CONTENTS

BOOK REVIEW

HINDU 31.5.11 BOOK REVIEW

Hindu law & jurisprudence

N. R. MADHAVA MENON

This work examines the role of Dharma in Hindu legal and religious traditions

THE SPIRIT OF HINDU LAW: Donald R. Davis Jr.; Cambridge University Press India Pvt. Ltd., 4381/4, Ansari Road, Daryaganj, New Delhi-110002. Rs. 595.

Religious origins and traditions in law have been subjects of research in many countries among philosophers, jurists, and historians. This has led to a rich variety of comparative legal literature, illuminating juristic thought and providing some significant insights into the foundations of modern legal systems. Donald Davis Jr.'s The Spirit of Hindu Law is a close second to the classics on Indology in examining the role of Dharma in Hindu legal and religious traditions. He has adopted an inter-disciplinary approach and comparative methodology which is both refreshing and revealing. For Davis, “law is the theology of ordinary life” and the European notion of law, as rules backed by sanctions enforced by the state, is an unnatural idea produced at a certain moment in history to serve certain colonial objectives. Among the merits he identifies in the concept is that it acknowledges and explains the gap between ‘rule' and ‘behaviour' in everyday life and highlights the higher purpose involved whenever law is invoked.

The true nature of law lies in its integral relationship with religion, though the two are different entities and have different roles to play in society. Despite several centuries of deliberate secularisation, the state could not remove elements of religion from the law even in nations that are most secular, liberal, and democratic. The methodology he adopts is to analyse some select key concepts drawing support from authoritative Sanskrit texts, relate them to the total Hindu legal tradition, and finally bring out their relevance to contemporary justice system in comparative situations.

Household

In the chapter where he examines the concept of ‘sources' (Pramana), Davis contends that Hindu law applies primarily to the ‘household', not the state. It follows therefore that Hindu law and jurisprudence should be understood differently from those that are predicated upon the state's exclusive jurisdiction over the law.

This focus on the household or householder leads to the Hindu legal tradition being linked to the living religious tradition, a link that manifests itself in five ways: sacramental rites (related to birth, marriage, death etc.,); domestic rites (performing pujas, worshipping deities, etc.,); actions to fulfil physical needs; social aspects like family transactions, caste status, etc; and expiatory/purificatory rites. Institutionally locating law in the household enables Hinduism to develop a shared community orientation which, in turn, shapes the legally constituted world of its members.

The author makes an interesting point about the subtle yet significant aspect of Hindu law. Generally, the “rule of law” is distinguished from the “rule of men” to emphasise that ‘authority' rests in law, not in the men who are implementing it. The “rule of the lawful”, envisaged by the Hindu law, moderates the conceptual superiority of law and seeks to avoid the problems arising from total

depersonalisation of law. Both “rule of law” and “rule of the lawful” — that is, rule by men of virtue and nobility — are necessary for a legal system to operate effectively.

The author asserts that the legal concepts central to Euro-American scholarship do not exhaust the rich legacy of ancient legal systems. An extensive comparative study is needed in this area. Unfortunately, Hindu law studies have, by and large, been confined to listing the differences and striving to establish that Hindu law is just as sophisticated as any other legal system. Delving deep into the history of Hindu religious traditions has not been a fashionable venture with scholars. By way of explanation, Davis says that “the need to know the details of Hindu law for the sake of a ‘non-intrusive' colonial administration has put us in the habit of only learning about Hindu law, and not from it”. His effort, therefore, has been to know the Hindu thinking on law by looking at the key conceptual ideas of Hindu jurisprudence. Hence the book's title: The spirit of Hindu law.

Writing “on the beauty of Hindu law” in the concluding chapter, Davis says the post-French Revolution period of Euro-American legal history is, in a way, the story of progressively restricting law to the court and the legislature, domains controlled by the state. What many of the scholars who studied “legal pluralism, religious law, or legal anthropology” have shown, however, is that “while this narrative has worked effectively in terms of how many people understand law conceptually, it has also hidden the reality of plural legal orders, alternative normative regimes, and religious or traditional self-appropriations of law's creative, co-ordinating, good-producing potential.”

Dharma

In contrast, he contends, Hindu law calls “all of this Dharma and we

would be well served to ask what might be gained by calling it all law as well … Religious legal systems such as Hindu law remind us that legal, or at least law-like, processes and institutions function in even the most ordinary of human contexts, that law is not necessarily the sole province of the state, and that law enables human flourishing as much as it constrains human vice … Hindu law shows that law's domain is co-extensive with life itself."

Here is a book that is well researched, well written, and out-of-the-ordinary, exploring religio-legal traditions with a view to discovering what to learn from them rather than just explain. Scholars interested in comparative law and theology will find a mine of information in it for further research. Students and teachers will get refreshingly new ideas on what to look for in ancient legal systems and how to relate them to the contemporary situation and requirements.

PIONEER 29.5.11 BOOK REVIEW

It’s not just tax evasion

The Darker Side of Black Money
Author: BV Kumar
Publisher: Konark
Price: Rs 295

The book states that black money is not just a matter of financial misdeed, it also has security implications for the country, says *RAJESH SINGH*

When BJP leader LK Advani raised in the run-up to the 2009 Lok Sabha elections the issue of massive amounts of slush money flowing out of the country and the need to get them back, few in the Government took him seriously, with some even ridiculing him for raking up a “non-issue”. He stands vindicated today. With the Supreme Court cracking the whip, the Union Government has gone on an overdrive trying to explain its indifference on the subject, and is seeking to make amends by pursuing — even though half-heartedly — measures to unravel the flow of illegal funds in tax havens abroad. The cumulative result of the developments arising out of the apex court’s intervention is the exposé of what can be called the ‘darker side’ of the episode: Black money is not just a matter of financial irregularity; it also has security implications for the country since such money is often used to fund terror and unrest. *The Darker Side of Black Money* provides the reader an insight into how that happens.

Written by a former Director General of Revenue Intelligence, Director General of Narcotics Control Bureau and Director General of Economic Intelligence Bureau, the book is among the few in its genre that seriously attempts to address the murky work of underground money management. The author explains the complex network of holding and

shell companies that form the backbone of the generation and deployment of illegal money. He delves into the legal protections that certain banks abroad offer to their customers for parking their unaccounted wealth, and ways to circumvent that to squeeze out information. Most importantly, he reveals that the Government has failed to make much headway in securing information from these banks about Indian illegal money not so much due to the refusal of financial institutions to cooperate but because the authorities —unwittingly or deliberately — chose to approach them on grounds that merited dismissal of their request.

Speaking of the Swiss bank laws, the author says, “There must be a substantial criminal allegation before a Government agency, especially a foreign one, can gain access to account information. Tax evasion, for example, is considered a misdemeanour in Switzerland rather than a crime.” However, if an investigating agency of a foreign country can demonstrate the linkage of the funds parked to a criminal activity such as money laundering or association with a criminal outfit, the banks would need to reveal the account details. This aspect is significant in the recent context of the Supreme Court admonishing the Government for treating the black money matter (in the celebrated ongoing Hasan Ali case) as one of mere tax evasion rather than a criminal act with larger implications.

The author traces the menace of black money in India to the corruption that thrived in the country’s controlled economy from the time of its Independence to a couple of decades ago. The businessman-politician-bureaucrat nexus, he says, led to the generation of enormous amounts of slush funds that needed to be safely parked out of the country. But economic liberalisation did not end the practice. Kumar points out that “crony capitalism’ backed by the ingenuity of the vested interests to adapt to the changed environment ensured the outflow of black money and its spread into various activities including criminal. Of course, the immediate casualty was the socio-economic growth of the country. The

author quotes a study to demonstrate that countries (like India) with high levels of corruption have less of their GDP going into investment and lower growth rates. This can be contested in the Indian context because the country has witnessed a fast pace of growth in recent years, but the fact is that core sectors have suffered for lack of funds. The Paulo Mauro (IMF economist) report the author quotes from says that corrupt Governments spend less on education and health, and more on public investments — probably that's where the maximum kickbacks are to be had.

Kumar devotes a large part of the book to the Bank of Credit and Commerce International (BCCI) fiasco, in a bid to make the readers understand the dangerous games financial institutions can play in aiding and abetting criminal activity through slush funds at their disposal. The BCCI had helped launder funds belonging to the dreaded Colombian drug cartel. It was exposed following a sting operation by the US Customs, and its repercussions were felt across various nations. The BCCI episode is a good, if chilling, example of how black money gets used to fund crime. From the Indian perspective, nothing should be more disturbing than this because the country faces a host of terror threats from across the border and internally as well — all of which need funds to thrive.

For long, the Government of India has believed that the problem lies in the parking of slush funds abroad. Even the best-intentioned Governments cannot completely check the flow of illegal money out of the country.

The real problem, as the author points out, is how this money is used. If the authorities are able to prove to the country where the money is parked that the funds have a criminal taint, they can lay their hands on them. For that to happen, we need to strengthen our domestic laws and approach the tax havens with reasonable evidence to back our claims. About $462 billion that went out of the country in 60 years since

Independence is not a small sum. What miracles that money could have done to our social sector can only be imagined; what it may be doing to damage the country’s security and peace is for us to be worried about.

CIVIL SERVICE

TRIBUNE 25.5.11 CIVIL SERVICE

The babu and the bureaucrat

P. Lal

IAS officers generally take umbrage at being called babus! They prefer being referred to as bureaucrats.

But who is a bureaucrat? And who is a babu?

As commonly understood in India, a babu belongs to a lower echelon in the official hierarchy. A clerk in an office may be referred to as a babu, and a head-clerk as the bada babu giving the latter a touch of respectability.

Historically, however, bureaucracy emerged as a dominant mode of human organisation in factories, offices and industrial establishments, more than 300 years ago in the wake of the Industrial Revolution. It proved to be an effective tool of management in business organisations, factories and industrial empires. Thus, the bureaucracy was born in the private sector and effortlessly travelled to the government sector where, too, it showed its efficiency, deliverd goods and services and conformed to rules. By doing so, it acquired power. One who held an office in the system came to be known as a bureaucrat.

Thus, the branch manager of a bank or the Chief Medical Officer of a district is as much a bureaucrat as a Deputy Secretary in a ministry or the SHO of a police station.

Max Weber, the political thinker and social scientist, who researched ‘bureaucracy’ extensively in private and government organisations,

prophesied its triumph and declared its three important characteristics to be permanence, hierarchy and a division of labour.

The element of permanence led C. Northcote Parkinson to propound, as far back as 1957, his famous law: “work expands to fill the time available for its completion.” He deduced as a corollary that there was little or no relationship between the work and the staff for its execution. Therefore, the rise in work-force would be much the same whether the volume of work were to increase, diminish or even disappear. To prove his point, he showed that the men in the colonial office in London increased from 372 in 1935 to 450 in 1939, to 817 in 1943, 1139 in 1947, and 1661 in 1954, whereas the size of the British Empire shrunk rapidly.

But, who is more important — the babu or the bureaucrat?

‘The law of inverse importance’ is relevant in this connection. According to it: “Exceptions apart, the real importance of a functionary in a bureaucratic organisation in regard to the nature of decision on a case, is inversely proportional to the rank that he occupies in that organisation.”

Thus, a note put up by an assistant, in a majority of cases, would be approved by the competent authority who is mostly an officer-bureaucrat who would just initial the file (a more practical-minded one may write ‘ not approved’, to be changed, at an ‘opportune’ time, to: ‘note approved’). If the assistant doesn’t put up the note, there is no way a decision can be taken. And, therein lies his power!

A record-keeper clerk is even more important than the assistant, though lower in hierarchy. It is he who maintains the files, puts up the PUC (paper under consideration) and adds the precedent case files. He can make the fresh receipts (PUCs) disappear, make the whole files perform the vanishing trick or only such pages of them as are inconvenient. He can add precedent cases — favourable or unfavourable — depending on

which party he wants to favour. After all, the decision makers find it safe to tread the path shown by precedents.

So, officer-bureaucrats (in all bureaucracies),cheer up. There is nothing to crib about being called babus!

CORRUPTION

TRIBUNE 24.5.11 CORRUPTION

Jan Lokpal: Changing the power structure

Jagdeep S. Chhokar

THE last time a corruption tsunami hit the country, it ended up with two significant changes. The time was the late 1980s, the trigger was Bofors. The changes were a move towards a federal polity from the unitary one prevalent since Independence, and the start of a change in the overall power structure in society, with the subaltern classes realising the strength of their numbers.

While the current "Bofors" are the Commonwealth Games, 2-G, mining, and the like, what changes will this current tsunami bring forth is not clear. Not being blessed with clairvoyance, one can only look at the game as it is being played and try to look for straws in the wind.

While the real changes will take time manifesting themselves, the current visible face of the saagar-manthan appears to be the Lokpal Bill. It is of course not clear whether, finally, the jinx of 42 years will be broken and there will be a Lokpal, and in what form, but the societal dynamics of power are fascinating.

Continuing the practice started with the fourth Lok Sabha in 1969 and another six attempts, the government innocently prepared yet another draft of the Lokpal Bill in October 2010. This is what seems to have now acquired a life of its own, inviting sobriquets such as "monster", "Leviathan", "beacon of hope". Why is it causing such extreme reactions?

Assume that a potentially effective Lokpal Bill gets passed and is also implemented in the right spirit, who will get affected, and how? Those who benefit from corruption are likely to face a cut to their monetary inflows, and those who have to pay to get their legitimate dues are likely to gain. Admittedly, this is a simplistic formulation but

will do, given the space constraints.

Again, who benefits from corruption the most? The proverbial common citizens who pay bribes benefit by getting their job done, but the one who gets the bribe to do the job benefits more. Who are these beneficiaries?

The nexus of the political class, bureaucracy and business is too well known to need explanation. Liberalisation has not broken this nexus but has only changed some of the dramatis personae. The avalanche of opposition to the Jan Lokpal Bill leaves no room for doubt that the opposition is intense and organised. All forms of the traditional saam, daam, dand, bhed are being used to discredit the whole attempt and the very idea that any one other than these three sectors of society can even think of having a say in the law-making process.

The politicians, being the kingpin of this nexus, possibly have the most to lose. Actually all the Jan Lokpal movement has done so far is to create a mere whiff in the minds of politicians that it just might be possible for someone to challenge their completely unfettered hegemony over matters of the state for the period between two elections. This mere whiff seems to have unsettled the political class so much that all manner of stratagems are being used to nip this audacity of common folk in the bud.

And what of these common folk? Their tragedy is that they need someone to "represent" them, as 1.2 billion people seemingly cannot express themselves except through their representatives. The actual representativeness of the elected representative is in some doubt despite the euphoria at the outcome of the recent state assembly elections. The other claimant to representing the common folk is what used to be called the "civil society", which now, in some people's lexicon, has become a bad word.

Who, or what, is this "civil society"? Without going into an academic discourse, these are supposed to be people who do things for general, public good without the expectation of a tangible payoff, in contrast to those who get some return from doing public good, such as salary for bureaucrats, exercise of state power for politicians. It is a large, diverse, and complex mass of people, usually self-proclaimed do-gooders.

While doing selfless service, they are not free from usual human weaknesses, and therefore amenable to manipulation by those who have high stakes. How, and by what means is manipulation done depends on who is to be manipulated. In true Chanakyasque style, our politicians have mastered this art. Two well known techniques being “divide and rule”, and a law often attributed to Parkinson, “Delay is the deadliest form of denial.”

The political class seems to have succeeded in convincing some significant parts of civil society that the Lokpal Bill being an extremely important piece of legislation, needs to be discussed in every district, taluka, block headquarters before it can be considered seriously, the real agenda of course being to delay the process so that the commitments made to get the Jantar Mantar fast broken can be progressively diluted ad infinitum.

What needs to be remembered is that this bill is a small step in the shift of a bit of power from the political class supported by the bureaucracy and the business, in favour of the people. Such shifts are necessary from time to time in a dynamic society to correct imbalances that creep in over time. The side that stands to lose even a bit of its power is bound to resist. It is for the countervailing forces to keep themselves together if any shift, however small, is to take place.

The game is on, let’s keep watching.

The writer is a former professor, Dean, and Director In-charge of the Indian Institute of Management, Ahmedabad.

TRIBUNE 28.5.11 CORRUPTION

Don’t make Lokpal a super cop

Kamaljit Singh Garewal

THE United Nations Convention Against Corruption [2004] promotes and strengthens measures to effectively combat corruption. It supports international co-operation and technical assistance to fight corruption and helps in asset recovery. The convention also promotes integrity, accountability and proper management of public affairs and public property.

Money from corruption finances organised crime, international terrorism and drug trafficking. Corruption money is first laundered, then moved across international borders with ease to tax havens where it is difficult to reach. While in the country of its origin it is concealed income on which no tax is paid. It soon returns to the country to fuel the economy, leading to more corruption. It is an ever ending spiral.

Very few public men have been tried for possessing disproportionate assets. We have been obsessed with bribery corruption which is very local in nature. Only recently have we been taking an interest in investigating real high-end corruption of the CWG and 2G variety which has a global dimension. The previous brush with this kind of global corruption – the Bofors case – did not even go to trial because the investigation was scuttled.

We must carefully think our way through the issues of corruption and the new Jan Lokpal Bill. We need an exacting, and a precise law with a fresh set of rules and standards to judge the behaviour of public men. We need quick investigation, trial and confiscation of property. The recovery of assets must be central to the new law. The recovery of stolen assets has been singled out as a fundamental principle of the UNCAC. The World Bank has found that corruption is the single greatest obstacle

against economic and social development. The UNCAC is a document of unprecedented scope and application and we must draw heavily from it in drafting the Jan Lokpal Bill. India has ratified the UNCAC after a long unexplained delay of six years.

All misconduct by public men is not corruption but all corrupt actions have an element of misconduct. Unfortunately the system neither detects nor punishes deviant behaviour. Alarm bells should sound when deviation from well-defined and publicised ethical and moral standards occurs. All public servants are expected to know and observe a high level of integrity. However, when they deviate from these standards, they escape detection. And graduate to the next level of misconduct.

Typical misconduct by public servants can be categorised in three ways: Criminal misconduct or misconduct with criminal intent, administrative misconduct and administrative lapse. Each must have a different remedy but the public servant who misconducts himself, criminally or administratively in the discharge of his official duty, must never go unpunished. Therefore, the way forward is: Prosecute criminal misconduct, departmentally award major penalty for administrative misconduct and minor penalty for administrative lapse.

Some basic principles should be clearly understood before designing the legislation to deal with corruption. A Lokpal (akin to Ombudsman) is the recipient of complaints. His work must remain confidential, never open to public. Inquiries he conducts should be confidential, names of public officials complained against, witnesses and documents examined should not be put in public domain until the Lokpal has taken a final decision. The Lokpal may find the complained act to be short of a criminal offence because it lacks criminal intent but it may all the same be administrative misconduct or lapse.

Protection for whistleblowers is essential. It will encourage people to come forward and provide information about corruption. But occasionally a public official who himself is in the dock may

masquerade as a whistleblower and get protected. Care should be taken to separate pseudo whistleblowers from the real ones

On receiving the complaint and after examining and verifying its contents, the Lok Pal will have to decide the course of action, whether or not to act on the complaint. If he decides to proceed, he may send the complaint for a detailed criminal investigation which may lead to prosecution. Or the complaint may be sent to the Head of Department for departmental proceedings against the public official. If the case relates to complicated financial matters then the complaint could be sent to the CAG to carry out a special audit for detecting irregularities. For minor complaints of administrative lapses a mechanism for examining the ethical angle of the administrative action should be in place through a scheme of Ethics Commissioners.

The Lokpal too must observe a code of conduct. There is a well-recognised international Code of Ethics for Ombudsmen. The Ombudsman shall be truthful and act with integrity, shall foster respect for all members of the organisation he or she serves, and shall promote procedural fairness in the content and administration of those organisations' practices, processes, and policies. The Ombudsman is independent in structure, function and appearance to the highest degree possible within the organisation.

While selecting the Lokpal due regard should be given to geographical distribution, gender balance and a fair representation to OBCs, SCs and STs. Do not design the Lokpal as a super cop-cum-prosecutor, or a super judge. The various clauses of the draft Lokpal Bill, 2010, empowers the Lokpal to cancel licences and leases, blacklist contractors, pass interim orders staying the implementation of decisions, transfer public servants, recommend interim relief and declare vacant post occupied by the public servant. It will have to be seen whether such orders can be passed by the Lokpal without hearing the affected party and without a provision for appeals.

The Lokpal drafting panel must ensure that the constitutional provisions of Articles 14, 21, 311 are not violated. The doctrines of judicial review, separation of powers and basic structure are respected. To pass such orders without hearing the individuals concerned would be a great travesty of justice. If the Lokpal steps into the arena of investigation and prosecution, he would be doing something that due processes of law frown upon. There could well be a constitutional clash between the Lokpal's brief to tackle corruption and the fundamental rights of citizens. Such a legal battle would defeat the very purpose of the new Act. We need the Lokpal who function as a true ombudsman — independent, neutral, impartial, fair, just and discreet – and not as a quixotic knight in shining armour.

The writer is a Judge of the United Nations Appeals Tribunal

HINDU 31.5.11 CORRUPTION

For drafting an ideal Lokpal Bill

Arun Kumar

The success of the institution of Lokpal will depend on limiting its scope to the very top of the hierarchy. That will make it manageable and lead to accountability down the line.

The drafting of the Lokpal bill is back in the news after the round of Assembly elections. The co-chairperson of the high-power committee involved in the drafting has said that progress is slow and that the June 30 deadline is likely to be missed. Some civil society groups made suggestions on what the Bill should contain. The chairperson of the drafting committee responded with alacrity, sensing an opportunity to let the government have its way by claiming divisions in civil society.

Apparently, important differences remain between the representatives of civil society and the government, especially with regard to bringing the Prime Minister and the members of the higher judiciary under the purview of the Lokpal. Two issues arise: how important is their inclusion; and will missing the June 30 deadline by a few months to get a good Bill in place make a big difference, given that the Bill has been pending for 42 years?

If it is indeed the magic wand that will eliminate corruption rightaway, then it is urgently needed. Those in favour of the Lokpal suggest that it will check the vested interests that are spreading corruption in society. But they are not able to convince the doubting Thomases who argue that it can neither be the panacea for all ills nor can it root out the endemic corruption in society in one go. The sceptics, who have often been in the forefront of the fight against corruption, need to be differentiated from the vested interests which have been stalling the Bill for their narrow ends. The sceptics are not for needless delay but want prioritisation of the steps to fight corruption.

The Lokpal is presented as a watchdog for the corrupt system. What has the experience been with the many watchdogs that are already in place? There is the Central Vigilance Commission to oversee the functioning of the investigative agencies, but we know that it has been largely ineffective. We have the Election Commission to see that elections are conducted in a fair manner, and it is seen to be successful. But the political system as a whole seems to be only getting more corrupt than before. There are the legislatures, which are meant to be accountable to the citizens and oversee the nation's functioning. But the country is witness to the growing criminalisation and the penetration by money power among their members. The judiciary is supposed to see that justice is done — which is but another form of accountability. But increasingly, judges at different levels have been accused of corruption. There are the lesser watchdogs, like the intelligence agencies and the regulatory bodies, but they too have been accused of a growing degree of corruption. Given all this, can there be a perfect Bill that will somehow insulate the Lokpal against the corruption in society?

Today, illegality is widespread in society. It affects almost all social, political and economic aspects of life. Tackling illegality is the most urgent task. Thus, while the Lokpal may not be the one thing on which all attention needs to be focussed, it is perhaps the most important step in the drive against corruption.

It is not that the nation does not know what should be done to deal with the black economy and the associated illegality. Since the 1950s, there have been dozens of committees and commissions that have gone into aspects of it. They include the Kaldor Report (1956), the Santhanam Committee (1964), the Wanchoo Committee (1971), the Dagli Committee (1979), the NIPFP Report (1985), and the Kelkar Committee (2002). Then there are the reports of Estimates Committees, the Comptroller and Auditor General and the Public Accounts Committees.

The reports contain thousands of suggestions — and hundreds of them have been implemented. These include the reduction of income tax rates (from 97.5 per cent in the highest bracket in 1971 to the present 30 per cent), elimination of many controls (relating to monopolies and restrictive trade practices, foreign exchange regulation, licensing, trade controls, and so on), demonetisation of currency, voluntary disclosure of income, issue of bearer bonds, acquisition of undervalued property, introduction of value added tax, and so on. Yet, the size of the black economy has grown.

Various movements against corruption (such as the ‘Nav Nirman' in 1972) or changes in laws (such as the introduction of the Right to Information) and the corresponding steps to fight corruption have been thwarted or diluted by the corrupt. People have often been disappointed by these failures and have become cynical. Yet, they have periodically reacted with positive outcomes. The subversion of steps to curb the black economy and the associated corruption is engineered by the ruling elite consisting of the triad of corrupt politicians, businessmen and the executive. Since they make huge incomes through the black economy, they have little incentive to curb their own illegality by checking that economy.

Can there be a perfect law that cannot be subverted? No such legislation has fully solved the problem it set out to resolve. The Indian Constitution is often praised, but it has had to be repeatedly amended and there have been problems. In practice, a law has seldom turned out to be as it was drafted on paper. Human ingenuity is such that it finds loopholes to subvert the law, for the spirit is not willing. Will the same fate meet the Lokpal Bill?

Take the law which is meant to prevent the crooked from deliberately letting their cheques bounce. Or the one that allows for the summary trial of cases where a signed lease exists and where the tenant does not vacate the property automatically when the lease ends. Today, lakhs of

cases relating to these provisions are pending in courts because the courts allow delays. The crooked then cock a snook at the law while the honest go on the back foot. This happens because there is lack of accountability among judges — if a case drags on, who are they answerable to? The party that suffers due to delays cannot take a tough stance for fear of antagonising the judge.

How can accountability be built into the system? The judges can be accountable to either their conscience or to a higher authority. Today, greed and decline of morals have made the former a rare commodity. In the case of the latter, the chain ends with the Chief Justice. If he demands accountability, it would percolate down. Similarly, if the Prime Minister and the Chief Minister demand accountability, the entire administration will follow suit.

Conversely, even if the Prime Minister or the Chief Justice is honest but practises non-accountability and arbitrariness, that spreads downward and corruption grows. Information about wrongdoings in high places is collected by the intelligence agencies, but is not acted upon. Such inaction will no more be feasible if the Lokpal Bill brings the Prime Minister and the Chief Justice of India under its ambit.

But can it bring about accountability in the political process, something elections have failed to do? Some doubt it, since the appointment of other constitutional authorities has run into controversies and that could happen in the case of the Lokpal too. How can the honest get to the top when corruption is endemic, except by accident?

Be that as it may, the surest way to subvert the Lokpal is to make the institution widely applicable to all manner of corruption. It will get embroiled in all kinds of wrangling and become like the courts, choked with cases. India has enough laws that can curb corruption at various levels, provided there is implementation; only accountability can ensure that. Thus, it is critical that those higher up in the hierarchy demand accountability from those under them. The buck would only stop end at

the top — with the Prime Minister and the Chief Justice of India at the Centre and the Chief Minister and the Chief Justices of High Courts in the States. That is what the focus of the Lokpal (and the Lokayukta) should be. Even then, without pressure exerted through public movements, the Lokpal can get subverted.

In brief, in the last six decades, many steps have been taken to curb the growing illegality but these have not delivered results due to lack of accountability in the system and the decline of self-regulation since greed has been placed on a new high pedestal. It is argued that the setting up of a Lokpal is not a magic wand to eliminate corruption but an important step towards that end. However, its success will depend on limiting its scope to the very top: that will make it manageable and lead to accountability down the line. Then only will laws be followed both in letter and spirit and become meaningful.

(The author is with the Centre for Economic Studies and Planning, School of Social Sciences, Jawaharlal Nehru University. E-mail: arunkumar1000@hotmail.com)

ECONOMIC DEVELOPMENT

PIONEER 25.5.11 ECONOMIC DEVELOPMENT

Grabbing land from farmers

Sandhya Jain

The growing menace of state-driven expropriation of farmland for crony capitalists to build towns and malls is the Indian face of globalisation.

Indian agriculture lost one of its most cogent voices at a time when the farming community across the country is facing the growing menace of state-driven expropriation of land for crony capitalists. This trend, which we may designate as the corporatisation of private property, parallels the other disturbing tendency towards the privatisation of public resources; both may jointly be said to comprise the Indian face of globalisation.

Mahendra Singh Tikait emerged in the public arena in October 1986 to articulate a growing need for modern amenities to make farming productive and remunerative. As founder of the Bharatiya Kisan Union he called a panchayat at his native village, Sisauli, and led a movement against increased power tariff in April 1987. Over three lakh farmers gathered at Karmukheri power station in Muzaffarnagar districtof Uttar Pradesh, compelling then Chief Minister Veer Bahadur Singh, who headed a Congress regime, to roll back the hike.

Shunning politics, Tikait championed the genuine interests of farmers in Uttar Pradesh, Haryana and Rajasthan. He cordoned the office of the Meerut divisional commissioner for 25 days in January 1988, and subjugated the Rajiv Gandhi Government with a stunning seven-day *dharna* at Boat Club, New Delhi, in October 1988, when five lakh farmers swamped the area from Vijay Chowk to India Gate. The Union Government accepted his demands, which included higher prices for sugarcane and waiving of electricity and water charges for farmers.

Tikait's approach of facing the Central or State leadership head-on, and refusing to be drawn into political alignments that could limit the spread and efficacy of his struggle, could have served his people well in the current struggle against forced acquisition of fertile farmland for corporate-driven development projects. But the doughty warrior lost a painful battle to bone cancer on May 15, 2011. The challenge before his political heirs is to reverse the policy of alienating agricultural land for non-agricultural purposes.

What needs changing is the Land Acquisition Act of 1894, whereby Government (as it was during the British Raj) can forcibly acquire private property for what it calls a "public purpose". This needs to be clearly defined. State Governments cannot be allowed to wantonly appropriate the land of farmers, first for Special Economic Zones which gave favoured industrialists land banks to develop mini-cities instead of merely adequate land for a specific industry; and now for shopping malls, housing colonies, and commercial complexes.

The core issue is protection of fertile land, particularly along waterways. We must recognise that financial compensation, no matter how adequate in terms of contemporary market prices, cannot offset the loss of the most fertile land along Ganga and Yamuna to soil-killing concrete high rises. The mindlessness with which the Union and State Governments have embraced this 'development' formula threatens national food security.

In the early decades of independence, the Government acquired land only for projects undertaken by the public sector. While affected groups could have legitimate grievances regarding compensation — because socialist rhetoric kept compensation packages low and civil society activists and fair-minded judges were still in the future — there was no malice in depriving the affected peoples of their land. Land acquired for thermal or hydro-power projects; for satellite launches; Army firing

ranges; roads and highways; fell in this category.

Things changed with economic liberalisation. Instead of a level playing field where free market could get them the best price for their land if they wanted to sell, industrialists began to use friendly politicians and State Governments to forcefully acquire huge tracts of land for profiteering at the cost of citizens. Thus, a businessman wanting to set up a steel plant did not want land adequate for the steel mill, but huge surplus tracts that could be 'developed' to commercial advantage by building shopping malls, hotels, housing estates, office complexes, golf courses, etc.

Most of the Indian countryside has already been irreparably ruined by this contractor-driven growth. Readers who have villages to visit on holidays have only to recall the halcyon days when farmlands and large trees dotted the roadside as one left the major cities to realise the extent of industrial encroachment.

When Congress MLA Kuldip Bishnoi raised his voice against the forcible acquisition of farmers' land for a special economic zone for a leading Mumbai-based industrialist, the party high command swiftly cut him to size. But protests spread in other parts of the country — even though the courts found it prudent to remain mute — until finally the then Goa Chief Minister decided that he would not permit any of the three special economic zones cleared for his State to take off.

But by then the crony capitalists had tasted blood, and the malaise of being 'friendly' to industry became endemic. The madness reached its apogee at Singur in West Bengal when the State Government felt it was its public duty to forcibly acquire farmers' land for a private company which felt aggrieved when the effort failed.

Regarding the current conflict in Uttar Pradesh, there is no justice in forcing farmers to sell land at Rs 850 per square metre and allowing a

private contractor to make Rs 30,000 per square metre. This is outright loot — another 2G Spectrum scam in the making. The protesting farmers insist they had no idea that their land was being used to build townships — an enterprise that could easily have been conducted in non-fertile, degraded lands elsewhere, and not alongside Yamuna.

Equally pertinent is the traditional farmer wisdom that land alone protects the family from starvation. Compensation disappears easily in fixing the roof, paying engineering college fees, or getting a daughter married. Worse, as most village land is the joint property of an extended family, the division of monetary compensation leaves them with nothing.

The silver lining in the high drama at Bhatta-Parsaul in Greater Noida was Uttar Pradesh Chief Minister Mayawati's agility in disproving Amethi MP Rahul Gandhi's allegation before the Prime Minister that 74 people had been burnt alive in 70-foot-wide ash mounds, women raped, and houses set on fire by the State Police. Ms Mayawati called the Central Forensic Science Laboratory to take samples for testing; the media rushed to the affected villages but could not substantiate the story. Soon the CFSL said the ash was burnt cowdung — no bones, no explosives were found in the samples. A red-faced Congress has had to deny the scandal as a media 'misquote' two days later, but by then the Prime Minister-in-waiting had nixed his claim to the august office. Mr Manmohan Singh must be enjoying a quiet laugh.

HINDUSTAN TIMES 31.5.11 ECONOMIC DEVELOPMENT

A new economics is needed to fight inflation

Gautam Chikermane,

If you were asked which of the evils you would choose - higher inflation or lower growth - it would put you in the league of finance minister Pranab Mukherjee and Reserve Bank of India governor D Subbarao. It would also put the political limelight on you and bring in various pressures - from your own party, from the opposition, from people at large. It is under such pressures that we need to examine the looming slowdown ahead.

I'll rephrase the choices. In an economy where 850 million people live on less than $2 a day, would you allow the prices of grain, vegetables, fruit, sugar and so on to keep rising? For how long and how high? At what point would you mediate and stop the rise? It would be within this broad political framework that you would need to answer this question.

On the other side, the slightest slowdown in economic growth would mean that the pace at which job creation is happening in the country would tone down. What would that do to the young people swarming out of our schools and universities? How would that change the texture of the "demographic dividend" that India is sitting on? One step removed, how will this slowdown in goods and services impact investments?

The short-term political choices are clear - tame inflation. And that's what the government has been doing through the rather blunt tool of monetary policy, that is by raising interest rates. It hasn't worked so far and how high Subbarao will take interest rates is anybody's guess. As a result, the millions of new homeowners who have built their dreams today in the anticipation of tomorrow's incomes will feel the pinch as their home loan rates increase and their EMIs begin to chew into their budgets.

But despite making the right choice - to control inflation - the government has not and probably will not be able to restrain runaway prices.

The local fruit vendor near my house sells mangoes at Rs 60 a kg; in Big Bazaar, they cost R35 a kg. Even in its limited reach, organised retail is delivering price benefits to people. Unfortunately, those economies of scale are restricted to the relatively well off.

Expanding retail chains will help a larger group of people - it is good politics - but the idea of increasing the retail footprint or allowing FDI in multi-brand retail has been captured by entrenched interests and are driving policies around it.

So what we have is a state where India as the world's seventh-largest economy and the second-populous nation is facing a high inflation crisis that nobody is being able to control. And I'm tired of hearing our leaders and bureaucrats tell us that inflation will fall "next month" or "soon" - we've been hearing that for more than a year now. It's time to end this false talking down of pain.

At a time when global food prices are at their all-time high, when fuel prices, even after easing, are higher than what economies can tolerate, and inflation is moving into manufacturing from where it becomes difficult to return, no government anywhere in the world can fight high prices. Desperately needed: a new economics - and a new way of seeing.

POLITICS AND GOVERNMENT

PIONEER 31.5.11 POLITICS AND GOVERNMENT

Wrecking the Constitution

SURYA PRAKASH

The UPA will be making a gross miscalculation if it considers the goodness of Kannadigas as a weakness and persists with HR Bhardwaj as Governor.

Going by the conduct of Karnataka Governor HR Bhardwaj over the last one year, there should be no doubt that the present occupant of the Raj Bhawan in Bangalore has turned it into a den of intrigue and mischief and has become the biggest destabiliSer of the Constitutional arrangement and the democratic process in the State. The Governor's intimidatory tactics, more akin to rude cross-examination techniques employed by rookie lawyers in Tees Hazari Courts where Mr Bhardwaj began his legal and political journey, and his frequent somersaults when such tactics fail, have only brought infamy to the office he holds.

If one considers the number of times he has been made to eat crow, he is certainly the 'Somersault Man' among Governors in the country. Just look at his track record: Last October, when 11 BJP MLAs revolted against Chief Minister BS Yeddyurappa and announced withdrawal of support to the Government, no one could fault him for his first response which was to ask the Chief Minister to prove his majority in the State Assembly. However, he had no authority to issue orders to the Assembly Speaker on what he should do and how he should treat the MLAs vis-à-vis the complaint made against them by the BJP Legislative Party. Apart from this constitutional impropriety, he described the vote on the motion of confidence as a "farce" and recommended the imposition of President's rule in the State.

Even at that stage it was known that the Speaker's decision to expel the

16 MLAs would get embroiled in a major legal battle, first in the High Court and later in the Supreme Court. Though the Speaker's orders were upheld by the High Court, it was also well-known that the fate of these 16 MLAs would eventually be decided by the Supreme Court. The recent judgement of the Supreme Court indicting the Karnataka Assembly Speaker for expelling the 11 BJP MLAs and five Independent MLAs shows the Speaker erred in not following due process while disqualifying the rebel legislators. As regards the five Independent MLAs, the Supreme Court has held that their withdrawal of support to the Government did not amount to defection. Both these judgements will have long-term implications in so far as the implementation of the anti-defection law is concerned, but neither of them gives Governors any power to destabilise constitutionally-elected Governments.

Last October, when the Governor took the foolhardy step of recommending President's rule in the State on the ground that the Yeddyurappa Government had lost majority support, people with even a nodding acquaintance of constitutional law wondered how the Union Government could take charge of a State when the Supreme Court had clearly declared that Governors are not to resort to arbitrary head counts. If, as Mr Bhardwaj claimed, the head count was vitiated, he should have awaited the opinion of the courts in the matter rather than take the law in his own hands.

The first and basic principle laid down by the Supreme Court in the Bommai Case is that the issue of majority or minority is not to be determined by Governors. This is a matter to be settled entirely within the four walls of the legislature. Fortunately, those who man the Union Government have a better sense of the law in the post-Bommai phase than most Governors. That is why the Union Government rejected Mr Bhardwaj's advice and forced him to eat his words. Rapped on the knuckles, Mr Bhardwaj did a neat *volte face*, pretended as if all was well, and directed Mr Yeddyurappa to face a trust vote on October14. The Chief Minister acted on this advice and won the confidence motion.

But the respite lasted just three months. In early-2011, the Governor was back to his old ways. This time, some allegations of nepotism made against the Chief Minister became the excuse for Mr Bharadwaj to once again dabble in active politics and step up the campaign against the Chief Minister and the Government. The Governor's conduct at that time smacked of collusion with Opposition leaders in the State Assembly and yet again emphasised the partisan role played by him, and led to fresh protests against him.

Since Mr Bhardwaj had objected to the expulsion of MLAs last October, the two recent judgements of the Supreme Court vis-à-vis the 16 MLAs has certainly come as a morale booster for him in so far as it vindicated his stand that the vote on the motion of confidence passed last October stood vitiated in the light of the hurried expulsion of the legislators. But as is his wont, Mr Bhardwaj has grossly misread the judgement and ventured into un-constitutional terrain by once again recommending the sacking of the State Government and imposition of President's rule.

And, as in the past, the Union Government has found no merit in his advice because it knows that such a course is constitutionally untenable. The Government is aware that after the Bommai judgement, the Supreme Court reserves the right to see the material sent by the Governor to the President. In that scenario the Union Government is obviously unsure of the material at hand. Therefore, yet again the Government has felt compelled to nudge Mr Bhardwaj to back-track and honourably make peace with the Chief Minister. Mr Bhardwaj has complied with this advice post-haste. However laughable it may seem, the very Governor who had recommended imposition of President's rule in the State has now publicly declared that Mr Yeddrurappa enjoys a "massive majority" in the Assembly and that the Chief Minister is his "friend". Forget about constitutional instability, the conduct of the Karnataka Governor clearly points to instability of the mind in respect of the present incumbent.

The Union Government is playing with fire by continuing with Mr Bhardwaj as the Governor of Karnataka. The people of this State are probably the most democratic and peace loving in the country. The Union Government will be making a gross miscalculation if it considers the goodness of Kannadigas as a weakness and persists with Mr Bhardwaj who is wrecking the Constitution and the democratic process from within Raj Bhawan. If the Union Government fails to act, it will expose itself to the charge of weakening the constitutional edifice. As regards the Congress, it will pay the price politically for allowing a partisan party man like Mr Bhardwaj to harass a duly elected Chief Minister.

The visual accompanying this article shows a BJP supporter shouting slogans from inside police van after she was arrested during a protest against Governor HR Bhardwaj for trying to destabilise the Government. Courtesy: Faheem Hussain.

TELEGRAPH 24.5.11 POLITICS AND GOVERNMENT

ADVICE TO COMMUNISTS
- Should the Left become social democratic?

Prabhat Patnaik

On a television channel on counting day, the panellists discussing the assembly election results were asked to offer advice to the Left, which had lost both the large states it ruled, one of them quite massively, on how it should reform itself for a future resurrection. The overwhelming opinion among them was that it should forget Lenin, and, as the anchor explicated, become 'social democratic'. The Left I suppose should be obliged to the panellists for being so concerned about its future; the question is: should it follow their advice and become 'social democratic'?

The central difference between social democracy and communism is the latter's acceptance of the category of *imperialism*; other differences derive from it. Indeed, the basic split in the Second International on the attitude to the First World War arose from a difference in perspectives on imperialism. On one side were those social democrats who supported their respective countries' war efforts since they did not see it as an 'imperialist war'; on the other side were those who not only were unwilling to do so, as they saw the war as an 'imperialist war' through which 'their' respective monopoly bourgeoisies were trying to grab more 'economic territory', but wanted the 'imperialist war' to be turned into a 'civil war' for the overthrow of the monopoly capitalist order, which made workers of one country fight fellow workers of another across the trenches. (A third position between these two, which tried to reconcile these irreconcilable positions, gradually lost relevance.)

The second group of social democrats split from the parent parties to

form communist parties, and they included not only Lenin but also Rosa Luxemburg, who, notwithstanding her many differences with Lenin, attended the founding congress of the German communist party a fortnight before her murder. This underscores the centrality of the question of imperialism to the communist position *vis-à-vis* the social democrats. And bound up with this question is the case for system-transcendence: if capitalism can be made into a peaceful, non-imperialist, non-aggressive system, as the social democrats believed it could, then it can also be made 'humane', and any pressing need for its transcendence by socialism disappears.

Advising the communists to become social democrats amounts, therefore, to asking them to abandon not only their basic objective of socialism, but also their persistent opposition to imperialism; indeed, one panellist on the aforementioned TV show explicitly asked the communists to forget about 'imperialism'.

The proximate difference between the communists and the bulk of the NGOs, including some highly progressive ones which are associated with the World Social Forum, relates precisely to imperialism. Opposition to the Iraq war or to American interventions, which many progressive NGOs would express, does not necessarily mean accepting the concept of imperialism (even when the material interests underlying such interventions are recognized), since one can still see these as *episodic events*. The communists see imperialism not as a set of episodes, but as an entire order that springs from the nature of capitalism itself.

Even those who see only episodes of imperialism have missed, alas, certain glaring recent episodes, such as the killing of Osama bin Laden which violated all norms of international conduct. One country sent in troops to attack a target in another sovereign nation, without so much as a 'by your leave'; murdered an unarmed man, who was offering no resistance, in front of his family; took his body away; and dumped it

into the sea. Osama may have been a villain, but what is at issue here is, first, the act of aggression against a sovereign country; and second, the ethical and legal questionability of the act of killing a person without a trial, which even the Nazi mass murderers were not denied. And yet, while Fidel Castro and Noam Chomsky have raised their voices on these questions, there has been a virtual silence over them in our country, as indeed there has been over the Nato bombing of Libya, which is in violation of international law (no matter how dictatorial Muammar Gaddafi may be).

There are no doubt fewer takers for the concept of imperialism today than was the case in the colonial era, when the imperial order was palpable. In particular, the much-hyped gross domestic product growth rates of China and India give the impression today that the earlier asymmetry between a first and a third world, implicit in the concept of imperialism, is disappearing, and that the latter is emerging as a replica of the former. This supposed replication, however, is obviously untrue: despite high growth, the working population in India and China continues to consist predominantly of peasants (including the landless) and petty producers, pushed even deeper into distress by such growth. Besides, this so-called levelling of differences across *nations* has strengthened, and not weakened, the position of first world *capital*. Much of China's export growth, for instance, which sustains its high growth, is accounted for by American corporations locating plants in China to export back to their home economy. The capitals of these and other 'emerging economies' too have grown stronger, but only by integrating themselves with metropolitan capital to the detriment of their own people. Hence, the concept of imperialism has not lost importance either in its sociological aspect (capitalism encroaching upon pre-capitalist producers) or in its spatial aspect (capital from the metropolis imposing an order where it expropriates for itself resources and primary commodities from all over the world).

But isn't obtaining resources from outside in lieu of one's own

products what ‘trade’ is all about? Why should ‘trade’ be called ‘expropriation’? This is because underlying what appears as normal ‘trade’ is a complex mechanism which deliberately compresses demand by the working people of the third world to ‘release’ exhaustible resources, and commodities producible only by the limited tropical land-mass, for the use of metropolitan capital. In colonial times, such compression was through taxation by the colonial regime, and the ‘draining away’ without any *quid pro quo* of the commodity counterpart of such tax revenue. Nowadays, such compression is through a variety of neo-liberal measures, all of which restrict purchasing power in the hands of the working people.

Such compression, the essence of imperialism, arises in turn from an asymmetry: these resources and commodities are either not producible at all or cannot be produced in sufficient quantities within the metropolitan countries, but the goods and services produced in the metropolis can, given time and appropriate arrangements, always be produced in third-world economies.

Communist practice must derive from theory, whose only test is correctness and not vote-catching capacity. Their forgetting ‘imperialism’, as the panellists advised them to do, will not only make them indistinguishable from others and hence historically irrelevant, but also leave the resistance to imperialism, which is bound to occur anyway, to terrorists, religious fundamentalists, and the Osama bin Ladens.

The reform they must undertake is not to abandon the concept of ‘imperialism’, but the very opposite, that is, to be even more firm in adhering to it. They must be even more vigilant that the basic classes whose interests they seek to defend — namely the workers, the peasants, the agricultural labourers — are provided relief rather than distress (through encroachments by imperialism and domestic corporate interests). And for this they must ensure space within the

party for debate, discussion and dissent, so that it becomes a thriving hub of intellectual activity, rather than a monolithic entity where a decision taken at the behest of some local *satrap* or bureaucrat in a Left-ruled state is defended, as revolutionary duty, by its members and sympathizers all over the country.

It may be asked: isn't this what being 'social democratic' means? The answer is 'no'. Rosa Luxemburg rejected social democracy and, along with Karl Liebknecht, was murdered by troops under a social democratic government; and she believed in no monoliths. Nor did Lenin. When the besieged and beleaguered revolutionary government under him signed the Treaty of Brest-Litovsk, over the objections of Bukharin and others, they brought out a theoretical journal, *Kommunist*, to attack the treaty, which the Bolshevik government or the party did not proscribe even in those times. Greater space for dissent within the party is not synonymous with 'social democracy'. The advice to communists to become social democrats, therefore, though well-meant, reflects only the Indian elite's own 'adjustment' with imperialism and distance from the working people.

The author is a former professor, Centre for Economic Studies, Jawaharlal Nehru University, New Delhi

PUBLIC DISTRIBUTION SYSTEM

HINDU 24.5.11 PUBLIC DISTRIBUTION SYSTEM

Mending the Food Security Act

Jean Drèze

The National Advisory Council has proposed a framework for the National Food Security Act. But its potential could be wasted by a flawed approach to the PDS.

Two years have passed since the Central government announced that a draft National Food Security Act (NFSA) would be posted on the Food Ministry's website “very soon.” After prolonged deliberations, a detailed framework for this Act has recently been proposed by the National Advisory Council (NAC), and a draft is on the anvil. This is a “compromise draft” of sorts, heavily influenced by the government's own concerns and priorities.

The NAC framework includes important provisions relating, for instance, to child nutrition, reform of the public distribution system (PDS), and redress of grievances. It has the potential to put all food-related schemes on a new footing, in a rights framework. However, this potential is in danger of being wasted by a flawed approach to the PDS.

In this approach, the PDS rests on a three-way division of the population, among “priority,” “general” and “excluded” households. (This article focusses on rural areas.) Priority households, covering at least 46 per cent of the rural population at the all-India level, are to get 35 kg of grain a month at “Antyodaya prices” (Rs. 3 a kg for rice, Rs. 2 for wheat and Re. 1 for millets). General households will get 20 kg at no more than half of the Minimum Support Price. And excluded households, which account for 10 per cent of the rural population, will get nothing.

This framework is problematic. First, it hinges on a lasting division of the population into three groups, without any clarity as to how the groups are to be identified. In the absence of any obvious alternative, the NAC is effectively falling back on the Below Poverty Line census to identify priority groups. This is a major setback — the NAC's entire work began with a virtually unanimous rejection of BPL-based targeting for the PDS. Exclusion errors in earlier BPL censuses were very large, and the next BPL census is unlikely to fare much better, judging from the pilot survey.

Second, since identification criteria are left to the Central government, with some discretion for State governments, nobody has guaranteed PDS entitlements under the Act, except for a few ultra-marginalised groups (such as the so-called Primitive Tribal Groups) which have a right of "automatic inclusion" in the priority list. Other households have no legal entitlement to be included in the priority list or, for that matter, in the general list. Therefore, they have no guaranteed PDS entitlements at all. This undermines the basic purpose of the Act.

Third, the transition from the current Above Poverty Line-Below Poverty Line framework to the NAC framework is likely to be disruptive. There are at least three major sources of disruption: the creation of an "excluded" category; the transition to a new BPL list; and the switch from household to per capita entitlements. Each of these changes entails a loss of entitlements for significant numbers of households. Meanwhile, the entitlements of other households will be enhanced. Can we expect this transition to happen without major tensions, or even to be completed at all?

Fourth, the NAC framework fails to "de-link" PDS entitlements from official poverty estimates, and to prevent a rapid shrinkage of PDS coverage over time. It is well understood by now that official poverty lines in India are abysmally low, and that undernutrition is not confined to households below the "poverty line." In the NAC framework, 46 per cent coverage of priority groups in rural areas corresponds to the proportion of the population below the "Tendulkar poverty line," plus a

margin of 10 per cent for targeting errors. This is significantly higher than the current BPL coverage of about 33 per cent. But except for ruling out any reduction of PDS entitlements before the end of the 12th Five Year Plan (which is only a few years from now), nothing in the draft NFSA prevents the government from reducing PDS coverage in tandem with official poverty estimates over the years.

Fifth, the idea of a universal PDS in the poorest 200 districts was dropped from the NAC framework (after being agreed and placed on record). This was an important idea, because any targeting process here is likely to lead to massive delays, fraud, and exclusion errors. In many of these districts, the local administration has little credibility. Large numbers of poor households are outside the BPL list, and are likely to remain excluded from the proposed “priority” list. Further, targeting is pointless in areas where an overwhelming majority of the population is vulnerable to food insecurity. Launching a universal PDS in these districts would have addressed a large part of the food insecurity problem in rural India in one go, at a small extra cost.

Sixth, the NAC abandoned another important idea as it went along: the automatic inclusion of all Scheduled Caste and Scheduled Tribe (SC/ST) households in the priority list — unless they come within the standard exclusion criteria. This will be a major protection against exclusion errors, and a well-justified form of positive discrimination in favour of SC/ST families. But the idea was dropped, on the grounds that it is difficult to reconcile with pre-specified “caps” on the coverage of priority groups at the State level based on poverty estimates. Punjab, for instance, has a low poverty ratio but a high proportion of SC/STs in the population — there is no obvious way to handle this.

In short, the NAC framework not only perpetuates the flaws of BPL targeting but also institutionalises artificial social divisions under the law. It is not difficult to imagine the Act being used as a foothold to extend these divisions to other domains.

The obvious alternative, a universal PDS, is a ‘no-no' for the Central government. Is there another way to repair, or at least contain, the

damage? I believe there is. Before coming to that, let me mention an interesting finding of recent BPL identification studies (by Reetika Khera, Sabina Alkire, and Himanshu, and others). These analyses, mainly based on the 2004-05 data from the National Sample Survey or the 2005-06 data from the National Family Health Survey, suggest that about 25 to 30 per cent of households in rural India meet simple, transparent and verifiable "exclusion criteria," such as having a government job, owning a motorised vehicle, or living in a multi-storied pucca house.

This suggests a simple but far-reaching modification of the NAC framework: expand the excluded category, but extend "priority" entitlements (35 kg of grain at Antyodaya prices) to all other households. With an exclusion ratio of, say, 30 per cent, the foodgrain requirements will be the same as in the current NAC framework. The financial cost will be a little higher (because all entitled households will pay Antyodaya prices), but the extra cost will be a small fraction of the total food subsidy.

In this "quasi-universal" framework, every rural household will be entitled, by law, to 35 kg of grain a month at Antyodaya prices, unless it comes within the well-defined "exclusion criteria." Everyone will be clear about their legal entitlements. The burden of proof, so to speak, will fall on the government to exclude a household, and poor households will be well protected from exclusion errors. State governments will be free to move even closer to universalisation, if they wish, by waiving some exclusion criteria and contributing additional resources to the PDS (as many States are already doing). Automatic inclusion of SC/STs (unless they come within the exclusion criteria) will be built in. PDS entitlements will be de-linked from the APL-BPL rigmarole, and from poverty estimates. And while some social division will remain, it will be "at the top," without undermining solidarity among disadvantaged groups.

Two further modifications of the NAC framework will round up this proposal quite nicely. First, the idea of a universal PDS in the poorest

200 districts could easily be reinstated, by waiving exclusion criteria in these districts for an initial period of, say, 20 years. Second, the Act could be gradually extended to the whole country, over a period of, say, three years, starting with the poorest 200 districts. This will make it easier to meet the additional foodgrain requirements in a phased manner.

This approach is not perfect, but it seems much preferable to the confused, impractical and divisive framework that has emerged from the NAC (or rather, from protracted discussions between the NAC and the government). It will be easy to adapt the current NFSA draft to this approach, while retaining the valuable work that has been done by the NAC on other aspects of the draft. This small modification could make a big difference.

(The author is a Visiting Professor at the University of Allahabad. The views expressed here are his own.)