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CORRUPTION

Two views on corruption

Harwant Singh

WHO cheats? That is a question posed by two well-known economists, Levet and Dubner. Then they go on to answer: Well, just about anyone where the stakes are right. You might claim that you don't cheat, forgetting the time you cheated! The golf ball you nudged out of a bad lie or, 'forgot' to sign for the last drink in a crowded bar.

Cheating may or may not be human nature, but it certainly is a prominent feature in just about every field of human activity. Levet and Dubner claim that cheating is a primordial economic act: getting more for less. So it isn't just the lowly babu who pockets a few thousand to move a file, or the high-profile bureaucrat or mighty minister who collects a large sum to clear a project or take a portion of an illegal building or a doctor who takes entrance exam on behalf of a duff candidate for his entry into a medical college for a few lakhs. From teachers who want to show better performance of their class to cricket players in match fixing, or an athlete who takes a drugs to win a medal, to sanctioning the change of land use, or reducing the import duty to favour a cartel etc, bending rules in the process, cheating is across the board and the list is endless and the spread is far and wide.

Executives and other dignitaries cheat out of an overdeveloped sense of entitlement. Whatever the incentive, whatever the situation, dishonest people will try to gain advantage by whatever means necessary. To them a thing worth having is worth cheating for. The corrupt people, like thieves, have a bonding amongst them. They

cover and protect each other. Thus a Defence Secretary Bhatnagar when charge-sheeted by the CBI in the Bofors case was sent as Lt-Governor, placing him beyond the reach of the long, but palsied arm of law. Prosecution witnesses, the whole bunch of them, in corruption cases can turn hostile, if the incentives are right.

Where there are pools of corruption and malfeasance, even non-swimmers can safely dive in: without the fear of drowning. When the environments are clean and chances of being found out are high, there is a disincentive for cheating, but where the chances of being pointed out are low or absent, one may commit murder, knowing that get-away is easy.

There is a tale, 'The Ring of Gypes,' from Plato's 'Republic.' A student named Glaucon offered the story in response to a lesson by Socrates. He told of a shepherd named Gypes who stumbled upon a secret cavern with a corpse inside that wore a ring. When Gypes put on that ring he found that it made him invisible. With no one able to monitor his behaviour, he seduced the queen and murdered the king and so on. Glaucon's story poses a moral question: could any man resist a temptation of evil if he knew his act could not be witnessed! Glaucon thought the answer was no, while for Socrates the answer was yes. Such are the two views on corruption.

PIONEER 24.2.11 CORRUPTION

A society in terminal decline?

Rajiv Dogra

With mounting corruption in every sphere of life and at every level of governance, it is only natural that cynicism among citizens should reach unprecedented proportions and their expectations dip to an all time low. But should we then accept corruption as a way of life in India? Or should we the people take a stand and root out this cancer that threatens India?

Objectively speaking, it will have to be admitted that corruption has become a way of life. It is a cancer that threatens to eat into and wipe out our entire value system and the stability of society. It makes mockery of our lodestar — *Satyameva Jayate*. Sometimes, in great confusion, people shake their heads and wonder if this could really be happening to us; to a nation of which we proudly say: *Mera Bharat Mahan*.

In recent days, and after some inertia, the establishment has set the agencies after the scamsters. But there is an all pervading feeling that they are going through the motions; that nothing much will result out of it, and that the rich will continue to smile slyly in their palaces. As proof, the cynics cite the example of the Jain Hawala case. Despite ample evidence, the accused got away. The same mood of *déjà vu* affects people at large now; that the Government will go through the motions but the culprits will eventually laugh all the way back to their various bank accounts where they have salted away their ill-gotten wealth. But even as the rich revel in their palaces, the common man is being put through the grinder. The

system shows no mercy to the innocent and the ordinary, especially the law-abiding.

Take a recent case which is a source of great anguish to the people of Delhi. Sometime during the monsoon period every year, the Municipal Corporation employees visit houses to inspect if there is any stagnant water on the premises that could breed mosquitoes. There is nothing objectionable to the stated purpose of the visit; after all it is for the larger public good. But what is grossly objectionable is the intent of the visiting official.

In most cases the official has no interest in society's welfare. Since the visit takes place during the working hours, he is likely to meet either the domestic staff, or a retired senior citizen or an over-worked house wife. Meanwhile, the Municipal Employee is busy scanning the premises. The tiniest bit of spilled water, even if it is the water from a recent shower, is enough for his purposes. He opens his *challan* book, looks at the offending house-holder sternly and warns in an admonishing voice, "It is up to you. Either you can settle it now, or you will have to suffer later." All this while his ball-point hovers threateningly over the *challan* book.

Some succumb, or simply are wise to ways of the world we live in, and pay up. A crisp bank note slides into the man's pocket and the case is closed; he marches on to the next house. But in many other cases the naïve and the principled do not get the message or simply refuse to accept it. Consequently, the moving finger of the official begins its scrawl, signalling the beginning of a tortuous saga.

A few days later the court summons arrive. The few words that are written on it are couched in legalese and largely indecipherable to an ordinary citizen. But the rough, yellowing piece of paper scares the wits out of the recipient. And as his/her inquiries with the more

worldly-wise neighbour reveal the consequence of ignoring the summons would be grave — a higher fine and in the end the possibility of a six month jail term. All this because of the whims of a municipal official, the official whose palm was not greased.

Regardless of your personal problems, irrespective of the fact that you may have recently had a heart operation, or are an old and infirm senior citizen, or are a single helpless widow without any relatives, the law requires that you must present yourself in person at the court. In case you don't do so, the threat of the jail hangs ominously.

And the designated court is an average of 25 km away in Dwarka for people who live in South Delhi. The appearance in the court is an experience that should best not be recounted. Any citizen, and they must number in thousands in every part of Delhi, who has had to undergo this experience would remain bitter with the system for long.

The fundamental question that people ask is whether it is the intention of the law-makers that the law-abiding and honest citizens should be so humiliated and put through such agony. In all probability, the law-makers may not have realised the evil consequences of their writ.

But, is it not possible to remedy this situation? Surely, it is. For example, as in the case of payment for many other Government services, why cannot the penalty be deposited at the nearest post office or a branch of the nationalised bank? The resort to the appearance in a court, and even the jail term, should arise only for those who refuse to pay the penalty.

Second, why must the corrupt municipal official be the arbiter of

where he chooses to see or ignore a water puddle. Today, panchayats all over India can decide on cases up to a financial limit of RS 5,000. Similarly, why the Resident Welfare Associations cannot be authorised to inspect, if necessary along with the municipal official, the houses within their jurisdiction and assess the violations in terms of accumulated water?

Such a system will free the courts from this unnecessary burden, allowing them to concentrate on and dispose of more serious and urgent matters.

In consequence, the Government would also have reduced one source of petty corruption and an issue that is the cause of great harassment to people. But is this too much to expect in an atmosphere where cynicism has reached unprecedented proportions, and the expectations of the citizens are at an all time low?

-- The writer is a former Ambassador.

ECONOMIC DEVELOPMENT

TELEGRAPH 27.2.11 ECONOMIC DEVELOPMENT

RETURN TO RESPONSIBILITY

- People will be grateful that the finance minister has left them alone

Ashok V. Desai

Congress finance ministers in the past five years followed what in my view were unwise macroeconomic policies. P. Chidambaram ruled the ministry at a time when the economy was booming; so, therefore, was government revenue. If only he had kept expenditure growth slightly below revenue growth, he would have rapidly reduced the fiscal deficit. Instead, he made broadly revenue-neutral budgets, and threw away a chance to put central finances on a sounder basis.

But compared to his successor, he was a paragon of virtue. Pranab Mukherjee, who succeeded him in 2008, spent as if there was no tomorrow and winning the general election was all that mattered. He told farmers they did not have to repay loans. He funded the rural employment guarantee programme under which any one person from a rural family could go to a collector and ask for a hundred days' work every year; if he was given work — and even if he was not — he could get Rs 100 a day. In other words, Mukherjee showered money on villagers who had votes. And they gave his party votes; that is why he is back as finance minister.

But that electoral bargain cost the country dear. According to the finance minister's figures, the fiscal deficit ratio in the past two fiscal years was 7.8 and 6.9 per cent. But yesterday, he promised to mend his ways, and to bring down the ratio to 5.5, 4.8 and 4.1 per cent in the coming three years. He promised to revert to fiscal sanity, though not too fast.

If he keeps this promise, he will do an enormous favour to the economy. For to bridge the fiscal deficit, he borrows chiefly from

banks. Being owned by the government and risk-averse, they lap up government debt; they just love it. If it becomes less abundant, however, they will start financing farmers, traders and industrialists. Instead of financing the government's wasteful consumption, they will begin to fund productive investment. That would be an important step towards the eight per cent growth all Congress finance ministers dream about.

The finance minister did not have to sweat to achieve the 5.5 per cent deficit. If he had done nothing at all, it would have come down to 5.7 per cent, because the gross domestic product keeps growing and thereby increasing government revenue. If he had only raised the taxes on goods and services that he did, he could have taken the ratio down to less than five per cent. But then he thought that would be going too far; he wanted to become good, but not too fast. To convince us that he was serious, he promised to table a status paper on public debt, and to follow it up with annual statements. He also promised to forsake the tricks he and his predecessor used to try to hide debt, like making oil companies pay subsidy on diesel, kerosene and liquid petroleum gas, and fertilizer companies on fertilizer. He did not promise reforms; as he put it, tax reforms are a process — as slow a process as possible. But meanwhile he promised to reform himself.

But why give people hope when you can make them happy? The finance minister raised the income tax brackets to give taxpayers a bit of relief. He reduced the surcharge on corporation tax that companies have to pay, and raised the deductions they earn on research and development — but increased the minimum alternative tax, which should have been abolished. Since the prime minister was once a social scientist, the finance minister gave tax refunds to those who would give money to social science institutions. He exempted charities from tax as long as they remained tiny. He exempted renewable energy equipment from

customs duty, and agricultural equipment, as long as it did not compete with home-produced machines.

He bailed out Mamata Banerjee. She had commissioned a white paper which showed how old and shoddy the railways' assets were and how much investment was required to repair and renew them. But she did not have the courage to raise fares and rates and earn some money to invest. Instead she went and cried on his shoulder. They are not quite buddies; in the battlefields of Bengal politics they have often fought. Still, Mukherjee gave her Rs 167 billion.

The finance ministry is clearly concerned about the financial sector. All its efforts to spread banking into villages have come to nought; banks are simply not interested in chasing borrowers whose debts the government will eventually write off anyway. Now Mukherjee has come up with the idea of having a bank branch in every village with more than 2,000 people; but those branches will be mere shells. The domestic capital market is also not raising much capital for companies. Big companies prefer to raise money abroad, and have to be stopped by the Reserve Bank of India. The small enterprises are perpetually short of capital. So the finance minister announced a financial sector legislative reforms commission, and also a stability and development council, which he called a super-regulator for finance. Why two bodies? It seems that the finance ministry thinks it has a problem, but has no idea how to go about solving it. It has a tried and tested regulator in the RBI, but does not have the confidence to merge all the little financial regulators it has set up into the RBI. It does not know its own mind, and it is doubtful that two more bodies will help it do so.

Perhaps the most promising initiative mentioned by the finance minister is one that has nothing to do with his ministry: it is a plan to spread the green revolution to eastern India. The thought behind it is a good one; the states of the east and the Northeast have

abundant rainfall and do not require investment in irrigation. Their yields are low and capable of being raised. So the next 100 million tonnes of grain should come from them. They cannot grow oilseeds and pulses; these will be promoted in 60,000 dryland villages. The government has spent so much time and energy giving jobs in villages without thinking about whether there is any work for people to do; all it can think of for them is to dig holes and repair roads — work which will all be erased in the next monsoon. If, instead of trying to give jobs, the government thought of creating a market for what villages can produce, it will do much more good at a lower cost.

Pranab Mukherjee had the tax code all ready; he had the report of the 13th Finance Commission on his table. He ignored both of them. He could have done so much; he did not. But he did not do any harm either. Admittedly, he faced a benign economic environment and did not have to take any hard decisions. Still, people will be grateful that he left them alone, and even made some smile. He will not be quicker or bolder in the future; but it is still to be hoped that he will last long enough to implement some of the good ideas he is sitting on.

Why growth matters

Ila Patnaik

India's long-term growth story remains intact. Yet, of late, investor confidence in India has declined. The last decade saw high private corporate investment as the main engine of growth. Investment growth has been at risk since the global financial crisis impacted business prospects. In recent months, there has been a decline in the stock market, and in foreign investment into India.

Budget 2011 must focus on improving the investment climate to sustain India's high GDP growth.

Policy-makers in India were able to respond quickly to the demand contraction caused by the crisis through expansionary fiscal and monetary policy, and the Indian economy continued to register high growth. But now it seems that the policy stance might have been excessively expansionary as inflation and fiscal and current account deficits rose sharply. The focus now needs to move away from pumping higher aggregate demand to keep up production, to longer-term investment that can increase the productive capacity of the economy.

The finance minister's post-crisis budgets focused on safety nets required to prevent the global recession from hurting the poor in India. The reforms required to keep investors optimistic about medium-term prospects for the Indian economy were not put on the

front-burner. Even reforms promised by the UPA were not carried through. The dismantling of the licence raj regime, however slow, that has characterised the last 20 years was put on hold. The years under the leadership of the man who initiated reforms saw a reforms-deficit emerging, as government actions failed to meet expectations. The corruption scandals hitting the government have only made the situation worse.

A difficult question faced by the government is one of government finances. The UPA has put government spending on a new path. Concerns about the expansion of government spending programmes and the consequent borrowing that these may entail would mean rising interest rates, high inflation, pre-emption of household savings by the government and a possible rise in the debt-GDP ratio to unsustainable levels. The question the government needs to ask is: is this path sustainable for the country at the current level of development and income? Can adequate resources be raised to sustain the growth in expenditure that this may require? What should be the approach that can prevent India from ending in a fiscal mess?

While subsidies are a legacy of the past, the UPA has focused on setting up large welfare programmes such as the NREGA. These have become a major source of concern as they mean larger and larger government spending. Expenditure requirements of the food security legislation and wage indexation for NREGA have been among important concerns.

Is spending on large welfare programmes sustainable for India? It has been seen that countries with low per capita income of \$1,000, such as India, have tax collection to domestic production (tax to

GDP) ratios of less than 20 per cent. It is only when a country's per capita income rises to about 10 times as much, that the government is able to collect more than 20 per cent of domestic production in taxes. There are a number of reasons for this. A large part of the economy is in the informal sector, with little participation in production chains where taxes need to be paid; agricultural income is often out of the ambit of the tax system; the use of modern information technology is limited in the bulk of the country and it is easy to avoid paying taxes. Consequently, the developing country average for tax payments is 18 per cent, which is roughly where India is today, when we combine Central, state and local government tax collections. While resources can be raised by disinvestment or by selling spectrum, reducing subsidies and increasing efficiency in the immediate context, the tax to GDP ratio cannot be expected to rise unless the structure of the economy changes adequately, and income levels are at about \$10,000 per capita. Until then the growth in expenditure can be met through higher revenue collection which can come through higher GDP growth, with the tax to GDP ratio at roughly where we are now.

The above argument, as Vijay Kelkar points out in a recent paper, implies that the government needs to focus on higher GDP growth. Tax policy has to be consistent with the objective of higher GDP growth. The most important front on which the government can act is to implement the Goods and Services Tax (GST). This will help production significantly as India will be able to reap the benefits of being a common market. However, very little progress has been made on the GST and the government has extended the deadline for implementation of the GST many times. It must now take the initiative and implement a Central GST where goods and services

have a single rate and a single administration. This can pave the way for the next steps, both in terms of tax policy and IT systems which will be required for a nationwide GST. It would be ideal if every state joined in. But, if even after being put on the defensive by the prime minister's reference on the GST the BJP chooses to oppose it, the Congress needs to go ahead and put together states willing to join, leaving out those unwilling to join. The implementation, especially the handling of turf issues with Central and state tax administrations, is not going to be quick or easy, and Pranab Mukherjee needs to make a beginning.

The focus on GDP growth needs to be put on the expenditure side as well. Faced with a trade-off between spending on building highways and bailing out loss-making public sector enterprises in competitive markets, the former needs to be given clear precedence. Further, there are a number of issues, including foreign investment, infrastructure, taxes and so on, for which a laundry list of reforms is available. These reforms require political initiative and if the government wishes to pull out of the reform deficit, it can push ahead. Given the credibility of the government and given its track record on implementation of promises made in the past, the budget has to emphasise concrete action rather than just make big promises.

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ENVIRONMENT

TELEGRAPH 23.2.11 ENVIRONMENT

DECAPITATING EQUITY

- India's climate change policy cannot be reversed on a whim

Chandrashekhar Dasgupta

It is only in the last quarter century that mankind has begun to grapple with the fact that the earth's atmosphere is not a limitless resource. This stark reality has been brought home to us by climate change. Since the beginning of the Industrial Revolution, mankind has been burning ever increasing quantities of fossil fuels (coal, oil and natural gas) and the resultant accumulation of carbon dioxide in the atmosphere is the principal cause of global warming. Scientists tell us that if the progressive concentration of greenhouse gases in the atmosphere is allowed to exceed a certain range, it will lead to dangerous interference with the climate system.

In other words, the planet's atmosphere must be treated as a scarce resource. The current negotiations on climate change seek to limit greenhouse gas emissions into the atmosphere and thus, in effect, regulate access to the global atmospheric resource. Since fossil fuels are the main source of carbon dioxide emissions, a climate change agreement has major implications for the levels and patterns of energy consumption available to signatory countries.

For a developing country like India, it is essential that any agreement should be based on equity, that it should not slow down economic and social development and poverty eradication or perpetuate the vast economic divide between the developed and developing countries.

The vast bulk of the greenhouse gas concentration in the atmosphere has originated in the industrialized countries as a result of their very high levels of consumption of coal, oil and gas. These countries are thus occupying much more than their fair share of

atmospheric space. In order to avoid dangerous levels of climate change, the developed countries must reduce their per capita emissions, releasing adequate atmospheric space for the development of poorer countries.

India has always maintained the principled position that every human being has an equal right to the global atmospheric resource. Per capita emissions of developing countries are a small fraction of those of the industrialized countries. For example, India's per capita emission is just a little over one tonne of CO₂e, compared to more than 19 tonnes CO₂ of the United States of America. Per capita emissions of poorer countries will rise as their energy consumption increases to meet the requirements of economic and social development and poverty eradication.

As the United Nations Framework Convention on Climate Change notes, "The largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs."

Equity demands that, over a period of time, the declining per capita emissions of the developed countries should converge with the rising per capita emissions of the developing countries, while compensating the latter for the excess atmospheric space previously occupied by the developed countries. The UN Framework Convention on Climate Change requires the affluent industrialized countries to cover the incremental costs of mitigation and adaptation actions in developing countries. The international community should combat climate change on the basis of equity.

The Indian prime minister, Manmohan Singh, has proposed that India's per capita emissions will not, at any stage, exceed those of

the developed countries. This is not only a fair but even a generous offer. It is no more than an assertion of our right to utilize an equal measure of energy on a per capita basis as the developed countries, provided we adopt the same energy mix and technology as the advanced countries.

Perpetuating the vast disparity between the per capita emissions of the advanced and the developing countries would amount to perpetuating the huge differences in their per capita income levels. A climate change treaty that binds us to lower per capita emissions over the long term will also restrict our per capita use of coal, oil and natural gas to lower levels than those of developed countries, making it virtually impossible for us to close the income gap with those countries. Any climate change agreement that denies us our right to equal utilization of the global atmospheric resource would be an unequal treaty restricting our right to development. It would divide the world into two categories of countries: those who are rich and those who are poorer — and treaty-bound to remain poorer.

Not surprisingly, the principle of equity based on an equal per capita approach has served as the basic foundation of our position in the climate change negotiations, ever since they began in 1990. Every government in New Delhi has endorsed this approach, reflecting a national consensus cutting across party lines.

This consensus has now been challenged by the minister of state for environment, Jairam Ramesh. Earlier this month, major national newspapers carried the startling report that the minister of state had indicated that India may abandon the per capita approach. The minister added that the US-based economist, Arvind Subramanian, has been commissioned to prepare a paper on alternative options. This is not the place to critique Subramanian's writing on climate change; suffice it to say that he rejects the per capita equity

approach. Jairam Ramesh also revealed that he plans to hold an international workshop in May, so that a new approach is ready before the climate change negotiations scheduled for June.

Rejecting the per capita principle would undermine the position of India and other developing countries on the question of climate equity. By proposing to “decapitate” the principle of equity, the minister has already inflicted severe damage to our credibility in the negotiations.

Ramesh’s statement gives rise to a number of questions. First, did the minister of state consult the cabinet before questioning in public the basic foundation of our long-standing national policy? After all, the per capita approach has been regularly endorsed by cabinet decisions over the past two decades. Second, does the minister of state plan to consult Parliament and, if so, when? Should a policy resting on a national consensus be reversed without reference to Parliament?

Third, does Ramesh propose to consult India’s civil society and the Indian public? Would a national workshop not have been a more appropriate forum to debate a possible reversal of India’s policy than an international gathering?

These disturbing questions require immediate answers. Our policy on a vitally important issue like climate change must rest on a national consensus. It cannot be arbitrarily refashioned on a personal whim. A major policy reversal, such as the approach contemplated by the minister of state for environment, should be taken only if it is approved by Parliament.

The author is a retired ambassador who has been closely involved in the climate change negotiations for many years. The article reflects his personal views, and not those of any official or non-governmental institution with which he may be connected

INFORMATION TECHNOLOGY

HINDU 25.2.11 INFORMATION TECHNOLOGY

The battle lines over encryption

Aparna Viswanathan

The draft Information Technology Rules provide the key to the back door sought by the government, and leave no doubt that security concerns will prevail over privacy.

The draft “Information Technology (Due Diligence observed by intermediaries guidelines) Rules, 2011 circulated by the Ministry of Communications and Information Technology on February 10, 2011, address the issue of the liability of internet service providers (ISPs) and other intermediaries, an issue which achieved public notoriety through the Baazee.com case in 2004. In one master stroke, the Draft Rules settle the dispute raging over the last year, regarding the use of encryption techniques by the customers of BlackBerry, Google, Skype and MSN. Yet, while doing so, the Draft Rules also reveal the fundamental shortcomings of the IT Act even after the 2008 amendments.

The case, Avnish Bajaj v State arose out of the sale of a video clip on the website of Baazee.com, shot on a mobile phone in MMS form, depicting two schoolchildren indulging in an explicit sexual act. Although the Baze.com case was ultimately decided under the provisions of the Indian Penal Code, the critical legal issue in civil law is to what extent ISPs can be held liable for the content transmitted through their network. The question, which was initially addressed by California courts in the mid-1990s, was whether ISPs should be treated in the same manner as newspapers or magazines publishing content and, therefore, made potentially liable for copyright infringement, defamation, obscenity and other civil/criminal liability, or as telephone companies which are not liable for the content of the communications they transmit.

Since the seminal 1995 judgment of the District Court of Northern California in the Netcom case, the view in the U.S. has been that an ISP is a passive service provider much like a telephone company and cannot be held liable for the content transmitted through its server. This legal position changed in the U.S. with the passage of the Digital Millennium Copyright Act (DMCA), which provided a “safe harbour” for ISPs, conferring exemption from copyright liability. However, the exemption is subject to the ISP meeting certain conditions. The ISP must not have the actual knowledge that the material is infringing, must not be aware of the facts and circumstances from which the infringing activity is apparent and, in the event of having such knowledge, must act expeditiously to disable such material. In order to avail himself of the exemption from liability, the service provider must also not receive a financial benefit directly attributable to the infringing activity.

The legal position in India is similar to the DMCA in that the exemption from liability is not absolute but is subject to meeting certain conditions. Following the 2008 amendments, Section 79 of the IT Act, 2000 provides that an intermediary will not be held liable for any third party information, data or communication link made available or hosted by him. However, this exemption will apply only if the following conditions are met.

First, the function of the intermediary must be limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted. Second, the intermediary does not initiate the transmission, select the receiver or select/modify the information contained in the transmission. In other words, the ISP acts like a telephone company and not like a newspaper editor who can select or edit the information provided. The exemption will also not be applicable if the ISP has conspired, aided, abetted or induced the commission of the unlawful act; or upon receiving actual knowledge that any

information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material. The last two conditions are similar to those imposed under the DMCA in the U.S.

Furthermore, in order to avail himself of the exemption under Section 79, the intermediary must “observe due diligence” while discharging his duties under the IT Act, 2000 and also observe other guidelines which the Central government may prescribe in this behalf. For the first time, since the 2008 amendments came into force, on February 10, 2011, the Ministry of Communications and Information Technology circulated draft rules regarding due diligence by intermediaries (the “Draft Rules”).

Sub-rule (2) of the Draft Rules lists the types of infringing information which should not be transmitted by the intermediary, including information which is 1) abusive, blasphemous, obscene, vulgar etc., 2) infringing of IPRs, 3) sensitive personal information, and 4) information which threatens the unity, security or sovereignty of India. However, sub-rule (2) then tries to add in the offences which are the instruments of modern cyber crime. The list includes any information which impersonates another person, that is, identity theft and deceiving or misleading the addressee about the origin of electronic messages more commonly known as phishing. However, this list comprising identity theft and phishing is entirely inadequate as these are only a few methods of modern cyber crime/war. The list ignores, for example, the installation of a program which allows an attacker to remotely control the targeted computer otherwise known as “BOTNETS.” Another common tool of cyber crime is the use of a software program or a device designed to secretly monitor and log all keystrokes otherwise known as “keyloggers.” However, neither the remote access of a computer nor the secret monitoring of a computer resource is mentioned in sub-rule (2).

The Draft Rules also introduce a definition of “cyber security incident” as any real or suspected adverse event in relation to cyber security that violates an explicitly or implicitly applicable security policy resulting in unauthorised access, denial of service or disruption, unauthorised use of a computer resource for processing or storage of information or changes to data, information without authorisation. In fact, the need to include the concepts of modern cyber crime and a definition as basic and critical as “cyber security incident” in Draft Rules on due diligence by intermediaries shows that there is a fundamental lacuna in the IT Act itself, namely, that it ignores the concepts of modern cyber war altogether and is limited to the outdated concerns of theft of software code through hacking.

The partial attempt to bring in the concepts of modern cyber crime under the purview of the IT Act distracts attention from what is perhaps the main objective of the Draft Rules, that is, to codify the government's position towards service providers such as BlackBerry, Google, Skype, and MSN Hotmail which has recently attracted much attention. Research in Motion (RIM), the Canadian company, which operates BlackBerry, provides its customers with their own encryption key and does not possess a master key. According to RIM, in its system, there is no “back door” through which either RIM or any third party can gain access to the key or the customer's data.

However, the Indian government was concerned that this level of encryption makes it impossible to monitor BlackBerry messages for national security purposes and that BlackBerry's strong encryption technology could be used for terrorist or criminal activity. As per newspaper reports, on August 31, 2010, the Government of India accepted RIM's proposal for “lawful access by law enforcement agencies” of encrypted BlackBerry data. In December 2010, RIM reportedly provided the government a cloud computing-based system which would enable security agencies to lawfully intercept

BlackBerry Messenger (BBM) messages in a comprehensible format but not BlackBerry Enterprise Service, that is, corporate emails.

The Draft Rules incorporate the government's stand vis-à-vis BlackBerry into law because they require an intermediary to provide information to government agencies, which are lawfully authorised for investigative, protective, cyber security or intelligence activity. In sum, the Draft Rules provide the key to the back door long sought after by the government and leave no doubt that security concerns will prevail in law over the interest in privacy through use of encryption by civil society.

POLITICS AND GOVERNMENT

INDIAN EXPRESS 28.2.11 POLITICS AND GOVERNMENT

Standing ground

The ministry of civil aviation not only wants a spanking new office for the Directorate General of Civil Aviation (DGCA) but it also wants to turn the DGCA's current address, in the heart of central Delhi, into a residential complex for its staff. After the finance ministry and the ministry of urban development shot down the plan, and the change in land use, the ministry seems to have retreated. Meanwhile, the army has demanded another 109 acres of land in Dwarka to make room for defence personnel.

But this is typical of the way the state and its appendages have made themselves comfortable in all of Lutyens' Delhi and its neighbourhoods. The government squats on the entire area, even as the rest of the city struggles and hustles, trying to accommodate the growing demands of industry and commerce, and the sheer press of its population. This bubble of privilege (still referred to as the Delhi Imperial Zone, or DIZ, in municipal terminology) is shaded with splendid old trees, lavished with infrastructural attention — its greenery sustains the whole city, though it houses the fewest people. Meanwhile, the rest of Delhi has intense demands placed on it, from a combination of trade, service and industries. There is no question that we need to radically review our land-use patterns. Changing Lutyens' Delhi from a place where the powerful can ignore the real city, into a more

diverse, mixed-use space is not only more seemly in a democracy, it would also ensure more efficient use of space.

Our absurd zoning laws mean that the best parts of town are taken over by PSUs and government departments, commissions and authorities with their squat, charmless buildings. There have been some moves towards changing this and easing the stress on central Delhi, including the idea that no new government offices should come up in the area and that

existing structures be augmented for optimum usage. But for now, it doesn't look like the government intends to cede space anytime soon.