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CHAPTER

Prudence in Administrative Ethics



Prudence is a keyword in ethics. Its meaning has four dimensions: (a) the ability to govern and discipline oneself by the use of reason, (b) circumspection on risk, (c) skill in the optimum use of resources and (d) insight into the practical wisdom of handling key objectives.

Aristotle (2004, Book 6, Chapter XIII, Lines 27–30, 165–166) places prudence in high esteem when he says the following:

‘Virtue is not merely a state in conformity with the right principle, but one that implies the right principle; and the right principle in moral conduct is prudence.’

Aristotle’s emphasis is designed to make it clear that moral and intellectual goodness are not just complementary, but in their highest form, inseparable. It is a call for sociopolitical change on the strength of high ethical quotient in human conduct.

This chapter discusses the significance and manifestations of prudence as a cardinal virtue in administrative ethics today.

1.1. ETHICS OF CONSTITUTIONAL ARRANGEMENTS

Normative foundations of administrative ethics are most authentically revealed in the Constitution of a country—the organic and foundational law of a state. Arrangements of power distribution and conceptions of governance, therefore, vary. Despite variations, however, there is a basic moral minimum of constitutional governance (a) that the exercise of power shall be within the legal limits conferred by the Constitution, and accountable to law; (b) that the exercise of power—irrespective of legal authority—shall conform to the notion of

respect for the individual and the individual citizen's fundamental rights; (c) that the powers conferred on institutions of the state—whether executive, legislative or judicial—will maintain checks and balance; (d) that the government in formulation and implementation of the policy shall be accountable to the sovereign; and (e) that in adjudication and legal interpretation, judiciary shall have freedom, autonomy and respect.

Besides ethics of constitutional arrangements, the net effect of the system on people, too, is equally important. Philosopher Jürgen Habermas has put it in precise terms:

'The legitimacy of rights and the legitimation of law-making processes are not the only question. There is also the question of legitimacy of a political order and the legitimation of the exercise of political power' ([1992] 1996, 132).

1.1.1. Ethics in Legal and Political Theory

Ethics matters in political theory because, as Kant said, 'True politics cannot take a single step forward unless it has first done homage to morals.' A political idea cannot be divorced from the ethical idea. Societies are unequal and everywhere there are aspirations to come out of the pulls of undeserved want.

Ethics matters in legal theory because, as John Rawls (1971, 3) said, justice matters as the first virtue of social institutions:

Justice is the first virtue of social institutions, as truth is of the systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust.

1.1.2. Constitutions as Systems of Values and Beliefs

Constitutions are supposed to express a coherent vision of values and beliefs of nations. Examination on coherence is done not merely on the basis of the Preamble, but the entire text. Thus, we find in the US Constitution principles such as (a) rule of law, (b) separation of powers, (c) representative government, (d) checks and balance, (e) individual rights, (f) freedom of religion, (g) federalism and (h) civilian control of the military; and fundamental belief on (a) life, (b) liberty, (c) the pursuit of happiness, (d) common good, (e) justice, (f) equality, (g) diversity, (h) truth, (i) popular sovereignty and (j) patriotism. Visions of the words lie in the details spread over the entire text and subsequent constitutional law developments.

Compared to the US Constitution, the Indian Constitution is larger in size. It has similarities with regard to the respect for rights, liberties and institutional autonomy, but differences as well. Variations occur because countries are different in terms of social composition, historical experience, governance challenges, worldview and vision on social reconstruction. Unique features of the Indian Constitution are textual and jurisprudential. Textual uniqueness of the Indian Constitution lies in the structure of governance, principles of state policy, centre–state relations, political economy questions and choice of social justice interventions. Doctrine of basic structure, interpretation of right to life and opportunities for public interest litigation are examples of ethical creativity in law and jurisprudence from India.

1.1.3. Constitutions in the Context of Rights-based Ethics

Constitutions also set apart rights of the people. The basic idea is to leave some space for entitlements which even the weakest person can legally claim, without shame or guilt, against the toughest odds. Usually, four factors get involved in the process of determination of a right: (a) prioritization of a protectable virtue, (b) vulnerability of the class to be protected, (c) capacity of an interest being claimed as duty and (d) reasoned social acknowledgement of the priority. Essentially, it is a counter-hegemonic strategy, based on the shared concept of a just order in society.

There are several types of rights, but constitutional rights are those which the state guarantees to its citizens under the authority of the Constitution. The Indian example of constitutional rights is well known—(a) right to equality, (b) right to freedom, (c) right against exploitation, (d) right to freedom of religion, (e) cultural and educational rights and (f) right to constitutional remedies—and classified as ‘fundamental rights’. The range of such rights varies from country to country. So do the drafting of the constraining clauses. However, there is a constant flow of jurisprudential acumen, emerging from the courts, that clarifies and consolidates justice.

1.1.4. Constitution: Vision and Impact

Many constitutions emerged from constituent assemblies. France (1789–1791), Germany (1919–1920), India (1946–1950) and South Africa (1993–1996) are a few notable examples. They deserve to be studied in detail to understand (a) the vision of their founding fathers and (b) the humanitarian and democratic consequences of the system they created.

In the context of the constitutional history of these countries, we can note some recent assessments given as follows: Not for Commercial Use

1. **French Constitution (1791):** ‘French constitutional law rests on a striking paradox: while the change of constitutional paradigm happened very quickly in 1789, it took a further 200 years for democracy to be fully embedded in constitutional and political practice. In contrast with the United States, where the 1776 constitution generated political stability, France endured a long period of political and constitutional instability punctuated by revolutions, coups and civil war... By 1792, constitutional monarchy had failed and this system was abolished’ (Boyron 2013, 4–5).
2. **Weimar Constitution (1919):** ‘The Weimar constitution achieved much that was ahead of its time: it established a parliamentary democracy and introduced a welfare state, guaranteed fundamental human rights and attempted to address some of the political and social problems that had bedevilled Germany under Kaiserreich. But it failed to heal the deep divisions within German society: industry, land, and public services were left unreformed and in private hands, while the armed forces, civil service and universities continued to be dominated by the conservative upper and upper-middle classes whose commitment to the new republic was lukewarm at best’ (Storer 2013, 61).
3. **Indian Constitution (1950):** ‘How the Court shapes and reshapes the demos is an all-important question. Perhaps, the earlier Justices, during 1950–73, did not regard themselves as social entrepreneurs and constitutional activists, preoccupied as they were with laying the

foundations of judicial review, a model rule of law, and of adjudication, and guided the colonial lawyering into a constitutional profession... The scene and scenario since 1973 is very different: in the main it has been an era of substantive due process' (Baxi 2016, 108).

4. **South African Constitution (1996):** 'The construction of the Rainbow Nation sprang from the need to symbolically define the post-apartheid political body and required clear legal and constitutional structures, which would become a characteristic post-apartheid constitutionalism. There were numerous intricate constitutional rules and supervising constitutional bodies that endeavoured to make the Rainbow Nation a legal reality. Even though the political idea of a Rainbow Nation was founded on the notion of a universalist common citizenship, it is nevertheless mitigated by a strong interest in protecting group rights' (Lollini 2011, 23).

The biggest challenge for states adopting a new constitutional settlement has been to ensure that its principles and values are embraced by the nation as a whole. In this sense, constitutions serve both instrumental and symbolic purposes. As instruments of government, they guide and control the procedures of public decision-making. As documents of substance, they act as symbolic rallying point for ethical course correction and reform.

1.1.5. Limits and Scope of Constitutional Amendment

Constitutions cannot be frozen. Ethics of prudence demands amending opportunities, so that they evolve with the reason and conscience of the nation. However, as a 1973 judgment of the Indian Supreme Court mentioned, 'Parliament could not use its amending power under Article 368 to "damage", "emasculate", "destroy", "abrogate", "change" or "alter" the "basic structure" or framework of the Constitution.'

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The basic structure limitation on amendment intends to protect constitutions from the whims and tricks of the majorities of the legislatures. There are conceptual concerns as well. Most important among them is the concept of 'constituent power'—a realization that constitutions are a set of inalienable values, a structured whole, in which a component has a meaning through an ethicality determined integrated vision. Simply put, a power given by the constitution cannot be construed to authorize destruction of other powers given in the same instrument. Wisdom, therefore, lies in the harmonious interpretation of constitution as a whole and not section or chapter wise.

1.1.6. Prudence of Public Order Stability in Governance

Purpose of public order laws should be to ensure that individual rights to freedom of speech and freedom of assembly are balanced against the rights of others to go about their daily lives unhindered. In this way, maintenance of public order becomes a public duty of upholding the overall interests of the sovereignty and integrity of the country. But handling public order crimes is a delicate task—professionally, technologically and legally. The work demands utmost care, caution and objectivity. Otherwise, cases backfire in courts and credibility of the entire government gets dented.

When we see the specific case of India, we find in its Constitution a libertarian premise—freedom of (a) speech and expression, (b) peaceful assembly, (c) association, (d) movement, residence and settlement anywhere within the country and (e) practising profession or carrying out business—as fundamental rights. In addition, there is a right to constitutional remedies, which facilitates judicial scrutiny of administrative action. Adequate protection against arbitrary arrest is available as a fundamental right, and the accused also has avenues of basic procedural justice safeguards. Liberty, thus, is a premise of human existence under the Constitution of India. Some space has, indeed, been provided in the Constitution for imposition of ‘reasonable restrictions’ on the right to freedom (Article 19) to protect the sovereignty and integrity of India, but public order has a space for action only under this premise.

Public order stability/maintenance in India, as elsewhere, has several challenges in this global digital high-tech age. Associational loyalties and intents vary. Not all of them are bona fide. We live amidst acts of terror and public sabotage of the worst form. Therefore, as custodians of trust, law enforcement agencies of the state have to detect conspiracies and accurately intervene to allow people safely benefit from their constitutional vision of governance.

1.1.7. The Ethic of Cooperative Federalism

Federalism in a polity is called cooperative when it is fair in balancing the interests of a nation with that of its regions. If ‘separation of power’ is the horizontal axis of fairness in constitutional arrangement, the spirit of ‘cooperative federalism’ is the vertical one. Vertically, there are three levels—central, state and local.

In the text of the Constitution of India, cooperative federalism manifests in several ways. India has been conceptualized as ‘Union of States’ (Article 1) and its three governance levels have been explicitly described (‘The Union’ in Part V of the Constitution, ‘The States’ in Part VI, and ‘The Panchayats’ and ‘The Municipalities’ in Parts IX and IX(A)) to provide clarity in the distribution of power. Constitution of India has other details as well—on (a) legislative and administrative relations between the union and the states, (b) services under the union and the states, (c) distribution of revenues between the union and the states, (d) appellate jurisdiction of the Supreme Court in high courts, (e) governance identity of the union territories, (f) role of the governor, Election Commission, finance commission, interstate council, and comptroller and auditor general of India, (g) subject matter of laws made by the Parliament and legislatures of the states, (h) resolution of federal disputes and (i) the ratification process in constitutional amendment.

Clarity has been a virtue of these stipulations. On actual functioning of the spirit of fairness, there are achievements and deficits. Achievements are many: (a) sustenance of unity and integrity of India, (b) strength of the Supreme Court as a court of appeal and authority to solve federal disputes, (c) performance of the Election Commission, finance commissions and the institution of the comptroller and auditor general of India, (d) entry of Parts IX and IX(A) in the Constitution on empowering panchayats and municipalities, and (e) spirit of cooperation shown in the passing of the constitutional amendment on the goods and services tax (GST) in 2016 and functioning of the newly set up NITI Aayog in the same spirit, are examples. Deficit, too, are there. After a comprehensive review, a commission appointed by the government on centre–state relations (Punchhi Commission 2010, 7 vols) came up with a reform agenda on 273 action points.

Highlights of the reform agenda are: (a) conditions for exercise of power under Article 356, (b) strengthening and mainstreaming of the Inter-State Council, (c) efficacy in the implementation of the Fiscal Responsibility and Budget Management (FRBM) Act, (d) fiscal domain of the local bodies, (e) monitoring of the devolution process and (f) time-bound implementation of directive principles through decentralized governance.

1.1.8. Ethic of the Rule of Law in Polity

Legitimacy of constitutional democracy rests on the actualization of the rule of law. A rule of law regime checks authoritarian streaks of power on the strength of the belief that all conduct, of both private citizens and state officials, conforms to a framework of law and only to law. It operates under three principles: (a) 'equal subjection to law', (b) a 'framework of law' which ensures that no one will be punished except for breaches of law and (c) 'a certainty' that when law is breached, punishment shall be given.

These principles have been elaborated by Sir William Wade (2009) in legal terms and with explicit reasoning:

1. Duty to justify that action taken is authorized by the law (to satisfy the principle of legality).
2. Acting within a framework of recognized rules and principles (to rule out misuse of discretionary power).
3. Availability of the right to carry a dispute with the government before the ordinary courts, manned by judges of the highest independence.
4. Even handedness of legal treatment between the government and the citizens (without unnecessary privileges or exemptions from ordinary law).

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For citizens, rule of law is a matter of great concern. It is the litmus test of democracy and a precondition for growth and justice. However, its actualization is not easy. A lot of effort is required to save governance from secrecy, intolerance and unfair means.

Parameters have been developed in recent years to assess the status of the rule of law in countries across the world. A notable effort, conceptually, is of the World Justice Project which assesses rule of law on the basis of 9 factors and 47 sub-factors. Factors of assessment are: (a) constraints on government power, (b) guarantee of fundamental rights, (c) maintenance of order and security, (d) access, affordability and efficacy of civil justice, (e) quality of criminal justice system, (f) prudence and impartiality of regulatory enforcement, (g) level of transparency and participation in governance, (h) absence of corruption and (i) status of informal justice.

1.1.9. Directive Principles of State Policy

The Constitution of India is among the few constitutions that contain 'Directive Principles of State Policy'. Normally, policy strategies are left to the governments of the future. Members of the Constituent Assembly of India were conscious of this, but they were equally conscious of

the (a) structure of inequality and dominance in social life and (b) end results of the task before them in terms of social, economic and political justice. So there is Part IV in the Constitution—not justiciable, but firmly drafted and fundamental for the governance of India as a basic structure of its Constitution. We can refer to Dr Ambedkar’s statements to understand better:

What is called ‘Directive Principles’ is merely another name of the Instrument of Instructions. The only difference is that they are instructions to the legislature and the executive. Whoever captures power will not be free to do what he likes with it. In the exercise of it he will have to respect these instruments of instructions which are called Directives. If any Government ignores them, they will certainly have to answer for them before the electorate at the election time. (Constituent Assembly 1948, 41)

It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip service to these principles but they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of governance of the country. (Constituent Assembly 1948, 476)

Strategic vision of the founding fathers of the Constitution was later strengthened by the judgments of the Supreme Court of India, aptly summed up in a landmark judgment of 1980:

The significance of the perception that Parts III and IV together constitute the core of commitment to social revolution and they, together, are conscience of the Constitution.... Granville Austin’s observation brings out the true position that Parts III and IV are like two wheels of a chariot, one no less important than the other. You snap one and the other will lose its efficacy.... In other words, the Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution.... Those rights (Fundamental Rights) are not an end in themselves but are the means to an end. The end is specified in Part IV. (*Minerva Mills Ltd. & Ors. v. Union of India & Ors.*, AIR 1980 SC 1789, at Para 56)

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In the light of the above, contents of the directive principles of state policy assume significance. The Directives (Part IV, Articles 36–51) take suffering seriously, reflect structurally and prescribe a basic moral minimum of humane governance. These are ‘principles’ of ‘state policy’ to be always remembered by the governments in India at all levels. Part IV of the Constitution of India now is held to be a part of its basic structure. It is to mandate to (a) strive to minimize the inequalities in incomes, (b) direct policies towards securing right to an adequate means of livelihood, (c) make provision for just and humane conditions of work, (d) endeavour to secure for its citizens a uniform civil code and (e) direct policies towards securing that the operation of the economic system does not result in the concentration of wealth.

1.1.10. Constitutional Foundation of Fundamental Rights

Constitutions often incorporate a set of rights that regulate the relationship between the state and the citizens and provide a few guarantees to even non-citizens. The Constitution of India does so in Part III (Articles 12–35) of the document where fundamental rights are enumerated and guaranteed. They are called ‘fundamental’ because they are top-priority inalienable entitlements,

with remedies under the most foundational legal document of the country. They are top priority because human dignity and creativity are the essence of meaningful human existence and, therefore, justification of state's existence to protect and value them.

Fundamental rights in the Constitution of India protect against the arbitrary exercise of power by the state as well as against other individuals. They also guarantee rights to the minorities. Care has been taken to adequately define state to give responsibilities a wide ambit, that is, to include 'the Government and the Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India' (Article 12). Any law that contravenes a right guaranteed under Part III is invalid under Article 13, and Articles 32 and 226 empower the judiciary to review such a law and strike it down.

Fundamental rights in India broadly fall into six categories. Articles 14–16 confer right to equality in several manifestations and prohibit discrimination on the grounds only of religion, race, caste, sex or place of birth. Article 19 guarantees basic freedoms such as freedom of speech and expression, freedom of peaceful assembly, freedom to form associations or unions, freedom to move freely and reside and settle in any part of India, and freedom to practice and profess one's religion, or carry on any occupation, trade or business. Articles 19(1)(f) and 31, which guaranteed property rights, were deleted by the Constitution (Forty-fourth Amendment) Act, 1978. Article 20 provides constitutional guarantees against retrospective criminal laws, double jeopardy and self-incrimination. Article 21 provides that no person shall be deprived of his/her life or personal liberty except according to the procedure established by law. Articles 23 and 24 provide guarantee against exploitation such as traffic in human beings and forced labour. Articles 25 to 28 deal with freedom of conscience and freedom of religion. Articles 29 and 30 guarantee rights of the minorities to conserve their language, script and culture and to establish and administer educational institutions of their choice.

Strong constitutional foundation of fundamental rights in India has been further strengthened by judicial interpretations. The Supreme Court of India, in particular, had done solid jurisprudential work in this area. We can briefly highlight a few: (a) development of public interest litigation in which, relaxing to requirements of locus standi, an application for an appropriate direction or writ could be given in public interest by any bona fide person and (b) the expression 'life' in Article 21 of the Constitution has received an expansive interpretation. These judicial insights have done India a lot of good and attracted worldwide attention in legal theory. It has now been possible to understand that 'life' does not connote merely physical existence, but the right to live with human dignity and all that goes along with it. It has also been made quite clear that an arbitrary, fanciful or oppressive procedure would be no procedure.

1.1.11. Power Arrangements for Legislation and Oversight

Legislatures are representative assemblies. They have the power to scrutinize and pass bills for legislation. As representatives, they also have the power of oversight through stipulated mechanisms of law. Representation in the legislature has an essential institutional form where directly elected representatives of the people sit to exercise legislative power. In some power arrangements, there is one more house of representatives, of indirectly elected members, to also independently go through

legislative matters as a stable house of elders and experts. These functions of democratic governance are assigned in constitutions in different ways, depending on the historical experience of nations and the logic adopted for ensuring public accountability and propriety in governance. The Constitution of India has adopted power arrangement for legislation in consonance with its concept of federalism. As 'union of states', therefore, there are legislatures in India at the centre (Parliament) and in the states (State Legislatures). Legislative jurisdiction of these is precisely laid down in the Constitution (Seventh Schedule). On concurrent subjects, the legislature of the union has the final power in situations of conflict with a law passed by a state legislature. There is also a compulsion of ratification of constitutional amendment parliamentary bills by the state legislatures and bills on concurrent subjects.

Legislative processes have, with experience, got fairly firmed up by now everywhere. Important, however, is the quality of public interest discourse at each stipulated level. There is a huge responsibility on the presiding persons of the houses and their committees on this count. They have powers to maintain the ethic of discourse in deliberations, but outcomes have not always been satisfactory: GST-related Constitutional Amendment was a public interest success in India, and the Forty-second Constitutional Amendment Act was not. What matters, therefore, is the intent of the piece of legislation in public interest terms that comes for the scrutiny of legislature and the type of individuals holding the reigns of legislative power there. Dr Ambedkar cautioned about it with great insight:

If we wish to maintain democracy not merely in form, but also in fact, what must we do? The first thing in my judgement we must do is to hold fast to constitutional methods of achieving our social and economic objectives.... The second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not 'to lay their liberties at the feet of even a great man, or to trust him with power which enable him to subvert their institutions'.... The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless it lies at the base of its social democracy. (Constituent Assembly 1949)

Besides ethics of intent (which basically emanates from the moral worth of the party system through cabinet decisions and floor management efforts), four other virtues in legislative power arrangements matter: (a) autonomy of internal functions, (b) accountability of the council of ministers to the legislature, (c) legislative oversight over administrative agencies through structured legislative committees and (d) space for judicial review of the constitutionality of laws enacted in the country. We will discuss these issues under the appropriate heading of this book.

1.1.12. Rationale of Tribunal System in Governance

The emergence of the tribunal sector in governance is a recent phenomenon. There were few tribunals until the Second World War when governments expanded their role. Tribunals were established to (a) regulate aspects of the expanding economy, (b) adjudicate disputes arising from the administration of new social programmes, (c) bring expertise to complex issues and (d) ease the load of the courts as alternate dispute-resolution mechanism. Now, tribunalization of justice is a known and accepted governance method all over. However, as the two important reports on the

UK tribunal system (Franks Committee Report [1957] and Leggatt Report [2001]) have pointed out, independence and impartiality of tribunals are the most important factors in establishing their credibility, as a system of justice, equal to the courts.

In India, Articles 323A and 323B of the Constitution provide for setting up of tribunals on a wide range of subjects, but judicial review of tribunal decisions is also there in the system. In fact, one way to analyse the quality of tribunals is to go through the successful judicial review cases. Another related way is to study the manpower quality in tribunals. One Hundred Sixty-second Report of Law Commission of India on Review of Functioning of Central Administrative Tribunal; Customs, Excise and Gold (Control) Appellate Tribunal; and Income Tax Appellate Tribunal (Law Commission of India 1998) highlighted serious knowledge deficit problems in these tribunals and proposed structural reforms. This is not to suggest that the situation is perpetually the same everywhere, but the fact does remain that the basic rationale of creating a system of tribunals in governance is its intellectual strength as a domain specialist.

1.1.13. Situating the Role of Public Sector Undertakings in Governance

The role of the public sector in a country's polity is best understood through its economic history. In the case of India, for example, we shall have to deconstruct the industrial policy documents—of 1948, 1956, 1977, 1980 and 1991—to understand the legacy and the challenges. Legacy today is that there is a huge public investment in the public sector undertakings (PSUs) in India. Challenge is to prudentially use it for the strategic needs of the country.

The question of harmony in a country's mixed economy is also there. Socialist vision of industrial development stresses on 'the people' holding the ownership of the strategic means of production (through the state) to achieve (a) optimum employment, (b) proper wages, (c) fair prices and (d) balanced sectoral, social and regional growth. Policy mindset in India till 1991 was, by and large, along these lines. The mindset changed when it was realized that (a) the notion of 'command from the government' in today's market-driven globalized world is maintainable in a country only up to a limited extent and (b) public interest anywhere is served only when public investments reap intended outcomes. Net policy result, therefore, has been to retain PSUs (with performance monitoring and reforms), but not rule out the eventuality of disinvestment on merit. Equally important has been the opening of the market for competition and limiting the area of public sector reservation to (a) strategic areas like defence equipment, (b) exploration and exploitation of oil and mineral resources, (c) essential manufactured goods, (d) technology development and (e) building of manufacturing capabilities in crucial areas.

1.1.14. Administrative Identity of the Regulatory Framework

Governments of all countries regulate in the interest of economic efficiency, fairness, health and safety. The only difference is the extent to which they go in this direction. So there are different regimes of regulation and the modes. Nonetheless, most uses of the term 'regulation' share a common structure: a subject (e.g., the state or a specialized agency) regulates an object (e.g., the

economy, firms or citizens) by means of certain instruments (e.g., laws or norms). In a political economy, the state can impose rules to govern the micro-level conduct of firms and individuals or, alternatively, make broad adjustments to macro-level policy instruments such as taxation and interest rates. In public policy, the state can promulgate targets or rules in an attempt to ensure policy actors conduct themselves in certain ways or move towards certain goals.

With such a wide range of regulatory options, what matters finally is the amount of faith a government puts in the 'self-correcting capabilities of the market'. The financial crisis of 2008 badly exposed this defining idea of market fundamentalism and highlighted the need for a well-structured regulatory framework to detect warning signals and cracks in the path of growth, corporate management or government policies.

There is a complete realization now that regulatory frameworks can function properly only when they are designed to serve their sectors with fairness, competence and autonomy. A clear administrative identity of regulatory agencies in the governance of nations, therefore, is needed to assure people that regulation is insulated from capture or interference and is manned by domain experts of courage and conviction.

1.1.15. Strength of the Vigilance Institutions in Governance

Governance structures perform primarily on the strength of resources, but institutions also have to be simultaneously built to check misconduct, imprudence or fraud. All systems do have in-built vigilance arrangements, question is of their net impact on improving things. The issue of the net strength of vigilance institutions in a nation is raised from this concern. The concern also assumes significance from the corrosive impact of corruption on the rule of law, democracy and society.

Institutional architecture of vigilance management is fairly well known by now. In India, we find three types of institutions: (a) Lokpal and Lokayuktas, (b) Central and State Vigilance Commissions and (c) Central Bureau of Investigation (CBI) and State Anti-corruption Bureaus (ACBs). All are outcomes of statutes passed by the central or state legislature, depending on the jurisdiction. The central acts—(a) the Central Vigilance Commission Act, 2003, giving the Central Vigilance Commission (CVC) a statutory status, (b) the Delhi Special Police Establishment Act, 1946, creating CBI and (c) the Lokpal and Lokayuktas Act, 2013—are drafted with greater vigilance and consciousness than the acts at the state level. The institution of Lokayukta, which functions in the states, is kept weakly empowered, and vigilance commissions are functioning in only a few states. CBI and ACBs work under secretariats and need appointing authority's sanction to prosecute, in certain states even to begin a probe. Success rate of anti-corruption cases in India is poor.

1.2. ETHICAL DIMENSIONS OF EXECUTION AND MANDATE DEVELOPMENT

Among the three branches of government, the first likely to face erosion of trust in democracies is its executive branch. Reasons for this are many: its spread (from national capital to village), its mandate (execution of laws and policies), its discretionary power (to handle procedural justice) and

its intellectual worth (in co-creativity). Building trust through administrative ethics is, therefore, important. In fact, it is a crucial historic task.

Distribution of power within the executive branch of the governments varies nationally. In India, administrative action is subject to judicial review, and de facto apex executive power—centre (the Cabinet)—is accountable to House of the People. It is a fair arrangement of power, aided by merit-based manpower (the bureaucracy). Sovereignty lies with the people in whose interest everybody is supposed to serve.

Despite an excellent arrangement of executive power in its Constitution, governance in India has its highs and lows. Experts have studied them—strengths, weaknesses, opportunities and threats—and suggested reforms in systems, procedures and supervisory vision. So reform inputs, too, are not really a problem. Problem is to rise beyond the self and sincerely respond on the crisis points of execution and mandate development. It is a problem of ‘man behind the machine’—an ‘ethics’ problem of (a) integrity, (b) aptitude, (c) competence, (d) public interest orientation, (e) empathy and (f) prudence.

1.2.1. Integrity

‘Integrity’ is a widely used word in administrative reform discourse. The need, however, is to understand it conceptually. It should also be understood with reference to another word used in similar contexts, that is, ‘honesty’. An honest person never hides the truth and does not steal or cheat. There are many such persons in public service. A person with integrity is honest and has other qualities as well. These ‘other qualities’ arise out of his/her completeness as an emancipation-conscious principled social being, which do not allow him/her to break under the adversities of life or absurdities of the system over him/her. Such persons are also there in public service, but a few.

In the realm of philosophy, a life with integrity is a self-examined socially committed moral life and an integral part of one’s formed character that does not bend with any undue pressure. It is a mindset that is conscientious, fair and empathetic and not of just being legally correct. In his *Dictionary of Philosophy* (2008, 187), Cambridge University Professor Simon Blackburn has defined the word ‘integrity’ as a philosophical concept:

Most simply a synonym for honesty. But integrity is frequently connected with the more complicated notion of a wholeness or harmony with the self, associated with a proper conception of oneself as someone whose life would lose its unity, or be violated by doing various things.

This definition has a correlation with the writings of eminent philosopher, Bernard Williams, on integrity. In his classic book on moral philosophy, *Ethics and the Limits of Philosophy* (1985, 193), he has provided a basic insight when he says that the important thing about morality is in its spirit, its hope, its underlying aims and a general picture of life it implies. Integrity can be a thrilling opportunity for life, provided men at the helm of affairs in public administration value and nurture it.

While integrity as a personal virtue of individuals in public administration needs to be valued and nurtured by the supervisors of power, the work of ethics crafting in systems does not stop by respecting the dignity of virtue of individuals and keeping a few such persons in key positions.

Next step would be to bring integrity into the system through structural reforms (e.g., autonomous vigilance agencies, ombudsman and administrative procedure act), impartial enforcement (e.g., tax surveillance bodies, prosecution of breach of trust crimes and conduct–rule management in services), ethics management training (on government roles and behaviour) and incentives (in the form of placements, positioning and protection). An ethical system of duty-based morality in public administration can be created but can only be retained till the Cabinet of the elected governments want it. In short, fate of ethics in public administration depends on the courage and conviction of its de facto apex executive body (the Cabinet). There has to be an intent to change from the top.

The issue of the integrity of the Cabinet brings us to a discussion on the (a) functioning of the political parties in legislatures, (b) strength of the sovereign will formation in spaces of public concern outside and (c) the Cabinet as regulator of determination in governance. Conceptually, these are the issues of political accountability in which legislatures and the Cabinet have to work together in public interest. Reality, however, is different, and the magnitude of difference primarily depends on the ethical worth of the party in power (in terms of the level of intra-party democracy, social base and vision, aversion to persons with criminal record and extent of funding transparency). Parties in legislatures are supposed to highlight the concerns of the people and work out solutions and interventions. In reality, however, there is a huge performance deficit on core constitutional values and governance standards. There is also evidence of deviance in the behaviour of the elected representatives and, to that extent, erosion of trust in democracies.

Public opinion on public administration matters gets expressed in democracies through the channels of liberty—media, associations, campaigns, knowledge-articulation and movements of protest. Legislatures have the duty to screen them constitutionally and draw the attention of the ministers to appropriate administrative action. On the other hand, the Cabinet has a duty to take a holistic view on them (techno-financial, legal and administrative) and come up in the legislature to justify their decision on them. The whole process, thus, is of ethics of discourse in which the executive branch of the government is made explicit and accountable on issues of public concern. Some scholars have gone into the impact side of this process and highlighted the tactical aspects of opportunistic floor management in legislatures. They have also commented on the quality of discussion in legislatures on core issues and lack of objectivity in them due to the pressure of their parties to follow a determined line of action. The eclipse on the virtue of discourse ethic, thus, is indeed there and people observe it in full media glare. The same situation prevails in the committees of legislatures, set up to go deeper into the issues.

Under these circumstances, integrity surveillance of the elected representatives assumes significance and can no more be neglected or compromised. A policy review by the World Bank Institute (2004, 1) puts the problem in global perspective:

In the course of the past decade, citizens' satisfaction with democracy in the developed countries has markedly declined. This decline was caused by interaction of several factors, including the non-responsiveness of politicians, the non-accountability of politicians, and voters perceived loss of political efficacy. Indeed, an increasing percentage of citizens developed the beliefs that politicians are principally concerned with power, that politicians do not care about what people think, and that normal citizens are unable to affect the political decision making process.... Voters' dissatisfaction with parties, politics and politicians, indeed, how democracy works, increased even further when major corruption scandals

were discovered in several established democracies.... These phenomena are fairly well known in the political science literature. Some scholars have even argued that political systems, by discounting voters' political demands, had come to resemble oligopolistic markets.

Measures suggested to improve this situation are many: (a) code of conduct for legislators, seeking declaration of sources of patrimonial income, earned incomes and financial interests, and restrictions on sources of potential conflict of interest with public duties; (b) ethics rules to enforce code of conduct for legislatures by clarifying misconduct and providing for sanctions by the competent authority; (c) ethics committee of legislature to oversee the moral and ethical conduct of members, hear complaints on breach of the code of conduct, tender advice to members on observing ethical standards and recommend reforms in the code of conduct; (d) fast-tracking long-pending criminal cases against the members of the legislatures and (e) effective regulation of campaign finance of candidates and political parties. A lot of paperwork has been done on these issues. A somewhat weak recommendatory framework also subsists here and there across the globe but push of legislative ethics has not done any significant harm to smart unethical operators anywhere.

Representative functions of the legislatures have drawn the attention of the analysts into the dynamics of mandate development in public administration. Ethical concern here is on the quality of the manifestos of political parties circulated while seeking public mandate in elections and sincerity of their implementation and value addition after getting it. From an ethics point of view, therefore, the executive wing of a democratically elected government has three considerations in administrative action: (a) framework of the Constitution, (b) jurisprudential compatibility and (c) promises of the party in its election manifesto. Each of these is equally important in legitimate governance—the first two legally and the third, as a matter of trust of the sovereign. A political party's election manifesto can become an excellent discourse document of intent, specifying plans, strategies and tactics of governance in public interest. It can outshine in contrast and in situations of a coalition necessity, justify a common minimum programme of action. Such an opportunity of trust building, on the other hand, can be lost under the weight of populism, opportunism or ulterior corrupt motives. All, finally, depends on the level of integrity of the party leaders bidding for power and the maturity of the people to see through falsehood.

1.2.2. Aptitude

'Aptitude' is an individual's natural inclination to succeed in a given activity—cognitively as well as motivationally. Required aptitude for 'public service' is in its main activity, that is, 'service'. A public servant is supposed to serve with complete dedication, rectitude and humility. It is a sacrifice-based relationship. As a corollary, therefore, public service does not need persons not inclined to work with complete dedication, rectitude and humility or see people with a class bias. This is the reason why aptitude tests are taken for civil service recruitment examinations and political parties are criticized for giving party tickets to persons lacking in service aptitude. It is also important to mention here the vision of Mahatma Gandhi on the value of service aptitude in the purification of the self: 'The best way to find yourself is to lose yourself in the service of others.'

Aptitude for 'service' is not the only prerequisite for public service. Public service can be a tough stressful task unless one temperamentally enjoys working for emancipatory interests and prefers working without fear or favour. Nations need public services run and led by moral minds and can be quite assertive about it. Ego integrity in steering and powerholding, therefore, is the second personality characteristic required in public service. Marx was not wrong when he found state structured egoistically. Functional history of state power till now has testified it. Rigidities of entrenched power in the organs of the state are a daily human experience and bitterly fought turf wars among them also do not remain hidden within the four walls of the power centres. A lot of systems thinking, thus, is needed to bring in a culture of transparency and fairness.

Aptitude for transparent relationships is the third prerequisite for persons handling public sector. Numerous public sector crimes and misconduct have been planned and executed under the veil of secrecy. A government of secrecy injures the people it seeks to serve, damages its own integrity, breeds distrust, dampens the fervour of its citizens and mocks at their loyalty. Uninformed citizens can never really be free. Therefore, public service should be supervised by persons who understand the intrinsic worth of transparency in democratic governance and fully honour people's right to information and grievance redressal. Temperamental inclinations of such persons should be strengthened by in-service training to make them understand the values of the rights-based approach to law and justice in which access to public documents is the right of the citizens (except on a few security issues) and a key indicator of legitimacy in governance.

Weber justified bureaucracy on the strength of the argument that it can craft a system of legal-rational authority. It is true, but as Herbert Simon has pointed out, bureaucracy's capacity to craft rational systems and procedures is in practice a 'bounded rationality', circumscribed by (a) ambiguously defined problems, (b) information about alternatives, (c) inadequate assessment about the consequences of perceived alternatives, (d) insufficient inputs on the rage of vested interests and (e) constraints of time. Therefore, it is necessary to recruit future decision-makers after testing their aptitude for seeing issues with a sense of proportion. A sense of proportion in decision-making enhances social acceptability, is a firmer step towards justice and a system-building move towards rationality as well. Properly recruited and trained bureaucracies can aid political executives in setting up a humane legal-rational order, provided they have space to act.

Studies on the structure of decision-making in contemporary governance have focused on certain ministerial responsibilities in systems: (a) leading the department, (b) participating in the Cabinet and (c) giving commitments in the legislature. All these are delicate administrative functions, requiring a deep understanding of cross-disciplinary policy inputs and high emotional resilience to handle complex issues surfacing with high frequency. To perform such critical functions, governments need systems in which 'the wisest govern the multitude, so long as it is certain that they will govern its advantage and not for their own' (Rousseau 1762). Problem, however, is that even today it has not been possible to fully filter the entry of the 'inappropriate' from the political leadership in governments. The extent to which they occupy the apex positions of administrative power subsists the problem.

Psychological research on administrative leadership qualities has highlighted some basic personality traits: (a) energy level, (b) sociability, (c) impulse control, (d) self-esteem, (e) inner reflection, (f) accuracy, (g) communication power, (h) trust generation, (i) task orientation, (j) role clarity, (k) prudence, (l) decisiveness, (m), persistence, (n) resilience, (o) fairness and (p) co-creation. Problem is that (a) these human qualities have not been adequately institutionalized

in public administration, (b) proven insights from organization theory and political psychology have not made any impressive entry into the induction training strategies of public administrative systems and (c) it has not been possible in the personnel management units of administration to systematically discipline egocentric or malicious behaviour of a number of public servants.

Impediments in setting up a value-based manpower support system in public administration are primarily two—bribery and mediocrity. Both affect the system by building a perverse nexus of like-minded officials and supervisors up to the highest possible levels. Once managed, such instances multiply and escape routes are created to craftily sabotage the entire regime of ethics in supervision. Therefore, a legitimate public administration needs a totally impartial assessment and promotion personnel system of choosing and posting supervisors in bureaucracy, and a robust vigilance and ombudsman system for top-level public servants. The Supreme Court of India has come up with some sincere structural solutions on these issues in four landmark judgments: (a) *Vineet Narain & Others v. Union of India & Another* (18 December 1997), (b) *Prakash Singh & Others v. Union of India & Others* (22 September 2006), (c) *Dr Subramanian Swamy v. Dr Manmohan Singh & Another* (31 January 2012) and (d) *T. S. R. Subramanian & Others v. Union of India & Others* (31 October 2013). We will discuss these judgments later, but at this point, it is only pointed out that the matters discussed in these cases and the lukewarm implementation of the orders in these judgments by the government do not speak well on the personnel and vigilance management practices in our country. Value-centred inclinations of the public servants have to be nurtured in the system and there should be absolutely no tolerance of mediocrity or fraud anywhere.

A major article by Yale University Professor Susan Rose-Ackerman (2001) has conceptualized the rationale of trust building in state systems quite well:

As Mark Warren points out, governments are needed in just those situations in which people cannot trust each other voluntarily to take others' interest into account. The state is a way of managing interpersonal conflicts without resorting to civil war. (p. 28)

Large democracies govern themselves through political representatives and other kinds of agents such as bureaucrats and judges. Because elected representatives cannot be perfectly controlled by voters, the electorate must have some level of trust in those it elects. Similarly, bureaucrats and judges must also have considerable discretion. The more they can be trusted to fulfill their role willingly, the fewer the resources needed to monitor and discipline them, and the more discretion they can be given. (p. 40)

To proceed with the discussion of trust in the reliability and fairness of government agents, I consider an important case where such trust breaks down. If officials are corrupt, they betray the trust bestowed on them by the citizenry and act in a way that favors those who make payoffs and those with whom they have a reciprocal trusting relationship. Understanding the incentives for corruption and the ways it can be controlled help one see how government legitimacy might be achieved. (p. 44)

Trust building through public administration in democracies is achieved through the combined efforts of civil and political leadership at all levels. It is a huge endeavour in which a corruption-free environment is the first requirement. There are four other prerequisites—truth, justice, discursivity and empathy. They are all aptitude-based personality traits. A good personnel management system keenly inducts persons with such values, allows them to grow morally, trains them appropriately and protects them from vested interests. Where it does not, trust

deficit occurs. The executive branch of the government is structurally the most visible and proximate branch for the people in a service area. It also has a sizeable manpower presence to carry out critical existential functions in society. It must, therefore, do its utmost to recruit, retain and develop the best from the society.

1.2.3. Competence

Governments run on the strength of institutional trust and professional competence. They have, from people's point of view, five basic knowledge-management tasks: (a) implementation of the Constitution, (b) value for money, (c) human development, (d) management of change and (e) national security maintenance. Sincere handling of these, together, gives governments a firm competitive edge. Allied to these are mandate-specific skills of implementation management. At the policy level, public administration needs persons with high analytical power and articulation to comprehend complex ground realities and cross through the intense public discourse process.

Governments acquire knowledge-management competence primarily through its civil service which (a) puts up interdepartmental policy briefs to the Cabinet as pieces of neutral advice, (b) provides policy feedback from the field administration, (c) coordinates with the expert bodies and (d) interacts with the committees of legislature, the tribunals and the courts. The members of the Council of Ministers interact with the legislatures directly and respond to the queries from the press and the public. Conceptually, the whole process is experiential learning and the policy process primarily evidence based.

There are several ways of strengthening knowledge-management core competencies in public systems: (a) training, (b) exposure to innovation and best practices, (c) e-governance, (d) monitoring methods and concurrent evaluation, (e) impact assessment, (f) risk assessment and contract management and (g) deconstruction of the lived world. We will take them up for discussion, sequentially.

A proper training should provide role clarity and bridge the performance gap in terms of knowledge, skills, attitudes, work discipline and ideological vision. Strategy of human workforce training in systems is often an ideological tool to achieve alignment with the objectives of the salary provider. In governments, the salary comes from public funds and ideological source for alignment, therefore, is the Constitution of the country. Public service training has to be in complete alignment with the constitutional duties and protection and not aimlessly be thrown into the high tides of outsourced experimentation of the markets. It should have a national public service training legislation, covering probation to superannuation, in adequately empowered and accountable training institutes of governments. Texts of the National Training Policy should be able to answer the queries of Dwight Waldo (1948, 101–102):

If there is a distinct 'administrative function', what precisely is the nature of this expertise? How should these experts be recruited; how are they to be trained; what, precisely, is the relationship of their curriculum to their functions? Is the expertise of the administrative class merely another example of functionalism, or does it differ in kind from the functionalism characteristic of the civil service as a whole? What is the relationship of the idea of civil service neutrality to these questions? These are not irrelevant or captious questions. They are things we are entitled to know about our new ruling class.

When we examine India's National Training Policy documents (1996 and 2012) in the light of Waldo's concerns, we find the essence missing. They have weak policy thrust (no mention of curriculum reform mechanism, constitutional ethics enforcement and approach to professional deviance) and no critique of the lessons learnt from administrative experience (e.g., neoliberal policies, 2008 fiscal crisis, audit reports, vigilance trends and social impact assessments). In the 2012 National Training Policy document, tactically, everything had been left to the departments. They are expected to prepare (a) cadre training plans, (b) set aside 2.5 per cent of the salary budget to be used solely for the purpose of training and (c) make the immediate supervisor responsible and accountable for the training of the staff working under him/her. There is a mention of the state training policy documents as executive instruments, not as discursive and legally accountable pieces of legislation.

Taxation, expenditure and audit are the core competencies required from public servants. Together, they form a framework of democratic accountability in which the executive branch of the government spends public money to serve public interest, taxation and appropriations are the domain of the House of the People, and the constitutional authority responsible for the audit of public accounts (Comptroller and Auditor General [C&AG]) reports to the legislative wing of the government for appropriate action. Entire concern in such a system is on 'taxation and expenditure justice', with a discerning eye on value for money. Professionally, it is a highly evolved and ideologically contested field of financial analysis in which models, methods and toolkits abound. Professional competence lies in the capacity to choose appropriate ones for application and firmly reject approaches that deny justice to persons situated at the bottom of the social pyramid.

Competence-seeking organizations take their accountability gaps seriously and introspect on methodological solutions. There is a flourishing market of consultants offering management solutions and toolkits, more appropriate for conducting efficient business than for selfless public service. Even then, there are some time-tested concepts in public management: (a) Tax-to-gross domestic product (GDP) ratio (to understand narrowness of tax base, tax avoidance and tax evasion), (b) accrual system of accounting (to understand realistic value of financial flows), (c) Fiscal Transparency Code (to observe International Monetary Fund's (IMF) norms of public disclosure on the design and results of fiscal policy), (d) Financial Responsibility and Budget Management laws (to improve fiscal discipline), (e) system of performance audit (to assess implementation processes and outcomes), (f) evidence-based policymaking (to build a system of impact evaluation and outcome monitoring for public policies), (g) social audit (to get stakeholders' feedback on public service quality), (h) citizens' charters (to guarantee rights-based and time-bound public service delivery), (i) public-private partnership (PPP; to augment public project funds from private investors) and (j) devolution of power (to bring governance closer to the community).

Executive competence is nurtured in the USA under the strategy of the Government Performance and Results Modernization Act of 2010. The process begins with identification of competencies needed to get desired goal orientation, analytical power and work efficiencies in systems and procedures. It is an in-depth professional review process which gets finalized in the United States Office of Personnel Management at Washington DC. The latest List has following competencies and the level added with each: (a) written communication (writing in a clear, concise, organized and convincing manner for intended audience); (b) vision (taking a long-term view of and building a shared vision with others); (c) team building (inspiring and fostering team

commitment, spirit, pride and trust); (d) resilience (dealing effectively with pressure, remaining optimistic and persistent under adversity and recovering quickly from the setbacks); (e) partnering (developing collaborations across boundaries to build strategic relationships and achieve common goals); (f) leadership (influencing, motivating and adapting to situations); (g) accountability (holding self and others accountable for measurable high-quality, timely and cost-effective results); (h) attention to detail (thoroughness in performing work and conscientious about attending to details); (i) compliance (knowledge of procedures for assessing, evaluating and monitoring projects or programmes); (j) conflict management (managing and resolving conflicts and disagreements in a constructive manner); (k) change management (knowledge of change management principles, strategies and techniques required for effectively planning, implementing and evaluating change in the organization); (l) decision-making (making sound, well-informed and objective decisions); (m) financial analysis (knowledge of the principles, methods and techniques of financial analysis); (n) information management (organizing and maintaining information or information management systems); (o) performance management (knowledge of the principles and methods for evaluating programme or organizational performance); (p) project management (knowledge of the principles, methods or tools for developing, scheduling, coordinating and managing projects and resources); (q) strategic thinking (capitalizing on opportunities and managing risks); (r) technical credibility (understanding and appropriately applying principles, procedures, requirements, regulations and policies related to specialized expertise); (s) legal competence (knowledge of laws, court procedures, precedents, government regulations, agency rules and executive orders); (t) external awareness (interest in the advances of interdisciplinary knowledge and its likely impact on organization); (u) flexibility (to handle rapidly changing conditions or unexpected obstacles); (v) interpersonal skills (showing understanding, empathy, concern, tact and positivity); (w) oral communication (logical and articulate expression); (x) persuasiveness (power of gaining cooperation from others) and (y) innovativeness (developing new insights into situations and questioning conventional approaches).

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1.2.4. Commitment to Public Interest

Public service is a commitment to protect public interest. It is a professional commitment to be honoured at all costs. Questions are two: (a) what constitutes 'public interest'? (b) who determines it? These questions assume further significance in the context of a very wide zone of consideration awaiting proper state intervention in difficult circumstances.

Realizing that there cannot be a definition of such concepts, the approach has been to define what certainly is not 'public interest', and then leave the rest to the facts of the case. In the UK legislation on 'public interest disclosure' (the Public Interest Disclosure Act, 1998, Section 43B) this approach has been adopted by permitting public interest disclosure in the following cases:

In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

- (d) that the health or safety of any individual has been, is being, or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

Crimes, failures to fulfil legal obligations, miscarriage of justice, damage to environment and acts of deliberate concealment cannot be called acts done in public interest. One concrete way, therefore, to serve public interest is to curb instances of such nature.

Another way to further public interest is to infuse 'rights-based moralities' into the administrative system. There are several instances of this approach in India: (a) the Right to Information (RTI) Act, 2005; (b) the National Rural Employment Guarantee Act, 2005; (c) the Right of Children to Free and Compulsory Education Act, 2009; and (d) the National Food Security Act, 2013. Some states in India also have right to public service delivery of goods and services legislation. In addition to these are the international treaties which India has signed and ratified: (a) the United Nations (UN) Convention on the Rights of the Child, 1989, and (b) the Convention on the Rights of Persons with Disabilities, 2006, being important examples. The basic approach of these instruments is to deepen human rights commitments of the Constitution and strengthen resource claims in implementation. Rights-based moralities into the administrative systems also get strengthened through the landmark judgments of the courts in fundamental rights' cases. Jurisprudential flow from the Supreme Court of India is a testimony on this where we see an expansive approach on right to life, equal opportunities and free speech. Finally, there are administrative law safeguards to ensure fairness in contestations.

The most important challenge in maintaining public interest commitment in public service, however, comes in the form of ideological permutations and combinations. Institutions can be held accountable or reformed, but ideologies in the mode of policy advice can emerge from anywhere, destabilize systems, cause extreme hardships and then vanish without owning any responsibility. The Global Financial Crisis of 2008 shows exactly this. Nobel Laureate Joseph Stiglitz (2011, 3) expands the theme and concludes:

Just a few years ago, a powerful ideology—the belief in free and unfettered markets—brought the world to the brink of ruin. Even in its heyday, from the early 1980's until 2007, American-style deregulated capitalism brought greater material well-being only to the very richest in the richest country of the world. I was among those who hoped that, somehow, the financial crisis would teach Americans (and others) a lesson about the need for greater equality, stronger regulation, and a better balance between the market and government. Alas, that has not been the case. On the contrary, a resurgence of right-wing economics, driven, as always, by ideology and special interests, once again threatens the global economy—or at least the economies of Europe and America, where these ideas continue to flourish.

It is also relevant to mention here that the Financial Crisis Inquiry Commission, set up under the Fraud Enforcement and Recovery Act to 'examine the causes of the current financial and economic crisis in the USA', in its report (January 2011) concluded that (a) this financial crisis was avoidable; (b) widespread failure in financial regulation and supervision proved devastating to the stability of the nation's financial markets; (c) dramatic failures of corporate governance and risk management at many systemically important financial institutions were a key cause of this crisis; (d) a combination of excessive borrowing, risky investments and lack of transparency put the financial system on a collision course with crisis; (e) government was ill prepared for the crisis, and

its inconsistent response added to the uncertainty and panic in the financial markets; (f) there was a systemic breakdown in accountability and ethics; (g) collapsing mortgage-lending standards and the mortgage securitization pipeline lit and spread the flame of contagion and crisis; (h) over-the-counter derivatives contributed to the crisis and (i) the failures of credit-rating agencies were essential cogs in the wheel of financial destruction. Despite these commissions and omissions listed in the 662-page final report, no action against any individual was taken because of the neoliberal hegemonic belief that it was a systemic problem of business cycles.

Lessons for governments from the recent Global Financial Crisis are many. Regulation of the market is needed. Autonomy of the regulatory agencies, too, is needed. They should be put under the system of judicial review to ensure fair procedure and transparency norms. Legislatures should perform their duty of analysing the reports of these agencies from systems point of view. They can involve government departments and expert bodies in discussions. More important is to bring in accountability into the public policymaking process by keeping the agenda evidence based, risk conscious and genuinely open. Stiglitz is right when he talks of maintaining a balance between the market and government. Entrepreneurial energies of nations deserve to be fully encouraged by governments, but it should be seen at the same time that no group unfairly influences government's allocative functions of public taxation. Governments are duty bound to maintain macroeconomic stability; they can also not afford to neglect rule of law maintenance or overlook their duties towards persons in need of care and protection.

1.2.5. Empathy for Human Suffering

Good governments are loyal to their social base and, therefore, take aspirations and sufferings seriously. They take due care of law and finances but know with utmost clarity that ultimate creative excellence in statecraft lies in handling challenges of 'undeserved want', a term precisely and consciously used in Article 41 of the Constitution of India. Article 41, a Directive Principle of State Policy, has given examples of undeserved want—cases of unemployment, old age, sickness and disablement—and said that the state in India shall provide public assistance in such cases. No elaboration was needed to clarify that 'assistance' in this context was meant to be methodologically correct and sufficient enough to pull out a cooperating individual from the situation of suffering. It was also clear that the attitude of the government agency in the process would be empathetic and the agency shall be capable of handling complex problems of transition from circumstances beyond control.

Other important stipulations on emancipatory interests are in Articles 39, 42 and 43 of the Constitution. The state shall, says Article 39, direct its policies towards securing that (a) the citizens have a right to an adequate means of livelihood, (b) the ownership and control of the material resources of the community are so distributed as best to subserve the common good and (c) the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Article 42 is on just and humane conditions of work and Article 43 on living wage for workers. Article 39(e) stipulates that the state shall direct its policy towards securing that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. These directive principles of state policy subsist since 26 January 1950, and standard reason advanced to cover performance deficiencies has been to point to

the first part of Article 41 which puts 'public assistance' subject to the 'limits of economic capacity and development'.

Since 1950, India has acquired an impressive competitive edge among nations in many parameters of overall growth but has not done well in almost all concerns expressed in Articles 39, 42 and 43 of its Constitution. A large portion of population lives below the poverty line, unemployment rate is high, work structure is fragile and income inequalities are rising by the day. Far too many of our people lack the basic requirements in terms of nutrition standards, basic health and access to worthwhile education and to other public services such as water supply and sewerage. Social care and protection infrastructure rests on weak public investment foundations, food prices are high, and residual welfare and systematic disaster management efforts have just begun. There is a substantial unaccounted wealth in society and corruption in public services, by and large, runs smooth with patronage and escape routes. It is, in a nutshell, a growth point of 'uncertain glory' in the administrative history of India which Amartya Sen has so well described in his recent book (Drèze and Sen 2013).

In other words, loyalty to social base is a problem of governance in India. Human suffering is a problem in contemporary Europe as well, but there is a difference. Problems in Eurozone emanate from the structural weakness of political economy in which, as London School of Economics Professor Paul De Grauwe (2015) has pointed out, sovereign debt crisis is being handled by weakly designed central banks of indebted nations in an atmosphere of highly rigid national mindsets on debt recovery. India's central bank (i.e., the Reserve Bank of India [RBI]) has adequate functional space to manage monetary control and has requisite sovereign backing of the government to take counter-cyclical measures. India does not have a debt burden and has its fiscal-management capabilities intact. Weaknesses of India lie in its (a) huge unaccounted wealth, (b) entrenched poverty, (c) increasing inequality, (d) collusive corruption and (e) high proportion of joblessness. The problem of the suffering people, under these circumstances, is to grasp the actual intent of the governing elite and assert sovereign will as an uphill task.

1.2.6. Ethics of State Intervention

Fairness in state intervention for growth and stability can be achieved only through a balanced approach towards capital and labour. Contributions of capital and entrepreneurship in human development can never be ignored, nor the issues relating to rights and entitlements of labour in society. Both are important for the state, which ultimately has to regulate factors of production in the market in precise terms and furnish reasons for decisions. Legitimacy of governments gets determined primarily on the strength of fairness established through these justifications. In practice, governments intervene as per the calculus of interests dominant on them, but they are not fully free. Mandates of the Constitution have to be kept in mind and can be sidetracked only at the cost of legitimacy in the eyes of the people. We see such a situation in India, where the Constitution is fairly explicit on principles of state policies and their objective ends are mentioned in the Preamble in unmistakable terms. There is also the jurisprudential support of these through the doctrine of 'basic structure' which makes Articles 39, 42 and 43 of the Constitution of India ethically important in state intervention.

State intervention experienced a policy turn in 1991, when India approached the World Bank for Structural Adjustment IBRD Loan of US\$250 million and US\$250 million IDA Credit to

help the country cope with an unprecedented balance of payments crisis. The loan and credit were approved and credibly repaid. However, India had to commit to support a broad-based policy reform set, aimed at liberalizing its economy and opening it up to more competition, both from home and abroad. It was also asked to simultaneously undertake, under the aegis of an IMF programme, complementary stabilizing policies that contained an aggressive set of neoliberal conditionality clauses containing triple missions of liberalization, privatization and globalization. This gave the executive wing of the government in India space for crafting (a) fiscal discipline, (b) removal of interest rate distortions, (c) transparent regulation of capital markets, (d) deregulation of industry and trade, (e) rationalization of exchange rates and (f) foreign investment promotion. It was a determined pro-market shift in state intervention.

There has been, in recent years, a wave of neoliberal policy advice to carry out ‘reforms’ (a) in land acquisition processes and (b) in labour market to invite faster investment. Anybody who understands India knows too well that land and labour are issues of existential importance for a vast majority of its people, unrest on agrarian relations and rural land markets has a deeply held base in history and there is a cherished history of intense struggle against exploitation of labour for unconscionable gain. Conscience of India is still pro-poor, pro-worker and in favour of fairness in land compensation. Result is that intervention proposals in land and labour markets are seen with utmost caution on gains and losses in class terms. There is also a widespread belief that India, as a country, predominantly of peasants and workers, needs a strategy of wage-driven growth in which ‘productivity gains are distributed in a way that allows labour income to grow at the same rate as productivity’ (UNCTAD 2010). This is the reason why second-generation neoliberal reforms, despite intense global pressure and domestic lobbying, are awaiting legislative consideration in India. 2021 is not 1991; India has learnt its lessons by now and its polity is more conscious of the cost of rushing through public policy decisions on foundational social concerns. After the Global Financial Crisis of 2008 and its aftermath, the neoliberal paradigm of governance advice has lost its sheen and ideological vigour everywhere and India has noted it. Democracy, in short, is in its active phase in India and asserts efficaciously. We can see this in the now-discarded Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015, or in the legislative creativity shown in the passing of the Constitution (One Hundred and Twenty-second Amendment) Bill on GST recently.

The pace of progress on neoliberal labour reform proposals in India since 1991 conveys a lot on institutional factors. Labour and labour welfare are in the Concurrent List of the Constitution of India, so any amendment to the subsisting labour welfare laws requires tougher scrutiny, greater consensus effort and a much wider human rights discourse. Besides, there is a credible context of labour history of human emancipation in India which the holders of powers can ill afford to ignore; it is an issue of legitimacy in democracy. Amidst the concerns of historical legacy and deep-rooted public perception, the neoliberal card of ‘market distortion’ has not so far worked in India beyond a point of accepted point of efficiency. In the year 2014, a state government (Rajasthan) succeeded in amending a few provisions of three labour laws under the argument of business promotion, but it was a cautious small step. By and large, prudence on such issues has prevailed under the counter weight of Indian democracy and its discourse ethic. India has always been conscious of its labour profile in demography, which essentially means millions of impoverished job-seeking persons in the organized sectors of the economy awaiting equality of opportunity in the democratic set-up.

1.3. STRENGTH OF ETHICS IN LEGISLATION

Amidst numerous conceptualizations of law, morality, sovereignty and legislative process, we can begin with the core issues highlighted by Philosopher Jürgen Habermas (1986):

A legal system does not acquire autonomy on its own. It is autonomous only to the extent that the legal procedures institutionalized for legislation and for the administration of justice guarantee impartial judgment and the channels through which practical reason gains entrance into law and politics. There can be no autonomous law without the realization of democracy.

It is an important statement in which each word has a condensed meaning, explained in detail in his masterpiece of 1992 (*Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*). Institutionalization of legal procedures for legislation is normatively the core highlighted issue and establishing a legitimate regime of justice and public reason is an associated issue.

Ethics in legislation, therefore, is a quest for incorporating fairness and public reason into the system through the medium of law. It is a quest because interests are many, they compete, and discourses on the validity of norms are not easy to settle. We will try to understand these issues with the help of concrete examples from contemporary India on law-making discursivity.

1.3.1. Constitution (Seventy-third and Seventy-fourth Amendment) Acts, 1992

The Seventy-third and Seventy-fourth Amendments to the Constitution of India, which aimed at a fundamental shift in the nature of governance, were passed in 1992 and came into effect in 1993 amidst high expectations. Expectations were high because India had succeeded in giving constitutional status to its local governments with well-drafted enabling provisions on structures, functions, empowerments and accountabilities. So the first step had been taken with vision and care. How effective have been the subsequent steps?

We can get authentic answers from five sources: (a) Tenth, Eleventh, Twelfth, Thirteenth and Fourteenth Finance Commission Reports, (b) Sixth Report of Second Administrative Reforms Commission, 2007, (c) reports of the State Finance Commissions, (d) local audit reports and (e) devolution index reports. If we take the last first, we find the intent of the state governments to delegate functions, finances and functionaries to the institutions of local self-government. In the first devolution index prepared in India in 2009–2010 (with 17 indicators from state governments to panchayats), Karnataka came first and Jharkhand last. Results on devolution index are prepared every year and we get an indication of intent gaps in systems strengthening efforts. Audit reports and reports of the State Finance Commission, on the other hand, highlight performance gaps and level of helplessness at the receiving end. From the angle of evaluation, the Fourteenth Finance Commission Report (2014, 102) is the most eloquent:

In their interaction with the Commission, the representatives of panchayats and municipalities in an overwhelming majority of states mentioned that they faced a paucity of funds for carrying out their own

mandated functions.... In almost all States the local body representatives sought funds for the improvement of basic services—water supply, sanitation, sewerage, storm water drainage, solid waste management, roads and street lighting, parks and playgrounds, burial and cremation grounds. Shortage of staff was another issue highlighted by them in a majority of the States.... In some States, the panchayat representatives expressed the need for further empowerment of panchayats to enable them to function as institutions of local self-government.

The Fourteenth Finance Commission gave 28 recommendations for improving the proper implementation of the Constitution (Seventy-third and Seventy-fourth Amendment) Acts containing (a) postulates of performance-linked grant release, (b) transparent disclosure, (c) periodic self-reporting, (d) electoral reforms, (e) a local body ombudsman, (f) standard setting in audit and accounts, (g) service delivery policy, (h) property tax reforms, (i) risk proofing in contracts and (j) a two-way flow of information sharing between the local bodies and the state government. There is no dearth of ideas, the problem is of intent to systematically decentralize in the spirit of probity and service to the people. Therefore, a good piece of legislation also suffers if it is not implemented in the same ethos in which the chambers of legislature had passed it. It is another matter that these chambers also have the responsibility to correct institutional imperfections through amendments in the original Act after a systems review of administrative action.

1.3.2. Electricity Act, 2003

Electricity acts are important because of the dimensions they touch in our lives—social, techno-financial, operational, regulatory and strategic. The first point to note about India's Electricity Act, 2003, and its 2014 Amending Bill is the ethic of discourse. They are outcomes of a seamless flow of transparent discussions on draft law with sector experts, utilities, independent power producers, regulators, consumer associations, financial institutions, state governments and union territory administrations. The Parliamentary Standing Committee made the consultation wider by inviting comments through public notice and taking them on record. Discourse process took time but the results were enriching, particularly in the context of the worrisome past experience of opacity on Enron contracts in Maharashtra and the World Bank negotiations in Odisha. Attitude now was to sincerely learn and correct an ailing sector through introspection, reform and consolidation.

In India's economic history, this act is a culmination of power sector reforms that started in the early 1990s. The Constitution of India empowers both the central and the state governments to legislate in the electricity sector, with distribution being the exclusive domain of the states. The Indian Electricity Act, 1910, provided the original framework for the electric supply, while the Electric (Supply) Act, 1948, laid the foundation of policy and institutional framework that remained in force until the post-1991 reforms began. The Electricity Laws (Amendment) Act, 1998, recognized transmission as a separate activity for the first time in India. In 1998, the Electricity Regulatory Commission Act was passed, creating a Central Electricity Commission and allowing states to create their own. The Electricity Act, 2003, reflected on the laws in existence and set into motion fundamental changes in policies.

Institutional vision of the 2003 Electricity Act has combined open access and competition thrust. As an act of legislature, this was a foundational change: (a) power generation was delicensed, (b) captive generation policy was liberalized, (c) state governments were allowed to unbundle State

Electricity Boards and create separate functionality accountable companies for generation, transmission and distribution, (d) power trading got recognized as an activity, (e) generating stations got access to the transmission for a fee, (f) distribution licensees got freedom to undertake generation, and generation companies to undertake distribution licence, (g) open access also facilitated consumers to enter into direct commercial relationship with a generating company or trader, (h) tariff was to be fixed premised on commercial viability principles, (i) increased policy role was assigned to the union government and (j) regulatory framework in electricity was mandatorily widened across the country. An important implication of the 2003 Electricity Act was on cross-subsidization: consumers under difficult circumstances could now be subsidized by the governments through their budgetary resources but not at the cost of utility's viability. Viability of the utilities was introduced as a strict prudential norm. Another important implication was on transmission and distribution losses. Beyond the limits of techno-spatial permissibility, transmission and distribution loss was conceptualized as theft of power and stringent measures were prescribed in the 2003 Electricity Act through a detection–prosecution mechanism.

1.3.3. Companies Act, 2013

The Companies Act, 2013, is a major corporate governance reform legislation in India which takes full cognizance of the phenomenon of corporate responsibilities and frauds and understands the rectificatory reform legislations of other countries. Essentially, however, it is an outcome of intense nationwide corporate governance reform discourse in India seeking (a) transparent reporting framework, (b) accountable audit functions, (c) fair, participatory and decisive boards, (d) entrenched managerial ethics, (e) adequate investor protection and (f) wider corporate social responsibility (CSR) contribution. Besides the ministries and the Parliamentary committees, the Securities and Exchange Board of India (SEBI) played a highly creative institutional role in providing evidence-based policy inputs till the drafting of the Bill and settling a few justified stricter corporate governance standards for 'listed companies' after the Bill became an Act. The entire discourse process took time, but the outcome was transformative in several ways.

The Companies Act, in any country, has a wide zone of consideration. Stakeholders in companies are many and not only shareholders, financiers and management. There is an in-built stakeholding of the government and the communities as well, because when companies turn fraudulent or cause financial crisis, entire nation suffers. These varied interests and concerns, therefore, necessitate elaborate crafting in the texts of legislations to bring in a conceptual vision of operational ethics, systematic stability and institutional justice. With a huge and complex architecture of 470 Sections and VII Schedules, the Companies Act, 2013, has achieved these. We can highlight the following specific points: (a) accounting and auditing standards (Section 2(7)), (b) maintenance of books of accounts and other papers in e-mode (Section 2(12)), (c) statutory status to chief executive officer and chief financial officer (Section 2(18) and (19)), (d) inclusion of cash flow statement in financial statement (Section 2(40)), (e) formation of one-person company (Section 2(62)), (f) 15 types of companies (Section 3), (g) global depository receipt (Section 41), (h) prohibition on issue of shares at discount (Section 53), (i) restriction on the reduction of capital (Section 66), (j) prohibition on acceptance of deposits from the public (Section 73), (k) increase in the quorum requirement (Section 103), (l) mandatory inclusion of the minutes

of the meeting of shareholders and creditors, (m) declaration of dividend (Section 123), (n) mandatory consolidated financial statements (Section 129), (o) constitution of National Financial Reporting Authority (NFRA; Section 132), (p) CSR (Section 135), (q) right of member to copies of audited financial statement (Section 136), (r) mandatory internal audit (Section 138) and audit committee (Section 177), (s) power and duties of auditors (Section 139) and auditing standards (Section 143), (t) directors, independent directors and directors elected by small shareholders (Sections 149, 150 and 151), (u) prohibition of insider trading of securities (Section 195), (v) nomination and remuneration committee and stakeholders relation committee (Section 178), (w) establishment of Serious Fraud Investigation Office (SFIO; Section 211), (x) prevention of oppression and mismanagement (Sections 241–246) and (y) punishment for fraud (Section 447).

These are highlights through keywords. They indicate the reform roadmap that the Companies Act, 2013, prescribes on the strength of several discourses. It is true that the real worth of innovative excellence can only be understood in the details of the text of the Act, but it does indicate the range of conduct well enough. Democratic churning is going to improve it further.

1.3.4. Constitutional Amendment on GST

On 8 September 2016, the Constitution (One Hundred and First Amendment) Act, 2016, received the assent of the president of India for introduction of GST in the country; the notification for bringing into force Article 279A(1), with effect from 12 September 2016, was issued on 10 September 2016, and on 12 September 2016, the Union Cabinet approved creation of GST Council and its Secretariat.

Article 279A(1) creates GST Council and entrusts it with huge responsibilities. It is an institutional mechanism comprising a chairperson (union finance minister) and one member nominee from each state government as members. The union minister of state in charge of revenue or finance is also a member. Idea seems to be to make the GST Council body of finance ministers, but discretion of the chief ministers has been kept rather wide: ‘the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government’ provides the range of options to the chief ministers. Nominee ministers from the state governments have been given the power to choose ‘one among themselves’ a vice chairperson of the Council ‘for such period as they may decide’, allowing rotation if needed. One-half of the total number of members of the GST Council is the determined quorum at its meetings and every decision is to be taken by a majority of not less than three-fourths of the weighted votes (central government has one-third weightage of the votes cast and state governments taken together, two-thirds) of members present and voting at the meeting.

The GST Council has been mandated to be ‘guided by the need for a harmonized structure of GST and for the development of harmonized national market for goods and services’. With these objectives in view, the Council has to recommend the following:

(a) The taxes, cesses and surcharges levied by the union, the states and the local bodies which may be subsumed in GST; (b) the goods and services that may be subjected to, or exempted from GST; (c) model GST laws, principles of levy, appointment of GST levied on supplies in the course of interstate trade or commerce under Article 269A and the principles that govern the place of supply; (d) the threshold limit of turnover below which goods and services may be exempted from

GST; (e) the rates, including floor rates, with bands of GST; (f) any special rate or rates for a specific period to raise additional resources during any natural calamity or disaster; (g) special provision with respect to the states of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and (h) any other matter relating to GST to be decided by the GST Council.

Legislative excellence of the Constitution (One Hundred and First Amendment) Act, 2016, lies in the structure of ethics it creates for reaching decisions on a complex tax matter. It is likely to succeed because it is prudent in comprehending the realities of cooperative federalism of India and respects the autonomy of stakeholders. GST is a game-changing reform for Indian economy. It creates a common all-India market and has the potential to reduce the cascading effect on the cost of goods and services. GST Council has the mandate to recommend to the legislature implications of GST on (a) tax structure, (b) tax incidence, (c) tax consumption, (d) tax payment, (e) compliance, (f) credit utilization and (g) reporting; and also has in its zone of consideration business process implications in terms of (a) pricing of product and services, (b) supply chain operations, (c) realistic accounting and (d) e-governance. It will succeed primarily due to the fact that the GST Council has been created as a fully discursive body in the spirit of cooperative federalism: it is not merely a forum of compensation seekers, but an apex recommendatory constitutional entity. The voting pattern of the GST Council is such that the states will play a major role with a two-third share, and though the central government with a one-third share has veto power, decisions will be taken by a three-fourth majority. This takes institutional dynamics of reform on a firm footing.

First meeting of India's Goods and Services Tax Council was held on 22nd and 23rd September 2016, and others regularly since then. The Council has handled some of the toughest issues of public concern with prudence, erudition and mature discursivity. Spirit of harmony has prevailed and an ethos of transparency, too, has never been compromised. These are signals for trust-building in democracy.

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1.4. ETHICAL DIMENSIONS OF ADJUDICATION

'Adjudication'—legal process of resolving issues on claims, offences and breaches—aims at justice through law, but there have been instances of a gap between the two even where law happens to be a legitimate piece of legislation. Philosophers have, therefore, highlighted ethical aspects of adjudication: (a) institutional access, (b) procedural fairness, (c) pace of process, (d) normative framework and (e) quality of mind and character. We shall analyse these issues one by one by taking up the problems in India's context.

1.4.1. Equitable Access to Justice

Access to justice is a universal problem. One has to only read the parable by Franz Kafka (*Before the Law* [German: *Vor dem Gesetz*] 1915) to understand this. The problem gets accentuated with inequality, not just economic but also social and political. To be of use to the suffering people, legal aid and empowerment are needed. There is also a need to make things transparent, comprehensible,

affordable and reliable. Rights, too, have to be taken seriously to provide legal services to even those who have entitlements but cannot themselves claim due to circumstances beyond their control.

The Supreme Court of India has gone a long way to provide solutions to the problem of access to justice. In 1951, it stated that where an accused is disabled from accessing justice due to poverty, it will amount to negation of fair trial (*Janardan Reddy & Ors. v. State of Hyderabad & Ors*, AIR 1951 SC 217). In 1979, it held that an indignant person should have access to quality justice in order for a trial to be fair and just (*Hussainara Khatoun & Ors. v. Home Secretary, State of Bihar*, AIR 1979 SC 1369). In 1981, it held that our current procedural jurisprudence is broad based and people oriented, and it envisions access to justice through 'class action', 'social action litigation' and 'representative proceedings' (*S.P. Gupta v. Union of India & Anr*, AIR 1982 SC 149). In 1984, it entertained a petition even of an unregistered association in a case relating to bonded labourers, observing that the cause of 'little Indians' can be espoused by any person having no interest in the matter (*Bandhua Mukti Morcha v. Union of India & Ors*, AIR 1984 SC 802). On 1 December 1988, the Supreme Court, on its administrative side, issued a notification allowing even 'letter petitions' if they happen to fall under certain categories specified in the notification: (a) concerning bonded labourers and neglected children, (b) atrocities on women, children, the Scheduled Castes and the Scheduled Tribes, (c) petitions from prisoners, (d) petitions against the police and (e) petitions pertaining to environmental matters, adulteration of drugs and food, maintenance of heritage and culture, and other matters of public importance to be determined by the competent Court. On 19 July 2016, the five-judge Constitution Bench of the Supreme Court held that 'access to justice' is a fundamental right guaranteed to citizens by Articles 14 and 21 of the Constitution of India (*Anita Kushwaha v. Pushp Sudan [2016] 8 SCC 509*). It identified four main facets that constitute the 'essence of access to justice' in India and further held that (a) the state must provide an effective adjudicatory mechanism, (b) the mechanism so provided must be reasonably accessible in terms of justice, (c) the process of adjudication must be speedy and (d) the litigant's access to the adjudicatory process must be affordable. Affordability is a serious concern in our country. Article 39A of the Constitution of India provides for free legal aid to the poor and there is in existence a structure of legal services under the Legal Services Authorities Act, 1987, but the net impact of the whole thing is hopelessly thin.

1.4.2. Procedural Fairness in Justice

Procedural fairness is an essential requirement of institutional justice, but fairness in procedure has to be discursively crafted in laws and sensitively handled at every step in a case. In precise terms, procedural fairness in adjudication lies in providing adequate space for natural justice principles: (a) the right to be informed in advance about the factual basis on which the case is to be decided, (b) the right to reasonable time to prepare a response, (c) the right to be fully heard, (d) the right to rebut and cross-examine, (e) the right to be legally represented and (f) the right to reasons for decision. Basic idea is to ensure a rule of law in which people have equality as well as protection to get justice through a set of procedures established by law. Realization of natural justice principles, however, has an institutional context in which state, as a whole, matters: executive to ensure that administrations respect human rights and judicial independence; legislature to introspect deeper on policy exceptions to the principles of natural justice in legislation and judiciary to control aberrations from litigants, witnesses, experts and members from the legal profession.

To ensure procedural fairness in adjudication, codes of procedures have been enacted to cover private disputes of individuals or organizations, and investigation and prosecution of crimes. Methods of alternate disputes resolution have also been developed as civil procedure and there are laws on limitation and standards of evidence. Codes of criminal procedure deal primarily with key human rights issues such as arrest, bail and bonds, custody, police investigation, prosecution, plea bargaining and sentencing. Besides civil and criminal procedure codes, there are special laws of legal procedure for preventive detention, juvenile justice and atrocity cases as well as laws for witness protection and custodial safety. Legislation for procedural justice in adjudication has a credible history of reforms, but the gap between law and justice is still quite wide. A rule of law gets enforced through professions. Holders of governance power in democracies have to see that professionals take rights and justice seriously and conduct themselves strictly in terms of their service rules and professional code of conduct. Finally, the sphere of counter-hegemony in society has to assert effectively to set things right, structurally and functionally.

India has an Advocates Act (1961) and a Bar Council of India to bring in professionally accountable conduct for lawyers. There is also a system of public prosecution in India which got strengthened after an amendment to the Code of Criminal Procedure (Act 25 of 2005) making it possible for the state governments to adopt the prosecution service consisting of a director of public prosecution, district public prosecutors and assistant public prosecutors, but the opportunity to make public prosecution autonomous and capable has yet not quite succeeded. On the autonomy and quality of the police investigation, too, there are directives of the Supreme Court of India, but states have enacted laws in their own way. Under the Constitution of India, 'criminal law' and 'criminal procedure' are subjects in the Concurrent List, and 'public order' and 'police' are in the State List (barring a few specified exceptions). This allows a lot of legislative space to the state governments (and responsibility) to propose or hold back procedural justice reforms. High cost of adjudication (particularly on lawyers' fees) in India's demographic profile and constitutional set up is also an extremely important unresolved justice issue for the people.

1.4.3. Pace of Adjudicatory Process

Courts in India are fair but work under a huge backlog of cases. The problem primarily is infrastructural (inadequate strength), but functional problems also affect the pace of the adjudicatory process. Unreasonable adjournments are one such issue, inadequacies in the quality of evidence presentation another. Policy problem is to see that the quality of judgments does not suffer with disproportionately wide manpower expansion.

Slow and halting pace of India's adjudication process is too serious a problem to be ignored. Delay erodes trust, increases cost of litigation, gives space for mischief, keeps level of uncertainty high and blunts faith in access. It affects enterprise on one hand, and human rights on the other. Worst sufferers are the poor. Justice V. R. Krishna Iyer in a case (*Babu Singh v. State of Uttar Pradesh*, AIR 1978 SC 527) observed the following:

Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from inordinate ordeal of criminal proceedings.

The Sixth Amendment to the US Constitution guarantees the right to a speedy trial to its citizens in all criminal prosecutions. In a case (*Barker v. Wingo*, 407 US 514 [1972]), the US Supreme Court laid down a four-part, case-by-case balancing test for determining whether the defendant's speedy trial has been violated: (a) length of delay, (b) reasons for the delay, (c) time and manner in which the defendant has asserted his rights and (d) degree of prejudice to the defendant which the delay has caused. In *Strunk v. United States* (412 US 434 [1973]), the Supreme Court ruled that if the reviewing court finds that a defendant's rights were violated, then the indictment must be dismissed and/or the conviction overruled.

The Constitution of India does not explicitly provide a right to speedy trial. In *P. Ramachandra Rao v. State of Karnataka* (decided on 16 April 2002 by a seven-member Supreme Court of India Constitution Bench), the court held the following:

It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings.... The Criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such rights than any guidelines. In appropriate cases jurisdiction of High Court under Section 482 of Cr.P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.... This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary quantitatively and qualitatively by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act. ([2002]) 4 SCC 578

1.4.4. Normative Determinants of Adjudication

Keeping a close eye on facts of the case, judgment is reached in adjudication. It is conceived as a collaborative process in which parties, witnesses, investigators, technical experts, sanctioning authorities and lawyers sit with the judge to help ascertain the truth. Above all, however, are normative determinants on the strength of which judges give their verdict. In the process of writing judgments, therefore, the author has to see that the document he/she crafts is (a) logically coherent, (b) legally consistent and (c) rationally acceptable. Merely being perfect on facts and procedure is not enough, it must 'meet the legitimate expectations of the society'—a concept so often used by the Supreme Court of India in recent years and elaborately developed by Ronald Dworkin (1986) and Jürgen Habermas (1992) in legal theory highlighting the role of law in social integration, norms validation and legitimation. At every step in adjudication, therefore, there is a normative requirement of being explicitly rational, on not only facts but norms as well.

Validation of norms in adjudication is important because it provides legitimacy to the system by bringing elements of reason, communication and discourse in democracy. Adherence to precedent is not unimportant nor the intent of laws articulated in the statute, but there is an acute realization in contemporary legal theory to care about the emerging social concerns on justice. Benjamin Cardozo (1961, 173) had talked about a sense of proportion on this in adjudication decades ago:

My duty as a judge may be to objectify in law, not my own aspirations and convictions and philosophies, but the aspirations and convictions and philosophies of men and women of my time. Hardly shall I do this well if my own sympathies and beliefs are with a time that is past.

The Supreme Court of India has precisely done this by keeping pace with the conscience of the nation by crafting validity norms of fairness in adjudication; (a) doctrine of basic structure of the Constitution, (b) concept of social action litigation, (c) wholesome interpretation of right to life, (d) formulation of guidelines on state–society legal relations, (e) expansion of the protective discrimination principle and (f) scope of judicial review are notable examples of this kind. The objective is not only to implement legal texts through interpretation but also keep close to the legitimate expectations of the society to get justice from the system established by law. Doctrines, principles, concepts, guidelines and approaches emanate from the visions of rights and duties and the role of state in the delivery of justice. Constitutions of the nations tell a lot about them, but it is the courts that authentically decode them for the people. In this sense, it is a public duty with huge social implications. Functional constitutional structure of the Supreme Court of India, too, suits this role: the Supreme Court in India is the highest court of appeal in all criminal, civil and constitutional matters (Articles 132–137); it enjoys advisory jurisdiction (Article 136) and has rule-making power (Articles 142 and 145). It has the authority to make final declaration as to the validity of law and all its judgments are binding on all other courts in India (Article 141). Widest possible powers were given to the judiciary to perform with full creativity within the allocated space.

1.4.5. Role of Mind and Character in Adjudication

Adjudication, functionally, is teamwork and a sensitive public duty at the same time. It is a delicate intellectual exercise in truth ascertainment, but this duty, ultimately, is of maintaining legitimacy in the system through performance and rectitude. It is a tough task of mind and character in which a lot depends on the integrity of the lawyers and judges. Societies understand this and get alarmed at the slightest signal of power asymmetry in governance. They know that justice is the first institutional virtue in society and perfection in adjudication is required to keep equilibrium of social trust in intact. Fair adjudication is also a convincing reason for compliance.

India has laws to deal with professional rectitude in adjudication: the Advocates Act, 1961, is one such example. Section 49(1)(c) of the Advocates Act, 1961, empowers the Bar Council of India to make rules on professional conduct and etiquette to be observed by the advocates to the court, client, opponent and colleagues. In 1995 (*C. Ravichandran Iyer v. Justice A. M. Bhattacharjee*), the Supreme Court laid down a number of principles and guidelines on Bar–Bench relationship in adjudication. Extracts given below capture the essence:

Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety

and probity. The standard of conduct is higher than expected of a layman and also higher than an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.

The members of the judiciary are drawn primarily and invariably from the Bar at different levels. The high moral, ethical and professional standards among the members of the Bar are pre-conditions even for high ethical standards of the Bench. Degeneration thereof invariably has its eruption and tends to reflect the other side of the coin. The Bar Council, therefore, is enjoined by the Advocates Act to maintain high moral, ethical and professional standards, which of late is far from satisfactory. Their power under the Act ends threat and extends no further. ([1995] 5 SCC 457)

1.5. PRUDENCE AS ETHICS

As has been mentioned, the virtue of prudence has a four-dimensional meaning. It is (a) the ability to discipline oneself by the use of reason, (b) circumspection on risk, (c) skill in the optimum use of resources and (d) insight into the practical wisdom of handling key objectives.

Analysis of prudence as ethics takes us to the vision of Aristotle: prudence in social cooperation can be a real solution to the problems of governance, and its ethical dimensions can touch several dimensions of human life.

We have seen how reason shapes emancipation, brings in temperance in governance and makes power accountable. More importantly, it harmonizes intervention power effectively and takes society towards justice and cohesion.

We also saw, however, that crafting 'prudence' in governance is not easy. Individuals can shape their destinies through contemplation and personal endeavour: governance reforms deal with vested interests and entrenched systems. Strategies of change, therefore, differ.

Ethical foundations of governance get strengthened when administrative power cares for law, and law becomes legitimate when law emerges from an atmosphere of sincere discourse on issues of governance.

There is a need to take suffering seriously and promote a sense of proportion in risk-taking. Ethical interventions are also conscious of sustainability of operations and have a vision of justice for future generations.

From the vision of ethics, we found that Kant is important, but we cannot ignore Aristotle's virtue ethics. There is a foundational role of public reason in governance matters, but cardinal principles of virtuous life do indeed matter as well.

Prudence, ultimately, is a cumulative experience in vision. Therefore, interdisciplinary teams are needed to plan, organize, develop and execute. These call for mature leadership, utmost objectivity and standards of probity in public life.

We saw examples of excellence and imperfections, of greed and irresponsibility. Vigilance is a foundational ethic in systems: it prevents improprieties and improves outcomes. Another prudential ethic is discourse, which makes systems transparent and reflexive. Holders of administrative power can, therefore, transform things significantly with the help of a strong prudential vision of governance and an understanding of the dynamics of human rights in history and society.

CASE STUDY 1.1

Morality of Duty (Trial of Eichmann [1961–1962])

A. Facts

Adolf Eichmann (b. 19 March 1906, Germany) was executed by hanging in the midnight between 31 May and 1 June 1962 in Jerusalem after an Israeli trial court sentenced him for death as Nazi war criminal. Charges against him were 15, most important being the fact that he, in his official capacity in Germany (1942–1945), coordinated deportation of Jews from Germany and elsewhere in Western, Southern and Northern Europe to killing centres (through his representatives Alois Brunner, Theodor Dannecker, Rolf Guenther, Dieter Wisliceny and others in Gestapo). Eichmann made deportation plans down to the last detail. Working with other German agencies, he determined how the property of deported Jews would be seized and made certain that his office would benefit from the confiscated assets. He also arranged for the deportation of tens and thousands of Roma (Gypsies). Eichmann was also charged with membership in criminal organizations—the Storm Troopers (SA), Security Service (SD) and Gestapo (all of which had been declared criminal organizations in 1946 in the verdict of the Nuremberg Trial). As head of the Gestapo's section for Jewish affairs, Eichmann coordinated with Gestapo chief, Heinrich Mueller, on a plan to expel Jews from Greater Germany to Poland, which set the pattern for future deportations.

After the Second World War, Nazi war criminal Adolf Eichmann fled from Austria and made his way to Argentina where he lived under the name of Ricardo Klement. In May 1960, Israeli Security Service agents seized Eichmann in Argentina and took him to Jerusalem for trial in an Israeli court.

B. Issues

Adolf Eichmann's defence is interesting and can be summed up in his own words. 'I, he said, 'was one of the many horses pulling the wagon and couldn't escape left or right because of the will of the driver.'

C. Ethical Dimensions

Philosophers of law, ethics and governance have studied Eichmann's case and seen in Eichmann's actions examples of total moral blindness and perverse opportunism. He was fully responsible as a wrongdoer, and his attempts to hide behind the systemic imperfections was a mere excuse. His example, too, was wrong. Men are not horses, more so the legally trained powerholders in public bureaucracies, police and armed forces. There can, indeed, be no justification from systemic malfunctioning, but men behind the bureaucratic machines are no less responsible for their deeds of devastation. Morality of duty goes beyond acts of technical compliance and ensures that validity norms, too, are normatively legitimate.

D. Resources

1. Eminent political theorist, Hannah Arendt, in her book, *Eichmann in Jerusalem: A Report on the Banality of Evil* (1963), argued that Eichmann was the embodiment of the banality of evil, a soulless careerist in bureaucracy, responsible for systematic mass murders without any remorse whatsoever.

2. However, there is a totally unreasonable justification in the defence of Eichmann by Bettina Stangneth in her book, *Eichmann before Jerusalem* (2011), that attempts to prove that it was the regime that may be cruel, but not its procedurally compliant career bureaucrat who efficiently and faithfully executed the written orders of the government in power.

CASE STUDY 1.2

Consequences of Policy Advice (Financial Crisis, 2008)

A. Facts

2008 was the year when the neoliberal market fundamentalism of economic policy advice (that had confidently and aggressively run for 30 years) suffered a heart attack of epic proportions. It was the worst economic history turn since 1929, ramifications of which are still felt by society the world over. Political leaders and their close advisers, who for years boasted about the 'self-evident benefits' of 'light-touch regulation' and 'market-driven governance', had to sink trillions of dollars of public money to prevent the world bank system from collapsing. Social consequences, in terms of employment and welfare, were disastrous. The USA was the first country to experience the catastrophe of anti-regulation policy advice, countries of Europe later. Enquiries and studies since 2008 have shown errors of presumption and assumption on the relationship between the state and the market in matters of governance for the people. The entire premise of neoliberal policy advice was proved wrong.

B. Issues

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The financial crisis of 2008 surfaced in the sub-prime mortgage housing market of the USA. They were loans characterized by higher interest rates, but poor-quality collateral. It was a situation created by the profiteering craze in the banking sector in an atmosphere of utterly irresponsible slackness in market regulation allowed by the government in power. These facts were established in the Financial Crisis Inquiry Commission Report of the US Government three years later.

C. Policy Advice

The neoliberal policy advice framework had four pillars of thought: Friedrich Hayek (economic philosophy), James M. Buchanan (constitutional economics), Richard Posner (legal theory) and Milton Friedman (monetary economics). Strategies recommended under the neoliberal paradigm were inspired by these thinkers in varying degrees. Hayek saw the market as a 'spontaneous order' that needed no intervention. It was, he said, fully capable of self-correction. Buchanan commented on state–society relationship, arguing that elite conflicts in political management over public finances do not allow sovereign individuals to live a utility-maximizing rational entrepreneurial life. Implication was to shred 'welfare fat' from the theory and practice of public finance. Posner called wealth a value of high significance, reposed faith on efforts of wealth maximization and proposed market mode in legal theory. Milton

Friedman highlighted the 'value for money' in governance through his theories of monetary economics. Net public administration impact of the whole thing was to recommend a model of 'market-centred governance system' with residual welfare and unrestrained markets. Crisis 2008 demolished all.

2008 was the year of epistemic break in finance: the Global Financial Crisis surfaced; spread deep, wide and prolonged; and exposed the postulates of market fundamentalism in viewing the state as a determining impediment to market creativity, national monetary expansion and worldwide fiscal stability. The post-2008 world has now come close to the realities that (a) markets have numerous imperfections, (b) regulation is needed in public interest, (c) ever-alert counter-cyclical fiscal and monetary measures are prudently required and (d) opacity and greed are matters of concern as much in secretariats as in corporate boards. Governance, therefore, needs a new paradigm and, under these circumstances, institution building assumes significance—in terms of capacity building, corporate governance and market regulation.

D. Resources

A broad critique of this type of thinking was already available in Peter Drucker's (1995, 285) warnings, which in an anxiety to maximize institutional profits the holders of power ignored and did not confront:

Neoclassicism goes back to Friedrich von Hayek's 1944 book *The Road to Serfdom*. Hayek asserted that any tampering with the Free Market soon leads to destruction of political freedom and tyranny. He also claimed—and that has proven eventually is most important thesis—that an economy based on the Free Market and unencumbered by government controls, regulations and interventions, creates by itself, an optically free, just and equal society.... The Free Market works only where there are effective institutional guarantees of property rights, and especially, effective protection of property rights against the powerful... For the Free Market to work also requires a reliable legal system, an infrastructure of financial institutions and an adequate educational system. The free market does not create a functioning society—it presupposes it. Without such functioning civil society a few speculators may get very rich. But the economy will remain poor.

But the real issues will still be with us. They are political and moral rather than financial or economic. Can a modern democratic society tolerate the subordination of all others goals and priorities in a major institution, such as the publicly owned corporation, to short-term gains? And can it subordinate all other stakeholders to one constituency—the shareholder—even to a 'socially responsible' one? Corporate capitalism failed primarily because under it management was accountable to no one and for nothing. (Drucker 1986)

CASE STUDY 1.3

Ethics of Discourse (Meetings of India's GST Council)

A. Facts

The Constitution was amended in India in September 2016 to have a GST Council for recommending law and policy measures on the subject. It is a mandate for a complex task on vital nationwide reform

issues, requiring a series of open and sincere discourse between union and states on rationally levying and fairly sharing tax revenue on goods and services.

B. Ethical Dimensions

Discourse ethics, anywhere, has certain structural and functional preconditions for success. It must have a balanced stakeholder representation, a set focus on validity norms and uncoerced subsistence till the end. Discourse is the essence of democracy. It is essential because it helps people understand rights in context and check aberrations of asymmetrical power. Ethics here is to not just be procedurally correct but also deliver legitimate outcomes.

C. Structure of Discourse

A huge responsibility of preparing consensus drafts was given to the GST Council of India. It succeeded primarily because the Council was prudently and fairly constituted. It included all stakeholders and balanced their voting power fairly. It was created as a fully fair and transparent discursive body with a focused mandate on performance. It was not structured as a forum of compensation seekers, but as an apex recommendatory constitutional entity created in the spirit of constitutional concern for cooperative federalism.

D. Resolution Efforts

The primary task of India's GST Council in its first financial year (2016–2017) was to work out draft legislations on central GST, state GST and integrated GST. For this purpose, it had convened a series of Council meetings to reach mutual understanding and consensus. The approach, basically, has been to build from strength to strength, understand perceptual gaps, reconcile through deliberations and work for a consensual draft. It was an exercise of evidence-based policymaking, structured with the crafting of discourse ethic in the process and outcomes.

India's GST Council worked positively and transparently to show to the world that reason, discourse and communication, in unison, can build strong strategic bridges in democracies. The system has indeed been put to test on account of the squeezed government revenues in a few states, but the spirit of cooperative federalism by and large has prevailed to keep the fundamentals intact. Reason for this is not difficult to see. The entire framework of the GST Council mechanism is widely discursive and fully transparent, and, resultantly therefore, the system progressively grows in strength to expand India's tax base on goods and services and better yields. Excellence of the GST framework can be seen from the well-drafted text of the Constitution of India (Article 279A).

E. Debates on GST

1. Goods and services exempted from the (power of GST to recommend to the union and the states under Article 279A(4)(b)). There is no consensus, so far, in bringing into the ambit of GST (a) alcoholic liquor for human consumption, (b) petroleum crude, (c) motor spirit, (d) high-speed diesel, (e) natural gas and (f) aviation turbine fuel.
2. Compared to the GST rate structure of most developed countries, the number of rate categories in India's GST is high. It has been pointed out that the number of rate categories can be reduced once GST becomes sufficiently revenue productive. This issue also came up before the Fifteenth Finance Commission as an issue of significance.

3. Section 171 of the Central Goods and Services Tax Act, 2017, has a mechanism (through the National Anti-profiteering Authority) to ensure that the benefits of reduction or lower taxes under the new GST regime are passed onto the end consumers. There were complaints on this count in the GST Council and in an effort to give justice to the end consumers, an administrative framework of intervention was provided.

As a whole, GST is a laudable reform effort. It is laudable not only as the first bold step, but steps taken even subsequently. It is one of the few reforms which had a favourable political will.

NOTE ON THINKERS

1. Aristotle wrote a foundational work on ethics (*Nicomachean Ethics*, written around 340 BC) in which he defined virtue as a trait of mind and propounded the primacy of character in human conduct in securing justice.
2. Immanuel Kant in his *Groundwork of the Metaphysics of Morals* (1785) gave the highly influential formulation that moral action is not a desire, but a duty to act in conformity with the principles of universal applicability.
3. Karl Marx in his *Economic and Philosophic Manuscripts* (1844) highlighted a condition of oppression arising from loss of control over productive activity under capitalism and came to the conclusion that state power, captured by the vested interests, is in reality an anti-people class rule.
4. Max Weber provided a major sociological understanding by conceptualizing modern bureaucracy (*Economy and Society*, 1922) as a system of rational principles, processes and rule-based behaviour.
5. John Rawls developed Kantian insight by working out a theory of justice (1971) in which he found essence of justice in fairness. Fairness, he argued, envisages freedom and opportunities to all, and flow of resources to the least advantaged first.
6. Jürgen Habermas went deeper into the dynamics of law and democracy (*Between Facts and Norms*, 1992) and emphasized the crucial significance of discourse ethic in legitimation acquisition. Popular sovereignty requires opportunities of seamless assertion on validity norms of legal compliance.

KEY CONCEPTS

1. **The neoliberal state:** Welfare state focuses on employment generation and social justice in statecraft to protect individuals from market disequilibrium. Neoliberalism wants the state to respect the creativity of the market and leave it free from any regulation. A neoliberal state has a monetarist approach to public finance that seeks 'governance by market' through policies of privatization, deregulation and liberalization. The 2008 Global Financial Crisis exposed this approach all over.
2. **Discourse ethics:** Ethics evaluates principles or standards of human conduct. Discourse ethics holds the view that moral decisions are valid only if the persons affected by the decisions get full opportunity to counter-argue in the deliberations. Discourse ethics puts emphasis on the proper scrutiny of validity norms and process fairness, not on substantive outcomes. It is a key concept on law and democracy from a highly influential contemporary philosopher Jürgen Habermas.

3. **Counter-hegemonic struggles:** Hegemony is a condition of predominance by content in which a set of vested interests exercises a political, intellectual and moral role of leadership cemented by a common world view. Hegemony, thus, is a powerful obstacle to reform from any social group. Counter-hegemonic struggles attempt to expose this condition and fight the status quo. Hegemony is a concept from Antonio Gramsci. Alan Hunt has theorized on counter-hegemony.
4. **Evidence-based policymaking:** The wisdom of evidence-based policy approach has come from the discipline of evaluation studies. The approach puts greater trust on analytics of human policy experience than on specimens of populist policy rhetoric or ideological global handouts. Basic question, as Ray Pawson says (2006), is to chart the course of past policy impact objectively and build corrections on it.
5. **Rights-based morality:** Philosopher of Law Ronald Dworkin classifies political theories into goal-based, rights-based and duty-based theories, and argues in favour of rights-based morality in a world dominated by abuse of power and denial of entitlements to the vast majority of people in difficult circumstances. Advantage of 'rights' is that in the game of power they can be used as 'trumps' and claimed without any shade of guilt on the claimant.

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