

Enclosure – 1

Theme 1: Tackling Corruption and Promoting Greater Accountability

There are seven broad areas of action at the State level.

1. Decentralization
2. Right to Information law
3. Instruments of Accountability like Citizen's Charter
4. Independent anti-corruption agency with teeth
5. Independent crime investigation free from governments interference
6. Mechanisms for speedy justice
7. Deregulation and simplification of rules and procedures

Decentralisation, crime investigation and speedy justice will be taken up in the other main themes. I will therefore, focus on Right to Information, accountability instruments and independent anti-corruption agency, and deregulation and simplification of rules and procedures.

1) **Right to Information**

The state government has been talking of transparency for a long time. Its acronym – SMART government – includes transparency. Laws are in place in Tamil Nadu, Goa, Rajasthan and Karnataka.

The recently enacted laws in Karnataka and Goa are regarded as the best so far. Madhya Pradesh Legislature passed a Bill and sent it to the President for his assent under the Article 200 of the Constitution. However, so far the union government has not approved the Bill. Therefore, Madhya Pradesh government is implementing provisions of the law through executive instructions. This is a rare example of the political will in favour of transparency in government.

In Andhra Pradesh despite talk of transparency, no concrete steps have been taken to enact a Right to Information law. The bill drafted by the government of India for introducing in Parliament is extremely vague and inadequate. There are too many vague exemptions; there is no penalty for noncompliance; there is no provision for independent appeal; there is no protection of whistleblowers and the time limits are too lax.

Lok Satta has drafted a practical, workable and sensible piece of legislation overcoming these deficiencies and presented it to the State government and all political parties. So far there is no response from the government. However, I believe this particular reform will be implemented for a variety of reasons.

1. The government's rhetoric makes it difficult to back track.
2. There is momentum in the country in favour of such a law.
3. There is sufficiently strong civil society pressure to compel the government to act.

4. World Bank has made it a condition for lending (civil society played a crucial role in this)
5. Right to Information gives high level of satisfaction to citizens at little cost.

Given these circumstances I believe some pressure from donor agencies will ensure legislation. But it is important to make sure that legislation is well-drafted and people are trained to utilise its provisions in their daily interactions with government agencies. This requires careful monitoring and proactive civil society.

2) **Citizens' Charters**

One of the most effective instruments to curb corruption at the cutting edge level is introduction of the Citizens' Charter. In a sensible Citizen's Charter, for every service, the public servant responsible should be clearly identified: what the citizens should do to obtain the service should be unambiguously stated; the performance standards including the time frame should be explicitly prescribed; and the penalty (compensation) payable to the citizens for non-compliance or nonperformance should be provided. While several departments of the Union government and a few State governments did release Citizen's Charters, none of them fulfil these four criteria.

Lok Satta prepared and published a People's Charter in October, 1998 on a variety of public services and applied pressure on the government to come up with the Citizens' Charter. The State government responded with a public commitment to frame Citizens' Charters in the following departments:

1. APSEB
2. APSRTC
3. Hyderabad Metropolitan Water Supply and Sewerage Board
4. Employment Exchanges
5. Commercial Tax Department
6. Registration Departments
7. Municipal Corporation of Hyderabad
8. Municipalities

A few of these departments did release Citizen's Charters, but they are all vague and none of them provided for penalties for non-performance.

Recently, in April 2001 the government did release a satisfactory Citizens' Charter in respect of Urban Local Bodies, giving clear and reasonable time schedules and providing for a compensation of Rs 50 per day to the applicants, if the time schedule is not followed. The amount has to be collected by the Urban Local Body from the persons responsible for the delay in rendering the services. This is an extremely positive step which deserves commendation and full support. Citizen's Charter is a mechanism by which the greatest citizen-satisfaction is possible at no extra cost to the government.

If the Citizens' Charters are released, popularised and implemented for all public services rendered by the government, it will be the most effective step to curb corruption and promote accountability.

As the burden of implementation rests with the bureaucracy, the political class will be only too happy to gain popularity and political mileage by introducing Citizens' Charters. Much of the cutting edge level of corruption can be easily curbed. However, Citizens' Charters need to be designed very carefully, reasonable time frame should be provided for and compensation should be awarded to the citizens for delays. If the designing of Citizens' Charters is left entirely to bureaucracy, it is unlikely that these Charters will be drafted properly or implemented.

Therefore, donor agencies like DFID should insist on an independent non government expert body preparing these drafts with full participation of the government machinery and public involvement. We also need to evolve an independent, accessible monitoring mechanism. The State government's Lok Ayukta is too remote, ineffective and toothless. There are two possible ways of creating monitoring agencies for Citizens' Charters. The first is creating in each district an independent agency and the second is utilising the existing consumer forum in each district.

The second course is preferable. Consumer Protection Act, which is a central law, does not cover government services. But wherever a fee is payable, the law applies. Therefore many of the services covered by the Citizen's Charter can be brought under Consumer Protection Act. Once the District Consumer Forum, which is a quasi-judicial body under the Consumer Protection Act, has jurisdiction over Citizen's charters, it will have a very salutary effect on the quality of public services and help reduce corruption substantially. For other services government can be persuaded to create new mechanics of monitoring and redressal. All in all introduction of Citizens' Charters seems to be a promising, effective and tangible action to curb corruption and promote accountability.

3) **Independent Anti-Corruption Agency**

At present there are three organisations at the State level dealing with corruption: the Anti – corruption Bureau (ACB), the Vigilance Commission and the Lok Ayukta.

Anti Corruption Bureau (ACB) is declared as a police station under the laws of the land. It is entirely controlled by the officials of the police department. However its powers are limited, procedures are slow and levels of probity are unsatisfactory. Typically in a year, only six hundred employees (out of 1.2 million) are investigated, of whom 300 are charged with specific offences, and of them only 30 are punished or convicted. Of them only 3 or 4 are executives at any level (Gazette Officers). The State government has to approve prosecution and take disciplinary action. Very often political considerations and bureaucratic apathy make it impossible to either launch prosecution or act against erring employees. In case of All-India Services (IAS, IPS & Indian Forest Service), the ACB cannot start an enquiry or investigation without prior permission of the chief minister. In most of the cases a trap cannot be laid without the government's approval. Similarly heads of the departments cannot be investigated without prior government approval. All these make ACB ineffective and totally dependent on government.

There is a Vigilance Commission headed by a senior IAS officer (retired chief secretary or an official of the same rank) to examine the complaints of corruption against any employee at any

level, to recommend ACB enquiry, to examine reports of the ACB and recommend action and to advise on the punishment to be awarded at the final stages of disciplinary action. The Vigilance Commission's recommendations are not binding on the government, but any deviation from its recommendation will go to the Legislative Assembly as part of the annual report. However, as the government at the chief minister's level has the unfettered discretion and control on all matters of investigations and disciplinary action against senior officials, the Vigilance Commission is helpless. Also ACB is completely under the political control of the government.

Vigilance Commission has been created in 1964 in the wake of Santanam Committee report at the Union level. The Central Vigilance Commission of government of India and Vigilance Commissions in states were created very swiftly by executive orders within months after Santanam Committee presented its report. Such political will is completely lacking 37 years later.

The third institution is Lok Ayukta created by State law. Lok Ayukta is headed by a former judge and is given the status and rank of the chief justice of the State high court. Every act of delay, harassment, inaction, corruption, excessive action, arbitrary action, abuse of authority by officials and ministers excluding the chief minister can be enquired into by Lok Ayukta. But Lok Ayukta has neither the machinery nor the authority to enforce its recommendations. Therefore over the years the institution has become truly ineffective and largely ornamental.

There is also a fourth agency, the Directorate General, Vigilance and Enforcement, which also carries out some of the functions of ACB, but is largely focused on revenue leakages and tax evasion. There are also two other institutions, the Tribunal for Disciplinary proceedings to enquire into allegations of misconduct of government servants, and the Commissionerate of Enquiries conduct disciplinary proceedings against gazetted officers and All Indian Service officers.

What we need now is a single agency with full authority, autonomy, manpower and resources. Many models could be considered, but whatever be the model, the agency should be independent and effective, and its decisions should be binding on government on matters of disciplinary action, and on prosecuting agency in matters of criminal trial. We also may have to consider a law for confiscation of personal properties of those held by family members. This may involve amendments of the existing Criminal Procedure Code and Indian Penal Code, and therefore needs the President's assent under Article 200 of the Constitution. But the other provisions creating a single independent agency is a State Subject, and will require appropriate legal and administrative steps by the State of Andhra Pradesh. Also the jurisdiction of this agency should be extended to every public functionary, including Chief Minister. The appointment of key functionaries in this independent anti-corruption agency should be made by a collegium comprising those in government, opposition, and the judiciary.

Obviously it is going to be hard to summon political will and courage to create such an independent and effective agency with sweeping powers. The political system, thanks to a very defective electoral funding regulation, is sustained by a chain of corruption. Election expenditure in Andhra Pradesh is widely regarded as the highest in India. The present ruling party, and chief minister Chandra Babu Naidu have contributed to this skyrocketing of expenditure in Andhra Pradesh. Therefore it is unrealistic to expect the state to muster the

political will to act. Also, if legislators are brought under the purview of the anti-corruption agency, they will rebel and threaten the survival of the government. It is, of course, very unrealistic to expect a chief minister to create a powerful agency and subject himself to its authority. Therefore, there are two intermediate steps feasible.

- 1) A more modest legislation can be attempted to create an independent agency with jurisdiction over all employees at all levels. If it is feasible, Ministers (Excluding chief minister) can be brought under its jurisdiction. Even bringing all employees including senior civil servants under the jurisdiction of an independent agency without government's interference is a major step forward.
- 2) The election funding law relating to local governments (panchayats and urban local bodies) is within the jurisdiction of the State Legislative Assembly. Municipal elections were conducted in 2000 AD and panchayat elections are overdue and are expected to be held before the end of July 2001. The State Election Commission, a constitutional body in charge of elections to local governments is willing to use its good offices to promote a sensible election funding law. If the law is not enacted before July 2001, it will not have any impact on the local governments for the next five years. But a good law, well enforced even after July 2001 will have a long term salutary impact on local governments. The legislators at State level will have no serious objection to such a law, nor will the government and ruling party have a vested interest in continuation of status quo. All it needs is to break the inertia, and the law could be changed. That Andhra Pradesh will be the first State to make such a law will be an added incentive to the political leadership.

Deregulation and Simplification of Rules and Procedures

There are several rules and procedures whose only impact on the public is extortionary corruption. There is need for a comprehensive review of the regulatory functions and procedures in every department and agency, with three objectives:

- a) Identify unnecessary regulations and repeal them
- b) Improve, simplify and make transparent procedures in respect of those regulations and services still relevant
- c) Specify levels of responsibility for each official in the hierarchy, so that accountability becomes real and meaningful.

For example, widespread petty corruption was eliminated by repeal of the Hackney Carriages Act in mid 70's when cyclists were exempted from obtaining licenses. Similar steps could be taken in respect of all private motor vehicles now. A body of experts from government and civil society should be set up to undertake this complex but vital exercise of deregulation and simplification of rules and procedures. The government would be inclined to take it up as it is politically popular. What is required is the momentum to break the inertia which funding agencies can provide.

Enclosure-2

Theme 2: Accelerating the Decentralization Process

On decentralization, I tend to broadly agree with Prof. Manor's paper. The following are my additional comments, or minor corrections to set the record straight.

A few errors

1) On page 2 of Prof. Manor's note, there is reference to NTR government's 1986 law to create a system with a new fourth tier. I presume the reference was to the creation of mandals as the intermediate tier of the revenue administration and development. Mandal is not a fourth tier. Earlier in districts we had three tiers - district, Taluk (for revenue and regulatory administration) and Block or Panchayat Samiti (for development and local governance), and village or Gram Panchayat. The intermediate tiers of Taluk / Block were not always coterminous in most cases. NTR's government abolished Taluks and Blocks and created 1104 Mandals in their place. Earlier there were about 400 Taluks / Blocks. In effect, the Mandal is a smaller (about one third in size and population) intermediate tier, ensuring the same jurisdiction for the elected intermediate Mandal Parishad (in place of the old Block or Panchayat Samiti), and the regulatory Mandal revenue office (in place of the old Taluk). This was a hugely popular move because 3 mandals were created in place of one Taluka, and the mandal headquarters was closer to people in distance. Otherwise it had the same powers and functions as before.

2) A minor correction on page 3. There was a reference: "NTR as chief minister spent government money lavishly". The truth is perhaps more complicated. NTR was remarkably thrifty in dealing with public money. But when it came to schemes like subsidized rice and housing for the poor, he was large-hearted to the extent of being profligate. There were very few other lavish expenses he incurred if they did not directly involve resource transfers to the poor. One exception was his pet theme of Budha Poornima Project involving erection of Budha Statue in Hussain Sagar lake in Hyderabad city and the beautification of the tank bund. But the expenditure on this and other such schemes is miniscule compared to the other large projects and schemes involving direct benefits to the people. Such schemes were not always well-designed, but they were well-intentioned. NTR's emphasis was largely on villages and poor, sometimes to the neglect of urban areas. It is in fact Naidu's government which has the habit of spending lavishly on a few highly visible projects, notably in and around the capital city.

On page 10, there was a reference to MP making a provision for various reserved posts to rotate. This was actually a constitutional requirement under Article 243 D (1). Similarly there was a reference to MP not permitting rotation of at least seats reserved for SCs and STs. It is likely that SC seats will have to be rotated in all States, except in respect of membership of village Panchayats in areas exclusively populated by SCs (which is fairly common in Dalitwadadas). In respect of Scheduled areas, the seats are exclusively, and permanently reserved for STs. This practice continues in AP as well other States.

A few substantive issues

1) Empowerment of stake-holders has been attempted legally in Andhra Pradesh. Some observers see it as an antithetical to local governments, but perhaps it would not be right to view stake-holders' empowerment as opposed to Panchayats.

2) Fall-out of Telangana movement

The recent revival of the demand for a separate Telangana State provides an opportunity to further the decentralisation agenda in Andhra Pradesh. Civil society institutions like Lok Satta movement, and several astute observers have been advocating that the real answer to alienation of people is genuine democratic decentralisation.

So far in AP, the government is claiming to have devolved powers on panchayats in respect of 17 subjects (out of the 29) listed in the Eleventh schedule of the constitution. This claim is patently untenable. What actually happened was a series of government orders giving the panchayats at various levels a right to summon the respective officials and review the functioning of a department, or reiterating the earlier orders or practices of panchayat presidents chairing advisory bodies (like food advisory committees). There has been no genuine and effective decentralization so far.

Now there are signs of the government being forced on the defensive on account of the separate Telangana demand. A cabinet sub-committee is now examining the extent to which devolution of powers to panchayats is feasible. Six or seven departments and subjects including the anti-poverty agency District Rural Development Agency (DRDA) are now proposed by the cabinet Sub-committee to transfer to Panchayats. Funding agencies like DFID should take advantage of this climate and pursue the agenda of decentralization aggressively. The general climate in favour of decentralization, the conduct of long-overdue elections to panchayats in July 2001, and the political compulsions arising out of Telangana agitation will make empowerment of panchayats for more likely in the immediate future.

3) Abolition of HODs

Any such devolution of powers and resources should take into account the following requirements:

- a) It is necessary to abolish the offices of State level heads of departments (HOD) transferred to Panchayats. As long as there is a line department head with a history and tradition of control of district departments, decentralization and panchayat empowerment will not take root.
- b) The HOD can be converted into a technical manpower pool providing services to the districts which seek their help. They may be authorised to even charge a fee to partly defray their expenses. This will force the State departments to improve their skills and knowledge in order to generate demand for their services. The State government can encourage this trend by linking budgetary grants to the performance standards of these agencies and the revenues they raised by offering services to districts.

- c) As district administration and various departments have evolved over a period of more than 150 years, many laws have been enacted to codify their powers and functions over the years. Real empowerment of panchayats needs a thorough overhaul of this body of laws. In Kerala, where decentralization has progressed farthest in India, as many as 36 laws have been amended transferring powers from State level to panchayats at the district level or sub-district level. A thorough exercise of a similar kind needs to be undertaken in Andhra Pradesh, preferably by a non-governmental expert body.

4) **Control of employees**

Real decentralization involves not only transfer of subjects, but control of employees. The present control, classification and appeal (CCA) rules need to be amended comprehensively in order to transfer the employees to local governments. While government grants towards wages and establishment will continue, local governments will be the appointing, transferring and disciplining authorities. Once this is done, there will be a clear link between authority and accountability at every level. Transfer is seen as the major source of power and patronage. It is hard for the State to part with this power. But given the present climate and the need for decentralization, this step should be taken in respect of the subjects transferred to the local governments.

5) **Transfer of resources**

The other necessary step in decentralization is devolution of resources. While the State Finance Commission has been appointed as a constitutional body to recommend resource transfer to local governments, it has still not acquired the stature of the Finance Commission at the national level, nor have sound traditions been established. As intermediate steps, the following resources are needed:

- a) All funds allocated in the budget for subjects listed under Eleventh and Twelfth schedules should be transferred to local governments.
- b) State budget should show under each subject "District Schemes" separately.
- c) There should be a separate budget document showing District-wise schemes, and allocations.
- d) All budgetary provisions to district schemes should be transferred as block groups separately for salaries and other expenses.
- e) Finance commission devolutions should be automatic to local governments with no additional conditions.
- f) All taxes, duties and cesses assigned to local governments and collected by State should pass to them automatically and promptly.
- g) Additional block grants to local governments on per-capita basis should be suitably adjusted to give weightage to population and backwardness.
- h) The Zilla Panchayat should have the power of reappropriation from one item to another within the district allocation.
- i) No savings from one district should be diverted to another district.
- j) Savings under non-recurring (capital) account should not be diverted by local governments for recurring expenditure.

- k) Savings on recurring expenditure can and should be diverted only to non-recurring expenditure. This encourages fiscal prudence and savings.
- l) There should be statutory checks for fiscal prudence in local governments, including mandatory balancing of revenue budget and capital grants and loans being utilized only for asset building.
- m) Within 3 years, at least 50% of the State's resources should be transferred to the districts.

6) **Wards committees**

Within urban local bodies, wards committees as envisaged under Article 243 - 8 of the constitution should be carefully designed. Unless the wards committee caters to a limited, well-defined, relatively homogenous area and population, the purpose will not be served. One big problem for urban local governments is the difficulty in raising taxes. Once a Wards Committee is constituted for a population of, say 25000 or so, and limited but exclusive powers and functions along with the corresponding staff are under wards committee's control, then there will be real accountability and citizen involvement in civic amenities. Wards Committee can be entrusted with the responsibility of collection local taxes and sharing in an agreed proportion of, say 70: 30, i.e. 70% of the tax locally collected will be locally utilized by the wards committee.

This is a model which works extremely well in a locality and helps mobilize resources. This has been successfully attempted in the industrial municipalities around Hyderabad city by the AP Industrial Infrastructure Corporation. Such devolution encouraged resource mobilization and improved amenities significantly. State government would have no political objection to this model, since it empowers people directly at the local level, and the powers and resources will be transferred from the local government to the people. The government can legitimately claim political credit for such empowerment. Funding agencies should give emphasis to such a model of devolution, which is constitutionally correct, politically wise and democratically sound.

7) **Primary Health**

Primary Health is a subject which can be transferred to local governments at least cost and most political benefit. If the primary health centre is transferred to panchayats, the immediate political gains accruing on account of improved health care to the poor will outweigh the cost of being unpopular with the relatively small health bureaucracy. The State government can legitimately claim credit for such decentralizing giving great satisfaction to the poor. At present the health care costs incurred by the poor are high, sometimes much higher than the rich for the same ailment or service, and the quality is appallingly low. Even at the current level of budget expenditure, health care quality will significantly improve in decentralized environment. Funding agencies have a vital role in making the government see the political merit of this decentralization.

8) **Subsidies**

One of the key features of reform process is to reduce subsidy burden by a variety of means:

- i) Better targeting
- ii) Shift from consumption to productive activities
- iii) Shift from short term gain to education and health care

But subsidy reduction is an extremely unpopular and politically risky proposition. In Poland, the food riots in the 1980's when subsidies were reduced started the process of collapse of the communist block. In Andhra Pradesh and elsewhere in India, direct subsidies to the poor, even when they are for short-term consumption, and are poorly targeted, proved to be politically extremely popular. Given this context, subsidy reduction is one of the hardest goals to accomplish in emerging democracies, even as fiscal imbalances keep mounting. One effective and pro-poor response to this problem is transferring subsidy programmes to the local governments.

For example, the rice subsidy can be easily transferred to local governments. It is well-known that as against 30 - 40% eligible poor families, nearly 90% of the families in the State have been covered by the White ration cards, entitling them to subsidized rice. All government efforts to weed out excess white cards proved to be unpopular and led to political backlash. A model which could be attempted is transferring rice subsidy to panchayats with the following caveats:

1. The poverty estimates for each district and a cluster of mandals in the districts should be made by sample surveys.
2. The rice subsidy scheme should be transferred to the districts.
3. They should be encouraged to target the subsidy better and readjust the cards to benefit the truly poor and needy.
4. There should be time-bound targets of reduction of number of cards based on poverty line studies.
5. The subsidy amount so saved will be available to the same local government as untied fund to be utilized as they deem fit, subject to certain broad sectoral guidelines. This provides incentive to the local panchayat / municipality to reduce subsidy burden, and transfer the same amount for other activities and services to reach the poor and needy. Thus even as certain ineligible families benefiting from rice subsidy will be antagonised, there will be commensurate gain to these or other families in the form of other services. If in a village an amount of Rs.5 lakh (half a million) is saved from rice subsidy, this amount could be utilised by the village panchayat for any other asset or service, say a school building or toilets for every household, or a road, or a drain or an irrigation tank improvement. There will be a new constituency supporting the alternative use of scarce resources, making desubsidization a politically palatable decision. This is one of the greatest benefits of decentralization.

The government is groaning under the weight of an enormous fiscal deficit. Decentralization could be a way of reducing wasteful expenditure, improving fiscal health, redirecting public expenditure in more productive and acceptable ways, and gaining popularity. Once the

government sees the political advantages, it would be easy to transfer the subsidies to local governments in a well-designed, fair and transparent package.

9) **Local elections**

Much of the corruption and maladministration in India are linked to a flawed electoral process. High and unaccounted expenditure, electoral irregularities, criminalization of politics and highly centralized party structures have been nurturing and sustaining a corrupt governance system. Genuine local governance significantly improves electoral process by enabling the citizen to clearly see the link between the vote and public good. Even then, the political culture operating at State and national levels permeates to the local level also. The electoral laws for the State Assembly can only be altered by the parliament. But local government elections can be improved by legislation at the State level. Campaign finance reform at the local level, steps to curb criminalization of politics and measures to minimise polling irregularities are critical to make local governments work effectively. The State government and legislators at the State level may not have a strong incentive for electoral reforms at State level, since they are products of a flawed system. But they have no incentive to incur high expenditure in local elections. In fact high local election expenditure will lead to high levels of corruption in local governments, which leads to two consequences: the government will be unpopular, and the local politicians will demand a greater share of corruption proceeds to make good their election expenditure and more! Therefore practical, modest and effective electoral reforms in local governments are in the interest of the State political bosses. The State Election Commission is willing and ready to be proactive in favour of electoral reform, and there is a window of opportunity which should be exploited to the full.

10) **Local Ombudsmen**

Given the current political and administrative climate, corruption will pervade local governments for quite some time. Therefore, along with empowerment of local governments, there should also be strong anti-corruption measures. The Kerala model of a strong Ombudsman's institution is both necessary and practical. As the State government's survival does not depend on local government politicians, there is no political risk to the government. At the same time the State government reaps the political harvest of anti-corruption measures at local level. Therefore, creation of a strong, effective and independent Ombudsman institution for local governments is a feasible and practical step which ought to be strongly advocated by the funding agencies.

As can be seen, despite a general luke warm approach of the State government, a lot can be accomplished in decentralization of power. All the above steps together amount to a great deal in terms of empowering local governments and making the citizen, especially the poor, the centre of the governance process.

Water Users' Societies were created as elected bodies with statutory backing largely because of World Bank's pressure. They are functioning reasonably satisfactorily, and they do effectively empower farmers. It is possible to integrate them more effectively with panchayats. Right now they are distinct and separate. But the idea of combining stake-holding with power-wielding cannot be faulted from a democratic standpoint. The appropriate way of looking at empowered stake-holders' committees is to treat them as the local self-governing bodies closest to people.

They are more democratic and accountable than panchayats. But they need to be established by law, and should be based on secret ballot and free and fair election, and they should be integrated with the panchayats to avoid needless function.

School Education Committees have been created as elected bodies of parents with statutory backing largely in response to civil society's pressure, notably from Lok Satta movement. In 1995, NTR government drafted a good legislation substantially empowering parents and making teachers accountable to parents' committees. Naidu, as a senior minister, and de facto floor manager in the Assembly scuttled its passing in 1995 despite the huge majority enjoyed by the ruling party. He was probably worried about the political fall out if the organised teachers (numbering around 300,000) are antagonized. Given the fact that organised sector enjoys enormous clout, and poor people have no voice most of the time, and school education is not a high priority issue for most of the poor on account of the returns being intangible and only in the medium and long term, the political price to be paid by antagonising teachers is high. This is particularly true because teachers are spread evenly all over the State (in practically every village), and they constitute the bulk of polling staff during elections. Naidu's quiet but effective resistance to parents' empowerment was based on these sensible, if overly practical, political considerations. Soon after, the NTR government was overthrown by Naidu, and the Bill was quietly withdrawn from the Assembly.

Subsequently, in 1997, parents empowerment was attempted in a feeble manner, largely again on account of Lok Satta's pressure. The Parents Committees were created, and they were effectively integrated with local governments. But the parents committees were given hardly any power, and they could not hold the teachers to account. Another lacuna noticed (which existed even in the more democratic NTR's Bill) was the ineffectiveness of parents' committees drawn from poor, landless families, mostly from lower castes. In Andhra Pradesh, government school education is not popular with the elites, propertied classes or organised sector. Only the unorganised poor send their children to government schools. Two reasons can be cited for this: the elites' fascination for English as medium of instruction in schools made them take their children out of government schools; once the elites no longer have interest in state schools, they declined precipitously over the years. In this backdrop parents' empowerment is necessary to give stake-holders a role in management of schools. But the law does not address the problem of capacity building of parents' committees.

Therefore two steps are feasible and necessary:

- a) The law can be amended to include as additional members in School Education Committees (SECs) prominent former students of the school, reputed former teachers and credible voluntary organizations. They will bring commitment, credibility, knowledge, leadership and skills in managing the schools effectively.
- b) The SECs can be given greater powers to monitor the functioning of teachers, even if it is found politically infeasible to actually give direct powers of control to parents.

Enclosure 3

Theme 3: Justice System Reforms

Delayed and inaccessible justice affects the poor much more severely than the rich. The rich, with their resources and influence, can actually benefit from failure of rule of law. The poor are viciously squeezed between a feeble and ineffective justice system, and the brute force of the police as well as crime lords.

Failure of justice plagues both the civil and criminal branches. A few examples will illustrate the gravity of the problem, as well as the contours of reform we should press for. A poor watchman living in a thatched hut in a posh residential area was bitten one morning by a pet dog of a rich family. This happened as the poor man was merely walking along the road. The dog bites were quite severe. The poor man and his kith and kin had to suffer a great deal of agony, fear, inconvenience and risk. When the man, with his supporters approached the dog owner for some help, after a great deal of haggling, all he got was Rs 100! In any fair system of justice the compensation should cover his physical injury and pain, emotional trauma, risk of rabies infection, cost of rabies vaccination, time lost from work, bacterial infection, medical treatment and penalty for negligence. In this case the minimum the poor person should get is Rs.25000. However, in the absence of a speedy and accessible justice system, the poor man and his family endure a lot of suffering and privation. A second example is that of the poor earth workers / construction workers in cities. They live in make shift thatched huts or tin sheds and do not have even the barest amenities – drinking water, sanitation, and shelter from sun and rain. The labour laws do provide for mandatory facilities etc, but the poor workers are neither aware of legal provisions, nor do they have accessible justice.

If a local law court has the power to direct, and ability to enforce its orders, there can be enormous gain to the poor. Similarly, criminalization of politics is largely a result of failure of justice system. In the absence of a mechanism for speedy resolution of disputes, there is a market for criminals in our society. They rise in affluence and public esteem by giving rough and ready justice and enforcing it through brutal and bloody means. Even petty crime is not controllable as there is no quick disposal of cases. Police habitually resort to torture and forced confessions, rather than relying on painstaking professional investigation and evidence gathering. The only silver lining in the present scenario is the prevalence of system of compensatory errors, instead of cumulative errors. Thus the errors of one individual or institution are often neutralised by errors of another individual or institution. Thus there is an illusion of relative peace and stability, but at enormous cost to political and social institutions and rule of law.

Given this back drop, there are a few specific State-level reforms that can make a significant difference in the delivery of justice, particularly to the poor. It is well-known that there is enormous pendency of cases in law courts in India – variously estimated between 18 million and 30 million. This backlog leads to delays, hurried trials, loss of faith in the justice system, attempts to find extra-judicial, and often violent means of resolution, vexatious litigation with the sole intent of harassing an opponent, rise of criminal gangs, failure of rule of law and grave injustice to the poor. Undoubtedly the Judiciary is at fault on account of lethargy. More importantly there are institutional and infrastructural problems which impede justice.

Prof. Manor mentioned in his note two possible problems DFID may be concerned about — autonomy of courts and of judges and corruption in the courts. Let me comment upon these two before discussing specific reforms and strategies. Judiciary in India is completely free from government's control. Their only dependence is in respect of budgets. But even there the government's will is subordinate to the higher courts' wishes. All subordinate courts — District courts and below — are under the full and exclusive administrative jurisdiction of the State High Court. In India each High Court has enormous powers of entertaining writs, hearing appeals, judicial review of executive decisions, interpreting law, determining constitutionality of a law, and even interpreting the constitution. High Court is not even controlled by the Supreme Court. A High Court judge has enormous security, and cannot be removed until the retirement age (of 62 years) except by impeachment and voting for removal by two-thirds of the members present and voting (and not less than half the membership) in both Houses of Parliament. To date, no judge of a High Court or Supreme Court has been removed. The only case of attempted impeachment of a Supreme Court Judge — Justice Ramaswamy — failed in Parliament after a committee of peers found him guilty of impeachable offences!

Even the budgetary control of government is tenuous. The political executive in recent years is terrified of courts. Therefore clever politicians are more than willing to buy peace by granting the High Court whatever it wants. The present government in AP is a successful practitioner of this appeasement of the High Court. If the High Court really seeks budget for improving the courts' functioning, then it is certain that the government will comply. Also the cost of improving courts' efficacy is marginal, and the rewards to society are disproportionately large.

Corruption is quite prevalent in courts at all levels. A highly respected former chief Justice of India himself told me privately that about 40% of Judges are honest, and 30% are hopelessly corrupt. In Maharashtra, where the High Court quietly weeded out corrupt judges over the past two years or so, 144 judges of subordinate courts have been forced to resign. This is about 10% of all the judges at various levels in the State. The happy aspect is that such determined action did enhance the levels of integrity in judiciary quite significantly. In Andhra Pradesh too, there is rampant corruption in courts — both at the judges' level and in the offices of courts which have leverage in deciding the priority of listing, the bench or judge before whom a case will come and even giving a copy of the judgement.

Judiciary cannot be controlled by politicians, but is manipulated from time to time for favours while in office (official cars, expense account, accommodation, housing etc) and anticipation of post-retirement postings (governorships, heading commissions of enquiry or tribunals etc.). These cannot be addressed at the State level. Larger constitutional changes including a Judicial Commission are necessary.

Let me therefore focus on a few modest, simple and effective reforms.

1. Increase in the number of courts

In India the number of judges per million population is estimated to be 11, as opposed to the European and North-American average of over 100. The number of courts in AP roughly corresponds to national average. The easiest and painless measure to improve justice delivery is substantially increasing the number of courts and judges. This is quite economical compared to

the benefits. Even doubling the number of judges by adding 1000 new judges in subordinate courts will mean a recurrent expenditure (for salaries, stationery and administration) well under Rs 100 crore. When we consider that the State spends everyday Rs 100 crore, this is a very small price to pay in order to make justice available to the poor. The capital expenditure for infrastructure will be well under Rs 100 crore too.

2. Gram Nyayalayas

The Law Commission (a national expert body appointed by the President, and headed by a former Supreme Court Judge) in its 114th report recommended gramnyayalayas for speedy and accessible justice. Mere increase in the number of judges is not adequate to improve access to justice. We need local courts (to reduce physical distance), simple procedures preferably without advocates (to eliminate delays), use of local language for evidence gathering and judgements (to make the system comprehensible and process intelligible), facility for local evidence gathering by the magistrate (to enable truth to emerge), and a definite time limit for adjudication (say 90 days). We also need complete judicial control to prevent arbitrariness, and provision for appeal to higher courts. These provisions are incorporated in the 'gramnyayalaya' model advocated by the Law Commission in its 114th report. Essentially these are local courts with special magistrates with jurisdiction over a town or part of town or a group of villages. They will be appointed by the District Judge for a specified period, of say 3 years. They would have exclusive civil (say upto Rs. 1 lakh) and criminal (say, upto 1 year's imprisonment) jurisdiction. In addition, certain civil disputes arising out of implementation of agrarian reforms and allied statutes, property disputes, family disputes and other disputes as recommended by the Law Commission could be entrusted to them. In civil cases there should be a provision for revision by the District Judge on grounds of improper application of law and on no other ground. In criminal cases where imprisonment is awarded, there should be a provision for appeal to the Sessions' Judge. Summary procedure will be followed and verdict will be delivered within 90 days from complaint.

In 1995, the NTR government drafted a similar Bill, and the 'Nyaya Panchayats Bill' was approved by the State Assembly and sent to the President for assent by the Governor under Art 200 of the constitution. After Naidu government took office, the Bill was withdrawn from the President and has not seen the light of the day since. This withdrawal was presumably for the following reasons:

- a) The lawyers were upset because their presence was barred in Nyaya Panchayats.
- b) The Bill provided for appointment of a group of five magistrates for each court, and makes it cumbersome.
- c) The magistrates were to be appointed jointly by the District Judge and District Collector. As the collector is under government control, the procedure allows political interference in judicial appointments.

The defects (b) and (c) above can be overcome by a single magistrate's appointment by the District Judge alone. The role of lawyers will be a contentious issue, but there are curbs on lawyers' appearance in Consumer Courts and Family Courts. If similar curbs are imposed in local magistrates' courts, then such a law will be acceptable to lawyers and will withstand judicial scrutiny. Given the present scenario, it is unlikely that the State government will act unilaterally to enact such a law. The High Court will have to be persuaded. A combination of

increasing the number of judges and better infrastructure with these special magistrates' courts is likely to be welcomed by the Judiciary. DFID and other donors should persuade the State government as well as the High Court. Civil society institutions should be taken into confidence in order to build pressure.

3. Crime investigation

The combination of several functions including crime investigation, riot control, intelligence gathering, security of state properties and protection of important citizens – all in a single police force has had a devastating effect on criminal justice system. The police forces have become inefficient and increasingly partisan. As the government of the day has complete powers over the crime investigation machinery as well as the legal authority to drop criminal charges against the accused, crime investigation has become a play thing of partisan politics. It is therefore vital to create an independent wing of police force fully in charge of crime investigation and functioning under the direct control of independent prosecutors appointed. The criminal courts should hold the prosecutors and the crime investigation police force accountable to them in their overall functioning. Only when crime investigation is thus insulated from the vagaries of politics can there be any fairness and justice to ordinary citizens. Equally important, only when crime investigation machinery is accountable to judiciary can the obnoxious and inhuman practice of torture, third degree and extra judicial executions in fake encounters be stopped. The police force can be kept under the control of a body headed by a judge of the High Court, and comprising of eminent jurists, professional police officials and activists.

It should be remembered however, that much of the mischief in police functioning is one of compensatory errors. Until governing institutions in India are fully democratized, there is bound to be abuse of office. No institution is more prone to abuse than, and no abuse is more venal than in, the police. Therefore there should be effective and open legislative oversight of police functioning through formal committees.

4. Decentralization of police forces

Local governance and local policing should go together. Traffic regulation, control of petty crime and public nuisances, and patrolling are essentially local policing functions, and they should be under local government's control. Ideally there should be identical territorial and functional jurisdiction for the local police and the local magistrate's court appointed under gramnyayalaya concept. Then slowly community policing and local accountability will become real. The larger crimes can be investigated and prosecuted by the independent crime investigation wing.

These four reforms together will make justice simple, accessible, speedy and effective for the poor. Of these, the State government will resist the independent crime investigation the most and the police will resist decentralization the most. Judiciary however would be quite happy that reform as judges will have greater say in prosecution. The other three reforms (1, 2 and 4) can be attempted with greater ease. The balance of convenience probably lies in taking up these three in right earnest, and having effective and open legislative oversight over crime investigation.

Enclosure 4

Theme 4: Strengthening the State Legislature

I have carefully gone through Prof Manor's comments and Prof Sreenivasulu's observations, and broadly agree with both.

The real issue in this respect is not enhancing the legislature's capabilities, but empowering legislature to monitor the executive's functioning more effectively. Empowered Legislative Committees is a model we should seriously consider. I believe it is an idea whose time has come for the following reasons:

1. In Westminster model, and in the way it is operated in India, legislators no longer have real legislative powers. Legislature's role is largely limited to supplying the ministers.
2. After the 52nd Constitutional amendment and the party whip, legislators have no discretion or power to substantially influence government's legislative agenda or affect the outcome of voting on the floor of the House.
3. In the absence of any positive legislative influence, individual MLAs see themselves as disguised executives who influence executive decisions. Since the government as a whole depends on the good will of legislators, their influence on executive decision is considerable. This is true in all States, and is particularly so in Andhra Pradesh under the present government.
4. When people elect a legislator, they are actually choosing the next government. As stakes are high, elections have become absurdly costly (legislative election expenditure is often in the range of Rs.10 million for serious candidates). The legislator risks huge amounts of money only in anticipation of rewards of office and opportunities to influence decisions to gain pecuniary advantage.
5. Decentralization and non-arbitrary functioning of the executive are the hallmarks of any meaningful reform. But if such reform is attempted seriously, legislators are bound to lose out, and will therefore severely resist real reform.
6. No government in Westminster system can engineer reform if its legislative support vanishes on account of reform.
7. Nevertheless legislators are politicians and individuals, and respond to risks and rewards. The ministers see fiscal compulsions or political benefits (increased popularity) and accept reform. In other words hardheaded calculations of real politics rather than moral imperatives dictate the pace and direction of reforms. Many States including AP are now favouring reforms because of these compulsions and incentives. We should create similar incentives of political advancement (enhanced popularity), and career satisfaction (recognition and respect for promoting public interest, and genuine pride in promoting public well being).
8. The answer therefore lies in making legislators genuine partners in governance. Once they have open, legitimate and significant say in public affairs, the urge for clandestine, illegitimate and substantial control of public purse and executive decisions for personal or partisan gain will be curbed to a large extent.

From the foregoing, I believe effective legislative committee system needs to be introduced and it will be both popular with legislators and effective in promoting public good. The present Committees are not suited to effective executive oversight. The legislative committee system

does function effectively once it is designed and operated well. Even within the constraints of the present committee system, there are examples of outstanding successes. Woodrow Wilson commented, “Congress in session is Congress on exhibition; Congress in Committees is Congress at work”. While Westminster model cannot facilitate such effective and independent parliamentary functioning, we can devise ways of making legislative committees effective. The recent Select Committee of AP Assembly on Societies’ Law has functioned in an exemplary manner. The Committee acted in a professional, democratic and non-partisan manner. The Minister piloting the legislation, the legislators of all parties, the civil servants and civil society organizations – notably Lok Satta, – all played an exemplary role in creating a liberal and citizen-friendly Societies’ Law in place of the inadvertently drafted illiberal piece of legislation. This shows that our system has the resilience to significantly improve the legislative functioning.

The committee system should therefore be as follows:

1. For each major subject encompassing several departments and agencies, there should be a Legislative Committee. There could be about 15-20 Committees all together.
2. Each MLA should be a member of any one of these Committees. This will be in addition to the constitutionally prescribed Committees.
3. Each Committee will be chaired by a legislator elected by the members.
4. The Ministers responsible for the subject and the civil servants will be accountable to the committee.
5. There shall be open public hearings in the glare of the press and television. The Ministers and civil servants will have to justify their policy, and explain their decisions and actions.
6. All key appointments of civil servants (in departments and agencies) shall be cleared by the Committee through public hearings. The government will send a proposal or a panel, and the civil servant will be examined publicly and the evidence of interested parties and citizens will be obtained. The appointment will be effective once the Committee approves it.
7. Once a civil servant is so appointed, he/she will have a guaranteed tenure of three years or more, unless there is proven incompetence or corruption.

Once such empowered Committees are in place, legislature will be vibrant, democratic, responsive and independent. People, the press and civil society institutions will have space to advocate policy changes or oppose corrupt civil servants. Legislators’ professionalism, political skills and competence in promoting public good will be on display, and there will be incentive for better performance in their legitimate sphere of activity.

I believe the legislators will welcome this. The reform will be a hugely popular measure. It will be resisted only by the Ministers, because their illegitimate actions will be scrutinised thoroughly. But a reform-oriented cabinet should accept legislative oversight in order to sell its reform agenda. I believe this reform can be engineered by careful structuring and active involvement of legislators of all parties, the media and the public. This reform has the added merit of taking the opposition parties into confidence and obtaining their cooperation and involvement.

Enclosure - 5

Theme – 5: Role and potential of opposition parties to act as change agents

There are three main opposition parties/groups – Congress which has about 40% vote and 91 members in State Assembly; BJP, which is an ally of TDP and Communists, whose influence on public discourse is disproportionate to their voting share of about 5% or less. While BJP is an ally, and has only a dozen MLA's in the State Assembly (out of 294), it often plays the role of the opposition on issues which do not threaten the survival of the government or involve the risk of a rupture with ruling party at the national level, and yet have popular appeal.

Congress, as the main opposition and as India's largest party has a vital role to play in State politics and on the floor of the Assembly. In reality Congress has no serious quarrel on the content of reform. If the roles of ruling party and opposition are reversed, there will be no serious policy change. Congress will probably be even more proactive in pursuing reforms. The record of Congress-ruled States of Madhya Pradesh, Karnataka and Rajasthan, as well as the history of Congress and the fact that economic reform was initiated by that party lead us to this reasonable conclusion. The issue of contention is not so much the content of reforms, but a highly personalized style of governance and the natural political rivalry between a party in government and a party which is waiting to unseat it.

For public consumption there are rhetorical flourishes from opposition parties about the anti-poor policies as part of reform, particularly electricity tariff revisions, attempts to privatize public sector etc. Except communists, no party seriously believes that state monopoly is the answer. In particular, on governance reforms all opposition will be in favour as long as such reforms favour decentralization, sharing of power, transparency, accountability and curbing of corruption. All parties including communists have been arguing in favour of such reforms. Sensible governance reforms deepening democracy will actually be welcomed by all parties in opposition. Therefore political opposition cannot be used as an alibi for status quo in governance.

But there is danger of knee-jerk political resistance from rival political parties if the ruling party attempts to personalize the whole reform issue. In their quest to unseat the ruling party, they will be compelled to discredit the CM and the reform policies. In such a situation it will be hard for parties in a poor country with large numbers of illiterate voters to articulate a nuanced, balanced point of view. There will inevitably be attempts to paint the whole reform process as anti-people and anti-poor.

Given these political realities, DFID and other funding agencies ought to evolve a fair, balanced and effective strategy to enlist the support and participation of opposition parties.

- 1) Pursuing reform of legislature and formation of empowered committees as discussed under Theme 4 will be welcomed by the opposition. The opposition legislators who have no role in government will have an opportunity to shape policies and monitor decisions, and will thus legitimately share credit and own the reform process.

- 2) The donor agencies should consciously interact with the opposition parties and establish a warm working relationship. Once such personal equations are established, and parties realize that there is nothing sinister in the reforms advocated, much of the opposition will be blunted. Parties will then resist the temptation to use the reforms as an alibi to attack the government.
- 3) If genuine decentralization is attempted, then local government leaders from opposition parties will be champions of reforms blunting political opposition.
- 4) Funding agencies would do well to work closely with local government leaders in rural and urban areas to advocate decentralization. The Chamber of Panchyati Raj and the Chamber of Municipal Chairpersons are the formal collective bodies of local governments which traditionally seek local government empowerment. By the very nature of things, the local governments controlled by the opposition parties tend to dominate discussion in these bodies. Therefore interaction with these bodies will help further the cause of decentralization, and will establish a working relationship with the opposition parties.
- 5) Some of the local governments are doing outstanding work despite the constraints imposed on them. Studying and publicizing such work will help blunt political opposition to reforms.
- 6) Donor agencies should work hard to put the relationship between them and the State government on an institutional plane. There is a strong feeling that donors are largely banking on the CM to somehow deliver the reforms. Such a personalized approach suffers from the following risks.
 - a) Government is too large and complex to be reformed by one individual.
 - b) If all credit is garnered by one person, and blame is shared by others, there will be natural resistance to reform.
 - c) In their quest to unseat a party from power, the opposition will be compelled to attack reforms, and will throw the baby with the bath water.
 - d) If all reform process is linked to one individual's incumbency, then risks are increased to an unacceptable level. As and when that individual fails, it will be wrongly perceived as failure of reforms themselves.
 - e) Individual-based reforms will be shallow and short-lived, and will not normally endure his departure.

There is a strong perception that the funding agencies are linking the whole reform process with the CM and unlike in States like Karnataka, are not institutionalizing the reform effort. This perception should change, and broad institutional approach should be followed involving multiple agencies and multiple players.

- 7) In a poor country several elements of reform process – rational tariffs, fiscal balancing, expenditure control, privatization, greater competition – initially cause a lot of pain to several segments of the population, particularly the poor and the vulnerable sections. It is vital to ensure that the freedom-enhancing, corruption-controlling, democratic elements of reform are implemented quickly to ease the burden on the poor and to improve delivery

of services and enhance the dignity of the poor citizens. Therefore there should be greater emphasis on democratic and governance reforms – like citizen’s charters, right to information, empowerment of local governments, improved school education and primary health care, speedy justice etc., — in order to gain broad popular support as well as blunt the political opposition. Governments in India have not paid enough attention to this need for governance reforms, and thus reform efforts have tended to become short-lived and self-limiting.

From the foregoing it is clear that with an open, fair, democratic, pro-citizen approach, all parties across the political spectrum will be able to extend support for reform process publicly.

Enclosure 6

Theme 6: Role and Potential of Civil Society and Private Sector

A proactive civil society with the capacity to mobilize public opinion, skill to guide public policy and ability to monitor government's actions is often the difference between success and failure in reform process. In India it is rare for civil society organizations to have these three abilities across a wide spectrum of governance reform. Therefore, by and large civil society hand tended to play either a reactive role, or has been a habitual dissident and rabble-rouser.

In Andhra Pradesh certain vital civil society institutions have in recent years acquired high level of skills and credibility, and are already playing a vital role in reform process. Lok Satta, Foundation for Democratic Reforms and Cooperative Development Foundation are examples of such institutions. Lok Satta has a large membership all over the State, and more critically, enjoys a broad support of about 20% of the population of the State and has wide name-recognition. Its advocacy of governance reforms has already yielded several significant results. Citizen's charters, enactment of a liberal societies' law, partial empowerment of parents in schools, water users' associations, some efforts at empowering elected local governments, and deployment of sizeable resources for construction of toilets in poor households are all largely, and in some cases wholly, a result of Lok Satta's strong and imaginative advocacy. Similarly Cooperative Development Foundation was largely instrumental in the enactment of the new cooperative law in 1995 in AP, which has become a model for many States including MP, Orissa, Karnataka, Jammu and Kashmir and Bihar.

The keys to civil society's efficacy to build a broad coalition across the State for governance reform are as follows:

- a) the coming together of several individuals of unimpeachable integrity and impressive track record, and their willingness to transfer that credibility to the cause of governance reforms.
- b) their ability to relate their knowledge to the problems of governance and find creative, practical and sensible answers.
- c) their capacity to articulate a non-partisan, holistic agenda which appeals to, and brings on one platform, all segments of society cutting across the many barriers and
- d) their demonstrated commitment to the cause of governance reforms, and their willingness to make it a long-term mission.

Once these conditions are fulfilled, such civil society movements will have a significant, and sometimes a profound, impact on governance reform. In AP, Lok Satta movement, along with other credible civil society institutions, is poised to play such a vital role.

In addition, the funding agencies can play a role in mobilizing issue-based support among civil society institutions. Chambers of Panchayati Raj and Municipalities will have a natural interest in promoting decentralization. Voluntary organizations in general will support citizen's charters, right to information, emphasis on school education and better health care delivery.

In addition, the print media and television channels should be sensitized to the need for, and elements of, democratic governance reforms. Therefore intensive, structured interaction and

exposure of media persons to governance reforms issues will be of great value in creating a mood for governance reforms.

Equally important is the citizens' capacity to apply the tools of accountability for better governance. Only when citizens are ready and capable of monitoring governance and holding it to account will reform be sustainable. This requires large scale training of active citizens.

FDR / Lok Satta are engaged in a massive training and mobilization of 100,000 active citizens all over Andhra Pradesh. A much larger effort may be necessary and worthwhile to build a strong constituency for governance reforms and to make reforms sustainable.