PRIVATISATION

AN AFFRONT TO THE INDIAN CONSTITUTION

Peoples' Commission on Public Sector and Public Services

November 2021

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Published by: Peoples' Commission on Public Sector and Public Services

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Acknowledgements

The Commission wishes to express its deep sense of appreciation and gratitude to members of the secretariat for having helped at every stage in the production of this report. The secretariat consisting of Ashish Kajla, Neelamegam Kannan, Kavita Kabeer, Tani Alex, Anirban Bhattacharya facilitated the conduct of several sessions of the meetings, mostly online, in which the report was discussed and finalised. Moreover, members of the secretariat helped the Commission provided unstinted support in finalising the report and its publication.

Thomas Isaac & E.A.S. Sarma
Co-Chairs,
Peoples' Commission on Public Sector and Public Services

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Foreword

Public Sector Enterprises were to shoulder a vital role in economic development of independent India in accordance with the letter and the spirit of the Constitution, especially consistent with the State's mandate stipulated in the Directive Principles.

There was a virtual consensus cutting across not only political but also economic interests in the national movement regarding the need for a vibrant public sector. The leading business houses realised the historical limitations that circumscribed their resource mobilisation capabilities in the post-colonial period. The potential for colonial primitive accumulation and markets that the European capitalists enjoyed in the period of their ascendence was foreclosed. In these circumstances the celebrated Bombay Plan (1944) drawn up by the representatives of business interests underlined the need for vigorous state intervention to promote industrialisation and setting up of public sector units that would establish basic infrastructure and long gestation basic industries that required heavy investment. The document also accepted planning so that the scarce resources are effectively deployed. The state was also to institute an appropriate regulatory framework for an import substitution strategy of development.

The regulation of imports directly flowed from the Swadeshi slogan of the national movement. India's tryst with colonial free trade had been a terrible experience with the economy growing at around one per cent per annum, deindustrialisation, recurring famines and shrinkage of India's share in global production. Given the abject poverty, illiteracy and ill-health of vast majority of the citizens who were also social victims of the legacy of caste discrimination, pursuit of social and economic justice was enshrined in the Directive Principles of the Constitution of India. These directives of the Constitution form the starting point of the analysis of the Interim Report 1 of the Peoples' Commission on Public Sector and Public Services. The gist of the arguments in this opening initial report of the Peoples' Commission is that the current policy of the Union Government for privatisation of the PSEs is tantamount to negation of the social objectives of the

Constitution as stated in the Directive Principles and constitutional guarantees on affirmative action.

How did we come to this impasse? A successful import substitution strategy is predicated on continuous expansion of the domestic market. Among others, the most important was the failure to carry out land reforms and mitigate rural poverty. The attempt to change course to an export-oriented growth strategy in the 1980's to accelerate growth ended in a major foreign exchange crisis. The country was forced to come to terms with Fund-Bank prescriptions and a new free market era of systematic dismantling of the post-independence economic regime was inaugurated in 1991.

India's corporate interests were also fully convinced that the earlier regime had exhausted its potential for them. In fact, the Bombay Plan had not envisaged open ended growth of public sector or planning. As the corporates matured and gained experience, the public sector was to be eventually transferred to them or in other words privatised. In the changed global scenario, being part of the new international division of labour was inevitable and whatever loss of domestic market or opportunity was to be more than made good by the potential of primitive accumulation through privatisation of the public sector and monetisation of public assets.

The Indian developmental state has also meanwhile undergone profound transformation into a neoliberal state, a direct handmaiden of corporates and finance capital. Under the cover of Covid Pandemic, the unfinished neoliberal agenda in the financial sector, labour laws, privatisation and corporatisation of agriculture were also pushed through. Such has been the confidence that the laws were enacted mostly through the ordinance route by-passing Parliament and when finally placed in the Parliament, approved in hurried voice votes.

The year long struggle of the farmers protesting the three farm laws was a rude shock to the neoliberal state with most farmers rejecting their agenda. The labour laws are also in limbo. But the NDA government seems to be determined to push ahead with its privatisation agenda. One important reason is that it requires "non-debt-creating" receipts to fill the revenue gap in the budget which is getting out of hand because of tax concession to the corporates, capitalisation needs of the banks to make up for the NPAs of the corporates and payment for the more recent Production Linked Incentives Scheme. The Interim Report has pointed out that the macro-economic effect of such "non-debt-creating" receipts would be the same as a normal increase in the fiscal deficit if the private sector merely borrows funds from the banking sector. The macro-economic implications of privatisation are a set of issues that we would be taking up in one of the subsequent reports.

Facing a check-mate in the response to its farm agenda the Indian state is keen to demonstrate to international capital and Indian corporates their full commitment to the reform path. This in fact has been the general tenor of the corporate media after the farm laws fiasco. In this context the privatisation agenda would appear as low hanging fruits that can be easily plucked. For one, the government has succeeded in influencing middle class and public opinion through relentless propaganda that the public sector cannot be efficient and is a drain of government resources. Perhaps the resistance to privatisation has also started to suffer from fatigue. And the government through subterranean and ingenious measures are undermining the functioning of the existing public sector so that sooner or later there would be no alternative to privatisation . Such is the desperation of the government that they are willing to give extensive concessions to make privatisation attractive in the current forbidding macro-economic environment, even sacrificing the revenue objectives.

It is in this context that the Peoples' Commission on Public Sector and Services which includes eminent academics, jurists, erstwhile administrators, trade unionists and social activists has been constituted. It is remarkable that the members of the Commission within a month of its constitution have through online consultations among themselves drawn up Interim Report 1, focusing more on the Constitutional aspects of the privatisation drive. We intend to have in-depth consultations with all stakeholders and other eminent people and produce several sectoral reports before coming out with a final report. This procedure has been adopted because of the urgent need for an informed public debate on privatisation and mobilising support for the resistance to such disastrous moves.

Thomas Isaac & E.A.S. Sarma
Co-Chairs,
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Preface

In December of 2020, CEO of NITI Ayog, made a daring statement:

> *"In India we are too much of a democracy so we keep supporting everybody… For the first time in India a government has thought big in terms of size and scale and said we want to produce global champions. Nobody had the political will and the courage to say that we want to support five companies who want to be global champions."*

This is a clear policy agenda to demolish small enterprises and create an oligarchy in the model of post-disintegrated Soviet Russia so that "democracy" can be put an end to!

True to this agenda privatisation of CPSUs has been going with vigour. Recently a "National Monetisation Pipeline" (NMP) has been unveiled to alienate Rupees 6-lakh crore worth of public assets. This plan hopes to hand over almost the entire key infrastructure the nation has built over the last 70 years to private oligopolies. This includes 31 airports, 23 seaports, 26,700 km of highways (20 per cent of country's road length), 400 railway stations, complete privatisation of Konkan Railway and four heritage hill railways, 1400 km of rail lines, and the lucrative parts of the Dedicated Freight Corridor even before it is completed and ready.

Making the pandemic an excuse, the government said that "in the wake of COVID 19" the monetisation is necessary to generate revenue to meet the "pressing need on the public outlay towards social sector priorities and economic stimuli initiatives." The NMP document states that due to Covid and slowing economy, 'risk appetite' of private investors is low. So, NMP plans to offer them 'mature brown field projects with stable and attractive returns to unleash animal spirits.' But the intent is clear.

To hasten the process, government is brazenly bearing upon the regulatory authorities to tamper with their rules and regulations. In the event, most of these costly assets could land up on the laps of favourite business tycoons at dead-cheap prices thereby achieving the objective of "supporting five companies (may be ten) who want to be global champions!" So 'revenue earning' to 'invest in infrastructure' as being touted cannot be the reason for this predatory policy move.

Dismantling public sector and monetising public assets means subjugating our national economic interests, our economic independence and sovereignty to the interests of international finance capital and corporate entities. It means handing over our national assets, our national wealth to the oligarchs in a silver platter. And it means facilitating ferocious exploitation of our workers by the profit hungry employers; imposing virtual slavery on them. It means robbing the SC/ST of their statutory right to reservation. This will ultimately lead to the crushing of democratic structures and social institutions and make India as the most inequitable country.

This also means that India is accelerating its abandonment of the path of 'welfare state' founded in our Constitution and adopting a market-driven 'corporate state'. As is known welfare state is a concept of government where the state plays a key role in the protection and promotion of the economic and social well-being of its citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, affordability and accessibility of public services, and public responsibility for those unable to avail themselves of the minimal provisions for a good life as indicated in our Directive Principles of State Policy. While 'welfare state' is service-driven, 'corporate state' is profit-driven!

Morphing India of 135 crore people, 75% of whom are poor and low income, into a market economy, under the control of Oligarchs will bring the vast majority of consumers, farmers, traders and small producers to their knees subjecting themselves to the whims of these predators as to the price they pay/receive for products and services either bought or sold. All this with the active help of the Indian state!

This agenda of privatising the public sector and alienating public assets could cause certain irreversible and severe damages to the nation's polity and economy:

- Break the legs of India's economy thereby severely destabilising it.

- Violating Constitution by morphing the economy from welfare to predatory.
- Monopolistic/duopolistic/oligopolistic control that pauperises consumers.
- Propitiating the crony-capitalists and depriving India of 'family assets.'
- Pose threat to human and national security.

Above all, Public Sector and assets built by the sweat and toil of the people and their tax-money on their land belongs to them and not the government of the day which is there, only on short-term contract like a tenant. A tenant cannot alienate the house.

It was Benito Mussolini, the Italian dictator who coined the word 'Fascism' and defined it as the "merging of the State and the Corporations." By resorting to mindless dismantling and privatisation of PSUs, and sale of public assets Central government is heading towards such merger. This cannot be countenanced.

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Key Findings of the Commission

Mandate

As prescribed in the Directives Principles of State Policy, enshrined in the Constitution of India and as recognised by the Apex court, state policy is intended to ensure that the ownership and control of material resources of the community are so distributed so as so to sub serve the common good and counter concentration of wealth and means of production to the detriment of the public at large. The question that the Commission tries to answer is whether privatisation of the public sector and monetisation of assets subserves the common good. We answer this question with a categorical "NO."

As a Peoples' Commission on Public Sector and Public Services, it is our role and duty to alert our fellow citizens that the government of the day by pursuing the model of privatisation is reneging on its obligations and duties under the Constitution.

A violation of the constitution

Equity

The pandemic has not been an equaliser as is claimed commonsensically. While 230 million people today are below poverty line under the cumulative shocks of demonetisation, GST and the lockdown, the super-rich has accumulated enormous share of wealth. According to The Economist, Mukesh Ambani and Gautam Adani's net worth had increased by 350% and 750% respectively between 2016 & 2020. Privatisation in India shows that disinvestment in public enterprises over the years has led to the concentration of economic power, a trend that is disturbingly on the rise taking us towards an oligopoly.

In a country like India where millions are yet to secure access to the basic needs of life, private enterprise which is largely profit-driven could not be expected to provide goods and services at affordable prices. The fact that PSUs are mandated to replicate what the state itself is committed to is what enables citizens to seek justice when they are denied opportunities. The pursuit of privatisation shrinks the space for the State to fulfil its constitutional commitment of empowering the disadvantaged communities.

Federalism

The Planning Commission provided an independent and participative meeting ground for the Centre and the States as equal partners, eliciting trust as required in a federal set up envisioned in the Constitution. In this planning process, the Central and the State PSUs became constructive partners. The dismantling of the Commission in 2014 in favour of NITI Ayog (a free-wheeling "think tank" at best) is an affront to the federal principles enshrined in the Indian Constitution.

Affirmative action

The PSUs are not only expected to provide specifically reserved employment opportunities for the SCs/STs/OBCs but also to empower by ensuring their participation in the decision making process of the State. Contractualisation, an outcome of deregulations and privatisation, puts the workers outside the scope of the laws governing reservation thereby subverting the affirmative action. It incidentally negates the commitment given by the BJP in its 2019 Election Manifesto.

Fall-outs of privatisation

Quality of employment

The CPSEs had 22 Lakh employees in 1989-1990 but by 2019-20 this has already come down to just 10.64 lakhs, a decline of 52%. All actions of the State can be challenged in a Constitutional Court. No such challenge can be brought against a private company jeopardising rights of labour rendered helpless against the immanent possibility of retrenchment. The recruitment and human resource policies in PSUs have been known to be transparent in a manner that enables aggrieved employees to seek legal remedies. The public sector provides a minimum benchmark for such practices in industry, one that we would lose.

Loss of revenue

The justification for the sale of PSUs is that they are a drag on the exchequer and that their sale would stem the bleeding. The fact that many such sale deals (like Air India) are overwhelmingly loaded in favour of debt repayment implies revenue losses for the government. Moreover, the terms of the sale have always been, unsurprisingly, controversial. Additionally, the terms of the sale can result in the state actually registering significant losses as a result of the deals.

Mounting NPAs

Many of the private players who are likely to bid are already heavily indebted to the PSU banks and their failure, which is most likely, will further compound the already precarious NPA crisis for the latter.

Violation of existing laws & safeguards

Lands were acquired in the past for PSUs under the erstwhile land acquisition law in the name of "public purpose", a term defined at that time to imply exclusively land acquisition for companies wholly owned by the government. Either allowing such land to be transferred to private companies or monetising them in other ways would violate the land acquisition law.

Nexus and Favouritism

Time and again PSUs have been deliberately and systematically weakened and then offered on a platter to private bidders. Competition is being diluted by the arbitrarily tweaking the terms of bidding to suit the interests of a few industrial groups or by allowing inexperienced companies to enter crucial areas of infrastructure.

Private Mismanagement

There is no dearth of contemporary examples of privatised PSU units closed down after mismanagement by their private promoters (e.g. HZL's smelter unit at Visakhapatnam) and private financial institutions mismanaged and taken over into the public sector (e.g. Global Trust Bank).

Monetisation pipeline: a move fraught with dangers

Instead of using state enterprises as a vehicle for kickstarting the economy during the pandemic, the government has announced that it would start "monetising" assets

Valuation

Given the fact that these are public assets, many of which have been established over many years following sustained public investment, how fair is it to offer the assets to private interests at deeply discounted rates? The fact that potential investors would value their bids in terms of the expected discounted returns over the lifetime of the lease implies that they would only offer a fraction of what the government considers as the value of the asset today. The fact that the sale of prime assets are happening in the context of the pandemic, when Indian economy is still to recover, there is the grave possibility that these assets will be offered at even deeper discounts to the private interests. Alienating massive public assets at net present value in the garb of monetisation would lead to very low returns, asset stripping and promotion of an oligopoly.

Danger of monopolies

The lease exercise would allow the private lease holder to exploit their monopolistic control of these assets without any restraint. This would only further concentration of wealth and is to the detriment of a healthy democracy. User charges imposed may prove to be exorbitant with citizens having no access to legal remedies.

Nationalisation of losses and privatisation of profits

PPPs are structured such that the state incurs most of the financial burden (and the losses), the private partner has free and unhindered access to profits (the Delhi and Bengaluru airport projects are just two of the striking examples)

Dent to national productive capacities

The intersectoral connections, namely energy, capital goods, machine tools, material/natural resources processing allowed CPSEs is what enabled to them remained effective and competitive, while furthering national self-reliance. Stripping these away would rob them of their effectiveness and ability to contribute to national productive capacities.

Climate crisis

It needs to be reiterated that the agenda of commitments made at the global level by the Indian state in respect of climate change, agriculture transitions (sustainable farming), health transitions and energy transitions require major contributions from the public sector. If the Indian state is going to be hollowed out, as threatened by the privatisation drive, it would be unable to deliver on the future challenges emerging on all these mentioned fronts, including technological self-reliance.

The Report - Privatisation: An Affront to the Indian Constitution

Introduction

The Union Government led by the National Democratic Alliance (NDA) is committed to an aggressive push towards privatisation of national assets. Having decided at the height of the pandemic to maintain a bare minimal presence in "strategic" sectors, which includes atomic energy, space and defence, transport and telecom, power, energy, coal, petroleum and minerals, and banking, insurance and financial services, it has decided to relinquish control or shut down its companies in all other sectors of the economy. As of now, a relatively small number of about 60 Central Public Sector Enterprises (CPSE), remain out of the overarching policy to disinvest government stake and relinquish control in these enterprises. The policy implies that the government will retain control of only a small number of the remaining about 300 CPSEs.

Moreover, recently, it has also decided on a massive programme of monetisation of assets controlled and operated by CPSEs and by its agencies such as the National Highways Authority of India and departmental undertakings, primarily the Indian Railways. The Government expects to deploy assets across a range of sectors, estimated at Rs. 6 lakh crores, from which it hopes to mobilise revenues in the form of long-term lease rents. It has justified the aggressive push as being necessary in order to sustain spending on welfare, promote development, empower citizens and to create jobs.

The government has already allowed private companies to take over many ports and airports. It has signalled its intention by initiating the sale of Air India to Tatas recently. But many more companies are now on the anvil. Among them are the Life Insurance Corporation of India (LIC), a pioneer in the Indian insurance business, Bharat Petroleum Corporation of India (BPCL), an Indian public sector petroleum refiner with an extensive marketing reach, BEML, a defence and transport equipment major, the Shipping Corporation of India, the lone public sector presence in the shipping sector, and the steel companies Neelachal Ispat Nigam Ltd. (NINL) and Rashtriya Ispat Nigam Ltd (RINL). Alongside these developments, the government has also recently asked the ONGC to hive off 60 per cent of its participating interest in Mumbai High and Bassein fields to international players. The recent move to sell real estate assets of the two telecom companies, BSNL and MTNL, is also part of the same drive.

A brief account of the privatisation story must start from its initial justification, in the early 1990s, that the state needed to mobilise resources by shutting down loss-making units so that workers could be rehabilitated or provided decent VRS compensation packages. It was also argued that the disinvestment in such units would release resources for the restructuring, renovation and modernisation of public sector units so that could turn profitable. But it soon became clear that the real intention was to garner resources to finance routine budgetary expenditures in a context where direct tax concessions and indirect tax "rationalisation" were eroding the resources of the State.

But unless disinvestment is financed by a reduction in the flow of private expenditure, it becomes no different from a fiscal deficit in its macroeconomic effect; it does not constitute resource mobilisation at all. A distinction is often drawn between "debt-creating" and "non-debt creating" capital receipts and disinvestment preferred on the grounds of being "non-debt-creating". But, once raising "non-debt creating capital receipts" for the budget was adduced as the argument for disinvestment and annual targets were set, the problem was to persuade the private sector to buy into these units. This necessitated sops in the form of "strategic

The fact that the sale of prime assets are happening in the context of the pandemic, when Indian economy is still to recover from the unprecedented slowdown, is particularly striking. That the asset sales are proceeding at a time when the private corporate sector has shown an extreme reluctance to invest is an indication of not just the desperation of the government, but that there is the grave possibility that these assets will be offered at even deeper discounts to the private interests.

sales" by letting private industry take control for a small investment, underpricing the assets (BALCO, etc.), and selling equity of some of the best public sector firms at a discount, all of which actually made "non-debt creating" receipts distinctly inferior to "debt creation". This is the background that is likely to make this round of privatisation and asset monetisation even more of a net transfer of resources to the private sector, both in absolute terms, and certainly compared to simple "debt creation". In fact that may be the real objective now.

The fact that the sale of prime assets are happening in the context of the pandemic, when Indian economy is still to recover from the unprecedented slowdown, is particularly striking. That the asset sales are proceeding at a time when the private corporate sector has shown an extreme reluctance to invest is an indication of not just the desperation of the government, but that there is the grave possibility that these assets will be offered at even deeper discounts to the private interests.

During the mid-1990s, when a coalition government was at the helm in New Delhi, under PM Deva Gowda, efforts were made to strengthen the governance of CPSUs by granting financial autonomy under the Navaratna scheme. Effort were also made to improve the interface between the operating ministries and their PSUs by making sign MoUs so that the managements of these units enjoyed greater operational autonomy.

This Commission, during the course of its deliberations, considered various aspects of the push towards deregulation and privatisation, especially in terms of their impact on society. Among the targets are those such as the LIC, which is structured uniquely, unlike any other insurance company in the world. A household name in India, the LIC was not even structured legally as a company, having characteristics such as a body of shareholders. There are others such as the

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ONGC and BPCL, which deal with scarce, valuable and strategically critical intermediate commodities. There are also infrastructure such as airports and ports, which have been historically termed natural monopolies; handing them over to private interests risks putting them beyond the pale of regulation, control and oversight.

In agriculture, although the government has announced its decision to withdraw the three controversial farm laws, there remains the danger that Indian peasants and Indian public at large would be exposed to the twin dangers of corporatisation and globalisation in the crucial sector of food production and food availability. The state and its agencies have played a significant role in the provision of irrigation, soil conservation, credit, R&D, seed multiplication, extension services, on the one hand, and, on the other, in the assured procurement of major crops at remunerative prices, public storage of food stocks, and, to a limited extent, in the processing and marketing of certain crops.

This role of the state has been under attack since India signed on to Agreement on Agriculture (AoA) at the world Trade Organisation (WTO) in 1995. The AoA, inspired and guided by the global agribusiness giants and the OECD countries that subsidise their agriculture heavily, is intent on changing the land use pattern in tropical and subtropical countries of the South in favour of the products in demand in their markets and away from the traditional local patterns of food production. This has already created scarcity in critical areas of food supplies in many countries, especially in Africa, leading to their dependence on food surplus countries of the North. The danger of "food imperialism" is real and is a matter of serious concern, not only for our peasantry but for the country as a whole.

The three farm laws were a natural result of the pursuit of the policy course adopted by successive governments since 1995. Seen in this perspective, the mere withdrawal of three

As a result, 230 million people are below the poverty line as defined by the normative minimum wage standard. Nearly 190 million people – 14 per cent of the population – are undernourished. More than half the female population aged 15-49 years are anaemic; nearly 35 per cent of children under five are stunted; and, 20 per cent suffer from wasting. Already vulnerable, children now run a greater risk of death from common childhood illnesses such as diarrhoea, pneumonia, and malaria.

farm laws would be totally inadequate; a policy reversal is called for in order to rescue Indian agriculture from the prolonged crisis that has resulted in prolonged misery and the unprecedented scale of peasant suicides witnessed since the late nineties.

The immediate context

It is important to emphasise that these developments are happening in the context of the Covid-19 pandemic. For almost two years India has been gripped by a public health emergency of unparalleled proportions, and incomes and employment have never suffered such a precipitous decline since Independence as they have during the pandemic. Most worryingly, inequalities have widened during the pandemic: the rich have got even richer and the poor have lost grievously.

Even before the onset of the pandemic India was already in the throes of the longest economic slowdown since 1991, triggered significantly by the decision to demonetise 86 per cent of the value of the national currency in November 2016. The lockdown imposed suddenly in March 2020, perhaps the harshest anywhere in the world, heaped untold misery on millions even as economic activity came to a standstill.

As a result, 230 million people are below the poverty line as defined by the normative minimum wage standard. Nearly 190 million people – 14 per cent of the population -- are undernourished. More than half the female population aged 15-49 years are anaemic; nearly 35 per cent of children under five are stunted; and, 20 per cent suffer from wasting. Already vulnerable, children now run a greater risk of death from common childhood illnesses such as diarrhoea, pneumonia, and malaria.

Unemployment in both rural and urban areas is now in excess of 14 per cent; more worryingly, there is evidence that this figure hides the fact that more and more people are

Unemployment in both rural and urban areas is now in excess of 14 per cent; more worryingly, there is evidence that this figure hides the fact that more and more people are giving up their search for employment.

giving up their search for employment. As a result of the severe stress caused by declining employment and incomes indebtedness is rising dangerously. The anecdotal evidence suggests that loan sharks, many of them now sporting a digital tag, are charging usurious rates of interest without any checks or balances in place.

The overwhelming proportion of Micro, Small and Medium Enterprises (MSME), which are the primary source of industrial employment, are in the throes of a meltdown. A recent survey of 81,000 self-employed and micro or small businesses found that more than three-fourths of them had incurred losses. The failure of the government to provide timely and adequate support implies that many would never be able to recover from the crisis. The number of suicides by those engaged businesses, primarily small businesses, increased by a whopping 29 per cent in a single year – between 2019 and 2020.

One of the highlights of the Indian state's response to the pandemic has been the grievous injury it has caused to education. No other country has shut schools for longer than in India. A total of 320 million learners from 1.5 million schools have transitioned to what is euphemistically termed e-learning. Given that only 15 per cent of rural households have internet access (42 per cent in urban India), the quality of this education has been widely adjudged to be dubious. This is compounded by the gender divide in online access, which has exacerbated the already existing societal problem of limiting access to girl children in India.

But it is not as if all Indians went through the same fateful journey in the pandemic. There was no let-up in the accumulation of wealth by India's billionaires. According to The Economist, Mukesh Ambani's net worth had increased by 350 per cent between 2016 and 2020; fellow tycoon Gautam Adani's net worth increased by a 750 per cent during the same period. In 2020-2021 Mukesh Ambani's net

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worth was Rs. 7.18 lakh crore; Gautam Adani's net worth was Rs 5.06 lakh crores. Other super-rich have also increased their wealth by 75 to 85 per cent within a year. The richest 10 per cent of Indians own over three-fourth of the country's wealth, while the bottom 60 per cent, own less than 5 per cent. Much as the elite would have us believe, widening inequality is an urgent and explosive issue.

Governance and the Constitution

Article 37 of the Constitution in Part IV says that the provisions contained in Part IV shall not be enforceable by any court, but the principles therein laid down are nevertheless *fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.* (emphasis added)

These are strong words. Governance is entrusted into the hands of the Executive and the Legislature and the Institutions set up by then by the Constitution of India. The Directive Principles are therefore addressed to the Executive and the Legislature. The Supreme Court of India in the case reported as Charu Khurana v. Union of India, (2015) 1 SCC 192 has held that the Directive Principles have been regarded as the "soul of the Constitution" as India as a welfare state. They provide guidance for the interpretation of Fundamental Rights, as well as Statutory Rights.

The fact that these principles are not enforceable in a court of law has not stopped the Supreme Court from using these principles to interpret Executive action as well as Fundamental Rights in favour of the people of the country. It is through these principles that state policy is intended to ensure that the ownership and control of material resources of the community are so distributed so as so to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the detriment of the public at large.

The fact that these principles are not enforceable in a court of law has not stopped the Supreme Court from using these principles to interpret Executive action as well as Fundamental Rights in favour of the people of the country.

This has been recognised by the Supreme Court in K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1.

Economic policy of the state is about making choices that will best subserve the common good. The question that we are raising in this report is whether privatisation of the public sector and monetisation of assets subserves the common good. We answer this question with a categorical "no." Governance is about making those choices that will ultimately usher in a welfare state. Our constitution is unique in that the policy directions of building a social order for the promotion of the welfare of the people have been enshrined in it. Moreover, a duty has been cast on the state to apply these principles in making laws and policies. This report demonstrates that the state has reneged on this obligation and duty to secure a social order for the promotion and welfare of the people. The data produced in this report demonstrates that wealth is concentrated in the hands of the few and that far from diffusing the ownership and control of the natural resources of the community, they are concentrated in the hands of the few, thereby creating oligarchies: that the rich have become richer and the poor have become poorer, more particularly after the pandemic. Hence, in every sense of the word, the Executive and Legislative actions of the state in India have violated "the soul of India," namely the Directive Principles of State Policy, which are fundamental in the governance of the country.

When social welfare legislation has been challenged, the Supreme Court has relied on Directive Principles to sustain such legislation. In 1954, the validity of the Minimum Wages Act was challenged before the Supreme Court on the grounds that it was illegal and ultra vires because it conflicted with the fundamental rights of the employers and the employed guaranteed under Article 19(1)(g) of the Constitution and that it is not protected by clause (6) of that article. Upholding the validity of the Act, the Supreme Court in its judgement

It is through these principles that state policy is intended to ensure that the ownership and control of material resources of the community are so distributed so as so to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the detriment of the public at large. This has been recognised by the Supreme Court in K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1.

reported as Bijoy Cotton Mills Ltd. vs State of Ajmer, AIR 1955 SC 33. observed that workers' entitlement to minimum wages drew sanctity from the Directive Principles. Moreover, the Court noted that the workers' desperation to even work below minimum wages did not give employers the right to flout the minimum wage standards simply because they had a contract which allowed it.

In 1983, the Panjab and Haryana High Court struck down Section 4(1)(b) of the Payment of Gratuity Act, 1972 as being violative of Article 19(1)(g) of the Constitution of India. The decision was appealed before the Supreme Court of India. The Supreme Court set aside the decision of the High Court and upheld the validity of Section 4(1)(b) of the Payment of Gratuity Act, 1972. The Court, in its decision reported as Bakshish Singh v. Darshan Engineering Works, (1994) 1 SCC 9 relied on Directive Principles of State Policy while arriving at its decision.

In Peoples' Union for Democratic Rights v. Union of India, (1982) 3 SCC 235 the Supreme Court articulated the proposition that Article 23 of the Constitution, which talks of forced labour, will include labour which a person is compelled to do below a minimum wage or in conditions where they find no other alternative.

Taking into account the Supreme Court's wide interpretation of Article 23, this report makes it apparent that much of our migrant labour and other self-employed persons were compelled to work as "forced labour" during the pandemic or were faced with starvation or certain death.

While it is true the Supreme Court has held that it is not the mandate of the court to interfere with the economic policy of the government, this is purely due to the reason that the Supreme Court lacks expertise in the governance of the country, nor is that role assigned to the court under the Constitution. Reliance in this regard may be placed on Indian Express Newspapers v. Union of India, AIR 1986 SC

515, in which the Supreme Court stated that on an economic policy, no judicial intervention is permissible. The same has been reiterated by the Supreme Court in a catena of judgements. However, it must be noted that the Supreme Court may interfere with the policy decisions of the executive if the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness, unfairness, being contrary to an Act of Parliament, or for violation of Fundamental Rights of the citizens. A recent example of this is when the Supreme Court declared the central government's Covid-19 vaccination policy is "prima facie arbitrary and irrational."

It does not follow that state can be absolved of its duty to follow the Directive Principles more particularly when it comes to creation of a welfare state or, for that matter, the dismantling of the welfare state. Accountability in this regard is to the people of the country and, being a Peoples' Commission on Public Sector and Public Services, it is our role and duty to alert our fellow citizens that the government of the day is reneging on its obligations and duties under Constitution. We have seen a recent example of accountability of the government of the day to a people's movement in the proposed repeal of the three farm laws which would have threaten the corporatisation of agriculture, thereby rendering farmers landless labour on their own land.

It is significant that none of the policy statements of successive governments, including the Disinvestment Commission's reports of the 1990's and, in particular, the Department of Public Enterprises and Disinvestment's policy document of 2003, discussed the fundamental issue of the Constitutional mandate that the State is obliged to pursue. Strikingly, these policies did not address the fact that these policies were in conflict with the obligation of the state to perform its 'welfare' function, which are unambiguously stipulated in the Directive Principles. More specifically, these policies undermined the vital role that was constitutionally mandated for public sector institutions to act as an instrumentality of the Indian state.

Perhaps, for the first time, this Interim Report of the People's Commission has covered this aspect in a comprehensive manner, reminding the state of its constitutional obligation, which it has seriously breached.

Privatisation and Constitutional guarantees on affirmative action

Reservations are a unique part of the protective and welfare provisions of the Constitution for the SCs/STs/OBCs. The Constituent Assembly introduced those provisions after elaborate discussions, keeping in view the deep-rooted discrimination meted out to those communities for centuries. The historical injustices done to them cannot be expected to be corrected over a few decades, keeping in view the nature of the governance structures that still remain heavily biased in favour of the other sections of the society.

The provisions relating to reservations and welfare of the SCs/STs/OBCs need to be viewed as a part of the "basic structure" of the Constitution (Kesavananda Bharati ... vs State of Kerala And Anr on 24 April, 1973), which cannot be altered either through Constitutional means or otherwise.

Disinvestment of the PSUs has the effect of shrinking the space available for reservations for the SCs/STs/OBCs, which incidentally negates the commitment given by the BJP in its 2019 Election Manifesto ("we remain committed to ensuring the benefits of Constitutional provisions to the Scheduled Castes, Scheduled Tribes and Backward Classes").

The provisions that relate to the role of the welfare State and the obligation of the State to provide reservations for SCs/STs/OBCs were incorporated in the Constitution after elaborate deliberations in the Constituent Assembly.

It does not follow that state can be absolved of its duty to follow the Directive Principles more particularly when it comes to creation of a welfare state or, for that matter, the dismantling of the welfare state. Accountability in this regard is to the people of the country and, being a Peoples' Commission on Public Sector and Public Services, it is our role and duty to alert our fellow citizens that the government of the day is reneging on its obligations and duties under Constitution.

The Preamble to the Constitution envisages the State has the character of a socialist democracy for securing its citizens, among others, social justice, equality of opportunity and status, subject to the specific provisions of compensatory discrimination in favour of SCs/STs/OBCs as required by Articles 15(4) and 16(4). Articles 38 and 46 envisage the State to be a welfare State with special reference to the SCs/STs. There are several other provisions of the Constitution that safeguard and empower the SCs/STs/OBCs. Each arm of the State is obligated to discharge such a welfare function in its totality, not in a fragmented manner. In other words, the PSUs are not only expected to provide specifically reserved employment opportunities for the SCs/STs/OBCs but also to empower them in many other ways including "empowering them and ensuring their participation in the decision making process of the State.... public employment gives a certain status and power, besides the means of livelihood" (Indra Sawhney & Ors Vs. UOI & Ors,)

Privatisation, a betrayal of the Constitution

Based on the consideration of the Constitutional issues involved, the Commission deliberated on the critical role and continued significance of the public sector in India's development as a society that regards the pursuit of social equity as a cardinal virtue. It thus decided that its first report emphasise the role of the public sector as mandated by the Constitution of India. In this it was guided by the premise that while successive governments in the last three decades had pursued deregulation and privatisation, which have restricted the scope for CPSEs, the underlying legal edifice has not been tampered with. Such an approach enabled the Commission to highlight the fact that the actual conduct of policy has dangerously deviated – in letter and spirit – from the original scheme that was envisaged for such enterprises in the Constitution. The fact that a significant backlog in terms of development objectives – think poverty and wide

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disparities in income levels and the wide regional disparities, for instance – remain unfulfilled since the Constitution was adopted, also implies that the underlying justification for the legal edifice that Indians adopted seven decades ago have not changed either. This is not a trivial matter for a society that believes in the supremacy of the rule of law in a democracy.

Let us start first with the Preamble, as the Constitution itself does. The Preamble envisioned the Indian State as a "socialist" State and a "welfare" State as described in Article 38. Further, it guarantees "social order in which justice, social, economic and political" that is accessible to all. Still further, it makes it obligatory for the state to ensure that the "ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

It thus imposes the pursuit of equity as an obligatory principle of any policy the state may choose to pursue. These are all part of the basic structure of the Constitution and therefore no government can alter it. Further, in the Constitutional scheme, the Directive Principles of State Policy (DPSP) were regarded as being fundamental in the governance of the country; in fact, it made it obligatory for the state to apply these principles in making laws. The DPSP were thus not just meant as an aspirational blueprint drawn at the time of Independence to be achieved at far and distant future but a key guidepost to the charting of policy and governance.

In fact, the Planning Commission, which was set up through a government Resolution in 1950, was an institution specifically meant to translate the Constitutional provisions relating to the citizen's Fundamental Rights and the Directive Principles on State policy. In fact, the terms of

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reference as spelt out in the Resolution clearly expressed the language of the parts of the Constitution relating to Fundamental Rights and the Directive Principles. The resolution refers to the Fundamental Rights and reproduces the language of two Articles: Articles 38(1) and Article 39(a), (b), and (c) in the Directive Principles. The resolution also explicitly stated that the Commission would pursue its mandated task "in furtherance of the Directive Principles."

The pivotal role played by the Planning Commission over the decades till 2014, as the primary instrumentality for translating these terms into tangible outcomes through a unique central planning approach, ensured that both the Centre and the States played their respective roles in fulfilling the Constitutional mandate for building a republic that is consistent with the concept of a "socialist", "welfare" State. The Planning Commission thus provided an independent and participative meeting ground for the Centre and the States as equal partners in this planning approach, eliciting trust as required in a federal set up envisioned in the Constitution. In this planning process, the Central and the State PSUs became constructive partners in building a vibrant nation that we witness today.

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The first major blow to the integrity of the planning Commission came when the then government launched the 1991 reforms, which diminished the role of the Commission and the effectiveness of central planning as an instrument of a welfare State. By 2004 the move to weaken the Commission had begun. The dismantling of the Commission in 2014, which was one of the first policy decisions of the NDA Government, thus not only reflected its priorities was indicative of the course it intended to pursue in time.

The NITI Aayog, which is officially claimed to be the replacement of the Planning Commission, has proved to be a pale shadow of the original. Unlike the Planning Commission, which was established in 1950 with a clear mandate derived from the Constitution, the NITI Aayog is nothing but a freewheeling "think tank". In terms of its composition as well as its functioning it has been non-transparent and does not allow for a systematic and adequate representation of the interests of the states of the Indian Union. The conduct of the NITI Aayog is thus another affront to the federal principles enshrined in the Indian Constitution.

The 1991 economic liberalisation measures were ostensibly expected to create a larger and a more competitive environment for the private sector to deliver efficiency improvements, transparent, rule-based regulation where there are natural monopolies or externalities and greater consumer accountability to the public. Instead, the 1991 reforms laid undue emphasis on privatisation as the panacea for all problems rather than creating competitive markets, ignoring the reality that private enterprise is largely driven by the profit motive and in the absence of competition and regulation, where necessary, would turn out to be worse than the problems it was supposed to address. Moreover, in a country like India where poverty levels are high and markets ate fragmented and where large numbers of disadvantaged households were yet to secure access to the basic needs of life, private enterprise which is largely profit-driven could not be expected to provide these sections goods and services at affordable prices.

While it can possibly be argued that "minimum government, maximum governance" could be a particular government's objective of reform, can the government use that as a ploy to renege on the obligation cast on it by the Constitution -- to be a socialist, welfare State?

A public debate on these questions assumes utmost importance and urgency at a time like this when the government is in an undue haste to rush headlong into privatising the public assets on such a large scale, which may

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indirectly imply a distinctive and irreversible deviation from the responsibilities cast on the State in the Constitution.

To facilitate such a public debate, the Peoples' Commission (Terms of Reference in the Annexure) has made an attempt to address these questions in an independent manner and arrived at the prima facie finding that the policy on privatisation of assets as adopted in the present context will have far reaching implications in many ways and more importantly, will imply an outright breach on the part of the government of the obligations cast upon it by the Constitution.

In his address to the Constituent Assembly on November 25, 1949, when he presented the draft Constitution, Dr Ambedkar had expressed his apprehension on the inequalities in the society and their implications for governance in the following prophetic words:

"In politics we will be recognising the principle of one man, one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up"

More than seven decades since then, despite the Constitutional safeguards provided, we continue to be a society in which concentration of wealth is yet to reduce, poverty yet to disappear, the plight of the disadvantaged sections yet to improve fully and empowerment of the disadvantaged yet a distant dream. The primary reason for this has been the continuing dominance of the vested

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interests and a bias in governance against the interests and concerns of those who are socially and economically deprived. The political elites at the helm of affairs have largely failed to fulfil the constitutional mandate.

The State and the ruling political elite cannot absolve themselves of that mandate on the facile premise that it is not in its scheme of governance. On the other hand, it is all the more necessary that the ruling political executive should introspect on the reasons for its not being able to discharge its obligation as a socialist, welfare State and align its policies in tune with what the Constitution has mandated.

As an arm of the State, the PSUs are obligated to perform their "welfare" function in its totality, including affirmative action in favour of the Scheduled Castes/Scheduled Tribes/Other Backward Castes in terms of Article 16(4). The fact that PSUs are mandated to replicate what the state itself is committed to is what enables citizens to seek justice when they are denied opportunities that would be available from the state itself. The pursuit of privatisation as state policy necessarily shrinks the space for the State to be able to fulfil its constitutionally guaranteed role, which would result in long-term adverse impacts in empowering the disadvantaged communities, giving them social status and dignity, which they had been denied for centuries.

There is yet another adverse consequence of industrial deregulation in the last few decades, which has had an adverse impact on employment, especially of socially marginalised groups and communities. This arises from the increasing tendency of even public sector companies to engage much higher proportions of their labour force on short-term contractual basis.

The CPSEs had 22 Lakh employees in 1989-1990 but by 2019-20 this came down just 10.64 lakhs, a decline of 52 per cent. Most of this decline was due to the increasing use of workers on contractual terms. The fact that the employment of such workers would be outside the scope of the constitutional guarantees pertaining to reservation is particularly worrying. Public Sector Banks, which are bound to follow reservation norms, employ 11 lakh regular employees. However an almost an equal number are employed as Business Correspondents engaged on contractual terms and whose recruitment is completely outside the scope of the laws governing reservations.

Since the engagement of short-term contract workers is outside the scope of the laws governing reservation (aggravated possibly also by of the difficulty in monitoring such employment), the policy of deregulation and privatisation are thus a subversion of the affirmative action policies that the state officially claims it is committed to. Over the last two or three decades many large public sector companies and undertakings like Indian Railways and Coal India have been engaging a much larger proportion of their work force on short term contractual basis, which deprives workers of not only the right to reservation in tenured employment but also wages and benefits.

Moreover, when a public undertaking outsources its services – for instance, the Indian Railways outsourcing catering services – the transfer of these activities does not bind the contractor to any of the legal commitments that the Railways as an entity is committed to. For instance, in 2018 the Railways had 13.11 lakh employees on its rolls (according to a reply by the Government in the Lok Sabha in January 2018). However, in the preceding five years the Railways had employed 7.5 lakh workers on contractual terms. The point in highlighting this is to stress the adverse consequences of deregulation that allow not just the private actors but even the state-run agencies to undermine constitutional guarantees. In doing so they also severely curtail the scope of these guarantees that are a cornerstone of social equity, meant to correct historical wrongs perpetuated over centuries.

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The Constitutional mandate for PSUs

As an instrumentality of the State, the PSUs are an integral part of the State, created not only for undertaking strategic activities of trade, business, industry or services on behalf of the State but also for discharging all other obligations of the State as envisaged in the Constitution.

PSUs can either be undertakings created by specific statutes (e.g. Port Trusts set up under the Major Port Trusts Act, 1963) or created as "government companies" (e.g. NTPC, HPCL) as defined in Section 2(45) of the Companies Act. A government company under the Companies Act is "any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company".

In either case, the PSUs fall within the ambit of the "State" as defined in Article 12 of the Constitution with reference to the clause "other authorities within the territory of India or under the control of the Government of India". This has legal implications for a welfare State in that all actions of the State can be challenged in a Constitutional Court namely the High Court or the Supreme Court directly on the ground that an executive act of the State or a law negatively impacts our fundamental rights or in any other manner violates a specific provision of the Constitution of India. No such challenge can be brought against a non-state actor such as a private company in these courts. The implication of this should be obvious for the rights of labour or for consumers who will find themselves without a remedy against the immanent possibility of retrenchment and loss of employment.

The pursuit of privatisation as state policy necessarily shrinks the space for the State to be able to fulfil its constitutionally guaranteed role, which would result in long-term adverse impacts in empowering the disadvantaged communities, giving them social status and dignity, which they had been denied for centuries.

Article 19(6)(ii) enables the State to create State owned/controlled corporations for carrying on any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. In other words, PSUs as described above are a part of the Constitutional scheme of extending the role of the State into trade, business, etc. and there can be no ambiguity about it. It is also clear that the PSUs, which form part of the "State", not only serve the interest of carrying on business, trade etc. but also to fulfil all other functions of the State as mandated in the Constitution. Creation of the PSUs is thus a conscious decision of the legislature, either through the special laws enacted for some of them or through the Companies Act in the case of companies incorporated under that Act, in order to extend the role of the State in all its dimensions into areas of trade, business and so on. The role of a PSU should therefore be viewed as an instrumentality of the State with all the multifarious obligations cast upon it by the Constitution.

The consequences of privatisation

An argument that has been repeatedly advanced ever since 1991, that PSUs are necessarily inefficient, has been made without any justification or with reference to the facts or the specific contexts in which particular PSUs operate. The government and the media has just been repeated this as if it is gospel, without any facts to prove their case. For instance, the Visakhapatnam Steel Plant of the Rashtriya Ispat Nigam Ltd., unlike its private sector competitors, has for years not been allotted captive iron ore mines.

Of course, there are many ways in which corporate governance practices need to be improved in PSUs. But one of the important things that needs to be done is to improve the interface between the political authority with the technical and managerial bureaucracy in the PSUs. Each loss-making PSU has its own reasons for losses, which need to be understood and addressed. To blame PSUs for their shortcomings and justify disinvestment will defeat the primary purpose of setting them up as instruments of the

PSUs in the financial sector, such as the banks, the insurance companies, etc. touch upon the lives of almost all the households in the country. A public sector undertaking like the LIC is a household name in terms of the large number of policy holders among the public who have benefitted from the numerous people-oriented schemes offered by it. Privatising LIC as a means to mobilise resources for the Centre is a simplistic way of viewing LIC's larger role in the lives of the people. In fact, because of its reach, the LIC is used by the Government to run several of its schemes. More importantly, LIC's success – synonymous with the penetration of the life insurance business in India – was largely because of the sovereign guarantee that backs every policy issued by it. Incidentally, this guarantee has never ever had to be actually invoked. All this is likely to change dramatically once LIC is privatised.

In fact, the LIC was not even structured as a regular company but as a special corporation. It is *sui generis* in the world of finance. The only investment the Government ever made was the Rs. 5 crores it put in as equity when the LIC was established in 1956; later, when the equity base was expanded to Rs. 100 crores in 2011, this came from the LIC's own funds. It is uniquely structured as a corporation in which *all* profits, barring the 5 per cent dividend to the government for its equity, are distributed to policy holders. Indeed, its structure as a trust, a giant mutual benefit fund in the insurance business if you will, has given it a popular respect that is unrivalled. In contrast to the Too Big To Fail private giants in the global financial industry, the LIC has proved to be Too Good To Fail.

The long term tenures of life insurance policies provides the LIC with funds that enable it to invest in projects with long gestation periods, most notably infrastructure, for which there is shortage of funds through normal market channels. The sale of LIC, even a minority stake, would thus alter the very character of the illustrious institution that has served the nation well for seven decades. Even if the government retains control of the institution, the disinvestment may well shake the trust of policy holders, thereby affecting adversely its prospects in the future, and with it the reach of life insurance in India that the LIC has so creditably pioneered.

State under Articles 12 and 19 to enable the State to fulfil its functions as a socialist welfare State.

Since the States are closely involved initially in negotiating with the farmers and other land owners, while acquiring lands for setting up PSUs, instrumental in developing and regulating the auxiliary industrial units that support the PSUs, involved in ensuring harmony between the managements and the workers and so on in accordance with the different labour laws, the Centre cannot afford to ignore the role of the States by unilaterally deciding to privatise PSUs. The manner in which the Centre is pursuing privatisation today will thus have an adverse impact on its federal relations with the States, a concept that finds unambiguous expression in the Constitution.

The NITI Ayog has recommended privatisation of at least two public sector banks. The government's intentions on this has been made clear by the fact that the amendments to the banking laws are being scheduled in the forthcoming Winter Session of Parliament.

There were compelling reasons that prompted the government to create PSUs from time to time, which include self-reliance in critical sectors of the economy, furthering the national interest, optimising the use of scarce natural resources, extending development into rural and remote areas, especially for the benefit of the disadvantaged groups, minimising concentration of wealth in the hands of a few and socialising profits and other social benefits. It is not as though reasons no longer exist for the government to reduce the space for the public sector and allow profit-driven private agencies to step in.

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Had the government allowed the PSUs capable of producing vaccines to mobilise their forces in the present context of Covid, India could have handled the vaccination drive more quickly and effectively and saved many innocent lives. But the sad reality is that successive governments had eroded the public sector units producing vaccines. In fact, the Covaxin fiasco is illustrative of how public presence in vaccine production has been made subservient to private interests. Although Covaxin was based on work done at the National institute of Virology and other laboratories of the Indian Council of Medical Research, which meant that public institutions had invested significantly in the intellectual property that was embedded in the Indian-made vaccine, the right to commercially exploit the intellectual property was ceded completely to Bharat Biotech International Ltd (BBIL). Thus, even though the vaccine was developed with significant deployment of public resources, a private company has been allowed to sell it at a price that is arguably the highest among all Covid vaccines in the world.

The failure of the government to allow and equip Indian public sector vaccine manufacturers, which have been run down in the last 10-15 years, has resulted in the Indian state being completely at the mercy of two private vaccine companies. It also explains the failure to rapidly vaccinate the Indian adult population quickly during the ongoing pandemic. This is despite India having not only a long and established tradition as a vaccine manufacturer but also a reputation as a country that has for decades delivered immunisation programmes successfully – and without pricing them – under the auspices of agencies controlled by the state.

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Had the Centre and the States invoked their authority under the labour laws and forced the private agencies to protect the migrant workers, the trauma that the nation witnessed last year when thousands of migrant workers had lost their livelihoods could have been saved. The pandemic has clearly shown the state failed to harness the PSUs as a capable instrumentality of the State to deliver services urgently in a national crisis.

The government should take note of the fact that the PSUs represent a wealth of the valuable public assets and the human resources assiduously built by its predecessor governments over several decades. The lands under occupation of the PSUs are extremely valuable when evaluated at prevailing market prices, far in excess of the likely proceeds that the public exchequer will derive through privatisation. Many of the private players who are likely to bid are already heavily indebted to the PSU banks and their failure, which is most likely, will further compound the already precarious NPA crisis for the latter. While disinvestment offers a bonanza for the private players who will secure easy access to valuable machinery, skilled human resource pool, scarce natural resources in some cases, and land assets of immense value, it is the public at large and the public exchequer in particular that will be the losers in the ultimate analysis.

Apart from the fundamental infirmity of the whole disinvestment process being unconstitutional, there are individual laws that stand violated in the process of disinvestment that is being followed at present. For example, lands were acquired in the past for PSUs under the erstwhile land acquisition law in the name of "public purpose", a term defined at that time to imply exclusively land acquisition for companies wholly owned by the government. Either allowing such land to be transferred to private companies or monetising them in other ways would violate the land acquisition law.

Many of the private players who are likely to bid are already heavily indebted to the PSU banks and their failure, which is most likely, will further compound the already precarious NPA crisis for the latter.

Similarly, unilateral decisions on auctioning coal and other mineral blocks to private parties without the consent of the local adivasi gram sabhas, insofar as the blocks are located in the Scheduled Areas of Chhattisgarh, Jharkhand, Maharashtra, Andhra Pradesh and other states and thus violate provisions of the Panchayats (Extension to the Scheduled Areas) Act, (PESA) and the Forest Rights Act legislations.

The recruitment and human resource policies in public undertakings have for decades been known to be transparent in a manner that enables aggrieved employees to seek legal remedies. Since such practices are not adopted in large swathes of industrial activity in the private sector, the public sector provides a minimum benchmark for such practices in industry. Moreover, the training policies in many of the public sector companies have been widely regarded by industry to be among the best in India. For decades PSUs had a policy of recruiting a large number of engineers and scientists as Graduate Trainees, who have formed the technical cadre not only within the concerned PSUs but elsewhere, even in private industry.

The process and the context of disinvestment raise serious concerns about the motives underlying it. For example, when the threat of Covid-19 still rages, it is improper and undemocratic for the government to opportunistically and aggressively pursue disinvestment when people are preoccupied with their health concerns. This Commission is also concerned about the process of disinvestment in terms of the large number of amendments being introduced to environment and forest laws to relax the norms in favour of the business houses. There has also been an erosion of the regulatory structures – for example, the extension of the tenure of the present incumbent of the office of Governor, Reserve Bank of India or the tenures of the heads of the other regulatory bodies. Competition has also been diluted by the arbitrarily tweaking the terms of bidding to suit the interests of a few industrial groups or by allowing inexperienced companies to enter crucial areas of infrastructure (e.g. airports). Those targeted for disinvestment are being weakened by forcing them pay higher dividends, which significantly diminishes their investible resources. The government has also undermined these units leaving the vacancies of the offices of the senior

Competition has also been diluted by the arbitrarily tweaking the terms of bidding to suit the interests of a few industrial groups or by allowing inexperienced companies to enter crucial areas of infrastructure (e.g. airports).

management vacant or by delaying appointments to key positions.

Before rushing into disinvesting a PSU the government ought to revisit the circumstances that compelled the government to create those PSUs in the first instance and ask itself the question, "Do those circumstances continue to exist today?". If the answer to this question is in the affirmative, there is clearly a case against disinvestment. Also, the government should remember that many PSUs came into existence in the past, when mismanaged private ventures were taken over into the fold of the public sector to safeguard the natural resources and the interests of the workers (e.g. private coal companies). There is no dearth of contemporary examples of privatised PSU units closed down after mismanagement by their private promoters (e.g. HZL's smelter unit at Visakhapatnam) and private financial institutions mismanaged and taken over into the public sector (e.g. Global Trust Bank).

The track record of privatisation in India shows that disinvestment in public enterprises has led to the concentration of economic power. Moreover, the terms of the sale have always been, unsurprisingly, controversial. Additionally, the terms of the sale can result in the state actually registering significant losses as a result of the deals.

The recent sale of controlling interest in Air India to the Tatas would illustrate all these three facets of privatisation well, and why they are bound to generate controversy. As a result of the sale, the Tatas, along with Indigo Airlines (owned by Interglobe Aviation Ltd), have a combined market share of almost three-fourth of the domestic passenger traffic. This is because the Tatas already control two other airlines – Air Asia and Vistara. As a result of the sale, the Indian air passenger market is effectively a duopoly.

Much has been made of the fact that the Tatas are paying Rs. 18000 crore for a loss-making company like Air India. But the fact of the matter is that the price of an enterprise, when it is on the block, is a hazardous guess for several reasons. This is primarily because the value of an enterprise in a market economy hinges crucially on what its potential buyer thinks its earning potential over the long term is. But the fact that the Tatas' acquisition of Air India positions them as an oligopoly, changes everything, including the pricing power that it now commands in the changed context. Since the market structure changes radically after the sale of a public asset it is also an important reason why the price of the asset can never be "right". This is also the reason why privatisation is always bound to be controversial.

Now, turning to the structure of the deal, it is obvious that the Tatas are only paying Rs. 2700 crores of the Rs. 18000 crores upfront as cash for taking control of Air India. The remaining offer price covers the portion of Air India's debt that it is taking responsibility for. But, since the takeover of debt offers significant tax breaks for the Tatas, there would be loss of revenue to the exchequer as a result of the deal. From a government revenue perspective – and this is important because the original justification for the sale of Air India was that it was a drag on the exchequer and that its sale would stem the bleeding – the fact that the deal is overwhelmingly loaded in favour of debt repayment implies revenue losses for the government.

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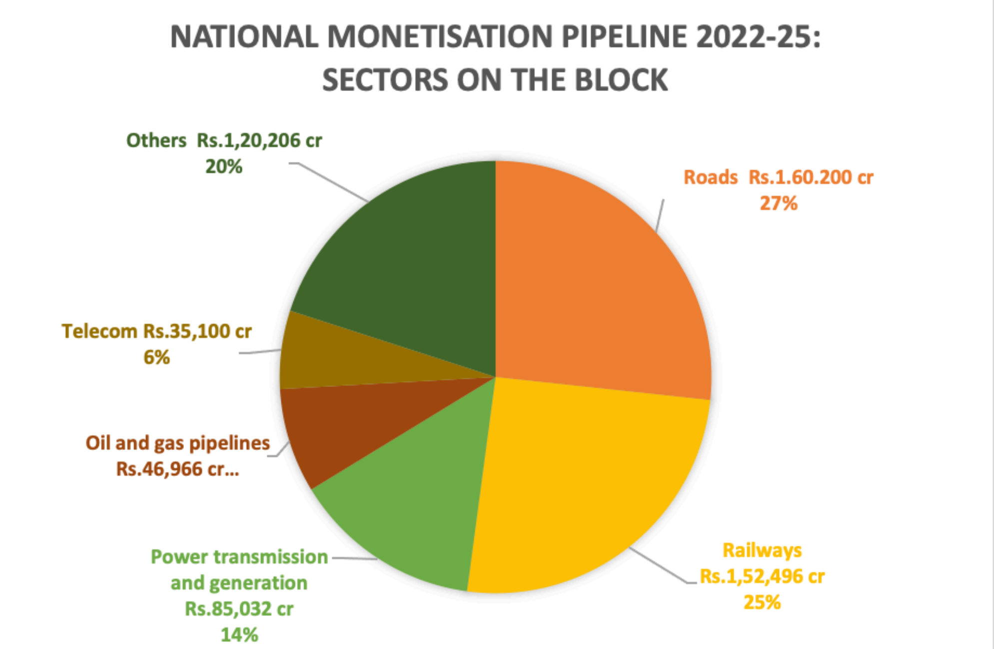
It needs to highlighted that Air India was driven to the ground in the last few decades by deliberate policy by successive governments in the last two decades. The reckless haste with which aircraft were purchased – 111 aircraft in one shot by Air India and Indian Airlines in 2005-06 – was the primary cause of its debt ballooning to unmanageable levels. This was followed the even more reckless decision to merge the two state-owned airlines without a thought to their synergies or operational requirements. These were compounded by the Open Skies policy of the government, which allowed private airline companies to engage in predatory behaviour. The two national airlines' routes were allowed to be cannibalised by private carriers, for instance, in a manner that would not have been allowed anywhere in the world.

The asset monetisation pipeline

Instead of using state enterprises as a vehicle for kickstarting the economy during the pandemic, the government has announced that it would start "monetising" assets held by public sector undertakings and agencies like the NHAI and the Indian Railways (see chart). The NITI Aayog, which mooted the proposal, of course, without any transparent consultation with the concerned stakeholders, including the agencies whose assets are now on the block, expects to deploy assets worth Rs. 6 lakh crores on long term lease over the next four years. Assets ranging from roads, ports, airports and railway track and stations, through fuel pipelines, telecom towers, optical fibre cabling, warehouses, and stadia are to be offered on lease to private investors.

A significant part of the plan pertains to the Indian railways, the largest enterprise in India. Four hundred railways stations, 90 trains (accounting for five per cent of all trains, but operating in the densest traffic corridors), 1,400 km of track (including access to overhead electrical equipment), 265 railway sheds, 673 km of the lucrative Dedicated Freight Corridor are to be made over to private interests on long term lease. Since the bulk of the investment in assets such as stations and track has already been made by the government, the private investment is likely to be only marginal.

As the accompanying chart illustrates, more than half the value of assets that are on the block belong to the Indian Railways and the NHAI, crucial infrastructure in which there is significant public interest, and which has a bearing on underlying costs in the overall economy. There are several problems with the monetisation plan.



Source: NITI Aayog

First, it is not even clear that the valuation of the assets proposed to be leased would indeed be worth Rs. 6 lakh crores.

Second, given that public finances are in dire straits, primarily because of the huge tax concessions offered by the government to large private corporate interests in the last two years, the asset monetisation pipeline appears to be a desperate move to shore up revenues. Given this context, and since the economy has suffered a serious setback in the last few years, the leases offered by the government are likely to be at bargain basement prices. Given the fact that these are public assets, many of which have been established over many years following sustained public investment, how fair is it to offer the assets to private interests at deeply discounted rates? The irony lies in the fact that these publicly owned assets would pave the way for the creation of private monopolies.

Third, the fact that potential investors would value their bids in terms of the expected discounted returns over the lifetime

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of the lease – what in economic parlance is referred to as its net present value – implies that they would only offer a fraction of what the government considers as the value of the asset today. In fact, after allowing for the investors profit margin, it is unlikely that investors would offer more than one-fourth of what the government has valued these assets. This automatically implies that the upper limit of the entire lease exercise would yield not more than Rs. 1.5 lakh crores, even if one assumes that the Niti Aayog's valuation is accurate.

Fourth, since many of these assets are what are termed natural monopolies – a railway station, for instance, has certain unique geographical characteristics that are non-replicable – the lease exercise would allow the private lease holder to exploit his monopoly position without any restraint. Added to this is the fact that a monopolist with assured long-term control has no interest in long term development of the asset because he has no ownership rights. This has severe adverse consequences for public services. Imagine a railway station that has been handed over to a private operator. In such a situation, the operator can choose to price access charges such as the entry to railway platforms and other amenities at rates that may prove to be exorbitant with citizens having no access to legal remedies. Moreover, the structure of the lease has the inbuilt perverse incentive of enabling the monopolist to flog the asset during the lifetime of the lease. The government may well find that the value of the asset has been considerably diminished by the end of the lease period.

Fifth, the NITI Aayog envisages that public private partnerships would play a significant role in the monetisation of these assets, despite it being obvious that PPPs have been a disaster in not only in India but in many parts of the world. Moreover, as the collapse of the IL&FS (the mother of all PPPs in India) a few years ago demonstrated, they are utterly opaque vehicles of investment, with the state (or state-backed financial institutions) inevitably bearing the burden. In fact, the fact that PPPs are structured such that the state incurs most of the financial burden (and the losses), the private partner has free and unhindered access to profits (the Delhi and Bengaluru airport projects are just two of the striking examples). Related to this is the fact that a significant portion of the non-performing assets in the banking sector have arisen from the fact that truant private investors in such projects have brought the public sector banks to grief.

Sixth, the "monetisation" of assets of public undertakings shuts off revenue flows that would have accrued to them from these assets. This is because it would deprive them of revenues as return on the capital that had sunk into these assets over the years. The decision of the government to hand over oil and gas pipelines valued at Rs. 46,000 crores belonging to public sector companies thus shuts off not just access to revenue streams in the future but destabilises their long term capital expenditure programmes that guided these investments in the first place.

The asset monetisation drive covers even the 60 companies where the government has not decided to relinquish control or shut down. Assets such as land, buildings, residential quarters, power transmission lines, telecom towers and oil and gas pipelines are o the block. Given the fact that these assets are central to the role and competitiveness of CPSEs, the NMP and asset privatisation plans will adversely affect the operations of these companies and their contribution to the economy and society. It is important to reiterate that the CPSEs were established, developed and nurtured as a part of the planning process, as a development block.

The intersectoral connections, namely energy, capital goods, machine tools, material/natural resources processing allowed CPSEs is what enabled to them remained effective and competitive, while furthering national self-reliance. Stripping these away would rob them of their effectiveness

The provision of these services on terms that allow equitable access to all citizens, on terms that are affordable, without forsaking quality and safety considerations, is thus gravely compromised as a result. People in remote and backward regions, as well as communities that are economically and socially backward as well as marginalised communities, would be effectively excluded.

and ability to contribute to national productive capacities. These public assets are the arms and legs of the manufacturing and infrastructure in the country. These enterprises were developed as a technology commons for a latecomer catching up to be able to face foreign competition. The NMP and privatisation thus threaten to dismember the development block, thereby adversely affecting the commons and hollowing out the manufacturing arm of the Indian state.

Further, the monetisation plan, by bringing these publicly owned key national infrastructure assets under the control of private interests, weakens and undermines the state's capacity to fulfil its public-oriented governance functions effectively. The provision of these services on terms that allow equitable access to all citizens, on terms that are affordable, without forsaking quality and safety considerations, is thus gravely compromised as a result. People in remote and backward regions, as well as communities that are economically and socially backward as well as marginalised communities, would be effectively excluded.

Privatisation and asset monetisation will strip the state of the instrument it has, through control of CPSEs and their assets, to provide access to basic services and needs for the people, which it is bound to do so through the Constitutional scheme. The loss of these instruments leaves it incapable of delivering on the goals of equity and sustainability. It needs to be reiterated that the agenda of commitments made at the global level by the Indian state in respect of climate change, agriculture transitions (sustainable farming), health transitions and energy transitions require major contributions from the public sector. If the Indian state is going to be hollowed out, as threatened by the privatisation drive, it would be unable to deliver on the future challenges emerging on all these mentioned fronts, including technological self-reliance.

It needs to be reiterated that the agenda of commitments made at the global level by the Indian state in respect of climate change, agriculture transitions (sustainable farming), health transitions and energy transitions require major contributions from the public sector.

There are implications for the state being able to offer the required critical infrastructure for the acceleration of private investment of micro, small and medium scale enterprises (MSMEs) in the realisation of 17 sustainable development goals (SDGs), realisation of climate smartness of road and rail infrastructure, forest protection, sustainable development of neighbourhoods and urban habitat.

Conclusion

Many of the issues highlighted in this report have not received the attention they deserve, especially when such a large-scale sale of national assets is on the cards. For far too long public enterprises have been ridiculed and abused, especially by a media that seems to be itself invested in the liberalisation policies adopted by the government. This Commission has tried to set the record straight by focusing attention on the issues that have been sidelined in the media's narrative of the public sector enterprises and their role in Indian society.

This commission has strived to produce its first report in time so that it can serve as a basis for a debate on the issue, not only in Parliament when it convenes for the Winter Session but outside it as well.

In the weeks and months ahead the Commission will work towards producing more reports focusing on sectoral issues covering the vast areas of activity in which public undertakings operate. Meanwhile, it will engage with all sections of the citizenry to highlight the issues that have been raised in the report.

Terms and Reference

Purpose

To invite people concerned with the process of policy making and those against the government's decision to monetise, disinvest and privatise public assets and enterprises and to present evidence and arguments in an open forum, transparently, before the Peoples' Commission.

To determine whether there has been any consultation with the state governments, local self- governments, farmers' organisations, trade unions, student unions, women's organisations, environmental groups, SC/ST associations, and whether their opinion and approval were taken for the decision to monetise, disinvest and privatise publicly owned assets?

Terms of Reference

Given below are the Terms of Reference (ToR) in terms of broad public concerns that the commission would be asked to examine as an independent entity on the basis of the inputs to be sought over the period of next two years (November 14, 2021 to December 31, 2023) as expert testimonies and depositions, petitions to be received from the organisations representing the affected parties' interests and study reports to be prepared by the members of the National Working Group on Public Sector and Public Services (NWGPS).

To examine:

1. Implications for constitutional obligations of the welfare state, affirmative action, social justice, and reduction of income inequality and ensure adequate means of livelihood and other Directive Principles of state policy listed under Part IV of the Constitution.
2. Implications for redevelopment of public assets and public oriented governance of state-owned enterprises (SOEs/CPSEs) for availability, affordability, quality and safety of public services for common person and economically and socially marginalised people in particular.
3. Implications for employment generation, reduction of poverty, and environment protection.
4. Implications for economic sovereignty and political democracy, technological self-reliance and national security.

5. Implications for maintenance of critical infrastructure for public and private investment of micro, small and medium scale enterprises (MSMEs) and public services for sustainable regional development of economically and socially backward areas.
6. Implications for public and private investment, financial stability, technical and social viability of infrastructure, state capacity for universalisation of basic services.
7. Implications for concentration of economic power, economic decentralisation, public accountability of regulatory bodies

Timetable and Outputs

It is proposed that the findings of Peoples' Commission (PCPS) could be released once in two to three months in the form of a Peoples' Commission Verdict on the issues to be identified on the ToR spelt out in this document.

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