



## Oral Orders Are Anathema to Good Governance

One of the major criticisms of the liberal democracy in India which still deters major players from investing into this country is its alleged bureaucratic sloth which has so far kept India's developmental potential hobbled. Notwithstanding all the efforts to make the Indian bureaucracy change its ways, it is alleged to remain recalcitrant and refuses to respond to the demands of time. Indian bureaucracy has also been alleged to have always been tied to the coat-tails of the political class in power and have usually acted as the Cerberus of the partisan interests of the reigning party.

The Indian political class has also effectively and carefully nurtured a symbiotic relationship with the Indian bureaucracy. Hence, the fondness for a subservient and pliable civil service has never waned though every party in power has always paid a lip service to the necessity of an impartial and transparent bureaucracy. But the fact remains that Indian bureaucracy's craving to free itself from the shackles of political bondage could be no more than the desire of those who hold the reins namely the ruling establishment.

Good governance in a democracy is possible only if it has a professional bureaucracy to carry out the vision of the elected executive. But as the elected executive holds the reins of control over service conditions of the civil servants, the latter has been alleged to be more than willing to oblige the former to ensure desired transfers or postings for themselves. As a result thereof, the institution of bureaucracy has effectively been emaciated over the years. And when the system including the political class has looked forward to strong responses from a withered civil service, the latter has often disappointed.

For the major part of its existence, Indian civil service has always reflected the traits and character of its political masters who have generally preferred to get their work done without being caught for a wrong move or being held accountable for the decisions taken. As they say, successes have their fathers identified but failures have always been orphans. The phenomenon of issuing verbal instructions to the civil servants emerged from this cosy

relationship between the political class and the civil service. And with the slew of decisions going wrong and emerging as major scams in the media, the civil servants have been baulking lately to take the stick on behalf of their political patrons.

All this seems likely to change if an Office Memorandum (OM) issued recently by the Central government is to be believed. This OM urges the bureaucrats to ignore oral instructions of the political masters. This will go a long way in bringing about an overall accountability in the upper echelons of the government unless it remains one of the several such pious nostrums from the rostrums.

This move is said to be a compliance of the celebrated Supreme Court judgement as delivered on the 31st of October, 2013. The judgement came in response to a petition filed by 83 retired bureaucrats and eminent persons who thought of inviting the attention of the Apex Court towards some of the ills afflicting Indian bureaucracy for aeons. The petitioners included former Cabinet Secretary TSR Subramaniam, former Indian Ambassador to the US Abid Hussain, former Chief Election Commissioner N Gopalaswami, former Election Commissioner T S Krishna Murthy, former Delhi Commissioner of Police Ved Prakash Marwah, and former CBI Directors Joginder Singh and D R Kaarthikeyan.

In its judgement in the TSR Subramaniam and others Vs State of India case, the Supreme Court said, "The civil servants cannot function on the basis of verbal or oral instructions, orders, suggestions, proposals, etc. and they must also be protected against wrongful and arbitrary pressure exerted by the administrative superiors, political executive, business and other vested interests".

"Recording of instructions and directions is, therefore, necessary for fixing responsibility and ensure (sic) accountability in the functioning of civil servants and to uphold institutional integrity," said Justice Radhakrishnan, who authored the 47-page judgement. The court also saw merit in recording oral instructions for strengthening citizens' entitlement as enshrined in the Right to Information Act (RTI). "By acting on oral directions, not recording the same, the right guaranteed to the citizens under the RTI Act, could be defeated. The practice of giving oral directions/instructions by administrative superiors, political executives, etc. would defeat the object and purpose of RTI Act and would give room for favouritism and corruption," the judgement said.

The written directions are of critical importance as mere oral commands defeat the purpose of transparency, giving rise to favouritism and corruption in the system. The need for issuing written orders would, hopefully, deter politicians from issuing illegal or flawed directions.

Attributing bureaucratic deterioration to political interference, the Court observed that civil servants should not act on verbal orders from the political executives and any action by them must be based on written communications from the superiors. If the superiors' instructions are not in writing, the concerned bureaucrat, acting on such oral orders, must put the same down in writing on file to record the source of action and also to show that the decision was not his/hers. This would save him/her from the risk of getting hounded and victimised for it if things go wrong in future.

The Government-constituted Hota Committee (2004) and Santhanam Committee (1962) on administrative reforms had also highlighted the necessity of recording instructions by public

servants. Be it kindly noted that Rule 3(3)(iii) of the All India Service Rules clearly says that superiors' orders should ordinarily be in writing. In exceptional circumstances, it says, action can be taken on the basis of oral directions, but the superior officer must later confirm the order in writing. But such provisions have usually been complied in breach. The bureaucrats of a South Indian state were recently up in arms against the reluctance of the Ministers to put down their oral orders in writing which led to an unwholesome procrastination over many critical decisions, thereby hobbling the functioning of the government machinery.

The fact remains that many of the important decisions in the government at all the levels keep hanging fire for the simple reason of lack of courage to own up the same in case of things going haywire. But the stakeholders including bureaucrats and elected representatives holding public offices have to understand and appreciate that any decision or action taken impartially and transparently as per pre-laid out norms and rules would not invite the kind of public opprobrium or criticisms as taken in an opaque manner.

Oral instructions, once they become the norm than the exception, are really anathema to the tenets of good governance. One only hopes that the recent guideline regarding oral instructions would be followed and complied in all seriousness thereby giving a cushion to the civil servants as required to ensure good governance in the country. This will help in healthy evolution of the system of governance which shall be responsive, transparent and service delivery-oriented. The same is also required in keeping with present Central government's commitment to the precept of 'Minimum Government, Maximum Governance', thereby further annealing the foundations of our fledgling democracy.

## Salient Points

- Good governance in a democracy is possible only if it has a professional bureaucracy to carry out the vision of the elected executive.
- But as the elected executive holds the control over service conditions of the civil servants, the latter has been alleged to be obliging the former to ensure desired transfers or posting.
- Indian civil service has always reflected the traits and character of its political masters who have generally preferred to get their work done without being caught for a wrong move or being held accountable for the decisions taken.
- Recent OM by central government urges the bureaucrats to ignore oral instructions of the political masters. This will ensure overall accountability in the upper echelons of the government.
- In its judgement in the TSR Subramaniam case, Supreme Court said, "The civil servants cannot function on the basis of verbal or oral instructions, orders, suggestions, proposals, etc.
- By acting on oral directions, not recording the same, the right guaranteed to the citizens under the RTI Act, could be defeated and it would give room for favouritism and corruption.
- All India Service Rules clearly says that superiors' orders should ordinarily be in writing. In exceptional circumstances, it says, action can be taken on the basis of oral directions, but the superior officer must later confirm the order in writing.
- Many of the important decisions in the government remain pending for the lack of courage to own up the same.
- But decision makers should keep in mind that any action taken impartially and transparently as per rules would not invite opaque criticisms.

- Once recent guidelines regarding oral instructions are followed and complied in all seriousness, it will give a cushion to the civil servants to ensure good governance.

## **Glossary**

**Sloth:** laziness

**Hobbled:** to proceed irregularly and haltingly

**Recalcitrant:** resisting authority or control

**Cerberus:** a formidable and often surly keeper or guard

**Pliable:** easily bent

**Waned:** to decrease in strength

**Emaciated:** marked by emaciation

**Withered:** fade

**Baulking :** to stop short and stubbornly refuse to go on

**Anathema:** a curse

**Annealing:** to free from internal stress by heating and gradually cooling

**Fledgling:** an inexperienced person