

ETHICS, ACCOUNTABILITY AND GOOD GOVERNANCE SOME REFLECTIONS

by
Dr. Kamal Hossain

1.1 Most of the countries in Asia and Africa are in the midst of a dual transition towards a market economy, and a democratic political order.

1.2 Societies in transition while promoting economic liberalisation have tended to ignore the need for law and social policies to regulate the operations of the market. What then emerges is a 'free for all'. In the absence of efficient and properly regulated markets, uncontrolled freedom tends to degenerate into licence to maximise private profit by any means. Burgeoning corruption, fraudulent financial transactions involving banks and stock exchanges, the emergence of powerful Mafia-type criminal syndicates and growing violence are some of the disturbing manifestations.

1.3 It has been our common experience that there is an increase in opportunities for corruption during the process of transition. Many strategic decisions still need to be taken by the state with regard to privatisation and de-regulation. Opportunities to grant favours abound involving grant of licences, grants of valuable public land and natural resources, and the award of contracts for mega-projects to private investors in areas previously reserved to the public sector e.g., power, telecommunications, transportation and physical infrastructure. The parallel transition towards democracy necessarily involves elections. The increasing cost of elections and the ever-increasing funds sought to be mobilised by political parties has meant that the temptation to abuse power for political fund raising, becomes irresistible.

1.4 The aim must clearly be to curb those temptations. Ethics and good governance are needed to place governments under greater scrutiny, and to induce powerful corporations to become socially responsible corporate citizens which are accountable and which recognise their obligation to conduct their activities transparently and in accordance with the "the rules".

1.5 To achieve accountability and social responsibility a creative role must be played by the state and its law-makers and policy makers. As to the nature of that role, I would like to paraphrase the conclusions of two recent studies, one of them published by the United Nations University, as follows: Too often, one could argue, governments, hierarchies and markets are considered as substitutes for each other. This is a false dichotomy. Today's economy requires a pluralism of organisational modes, each working in tandem with the other - each supporting the other. Just like the emerging managerial structures of twenty first century firms, we need governments to be lean flexible and anticipatory of change, to maintain an institutional framework which regulates, but does not control markets, promotes competition and equality of opportunity and upholds the rule of law.

1.6 Investments and development could thus be promoted if there was improvement in the accountability of leaders to their people, transparency of all transactions, proper administration of public funds and the overhauling of procurement procedures. These call for respect for due process, caution against proliferation of administrative regulations, and the reform of the

bureaucracy. Other indispensable requirements include: the rule of law, independence of the judiciary, scrupulous respect for the law and human rights at every level of Government, transparent accountability of public monies, and independent public auditors responsible to representative legislatures, not to the executive.

1.7 In this context, the importance of the right to information can not be over emphasised in order to require disclosure to the public of material information on which policies or important decisions are made; in particular, where governments exercise powers which involve grant of substantial economic or financial benefits, such as through award of concessions and contracts for major projects such as construction of power plants, highways, pipelines, or dams. This is necessary to avoid the conferring of favours upon cronies and is an important safeguard against corruption. As Justice Brandeis of the US Supreme Court said: "Sunlight is the best disinfectant". If the award of such contracts or other economic benefits is done on the basis of an open and transparent process, through competitive bidding, this could significantly prevent arbitrariness and reduce the possibility of public power being abused for private profit.

1.8 Ethics, accountability and good governance are not new discoveries. These have been written into most of our constitutions, some of which were adopted more than fifty years ago. Today we are called upon to re-discover them, because the legitimate expectations of ordinary woman and men — promises made to them by their constitutions — remain unfulfilled. This painful reality was reflected in an answer given by Pandit Nehru in the last year of his life — seventeen years after the independence of India to a question put to him by Andre Malraux; "What has been your greatest difficulty since independence?" His answer was; "Creating a just state by just means." (A. Malraux, *Anti-Memoirs* (1968), page 145). These words have a strangely contemporary ring and could apply to most of our societies.

1.9 Our common experience has given us certain insights about how we can move forward to make those promises become a living reality. A successful strategy for this purpose would also involve combating the menace of corruption. The great architects of the state of the art South African Constitution and the master builders of the new South Africa led by President Nelson Mandela had identified essential elements of that strategy which were so well expressed by President Thabo Mbeki in his address to us. He underscored the need for a moral vision based upon shared ethical values.

A book launched this week entitled **Fighting Corruption: South African Perspectives** lists some of those values: compassion, integrity, honesty, truth, justice, freedom and respect for one another (Bonganjalo Goba Chapter 11, **Moral Vision of a Transforming Society: Choosing who we are**).

1.10 The South African Constitution contains innovative provisions to enable citizens to participate in building the new democratic order. These include the right to information, the right to participate in law-making and the right of everyone to move the judiciary on matters of public interest — invaluable for the purpose of achieving transparency and accountability in governance.

1.11 If the state is to be remoulded and the market is to be brought under the discipline of the rule of law in order to progress towards a corruption free society where the legitimate expectations of ordinary women and men may be realised, we must recognise the critical role of coalitions of active and socially conscious citizens — nationally, regionally and globally —

of a vibrant civil society in achieving these objectives. The global movement to combat corruption, launched by Transparency International is premised on the belief that only such broad based coalitions can create the strength necessary to challenge the powerful combination of forces which sustain and benefit from corruption.