

Chapter 4

GOVERNANCE AND PUBLIC ADMINISTRATION IN BIHAR

The most important change in recent thinking about economic development and growth has been the emphasis on institutions, administration, and the quality of governance.¹ Thus, India's Tenth Plan document and the Eighth Inter-State Council meeting in August 2003 emphasized good governance and the government's critical role in development. Recognition of the central role of institutions is also evident in the reforms undertaken by the states, aimed at improved response to the public with effective delivery of high-quality services.

Most state governments are characterized by poorly defined service norms, political interference, and a largely non-meritocratic bureaucracy. Especially so in Bihar, this is compounded by a highly centralized administration with the kind of incentive structure that thwarts decision-making and can cause major delays. This impairs the state's ability to manage public resources and implement projects and programs.

Some programs in Bihar have been effectively implemented, demonstrating the possibility of success with resultant improvement in social and economic outcomes. Such successes include: the pulse polio immunization project, COMFED dairy cooperative, participatory irrigation management in Paliganj, and the recent additional revenue measures. This chapter identifies the main difficulties in governance and administration, together with the required coordination in authority, incentives, leadership, and resources to improve administrative effectiveness.

Decision-making, Centralization and Procedural Logjams

Centralization

Bihar's centralized government, resistant to delegation of authority is characterized by personalized politics, that obstructs institutionalized decision-making. There is reduced risk-taking with bureau-

cratic preference for collective scheme approval to avoid accusations in the use of public funds.

The committee system is also poorly developed and is a major hindrance to the decision-making process. For example, the Development Commissioner alone handles over 100 committees on diverse subjects. The Cabinet Sub-Committee on Economic Affairs, set up to expedite important decisions, is swamped by routine matters. Limited computer use results in delays and inefficient manual procedures. This weakens the capacity to deal rapidly with natural calamities, law and order, or projects.

Other instances of centralization holding up speedy decision-making include:

- ◆ Centralized purchases, excessive use of rate contracts, and routing all notices for tenders and procurement through the Department of Information and Public Relations;
- ◆ Lack of downward delegation for minor repairs, expenditure, and tender approval, and the committees of secretaries to approve even minor tenders and purchases;
- ◆ Cabinet approval for most cases relating to temporary or permanent settlement or lease of land;
- ◆ Centralized decisions on most appointments, transfers, and additional charge for even local vacancies;
- ◆ Approval by the finance department or high-powered committee under the Chief Secretary for most expenditure and personnel matters.

Procedural logjams

The severe erosion of development outcomes is due to the system of budget sanctions and releases,

the approval procedure for schemes, expenditure, continuance and creation of posts etc, as well as poor monitoring.

Comparison with other states

States like Andhra Pradesh and Karnataka and the newer states like Chhattisgarh and Delhi have simplified their financial and administrative procedures, allowing departmental autonomy for spending, personnel and approvals, and delegation of powers, with time limits for decisions. In Uttar Pradesh, the departments can incur expenditure on continuing schemes once the Governor has approved the budget. In a number of southern states, departmental file movement has been computerized and empowered committees dispose off inter-departmental matters speedily. Major exercises to revise manuals and secretariat procedures are under way in other states, including financial power to account for inflation and prescription of time limits for action.²

Reform considerations

Administrative and procedural reforms are complex, but can be quickly executed and yield demonstrable benefits, especially if politically non-sensitive. The action areas here include:

- ◆ Amending the Rules of Executive Business to raise the cost limit for schemes requiring clearance by the Empowered Committee and Cabinet. As in the central government, this can be strengthened by an intermediate tier, consisting of a committee under the Secretary with representation of the finance department for original and revised approval as well as for continuing schemes ;
- ◆ Delegating more powers to field officers and elected or autonomous bodies. This will revise financial powers and simplify the procedures for purchase, tender, deployment of staff, and approval of schemes, taking cognizance of the recommendations of the Maheshwari Committee³
- ◆ Institutionalizing the system of internal financial advisers and granting more departmental autonomy in the use of sanctioned budgets, similar to the center and Andhra Pradesh.⁴ This could be introduced gradually starting with the major departments.

These suggestions aim to enable senior officials focus on policy analysis and supervision and

remove decision-making bottlenecks. They intend to communicate the objectives to employees for their support and encourage public discussion to carry out reform.

Civil Service Reform

Sector studies and discussions with senior officials show that recruitment, vacancies and staff performance problems greatly affected policy formulation, project implementation, fund utilization, and service delivery. Two principal problems are the fragmentation of personnel management between the finance and personnel departments, and absence of reform in service cadre rules, which have generated avoidable costs and litigation. A fuller discussion of these issues is included in Annexure 3.

Civil service reform has been well presented in the Fitment Committee Report (1999) and the Fitment Appellate Committee Report (2000). The Fitment Committee, which resembled a Pay Review Commission, showed the impractical and unaffordable aspects of adopting central scales for all state posts. This is especially true as most departments did not have recruitment and promotion rules for the majority of posts. Besides, since there was no rationalization of functions, departments were often created or divided illogically. The Committee also reported a lack of concern about: (a) the unaffordability of providing central scales and allowances; or (b) the need to constitute bipartite committees for wage negotiation. Additionally, there are insights into how past practices have distorted inter-cadre alignments. Some of these issues are addressed below.

Size and composition of civil service

The GoB is not overstaffed as compared with other states (Table 4.1). In fact the obverse is true, as shown by vacancies in critical areas, such as engineering and teaching. The problem with the state's civil service has more to do with affordability, composition, skill mix, spatial distribution, and overstaffing in groups C and D, which form about 94% of the total employee strength.

Reforms in other states

Extensive civil service reforms being implemented in other states, that are relevant for Bihar, can be summarized as follows:

- ◆ Publication of a strategy paper, that has political ownership, on good governance and civil

TABLE 4.1 COMPARATIVE STATE-LEVEL PUBLIC EMPLOYMENT STATISTICS

State	Population	Core Civil service	Ratio	Total govt. employees less SOEs*	Ratio	Total Public sector	Ratio
Andhra Pradesh	75,110,584	553,972	0.74	965,892	1.29	1,328,550	1.77
Karnataka	51,152,000	240,969	0.47	530,984	1.04	693,246	1.36
Orissa**	35,391,000	480,000	1.36	581,400	1.64	660,928	1.87
Gujarat **	47,267,000	206,000	0.44	502,000	1.06	800,000	1.69
Punjab	23,510,000	NA		373,702	1.60	NA	NA
Uttar Pradesh**	162,000,000	880,000	0.54	1,530,000	0.94	1,778,500	1.10
Bihar	82,880,000	451,344	0.54	NA	NA	533,544	NA

Notes: * The figures for total government employees less SOEs include work charged and daily wage laborers, grant-in-aid institutions, sub-national governments, and other employees whose salaries are covered by the state. It does not include employees of state-owned enterprises, cooperatives or municipal corporations.

** Figures are based upon World Bank estimates from available data. Gujarat data is from 1998-99. Bihar data is for 2003-04 estimates.

Source: State governments.

service reform with sequenced annual implementation plans (in Andhra Pradesh, Karnataka, Orissa and Kerala).

- ◆ A comprehensive computerized personnel database linked to computerization of the treasury and payroll (in Uttar Pradesh, Punjab and Andhra Pradesh).
- ◆ Responsibility for civil service reform under the Chief Secretary (in Andhra Pradesh, Karnataka, Orissa and Maharashtra).
- ◆ Zero-based audits of key departments (preceded by quick functional reviews) based on inventory of schemes, identification of those redundant, unproductive staff, and linked activities. Redundant staff is offered redeployment, voluntary retirement, or in some instances, termination with benefits (in Orissa, Karnataka and Maharashtra)⁵.
- ◆ Increasing recourse to contract mode of appointment and lateral entry with adequate safeguards (in Andhra Pradesh and Karnataka).
- ◆ Consolidating civil service cadre rules for systematic revision with due regard to causes for service litigation and effective performance⁶.
- ◆ Devising computerized procedures for secretariat information and to monitor file movement such as Smartgov (in Andhra Pradesh) and simpler systems (in Karnataka, Delhi and Maharashtra).

Reform considerations

Against this backdrop, two important steps could help initiate the reform process: (a) setting up an

expert committee with a limited tenure and clear terms of reference to provide a vision and strategy for administrative reform and manpower planning in consultation with employees and civil society. The experience of Maharashtra and recent efforts in Orissa can serve as a guideline; (b) developing a comprehensive personnel database, clearly necessary, as exemplified by the irrigation department. This should be integrated with information required for pension management and monitoring. Clearly, the capacity of the personnel department, in collaboration with the finance department, will need to be strengthened. Recent recommendations of the secretaries' committees to amend civil service rules, and rules on departmental inquiries and secretariat procedures, should be implemented incorporating the suggestions of the Fitment Committee. Finally, the expert committee should formulate measures to rationalize cadre rules, promotion criteria and seniority lists. This could draw on examples from other states and prescribe criteria for the creation and upgradation of posts. The criteria spelt out by the Fitment Committee may help guide this process. These reforms could reduce the burden of litigation (discussed below) and smooth promotion, thereby ensuring greater equity across cadres.

Machinery of Government: Rationalization of Functions and Staff

Changes in the skills mix of staff need to be accompanied by measures to reduce administrative fragmentation and to streamline the machinery of government. In many states, the problem of a large and unwieldy council of ministers is compounded by relatively weak mechanisms for policy coordination. Fragmentation extends beyond administrative

structures, civil service cadres, and the non-alignment of budget heads with departments. Institutional reforms are therefore needed to reduce such fragmentation and align the structure of the civil service more closely with updated functions.

Bihar has 48 departments, which is large as compared with other states (Andhra Pradesh has 36 and Karnataka 29). This reflects the pressures of coalition politics. These departments are fairly segmented without much coordination between them, especially in important policy areas such as poverty reduction, agricultural production and family planning. This dichotomy percolates to the districts and is complicated by the responsibility of elected local bodies for disparate functions. However, the district magistrates retain a critical role in coordination and leadership despite erosion of their authority over elected local bodies and other constraints.

Two major components of the reform process in Andhra Pradesh and Karnataka are: a) simplifying, redefining and rationalizing the government's role to focus on the most critical public goods and services; and b) enhancing accountability, responsiveness and transparency with which the government and its agencies perform this role. States like Uttar Pradesh, Karnataka, Andhra Pradesh and new states like Chhattisgarh and Delhi have initiated serious exercises to merge, abolish or consolidate departments and streamline the reporting relationships for heads of departments. Rationalizing government structure and rightsizing has been achieved to a significant extent in Chhattisgarh, which has reduced the secretariat to 18 departments (compared to 50 in undivided Madhya Pradesh), while limiting salary expenditure to 40% of own source of revenue. Withdrawal of government from unwarranted areas is related both with devolution to local bodies and outsourcing to the private sector, NGOs and user groups as in Karnataka, Kerala and Andhra Pradesh. Orissa's zero-based functional audit and Maharashtra's exercise of quick and effective functional reviews demonstrate ways in which reviews can be undertaken with limited resources.

Reform considerations

Organizational reviews have provided an analysis of restructuring options at departmental and agency levels and creating rationalization opportunities. The Fifth Central Pay Commission (1996) and the Karnataka Administrative Reform Commission (2001) reports provide excellent

models for prior option reviews and recasting of functions and ministries. The Fitment Committee recommended organizational reviews in Bihar and updating of the Rules of Business. However, barring the limited exercises that were undertaken in three departments, most have not had reviews.

Given the imperatives of a coalition government, it is ambitious to immediately expect a major exercise that rationalizes the machinery of the government. A greater number of feasible near-term exercises need to:

- ◆ Undertake zero-based audit of functions and staff across departments, and amend the rules to enable the transfer of staff including engineering personnel between departments keeping the Fitment Committee observations in mind. The newly set up Administrative Training Institute can support this effort.
- ◆ Appoint a high-level state commissioner attached to the Department of Personnel to oversee this work with responsibility to examine the experience in Andhra Pradesh, Karnataka and other states; rationalize the functioning of departments; eliminate administrative overlap and duplication; and wind up units whose services are no longer necessary;
- ◆ Link this to deregulation and privatization as also ongoing efforts to transfer responsibility for infrastructure and social services to user groups; and
- ◆ Clarify the functions of panchayati raj institutions (PRIs) at different levels and their links with district administration and user groups, such as JFM, VSS, health committees, watershed associations, PIM groups and self-help groups, strengthen the financial and organizational capacity of PRIs and enhance citizens' supervision of PRIs.

Problems of Meritocracy: Recruitment, Promotion, and Redeployment

The existing civil service rules envisage a merit-based system of recruitment, placement, promotion, sanctions and rewards. However, official committee reports and interviews show that the system operates in an ad hoc, non-transparent and

non-meritocratic manner. Problems related to the work environment (including those faced by women employees), infrastructure, and accommodation, local tensions and delayed salaries together affect staff morale. There also appears to be a breakdown of hierarchy and the loss of control by district magistrates, heads of departments and departmental secretaries over subordinate personnel. The district magistrates appear to be frustrated by centralization, absence of support and understanding from their superiors, and inaction on reports of malfeasance and inefficiency at subordinate levels.

Problems of recruitment, promotion and redeployment

Difficulties in recruitment and promotion lead to problems of vacancies in frontline positions, which in turn affect execution of schemes and the provision of services. Sanctioned posts of around 40,000 teachers have recently been filled, but after being long overdue. Many vacancies continue in critical field posts like the DDC of zilla parishads, block development officers, chief engineers down to junior engineers and critical support staff in district magistrates' offices.

The problems in recruitment stem from delays in approval for continuation of posts, loopholes in departmental rules, court directions, delays in sending requisitions to the PSC and SSC, the inefficiency and recent controversy surrounding the Bihar Public Service Commission and the uncertainty over filling positions following the state's bifurcation. Existing rules prevent the transfer of engineering and other staff across departments to deal with critical shortages. There are also problems of unequal distribution of employees across districts, partly due to their unwillingness to be posted to backward areas. Unlike the Government of India, there is no cap on compassionate appointment of legal heirs of deceased employees and there is no criterion for penurious circumstances.

Performance assessment, rewards and sanctions

The performance assessment of employees is recorded in confidential rolls. As in the center and other states, promotion is based on seniority with little incentive to excel and secure outstanding grades. Training opportunities are limited even for senior officials. Consistent with the trend in most states, there is little effort to weed out deadwood by

enforcing compulsory retirement in the 50-55 year age bracket.

Experience of other states

The importance of merit-based staff recruitment, promotion and deployment has been recognized by most states. The initiatives undertaken include:

- ◆ Rightsizing exercises in Andhra Pradesh, Orissa, Karnataka, Punjab, Goa, Chhattisgarh and Maharashtra with a range of measures to abolish vacant posts, freeze posts and recruitment, phasing out work-charged staff and compassionate appointments, redeployment of surplus staff, premature retirement, and attractive schemes for voluntary retirement;
- ◆ Departmental recruitment committees, on the model of the center and Andhra Pradesh, with an annual plan for filling posts while considering attrition, temporary and permanent posts related to plan and non-plan schemes, essentiality, modes of recruitment, reservation and the shortage of staff in backward districts;
- ◆ Transfer policies based on stable tenure, transparency and consultation with employees (as in Andhra Pradesh and Karnataka);
- ◆ Merit-based recruitment for core and non-core posts requiring different modes of recruitment and the collector's control over field staff (as in Andhra Pradesh);
- ◆ Increasing attention to performance assessment at the secretariat and field levels through improved confidential rolls, clear links to promotion, training, continuance in service and career planning and the use of tangible performance indicators (as in Andhra Pradesh);
- ◆ Efforts to streamline and reduce delays in departmental inquiries; and
- ◆ Training workshops, video-conferences and other modes to improve two-way communication.

Reform considerations

Bihar's Fitment Committee recommended several steps for formulating or revising recruitment rules applicable to all services, and the criteria for approving the creation of posts or awarding pay scales. The state could perhaps follow up these

recommendations, assisted by an expert panel as in Andhra Pradesh. The priority considerations for reform include:

- ◆ Urgent approval of critical vacancies and strengthening capacity and infrastructure in BPSC and SSC for filling posts. However, it would be financially imprudent to fill all vacant positions reported by the departments without verification;
- ◆ Scale up departmental rightsizing exercises after evaluating the effort of the departments of irrigation and public health engineering;
- ◆ Consider setting up recruitment screening committees on the model of the center and Andhra Pradesh;
- ◆ Introduce greater transparency, delegation of powers, and constitute district cadres in the transfer policy; and
- ◆ Improve communication between field officers and departments.

Making Government Accountable and Responsive to Citizens

Responsive administration and access to information

The thrust of the message of the Tenth Five Year Plan and the recent Action Plan for Good Governance approved by the Eighth Inter-State Council is that administrative reform is meaningful only to the extent that it enables responsive, transparent and accountable administration and service delivery. Good governance is on the political and administrative agenda of many states. The features of citizen-centered administration that provides information to the public about the kind and quality of government services should include:

- ◆ Formulation and credible implementation of citizens' charters;
- ◆ Speedy and effective redressal of public grievances;
- ◆ Simplification of rules and regulations;
- ◆ Decentralization and partnerships with NGOs/private sector;
- ◆ Easy and widespread access to information on government schemes and procedures and computerized access of land records (such as BHOOMI in Karnataka);

- ◆ Facilitation of transactions with public agencies through computerized counter services or virtual sites (such as E-Seva in Andhra Pradesh, JAGRITI in Punjab, FRIENDS in Kerala);
- ◆ Opportunities for consultation and participation in budgeting, service delivery and resource allocation (such as Janagraha in Bangalore or Bhagidari in Delhi); and
- ◆ Documentation and dissemination of best practice across states.

The elements of responsive administration and transparency are yet to be fully articulated in Bihar despite positive moves in this direction. The failure of the complaint mechanism and lack of information on reasons for the recurring breakdown in public services - like water supply, power and sanitation in public utilities — contribute to the numerous High Court petitions. There is presently no nodal point for functional reviews and restructuring departments. The division for administrative reform in the Department of Personnel and Administrative Reform is moribund.

E-governance

Good practices in e-governance have been known in many states. These include E-Seva in Andhra Pradesh, Janmitra in Rajasthan: FRIENDS in Kerala and CHOICE in Chhattisgarh for all transactions with public authorities; SETU in Maharashtra (computerized counter services in public offices); city and district-level projects like VOICE in Andhra Pradesh; computerized registration process in Andhra Pradesh and Maharashtra; computerization of land records in Karnataka; wired villages and panchayat links in Kerala, Maharashtra and Madhya Pradesh; computerization of treasury in the southern states; state portals, file monitoring, issue of licenses and permits and various networked systems in Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra. Chhattisgarh is an example of a new state developing and implementing a road map for e-governance in a short time. Specific applications and IT kiosks may not be a burden on public resources given the readiness of the private sector to come in on a BOT basis or the willingness of NGOs to run IT-based services as in Maharashtra and Pondicherry. E-kiosks for farmers could be piloted quickly on the model of the NGO effort in Pondicherry or the Gyandoot in Madhya Pradesh.

Vigilance and corruption

A series of high-profile scandals have given Bihar an unfortunate reputation of being highly corrupt, reiterated by some central ministries and also external observers. Citizens' surveys show demands for bribes at various service outlets, such as allotment of houses, release of subsidy in poverty reduction schemes, and grant of permits and licenses. One result is the demoralization of "clean" officers when action is not taken against corrupt ones. It also diverts scarce resources away from development needs, and has an adverse impact on the investment climate.

The problem in Bihar is in part related to poorly enforced sanctions and failure to prosecute corrupt individuals. The procedures of departmental inquiries suffer from all the delays and ineffectiveness that are common to most states.⁷ The Lok Ayukta (ombudsman) is generally seen as not being very effective because of a lack of prosecuting staff and an absence of accountability to the public.

Reform approaches

Many states are strengthening their vigilance and anti-corruption effort, with states like Andhra Pradesh, Karnataka and Orissa coming out with a long-term strategy. The Lok Ayukta in Karnataka has been spearheading the move for abolishing corruption. Visible progress is being made in some states. The main problem in Bihar appears to be the lack of accountability for grievance redressal and the failure to fix responsibility for time-bound action based on public requests and complaints. The government could achieve quick results in areas with strong public interface which are prone to corruption and thereby demonstrate its commitment and ability in improving service delivery. The reform priorities could include:

- ◆ Developing rural and urban model offices to demonstrate improved counter services, computerized issue of certificates and permits needed by the public and business, and the benefits from process re-engineering and motivated employees.
- ◆ Strengthening the administrative reforms division to coordinate good governance effort and functional reviews, supported by ATI for capacity building;

- ◆ Widely accessible notification of citizens' charters (based on user and employee consultation) by selected departments, listing citizens' entitlements to various public services with known quality and time limits, and ensuring their implementation in consultation with citizens' groups;
- ◆ Generating citizens' demand for responsive administration through widespread consultations;
- ◆ Identifying and implementing some e-governance applications with demonstrable benefits;
- ◆ Reducing corruption through simplified regulation, process re-engineering, and transparent procurement practices.

Judicial Administration and Governance

A well-functioning judicial system operates with checks and balances between the main branches of government—legislative, judicial and executive. This is vital to each of the key themes of this report that is, a healthy investment climate and environment for growth requires the judicial system to protect property rights and impartially resolve legal disputes; and good governance and administration require that government execute its responsibilities in accordance with the law. A key element of poverty reduction is the equal protection of the poor under the law. The judicial system must be impartial and provide a balanced interpretation of the law while recognizing the constraints and responsibilities of the other branches of government. Some of the issues in judicial administration, with a focus on judiciary-executive relations are examined here.

India performs well in preserving the rule of law. However, the Bihar government has become increasingly challenged in the maintenance of law and order, with financial and administrative difficulties creating extensive litigation against it. This brings the government and the judiciary into conflict over issues of enforcement of rights, policy implementation, and compliance with court orders. The constitutional mechanisms of checks and balances among the three organs of the state seem to be strained and the techniques being utilized for redressing grievances seem distant from what the founders of the Constitution had originally intended.

Growing demands for judicial relief against the government

Since 2000, the vast majority of cases in Bihar's High Court relate to civil writ petitions that involve executive inaction, resulting in violation of a legal right. The writs cover four broad areas: service-related matters of government employees (non-payment of salaries, irregularities in obtaining land revenue; etc.)⁸; irregularities in obtaining land revenue; non-payment of admitted contractual dues; and breach of statutory rights by public utilities.

Public interest litigation

In addition to writs, many public interest litigations (PILs) are being filed in the High Court. In India, the courts are gradually assuming the power under writs and PILs to direct the state on policy matters. In a series of Supreme Court decisions, it has been held that writs can be issued under PILs, to compel government action on matters where the government normally has discretion. However, there are few PILs where the court has actually exercised such discretion. In most cases, the courts order the executive to fulfill an obligation that it is legally bound to perform.

Most PILs in Bihar have shown an urban middle-class bias, such as the infamous Arun Mukherjee PIL. Originally filed to ask for removal of encroachments and street widening, it has subsequently been used for such varied matters as removal of waterlogging, city beautification, and location of bus stands. There have been other PILs though bearing on general social welfare, for instance, to compel the holding of PRI elections, and to protect fresh-water dolphins. Although the majority of PILs are dismissed by the court as frivolous, the executive feels that those admitted are often on administrative and policy issues. They feel the PILs distort public resource allocation and focus on targeted special interests rather than the general population. In addition, there are complaints that a lot of time of senior government officials is being diverted from their primary duties to court appearances that are, on occasion, abusive to them.

The judiciary sees the issues differently citing: repeated instances of government failure to comply with court orders; grave issues at times involved in writs and PILs; court documents not filed for long periods; or government lawyers unable to answer court questions. Indeed, the pat-

tern of cases against the government that come before the court strengthens the perception of a breakdown of governance. The cases include: government programs not being implemented, basic services not provided, corruption, escalating diversion of funds, violence and a general feeling of government apathy. Often, the government simply refuses to comply, resulting in a large number of contempt petitions.

Contempt proceedings against the government

Many writ petitions and PILs have financial implications for the government which, under Bihar's fiscal stress, cannot be financed. The government frequently ignores court orders as a result, leading to contempt of court proceedings. There are currently over 5,500 contempt applications pending against the government in the High Court, 1000 of them from the previous year alone. The government in fact has no financial incentive to comply with court orders since contempt proceedings take two years to be heard (relating to different fiscal years and different postings). The court views this as outrageous, and it has led to an apparently adversarial relationship between the judiciary and the government. It is reported that in the majority of court cases, the government could comply with court orders as the matters are capable of being implemented by the government and yet compliance is achieved only after contempt proceedings.

Many other writs raise issues of administrative inaction or irregularities. Administrative actions sometimes violate the rule of law. A frequent example is writ and contempt applications involving the government's non-payment of retirement benefits. Over 1500 contempt applications are pending relating to non-implementation of orders involving post-retirement benefits. The court has often directed senior government officials to appear before it, as government lawyers are unable to explain to the court the underlying rationale of the government.

The payment of public salaries has also been raised with the Supreme Court of India. Recently, the Supreme Court asked the Bihar Government to deposit Rs.50 crore with the Patna High Court for disbursement of part of the unpaid salaries to thousands of state public sector undertaking (PSU) employees. In many cases, these employees have not been paid for years.

Strain on court resources

Like other states, Bihar suffers from a huge backlog of court cases. The Patna High Court is estimated to have about 90,000 pending cases. Owing to the expansion of the court's writ jurisdiction and the increase in PILs, a significant proportion of court resources are being devoted to them. Out of the 24 judges in the High Court, eight are exclusively devoted to hearing writs and four to hearing PILs. This seriously affects the prompt disposal of other cases and adds to the arrears. On an average, there is a waiting period of about 20 years before a case comes up for hearing.

The quality of legal representation on behalf of the government is also poor. Previously governmental departments had legal cells to advise on litigation, but these have now been abolished. The offices of the Law Secretary, the Advocate General, government pleaders and other standing counsel are not equipped to deal with the growing number of cases against the government. The coordination between them and the concerned litigant departments is weak and results in long delays and inadequacies in filing documents on behalf of the government.

About 80% of the judiciary belongs to the forward castes although they represent about 18% of the total population. It is reported that interests represented by the forward castes are reflected in judicial pronouncements, undermining the implementation of much socio-economic legislation, to the detriment of the weaker sections, such as the Land Ceiling Act and the Bihar Homestead Tenancy Act. Representatives of the weaker sections are slowly beginning to join the legal and related professions and issues concerning their protection and welfare are now being taken seriously.

Reform considerations and approaches

Government litigation is closely linked with administrative reform on two counts. One is the question of procedural reform relating to management of litigation, effective monitoring of cases, proper legal defense, appointment of good pleaders and the provision of support and advice to the heads of departments and secretaries. The other is the need to address systemic causes for recurring petitions to the court for executive inaction, insensitivity to citizens' grievances, civil service complaints or payment of admitted dues by the joint engagement of the High Court and government as exemplified in pension payments. Bihar could draw lessons from

recent studies in Andhra Pradesh, reforms introduced in Karnataka and Andhra Pradesh as well as the lead role being played by the law department.

The large number of contempt petitions in the High Court questions the effectiveness of writ proceedings. Simply issuing of writs is not the answer without delving deeper into the ability of the government to comply with court orders because of administrative or financial constraints. Attempts to engage with the administration have been made on a few occasions in the Patna High Court. The latest is a joint attempt to set up a pension cell within the state departments for dealing with retirement benefit cases coming to the High Court. Such engagement, pending evaluation, would appear to be a much more constructive approach to dispute resolution.

The issues noted here on judicial-executive relations are complex and do not lend themselves to simple and quick solutions. They also can have profound consequences for society, with the potential for major improvements in the way government conducts itself and how the law is administered. A great deal of discussion and open debate will be needed in moving this agenda forward. Some preliminary suggestions include:

- ◆ **Setting up of a system to facilitate proper management of cases against the government.** As brought out in the Report, one of the primary reasons for the poor quality of legal representation on behalf of the government is the lack of infrastructure and resources to manage and advise, inter-alia, on actions and proceedings and coordination between departments. A system in which the government is advised and updated on issues, that are rationally segregated, will help improve the quality of legal representation of the government. It will shorten the ever-widening gap between the government and the judiciary. There is also an urgent need to monitor government cases in the courts, improve the system of appointment of government lawyers and establish a mechanism to ensure proper decision-making for efficiently managing the process of government litigation. In response to a recent directive from the High Court, the government has issued instructions directing all departments to ensure that court documents are filed on time and that court orders are complied with.

- ◆ **A review of court management and administration with the objective of setting up a system for the efficient and prompt disposal of cases.** Owing to the ever increasing litigation and limited resources, leading to virtual denial of justice, such a system is imperative. The judiciary needs to be equipped to better administer the pending cases on a priority basis. Such priority could depend upon factors such as cost, public interest, the number of years a matter has been pending, etc. The court management procedure also needs improvement.

Encouraging alternate dispute resolution

Mediation and alternate dispute resolution may be a more practical and speedy resolution to the majority of pending cases, rather than relying on current court procedures to clear up the massive and growing backlog. This would require panels of trained mediators and conciliators. In addition, the amendments to the Code of Civil Procedure, 1908 for the purpose of speedy and timely adjudication of disputes should not remain merely on paper.

Summary

The quality of governance and the civil service are fundamental to development. They cut across issues of performance in service delivery, poverty reduction, and economic growth. This chapter has focused on public administration and measures to improve its performance.

Bihar's problems with regard to administration include: fragmentation, excessive support staff, inadequate skilled staff, difficulty with redeployment, and antiquated and cumbersome rules, which curb governance. These problems are not unique to India, and certainly not Bihar. However, they are accentuated in Bihar by the extreme centralization of the administration, a weak system of incentives and sanctions, procedural logjams, and by corruption. The difficulty and fear of risk taking, due in part to fear of vigilance inquiries and court direction, has paralyzed decision-making with consequent erosion in development outcomes and performance of basic public services, including core social development affecting all levels of government. Related to this has been the enormous and growing burden of government litigation and contempt orders, due in large measure to Bihar's problems of administration. These are

also key factors behind weak project implementation and forfeiture of centrally sanctioned resources.

There is a large agenda for administrative reform. This chapter has dealt with centralization and decision-making, civil service reform, rationalization of staff and functions, the problems of meritocracy, government accountability, and judicial administration. But this large agenda needs to be prioritized and sequenced in a pragmatic way, bearing in mind the difficulty of institutional reform and Bihar's capacity constraints. Moreover, for the agenda to succeed, its ownership by the political leadership and bureaucracy is imperative. Reforms in Bihar should be simple and practical to take the agenda forward, yield demonstrable benefits, enable quick execution, and be politically non-threatening. The following priorities are recommended for initiating this agenda:

- ◆ **Procedural reforms and amendment of antiquated rules:** (i) Delegate more authority by amending the financial limits under the Rules of Executive Business. This would raise the cost limits for clearing schemes without Cabinet approval, and for departmental expenditure sanction with minimum external reference; (ii) minimize disruption of funding flows for budgeted schemes through budget procedure reform. This will enable utilization of Gol releases through contingency funds, or immediate access to funds kept in civil deposit; (iii) amend rules on cadre rationalization and secretariat procedures including the authorization of transfers across departments to hasten decision-making and enhance administrative capacity by implementing the recent recommendations of the committees of secretaries.
- ◆ **Enable secretaries and field officers to focus on policy and program implementation:** (i) Grant greater departmental autonomy over sanctioned budgets, scheme approvals, publication of tenders and notices, continuation of posts, time-bound promotions, and contingent expenditures; (ii) fill secretariat and technical head vacancies (plan and non-plan), establish transparent rules for vigilance inquiries, and reduce time spent on establishment matters; (iii) delegate more authority to district magistrates, field officers and elected or autonomous bodies, for purchase, tender

approval, staff deployment in key vacancies, and routine maintenance ; (iv) establish a system for effective management of legal cases against the government, including service litigation; and (v) develop measures to improve two-way communication between field staff and the secretariat.

◆ **Making the administration more efficient and responsive:** (i) provide more opportuni-

ties for exchange of experience and experimentation to field officers through workshops in the Administrative Training Institute with dissemination of success stories; (ii) improve tracking and public grievance redressal mechanisms; and (iii) create counter services to enhance public satisfaction.



Notes

¹ The World Bank's 2002 *World Development Report* focuses on institutions, markets and economic development.

² See Report of the Karnataka Administrative Reforms Commission, 2001, and the Report of the Andhra Pradesh Cabinet Subcommittee on Administrative Reforms.

³ Report on Administrative Reforms in India, prepared by Professor S R Maheshwari, former Professor of Political Science & Public Administration, Indian Institute of Public Administration, New Delhi and submitted to the Department of Administrative Reform & Public Grievances, Ministry of Personnel, Gol, 2002.

⁴ See Andhra Pradesh Report on *State Financial Accountability Assessment, 2003* and the Easwaran Committee Report for Gol, 1996.

⁵ See Orissa White Paper on *Public Expenditure Management and Administrative Reform, 2002*, for a lucid exposition of rightsizing strategy.

⁶ See the excellent exercise by the One Man Committee in Andhra Pradesh, 1980, and the recent *Review Report of Service Litigation* by the Andhra Pradesh Center for Good Governance, 2002, as well as the Report of the Maharashtra Committee on Good Governance, 2001.

⁷ See the Report of CGG Andhra Pradesh referred to earlier and the Report of the Institute of Applied Manpower Research, Delhi, 2003.

⁸ There is also some indication of the High Court selectively admitting matters which involve financial claims against the government that should actually be tried as civil disputes.