

# Making Democracy Work

## Deficits of Democracy and Governance

Democracy works when citizens and the most marginalized people have the capability to ask questions, seek accountability from the state and participate in the process of governance. Democracy becomes meaningful when people can shape the State and the State, in turn, creates enabling social, political, economic and legal conditions wherein people can exercise their rights and achieve freedom from fear and want. It is not merely elections or universal adult franchise that defines the process of democracy. Quality of the democratic process depends on the capability and integrity of the organs of the State, institutions of governance and the extent of people's participation in governance. While constitutional framework and human rights guarantees can build the grammar of democracy, it is always people and the ethical quality of the political process that make democracy work. Democracy involves dignity, diversity, dissent and development. Unless the last person can celebrate his or her sense of dignity, exercise democratic dissent and involve themselves in the process of governance and development, democracy becomes an empty rhetoric. Democracy dies where discrimination begins and the politics of exclusion takes root.

Accountable and people-centered governance can provide an operational framework for making democracy work. Governance is a political process involving exercise of different forms of power (social, political, economic, legal and administrative) within various institutional arenas. The Human Development Report described governance as “the exercise of power or authority- political, economic, administrative or otherwise to manage countries resources and affairs. It comprises the mechanism, process and institutions, through which citizens and groups can articulate their interest, exercise their legal rights, meet their obligations and mediate their differences”. The real challenge in a democratic process is to ensure that the process of governance does not get subverted or appropriated or controlled by economic and political elites who control the institutions of government or powerful market forces and international financial institutions like the World Bank and IMF. The key question that needs to be asked here is “Who exercises power in the process of governance: people or bureaucrats or those who control the government?”

The discourse of governance and development is often dominated by the

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so-called 'good governance' framework. The problem is that the operational framework of 'good governance' is largely apolitical in nature. It promotes a techno-managerial approach that focuses primarily on effective micro and macro management of economic resources. This 'good governance' framework, more, over is informed by the dominant neo-liberal economic perspective that puts the interest of big multinational corporations and their profit before the people. The 'good governance' framework fails to seek accountability from global institutions like the World Bank, IMF and WTO and to question the unjust macro-economic policy framework that serves the interests of a few rich people and rich countries and perpetuates inequalities and poverty. Words like 'freedom' and 'rights' are frequently employed to legitimize an increasingly unilateral and militaristic approach to 'good governance'. In such a top-down techno-economic and managerial approach people are often seen as 'instruments' of effective economic management. Corporitisation of governance and marketisation of development go hand in hand. The proponents of such a process are fast growing breed of political leaders who also control the market through their own business and media empire. They often see democracy as a political means or instrument for protecting the corporate interests and amassing their own wealth. In such a situation, there is no government of the people, by the people and for the people.

Hence, there is a need to challenge the 'good governance' paradigm and to begin to practise and promote people-centred governance as an expression of grassroots democratization process. A rights- based approach to governance is a function of power relationships within and beyond the institutions of government and the exercise of such power with sense of justice, fairness and equity. Such an approach is based on five key elements: human rights, distributive justice, democratic legitimacy, peoples' participation and accountability.

Governance is crucial because it encompasses both processes and arenas wherein public policies are formulated, legitimized, legislated and implemented. And it provides institutionalized means to claim rights and seek justice through the justice delivery system. It can be the interface through which citizens and marginalized people can interact and mediate with the state and seek accountability.

However, in reality, governance is a site of unequal and unjust power relationships: here patriarchy gets reinforced through various forms of marginalization and oppression and poverty gets perpetuated and people become mere 'vote

banks' based on caste, creed and colour. Such unequal and unjust power relations entrenched in the institutions and processes of governance need to be challenged and changed by the people, particularly the marginalized, including women, dalits, adivasis, and millions who go to bed hungry almost everyday.

The process of governance and the institutions of governance need to be reclaimed by the people: questions need to be asked, policies need to be monitored, rights need to be claimed and accountability needs to be asserted. Assertion and claiming of rights by the people and marginalized groups demand a transformation of power relationships in various areas of governance. This also means that seeking accountability is a prerequisite for realizing rights, particularly socio-economic rights. Fighting poverty and injustice requires the realization of rights and justice through the process of accountable governance. Governance becomes accountable when people are educated, enabled and empowered to ask questions, seek justice and demand participation.

In India of the process of democratization and the process governance are passing through a critical phase. The potential and possibilities of the liberal democratic constitution of India often gets annulled by a feudal, casteist and communal political tendencies and the colonial character of the Indian bureaucracy. The rise of politics of exclusion, discrimination and religious fundamentalism, along with the influence of market forces with a vested interest, tends to undermine the very spirit of the Constitution of India and the democratic process.

On the one hand there seems to be unprecedented optimism about the potential of economic growth and on the other, there is a tendency towards making the poor and the marginalized invisible. The quality of a democracy is determined by the quality of the rule of law, institutions of governance and political process, including that of the political parties. Political parties are the legitimizing agents and vehicles of the parliamentary democratic process. The quality of the institutions of governance and parliamentary process are shaped by the nature, character and culture of political parties and the character of the leadership. The erosion of transparency and accountability and increasing instances of corruption in various institutions and arenas of governance is a reflection of the political process and patron-client culture of political parties. The lack of democratic norms, accountability and transparency within most of the political parties contribute to the decadence of democracy. Transparency, accountability, integrity, athletic leadership and democratic culture within the political parties are indispensable to ensure democratic, accountable, effective and people-centred governance.

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The global policy promises of the Eight Millennium Development Goals (MDG) and the national policy promises in the 10th five year plan goals will not be made good in India without political will, adequate budgetary commitments, civil society monitoring and participation. The political promises made by the current government at the centre will be postponed unless citizens groups and civil society organizations actively seek accountability and monitor the political and policy pronouncements.

## Monitoring the Development Goals and Policy Promises

The underdevelopment of rapidly ‘developing’ India is quite evident as various human development indicators reflect that we have not been able to guarantee basic development rights to the citizens of India even after five decades of independence. The status of basic health, primary education or hunger continue to take centre stage as access to these services in various states for many disadvantaged communities is far from satisfactory.

Current commitments of the government can be identified in the formal/official documents of the Government of India. The government at the centre led by the United Progressive Alliance (UPA) has come out with a Common Minimum Programme (CMP), which highlights various commitments that the State has made to improve the situation of the poor. The delivery of these commitments are supposed to be officially monitored by the National Advisory Committee, which has been set up and provided adequate powers and resources by the UPA to ensure the success of CMP.

The 10th Five Year Plan is in mid course. The National Development Goals (NDGs) have been spelt out in the 10th Five Year Plan. The CMP commitments are not inconsistent with the NDGs, therefore the Planning Commission effectively recognizes CMP as a national common minimum programme to mobilize resources for its implementation.

India has signed the Millennium Declaration in September 2000. Hence, the MDGs are recognized as a legitimate policy commitment by the Government of India. The Finance Minister in his budget speech of the year 2004 said that *“The countries of the world, India included, have set for themselves the Millennium Development Goals. Our date with destiny is not at the end of the millennium, but in the year 2015. Will we achieve those goals? In the eleven years that remain, it is in our hands to shape our destiny. Progress is not always on a linear path, nor is it inevitable”*.

The comparative picture of the MDGs, NDGs and commitments made under CMP clearly reflect the policy intention of the government. In relation to MDGs, national policy goals are far more ambitious. The Millennium Goal of eradicating extreme poverty and hunger clearly envisages reduction by half, the number of people living on less than a dollar a day and those who suffer from hunger. The 10th Five year Plan envisages to reduce the poverty ratio by 15 percent points by 2012. The CMP claims to guarantee 100 days employment every year to one able bodied person in every rural, urban poor and lower middle class households. The CMP also make the promise of providing *Antyodaya cards* for all households at risk of hunger.

Similarly, in the area of education, one goal that the NDGs seeks to attain is, to provide primary schooling for all boys and girls by 2007. The MDGs visualize elimination of gender disparity in the field of primary and secondary education by 2015 whereas NDGs envisage reduction of gender gaps in wage rates by at least 50 per cent by 2007. The CMP mentions that at least one-third of the funds flowing into Panchayats will be earmarked for the development of women and children.

In case of MDGs, the health-related goals focus on reduction in child mortality by two-thirds among children under five whereas, the NDGs seek to reduce infant mortality to 45 per 1000 live births by 2007. The MDGs also focus on improvement in maternal health care and combating HIV/AIDS, malaria and other commonly prevalent diseases. In order to ensure environmental sustainability, NDG concretely state to ensure access to safe drinking water in every village by 2007. The NDGs focus on attaining 33 per cent forest and tree cover by 2012. The CMP aims at extending ownership rights on minor forest produce to those who live in forests as well as at discontinuing eviction of tribal communities from their forest dwellings.

The CMP clearly focuses promotion of disadvantaged sections. It seeks to extend ownership rights in respect of minor forest produce to the weaker sections who work in the forests. The UPA also 'promises to launch a comprehensive national programme for minor irrigation of all land owned by Dalit and Adivasis'. Such commitments will remain on paper unless sufficient bottom-up pressure is built from those who have highest stakes in the realization of such commitments. The national aggregates of achievements will also miss out the regional/state/district level variations; as a result the poor areas or states like U.P., M.P. Bihar, Rajasthan, Orissa and many other states will continue to suffer due to lack of basic needs will not be met.

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In regards to education, a 2 per cent cess on all central taxes is expected to yield Rs 4000 crore. The budgetary allocation for all levels of education in 2004-05, at Rs 11,062 crore, was only Rs 800 crore more than the expenditure in 2003-04, thus belying the hope generated by the CMP. Likewise, though the CMP promises 100 days of employment (for at least one able-bodied person in the poor and lower middle class households), there is no sign of budgetary commitment or clear policy guidelines to keep the promise. The current level of national budget allocation will have to be increased three times to cover 5.2 crore family below poverty line with Antyodaya card or public distribution system.

The comparative table presented below looks at the issues from different perspectives and also identifies possible strategies and areas of intervention. Will these goals be attained within its specified time frame is a big question as resources allocated are not adequate to meet the requirements.

Comparative Analysis of MDGs, NDGs and CMP			
Sl.	MDG Goals	National Development Goals/Targets-Tenth Five Year Plan	CMP Goals
1.	<p><b>Eradicate extreme poverty and hunger</b></p> <p>Reduce by half the proportion of people living on less than a dollar a day.</p> <p>Reduce by half the proportion of people who suffer from hunger.</p>	<p>Reduction of poverty ratio by 5 percentage points by 2007 and by 15 percentage points.</p>	<ul style="list-style-type: none"> <li>• Enact National Employment Guarantee Act.</li> <li>• 100 days employment every year at minimum wages for at least one able bodied person in every rural, urban poor and lower middle class house hold.</li> <li>• Double the flow of rural credit in the next</li> </ul>
			<ul style="list-style-type: none"> <li>• Strengthen public distribution system in poorest and backward blocks of the country.</li> </ul>

Contd... Comparative Analysis of MDGs, NDGs and CMP			
Sl.	MDG Goals	National Development Goals/Targets-Tenth Five Year Plan	CMP Goals
			<ul style="list-style-type: none"> <li>• Antyodaya cards for all households at risk of hunger.</li> <li>• National programmes for minor irrigation of all lands owned by Dalits and Adivasis.</li> </ul>
2.	<p><b>Achieve universal primary education</b></p> <p>Ensure that all boys and girls complete a full course of primary schooling.</p>	<p>All children in school by 2003; all children to complete 5 years of schooling by 2007.</p>	<ul style="list-style-type: none"> <li>• Provide functional Anganwadi in every settlement and ensure full coverage for all the children.</li> <li>• To raise public spending in education to at least 6% of the GDP with at least half amount being spent on primary and secondary schools.</li> </ul>
3.	<p><b>Promote gender equality and empower women</b></p> <p>Eliminate gender disparity in primary and secondary education preferably by 2005, and at all levels by 2015.</p>	<p>Reduction of gender gaps in literacy and wage rates by at least 50% by 2007.</p>	<ul style="list-style-type: none"> <li>• Introduce legislation for one third reservation for women in Vidhan Sabha and Lok Sabha.</li> <li>• At least one third of the funds flowing into panchayats earmarked for programmes for the development women and children.</li> <li>• Enacting new legislation that gives women equal rights of ownership of assets like houses and land.</li> </ul>

Contd... Comparative Analysis of MDG, NDG and CMP			
Sl.	MDG Goals	National Development Goals/Targets-Tenth Five Year Plan	CMP Goals
4.	<p><b>Reduce child mortality</b></p> <p>Reduce by two thirds the mortality rate among children under five.</p>	<p>Reduction of infant mortality rate to 45 per 1000 live births by 2007 and to 1 by 2012.</p>	<ul style="list-style-type: none"> <li>• To raise public spending to at least 2-3% of the GDP over the next 5 years with focus on primary health care.</li> </ul>
5.	<p><b>Improve Maternal Health</b></p> <p>Reduce by three quarters the maternal mortality ratio (MMR).</p>	<p>Reduction of maternal mortality ratio to 2 per 1000 live births by 2007 and to 28 by 2012.</p>	<ul style="list-style-type: none"> <li>• To introduce a national scheme on health insurance for the poor families.</li> </ul>
6.	<p>Combat HIV/AIDS, malaria and other diseases –</p> <p>Halt and begin to reverse the spread of HIV/AIDS.</p> <p>Halt and begin to reverse the incidence of malaria and other major diseases.</p>	<p>NA</p>	
7.	<p>Ensure environmental sustainability –</p> <p>Integrate the principles of sustainable development into country policies and programmes; reverse</p>	<p>Increase in forest and tree cover to 25% by 2007 and 33% by 2012.</p> <p>All villages to have sustained access to potable drinking water by 2007.</p>	<ul style="list-style-type: none"> <li>• Ownership rights of minor forest produce, including Tendu Patta to those who live in forests.</li> <li>• Eviction of tribal communities and their forest dwelling</li> </ul>

Contd... Comparative Analysis of MDG, NDG and CMP			
Sl.	MDG Goals	National Development Goals/Targets-Tenth Five Year Plan	CMP Goals
	<p>loss of environmental resources.</p> <p>Reduce by half the proportion of people without sustainable access to safe drinking water.</p> <p>Achieve significant improvement in lives of at least 100 million slum dwellers, by 2020.</p>	<p>Cleaning of major polluted rivers by 2007 and other notified stretches by 2012.</p>	<p>from forest areas will be discontinued.</p>

Moreover, it is felt across the civil society organizations that the MDGs need to be situated in a local socio-cultural context laying adequate emphasis on the quality and ethical dimensions of development. Though the unjust trade rule, patent regimes, privatization of public services and militarization undermine the possibilities of realizing MDGs.

Unless clear targets are set for achieving 8th goal of MDGs on aid, trade, debt, there will not be enough financial resources to realize the other seven goals. There is every likelihood that dalits, tribals, disabled, women, minorities and the poorest of the poor will still be out of the MDG or NDG promises..

The participation and engagement of Civil society institutions become pertinent to contextualize the development goals in local situation, sensitising citizens; and influencing the policies and practices of the government in a way to ensure that voices of the poor and marginalized are heard. As the battle for providing the basic services to the people could not be won in the last fifty seven years of postcolonial experience in India, there is every chance of loosing it in 2015, unless there is real policy prioritization and political will.

The role and accountability of the government remains key to attain the development goals and policy promises. An effective response to issues of poverty

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and marginalization requires increased budgetary allocation, clear policy guidelines, efficient implementing system and participation of the poor and marginalized in governance.

## Monitoring Institutions of Governance

The second Citizens Report on Governance and Development seeks to analyze and understand the performance and working of key institutions and arenas of governance in relation to social development and from the perspective of citizens and the civil society. The socio-economic rights, the Millennium Development Goals, 10th five year plan Goals and the Common Minimum Programme of the United Progressive Government are important pointers that help to monitor the process of governance and development. The right to livelihood (food/work) as well as the right to education and health have also been included in the analysis of institutional performance of Parliament, Executive, Judiciary and Local Self Governance institutions. The Social Watch process aims to initiate monitoring of initiatives to achieve various goals keeping citizens living in remote parts in vulnerable situation at the centre of the exercise. The momentum generated by the community-based monitoring will make institutions of democratic governance responsive and accountable to the citizens.

## Seeking Accountability: Parliament Watch

The idea of a vibrant, independent and accountable parliament is central to making democracy work. In a parliamentary democracy like India, the responsibilities, roles and function of the parliament increase manifold. One of the biggest achievements of postcolonial India immediately after attainment of independence was, the establishment and institutionalization of the parliament. Over the decades, the parliament has been one of the most important pillars of Indian democracy. Except a brief spell in the mid seventies, the Indian parliament has remained a key site for holding the government accountable and providing it with a progressive legislative framework. However, in the recent past, the parliament is failing in performing its role and increasingly reflecting the rapid down- slide of Indian democracy.

In 2003, the parliament has failed to make democracy work as it wasted parliamentary time and public money on inter-party political controversies. Nevertheless, the positive performance of the parliament in the form of quality work

of standing committees, approval of several important legislative measures and occasional debates on basic issues affecting the people deserves mention. The following highlight the performance or the lack of it, of the parliament during 2003:

### **Time Lost on Account of Unruly Behavior**

The Lok Sabha lost over 60 hours to disruptions. The cost of Parliamentary transactions is currently estimated to be Rs. 18,430 per minute. The loss to the public exchequer can be easily imagined. The only thing that can be said in favour of MPs is that the time lost due to disruptions was less in 2003 as compared to 2002. One can perhaps attribute this marginal improvement to the increasing media attention to disruption of Parliament and the mounting public displeasure over the way MPs are squandering public money.

### **Decreasing Number of Sittings**

For 36 years from the time of its inception in 1952, the Lok Sabha sat for over 100 days every year. In fact, it averaged 138 sittings in a year for several years and came down to 102 days in 1988. Since then, it has fallen to just about 80 days in a year. But the year 2003 saw a further decline— the Lok Sabha sat for only 74 days during the year.

### **Unfinished Business-Pending Bills**

In Rajya Sabha more than 30 bills are pending, which include the bills pending for more than 10 years. This includes bills such as the Indian Medical Council (amendment) bill introduced in 1987. In the Lok Sabha, the end of every session during the year 2003 saw about 30-40 pending Government Bills. At the end of the fourteenth session, the number of pending Private Members Bills stood at 261.

### **Time Spent on Legislative Business**

During the budget session, the Lok Sabha spent a considerable amount of time discussing government bills—a total of 56 hours, i.e. 23.33 per cent of the total duration of the session. This percentage however came down drastically during the monsoon session, when the house spent only 12 hours and 45 minutes, i.e. 11.28 per cent of the total time of the house spent on discussion of government bills. A total of 64 Bills were passed by both houses of Parliament during the year 2003 (including the second part of the winter session in the beginning of 2004). Some of the important Bills passed by both the houses include: the Constitution (Ninety Seventh Amendment) Bill; Fiscal Responsibility and Budget Management Bill; the Central Vigilance Commission Bill; the Election and other

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Related Laws (Amendment) bill; the Railway Protection Force (Amendment) Bill; the Indian Telegraph (Amendment) Bill.

### **Parliamentary Committees and Missing Members**

The continuing absenteeism at these Committee meetings should be a cause of worry. On an average, most of the committees record only about 45 to 50 per cent attendance. During the 12th session of the 13th Lok Sabha, for example, the financial committees recorded an average attendance of 51 per cent. Among the standing committees, the Committee on Railway recorded the lowest attendance during the year, a mere 14 per cent.

### **Debates and Discussions on Issues Affecting the Country**

The shrinking time available to Parliamentarians can be seen in the number of notices for short duration discussion under Rule 193 on those 'matters of urgent public importance' that do not make it to the session. During the budget session of Lok Sabha, for example, 280 such notices were received by the Lok Sabha Secretariat. Out of this, only six could be admitted. And even out of this six, discussions on only four could be completed.

### **Question Hour and Shortage of Time**

During the budget session of Lok Sabha, 702 starred questions were put in the question lists for oral answers. But eventually, only 131 questions could be orally answered. During the monsoon session, out of the 440 starred questions put down in the list of questions for oral answers, only 44 were answered orally.

### **A Look at Social Sector through the Prism of Question Hour**

The concern of MPs for the social sector is evident in the large number of questions put in by members in both houses during all the three sessions on many issues ranging from amenities and policy initiatives for families below the poverty line (BPL families), employment guarantee schemes, drinking water schemes, housing for the rural poor and construction of rural roads. This leads to significant and revealing data about the status of the social sector in India. For instance in response to a question seeking information on the per capita government spending on health in each state between 1999 and 2000, the government's response showed that Goa spent Rs 1081 per capita on health care and stood first among states. Pondicherry and Mizoram spent Rs 782 and Rs 762 respectively and stood second and third. The lowest per capita spending on health was recorded in Bihar (Rs 64) in 1999-2000. In 2000-01, Bihar's per capita spending dropped to Rs 60 and was the lowest among all the big states.

### Assurances

Both houses of Parliament have committees on government assurances. These committees are responsible for culling assurances given by ministers in both the houses and monitoring their implementation. In the year 2003, the number of pending assurances rose sharply. For example, in the Rajya Sabha, the number of pending assurances in 2002 was 203, this jumped to 515 in 2003, indicating an increase of over 150 per cent. The Ministry of Finance and Company Affairs (22 pending assurances), the Ministry of Human Resource Development (17), the Ministry of Health and Family Welfare (14) and the Ministry of Tourism and Culture (11) are some of the Ministries having the maximum number of pending assurances. A total of 162 assurances were pending as at the end of the winter session of the Rajya Sabha.

### Broken Promises: Policy Watch

Democratic governance can be realized only in a milieu of people-centered policies and practices. Unfortunately, the Indian polity and the state have perfected the rhetoric of democratic governance, which in reality is divorced from a policy framework rooted in a peoples rights discourse. This lead to perpetuation of inequity, exclusion and poverty. In this context, it becomes imperative to work with a conceptual framework, where objectives of the development processes are visualized as a matter of rights for the citizens.

The fact that substantial sections of Indian population suffer from glaring deprivations vis-a-vis a set of commonly acknowledged basic needs, such as adequate food, shelter, clothing, basic health care, elementary education and basic sanitation. In fact, the major shortcoming of the economic transformation of India is found/ located in the realm of policies and process that would have facilitated meeting the above noted basic needs. In this context, it becomes increasingly imperative for the Indian state to realize that the neglect of positive rights as largely enshrined in the directive principles, generally leads to an increased resource burden and a negative impact on the state. To compound the issue, the growing influence of neo-liberal economic agenda has tended to make the material and social conditions more difficult and fragile for the under-privileged economic and social groups, who constitute the majority of our country.

This year's Social Watch Report attempts to track the performance of policies with respect to three rights, namely, livelihood, education and health. In spite of the adoption of a progressive and promising CMP for governance by the Union

government, the audit of the performance and framework of policies presents a dismal picture. The key highlights of policies and practices in the year 2004 reveal the following trends:

### **Livelihood Prospects Continue to Decline**

While the growth rate of employment took a beating in both urban and rural India in 1990s, the extent of the decline was much larger in rural India. The annual growth rate of employment in rural areas dipped to 0.58 per cent in the period 1993-94 to 1999-20 from 2.03 per cent in the period 1987-88 to 1993-94. In urban areas it declined marginally from 3.39 to 2.27 per cent during the same period.

### **Livelihood and Agriculture – A Dismal Picture**

In fact, during the second half of the 1990s, as per NSS data, employment growth in agriculture almost completely dried up. Decline in the growth of employment opportunities was, in large measure, policy-driven through reduction in public development expenditure, declining input subsidies, and drying up of rural credit.

### **The Myth of Growing Food Security**

It may also be noted here that the decade of the 1990s is indeed the only one since independence when per capita food grain output in the country declined in absolute terms. As it happens, the absolute amount of per capita food availability for the triennium ending 2002-03 was only marginally higher than the years of the Second World War, i.e., the period that witnessed the terrible Bengal famine. It reflects a complete disregard for the right to livelihood, as reflected through appalling access to employment and food availability, and in recent years, the situation appears to have deteriorated alarmingly.

### **Health – Arduous Path Ahead**

The public expenditure on health as a percentage of GDP in India is among the lowest. Developed countries like the US and Canada spend 12.61 and 9.76 per cent respectively of the GDP on health, whereas India spends only 4.46 per cent. Even Bangladesh has overtaken us in this regard over the past decade. It is worth noting here that according to the Human Development Report, 2004, in terms of public expenditure on health care as a proportion of total health care expenditure (in the country), India ranks as low as 171 among the 175 countries studied. On the other hand, in terms of private health care expenditure as a proportion of the total, India's rank is rather high at 18.

### **Education – Promises Need to be Backed by Commitment**

The NDA government's last budget, for the year 2004-05, had set aside Rs. 6,004 crore for elementary education, whereas the Tapas Majumdar Committee had suggested that to achieve the goal of universalization of school education over a ten year time frame (1998-99 to 2007-08), the total expenditure required was around Rs 1.37 lakh crore, and for 2004-05, it had suggested an expenditure of about Rs 17,000 crore. Also, the capital allocation on education, which is meant for the creation of new buildings and other infrastructure, had been very low throughout the tenure of the NDA regime. It declined from around Rs 224.53 crore in 1994-95 to Rs 18.42 crore in 2002-03.

### **Common Minimum Programme – Promising Policy Prescriptions**

The major policy promises of the CMP include; enactment of an employment guarantee act, protection of labour rights, expansion of social security programmes, increase in the expenditure on education up to 6 percent of GDP and on health up to 2-3 percent of GDP, expansion/universalisation of PDS, launching of food for work programmes, drinking water facilities for all, empowerment of the PRIs, one –third reservations for women in the Lok Sabha and the Vidhan Sabhas, among others.

### **Disturbing Continuity in Economic Policy Orientations**

Budget 2004-05 failed to mark a departure from the 'business as usual' and failed to live up to the promises of CMP. For example, in the education sector, a 2 percent cess on all central taxes is expected to yield Rs 4000 crore, and the budgetary allocation for all levels of education in 2004-05, at Rs 11,062 crore, was only Rs 800 crore more than the expenditure in 2003-04, thus belying the hope generated by the CMP. Similarly, there is no significant additional allocation of funds to address the needs of the health sector, which is in a woeful state.

### **Policy Scenario 2004 – Cautious Optimism**

The basic point that we wish to stress is that, to meet the objectives laid down in CMP and to move towards the progressive realization of the rights to health, education and livelihood, the present government needs to move away from the beaten path of neo-liberal policies and fiscal conservatism.

### **Access to Justice: Judiciary Watch**

The functioning of a democracy is dependent on the autonomy and efficacy of the three systems of the state, namely, parliament, executive and the judiciary.

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India in the last two decades has seen rapid erosion of the functioning of the parliament and the executive. In this scenario of failure of the state in ensuring its constitutional obligation and rights to the citizens and initiating social-economic transformation, the judiciary has often played a significant role in upholding the rule of law and thereby protecting the fundamentals of democracy in the country.

Nevertheless, it is important that the judiciary is not burdened with expectations of playing the role of the executive. It cannot directly carry out the tasks of effective governance. This is critical for the long-term health of Indian democracy because of two reasons. First, the judiciary has its role and organizational limitation and can not perform the role of day-to-day governance. Second, the fundamental principle of division of power needs to be respected and strengthened for making democracy work effectively.

The section on the state of the judiciary 2003–04 seeks to audit the institution of Supreme Court and the judiciary from two broad perspectives. The first part documents the proactive role of the supreme court in upholding and guaranteeing the fundamental rights to the citizens. It undertakes a qualitative review of civil liberties and democratic rights. In addition it takes a close look at the four inter related rights i.e. the right to food, right to education, right to work and right to health through the cases decided by the Supreme Court along with some with some significant verdict of the High Courts in the year 2003–04. To present a more comprehensive picture, it also looks at some ‘economic policy cases’ and cases relating to infrastructure projects and environment. The second part of the chapter throws light on the functioning of the judiciary with an attempt to highlight the existing structural and processual constraints and some potential solutions.

The report presents two contrasting realities. On the one hand, the sheer number and the manner of intervention of both the Supreme Court and the high courts on the various aspects of the fundamental rights to Food, Work, Education and Health drives home the point that the right based approaches in the context of the state of development of the country remain inescapable – despite its limitations. The biggest hurdle against the efficacy of rights has been that while it continues to give a very progressive legal regime in principle, such provision seldom get implemented. Indeed, a theme that kept recurring in cases with the higher judiciary related to the problem of securing compliance with court orders.

The processual and structural state of affairs of the judiciary presents a gloomy

picture. The high pendency rate, inordinate delays, archaic law framework, dysfunctional courts, low morale and de-motivation creeping into the ranks of the judiciary are pointers to the deteriorating condition of the judicial system. Some of the key highlights of the functioning of judiciary in year 2003–04 are following:

### **Subversion of Justice**

The Best Bakery case has brought home two critical aspects relating to subversion of the justice delivery system. One that judiciary – even the higher courts – are amenable to political and other influences. Secondly, the Supreme Court by its severe indictment of the High Court’s role made clear that “it would not remain a silent spectator to deliberate defiance of principles governing the rule of law and due process.”

### **Striking at the Right to Strike**

The Supreme Court in August last year held that the government employees had no fundamental, statutory or equitable/moral right to strike. The decision invoked some strong sentiments including widespread criticism by the media. The logic of the Court in fact was on tenuous ground. The right to strike has been held to be an essential aspect of freedom of association under ILO Conventions 87 & 98.

### **Gender Crimes and Problems of Implementation**

The Supreme Court observed that “it is apparent that to a large extent, the Prenatal Diagnostic Techniques Act 1994 is not implemented by the Central Government or by the State Governments.” The Supreme Court in September 2003 gave separate directions to Central Government, Central Supervisory Board, State Governments and appropriate authorities to take all possible remedial action including creating public awareness against the practice of prenatal determination of sex and female foeticide through appropriate programmes in the media.

### **Economic Policies – Pro Liberalization and ‘Economic Reforms’ Position**

In a petition that generated lot of controversy, the decision of the government to sell its majority share in Hindustan Petroleum Corporation Ltd and Bharat Petroleum Corporation Ltd to private parties without Parliamentary approval was challenged as being contrary to the provisions of the Esso Act, Burma Shell Act and the Caltex Act. The Supreme Court briefly reviewed the position

the world over on whether there is any need for a law regarding privatisation but felt that “there is no challenge before this court as to the policy of disinvestments. The only question raised before us is whether the method adopted by the government in exercising its executive power to disinvest HPCL & BPCL without repealing or amending the law is permissible or not. We find that on the language of the act such a course is not permissible at all”. However, it is felt that the disinvestment case is the only case in recent years where the Supreme Court “has allowed a challenge to any purported implementation of the new economic policy”. In all the rest, the Court has not entertained any challenges to the actions of executive for promoting and furthering ‘economic reforms’.

### **Conservation Rulings – In Favour of Large Infrastructural Projects**

Despite the diverse grounds on which the challenges have been made against large infrastructure projects, the general response of the Courts to such litigation has been conservative so much so that in no case so far has the Court ordered the scraping of any project or even any significant restructuring of a project in the face of such challenges. The Courts have largely taken the view that considerations of environmental impacts of a project, or economic and financial considerations raised technical issues and policy matters, which are best left with the expert authorities of the executive.

### **Financial Difficulties: No Grounds for Violations of Social and Economic Rights**

In the context of the social and economic rights, it is important to note that the Supreme Court has made clear in 2003 that financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental right arises. In fact the Supreme Court has been highlighting this aspect in the matters concerning fundamental rights and maintenance of ecology. In some other cases, the Apex Court has held the ‘financial difficulties of the institutions can not be above fundamental rights of a citizen’.

### **Supreme Court’s censure of Government’s Ineffective Role**

In late November 2001 the Supreme Court had directed the state governments to implement Mid Day Meal Scheme (MDMS) by providing every child in every Government and Government assisted primary schools with a prepared mid day meal with a minimum content of 300 calories and 8-12 gms protein each day of school for a minimum of 200 days. While noting that some

states were implementing the directions of the court, it was also seen that some other states had not even made a beginning despite the fact that over 1½ years had elapsed between November 2001 till May 2003. Particular reference was made to the states of Bihar, Jharkhand and Uttar Pradesh and the Court noted that while the counsel for Uttar Pradesh and Jharkhand could not give any satisfactory reason for non-implementation and did not even file any affidavit in this regard, the affidavit filed by Bihar ‘could not be more vague than what it is’.

### **Right to Work**

The Supreme Court has in recent past interpreted and included the right to work as one of the positive rights guaranteed under Article 21 of the Constitution of India. Specifically it has held that “income is the foundation of the many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental”.

### **Right to Health**

While deciding the controversial Tehri Dam case, the Supreme Court observed in a significant judgment in September 2003 that ‘right to health is the fundamental right under Article 21. Protection of this is inextricably linked with the clean environment. Clean and healthy environment itself is a fundamental right.’

### **Pendency in Courts**

The pendency in high courts has been showing an increasing trend. It has increased from 26.51 lakhs as on 31.12.1993 to 35.55 lakhs as on 31.10.01. Out of the total 36,01,186 pending cases in different high courts, approximately 17 per cent are more than 10 years old.

### **Vacancy of Judges**

Out of the total approved strength of 655 judges in various high courts, there is a vacancy of approximately 24 per cent (156 posts) as on 1.12.2003 leading to mounting arrears in the High courts.

### **Dysfunctional Courts**

The records before the Supreme Court show that about 70 Courts in Karnataka, 10 Courts in Kerala, 42 Courts in Madhya Pradesh, 84 Courts in Maharashtra, 42 Courts in Orissa, 14 Courts in Punjab and 132 Courts in West Bengal are not functioning.

### **Successful Efforts of Supreme Court at Reducing Pendency of Cases**

The Supreme Court in a short period of three years has brought down the number of pending cases from more than one lakh to just around 20,000 cases through systematic judicial measures based on the report 'Modernization of Civil Justice System: Implementation Plan' of the National Judicial Academy. The current rate of disposal and fresh filing of cases, promises a zero pendency future for the Supreme Court.

## **Grassroots Democracy: Local Governance Watch**

In a report on auditing institution of the State for making democracy work, the section on Panchayats become critically important as the introduction of the Panchayat Raj system through the 73rd Constitutional Amendment is the most definitive step towards reenergizing democracy in the history of independent India. Unfortunately, this laudable initiative for decentralization of governance has been circumvented by the alliance of elite political interests, change resistant bureaucracy and the rent seeking class, which has well entrenched interests in the continuation of a colonial centralized state structure.

The 73rd Constitutional Amendment and ensuing state Panchyat Acts are progressive in nature and provide substantial space for responsive and participatory governance. Importantly, special provision for women, OBCs, SCs and STs are in built in the Act to protect and further the interest of vulnerable and marginalized sections. The Panchayat Extension to Scheduled Areas (PESA) Act provides special provision for function of Panchayats so as to protect and promote the tribal interests in accordance with the spirit of the scheduled areas as enshrined in the constitution. However, the actual implementation of the Act tells an entirely different story. It is a story of non-performance of an institution due to lack of support and resistance from government and the bureaucracy. This resistance is clearly reflected in the lack of real devolution and delegation of funds, function and functionaries to the Panchayats.

In spite of these odds, the Panchayats generate some hope in a deeply troubled system of democracy. The hope emanates from the fact that a new and large base of democratic leadership amongst the rural areas and marginalized sections of the society is being built through the Panchayat system. It also presents many micro examples of effective governance.

This year report is a novel experiment in tracking and auditing Panchayats from the lens of rights to food, right to work, right to health and right to education. This report also attempts a systematic audit of implementation of PESA. Some of the key highlights of this section are following:

### **Adjuncts of the State Governments**

The Panchayats function at the mercy of state governments and are usually treated as mere adjuncts of a state's politico-administrative machinery. In spite of the fact that Panchayat are democratically elected bodies and are as much a constitutional body as Parliament or state assemblies.

### **Broad and Representative Democratic Leadership**

India now has constitutionally mandated 232,332 village panchayats, 6,000 intermediate panchayats and 534 zilla panchayats. The three tiers of these elected bodies consist of as many as 27,75,858 village panchayat members, 1,44,491 members of the intermediate panchayat and 15,067 members of the district panchayat.

### **Growing Women Leadership**

Women head about 175 District panchayats, more than 2,000 Block panchayats and about 85,000 Gram panchayats. The southern states are fairing better in promoting women leadership compared to the northern states. Kerala, Karnataka, Andhra Pradesh, Tamil Nadu, West Bengal and Madhya Pradesh are some of the states, which have more than 33 per cent women leadership clearly indicating that some women have been elected from general seats.

### **Parliamentary Review Committee on Local self-Governance**

A decade after the 73rd and 74th constitutional Amendments, a Parliamentary Committee was constituted to review their impact and progress. This committee of the 13th Lok Sabha, chaired by Chandrakant Khare, comprising of 30 members from Lok Sabha and 13 members from Rajya Sabha, reviewed the 10 years of implementation of the Amendments and expressed that this period has witnessed a willful violation of Constitution with respect to devolution of rights to Panchayats. The committee also expressed unhappiness over the Action Taken Report presented by Ministry of Rural Development where the replies furnished by the Government were evasive, vague and inconclusive.

### **Ineffective Fiscal Decentralization**

State Finance Commissions (SFCs) have been constituted and have given their recommendations. However, only four states—Himachal Pradesh, Kerala,

Rajasthan and West Bengal—have largely accepted the recommendations of their SFCs. In other states only some of the recommendations have been accepted. The total fund on the 29 subjects, roughly calculated to be Rs 72,000 crore, is only minimally devolved to the Panchayats. The central ministry has retained a large portion of approximately Rs 30,000 crore and an equally substantial sum is kept at the state level, which leaves only 5 to 10 per cent to be devolved to the Panchayats. Panchayats have invariably failed to generate their own revenue and are dependent on grants from the state and the centre to fulfill their responsibility. One important reason for poor resource generation by Panchayats is inadequate control of PRIs on natural, physical and human resources within their jurisdiction. Unfortunately, fiscal devolution is increasingly dependent on political pressures, market forces driven by contractors and, plain and simple corruption.

### **Parallel Initiatives Undermining Panchayats**

With the evolution of PRIs, various parallel developmental schemes and institutions have been initiated directly undermining the legitimacy and role of Panchayats. MPLADS is one such scheme. It is worth noting that many of the works undertaken under the MPLAD scheme duplicate the development work taken up by the Panchayats. It is important to underscore that PRIs are starved of funds and the financial allocation under MPLADS was increased in 1999-2000 to Rs 2 crores per year for every MP. The centrally sponsored schemes (CSS) also undermine the PRIs. The share of centrally sponsored schemes (CSS) in the plan budget of central ministries has increased to 70 per cent as against 30 per cent in the early 80s. The state governments are also promoting special interest groups with vertical hierarchy and parallel authority to that of Panchayats, such as Janmabhoomi in Andhra Pradesh and Gram Vikas Samiti in Haryana. The last two to three years have been most unfortunate as the previous NDA government attempted to strengthen District Rural Development Agency (DRDA) as the principal organ at the district level for handling huge funds.

### **Complex Procedures and Lack of Capacities**

The governance procedures adopted for the Panchayats are extremely complex and are often a duplication of the state government rules and procedures. Particularly, the procedures of accounting adopted are very complex for the rural masses. This issue gets further compounded by the lack of skills and knowledge of the panchayat members. A study by Unnati in Rajasthan found that 40 per cent of the elected representatives were illiterates and 90 per cent of reserved category panchayat heads were elected for the first time leading to poor capacities for performing the role of panchayat representatives.

### **Panchayats Managing Primary Education**

Some experiences of PRI managing the local primary education are positive indicating that decentralization and de-bureaucratization of education can be effective and would be able to meet the local demand through locally available human resource.

### **Health Care and Panchayats**

Involvement of local bodies in public health delivery is almost negligible. Unfortunately, the capacities of local bodies for managing public health and sanitation are weak and as a result the local bodies would find it difficult to evolve and manage the public health system. Nevertheless, the partial success of experiments like Jan Swasthya Rakshak (JSR) model in MP demonstrates that community-based primary and preventive health management is possible and its institutionalization with Panchayats can make it sustainable, replicable and equitable.

### **Reluctance to Operationalize PESA**

The PESA Act is one of the most potent legislative measures of the recent times, which recognizes the tribal peoples' mode of living, aspirations, their culture and traditions. But the fact that in most of the state the enabling rules are not in place more than eight years after the adoption of the Act suggests that the state governments are reluctant to operationalize the PESA mandate.

### **Ignoring the Spirit of PESA**

The state legislations have omitted some of the fundamental principles without which the spirit of PESA can never be realized. For instance, the premise in PESA that state legislations on Panchayats shall be in consonance with customary laws and among other things traditional management practices of community resources is ignored by most of the state laws.

### **State Legislations Weaken Gram Sabhas**

The Gram Sabhas in the PESA Act are central pillars of governance entrusted with significant role and substantive powers. However, the state legislations, perhaps by design, through a twist of legal language have taken away powers from the Gram Sabhas.

### **PESA and Water Resources**

As per PESA, the power to plan and manage 'minor water bodies' exclusively vests in the Panchayats at appropriate level. However, no legal definition of the term 'minor water bodies' exists in the statute books. The states in their conformity

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legislations have also not defined the term leading to ambiguity and scope of interpretation by the bureaucracy.

### **PESA and Land Resources**

The PESA Act mandates that there should be consultation before land acquisition for development projects and before resettling or rehabilitating persons affected by such projects. Also the Gram Sabhas and Panchayats have the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any alienated land of Scheduled Tribes. However, state governments have not laid rules in this regard.

## **The Way Forward**

This report, is an attempt to track the functioning of key institutional pillars of democracy in India from the perspective of poor and ordinary citizens. The endeavour is to generate awareness about the functioning of the Parliament, Executive, Judiciary and the Local Self Government in public domain and raise public debate on issues of critical relevance for vibrance of democracy in the country. Importantly, it is also to explore and acknowledge the positive space and initiatives of these institutions for promoting and making democracy work.

However, given the vastness, diversity and size of the country, there is a need to replicate and initiate social watch process and citizens monitoring at multiple levels, ranging from local to state and national level. The multiplicity of efforts would add strength to the process of citizens monitoring the functioning of democracy in the country. Importantly, it would provide new and divergent viewpoints for debate, discussion, follow up and action in the public domain for deepening democracy in India.

The process of building the Social Watch Coalition in India has already taken several steps forward in this direction. State level processes have been initiated in many states like Kerala, Andhra Pradesh, Orissa, Chhattisgarh, Madhya Pradesh, Uttar Pradesh, Bihar, Rajasthan, etc. These processes are being planned to bring in and articulate citizens' voices and concerns from the grassroots and to link it with the process of monitoring governance, democracy and development in India.