

# ISAS Insights

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## **Good Governance, Accountability and Sustainable Economic Development in India**

*The Central Bureau of Investigation (CBI) in India had initiated an inquiry into the allocation of coal mine blocks by the previous United Progressive Alliance (UPA) government. The inquiry report was placed before the special CBI court set up to try these cases. The court has given its verdict. It has indicted the three officers in the Ministry of Coal who had processed the proposal for approval by their minister, who was also India's then-Prime Minister Manmohan Singh. It has however, not found any fault with Singh ostensibly on the ground of his argument that he was misled, since, as prime minister, he did not have the time to examine each case thoroughly. That may be factually correct. However, what does such a stance imply about the role and accountability of the head of any department? Can such a stand be tenable? Is leadership not a critical element of good governance? What will be the long-term consequences on dynamism and initiative-taking in the government? This paper attempts to analyse these issues.*

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The special court mandated to hear the cases relating to the allocation of coal mines in India during the tenure of the previous United Progressive Alliance government has convicted the then-Secretary in the Department of Coal, H C Gupta, along with the then-Joint Secretary and

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Director, to two years imprisonment. The verdict has meanwhile absolved the then-Minister for Coal, who was also the then-Prime Minister Manmohan Singh on the grounds that he was misled by the officers and that they belied the trust reposed in them. This verdict does indeed prove the age-old saying that 'justice is blind'. It is indeed so, as the allusion in the expression is to the Greek statue for justice, wearing a blindfold so as not to treat friends differently from strangers or the rich from the poor. The judiciary cannot be faulted. It can only pass a verdict based on the evidence produced before it. It is not the role of the judiciary that needs to be discussed but the stand taken by the *dramatis personae* in this particular case. What is the role and accountability of the head of the department? Can he be totally absolved of the wrong-doing on the strength of his stating that he was too busy?

Good decision-making is all about well analysed, objectively evaluated and clinically examined issues going through a hierarchy where each rung applies its mind on the issue at hand. Since prime ministers and ministers are busy persons and have to apply themselves to multiple issues at the same time, they are provided with personal secretaries to assist them in their paper work. The Indian prime minister has a huge secretariat to assist him or her to ensure judicious decision-making. At any point of time, there are at least eight joint secretaries, three secretaries and a retinue of lower functionaries in the Prime Minister's Office (PMO) purely to support the prime minister.

To put the issue in perspective, the reference is to the perceived irregularity in the allocation of the Thesgora-B Rudrapuri block of coal mines in Madhya Pradesh to a private company. The officers have been indicted as the application from the company seems to have been incomplete and, therefore, should not have been recommended for approval as it did not conform to the specified guidelines. The investigation by the Central Bureau of Investigation (CBI) revealed that Gupta and his team of officers had kept the then-prime minister, who was holding the coal minister portfolio, in the dark. This has been held by the court as a breach of law and a breach of the trust reposed in them. In an earlier statement filed by the then-prime minister, in connection with the CBI investigation into the allocation of a coal mine to Hindalco, another applicant company, it was averred that he went by the advice of the coal secretary.<sup>2</sup> That indeed is the easiest and most convenient stance that the leader of any team

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<sup>2</sup> Express News service. 1 October 2015. "As PM, not possible to go through all files, Manmohan tells CBI". "As the P M of the country, I have many other issues to worry about and it is not practically possible for me

can take. However, can such a tall personality as the prime minister of a country take that stand? What about the trust that the officers repose in him as the leader of the country? Could Gupta also not have taken recourse to the same argument and averred that his officers had misled him. The prime minister has a whole retinue of officers in what is known as the PMO. Is it possible for all of them to be misled?

It is a monumental irony. Gupta is regarded as one of the most upright, simple and sincere officers in the Indian Administrative Service. The irony is that it was his predecessor in office, P C Parakh, who, in May 2004, suggested that the allocation of coal mines was being done by the 'screening committee process' which was prone to lobbying and was opaque. He stated that it led to "windfall gains" to the allottees. He recommended that the allocation be made through a transparent auction process. His reasoning and recommendation were accepted by the then-coal minister (who was also the then-prime minister) on 1 November 2004. Thereafter, there was a saga of delay, procrastination and stonewalling by the then-prime minister's cabinet colleagues in the coal ministry itself. The decision taken by the then-prime minister was to allot coal mines only by the auction process. Operationalising this decision was taking time. In fact, the amendment to the legislation was finally approved only in 2012; eight years after the prime minister had taken the decision. The lobbyists would not let go. After all, "windfall gains" were at stake. Meanwhile, Parakh retired in December 2005 and Gupta replaced him as the coal secretary. The PMO just about cajoled the department to continue allotting mine blocks through the 'screening committee process' as the amendment was taking too long. Was this the folly of the department?

The department officials seemed to have been misled into believing that the delay in coal allocation would cost the country dear in terms of the loss of potential thermal power generation and, therefore, they undertook to pursue the allotment, pending a change in procedure, along the extant guidelines. However, the price of their folly is two years of their lives in gaol. Who misled whom? Who belied whose trust? These are questions that any hypothesis on good governance and objective decision-making should provide. No amount of classroom education in the Lal Bahadur Shastri National Academy of Administration at Mussoorie (the ultimate alma mater of civil service officers) can prepare an officer for such a situation.

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to know and recollect such guidelines. It is for the Secretary (Coal) to highlight those guidelines in his note/report if such guidelines would have a bearing on the decision to be taken by the Minister (Coal)."

This leads us to discuss the classic predicament of the bureaucrat and the relationship that he or she bears with the political executive or the political master, as in this particular case. There is not even an iota of doubt in the mind of anyone, possibly even the court, that the three indicted officers were acting as per the bidding of the then-political set-up. However, did they overstep (bend over backwards) or did they not cover their tracks adequately? It is only natural that the politicians have a constituency of influential personalities that they have to cater to. They will seek to advance the cause of this constituency. However, it is equally undeniable that this is exactly the pitfall that the bureaucrat is trained to watch out for. It is not a bad thing to take note of the signals being given by the politicians. However, the decision to recommend has to be predicated on the merit of the case or the public interest that will be served by that recommendation. This is where the rigour of incisive and objective analysis comes in. It is also reasonably certain, as the court verdict makes it out to be, that the bureaucrats did not ‘mislead the coal minister’. If they actually did mislead the coal minister, then they deserve the indictment that has been dealt on them. I say this with an element of confidence, as Gupta, in his long years in the bureaucracy, has never been known to have been driving a personal agenda, let alone favouring or espousing the cause of a corporate. Thereby comes the need to make a distinction, albeit very difficult, between a decision taken/recommended in good faith but which on hindsight seemed to have gone awry and an act of commission with vested interest in mind. This distinction has to be drawn by any investigative agency or court.

There is a proposal by the government now to amend the Prevention of Corruption Act, 1988 (PCA) to exclude the all-encompassing sweep of Section 13 (1)(d)(iii) of the Act. The subsection has, all along, defined “criminal misconduct” as “while holding office as a public servant” obtaining “for any person any valuable thing or pecuniary advantage without any public interest”. Such an omnibus provision can be invoked to fix almost any decision of a bureaucrat since every decision may lead to allegations of pecuniary advantage for some person. It is regrettable that the fundamental judicial principle of *mens rea*, which is the most important determinant of guilt under criminal law, was given a short shrift in the PCA. However, the move to amend this provision has not found favour with the conscience-keepers in the civil society. They would rather criticise *babus* (as bureaucrats are often pejoratively referred to) for being rule-bound, non-initiative taking and self-serving rather than giving them some protection and have them operate without fear or favour.

This brings us to the role that the political executive needs to play. I am certain that the then-prime minister and his secretariat were sure of Gupta's personal and professional integrity. If so, was it not incumbent on the then-prime minister to aver in court that, he was, as the leader of the team, ultimately responsible for the final decision? If he had done that, possibly all of them could have been let off, with perhaps a warning, as there was definitely no criminal intent on their part. Or is it wrong to assume that the integrity of the former prime minister was so high that no one, not even the court, would have suspected him of wrong doing with a pecuniary intent? It is commonly believed that if he had indeed owned his professional responsibility for the irregularity, he would have walked into the sunset with his head held high. That was not to be! He seems to have averred that he was indeed misled. This creates a huge chasm between the bureaucracy and its political masters. The former prime minister had, for free, the best of lawyers that his Congress party could draw upon to argue in court for it to lend credence to his story. On the other hand, Gupta did not have the financial means to hire a lawyer. He argued his own case. Henceforth, now more than ever, the bureaucracy may balk at making independent and dynamic decisions, for fear of going behind bars and having that meagre source of livelihood, their pension, taken away in view of their indictment for criminal intent?

The Indian government has been eager to improve India's ranking in the World Bank's 'Ease of Doing Business' index. A Task Force has been set up to suggest measures to ease the procedure to start or wind up a business in India. The World Bank's 'Ease of Doing Business' index indicates that India failed to improve its position and stands at 130 out of 190 economies surveyed. In order to ensure quick and hassle-free decision making or clearances, the official machinery has to be positively oriented, progressive and dynamic. However, if attempts to hand-hold businesses are looked at with suspicion, officials are bound to display caution and ensure that they seek approvals and/or provide written justifications for all clearances given, which is bound to be time-consuming. It is this aspect of decision making which has become a casualty after this court verdict. It is seen as penalising honest officers with a proven track record. There is a dire need to quickly amend the PCA to incorporate the required safeguards. Otherwise, the official machinery will slip into a period of docile and dormant mode. The 'steel frame' needs to be provided with more tensile strength, and it is only the government which can provide that much-needed support.

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