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Why Indians Need To Understand the Importance of Gajendra Haldea's Contribution to the Nation



It is only in India that a whistle-blower and a crusader, whose honesty, integrity and brilliance has saved the country billions of dollars, would be demonised when alive and recognised as the 'father of Infrastructure' when he is no more.

The people of India, who are the biggest beneficiaries of his work, remain clueless about his contribution, because, as an IAS officer, he worked within the system and fought his battles for the nation largely from the inside. In the process, he had to give up the opportunity for plum postings and post-retirement sinecures that are the primary focus of most senior bureaucrats.

It is important to put Gajendra Haldea's (1949-2021) contribution to the nation in perspective and his brother Prithvi Haldea has done an excellent job of collating all his work and more at <http://www.gajendralhaldea.in/>

His enormous body of work included drafting several key national and state legislations of which the Foreign Exchange Management Act, 1999 (FEMA), The Electricity Act, 2003, and three draft legislations covering regulatory reforms, public procurement and the Public Contracts (Settlement of Disputes) Bill, 2014, as well as the innumerable model agreements for various infrastructure projects are the most important. His intervention on the gold-plated deal negotiated by Enron Inc for Dabhol Power Company alone ought to have won him national honours.

A letter from the late Soli Sorabjee, then the attorney-general of India, to finance minister (FM) Jaswant Singh in February 2004, says it all. He wrote of how one clause in the counter-guarantee agreement (which is the norm internationally, but is never part of Indian agreements) had saved the day for India after the Maharashtra government famously dumped Enron's Dabhol power project in the Arabian Sea.

This clause made the guarantee conditional and payable only if 'validly due' which helped fight Enron's claim. It also capped the termination guarantee at \$300 million preventing what could have been a \$1,400-million claim. An intrigued Mr Sorabjee made the effort to find out who had ensured this safeguard.

Having discovered that it was at the dogged insistence of one official in the finance ministry, he wrote to the FM saying, "It has become customary in our country to criticise and run down the bureaucracy. Unfortunately, praise is not accorded where it is pre-eminently due."

Noting the pressure that would have emanated from Enron, at a time when the entire country had been hostage to its arrogant political manoeuvring, Mr Sorabjee wrote, "It would have taken exceptional brilliance, skill, integrity, and courage of conviction to be able to modify the draft of the counter-guarantee agreement proposed by Enron" and recommended that Mr Haldea be given "the recognition that was legitimately due to him." It is important to recall that such was Enron's clout that the US Ambassador to India, Robert Blackwill, had openly threatened the government on its behalf and the company had systematically silenced the Indian media.

Mr Sorabjee's letter was written a decade after Enron's power-play of the early-1990s and only after it had flamed out globally. By then, Mr Haldea had played a major role in preventing a slew of 'fast-track' independent power projects (IPPs) from following in Enron's footsteps by demanding similar terms and guarantees. Eventually, these IPPs did inflict a big burden on power distribution companies, but the damage was far less than what it could have been. But recognition or reward? It was mainly in the form of media articles asking him to take comfort from his legion detractors which indicated that he was doing something right.

Former cabinet secretary, the late TSR Subramanian, went so far as to write this in his autobiography: "India would have been better off paying Haldea a billion dollars so that the infrastructure sector could move on without his interference... towards the end of my tenure, I found that he was in fact worth five billion dollars!"

This shockingly wrong denouement from an otherwise well-regarded bureaucrat came before the collapse of Infrastructure Leasing & Financial Services (IL&FS).

TSR passed away in February 2018, just months before IL&FS began to default and exposed the cosy nexus between India's bureaucracy and a company that Mr Haldea was to describe as a "many layered circus, riddled with conflict of interest."

The unhealthy growth and demise of IL&FS was entirely due to venal bureaucrats who colluded with the group in multiple and inter-changeable roles on deputation at IL&FS, as administrators and later regulators and supervisors.

This group, which was sarcastically called IL&FS-cadre by upright bureaucrats, has not been held accountable as yet. Their wink-and-nod attitude allowed crony capitalism to flourish, funded by public sector banks' (PSBs') chairmen as willing accomplices.

It takes a special kind of steely character to ignore criticism from the senior bureaucrats and ministers who decide your promotions and postings. Gajendra Haldea had it in spades.

However, his unrelenting criticism of the system was always accompanied by solutions and very detailed and path-breaking work in drafting legislation, policy framework and standardised model documents to do things right.

His model concession agreements for PPP projects covered power, highways, ports, airports, railways, land use for projects, the Hyderabad Metro Rail, etc. He, correctly, demanded copyright for some of this work.

When things went awry, he wrote two detailed papers exposing the rot. A 2010 study, aptly titled “India’s Sub-Prime Highways” exposed how banks were lending at nearly double the cost estimated by the National Highways Authority of India (NHAI), giving private partners a free ride.

The PSBs, he said, provided huge loans to private sector infrastructure projects “in a manner that can only be described as cavalier because prudence, as well as due diligence, were conspicuous by their absence.”

Financing inflated projects, reckless disbursement of funds, irresponsible waiver of conditionalities, bypassing of contract terms, lack of any worthwhile stake of the project sponsors and diversion of funds became the principal attributes of PSB lending to infrastructure projects. India paid the price for this ‘imprudent lending’.

Had bureaucrats like TSR Subramaniam and his successors paid attention and supported Mr Haldea, bad debts of PSBs, which inflicted a cost of Rs15 lakh crore on the exchequer, could have been substantially reduced. A big chunk of these bad loans on bank books are on account of infrastructure projects and IL&FS.

Gajendra Haldea was not merely a one-person watchdog of national interest, he was unique in being completely supportive of private involvement to achieve transformational infrastructure development.

He worked hard to enable this with appropriate policy and suggested ways to clean up the mess (including a change in the architecture of independent regulators) if the process was perverted.

When that also failed, he even dared to file public interest litigation (PIL) to challenge projects that would damage the public interest. His challenge to the privatisation of Delhi’s power distribution was one example.

India has, indeed, lost a conscience-keeper in Mr Haldea’s demise. But it is not too late to recognise his enormous contribution to building national infrastructure and preventing the loot of national resources with a State honour befitting the man who is posthumously recognised as the ‘Father of India’s private infrastructure development’.