and other benefits... in short, not becoming obliged, obese and rich on the job.

Can ethics not be enforced? With respect to the bureaucracy they certainly can, having all been clearly spelt out in the service conduct rules. But circumstances have changed. The intake in the All-India services is now almost exclusively from the technical disciplines with early recovery of heavy investment in education being the probationer's first preoccupation. While private sector salaries look after this aspect those in government do not. And who is left in important positions in the power structure, who is untarnished enough and concerned enough to bring erring and corrupt bureaucrats to heel?

The political executive, having wrested the functions of the civil servant, is obviously bound by the civil servant's ethics. Apart from loyalty to the constituency and party, which is conveniently tossed out once a candidate has been elected.

There is an increasing number of competent young professionals in politics, but not enough yet to have politicians convinced about the need for ethics even in the obvious context of an ambitious developing country. The few Lok Ayukts have been of no avail, and the legislatures do not even require, at office-taking, members to file property returns. So we need to look at the institutions which tend, from the outside, to compel politicians, particularly the executive to a straight path.

The judiciary has been effective as obstacle and remedy against excesses by the political executive as an institution. However, crimes by individual politicians have seldom resulted in conviction and jail. (Though with cell phone in hand , prison has proved for some, in their pre-bail sojourn, a haven for directing nefarious operations and even for improving concentration with meditation).

The court has also contributed directly to governance. Where this has broken down it has had to get things going with the help of counsel and amicus curiae. And writ petitions have provided a comprehensive handle for change, usually for the better.

The media, especially the electronic version, by virtue of its immediacy, ubiquity and visibility, is an effective preventive against contemplated misdoing by the executive or the individual criminal politician. Where the deed has already been done and VIP criminals are not likely to be punished through the legal

process, they might as well — from the public's point of view — suffer initial pillorying by the media.

The media's direct contribution to governance ranges from sting operations and fastening on bad roads for immediate impact to awakening citizens to government infringements on their rights, and providing them with the information and clarification of events and issues needed to help them confront unreasonable authority.

Civil society has been in the vanguard of obtaining affidavited information on electoral candidates and publishing it before the polls to warn voters off contesting criminals. It has also dwelt on serious aspects of misgovernance, e.g., the displacement of tribals by mega dams without rehabilitation, outrageous examples of environmental degradation, police crimes, communal riots.....

What makes civil society the most potent agent for social change and good governance is that it carefully and unhurriedly prepares its brief and is often able to persuade the court to prosper its cause —as with the ban on the reckless felling of trees for timber.

In the normal course the new Right to Information Act should arm the individual, the media and civil society to compel the government to be more accountable and transparent. But bureaucrats will continue to withhold and obfuscate facts and have the Act applied where it should not to put it in disrepute, until they are pinned down by the court. The first test of the Act is extremely disappointing, viz. not allowing ex-president Narayanan's letter to Vajpayee on the Gujarat riots to be made available to the Nanavati Commission.

But world-wide and at nation state level, haven't the ethics of governance in behalf of the citizen already been overtaken by the ethics of governance in the interest of the corporate sector? All right for the British, "a nation of shopkeepers" since the days of John Company, and the Americans who have out-done them. But not for the rest of the world where the boxwallah or trader-businessman, despised by all ancient civilizations, has by virtue of victorious, omnipotent and omnipresent Anglo-Saxon protestant capitalism become the icon of a materialist, consumerist society. Thanks to the collapse of the Soviet system as an alternative.

In India we have seen corporate houses steadily using governments and public resources to grow from nothing to the giants that they are today. The favourite topic of conversation within the bureaucracy was how for the last twenty to thirty years these new corporates had been indirectly selecting the so-called brightest civil servants to head the crucial economic ministries in Delhi.

But of late, our parliamentary system has been at full stretch serving the corporate sector. In Kerala coca-cola has been exploiting ground water

resources in a manner that deprives a village panchayat of clean drinking water. The panchayat has taken the company to the Supreme Court. Nearer Delhi the Honda Motor management had the local police beat up its own agitating employees. With just a stroke of the pen we now have an open skies policy with the US, something Union Cabinets in the past have considered us too vulnerable to adopt. And who knows how far the patron-client relationship envisaged in our new multi-faceted strategic understanding with the United States will take us? Perhaps from genuflecting, to feet touching, to utter prostration, under the urge of boot or insult or flattery, to some dubious access to US technology or a second-class membership of the UN Security Council — with no voting rights?

I might add that many corporates and their surrogates are still not satisfied with the Indian parliamentary system and are pressing for a US- model presidential form of government. This would allow the president to have his own cabinet of experts who would not need to be elected members of any legislature, but would often be drawn from the corporate sector and would serve its interests. The scheme would have a convenient cabinet not accountable to the legislature at all.

Governments in the west can afford to be corporate world-oriented since their local bodies out there provide the most urgently required goods and services to their citizens. In Europe local bodies' expenditure to total public expenditure is over 40%. (In China it is over 60%, the secret of the inherent strength of that country.) In India the percentage is less than 5. If we have to imitate the west the whole way we need to have good local governance.

The 73rd and 74th amendments to the constitution require regular elections, spell out the responsibilities of panchayats and municipalities, creating the machinery to conduct elections and ensure a rational distribution of financial resources between the states and their rural bodies. But the states themselves are insolvent, and only a few like Kerala— 35% of the plan expenditure there is accounted for by the local bodies— have shared their resources with local bodies. What is needed is for the constitution to formally recognize three- tier governance, and integrate local bodies into the chapter on distribution of financial resources under the jurisdiction of the finance commission.

We also have to create a demand for local governance. This would include our enthusiastic participation in the elections and forming citizen's watch committees to ensure the local bodies function transparently and the money is well spent.