

**Lessons of the Enron Disaster:  
Democratization through TAPing of Governance as the Remedy  
by Prayas Energy Group**

**Part I: The Enron Disaster: The “Governance Failure”**

**Context of the Current Controversy**

Enron, an American multinational Corporation made its first entry into the Indian electricity sector in June 1992 by signing a Memorandum of Understanding (MoU) with the power utility owned by the state Government of Maharashtra (GoM), viz., the Maharashtra State Electricity Board (MSEB).

The first power purchase agreement (PPA) was signed between the Dabhol Power Company (DPC), the Indian subsidiary of Enron and MSEB in 1993. This became controversial with allegations of corruption in the deal. The incumbent government in the state was defeated in the subsequent elections. The new government promptly cancelled the deal after assuming power in March 1995. However, it renegotiated the deal with Enron, with equal promptness. The amended PPA was finally signed in July 1996 and was further amended in substantial manner as late as in December 1998.

Enron started commercial operation of the first stage of the power project (with capacity of about 700 MW) from May 1999. Though it is not utilizing the entire capacity of the Enron plant, MSEB was paying about Rs. 95 crores per month to Enron as fixed capacity charges, irrespective of the amount of electricity it buys from Enron. This burden soon became unbearable for MSEB, which had already been in precarious financial situation.

In the meanwhile, the newspaper reports about the effective rate of Enron’s power (which was quoted as Rs. 7.80 per unit [kWh]) caused uproar in the state legislative assembly. GoM agreed to appoint a high-power expert committee to “review” the deal. After delay of more than six weeks, the Committee was appointed, which comprised: Dr. Madhav Godbole (Chairman), Dr. E. A. S. Sarma, Mr. Deepak Parikh, Dr. R. K. Pachauri, Prof. Kirit Parikh and Mr. V. M. Lal.

It would be appropriate to record two important observations regarding the Committee at the beginning. First, though many people raised protests about the pro-Enron biases on the part of some members of the Committee, there cannot be any doubt that the Committee possessed very high-level of expertise and experience in the areas that were crucial in this matter, viz., energy policy, infrastructure finance, international trade, and public administration. Second, it is worth noting that all the members came from mainstream institutions, and none could be branded as having anti-privatization or anti-reforms leanings. The report of the Committee should be viewed in the background of these two distinctions of the Committee. This makes it clear that the pro-Enron quarters have nothing to protest about the composition of this Committee.

**The Findings and Conclusions of the Godbole Committee**

The Committee submitted the first part of its report on 10th of April 2001. The report was extremely critical about the current agreements and the process in which the agreements were cleared and passed by various government agencies as well as the concerned autonomous agencies.

In the first part of this paper, we are summarizing the findings of the first part of the report of the Committee. These include findings and conclusions on the substantive aspect of the power purchase agreement for the Enron's DPC project as well as those on the process in which the agreement was cleared (Godbole et al., 2001). (All figures in the bracket in the subsequent discussion refer to the page numbers in the Godbole Committee Report).

### **The Substantive Problems with the PPA**

Instead of discussing, in detail, the findings of the Committee on the substantive aspects of the agreements, we are reproducing the conclusive comments of the Committee only on the four major substantive issues in order to maintain brevity.

#### ***The Inappropriate Project and Unwanted Electricity***

"The Committee finds that, while the initial demand projections for DPC were flawed in that they ignored different load types in their projections, the demand projection that was the basis for commencement of Phase II was based on patently untenable assumptions, given the information at that time; assumption that have since proved to be completely unjustified" (emphasis original) (53).

#### ***The Unnecessary Linkages with Supporting Projects with Excessive Capacities***

The Committee points out that various components of the complex Enron project other than the power project such as the LNG Regasification Facility, Marine Facilities, Shipping Charter, Gas-Supply Agreement were unnecessarily linked to the power project. Further, it also observes that the designed capacities of all these supporting or connected projects were in excess of the needs of the power project. It also points out that the cost of these overcapacities were loaded entirely on the power project (and hence on MSEB).

#### ***Surreptitious Overcharging of Rs. 930 Crores per Year***

The most shocking revelation of the report is the surreptitious overcharging done by Enron on at least four counts (with yearly excess payment figures in the bracket): unnecessary capacity of the LNG facility (Rs. 253 crores); (ii) charges for the harbor facilities and shipping charter (Rs. 100 crores); (iii) excessive O & M expenses (Rs. 246 crores); (iv) inflated fuel consumption (Rs. 332 crores). Thus, even within the framework of the present agreement, it could be claimed that DPC is overcharging MSEB by about Rs. 930 crores per year.

#### ***Unaffordability: Impacts on State Finances***

The Committee unanimously arrives at the conclusion that, in one year, the payments to DPC has ruined financial position of MSEB and put a heavy burden on the finances of GoM. This prompts the Committee to comment: "This (burden of Enron payment) could conceivably lead to drastic cut in budget allocations for the 'State Plan' expenditure and can arguably lead to a declaration of a Plan Holiday" (24).

### **Problems in the Process of Sanctioning the Project**

As mentioned before, the Committee also recorded severe criticisms on the process in which the project was sanctioned. For this paper, these process-related criticisms are of direct relevance.

### ***The ‘Fast-Track’ Process of the Renegotiation Group***

While discussing the speed at which the Renegotiation Group functioned, the Committee quotes from the judgement of the Bombay High Court: “The speed at which the whole thing was done by the negotiating group is unprecedented. What would stop one to say, as was said by the Chief Minister in the context of the original PPA, ‘Enron revisited, Enron saw and Enron conquered—much more that it did earlier’” (39).

### ***Negotiation Vs. Bidding***

GoM had persistently defended the choice of the route of negotiations over the more transparent route of competitive bidding. It has argued in the court that competitive bidding was not relevant, counter-productive, and inappropriate. The Godbole Committee found, “(E)ach of these reasons to be deficient and suspect” (43). GoM has also argued that it had conducted intense negotiations before signing the contract. The Committee commented: “Both, the justifications and the quality of these negotiations are suspect” (emphasis original) (42).

### ***CEA Clearances***

The Committee points out that, contrary to its regular practice, the Central Electricity Authority (CEA), in its relevant letter, did not explicitly give the required ‘techno-economic’ clearance to Enron project. Neither, at any stage, the CEA indicated that it reviewed the economic aspects of the project. This prompts the Committee to comment: “Thus, it is a moot question whether the CEA discharged the statutory duty cast on it under the Electricity Supply Act adequately. It is not clear from all this whether the economic aspects of the project have been comprehensively evaluated” (48).

### ***Tariff Competitiveness: A Fraud on the Public Interest***

In order to satisfy the legal requirement and also to establish that the project is in public interest, it was necessary to demonstrate that Enron’s tariff would be competitive. Further, in order to demonstrate its competitiveness, Enron’s tariff should be demonstrated to be lower than the tariff for an equivalent project according to the GoI norms.

After detailed investigation into this issue of competitiveness, the Committee comments: “Thus, in each and every instance, both for Phase I and Phase II, the assumptions are not only untenable; they are also favorable to DPC . . . . The Committee considers this combination of circumstances to be beyond the realm of coincidence and thereby is constrained to conclude that these assumptions were deliberately chosen so as to show that the DPC tariff was lower than GoI tariff. As can be seen, the entire demonstration of public interest owing to the lower DPC tariff is on extremely shaky ground and in the opinion of the Committee utterly unsustainable” (emphasis original) (61).

### ***Lack of Due-Diligence by DPC and Financial Institution***

The committee does find severe lapses on the part of the financial institutions which provided funds to the Enron project: “the Committee also finds that the financial institutions showed poor judgement and lack of due diligence in accepting these (demand) projections without demur . . . . The decision of the financial institutions to fund this project seems to have been based primarily on escrow account given by MSEB,

guarantee by the state government and the counter-guarantee by the central government (for Phase I) rather than on an independent and meticulous appraisal of the project” (53).

### ***The “Broad” Failure of Governance***

The Committee says: “The Committee is troubled with the failure of governance that seems to have characterized almost every step of the decision making process on matters relating to DPC. This failure of governance has been broad, across different government at different points of time, at both the State and the Central level, and across different agencies associated with examining the project, and at both the administrative and political levels. It strains belief to accept that such widespread and consistent failure to execute assigned responsibilities is purely coincidental” (84).

These startling, if not shocking observations and findings of the Committee comprised of the men of high expertise and experience should certainly give severe jolt to every right thinking citizen. Obviously, the entire Enron saga could prove to be an illustrative case-study for the students of public affairs. In the subsequent part of the paper, we try to draw lessons for governance from this saga.

## **Part II: The Diagnosis: The Fundamental Malady**

### **Governance Crisis: The Root of the Performance Crisis**

At this point, many questions need to be answered. How Enron dared to indulge in open loot of thousands of crores of public money? How and why the government agencies chose to shun away from their statutory responsibilities? How, at times, these agencies dared to collaborate with Enron to openly cheat and defraud public? Why such a flawed project was allowed to pass through by different agencies despite the disapproval and protest from a variety of quarters? How “such widespread and consistent failure to execute assigned responsibilities” which is not “purely coincidental” could persist for a period of more than nine years. If so, why the stakeholders in the sector did not (or could not) make efforts to stop this? All these questions are literally worth millions of dollars of taxpayers' money.

The Enron project and the lessons it provides for the governance of the sector are the main subject matter for this paper. However, this story of greed, deception, and intrigue is not restricted only to the Enron project. We hear similar stories and criticisms about the other projects started by the independent power producers (IPPs). Further, it needs to be noted that the Enron project (as well as the other IPP projects) is just one symptom or outburst of the malady that is plaguing the entire Indian power sector. MSEB, like all other SEBs, is experiencing severe financial crisis. At the same time, it is also suffering from the crisis of credibility, not only in the eyes of its consumers but also in the capital market. It is well known that, at the root of the credibility and financial crises faced by the SEBs, there are a variety of factors. These include, grotesque levels of mismanagement, financial and administrative indiscipline, blatant corruption, high losses of electricity due to poor equipment, large-scale theft of electricity, heavy burden of subsidies. All these functional distortions, together, could be called the performance crisis. Thus, these three crises—financial, credibility and performance crises—characterize the malady plaguing the entire Indian power sector.

The questions that are raised by the report of the Godbole Committee, the broad governance failure it talks about, and the widespread malady destroying the Indian power sector need to be analyzed with an integrated perspective. This is especially important when the sector is being reformed and restructured in a fundamental manner.

The integrated analysis should begin with investigation into the question that why "the broad governance failure" and the three crises were allowed to happen and persist? These must have been allowed to happen and persist because some people must have been benefiting out of this rot and that too handsomely, while the sector in general and most of the consumers and people suffered very badly. Further, those who have been benefiting must be powerful enough and must have adequate control over the sector to perpetrate this rot, despite the resultant destruction and suffering for many.<sup>1</sup>

It is often and quite rightly said that at the roots of this performance crisis lies the 'political interference', to be more correct, interference by partisan interests represented by politicians. But the politicians are not alone in this game. In fact, they are one of the important key players in the alliances (and nexuses), who turn even a genuine project into a disaster and a dishonest project into a death trap (as happened in the case of the Enron project). The other key players in these alliances include sections of top-level bureaucrats, contractors, suppliers, officials, employees, and even some consumers. Obviously, members of these unholy alliances work to serve their own interest by drawing maximum possible economic and political benefits in every possible way.

There are many examples of such unholy alliances operating in the Indian power sector and drawing benefits for their members. As we saw in the case of the Enron project, the political bosses, top-level bureaucrats, and Enron joined hands to throw every legal provision—that posed even a slightest hurdle for the project—to winds.

But the next question is how exactly these unholy alliances manage to do this? As the analysis of the Enron deal by the Godbole Committee suggests, these alliances and nexuses effectively take over control of one or many of the three main functions of the governance process. These three major governance functions include: (i) decision-making, (ii) implementation of the decisions made, and (iii) regulation (ensuring adherence to rules) of the decision-making and implementation functions.

These three governance functions, in normal circumstances, are expected to work to serve the public interest<sup>2</sup>. However, by taking over the control of these three governance functions, the members and leaders of these unholy alliances and nexuses ensure that, instead of the public interest, the sector would function to mainly serve their own interests. In this sense, there is breakdown of the governance of the sector. In other words, we can describe this situation as the crisis of governance in the sector. Thus, we can conclude that, at the root of the performance crisis (as well as that of credibility and financial crises), lies the governance crisis.

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<sup>1</sup> In fact, they must be powerful enough not only to repress marginalized sufferers but even to silence the powerful ones who were not ready to join them.

<sup>2</sup> Here, the term public interest is used in a somewhat broader sense. It includes interests of the disadvantaged sections of society plus the broader and long-term interests of society as a whole.

## **Lack of TAP at the Root of the Governance Crisis**

But the next question is how these alliances can manage to get control over the three main governance functions mentioned above? Why the consumers and people in general—whose interest the sector should be serving—do not or cannot do anything to prevent the take-over?

### ***Lack of Transparency***

The answers to these questions could be provided in terms of the three lacunas in the governance, which are discussed in the following paragraphs. These alliances manage to take over control of the sector, first, because they can manage to avoid examination of the propriety and rationality of the decisions. This is possible because the alliances cannot only manage to hide all this information about the decisions but also manage to deceive people by giving false information. The Enron saga provides a plethora of illustrations to support this observation.<sup>3</sup>

This lack of information (or provision of misinformation) on crucial aspects of the decisions or their implementation points at the first lacuna—viz., lack of transparency—that allows the unholy alliances to take over the control of governance of the sector.

### ***Lack of Accountability towards Public***

The second lacuna relates to the responsibility of those who make the decisions or implement them. There are many instance in which the politicians, bureaucrats, and experts who made the decisions that have been proved to have seriously adverse impacts on the public interest could not be forced to own up the responsibilities and to pay for their unjustifiable, irrational, and blatantly anti-people decisions. This complete lack of accountability is the second lacuna that allowed the unholy alliances to take over governance of the sector. This was again well illustrated in the Enron saga.<sup>4</sup>

### ***Lack of Public Participation***

There is another critical lacuna in the current governance process, especially in the decision-making and regulatory functions. It has been clearly established that the major decisions are, in most cases, made by a small coterie comprised politicians in the power, top-level bureaucrats, and their commercial consultants, all coming from the advantaged and largely urban sections of society. In effect, most of their decisions reflect not only their limited understanding of the socio-politico-economic reality at the ground level but also result in welfare of the advantaged sections. This lack of participation of diverse

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<sup>3</sup> Just take the example of the separation of the regasification facility as per the recommendation of the Renegotiation Group in 1995. MSEB and Enron (and possibly GoM) decided among themselves not to follow this recommendation without informing public about this decision to deviate from the recommendation of the 'Renegotiatin Group'. This is despite the fact that the reduction in capital cost due to this separation was one of the main arguments put forth by GoM to justify the renegotiated deal.

<sup>4</sup> The pro-Enron politicians and bureaucrats, claimed that Enron's tariff would be Rs.1.89 per unit (in the case of the first PPA, Rs. 2.40 per unit). When Enron started sending bills with effective tariff of Rs. 6.00 to Rs. 7.80 per unit, it became clear that MSEB, GoM, and the economy of the state would soon be on the brink of financial disaster. However, all these decision-makers and the implementers still go around espousing Enron's cause.

sections of society with different politico-socio-economic backgrounds provides scope for the unholy alliances to serve their own narrow interests at the cost of the public interest.

To sum up, because of the lack of transparency, the lack of accountability of decision-makers and executors of these decisions, and the lack of public participation in decision-making and regulation, it was possible for these unholy alliances to hold the sector for ransom. Thus, the breakdown of the governance of sector, or, the “crisis of governance” in the sector is rooted in the lack of transparency, accountability, and (public) participation (or TAP). Hence, lack of TAP is seen in this analysis as the core malady besetting the sector<sup>5</sup>.

### **Part III: The Core Remedy: Democratization or TAPing of the Governance**

Before moving to the discussion on how to address the crisis of governance, let us briefly discuss the remedy suggested by the protagonists of privatization of the power sector. Privatization essentially means change of ownership of utilities—from the state to private players. One way to investigate the efficacy of this remedy is to ask the question: will this change in ownership address the core malady besetting the sector—viz., capture of governance functions by the unholy alliances?

#### **Limitations of the WB Model/ Privatization as the Solution**

As far as the power relationship between the unholy alliances and the consumers (these include industrial consumers also) is concerned, privatization will certainly not make any change in favor of the latter. In other words, mere changes in the ownership of utility will not empower the consumers or public to effectively challenge the powerful members of the unholy alliances controlling the sector. Thus, there is no way that the stranglehold of the unholy alliances on the power sector will be released after privatization. In fact, there is danger that, with entry of the powerful corporations, the new and equally (if not more) powerful and equally unholy alliances of corporations, politicians, and bureaucrats might take over the control of governance of the sector. The situation after entry of the Enron and other IPPs has demonstrated that this apprehension is not ill-founded. Thus, the solution of privatization does not effectively address the core malady haunting the sector, viz., the governance crisis manifested in the form of control of the unholy alliances over governance of the power sector.

In a way, this is acknowledged even by the protagonists of the privatization. They agree to the need, for stringent and independent regulation to keep in check the ‘non-

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<sup>5</sup> This diagnostic analysis could be extended further. It must be noted at this point that, even in the earlier model (of earlier era), there were certain provisions for TAP. For example, there has been a provision in the electricity Act for establishment of Consultative Council (CC), which is expected to advise the SEB to on policy matter. Similarly, the decision-makers in the sector were to be held accountable through the politicians who were the ultimate masters of the sector. These politicians were to be held accountable through democratic elections. However, the CCs were hardly functional, if at all they existed. This was because their formation and functioning has been left to the discretion of the SEBs. Similarly, the politicians devised many ways and tricks to win elections without being held accountable for their actions. This circumvention of the existing TAP related provisions was possible mainly because these provisions were indirect (the accountability was to be exercised through somebody), vague, and discretionary.

competitive behavior' of private players, especially in view of the natural monopoly in the Indian power sector, which is going to persist at least for some decades to come.<sup>6</sup>

However, there is one crucially distinctive characteristic of the independent regulation as envisaged by the pro-privatization elements who largely subscribe to the World Bank's model of electricity sector reforms. In this model, the regulation is to be independent of the state and 'investor-friendly'. This is because the main objective guiding the design of the regulatory system in this scheme is to protect private players and investors from "interference" of the state. Such a system will not automatically serve the purpose of protecting interests of consumers and people in general and the disadvantaged sections in particular from the designs of the unholy alliances. This is mainly because such a system does not pay the necessary attention to the special needs of these sections. Neither does it emphasize on creating space for these sections in the regulatory process and on building their capabilities to utilize this space. This effectively excludes the small consumers and disadvantaged sections from the participating in the 'independent' regulatory system. Thus, the new regulatory system becomes an unrestricted domain for investors and private players who have space and capabilities to participate in the regulatory system. Further, as our earlier study of the World Bank's Orissa model demonstrates, the regulatory institutions in this model are severely prone to sabotage by powerful vested interests (Dixit, Sant, and Wagle 1998).<sup>7</sup>

In short, neither the remedy of privatization nor the accompanying 'independent' regulation envisaged by the World Bank and its followers is geared to address and resolve the core malady plaguing the sector.

### **The Core Remedy: Democratization of Governance of the Sector**

To initiate the search for the effective remedy, let us briefly revisit our diagnosis. According to the diagnosis, at the root of the financial and performance crises in the electricity sector lies the governance crisis manifested in the form of the take-over of the governance functions by the unholy alliances of powerful interests. Further, our diagnosis also suggests that, at the root of this take-over of governance functions lie the lack of transparency, accountability, and (public) participation (or TAP).

The strategy to arrive at the core principle of our prescription emerges from this multi-level diagnosis. Thus, in order to address the financial and performance crisis, in a fundamental manner, we need to eliminate the control of the alliances of vested interests over the three governance functions. This, in turn, would require establishment of transparency, accountability and (public) participation (TAP) in all the above-mentioned three governance functions.

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<sup>6</sup> It is by now clear that, despite the enthusiasm of the bookish marketwallahs, it is quite difficult to bring in bulk competition in the Indian power sector without precipitating the attendant legal, procedural, and financial problems. There is no need to mention here that retail competition will remain a distant dream, if not an impossibility in decades to come.

<sup>7</sup> However, it needs to be acknowledged that there is some space for the public and consumers to intervene in the regulatory process and the new model is certainly better than the old, state-centered model at least in this respect.



To be more precise, these requirements should be articulated as: complete transparency towards public (T), direct accountability primarily (not towards investors but) towards public (A), and meaningful public participation (P) in all the three functions. Thus, this TAP is essentially 'public-friendly' as against the 'investor-friendly' TAP envisaged by the World Bank.

In other words, TAPing of the governance functions is the core remedy for resolving the financial, performance, and governance crises besetting the sector. How exactly this TAPing would eliminate these ills? certainly not through the sleight of any "hidden" hand. The 'public-friendly' TAPing would bring about the direct and effective control of people or the 'public-control' on the three governance functions and would, thus, help ensure that governance functions are geared to serve the public-interest. This direct public control through TAP over the governance functions could be called "democratization of governance". Thus, as we saw earlier, the core remedy lies not in privatization of the sector, it rather lies in democratization of governance of the sector.

### **Implementing the Remedy of Democratization**

Implementing the core remedy of democratization would essentially mean instilling measures for TAPing of the three governance functions. Instilling full transparency to public, direct accountability to public, and meaningful public participation in all the three governance functions would naturally seem a Herculean task. This is natural because we are on a learning curve as we make transition to a new model of organization of the sector. However, there are practical ways and means to break down this task and address it in systematic manner.

#### ***The Regulatory Commissions: The New Governance Institutions***

The practical way to approach this task is to begin with agencies that would be discharging the three governance functions. We need to investigate the possible mechanisms and strategies that could be used to TAP these governance agencies. In this context, it needs to be noted that the power sector in India is being currently restructured in a significant manner. One of the more critical and widespread changes is establishment of the regulatory commissions at the center and the state levels. Though there are many similarities in the composition and functioning of these commissions, there is considerable diversity in the extent and nature of their activities as well as in the powers delegated to them.

These regulatory commissions are products of the particular reform model that is tailored largely on the lines of the American (US) model and actively sponsored by the World Bank. As mentioned before, the main function of the 'independent' regulatory commissions, as envisaged in the World Bank's model, is to shield private players from the interference of the state and politicians. However, their American genealogy has left many provisions—which are conducive to 'public-friendly' TAP—intact in the structure and functioning of these regulatory commissions. As our experience in Maharashtra suggests, the available space for public-friendly TAP in the structure and functioning of the regulatory commission could still be effectively utilized to exercise public control, to a great extent, not only on the regulatory function but also on the decision-making and implementation functions.

### *Continued Role for the State*

However, in the Indian situation, many state governments, despite establishment of the regulatory commissions, have retained with themselves considerable amount of decision-making power especially in the case of policy-decisions. In addition, to make the matters more complex, most of the state governments continue to be the owners of the state electricity boards (SEBs). There is a growing demand that these governments should hand over all the powers and responsibilities to the regulatory commissions, which are mentioned in the relevant reform acts. There is no doubt that this should be done. However, at the same time, the demand for divesting even the policy-making functions (that still remain with the state governments) and hand them over to the regulatory commissions might prove premature and counter-productive.<sup>8</sup>

### *TAPing the Governance Agencies*

This discussion indicates that there will be three main agencies performing the three governance functions in the Indian power sector at least in the near future, viz., the state (or the governments), the utilities (privately or publicly owned), and regulatory commissions. As the accompanying table indicates, all the three agencies will be handling the decision-making function<sup>9</sup>. The state will be handling mainly the policy-related decisions, while the utilities will be making many important functional decisions in the techno-economic and financial areas. The regulatory commissions, however, will be adjudicating on major decisions such as tariff and propriety of investments. Further, while implementation function will be mainly handled by the utilities, the regulation function will be handled by the regulatory commissions<sup>10</sup>.

As the table indicates, there are four main routes or mechanisms (or strategies) to fulfil the task of TAPing the three governance agencies. The first route is the ‘democratic-political’ means that are available in democratic system. These ‘means’ include activities such as submitting petition and organizing public education or protest programs. These are especially useful and effective in the case of publicly-owned utilities. Here, the term ‘democratic, political means’ needs to be differentiated from the term ‘political interference’, which essentially means interference by partisan politicians aimed at

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<sup>8</sup> This observation is rooted, first, in our analysis of the structure of regulatory system in Orissa designed by the World Bank, which was found to be deficient on the grounds of ‘public-friendly’ TAP. It is feared that due to this lacuna, the regulators might turn into the new unrestrained kings of the sector (Dixit, Sant, and Wagle 1998). The second reason for this caution is rooted in the fear that the regulatory commissions—because of their particular structure, mandate, and functioning style—will be much beyond the radius of influence of the disadvantaged sections of society. As against this, the state will be comparatively more amenable to influence of these sections, who, despite their disadvantages, have gained considerable political leveraging power in the five decades of not-so-perfect democratic activity.

<sup>9</sup> The table is aimed at providing a somewhat simple picture. Many intricacies and exceptions could be identified to make the picture more sophisticated.

<sup>10</sup> Though there will be considerable diversity in the functioning of the SERCs, we will not be discussing, in this paper, the different strategies to address this diversity.

protecting narrow political or economic interest and not public interest. As against this, democratic political means are used by various civil society institutions (CSIs) and individuals to put forth either public grievances or their own positions on public issues.

**Table: TAPing the Three Main Governance Agencies**

<b>Governance Agency</b>	<b>Governance Function(s)</b>	<b>Routes for TAPing the Agency</b>
Utilities	§ Decision-Making	Through democratic ‘political’ means
The State	§ Implementation	Through courts using laws (such as the ‘Right to Information’ Act)
Regulatory Commissions	§ Regulation	
		Through inter-agency pressures

The second route is the judicial route. The state agencies could be forced to respond to TAP related demands using many existing laws, for example, the law such as the newly enacted Right to Information Act.<sup>11</sup> As far as the regulatory commissions are concerned, there is provision in all the reform acts permitting judicial review of the decisions of the regulatory commissions.<sup>12</sup>

The third route is using the TAP mechanisms that are in-built in the structure and functioning of (especially of the publicly-owned) utilities, the state, and the regulatory commissions. As we have seen earlier, there have been certain in-built TAP related mechanisms in the government and the utilities, which are often given short shrift. CSIs should undertake concerted efforts to press for adherence to these in-built mechanisms. In the earlier era, the blatant avoidance of these mechanisms was, in fact, allowed to spread wide because of their neglect by CSIs.

The fourth route is using the inter-agency pressures. Though not exactly designed with a comprehensive perspective, the three governing agencies keep each other in balance by exerting what are called here as the inter-agency pressures. For example, the regulatory commissions can pull up the governments, if it is demonstrated to them that certain actions on the part of the government encroach upon the decision-making powers of the commissions. Conversely, the governments can give policy directions to the commissions, if desired.

<sup>11</sup> Though many observers have (rightly) expressed doubts over the efficacy of this set of new laws. However, a lot can be achieved by trying to enforce the existing provisions of these laws while pressing for the changes in the laws.

<sup>12</sup> However, in the case of most of the states where the World Bank consultants have drafted the Act, the Act allows review of the orders of the decisions of the commissions only on procedural grounds, precluding the substantive examination of the orders of the commissions. However, in the other states, the orders of the commissions are open to procedural as well as substantial review.

### ***The Two Preconditions: Space and Capabilities***

Our experience with the Maharashtra Electricity Regulatory Commission suggests that it is possible to TAP and to democratize governance agencies, to varying degrees, functions if the following two preconditions could be fulfilled.

First, there should be legal and procedural 'space' for effectively TAPing of the governance agencies. Second, the public (interest) institutions or civil society institutions should have the resources, information, capabilities (expertise and skills) that are necessary to make optimum use of this available space.

Creating the space (in terms of institutions, acts, and rules) for TAPing of the governance agencies through appropriate legislation is a tougher task. This is very well demonstrated in the case of deceptive legislation that has been enacted in various states under the name of "Right to Information" Act. In the case of the Indian power sector, the Central Reform Act (the Electricity Regulatory Commissions Act of 1998) and the state-level reforms acts in most states allow, in principle, considerable space for TAPing regulatory commission and utilities. However, in some states, this space is not clearly articulated at the operational level in the design of the 'Conduct of Business Rules'. This results mostly in leaving the TAP related provisions vague, indirect, and discretionary. Further, there is need to set the right procedural precedents to create and / or establish the TAP.

The task, which is equally daunting, is to evolve the necessary capabilities (expertise and skills), resources, and attitudes in various social and political (or civil society) institutions in order to make best use of the available space for TAP. Because governance of the power sector involves complex technological, economic, financial, and legal issues, in order to effective, the civil society institutions would require information, analytical capabilities, and legal skills of highly sophisticated levels. All this also requires equally higher levels of human and financial resources. It needs to be understood that the structure, perspective, capabilities, skills, and resources possessed by most of the civil society institutions in India are geared to deal with the old, state-centered political and economic regime. To make changes in all these would require vision, concerted efforts, and leadership, all of which seems to be absent from the scene.

### **Part V: Summary and Conclusion**

The major contribution of the Godbole Committee is highlighting of the "broad failure of governance" as the root-cause of the fraud and tragedy that struck the state of Maharashtra in the form of the Enron project. But, again, Enron is not alone. The story is not much different in the case of the other independent power producers (IPPs) in the country. Further, the frauds perpetrated by the IPPs are not stray accidents. Rather, they are symptoms of the deeper malady that has been plaguing the Indian power sector for decades. As our analysis indicates, the financial and performance crises besetting the sector are essentially products of the governance crisis, which is the handwork of the unholy alliances that have taken over the governance of the sector. Further, this take-over is effected by trampling on the inadequate and discretionary provisions for transparency, accountability, and public participation.

Unfortunately, the prescription suggested by the mainstream institutions to resolve the prevailing crises—privatization and independent regulations—are not appropriately designed to address the root cause of the governance crisis, viz., the control of unholy alliances. As a result, the crucial governance agencies—viz., the regulatory commissions—in the new model remain highly prone to sabotage by the unholy alliances of the vested interests.

This leaves us no choice but to give centrality to the public-friendly TAP provisions in our efforts to reform and restructure the Indian power sector. This is necessary to permanently stem out the possibility of take-over of the sector by the unholy alliances. This, in turn, would require that all the governance functions and governance agencies are made amenable, on mandatory basis, to full transparency to the public, direct accountability to public, and meaningful participation of public.

This task of democratizing the sector through public-friendly TAP—which, prima-facie, appears to be a Herculean task—needs to be handled in a systematic manner. The three major governance agencies—the state, the utilities, and the regulatory commissions—could be TAPed in a variety of ways. However, the space and capabilities of civil society institutions will be the important determinants of successful TAPing of these agencies. Improving on both these counts in a rapid manner is the main challenge facing the civil society in this country. Another challenge before the civil society in this country is to resist the attempts by the vested interests to urgently bulldoze major and irreversible changes in the structure and frameworks (including the ownership patterns) in the sector. Allowing such changes to pass through before the governance of the sector is adequately TAPed would create another set of vexed problems in the sector. Hence, it is necessary that various civil society institutions work jointly to ensure that the process of reform as well as the agencies carrying out the process are adequately TAPed.

In conclusion, it needs to be clearly understood that the present reform model—mainly comprising changes in the ownership patterns, financial restructuring, and inter-institutional balancing—would not help eliminate the root malady plaguing the sector. In other words, there is no alternative to the real democratization of the governance of the sector. This is the billion-dollar worth lesson of the fiasco called Enron.

### ***Reference***

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