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Corporate Citizenship and Governance of Firms in India

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Abstract

Corporations have taken a step ahead in contemporary times endorsing 'Corporate Citizenship' for positive impact within organizations and society. In departure to the classic definition of organizations just being profit-maximizing bodies exercising powers granted to it for the interests of the shareholders; business organizations in the twenty first century have assumed a prodigious role of 'a legal construct that needs to be economically competitive as well as socially responsible'. The ambit of Corporate Citizenship is more than social responsibility. Corporations cannot ignore global issues which increasingly impact business, and choosing not to engage with communities can hurt the bottom line which may impact businesses. Organizations are required today to also protect their employees, engage them as ambassadors in company's citizenship efforts, without which good governance in corporations remains unfulfilled.

Keywords: Corporate Citizenship, Governance of Firms, India

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Introduction

Firms today operate with conscience, something that in the past was unthinkable and unacceptable. This phenomenon could be attributed to the sequence of events that took place in the 1920s in the American society, which led to a riveting argument between Adolf A. Berle Jr and E. Merrick Dodd (both Law Professors) over the role of managers, whether they should merely act in a fiduciary manner towards shareholders or accept a greater trusteeship; and a series of corporate collapses in the eighties and nineties which acted as catalyst in rallying organizational change and championing responsible and cogent behaviour.

Corporate Citizenship is more than a catchphrase for businesses; a 'modus operandi' to create dynamism within firms, and to expand the horizon of the impact of businesses in civic life. Constant deliberation over issues related to the purpose of Corporations, role of Corporate Managers and how Corporations should function within society have convinced organizations to go all-out for competitive edge and demonstrate upright and ethical behaviour. Reports on Corporate Citizenship are being released annually by firms to demonstrate their commitment, best practice and initiatives that add new perspective to business. From being a voluntary initiative, Corporate Citizenship has become imperative

for businesses today for demonstrating excellence, sustainable financial performance, corporate governance and stewardship.

Who is a 'Corporate Citizen'?

International Finance Corporation defines 'Corporate Citizenship' as the commitment to ethical behaviour in business strategy, operations and culture and what investors, creditors and other stakeholders have come to recognize as vital for effective and responsible governance in organisations, and long-term sustainability. The approach of Corporate Citizenship is oriented towards stakeholder's management; a concept popularised by Edward Freeman who in his book '*Stakeholder Approach to Strategic Management*' published in 1984 indicated that it is the necessity for organizations to manage the relationships with its specific stakeholder groups in an action-oriented way. But like the terminology, the approach to Corporate Citizenship varies across organizations and countries. For some it means dealing with governance issues, many refer to it as Corporate Social Responsibility (CSR), few others denote it as means to increase brand value and share price, Freeman et al.(2010).

A 'Corporate Citizen' is not an individual or figurative organization, but the substance or value that is created within an organisation or in the business space. Companies are engaged in corporate citizenship activities, taking proactive measure to design successful business plans that will benefit firms in terms of share price and creating opportunities for people of the society.

Archie B Carroll, a Professor of Business Ethics in the article titled '*The Four Faces of Citizenship*' published in *Business and Society Review* (1998) stated that Corporate Citizenship includes four faces - an economic face, a legal face, an ethical and a philanthropic face. The New-Age corporate citizen are those firms who do not restrict themselves to philanthropy and CSR activities, but essay good business practices, promote diversity, advocate positive employee relations, and responsible behaviour within and outside organizations. Carroll in the same document proposes Corporate Social Responsibility (CSR) also as Discretionary Responsibilities purely of voluntary nature like philanthropic contributions. The addition of CSR, Corporate Citizenship and Sustainability expands the horizon of Corporate Excellence (Carroll, 2016)

Interpreting Corporate Citizenship

There are alternate approaches to interpreting the term 'Corporate Citizenship' from being philanthropic to a social activist model. Milton Friedman's famous statement that the social responsibility of business is to increase the wealth of its shareholders have often being misquoted using it against CSR. John Friedman, award winning thought leader in Huffington Post in June, 2013 presented a case favouring Friedman's argument, which he believes is not against social responsibility but the elements signify integral parts of ethics and integrity(Friedman, 2103)

Milton's original quote:

"There is one and only one social responsibility of business -- to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engage in open and free competition without deception or fraud." - Milton Friedman, New York Times Magazine, September 1970

What Milton's argument missed is that 'the rules of the game have changed in fundamental ways and people today expect (and demand) more of business than simply that they maximize their profits without coming to grief by some violation of law' as John elucidates. Thomas S. Coleman in a University of Chicago feature story(University of Chicago, 2013) on CSR pointed out that Friedman did not think it inappropriate for corporations to do all they could to minimize potentially injurious externalities.

Coleman summarizes that economists argue for effective means to manage externalities and other social responsibilities. They believe that it is neither efficient nor reliable to impose ill-defined social responsibilities that may be open to arbitrary interpretation by firms. Corporate Citizenship, like the Friedman's quote has been underrated throughout.

Professor Klaus Schwab, Founder and Executive Chairman of World Economic Forum in Foreign Affairs, 2008 moots that companies not only must be engaged with their stakeholders but are themselves stakeholders alongside governments and civil society, and hence corporate citizenship must be recognized. Schwab maintains that since global citizenship is in a corporations enlightened self-interest, it is sustainable.

Corporations cannot ignore global issues which increasingly impact business, and to choose not to engage with them can hurt the bottom line which may impact business. At the Davos declaration in 1991, the stakeholder concept became the cornerstone of the global business meet, and since then the forum has continuously promoted the ideals of 'corporate engagement'.

Integration of Corporate Citizenship Principles in Business Strategy

Boston College Center for Corporate Citizenship, underlines four key principles of corporate citizenship: (1) minimize harm, (2) maximize benefit, (3) accountability and responsiveness to key stakeholders, and (4) support strong financial results for sustainable businesses. There are increasing number of corporations and business leaders and Transnational Corporations (TNCs) who have incorporated Global Corporate Citizenship into their business goals and policies. This is because companies today need to respond to public accountability demands outside a binding legal framework (Boston Center for Corporate Citizenship, 2014)

The United Nations in 2000, launched the United Nation's Global Compact(UNGC) as part of the UN Corporate Citizenship initiative and the participating companies have agreed to voluntarily adhere to the Compact's ten principles on Corporate Citizenship bridged under human rights, labour rights, environmental stewardship and anti-corruption efforts. The representation in the UNGC initiative were mostly from EU Europe (42%), followed by Asia (20%) and South and Central America (20%). North American companies formed only 4.6 % of the initiative membership. Also these participating companies were urged to issue "*Annual Communication in Progress Reports*" and this reports were to appear either as part of the company annual report, or a separate corporate citizenship report. Corporations across countries choose to join the UNGC for many reasons, most convincing being social legitimacy (UNGC, 2000)

The Logistics and Transportation Corporate Citizenship Initiative of the World Economic Forum have also identified a set of principles that represent "*Work in Progress*" which are binding on participating states for promoting responsible practice in business –

Principle 1: Governance - compliance through integrity

Principle 2: Financial Responsibility - optimizing shareholder value over time

Principle 3: Stakeholder Engagement - transparency and accountability

Principle 4: Employees - social justice in the workplace

Principle 5: Human Rights - global corporate citizenship

Principle 6: Community Investment- responsive in times of need

Principle 7: Customers, Suppliers and Subcontractors - Responsibility in our business

Principle 8: Environment and Precautionary Approach - towards environmental sustainability

The Global Corporate Citizenship (GCC) is being institutionalized at the international level as a public-private initiative promoting the ten principles and widely popularized by the United Nations and the World Economic Forum.

The ambit of Corporate Citizenship is more than social responsibility, and for many it resonates in achieving targets on human rights, regulatory accountability. Within organizations, the management contribute in a huge way in increasing value placed on citizenship efforts. The Boston College in an article on their 'Corporate Citizen' magazine recognize four behaviour that effective corporate citizenship professionals should adopt to contribute to the objective the CFOs and COOs are responsible

- a) *To know the company's business strategy.* It is important to know the company's business strategy that will help to deliver business and social value
- b) *Understand the pain points.* Position the programs to meet company's particular business needs and to contribute to business value and thus mitigate negative impacts.
- c) *Speak their language.* It is important to understand the organizational leaders focus and orientation, meaning what their concerns are. Professionals are required to measure the engagement scores and turnover of employees who are engaged with the corporate citizenship program compared with those who are not engaged.
- d) *Help them cut through the noise and focus on what is important.* To stay abreast of the emerging trends in non-financial disclosure and reporting, tracking important issues, setting priorities and recognizing issues that people of the organization and resources should be engaged for.

Corporate Citizenship brings attention to issues that are significant to business and its bottom line. To make business rewarding it is important for those outside the CSR and Corporate Citizenship department to understand how they can contribute to the jobs, engage and benefit themselves, their employer and society. Organizations are required to make it possible to engage their employees as ambassadors in company's citizenship efforts

Citizenship Reporting

Global enterprises like Accenture, a management consulting, technology services and outsourcing company, in a report titled '*Our Journey Forward*' for 2010-11, identified five key pillars for corporate citizenship impact- *Corporate Governance, Skills to Succeed, Environment, Our People and Supply Chain.* A key point highlighted in the report is the role of CEO and Senior Management in advancing corporate citizenship. Accenture also has set up the Corporate Citizenship Council and the Environment Steering Group to make strategic recommendations on sustainability initiatives and leadership acting on key policies and recommendations, bearing responsibility for driving the objectives through the organization. The '*Skills to Succeed*' initiative made a huge impact around the world in promoting jobs and in building business (Accenture, 2012).

Corporate Citizenship according to Deloitte is oriented to the public interest, building a culture of purpose, and inspiring leadership. Their *Pro Bono*, board service opportunities and IMPACT Day programs are some key initiatives to realize social impact at a leadership level. Corporate Citizenship Reporting has overtime become noteworthy for organization, for multiple reasons most prominently with relation to profit maximization, additional managerial responsibilities, as well as on how decisions and strategies of firms are made keeping in view the broad impact of business in society.

Prof Klaus Schwab in the article in Foreign Affairs reiterates that to meet the contemporary challenges faced by organizations, corporate governance should not be seen as only a compliance issue. Companies should be involved in the development of standards and practices, adapting them continuously to the

requirements of global markets and public expectations. Without effective corporate governance, corporate engagement would not be credible. To meet these goals firm are devoting themselves towards adopting good citizenship practices and frequently publishing the Corporate Citizenship Report to illustrate standards of business conduct that guide their decision-making and set the parameters for their professional relationships worldwide.

The Indian Case of Corporate Citizenship

The Indian growth story has been extraordinary; so has been the case of increasing corporate misconduct in the country. Instances of corporates evading responsibility most prominent of which is the misdemeanours of Union Carbide has brought much global shame and protest from all over. The mismanagement of the Union Carbide incident have compelled members of the corporate world and government to reflect whether any amount of corporate citizenship activity would have saved the reputation of the company. Some believe an ethical standing within the country would have served to counteract some of the damaging effects, others agree that participating in the relief effort and avoiding corruption may have reduced some sufferings of the people. There have been repeated incidents of corporate frauds like the scandalous Satyam Debacle, Kingfisher Governance failure, Saradha Scam and many others that have demonstrated time and again the need of corporate citizenship, as the key to organizational excellence and sustainability of businesses.

Corporate India for a long time have been indifferent or been resistant to corporate citizenship activities. But the Indian situation has been strengthened with the incorporation of the New Companies Act 2013, and the provisions within it that is intended to stimulate a positive citizenship reputation and showcase best practices. The governments' commitment to make India an investment destination with predictable and transparent policies, a stable tax regime, and easing process to do business in the country has raised the expectation and is considered by the global community as a great leap to good governance and citizenship in corporates. The World Bank 'Doing Business' survey 2017 indicates India stepping up to 130th rank in 2017 from 131 in 2016 out of 190 countries. In case of protection of minority investor, India stands at 13th position. The indicators on minority investor protection are on the following conditions -disclosure, director liability, shareholder suits, shareholder rights, ownership and control and corporate transparency and India seems to have made some reforms in the aspects of greater disclosure of conflicts of interest by board members, increasing the remedies available in case of prejudicial related-party transactions and introducing additional safeguards for shareholders of privately held companies in both Delhi and Mumbai(World Bank, 2017). But there is much to be achieved.

In CII Policy Watch paper (2016) it has been indicated that corporate integrity and good citizenship is not a choice but a non-negotiable imperative. CII in its constant endeavour to promote good corporate governance has brought in the National Committee on Corporate Governance (1996), the Model Code of Conduct and norms for companies in terms of better accounting practices, credit and finance, environmental and sustainable regulations and CSR. Apart from compliances, what CII promptly has developed guidelines for good corporate citizenship to address corruption, develop a band of trained professional compliance officers. The key focus is to go beyond compliance to '*continuous improvement*'. Many heads of key organizations feel that ethical corporate culture improves productivity, employee morale and trust of all stakeholders. And creating a sustainable business earns respect within corporations and in the community.

Earning a label of 'Good Corporate Citizen' is surely a value addition in the challenging times when several organizations are dwindling. While companies like Accenture India, Tata Steel, Citibank, Walt

Disney, Oracle are regularly publishing the Corporate Citizenship report, many Indian Companies are still missing the boat in recognition of the force behind corporate citizenship.

Credibility, Compliance and CSR have in time become essentials for corporations in earning worthy reputation in market. Sinha(2014) in a Quality Digest echoes on how earning good corporate citizens status can add value to a company's worth by bringing higher rates of employee attraction and retention, investors and business partners, good financial pays and accolades. Many companies are paying attention to the sustainability programs to steward corporate citizenship, once just a Public Relations (PR) exercise. Sinha identifies many ranking bodies/platforms to spot corporate citizenship, aspects like Ethisphere's list of the World's Most Ethical Companies, or Corporate Knights' list of the World's Most Sustainable Companies, or the Reputation Institute's CSR RepTrak 100 Study. Likewise in India ICSI (the Institute of Company Secretaries of India), FICCI) Federation of Indian Chambers of Commerce and Industry, India's largest apex business organization), CII(Confederation of Indian Industry-association of Indian Businesses), Futurescape, Institute of Directors (IoD India) and others organize Corporate Excellence and CSR awards to recognize worthy efforts made by companies.

In 2015 WIPRO, a leading global information technology has been awarded 'The ICSI National Award for Excellence in Corporate Governance' being recognized for its capabilities, growth, performance, governance ethos, approach towards CSR and sustainable development, and future strategy(Wipro, 2015 Press Release). Kotak Mahindra Bank won the Company of the Year award at the Economic Times 2016 Corporate Excellence Awards (Economic Times, 2016)

Sinha highlights that certainly rankings reflect the growing societal perception that corporate citizenship is an important marker of a company's success and a fundamental element of any business plan, but getting featured on a "best company" list is not enough. The cardinal aspect is protecting the interests of employees, communities and the environment in which one operates. Essentially there is a strong link between reputation and "doing the right thing" that is vital to become a good corporate citizen.

Indian Corporations and Ambiguity

In light of the emerging threats of digitization and automation, India is faced with a new crisis of large number of layoffs and rising unemployment stocked for the future. Cognizant Technology Solutions India ,a leading global IT and business process outsourcing services provider has announced the possibility of close to 6,000-10,000 lay-off as clients require a higher degree of automation, and digital services and so redundant and non-performing employees are to leave as organizations seek to trim costs. Not just Cognizant but major Indian IT firms like Infosys, Wipro and TCS are also following the same retrenchment model. While the firing process is speeding up, the hiring process is being slow for IT majors. In 2016 firms like TCS, Infosys, Wipro, Cognizant, HCL Technologies recruitment went down to 60,000 from 100,000 (Moneycontrol and Hindustan Times, 2017)

Should the current layoffs bear any impact on the impression of Corporate Citizenship in India? One of the important concern from layoffs is its impact on morale and productivity as anxiety infects remaining workers of a possibility "Will I be next?" in the line of fire? Whatever the euphemism whether restructuring, downsizing, rightsizing, or layoffs, globally after recession there have been massive job cuts in the big firms and the start-ups. Many see layoffs as not a negative trend and maybe a natural progression. Start-ups are mostly accused of frequent layoffs due to once over-hiring in a frenzy of hyper-funding, and are thus on correction mode to survive. Retrenchment may be a possible temporary solution when firms are disappearing or shrinking, but layoffs need not increase individual company productivity, profits or hike up company's stock price. Southwest Airlines Co. United States major airline

company and the world's largest low-cost carrier, created a positive impact in the sphere of business when unlike other airlines in US, those who announced tens of thousands of layoffs after the recession, Southwest never in over 40 year history had an involuntary layoff . Today it has a market capitalization bigger than all its domestic competitors combined. A former HR personal of the Southwest once stated that when people are the most important assets, there is no need to get rid of them. The goodwill SouthWest Airlines showcased is a symbolic gesture of good corporate citizenship and as Shel Silverstein quotes-“*It's amazing the difference, A bit of sky can make*” (Newsweek, 2010).

A new ambiguity characterises Indian Corporations, while on one hand Corporate Citizenship is just in an infant stage with CSR and Sustainable programs just looking up in India, simultaneously managerial responsibilities and employee engagements are being negatively affected. Layoffs maybe a significant transition for a company's future, but yet the flexible labour-market isn't necessarily so good for countries and creates a negative effect on worker productivity.

Wipro in response to the new demands of the digital era and in support of clients unveiled a new brand identity, a new logo representing the way the company “connects the dots” signifying both the integrated perspective and the company's ability to deliver innovation in ways relevant for clients. The new logo made of four circles represent the Wipro Values, Employees, Clients & partners, and Communities (BusinessWire India, 2017). As there is hope and need for exhibiting corporate excellence in India, orienting and achieving strategic corporate citizenship goals should serve to build organizations of character. It is as Napoleon Hill recounts “First comes thought; then organization of that thought into ideas and plans, then transformation of those plans into reality”.

The belief runs that the idea of corporate citizenship is focused towards employee engagement. Three aspects of corporate citizenship are philanthropy, community involvement and social innovation. It is certainly valuable to witness corporate engagement in philanthropy and community involvement, but for that the individuals need to be employed by profit-making organizations and corporations.

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Changing Policy Paradigm of Drinking Water Service Delivery: An Empirical Investigation in the context of Bihar, India

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Abstract

The present study critically analyses the policy framework of supply of drinking water in Bihar and attempts to explore scope of the new policy paradigm, which advocates for treating drinking water as economic good and supply it based on demand and cost recovery principle. The present paper uses the technique of Contingent Valuation Method to assess the Willingness to Pay for piped drinking water in rural Bihar and uses logistic regression analysis to identify factors influence willingness to pay for drinking water, critical to the new policy paradigm. The study found a large section of people are ready to share capital cost, monthly user charges and agreed to take part in management to ensure regular supply of improved drinking water. Education, income and community status, existence of contamination, perceived improved quality of piped water play significant role in determining willingness to pay for piped drinking water. The possibility of sharing project cost as well paying monthly charges and involving in managing the water supply project appeared to be an effective service delivery model in the context of rural Bihar. The findings indicates for adoption of more pragmatic approach and governance reform in supply of drinking water in rural areas, hitherto supplied by only public sector/enterprises.

Keywords: Bihar, Contingent Valuation, Drinking Water Policy, Willingness to Pay

Introduction

Safe and clean supply of drinking water has been recognized as important human right. The United Nation in its resolution adopted by the General Assembly on 28th July, 2010 has acknowledged the importance of equitable access to safe and clean drinking water and sanitation as an integral component of the realization of all human rights (United Nation, 2010). This proposal has left us with two questions, how to make the water available and accessible to the people and who is going to pay for it? However, in the same resolution, there is hint of state's responsibility to promote safe drinking water. Drinking water, though has characteristics of private good, however, in the developing world the drinking water mainly supplied in form of basic service by the state mostly free and through public institutions. However, searching of solution of these questions paves avenue for development discourse which is purely economic. In this context the public institution plays a critical role. Public institutions, as argued by Lal (2010) is not static, the new policy paradigm of drinking water supply advocates for an economic solution. As water is a scarce natural resource, increasingly there are arguments to treat drinking water as an economic good and to be supplied based on demand and impose user charges to ensure its efficient utilization. The Dublin Statement in 1992 advocated recognizing drinking water as an economic

good and also argued for participatory management of water services (International Conference on Water and Environment, 1992). In India, there have been changes in the policy paradigm of drinking water supply since 1990s. In India, the Eighth Five Year Plan (1992-97) advocated for treating water as a commodity to be supplied based on effective demand and cost recovery principle and managed by private local organizations. The rightward shift of the approach from supply driven to demand driven to make the system more sustainable through cost recovery and efficient through involving beneficiary in the decision making and management.

Though, drinking water is argued to be treated as economic good, however, determining the price of drinking water, a non-market good possess challenge. Of late, the assessment of price of water, a non-market commodity, has received attention of many policy makers. In this context, the Contingent Valuation Method has emerged as a method to determine 'Willingness to Pay' for a good, particularly a non-marketed good. The present paper is an attempt to explore the possibility of user charges for service of piped drinking water in the context of rural Bihar with the help of people's response on 'willingness to pay' for piped drinking water service based on the 'Contingent Valuation Method'. The present study attempts to explore the issue of contingent valuation method in determining willingness to pay for safe drinking water and identify determinants of willingness to pay in the context of rural Bihar with the help of primary survey conducted in four districts in the State.

The penetration of piped drinking water is lowest in Bihar. Only 3.07% households get tap water from treated source and the situation of rural Bihar is worse, as only 1.5% gets treated tap water which is lowest in the country (Government of India, 2011). To upscale the present service requires increasing the investment on drinking water many folds. So the question of who is going to pay for it becomes critical. The draft Bihar Water Policy (Government of Bihar, 2010) argued for community participation in management as well imposition of user charges for drinking water supply. The present study attempts to explore feasibility of the policy decision of imposing user charges with the question of how far the rural people are ready to pay for improved drinking water and share the investment on piped drinking water. Any positive answer can also create avenue for involvement of market forces in service delivery.

Policy Context

Rural drinking water supply is a State subject, included in the Eleventh Schedule of the Indian Constitution, a subject that may be entrusted to local governments by the States. The Sector Reform Project in 1999 and the Swajaldhara programme in 2002, initiated by the Government of India, advocated inclusion of community in water supply services, not only through sharing capital cost and user charges, but also sharing of responsibility of operation and maintenance of the supply schemes/projects. Subsequently, the Tenth Five Year Plan (2002-07) and the National Water Policy 2002 also argued for imposition and collection of water charges to 'cover at least the operation and maintenance charges of providing the service initially and a part of the capital costs' (Government of India, 2002). The National Water Policy 2002 also suggested that the water user rates should be linked directly to the quality of service provided and the subsidy on water rates to the poor and disadvantaged sections of the society should be well targeted and transparent. The National Water Policy, 2012 (Government of India, 2012) also reiterates this view.

The Public Health Engineering Department (PHED), Government of Bihar, is the principal agency in providing supply of drinking water in Bihar. The department has drafted State Water Policy in the year 2010 (Government of Bihar, 2010). This Draft Policy advocates for a shift towards community-level empowerment and responsibility for water and sanitation management. The Draft State Water Policy advocates for shifting service norms for coverage from habitation to household level through pipe water

system, and also advocates for moving from supply based to demand based water management. It also suggests initiation of rational water pricing and imposition and collection of user charges for sustainable operation and management of drinking water services. The draft policy aims for Public Private Partnership in development and management of water systems. It advocates creation of adequate space for participatory management by engaging people as well as Panchayati Raj Institutions (PRI), institution of self-government at rural areas, in the delivery chain and constituting Village Water and Sanitation Committees (VWSCs) to ensure community participation. Provision for adequate capacity building support to VWSC/community groups/PRI to help them undertake the required responsibilities also incorporated. The community is expected to be involved from planning, implementation, monitoring and managing services. The draft policy propose that after installation of schemes the management be transferred to PRI/community groups/VWSC for effective and sustainable management and empower the VWSC to collect user charges to ensure sustainable delivery.

Given this draft policy as background the present study attempts to assess to what extent the rural population in Bihar is ready to adopt change in supply provision especially the most critical/ sensitive part of the change in paradigm in service delivery pattern, that is, water pricing. The study explores the issue of willingness to pay for drinking water through Contingent Valuation Method and explores the underlying determinants for willingness to pay through a primary survey of rural households in four sample districts.

Concept, Research Design and Database

Non-Market Valuation Method: Willingness To Pay and Contingent Valuation

Of late, the process of valuing non-market goods has attracted attention of the policy makers. The economic valuation becomes important because a section of the services are provided to people in form of common good with limited scope of excludability. Though the supply of drinking water cannot be considered as pure public good as it has components of 'rivalry' and 'excludability', this does not rule out the market operation in providing service of piped drinking water. However, as there is absence of market operation for providing drinking water to rural Bihar, there is no observed price to reveal how much a household should pay to receive uninterrupted supply of improved piped drinking water. Economists have developed several techniques to measure the value of non-market goods and services, in consistent with market goods. These techniques are basically of two types. One type is based upon observed behaviour or through 'revealed preference' towards some marketed goods in connection to the non-marketed good of interest. The other approach, based on stated preference and feedback, collected through surveys, towards some non-marketed goods or services (Freeman, 1993). This stated preference approach is termed as 'contingent valuation method'.

The Contingent Valuation Method (CVM), based on the theory of economic utility and welfare. The technique enquires the individual directly to reveal their preference in terms of willingness to pay (WTP). WTP is argued to be a better technique if the consumer currently does not have the good or service for which the survey is being carried out (Carson, Contingent Valuation: A User's Guide, 2000). The concept of WTP is based on the theory of Hicksian Consumer surplus measures. The CVM uses survey research technique to elicit people's preferences in the form of WTP monetary amounts (Carson & Mitchell, 1993). Carson & Mitchell (1993) have depicted that in its standard form the CVM survey describes a detail hypothetical market in which a specified good may be purchased and asked respondents how much of their current household income they would be willing to give up in exchange for a specified increase in the level of the public good. This implies that the respondent is asked about the compensating surplus (CS) from a change in the good in question, which can be represented as

$$CS = [e(p_0, q^*, q_0, U_0)] - [e(p_0, q^*, q_1, U_0)]$$

Or equivalently $CS = Y_0 - Y_1$

where 'e' is the expenditure function, p_0 is the vector of prices for marketed goods, q^* is the vector of marketed goods, which remain fixed. q_0 and q_1 are the initial and subsequent level of non-marketed goods being valued respectively. Y_0 and Y_1 are the initial and subsequent level of disposable income associated with each of the two expenditure functions, respectively. U_0 is the initial utility level. This exercise, as argued, tries to trace out the Hicksian compensated demand curve (Carson & Mitchell, 1993).

The CVM has emerged as one of the most familiar method for being applied to deal with the compensating and equivalent measures of welfare changes. The CVM technique has been considered as unique technique among other benefit measure technique because of its ability to measure non-use benefits, since it can elicit values from both users and non-users of a given amenity. The CV survey, as mentioned by Khai (2015), mainly aims to get an accurate estimate of benefits (sometimes cost) of a change in the level of allocation of some public good. He pointed out the varieties of approaches in practice for valuing contingent market

- (i) Using an open-ended question in which the respondent is simply asked to claim his/her WTP.
- (ii) Using the questions in sequential bids in which respondents are asked whether or not they would pay some specified sum (the question is then repeated using higher or lower amount, depending on the initial response)
- (iii) Using a dichotomous choice question in which the respondents is asked only whether or not they would pay for any service (The sum is varied across respondents).

The present study has followed Carson (2000) as mentioned above and explored the WTP through the dichotomous choice question where the respondents have been asked whether they are willing to pay for piped drinking water or not.

People's Participation in Service Delivery: Review of the Concept

The new policy paradigm of drinking water throughout the world talks about people's participation in operation and maintenance and paying water prices to ensure sustainable supply. This participatory method of governance received utmost importance in many kinds of service deliveries since last few decades. Dreze and Sen (1995) and Webster (1992) ascertain that the poor functioning of the local public services in India relates to the centralized and non-participatory nature of their management. With the help of the data from 121 rural water supply projects from 49 countries of Asia, Africa and Latin America, Isham, Narayan, & Pritchett (1995) showed a positive impact of participation in project performance. Hoddinott et al., (1999), in their study in South Africa, also found a direct positive impact of participation on efficacy of public works projects and targeting of the beneficiaries. Paying and contributing for services is considered as higher form of participation. White (1996) has termed it as 'instrumental participation' where people contribute inputs. The involvement of citizen through contributing and producing public goods and services of consequence to them termed as co-production (Ostrom, 1996; Brandsen & Pestoff, 2008). The study considers 'willingness to pay' as a higher form of participation and attempts to identify underlying factors of a household's willingness to pay for piped drinking water.

Database

For this study the four districts of Bihar, viz. Nalanda, Begusarai, Purnia and West Champaran have been selected as sample districts. One district each has been selected from the four regions of Public Health Engineering Department, the main department responsible for providing drinking water in the state

through hand pump, tube well, pipe water etc. Moreover, the sampled districts represent various agro-climatic zones in the state and consist of population of different communities. Representation of various problems of water contamination has been taken into account while sampling the districts. There are three main problems of water contamination that affect drinking water quality, viz. Arsenic, Fluoride and Iron. Out of four sample districts, three districts suffer from these problems viz. Begusarai (Iron & Arsenic), Nalanda (Fluoride), and Purnea (Iron). West Champaran was selected to have detailed insight of working of water supply schemes in forest and tribal areas. From each district 4-5 blocks have been selected based on (a) presence of contamination problem in drinking water; (b) presence of backward/minority community population; (d) distance from the district headquarters. From each block 1-2 Gram Panchayats (Institute of self-government/rural local body at grass root level) selected for household survey. Overall 20 Gram Panchayats were selected for the study and in each Gram Panchayat 20-25 household randomly selected for sample survey. A total 458 household have been sampled for the study. The household level data collected in month of January 2013 through structured questionnaire. The questionnaire covered broad aspects of socio-economic, demographic and village level characteristics as well as subjective notions of motivation of taking part in the decision making process and willingness of the households to get engaged in drinking water supply and willingness to pay for the same.

Research Design

The study attempted to explore the issue from qualitative and quantitative point of view. For quantitative analysis data were collected from sample households and for qualitative analysis, the issue of willingness to pay was discussed in a focus group discussion with community members in different neighbourhood in every Gram panchayat.

To explore the concept of willingness to pay and the underlying household characteristics for this works as as a motivation for this study. The CVM uses to elicit a households willingness to pay for piped drinking water. It is argued that, willingness to pay depends upon several factors ranging from social capital (Polyzou, Jones, Evangelinos, & Halvadakis, 2011), to trust on delivery institution (Kim, 2005). Literature suggest that education (Almond & Verba, 1989; Helliwell & Putnam, 2007), economic status (Weinberger & Jutting, 2001; Nisha, 2006), social status in community structure (Alesina & La Ferrara, 2000; Ghatak & Ghatak, 2002) have positive impact of household in involvement in community affairs. Several variables have been identified to have influence on 'willingness to pay' of a household for piped drinking water. These variables have been brought under five distinct categories, namely education, economic status, social status, service delivery status and participation.

The current study considered mode years of schooling as determinant of education of the household. For economic status of the household the study considers monthly income of the household. Caste status, specifically whether the household belong to any marginalized community or not, has been considered as determinant of social status. To assess current delivery standard three variables have been considered, namely dysfunction of current source, distance of the current source from household and perceived quality of drinking water. To assess dysfunction it is assessed that how many times the current source got defunct in last six months. For distance it was assessed that whether the current source is within 50 meters or more than that. To assess quality of drinking water, the perceived quality of the water by the user, whether it is good or not is considered. Following White (1996), who termed it as 'Instrumental Participation', the concept of willingness to pay has been conceptualized as higher form of participation; and the study attempted to assess level of participation from two points, namely whether the households have been consulted for drinking water delivery or not and whether the

household ever contributed for drinking water service or not. The method of operationalization of variables considered in the model and their summary statistics presented in table 1 and 2 respectively.

Table 1: Method of Operationalization of the Determinants of Willingness to Pay

Determinants	Variables considered	Symbol Used	Method of operationalization
Education	Years of schooling	Edu	Mode years of schooling of the household
Economic Status	Household income	Inc	Monthly income of the household
Social Status in Community Structure	Caste or community of the household (Dummy variable)	Caste	Whether the household belongs to SC or ST community. Caste=1, if household belong to SC, ST, OBC, EBC Caste=0, otherwise
Service Delivery Status	Dysfunction of Current source of water	Dysf	No. of time the current source got defunct in last six months
	Distance of Current Source (Dummy variable)	Dist	Dist=1, if source is within 50 meters Dist=0, otherwise
	Perceived Quality of Drinking Water (Dummy variable)	Qual	Qaul=1, if perceived quality is good Qual=0, otherwise
Participation	Household contributed for drinking water supply (Dummy variable)	Cont	Cont=1, if the household contributed Cont=0, otherwise
	Household consulted for supply of drinking water in last one year (Dummy variable)	Conslt	Conslt=1, the household consulted Conslt=0, otherwise

Table 2: Summary Statistics

Variable	Mean	Std. Dev.	Min	Max
Mode Years of Schooling	7.8	4.5	0	19
Monthly Income	5899.4	4484.3	600	50000
Dysfunction	1.5	1.7	0	10
Caste	Proportion of sample household belong to backward social status: 39.7%			
Distance	Proportion of household have water source within 50 meters: 74%			
Quality	Proportion of sample household perceive water quality is good: 65%			
Contribution	Proportion of Household contributed for drinking water service: 43.2%			
Consulted	Proportion of Household consulted for drinking water service: 7%			

To identify factors those influence a household's decision of willingness to pay the following logistic regression model is specified

$$WTP_i = \alpha + \beta_1 Edu_i + \beta_2 Inc + \beta_3 dysf_i + \gamma_1 Caste_i + \gamma_2 Dist_i + \gamma_3 Qual_i + \gamma_4 Cont_i + \gamma_5 Conslt_i + \epsilon_i \dots\dots\dots(1)$$

Here, $WTP_i=1$, when a respondent household is willing to pay for improved drinking water and $WP_i=0$, when the household do not want to pay. The model predicts logit of dependent variable from explanatory variable. The dependent variable predicts logit, which is natural logarithm of odds ratio, and odds ratio is probabilities (p) of WTP happening (i.e. a household willing to pay) to probabilities (1-p) of WTP not happening (i.e. a household not willing to pay).

Results and Discussion

During the focus group discussions it was revealed that people actually contribute to repair the local hand pumps for uninterrupted supply of drinking water. The discussions also reveal people's willingness to participate in the operation and management of drinking water supply. During the focus group discussions the issue of payment for pipe water system was discussed and analyzed and it was found that a large section of people were ready to pay for pipe water service and for household connection. It was also found that people are even ready to share a part of capital cost of implementation of drinking water project and also to pay monthly user charges. The range of payment they agreed varies from Rs.50 to Rs. 2000 for sharing capital cost and for monthly charges they are ready to pay on an average Rs. 25 per household per month.

The result of logistic regression (Table3) indicates that income, education and community status have significant and positive impact on willingness to pay for piped water. However, one of the interesting result is that, member of backward caste are more likely to pay for piped drinking water service. Frequent dysfunction of current water sources also found to influence people to become willing to pay for piped drinking water for improved service. Though the contribution of household not found to have significant impact on willingness to pay, another interesting result is significant impact of consultation with a negative sign. The reason might be that a very small proportion of people are actually being consulted for decision making on drinking water service. In the present study, it was found that only 7% of the sample households have been consulted in last one year. The result indicates some important aspects. First, better off households in terms of income and education attainment are more likely to pay for piped drinking water.

The awareness level of better off households might drive the households to opt for better and improved drinking water option which may be useful for them to reduce time and medicinal costs. Secondly, there is a willingness to pay among marginalized communities. This result may be the indicator of awareness among these marginalized section related to drinking water and its quality. The present result paves ways for two avenues. The first one of management of service delivery system along with community termed as co-production (Ostrom, 1996; Brandsen & Pestoff, 2008), which argues for participation of citizen with service delivery organization through contributing and producing public goods and services. The second one is more pragmatic in nature, which argues about possibilities of reform and participation of private sector in water service delivery against water charges. However, sound political and water supply governance have been identified as necessary conditions to unfold and reap benefits of private sector participation, as there are risk of failing policy due to adverse governance factors (Krause , 2007).

Table 3: Regression Results: Determinants of Willingness to Pay

Independent Variable	Regression method: Maximum Likelihood Coefficient and Standard Error
Years of schooling	.1532835 (.0370362)*
Household income	.0001773 (.0000566)*
Caste or community of the household	1.186865 (.3509919)*
Dysfunction of Current source of water	.5444639 (.1459834)*
Distance of Current Source	-.2637671 (.3572315)
Perceived Quality of Drinking Water	-.516174 (.3726904)
Contributed for drinking water supply	-.4469469 (.3645736)
Household consulted for supply of drinking water in last one year	-1.587784 (.5576738)*
Constant	-.0404921 (.6969657)
No of Observations: 458	Wald Chi2(9) =75.52* Pseudo R ² =0.2399

Note: 1. Robust standard errors given in parentheses

2. * represent levels of significance at 1% .

Conclusion

In last couple of decades there has been advocacy for change in the public service delivery mechanism. The new paradigm talks about demand based supply and more participatory approach. In India, there have been changes in the policy paradigm of drinking water supply since 1990s. It advocates for treating water as a commodity to be supplied based on effective demand and cost recovery principle and imposition of water tariff. The present study is an attempt to assess policy preparedness and community preparedness for this new regime of service delivery through exploring the concept of willingness to pay for piped water supply in the context of rural Bihar. It is revealed that people want to have pipe water in their households and are willing to share capital cost and ready to pay monthly user charges for it if uninterrupted supply of drinking water is provided. The identification of determinants of willingness to pay reveals that though households with more education and income are more willing to pay for piped drinking water, however, the marginalized community members also found willing to pay for drinking water.

The frequent dysfunction of current water source might have influenced them to think about alternative sources. It has also found that people are not only willing to pay, they are also ready to be involved in operation and maintenance of drinking water service. This opens up the avenue for a distinct kind of participatory management mechanism often termed as 'co-production', which consists of citizen involvement or participation (rather than bureaucratic responsiveness) in the delivery of services. On the other hand the result also unfold possibility of involvement of private sector in the service delivery, hitherto being supplied through public agencies only. This calls for well thought about reform in political and water supply governance. Making people aware of the process and outcome, building capacity of the community are basic prerequisites for successful for community involvement. Whereas, policy formulation and changing institutional set up for alternative service delivery pattern are challenges in terms of institutional arrangements for effective implementation. The present study found that the community is eager to accept the new set of service delivery pattern. However, making people aware and building their capacity is necessary for its success. Regarding institutional set up, though there is a shift in paradigm advocated in the new Drinking Water Policy. In the context of Bihar, the institutional

set up needs more attention. The policy still in the draft form, which needs revise and finalisation of state water policy in line of national water policy and adopts it as guiding principle. Also, huge capacity building at all stages of political and governmental set ups who are responsible for implementation is required to bring about a change in mind-set to strengthen the possibilities alternative delivery models of delegation of responsibility to the grass root level.

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Role of ICT in Healthcare Sector: An Empirical Study of Pune City

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Abstract

Information technology has a critical role to play today in enabling progress in a multitude of areas which fall under the domain of development. It is a tool, which if properly utilized, can help mobilize resources and improve efficiencies by leaps and bounds. This study pertains to the intersection of Information and Communication Technology (ICT) and healthcare infrastructure and analyzes the level of digitalization and general utilization of information technology within the private and government hospitals; with regard to consumer interface, and secondly, regarding the knowledge and attitude of people towards the same. The research takes a dual focused approach to incorporate the views of two parties, mainly the service providers of healthcare and the consumers. Results show that citizens of Pune are largely aware of the e-health services available to them. Hospitals are also found to be sensitive to their need to keep up with technological progress as that not only helps them improve their internal administration but also improve their relationship with patients. A smart city requires a confluence of efforts both from the Government and a proactive citizenry to succeed and Pune city appears to be on the right path.

Keywords: Information and Communication Technologies (ICT), Healthcare, Smart City, Pune, India

Introduction

Given that a third of India's population resides in urban areas, and that these numbers are steadily rising with no slowdown in sight, it is imperative that our cities are able to expand and allow for the ever increasing numbers. For this reason, sustainable urban planning is a crucial need of the hour. In this vein, the idea of the Smart Cities has been gaining importance lately.

Though there is no one universal definition, a smart city is essentially an urban set up with a high degree of infrastructural development, both physical and in terms of information and communication technology (ICT), with a special focus on sustainable practices. It seeks to bring about a confluence of government resources, modern technology, citizen participation and the private sector, both the experience of the entrenched corporate sector and the enthusiasm of the entrepreneurial spirit, so as to develop innovative solutions for the age old problems associated with urbanization, ranging from issues like transportation to water scarcity. The concept is a fairly new one, popularized across the world in the past decade. In India, the Smart City Mission seeks to promote the development of cities that provide their citizens good physical, institutional, social and economic infrastructure in an inclusive and environmentally sustainable manner. These cities should then be able to serve as model for development that can be simulated further. A few basic aspects that are sought to be covered in a Smart

City are adequate water supply, assured electricity supply, sanitation, efficient urban mobility and public transport, affordable housing, robust IT connectivity and digitalization, good governance, especially e-Governance and citizen participation, sustainable environment, safety and security of citizens, particularly women, children and the elderly, and health and education (Ministry of Urban Development, 2015).

Pune is one of the largest cities in India, both in terms of population and domestic product, as well as a center for both academia and business activity. With factors such as strong human capital, an efficient municipal council and participatory citizenry, Pune is primed to succeed in its goal to become a Smart City. Given this background, this study explores the interconnected themes of good governance as well as citizen participation, both individual and institutional, in the context of the role of ICT in the healthcare sector in Pune city.

Literature Review

E-governance, short for 'electronic governance' is the act of using ICT at various levels of the government and the public sector and beyond, for the purpose of enhancing governance (Bedi, 2001). E-health is an emerging field in the intersection of medical informatics, public health and business, referring to health services and information delivered or enhanced through the Internet and related technologies. In a broader sense, the term characterizes not only a technical development, but also a state-of-mind, a way of thinking, an attitude, and a commitment for networked, global thinking, to improve health care locally, regionally, and worldwide by using information and communication technology (Eysenbach, 2001).

The application of e-governance in health care can help significantly in improving the efficiency, transparency and cost effectiveness of service delivery by providing a common platform for the healthcare providers, policy makers, professionals and the public at large. In public health, information management and communication processes are vital, and are in turn highly dependent on the availability of information. Though progress has been made in the area in the past few years since the early days of introduction of tele-medicine, a lot still remains to be done (Bhatnagar, 2014).

The Public Health Department under its e-Governance ambit has developed an assortment of applications providing for the inter-departmental needs of the organization. The focus of the department was primarily on five pillars as: Human Resource Management, Hospitals and Medicines, Communication, Administration and Citizen Centric. The wider use of ICT in healthcare is a basic condition for the development, implementation and further generation of innovative health care technologies. The collaboration of different sectors can create innovations beyond the capacity of any one institution alone. Public health leaders have a responsibility to understand and expand the beneficial uses of digital government (Kamlakar et al.).

Committee on Quality of Health Care in America and Institute of Medicine in the year 2001 focused broadly on how the health system can be reinvented to foster innovation and improve the delivery of care. It aims for health care to be safe, equitable, patient centered, effective, efficient and timely. The committee took a set of ten general principles to redesign the health system, one of which included attention on developing care processes for common chronic health conditions. It also wanted to change the structures and processes of the environment in which health professionals and organizations function (Crossing the Quality Chasm: A New Health System For The 21st Century).

The United States is far behind other developed countries in the Health Information Technology (HIT) area and the major concerns lie between both the government with regard to its ability to encourage the healthcare system to adopt HIT through subsidies and to adopt HIT through subsidies and other incentives and the willingness of practitioners to adopt the same. This can be done by establishing new technologically driven services like tele-health, decision support tools, electronic ordering systems etc. (Anderson et al., 2006).

Ramani et.al. (2005) conducted a study to address the problems faced by urban public health sector due to rapid urbanization and provide a working model to improve primary healthcare services in Ahmedabad. It sought to develop a model on the public and private participation which was first implemented in Vasna ward. Another city project included the city of Uttarakhand, where the role of the government, hospitals and health care centers for putting tele-medicine into practice and the impact was monitored on the local population (Vaisla, Bisht & Pant, 2011). Orissa was also reviewed for the use of ICT applications such as tele-medicine, tele-referral etc. The results showed that there is great scope in the education and service provision sector but problems such as lack of financial and technical resources and resistance of practitioners to adopting new practices are identified (Subash, Das & Patra, 2008).

International Telecommunication Union (ITU) in 2008 had a detailed discussion on the general pattern of implementation of e-health services in developing countries by assimilating new practices with existing infrastructure. Emphasis was laid on the need for legislative, administrative and regulatory framework for effective e-health practices as well as sound financial planning. There has been a need for regional as well as inter-institutional cooperation when it comes to putting e-health initiatives into practice (Implementing E-Health in Developing Countries, 2008).

The National Knowledge Commission set up a working group which proposed to design, develop, and integrate e-healthcare informatics network framework in India. The Health Ministry also set up a National Telemedicine Task Force to evaluate the pros and cons of introducing e-health in India. Various initiatives were undertaken by various tertiary level super specialty hospitals in the public and corporate sectors to start telemedicine programs and tele ambulance for emergency health care, mobile tele-hospital for rural health (Mishra, Ganapathy & Bedi, 2008).

Integrated Disease Surveillance Project (IDSP) aims to connect district hospitals and state-run medical to detect early warning signals of a disease outbreak and begin effective and rapid health actions with the help of ICT at the district, state and national levels. Establishing the use of modern ICT for collection, storage, transmission and management of data related to disease surveillance within state-run medical colleges, infectious disease hospitals, public health labs satellite based allows speedy data transfer, training and e-learning for outbreaks and programme monitoring (Kant & Krishnan, 2010).

In the matter of incorporating ICT tools in the healthcare sector, the focus essentially centers around making the provision of healthcare services to the masses efficiently and with minimal costs. This requires investment in infrastructure development to enable adoption of the latest technology to increase the effectiveness of service delivery, in terms of cost, time and outreach (Bloom, 2002).

It is not just in terms of financial resources that the government has to be involved to promote e-health, but also by providing a legal and regulatory framework and favorable policies for the same. A critical problem that requires immediate redressal is the lack of technical skills among the practitioners of medicine. It is only by enabling stakeholders to use the resources available to them that a holistic e-

health system whose potential is realized be established in the healthcare industry. Furthermore, changing the mindset of current practitioners who may be resistant to radical new practices is of special importance to ensure that the benefit from these practices can actually be derived. Literature points towards the positive impact that can be brought about in due course of time with the expansion of said practices. Though spending a high proportion of the GDP in itself is not a guarantee of success in any domain, it has been noted that India spends less than the required amount in health sector, especially given the momentous in terms of infrastructure development and skill enhancement it faces. There is great scope for use of ICT in the education and research domains as well, which will serve long term benefits by exponentially increasing the capabilities of these institutions, heralding further progress (Ramani et al. 159-173).

Against this backdrop, this study analyzes the level of digitalization and general utilization of information technology within the private and government hospitals; with regard to consumer interface, and secondly, regarding the knowledge and attitude of people towards the same in Pune city.

Methodology & Data Collection

The objective of the study is to analyze the use of ICT by Government and Private hospitals in their daily functioning and whether the citizens of Pune city are aware of the advantages of ICT in the healthcare sector. The study is based on primary data collected from seven healthcare providers¹ (institutional respondents) and fifty-five citizens (individual respondents) spread across the city. The individual respondents included visitors in the hospitals. Special care was taken to include people of different economic backgrounds to be able to further observe and analyze the role that factor plays on shaping people's awareness levels and attitudes.

The data collection was carried out using two structured questionnaires. The first sought information from both private and government hospitals while the second collected responses from the receivers of healthcare services, that is, patients and citizens at large. For easier understanding, enhanced comparability and better interpretation of data, tools such as bar graphs, pie charts and flowcharts were used.

Result and Analysis

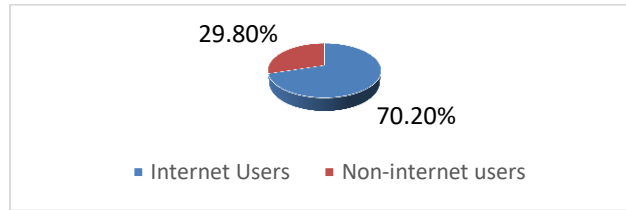
Given the use of two sets of respondents, the analysis of data has been split into two parts.

➤ Individual Respondents

The data was collected from 55 respondents across different hospitals which were part of the survey pertaining to the matter of use of ICT by these institutions. The respondents belonged to diverse ranges, based on their age and income levels. Of the total respondents, 30 (56.6%) were below the age of 30, 20 (37.7%) between the age group of 30 to 60 and 5 (9.43%) above the age of 60. Similarly, the randomized selection of respondents resulted in inclusion of people from different income ranges- 10 with less than a monthly income of less than Rs 10,000, 9 between Rs10,000 and Rs 20,000, 15 between Rs 20,000 and Rs 50,000 and 21 with above Rs 50,000.

i) Access to internet: Of out the 55 respondents, eight, all of whom belonged to the below Rs 10,000 per month income bracket, did not have access to internet. For those respondents, some of the following questions were not applicable. Figure 1 shows, 33 or 70.2% make use of the information available online pertaining to the field of medicine, which includes looking up information regarding symptoms, institutions, ratings etc.

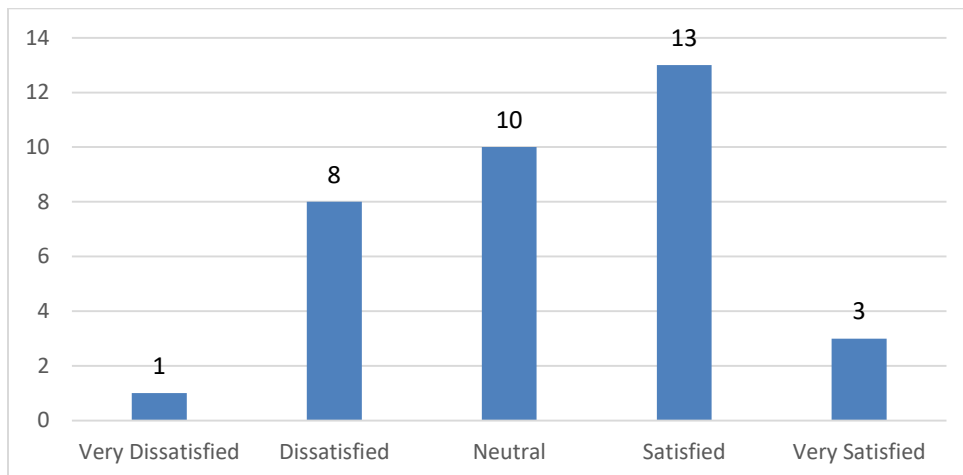
Figure 1: Usage of Internet to Acquire Medical Information



The reasons cited by the respondents who do not use information available online essentially was a lack of trust in the quality of information as well discomfort with using the internet by a minority. From the people who do use online information, responses were sought on the level of usefulness and reliability they believe the information to have.

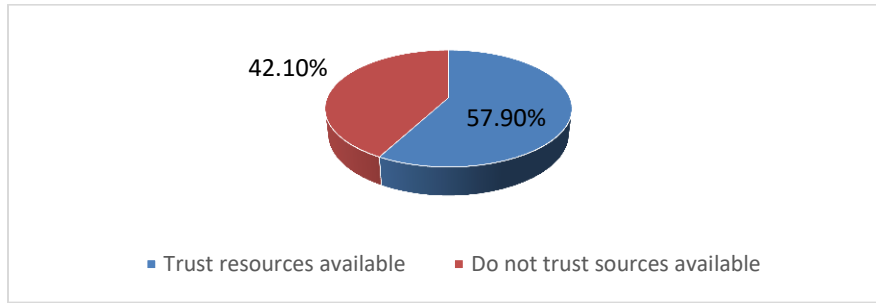
ii) Satisfaction and trust in quality of content: The level of utility that users derive from online information based on its usefulness. Only one person was entirely unsatisfied with the quality of information, a majority thought of it to meet at least a basic level of satisfaction.

Figure 2: Degree of Satisfaction with Usefulness of Content



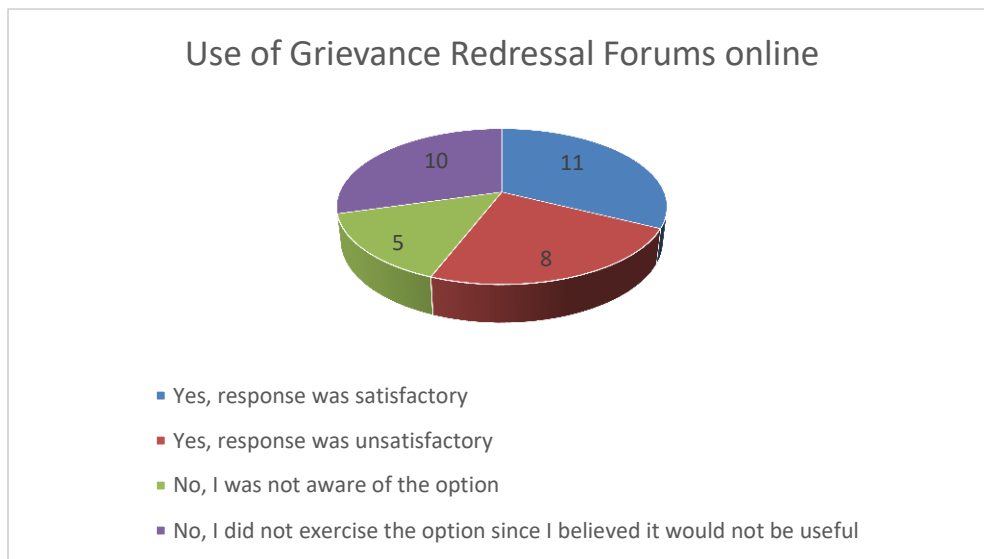
As for the matter of the level of faith they placed in the accuracy of such information, as shown in Figure 3, the numbers were close with 15 of the 33 respondents stating that they don't entirely trust information available and 18 saying that they do.

Figure 3: Level of Trust in Information Available



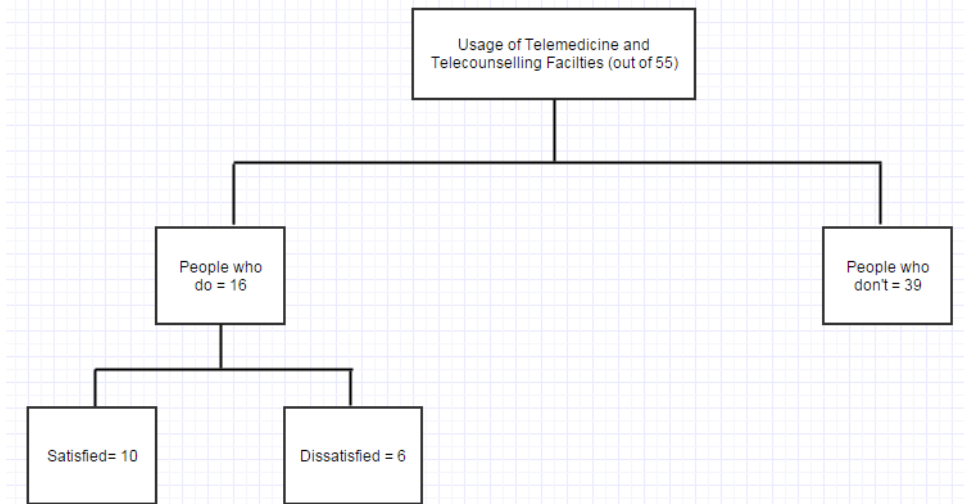
iii) Use of Online Grievance Addressable Platforms: With regard to the use of online portals set up both by the PMC as well the web pages of hospitals to express grievances, make suggestions etc., 19 of the respondents answered positively with regard to the usage of such platforms. However, of them 42.1% felt that the response to their inputs was inadequate.

Figure 4: Use of Online Grievance Addressable Platforms



iv) Telemedicine and tele-counseling: Another area of focus was the response of people to the availability of telemedicine and tele-counseling facilities by respondents, which included even those respondents who do not have access to the internet. Of the total 55 respondents, 16 had availed these services before, with a majority of them satisfied with the quality of service that they received.

Figure 5: Use of Telemedicine and Telecounseling Facilities



v) *Impact of government initiatives to inform citizenry:* Government initiatives to inform citizens regarding various health concerns such as vaccination programmes and to generate awareness about health concerns like diseases such as dengue, H1N1 flu, etc. reached 41 respondents, either through cellular or internet based communication, with 30 of them stating that they found the information received useful while 11 did not.

➤ ***Institutional Respondents***

Of the seven hospitals, two (both government hospitals) did not have a separate wing of their IT departments that focused on the expansion of e-health services provision. The general areas currently covered to improve internal administration were billing, admission, setting up a website, use of online HMIS (Hospital Management and Information System), equipping doctors with personal computers and promoting use of telecommunication and paperless work.

To improve their interface with patients, the hospitals incorporated measures such as seeking online feedback, direct videoconferencing and treatment, and use of emails and text messages to communicate information to patients. However, these are measures implemented solely by the private hospitals. No such measures to enhance communication with patients were seen in the government hospitals.

Two private hospitals provide patients online access to their medical records and three hospitals i.e. two private and one government are equipped with videoconferencing facilities for internal, inter institutional and patient oriented interaction. None of the hospitals provide teleambulance facilities and only one provides telemedicine facilities.

The hospitals are evenly split on their opinions regarding the level of utilization of these facilities offered by the patients and those seeking information about them in a broader sense.

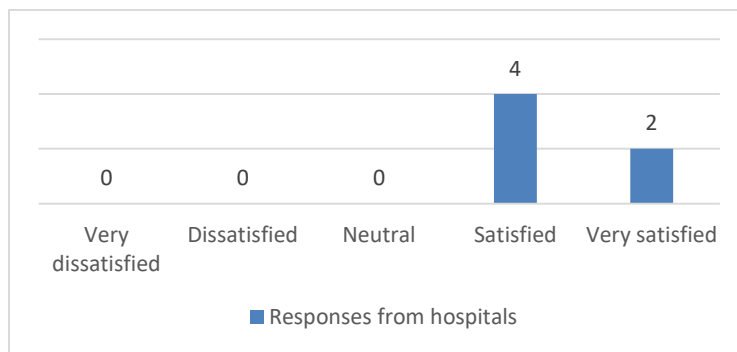
The private hospitals conduct regular trainings to keep updating the ICT skills of their staff. The government hospitals focus on ensuring that personnel are trained well to use the equipment and devices at their disposal, through tools such as the HMIS.

Most government hospitals were not found to be proactive in the area of generating awareness among patients, though one suggested the use of public displays to inform patients about the availability of these services. The private hospitals too stated the importance of better patient awareness to fully utilize the potential offered.

With regard to future plans, responses ranged from a general intention to keep up technological advances to more concrete goals such as improve user interface with target audience (government hospital) to implementation of a drone service to fly patients to the hospital (private hospital).

With the exception of one government hospital that has not implemented any significant ICT tools to improve administration, all hospitals responded extremely positively to the increased level of administrative ease and general return on investment upon implementation of e-health services by them, resulting in a general positive attitude regarding their rate of success at present.

Figure 6: Satisfaction from Using ICT Tools



Findings

The primary research conducted focused on two aspects of the provision of e-health services in Pune to get a comprehensive understanding of the present status of the same in Pune.

It is evident that e-health services can only be used for the benefit of people above a certain income and education level. There were several respondents who do not have access to the internet. Even among those who do, a few people who are not comfortable with using smartphones or computers do not use the internet for such purposes. Among the internet users, over 70% use the internet to acquire information regarding medical issues, healthcare providers etc. There generally prevails a positive attitude regarding the usefulness of information with only seven respondents expressing dissatisfaction with the content available online. However, a larger number of respondents distrust the reliability of the content. This occurs due to the high quantity of online content, not all of which is useful and not distinguishable from the legitimate information.

Out of all the people who use the internet for information, only 57% use the platforms provided by the PMC and hospitals to provide feedbacks, suggestions and express grievances. The others mostly do not believe that doing so would produce useful results, with a third unaware of the fact that that was a service they could avail. Among the people who do use these platforms, almost half are dissatisfied with the response to their queries, problems etc.

Only a third of the respondents know of and use these telemedicine services, many of whom belong to the category of individuals who either do not have access to or use the internet for informational purposes. It is therefore clear that these services should be focused on certain target groups that are previously identified to ensure that resources are not wasted.

It is clear that though government awareness campaigns have significant outreach, they still have to have higher visibility to expand their audience. A quarter of the respondents claim not to have found the content of such campaigns useful, exhibiting a need for the quality of content to be upgraded as well. Suggestions provided indicate that among those who actually use the internet are informed people who can actively contribute to recognition of key improvement areas. Respondents want more government involvement in the dissemination of information regarding critical health issues since there is an undeniable element of reliability given the source of information. Furthermore, respondents want the convenience of internet connectivity and therefore desire an improvement in the current status of interaction with hospitals through the use of more sophisticated websites, apps etc.

Primary data suggests that most of the hospitals recognize the need and benefits in investing in adoption of ICT tools to improve their ability to administer better care for their patients and organize themselves. However, the extent of digitalization is clearly dichotomous when it comes to government and private institutions. Government hospitals are at a more nascent stage in the adoption of such tools, and at this point seek to meet certain basic goals that will lay the foundation for future developments in the same direction. The use of systems such as the HMIS is helping in increasing accountability, transparency and efficiency, raising their overall competitiveness. Both private and government hospitals, though at different stages in the process of bringing themselves up to speed with rapid technological advances. There are instances of well advanced government hospitals that are better off at the moment than some of the private ones. In the matter of providing telemedicine facilities, majority of the respondents' fared poorly. This is an area of concern since that is the only option for better connectivity for people who do not use the internet to enhance their experiences for whatever reasons. Though strides have been made in all areas of incorporating e-health tools to improve the quality of services provided, identification of different sets of consumers and their varying needs will enhance streamlining of efforts and delivery of services both by the local government and hospitals. Furthermore, in a rush to modernize themselves to better serve an increasingly technologically proficient clientele, hospitals shouldn't lose focus of the importance of reaching out to the other side as well.

Conclusion

It is evident that the citizens of Pune are largely aware of the services available to them in the domain of e-health services as well as of the particular limitations to these services. They try to actively engage in the dialogue to improve the given situation. Similarly, hospitals are sensitive to their need to keep up with technological progress as that not only helps them improve their internal administration but also improve their relationship with patients. Hospitals are proactive when it comes to challenges and want to constantly improve their capacities. This reflects positively on the government, hospitals and private individuals' desire to actively engage in the constant process of improvement. Keeping in mind the subject of e-governance, the PMC can improve the services provided by its health department, both in terms of better responses to complaints and suggestions, and by improving the quality of the content and outreach of its awareness campaigns. There is a need for increasing the level of outreach to create awareness regarding the spread of communicable diseases as well as general health concerns such as proper nutrition. Further, need for more user friendly apps to provide access to online records and a consolidated database to provide contact information of various doctors was emphasized.

Endnotes

¹ 7 hospitals (4 Government and 3 Private)- The government hospitals were Kamla Nehru Hospital, Sasson Hospital, Cantonment Hospital near Golibaar Maidan and Naidu Hospital. The private hospitals chosen were Dinanath Hospital, Siddharth Hospital and Ratna Hospital.

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Managing Investment Disputes: A Critical Analysis of Investor State Dispute Settlement Mechanism in Bilateral Investment Treaties

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Abstract

This paper reviews institutional and procedural aspects of the investor state dispute settlement (ISDS) mechanism in bilateral investment treaties (BITs). The problems of international arbitration system under ISDS are the main focus of the paper. ISDS was initially created to de-politicize the investment dispute settlement mechanism. However, in the actual practice, this system came under strong criticism for its flaws like confidentiality, inconsistency, non-transparency, expensive etc. Although, several alternate mechanisms at national and regional level were proposed, however, results are insufficient. Therefore a free and fair system for investment dispute settlement, based on the consent of all stakeholders (states, investors and development objectives) is need of the hour.

Keywords: Investment Disputes, Investor State Dispute Settlement Mechanism, Bilateral Investment Treaties

Investor State Dispute Settlement (ISDS)

Bilateral Investment Treaties (BITs) are the main legal instruments for protecting and promoting foreign direct investment (FDI) worldwide. These treaties provide number of investor friendly clauses to attract investors. However, one the most contentious provision they BITs provide is ISDS. While introducing the ISDS, Eberhardt¹ (2016) writes *"In an old fable, a wolf dresses in sheepskin to deceive the shepherd who indeed locks the hungry wolf up with the sheep. In global trade policies, the equivalent of the wolf is called investor-state dispute settlement or ISDS, a special tool for multinational companies to bully and squeeze money out of governments (P.13)"*. ISDS was created to function as a de-politicized forum for settlement of disputes and to offer other advantages such as possibly cheaper, swifter, and fair than other dispute settlement mechanisms. On ground, however, the actual working of ISDS has led to fears about systemic flaws in the system. Majority disputes in ISDS involve issues of public policy as actions challenged by foreign investors increasingly include matters such as public health, environmental protection, human rights, labour rights or other development related measures (UNCTAD 2014c). According to Gaukrodger and Gordon (2012), till the mid twentieth century, prior to the mechanism of the ISDS system, investment related disputes were decided by direct dialogue between investor-and State or proceedings in domestic courts or were handled via diplomatic procedures or, at

¹ Eberhardt Pia is a researcher and campaigner at Corporate Europe Observatory, a campaign and research group, at Brussels.

times, by the use or threat of armed force (Johnson and Gimblett 2011). Provisions on ISDS have been a part of the international investment agreements (IIAs) for decades. Most of the BITs provide ISDS mechanism. Analysts such as Eberhardt and Cecilia (2012) argue that, in investment disputes MNCs can litigate sovereign governments if the government has done something that the MNC conceived damaging to its profits. Author further elaborate that historically, 'BITs were put in place by Western countries to protect their investors when they invested abroad. The western idea of ISDS as a free, fair and autonomous system for the resolution of disputes between MNCs and sovereign governments is one of the main justifications for a mechanism which has took huge amount of taxpayers money and challenges the ability of independent governments to act in the people's interest'. Similarly, Schill (2015) points out 'that ISDS is looked as depoliticizing international investment disputes and leading to improving the rule of law in State-investor relations. However, with the abrupt rise in investment arbitrations particularly during the last decade, ISDS has been fronting a significant criticism, including the withdrawal of some countries from it and starting of worldwide debates to reform or revoke ISDS mechanism. Frequent concerns include inconsistencies in investment arbitration decision making, deficient regard by arbitration tribunals to the host country's right to regulate in inferring and interpreting treaty texts, concerns of bias of ISDS system in favour of foreign companies, issues of lack of impartiality and independence of arbitrators, mechanism to control IATs and to guarantee impartiality of their decisions, third party funding, and very expensive resolution of disputes'.

Investor-state disputes filed under ISDS may challenges essential laws and regulations of any government, such as those guarding the health and environment, governing the essential services, addressing social, political and economic welfare issues and governing the use of domestic natural resources. The disputes have also a major financial effects on the public money (Osterwalder and Johnson 2011). Similarly, analysts like Wellhausen (2016) argues that one of the exceptional features of ISDS is that only foreign investors can file arbitration against State, were as host State can't do this.

There are presently more than 3,286 IIAs (2,928 BITs and 358 other IIAs) (UNCTAD 2016). By the end of March 2017, there were 767 known investor-state dispute cases, the majority of these cases are filed by companies from developed countries against countries from developing South.² However, most of the arbitration institutions are subjected to confidentiality, so the actual number of disputes filed is likely to be much greater. The exact passage of an ISDS case depends on the relevant institution and the rules conducting the case (Eberhardt and Cecilia 2012).

Investment Arbitration Institutions

International arbitration for investment disputes under ISDS starts with a foreign investor's notice of arbitration to a host State. During the proceedings, both the parties, the State and the investor are assisted by counsel (lawyers). Both the parties mutually select the tribunal for arbitration. Generally each party selects one arbitrator and both mutually appoint a third to serve as tribunal chairman. Proceedings may last for years. However, a very limited or no information is shared to the public, sometimes even public remains unaware, of the fact that a case is going on. Finally, the arbitrators decide the size and type of the remedy and allocate the legal expenses of the proceedings (Eberhardt and Cecilia 2012). However, most of the modern BITs mentions more than one dispute settlement instrument.³ Some BITs mention the arbitration under the Arbitration Rules of The United Nations

² UNCTAD .2017. Investment Policy Hub: International Investment Agreements navigator, available at <http://investmentpolicyhub.unctad.org/IIA> (accessed on 12 April 2017).

³ See Dolzer, Rudolf and Stevens Margrete.1995.

Commission on International Trade Law (UNCITRAL)⁴ either alone or together with the references to the International Centre for Settlement of Investment Disputes (ICSID) arbitration, a small number of BITs also refer to the arbitration of the Stockholm Chamber of Commerce (SCC), International Chamber of Commerce (ICC)⁵, The Permanent Court of Arbitration (PCA), London Court of International Arbitration (LCIA), the Cairo Regional Centre for International Commercial Arbitration (CRCICA) or some other regional or international arbitration⁶ (Begic, 2005).

Problems of ISDS System

The UNCTAD (2013) in its *World Investment Report*, notes that the working of ISDS has shown grave deficiencies. Crisis are related to legitimacy, absence of consistency and inaccurate decisions, issues of transparency, the way of arbitrator appointment, arbitrator's impartiality and independence and huge financial stakes. According to Eberhardt and Olivet (2012), 'ISDS is a partial system that puts the rights of investors over common interests, allowing foreign investors to bypass domestic legal mechanism of the host countries, and placing their self-interests above policy decisions and legal systems of sovereign governments.'⁷ Only investors can initiate litigation against host States through the ISDS system, making an inequality in the system and discrimination to domestic investors. Author further elaborate that 'arbitrators are not free and fair, each arbitrator gets huge amount on a case-to-case system, and arbitrators may also act as legal consultants for the foreign investors when not handling a case'. Once an arbitration tribunal has given a decision, there is no system of appeal or revision for losing party. Huge compensations can be demanded from States that are judged by arbitrators to have harmfully affected profit of investor (UNCTAD 2014). Analyst such as Schill (2015) has highlighted following problems of ISDS. First, the raising number of inconsistent and conflicting interpretations by IATs of agreed clauses of investment protection, not only under different BITs, but also in almost identical disputes initiated under the same BIT. Second, the broad worded investment treaties pay way for IATs to expensive interpretation of formulated principles of investment treaties, which creates unpredictability and uncertainty in IAT's decision making. Third, the inadequate respect paid by some arbitration tribunals to the necessity of host States to rule and regulate in the common public interest, like to protect public health, the environment, labour standards, or to react to financial and economic emergencies. Fourth, ISDS management problems particularly the confidentiality of proceedings, the impartiality and independence of arbitrators, and the issue that dispute settlement under ISDS creates a one party-owned business, in which other-party, even if impacted, is voiceless. Fifth, the absence of instruments to guarantee 'correct' interpretations of treaty clauses in line with the intents of the contracting parties. Sixth, the large expenses and extensive length of many arbitration proceedings, including in cases that are abusive or frivolous or are clearly lacking of merits.

Problems start with in the origin of ISDS system itself, as Legal basis of ISDS system is varied and complex, while various other dispute settlement instruments are fastened in well-defined treaty bases. ISDS's legal source is based on dispute resolution mechanisms or provisions contained in more than 3000 investment treaties, international conventions⁸ and different arbitration rules. Majority of BITs offer for ISDS. There are big differences in the detail and contents of these provisions (Gaukrodger and Gordon 2012). These ambiguous provisions are interpreted by arbitrators in a very expensive manner.

⁴ Decision on UNCITRAL Rules, UN. Documents. A/CN.9/IX/CRP. 4/Additional. 1, amended by UN. Documents. A/CN.9/SR. 178 (1976), reprinted in 15 *International Legal Materials* 701 (1976).

⁵ ICC Arbitration Rules 1998, 36 *International Legal Materials* 1604 (1997).

⁶ See Parra, A. R. 2000.

⁷ Friends of the Earth Europe. 2014.

⁸ Notably the ICSID Convention

Analysts such Roberts (2013) argue, that private dispute settlement system has been grafted into the public international investment law, and this according to Garcia *et al* (2015) has resulted into a non-transparent investment dispute settlement system, in which, it is impossible or very hard to know basic facts such as the name of disputing parties or the number of disputes or their results.⁹ These issues reflect the ISDS system's roots in private commercial dispute settlement, where secrecy is justified for the sake of business. However the major and critical problems of ISDS can be summarized as under.

Confidentially or non-Transparency

ISDS is conducted under rules that are mostly secretive. This secrecy violate the international human rights to public participation and information. Confidentiality or secrecy of cases is the critical problems of ISDS (Magraw 2015). In several occasions, it is impossible or at least very hard even to know that an investment dispute has been initiated, what the arguments and issues are and what conclusions or awards have been delivered to resolve the case. This absence of transparency has numerous negative effects. Like, it deteriorates the supposed legitimacy of the ISDS, and the decisions and awards given under it. Also, it prevents the States, public and investors from assess to what the responsibilities set forth in investment treaties actually mean in practice. It also creates tension between the ISDS system and the fundamental right to information. In any democratic State, public has fundamental right to know, were taxpayers money is used? (Osterwalder and Johnson 2011).

Most of the investment treaties do not oblige foreign investors to make public, their intention to file a dispute in IATs. Public release of dispute cases mostly depends on the arbitration rules selected by the disputing parties. For example, when ICSID is opted as the arbitration court, the confidentiality of arbitration process is protected by art. 48(5) of ICSID Convention, "*Centre shall not publish the award without the consent of the parties*" and by ICSID Arbitration Rules (Tahyar 1986). Although the ICSID has a policy of registration of cases. However, that register includes only the name of the disputing parties, the date of case registration and a very brief description of the dispute. Similarly, if the institution like (ICC or SCC) is chosen as arbitration facility there is no rule of making any information, public. Non-institutional or Ad hoc arbitration rules have no prerequisite of registration (OECD 2005). UNCITRAL rules are the most commonly used in an *ad hoc* arbitration, however, like other rules, they also have no provision for transparency as, *Article. 34(5) of UNCITRAL rules 2010 provide that it will not be make awards public, unless otherwise agreed by the parties,*. Although UNCITRAL in 2014 adopted a set of Rules on Transparency, but these rules do not apply to cases filed under BITs existing before 1 April, 2014 unless the agreed by Parties. The majority of ISDS cases are/will based on pre-2014 BITs, So UNCITRAL transparency rules may not apply in most of cases under ISDS (Magraw 2015).

Many recently concluded treaties also remain silent on issue of transparency in proceedings. Rather, they just refer to pre-existing arbitration rules, such as those under the ICSID, the rules developed by UNCITRAL, and less frequently, those issued by the ICC, the Arbitration Institute of the SCC, and other related arbitration bodies. SCC arbitration Rules also impose an obligation of confidentiality on the tribunal and the SCC itself as the article 45 says "*The SCC and the Arbitral Tribunal shall maintain the confidentiality of the arbitration and the award, unless otherwise agreed by the parties*".¹⁰ (Osterwalder and Johnson 2011). The ICC arbitration rules have a presumption of secrecy for awards and proceedings, and protect trade secrets and confidential business facts. Article 22 (3) of ICC Rules 2012 enables the

⁹ Like ICSID, UNCITRAL consent of disputing parties is prerequisite for publishes results

¹⁰ ICC, Arbitration Rules (2010), available

at http://www.sccinstitute.com/media/40120/arbitrationrules_eng_webbversion.pdf (accessed on 1 Nov 2016)

arbitration tribunal to make instructions regarding confidentiality and to take due actions to protect secret information.¹¹ LCIA is also in favour of confidentiality of awards and hearings. Article 19 and 30 of the LCIA Rules 2014 has provisions to impose duties of confidentiality¹²(Levander 2014). According to article of 19 (4), “All hearings shall be held in private, unless the parties agree otherwise in writing”. Also article 30 (1) says that “The parties undertake as a general principle to keep confidential all awards in the arbitration”, Similarly Article 30 (3) says that “The LCIA does not publish any award or any part of an award without the prior written consent of all parties and the Arbitral Tribunal”. The simple idea is that all aspects of the arbitration proceedings, including the arguments and the final award, will be confidential. Similarly, PCA, which mostly uses UNCITRAL rules, were Art. 34(5) of UNCITRAL provide that it will not be make awards public, unless otherwise agreed by the parties, also follow confidentiality.

Absence of Review or Appeal system

Review or appeal system for awards, is almost absent under ISDS mechanism. For example, according to Article 53 (1) of ICSID Convention, the most used arbitration rule “The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention”. Although a party can file for annulment under ICSID. However, annulment process does not determine error in the arbitration tribunal’s in applying of the respective law. Rather, request for annulment can only be approved on errors in process of law, not in the award itself, for example, an error in the constitution or procedure of tribunal.¹³ So annulment is not an alternate for an appeal (Wellhausen 2016). Also if an award under annulment is upheld by the annulment committee, member States of ICSID under Article 54 are obligatory to deal it as a final national judgment (Gaukrodger and Gordon 2012)¹⁴. However, according to UNCTAD (2014c) report ‘an ICSID annulment committee may not be able correct or annul an award, even after knowing the obvious errors of law. Furthermore, annulment committees are formed on an *ad hoc* basis for each dispute, they may also arrive at inconsistent decisions, thus further weakling the predictability of investment law. The report further points that the ICSID Convention drafters intentionally chose an annulment, not appeal mechanism. This reflected their intention of finality of awards. The role of annulment committee is not to correct errors or of law, but to guard the finality of the award and also to police the procedure of award. This has create a powerful and privileged path through which investors can contest the any policies of host States’.

Analysts such as Schreuer (2001) points that Article 52, requires annulment committee to turn a blind eye on a possibly erroneous decision and national laws tend to confine the grounds for review of awards.¹⁵ However, under non-ICSID Convention arbitrations, awards can be challenged under the commercial arbitration system created by national law, the New York Convention and other applicable treaties. National arbitration rules provide a list of grounds on which awards can be challenged (Katia 2006). However, most of national arbitration measures offer a list of grounds for non-enforcement of awards, contained in Article V of the New York Convention: (1) *the arbitrated agreement was not valid* (2) *denial of the losing party’s right to present its case* (3) *award was outside the scope of arbitration* (4) *the arbitral procedure was against parties’ agreement* (5) *the award has been set aside* (6) *arbitration*

¹¹ ICC, Arbitration Rules (1998), articles. 20.7, 21.3, 28.2

¹² Article. 36 and LCIA Arbitration Rules (1998). Article. 19, 30.

¹³ ICSID Convention, Rules and Regulations, chapter VII Interpretation, Annulment and Revision of the Award, Art. 50, (1) (c) (iii).

¹⁴ Article 54 of ICSID Convention

¹⁵ Article 52 of ICSID Convention, grounds for annulment.

was not needed for dispute (7) enforcement of award is not against public policy. Among these, first five grounds are related to procedural matters, and obviously do not permit national courts to appeal or review the Additional Facility awards¹⁶ rather, they are mostly same as grounds for annulment provided by ICSID Convention. Although ICSID once proposed for study of feasibility of Appeals Facility, however, in 2005, the proposal was dropped by ICSID,¹⁷ announcing that it was premature for such an attempt.¹⁸ According to Walsh (2006), the appeal provision would increase the scope of review from procedural (as provided under annulment) to correctness of an error in award itself.

A Very Expensive System

Dispute settlement under the ISDS is an expensive one. A huge amount of public money is at the stake. According to UNCTAD (2014c) data, in ISDS cases, on average, expenditures, including arbitrator's fees (which is almost amount to 82% of total expenditures) and tribunal costs are 8 million US\$ per case per party exceeding 30 million US\$ in some cases,¹⁹ but particularly for developing ones, this is a major burden on public money. Even if the host State ends up winning the case, arbitration tribunals have generally refrained from asking the foreign investor to pay the respondent's expenses. Sovereign governments are ordered by arbitration tribunals, to pay million dollars of amount to MNCs. In one such case in 2006, Occidental Petroleum²⁰ won the expensive award of 1769.00 million US\$ to date. This award generated a worldwide debate (Wellhausen 2016). Similarly, in 2003, the Czech Republic paid a company an amount 354 million US\$, (equal to than Czech's health budget). Republic of Ecuador has paid 1.1 billion US\$ to a US based MNC (which is equal to 90% of Ecuador's social welfare budget for 2015. According to Eberhardt (2016) while 95% of awards go to corporations with at least 1 billion US\$ in yearly revenue. In one dispute case, Libyan government was ordered to pay 905 million US\$ to a firm which had invested 5 million US\$ only (Eberhardt 2016). The Republic of the Philippines spent 58 million US\$ to defend two ISDS cases against a German investor – the equal to pays of 12,500 teachers for one year or the immunisation for almost 38,00000 children for prevention of diseases such as tetanus, TB, polio or diphtheria (Olivet 2011). According to Scherer (2011) 'in arbitration costs, the lion's share goes into the pockets of the lawyers. It is estimated that almost 80% of all legal costs are spent on counsel'. Table 4.1 gives few examples of highest paid compensations by States to foreign investors.

¹⁶John and Vaughan1999.

¹⁷ ICSID 2004, Discussion Paper 23, "Possible Improvements of the Framework for ICSID Arbitration", dated 22 Oct 2004), available at <http://www.worldbank.org/icsid/highlights/improve-arb.pdf> (accessed on 8 Sept. 2016)

¹⁸ ICSID 2005, Working Paper 4 "Suggested Changes to the ICSID Rules and Regulations", ICSID Secretariat, dated 12 May 2005, available at <http://www.worldbank.org/icsid /052405-sgmanual.pdf>.(accessed on 7 July 2016)

¹⁹ See Gaukrodger and Gordon 2012.

²⁰ A BIT based case between Occidental Petroleum vs. Republic of Ecuador.

Table 4.1, an Overview of Highest Compensation Paid in Investment Disputes at Global Level

Year of initiation	Case name	IAs Used	Amount awarded (or settled for)
2011	Crystallex International Corporation v. Bolivarian Republic of Venezuela	Canada - Venezuela, Bolivarian Republic of BIT (1996)	1202.00 million US\$
2007	Venezuela Holdings B.V. and others v. Bolivarian Republic of Venezuela	Netherlands - Venezuela, Bolivarian Republic of BIT (1991)	1600.00 million US\$
2006	Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)	Ecuador - United States of America BIT (1993)	1769.00 million US\$

Source, UNCTAD 2016d, authors self-analysis.

Third Party Litigation

Similarly, a grave problem of third party litigation funding is also a part of the ISDS system. This is has been defined as ‘a novel industry of institutional investors who invest or provide finance to litigation in return of a share in award and a contingency in the recovery’ (Steinitz 2011). A usual funding organisation comprises ‘a professional funding firm which pays client’s legal expenses on an interim basis. If he win, he pay a contingency expenses out of the damages, usually 20 to 50 percent of the damages. The huge expenses and potentially huge compensations characteristic of ISDS system could make it potential market for third party funders. At least two United Kingdom (UK) listed funds, Burford²¹ and Juridica²² and one Netherlands based, Omni Bridgeway, have explicitly targeted IIA claims for funding (Gaukrodger and Gordon 2012).²³ Banks, such as Citigroup²⁴ or Credit Suisse²⁵ and insurance corporations, such as Allianz,²⁶ are also having divisions to invest in investment and commercial disputes. Also some financial corporations like GE Capital have occasionally invested in lawsuit (Martin 1999). Usually, Burford or Juridica may invest 3 million to 10 million US\$ in a 25-100 million US\$ lawsuit²⁷ in exchange 10 to 45% of the damages awarded (Atherton 2009; Cremades 2011). Support for foreign investors by companies and individuals for political and economic reasons is also possible. However, third party funders mostly choose not to reveal their role to the opposing parties or to the arbitrators. So, it is difficult to determine the exact role of third party funders in ISDS. However, third party funding has been a serious issue in several ISDS cases recently.²⁸ Funders have regular interaction with ISDS arbitrators and also sponsor or attend arbitration industry events (Gaukrodger and Gordon 2012).

²¹ See website of Burford, available at <http://www.burfordcapital.com/> (accessed on 9 Sep. 2016)

²² See website of Juridica, available at <http://www.juridicainvestments.com/about-juridica.aspx> (accessed on 3 July 2016)

²³ See Website of Omni Bridgeway, available at <http://omnibridgeway.com/international-investment-treaty-disputes-2/>(accessed on 12 October 2016)

²⁴ See Appelbaum 2010. Citigroup (Counsel Financial) division.

²⁵ See Glater 2009. Credit Suisse with (Litigation Strategies Group) division

²⁶ See Herman 2007

²⁷ Supra 32 and 33

²⁸ Like dispute of *Abaclat v. Republic of Argentina*, Decision on Admissibility and Jurisdiction, ICSID (4 August 2011), Opinion of dissent of Prof. Georges Saad (28 October 2011).

This has raised a number of legal issues regarding confidentiality, disclosure, legal privilege, conflicts of interests, attorney-client relationship and cost issues.²⁹ However, the most serious problems of this can be summarized as: (1) third party funder's influence on arbitration hinders the possibility of a fair settlement of disputes. As funders need to get a huge profit, a settlement of dispute can be thwarted by the funder if there is unsatisfactory scope for them to be fully compensated. The control of litigation funders to influence dispute settlement only based on its monetary benefits is a cause that most times transcends arbitration.³⁰ (2) The litigation funder could possibly not only have the influence to select the lawyer but also to transform itself into an significant fee and work provider, inviting the favour of lawyers and weakening the lawyer's zeal to the client, hence adversely affecting the legal profession.³¹ (3) The litigation funding can also delay the dispute settlement and may 'artificially exaggerate' the dispute, because the claimant investor knows that if he wins, he have to give substantial amount of award to the funder. (4) Litigation funding could rise the number of investment disputes and could have huge economic costs for developing countries in view of the ample compensations generally awarded in investment arbitration according to Morpurgo (2011). (5) Any issue in the relationship between the funder and the investor or sudden refusal of the funder to pay amount can result in the discontinuation of the arbitration process (Brabandere and Lepeltak 2012). (6) According to Beisner *et al* (2009) third party financing encourages abusive and frivolous litigation. Litigation funders unlike contingency fee lawyers, lack the incentives like, (a) the moral duty to inform clients when potential dispute claims would be abusive or frivolous and (b) when attorneys are employed on contingency, they apparently spend much time on cases that are probable to be successful, as opposite to disputes with a low chance of success. (Beisner *et al* 2009; Cremades, 2011).

Unfair System and Lack of Expertise or Specialization

The study by Waibel and Wu (2010) proposes that two groups of frequently appointed investment dispute arbitrators, one appointed by States and the other by investors, were expressively more likely to make conclusions that were favourable to States and investors, respectively. It is also argued by some that ISDS is an unfair system, were most of the arbitrators are from developed countries. For example, investment arbitrators at ICSID are mostly from Europe and North America, and almost 75% belong to OECD countries (Frank 2009), were as most of the respondent States are from the developing south. Several researchers agree that ISDS system has legitimacy crisis. These crises are fuelled by the rising number of inconsistent decisions by arbitration tribunal. Staunch defenders of the system, such Dolzer (2014) even acknowledges that 'the current system of ISDS has not been designed to promote consistency or uniformity of either interpretation or rule-making, with the expansive costs we have seen'. According to Magraw (2015) 'mostly members of the three-member arbitration tribunal handling ISDS cases are white men. ISDS has grave ethical problems and BIT obligations are so ambiguous that they are incapable of expected application and give IATs too much discretion. It can be also observed that none of the investment arbitration rules mostly used by IATs require arbitrators to be experts of international law. The UNCITRAL, ICC and SCC Rules even do not require their arbitrators to be general legal experts. Although ICSID Convention needs its arbitrators to have some competency in law, but having being created specially to deal with investor disputes, it still makes no requirement for expert

²⁹ International Arbitration Attorney Network: Leading Legal Network of Independent International Arbitration Law Firms and Practitioners.2016. available at <https://international-arbitration-attorney.com/third-party-funders-international-arbitration/>, (accessed on 21 Sept.2016)

³⁰ Torterola1, Ignacio.2016. "Third Party Funding in International Investment Arbitration", available at http://investmentpolicyhub.unctad.org/Upload/Documents/Torterola_Third%20Party%20Funding%20in%20Arbitration.pdf (21 Sept 2016)

³¹ *ibid*

arbitrators. This apparently minor flaw has had a massive effect on the development of investment law to date (Marshall 2009).

Absence of Consolidation of Parallel Proceedings

The need for consolidation of claims arises when there are multiple and different arbitration proceedings initiated with common questions of fact or law which increase the chance of even conflicting or inconsistent awards. For example, after 2001 Argentinean economic crisis, almost 40 investment cases were filed by foreign investors, all linking to the same actions of the Government of Argentina, but grounded on numerous different BITs. In such cases multiple claimants seek compensation under the same BIT against the same Defendant State for the same actions³² (UNCTAD 2014c).

The most commonly used ICSID and UNCITRAL 1976 arbitration rules do not have provisions for the consolidation of multiple claims. Notably, they do not prevent such a motion either. In 2010, UNCITRAL amended its arbitration rules to address issue of joinder and new rules openly allow under Article 17 (5) *“one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds [...] that joinder should not be permitted because of prejudice to any of those parties.”* However, UNCITRAL arbitration Rules as amended in 2010 are silent on consolidation in conditions when all parties have not agreed to the same arbitration treaty (UNCTAD 2014c). For the first time, Consolidation provisions were found in BITs in the new model Canada FIPA³³ as well as new 2004 US Model BIT,³⁴ these model BITs provide for consolidation upon demand by a parties of dispute and not *ex officio* (Katia 2006). Scholars such as Tams (2006) point that one practical way of addressing issue of inconsistency in awards rendering is to consolidation of different but same fact based cases.

Inconsistent Decisions

However, the most critical problems of the ISDS system is of inconsistency. In several cases, IATs came with either inconsistent results or reasoning. Franck (2005a) argues that, some inconsistencies practically may be attributed to significant differences in conduct, situation, or text, however having the same facts but different results remain critically problematic, ISDS is a substantial example of this, were arbitration tribunals have evaluated a similar treaty provision in IIA, but still come with dissimilar conclusions about the applicability, existence or forms of a claimed right, making whole ISDS, a unreliable and doubtful system. Inconsistency is root cause of number of other problems at ISDS. For example, inconsistency gives rise to other challenges, including lack of reliability, predictability, and transparency as to the rule of law and its application (McGowan 2005).

Conclusion

ISDS was initially created to de-politicize the investment dispute settlement mechanism. However, in the actual practice, this system came under strong criticism for its flaws like confidentiality, inconsistency, non-transparency, expensive etc. Although, several alternate mechanism at national and regional level

³² See Canadian Cattlemen for Fair Trade v. US, UNCITRAL, Award on Jurisdiction, dated January 28, 2008, available at <http://www.italaw.com/sites/default/files/case-documents/ita0114.pdf> (accessed on 9 Nov 2016)

³³ Article 32 of new model Canada FIPA , available at www.dfait-maeci.gc.ca/tna-nac/documents/2004-FIPA-model-en.pdf (accessed on 24 July 2016)

³⁴ Article 33 of 2004 US Model BIT, available at in www.state.gov/documents/organization/38710.pdf. (accessed on 9 June 2016)

were proposed, however, results are insufficient. Therefore a free and fair system for investment dispute settlement, based on the consent of all stakeholders (states, investors and development objectives) is need of the hour.

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