

Chapter 4 Governance and Conflict of interest issues

4.1 Introduction

The mode of delivery of public goods has been continuously evolving. New structures have emerged in the past few decades and there is an increasing expectation from common citizens and civil society that Governments should deliver the highest standards of integrity. In the recent past, issues of probity, integrity and accountability in all spheres, including the Government, have been exercising the nation. The explosion of new information and high-end technologies as in the case of the satellite digital multimedia broadcasting services, provides hitherto unexplored opportunities and raises public expectations. At the same time, it requires development of appropriate arrangements to address how accountability issues can be dealt with in the ever-changing structures of delivery of public goods and services. The issues of accountability and how best to address them would need to be answered in ways that best serve the interest of the public and that of the Government.

4.2 Subversion of the governance framework

The examination of the Antrix-Devas agreement raises a number of issues with regard to governance. Good governance is essential for ensuring proper performance, stewardship of public money and emergence of best outcomes. We have attempted to examine the Antrix-Devas agreement in terms of commonly-accepted benchmarks of good governance.

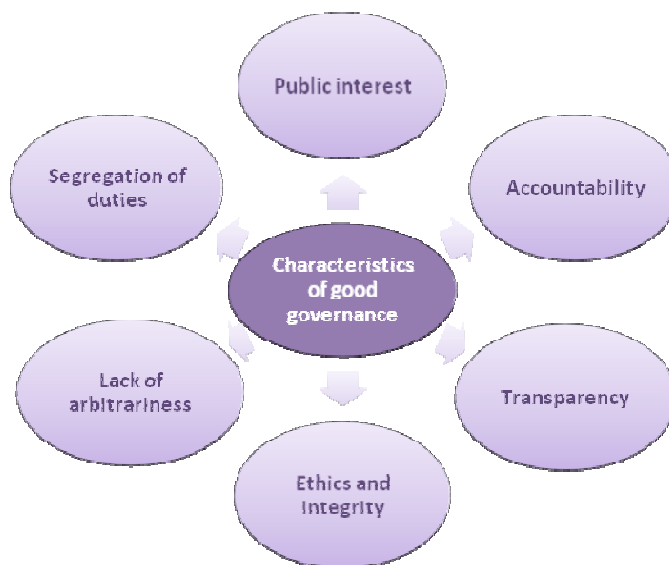
The benchmarks of good governance have been outlined in the following diagram:

Public Interest: Personnel in Government are expected to maintain public trust in their institutions by achieving best outcomes and seeking to advance public good at all times.

The Antrix-Devas agreement was a classic case of promotion of interest of an individual private entity viz. Devas, at the cost of public interest. The agreement contained clauses which were one-sided and to the advantage of Devas. In allocating valuable spectrum to Devas the revenue interests of the Government were altogether ignored. The earmarking of a prime orbital slot to be used exclusively by Devas for an indefinite period was further testimony to abdication of the country’s interest. The SATCOM policy which required that transponder capacity should be made available to the commercial sector on sound business lines, was disregarded.

Accountability: Government officials must be accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office. Accountability involves public officials giving an account of their actions as well as being held to account where the use of public resources is concerned.

In the Antrix-Devas agreement, the findings of Audit, as detailed in Chapters 2 and 3, reveal serious failures in terms of this governance parameter. Facts were concealed from the Union Cabinet and the Space Commission, which were the competent decision-making



authorities for obtaining financial sanctions.

Transparency in decision-making: Holders of public office should be as open as possible about the decisions they take and the reasons for their decisions and actions should be transparent.

The fact that DoS had already signed an agreement in January 2005 with Devas was concealed from the Union Cabinet, together with the fact that the satellite was being launched for a single private customer viz. Devas. This fact was also not brought to the notice of the Space Commission. This indicated lack of transparency. The introduction of new communication services without following a laid-down procedure, such as inter-departmental consideration, obtaining the approval of Cabinet etc. is another instance of the lack of transparency in the instant case.

Ethics and integrity: Personnel in government are expected to make decisions and act without consideration of their private interests.

The minutes of the Technical Advisory Group (TAG) meeting circulated by DoS sought to create the impression that the Devas services bore the stamp of TAG's approval. In reality, this was not correct. This is discussed in para 4.5.2.

Lack of arbitrariness: In carrying out the business of Government, holders of public office should make choices based on merit.

The events leading to the signing of the Antrix-Devas deal in January 2005, reveal that there was no attempt to identify any other partner for providing the Satellite Digital Multi-media Broadcasting Services. DoS merely rubber-stamped the proposal made by M/s. Forge Advisers in 2004, seeking to legitimize it by appointing a Committee to examine the proposal of this private entity. Clearly, this benchmark of good governance did not receive the attention it deserved.

Segregation of duties: Good governance requires that Government officials be clear about their roles and responsibilities and behave in ways which are consistent with those roles. Clarity about roles also helps stakeholders to understand how the governance system works and who is accountable for what.

With regard to the segregation of duties, the roles of the key stakeholders viz. DoS, the Space Commission, the INSAT Coordination Committee (ICC), ISRO and Antrix were clearly laid down. However, the concentration of roles and responsibilities of each of these organizations/committees in a single individual, propelled the agenda of a private entity, that was not in the interest of the Government.

In addition to the governance issues discussed under Chapters 2 and 3 and summarized above, further issues regarding governance and conflict of interest are discussed in the succeeding paragraphs.

4.3 Concentration of many roles in one official

The strength of any entity's internal control system is the method by which it ensures that personnel throughout the organisation are working to serve public interest without imposing unintended or excessive costs on it or without placing other interests (such as their own or clients' interest) before those of the entity.

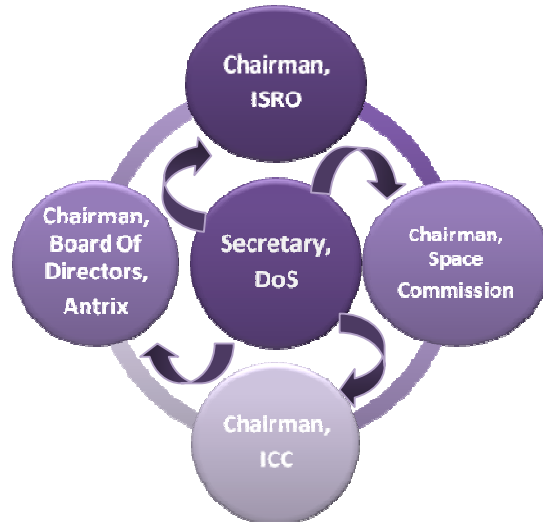
However, an entity headed by a person with multiple functional roles may at the least, be vulnerable to errors of decision-making and, at worst, may potentially expose the organisation to risks of manipulation and fraud.

In making decisions for the entity which they head or which employs them, public officials need to be alive to the potential consequences arising from them. Questions such as, 'Do the decisions cast aspersions on their objectivity? Is their participation in the decisions fair and reasonable? Have any steps been taken to record a potential conflict of interest and to restrict their own roles in light of the need for fairness and accountability?' need to be asked.

Instances of how decision-making proved disadvantageous to DoS reported in various Audit Reports of the Comptroller and Auditor General are discussed in **Annexure-4**.

DoS stated in August 2011 that it had addressed this matter.

4.3.1. Dr. G. Madhavan Nair performed multiple roles between 2004 and 2009 when the Antrix-Devas agreement was signed and operationalised. These were as follows:



- **As Chairman ISRO**

Dr. G. Madhavan Nair appointed the Dr. Shankara Committee to examine the offer submitted by M/s Forge Advisors, USA in April 2004, proposing to introduce Devas services in the country.

He mandated this Committee to finalise the financial aspects of the proposal submitted by M/s Forge Advisors, USA. The Committee did not include any member with financial expertise. The Committee submitted its report in January 2005. In the very same month, Antrix signed its agreement with Devas.

- **As Chairman, Antrix**

Dr. G. Madhavan Nair allowed Antrix to sign a transponder lease agreement with Devas against the stipulation of the SATCOM policy.

He authorised the then Executive Director, Antrix to sign the Antrix-Devas agreement. The terms of this agreement were heavily loaded against Antrix and included a stiff penalty to be paid by it in case it delayed delivery of satellites.

- **As Secretary, DoS**

Dr. G. Madhavan Nair tendered a Cabinet Note seeking financial sanction for the design, development and launch of the GSAT-6 satellite, in which the fact that the satellite was being realised for a specific customer was concealed. The Union Cabinet was given the impression that several firm expressions of interest had been received. In reality, there was

only one Company with whom negotiations were held and DoS had already inked a deal with this Company, Devas, *before* approaching the Cabinet.

- **As Chairman, Space Commission**

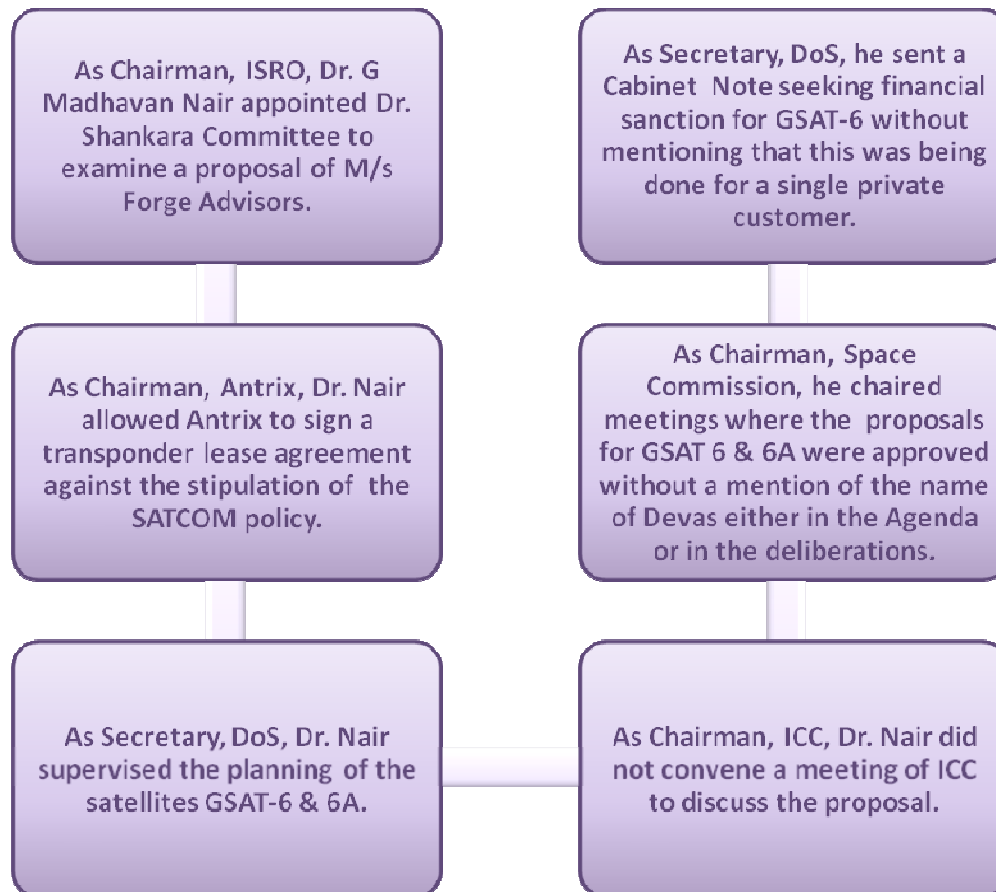
Dr. G. Madhavan Nair, as the Chairman of the Space Commission, chaired its 104th meeting in May 2005 and its 114th meeting in October 2009, during which the proposals seeking financial sanction were approved by the Space Commission for the GSAT-6 and GSAT-6A satellites respectively. In both these meetings, the position that these two satellites were being specifically developed for Devas was not brought to the notice of the Commission.

- **As Chairman, ICC**

Dr. G. Madhavan Nair, as Chairman INSAT Coordination Committee (ICC) did not convene a single meeting of the committee after 2004. Thus the views/concerns/interests of key stakeholders (represented through Secretaries of the respective Ministries/departments concerned) were effectively prevented from being a part of the decision-making process.

In different capacities, Dr. G. Madhavan Nair provided the momentum of decision-making at various stages of the Antrix-Devas agreement.

Table-9: Dr. Madhavan Nair's different roles



DoS stated in August 2011 that the Secretary, DoS had relinquished charge of the post of Chairman, Antrix. A senior scientist of ISRO had been appointed as full-time Chairman-cum - Managing Director of Antrix and had taken over charge on 7 July 2011.

4.3.2 The disparate roles of Director (Contract Management and Legal Services)

In March 2009, the work of finalisation of INSAT contracts was transferred to Antrix. Here is a graphic representation of the multiple roles performed by a single official:

Director (Contract Management and Legal Services) in DoS		
Overall role: Decision-making prior to signing contract	Role as Director (Contracts) of Antrix: Signatory of the contract from DoS side	Role as Director (Contracts) of Antrix: Enforced the contract on Antrix's behalf

The Antrix-Devas agreement was a case where an employee of one organization, i.e. DoS, responsible for the preparation, negotiation, management and enforcement of a contract, also participated in the management of the same contract as a representative of *another* entity, Antrix. This is a clear indicator that control activities had weakened to such an extent that there was no clear segregation of roles. This would have also prevented validation and objective assessment of the contract from taking place.

DoS informed Audit in August 2011 that this position had been changed and different officers were handling contracts in DoS, ISRO and Antrix.

4.3.3 Shri A. Bhaskaranarayana's role

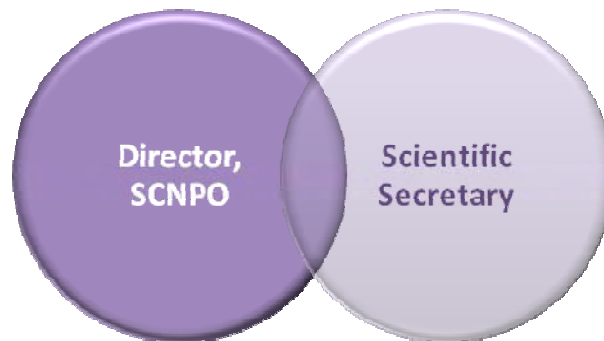
The Scientific Secretary is the top technical bureaucrat in ISRO after the Chairman, ISRO. All programme offices functioning at ISRO (HQ.) report to the Chairman, ISRO through him. He is the Head of the Department for ISRO and, in this role, performs both administrative and technical functions.

Similarly, the post of the Programme Director of SCNPO is also a critical position mandated to service ICC. According to this mandate, the Programme Director of SCNPO reports to Chairman, ISRO and carries out major technical activities such as transponder allocation, finalisation of INSAT contracts, frequency management and coordination of orbital slots with ITU.

Sh. A. Bhaskaranarayana was Director, SCNPO from October 2002 to July 2008. He first held the post up to the age of 60 years till July 2004. Thereafter, he was granted two extensions up to the age of 64 (that is up to July 2008). Sh. A. Bhaskaranarayana retired on superannuation with effect from 31 July 2008.

Chairman/ ISRO and Secretary, DOS, Dr. G. Madhavan Nair, directed Sh. A. Bhaskaranarayana to hold the additional charge of Scientific Secretary from August 2007, which was continued until his superannuation in July 2008.

Sh. A. Bhaskaranarayana was awarded the Dr. Vikram Sarabhai Distinguished Professorship with effect from August 2008 for a period of two years. It must be borne in mind that Secretary, DOS, Dr. G. Madhavan Nair asked Sh. A. Bhaskaranarayana, a retired official, to hold the charge of Scientific Secretary (i.e. the Head of the Department for ISRO) and Director, SCNPO with effect from August 2008, during his professorship, which he continued to hold till December 2009.



This retired official was, therefore, allowed to perform administrative functions of DoS from a sinecure position which normally senior scientists use for conducting higher research after retirement.

A transparent, objective and documented system was not in place to carry out functions such as allocation of transponders, finalisation of INSAT contracts and frequency management. Critical decisions were being made by only two or three officers of DoS/ ISRO. The multiple responsibilities of the officials belonging to ISRO and working in both ISRO and Antrix resulted in conflict of interest. In the present case, their decision-making proved disadvantageous to their parent organisation, DoS.

Grant of extension to or re-employment of superannuated officers is a matter within the remit of the Department of Personnel and Training (DoPT) as per the Allocation of Business Rules, 1961. In view of the dubious role played by the retired officials in the Devas-Antrix saga, it is incumbent that the existing guidelines with regard to re-employment/extension of retiring personnel, including those relating to the Professorship scheme, is suitably reviewed, for which the Department of Personnel & Training may be consulted.

DoS stated in August 2011 that this position had been changed and there were different officers functioning as Scientific Secretary and Director, SCNPO.

The Ministry of Home Affairs stated (February 2011) that the fact that Secretary DoS was also Chairman ISRO, Chairman of Space Commission, and Chairman, Antrix left scope for a conflict of interest situation.

The Ministry, in their communication, also observed that ***“there is no doubt that there has been collusive behaviour between some employees of ISRO and its affiliated organisations and Devas. The persons who set up Devas are also reportedly ex-employees of ISRO.”***

4.4 How ISRO officials abetted Devas

The Antrix-Devas agreement did not envision a specific role for ISRO towards the development of the Devas ground segment. Dr. G. Madhavan Nair (Secretary, DoS), however, permitted (April 2009) Sh. A. Bhaskaranarayana, to lead a team to USA for technical review of the entire ground and user segment of Devas.

A copy of the letter is at [Annexure-5](#). The review meetings were to encompass the Devas hybrid satellite terrestrial system configuration, review of available Mobile Satellite Services and Ancillary Terrestrial Component technologies for the same, review of consumer handset waveform choices and technical reviews of handset designs with potential chipset suppliers.

The team also proposed to meet the international investors of Devas such as Deutsch Telecom and Telecom Ventures during the tour. The approved tour programme indicated that Devas would be meeting all the travel expenses in connection with this tour.

Interestingly, no top official in DoS seemed to find any conflict of interest in a client paying for the expenses of a public official for a trip which was in connection with the solicitation of private business.

On another occasion, the CEO & President of Devas thanked Secretary, DoS in August 2009 for the encouragement, guidance and support extended by him and ISRO, in evolving the Devas system since its inception. A copy of the letter is placed at [Annexure-6](#). He indicated to the Chairman, ISRO that over the past one year, Devas had made significant progress on

the technology front and towards finalising the system configuration and services. There were no records to show whether any assessment of whether Devas Multimedia Limited had the technology to deliver the services promised, was done before signing the agreement.

In a letter of August 2009, the CEO and President of Devas Multimedia Private Limited named Dr. A. Bhaskaranarayana as being 'instrumental in a more focused definition of the Devas system, architecture, technology platform, handset/ terminals, and services'.

DoS stated (August 2011) that it was in agreement with the facts.

4.5 Other acts of commission

Public officials are expected to use their powers and resources in accordance with prevailing laws and public policies. The instances listed below indicate serious issues of integrity.

4.5.1 Failing to circulate minutes of Dr. Shankara Committee

As stated earlier, Chairman ISRO/ Antrix Board/ ICC and Secretary DoS, Dr. G. Madhavan Nair constituted the Dr. Shankara Committee in May 2004, to examine the joint venture proposal from M/s Forge Advisors, its technical feasibility, risk management, financial and market aspects as well as, time schedule and organisational aspects. The Committee submitted its report in January 2005, recommending signing of a transponder lease agreement between DoS/ISRO/Antrix and Devas. The Committee also recommended that in case Devas were to back out, the satellite could be effectively used for S-DMB services.

The MD, Antrix, in his letter addressed to the Additional Secretary, DoS in June 2010, indicated that the contractual terms of the Antrix-Devas agreement had been reviewed by a committee set up by the Chairman, Antrix/ ISRO, consisting of senior officers of ISRO/ DoS, including the Joint Secretary, DoS. It was also indicated that the Director, Contract Management and Legal Services of ISRO was involved in the negotiations of the contractual / legal terms and the whole agreement was vetted by him.

Although the Joint Secretary, DoS was a member of the committee, there was no proof that the minutes of the meeting had been forwarded to him.

DoS stated in August 2011 that it agreed with these facts.

4.5.2 Alteration of minutes of TAG to oblige Devas

The experimental plan of Devas came up for discussion in the 129th meeting of Technical Advisory Group (TAG) held on 26 December 2008, and in the meeting of the TAG Sub-Committee on the Devas Experimental Plan on 6 January 2009. Besides officials from DoS, senior officers of DoT and WPC attended the meetings.

The following issues emerged in the meetings:

- Devas was directed to submit technical details of its experimental plan.
- Devas was also asked to submit a list of all the services which would be provided through its experimental plan.
- TAG opined that the introduction of new technologies should be validated within the INSAT system.

However, Audit observed that in a letter dated 04 November 2009, DDG (DS) from DoT informed DoS that the minutes “do not reflect the deliberations held during the meeting”. This position was also reiterated by DDG (Network Operations Control Centre) DoT on 06 November 2009. In both letters, it was highlighted that:

- (i) Devas would have to submit an application for its proposed experimental plan to the apex Committee (that is, TAG) and apply for license for spectrum to WPC;
- (ii) DoS (and not Devas) would conduct experiments if the satellite media-based technology was to be validated;
- (iii) DoS would obtain necessary permission from WPC for terrestrial permission in the S-band.

The fact that the WPC representative had stated in the meeting of December 2008 that license for terrestrial transmission was not permitted in the S-band, was omitted from the minutes. Audit observed that notwithstanding these deliberations in the TAG meetings, DoT/WPC allowed Devas (and not DoS/ISRO) to carry out these experiments from January to September 2009.

The Joint Secretary of DoS, while confirming this position, observed (June 2010) that “A clear attempt was made to mislead TAG by tampering with the minutes and the fact that the

Wireless Planning Advisor had mentioned in the TAG, that Terrestrial Transmission in S-Band not permitted was overlooked". The minutes of the TAG meeting eventually circulated, gave the impression that Devas services had been approved by TAG, which was not a true reflection of the decision taken.

DoS stated in August 2011 that it was in agreement with these facts.

4.6 Current status of action taken by the Government

The Government of India constituted a High Level Team (HLT) on 31 May 2011 under the Chairmanship of Shri Pratyush Sinha, former Chief Vigilance Commissioner, to examine the entire gamut of the decision-making process followed in signing of the Antrix-Devas agreement. The HLT, in its report dated 2 September 2011 observed serious administrative and procedural lapses. It held Dr. G. Madhavan Nair, Shri A. Bhaskaranarayana, Shri K.R. Sridharamurthi and Dr. K N Shankara, all superannuated officers, responsible for various acts of commission and recommended that action may be taken against them under the relevant provisions of law. The HLT also found Shri S.S. Meenakshisundaram, Smt. Veena S Rao, Shri G. Balachandhran and Dr R. G. Nadadur responsible for acts of omission and recommended that appropriate action be taken against them under the relevant rules.

In January 2012, DoS furnished the status of action taken with regard to the Antrix-Devas agreement. The key institutional changes made/proposed included:

- (a) Appointment of a full-time Chairman-cum-Managing Director of Antrix with effect from 7 July 2011.
- (b) Meetings of the Space Commission to be convened at least once every quarter.
- (c) Establishment of a Standing Project Appraisal Committee in October 2011, chaired by Secretary, DoS. This Committee would service the Space Commission.
- (d) Reconstitution of the INSAT Coordination Committee (ICC).
- (e) Appointment of a Director-level functionary for costing of INSAT / GSAT transponders.
- (f) Restructuring of the existing SCNPO at ISRO Headquarters into three separate wings dealing with (i) frequency management (ii) SATCOM policy implementation and (iii) the Satellite Communication Programme.

While the actions taken or proposed to be taken by DoS do make certain institutional changes, the key issue of concentration of different roles and responsibilities in one individual viz. Secretary, DoS has only been marginally addressed. This has been done to the extent of divestment of his position as Chairman, Antrix Corporation Limited. The governance issues, in terms of segregation of responsibilities to ensure risk mitigation, in our view, deserves further attention of the Government, particularly in the context of the dysfunctional checks and balances.

The Action Taken Report furnished by DoS indicates that Dr. G. Madhavan Nair, former Secretary, Department of Space and three other retired senior scientists of ISRO, viz., Shri A. Bhaskaranarayana, Shri K R Sridharamurthi and Dr. K N Shankara have been excluded for re-employment, role in any committee or any other important role in the Government. These officials have also been divested of any current assignment / consultancy.