

GOVERNANCE WITH SUSTAINABLE DEVELOPMENT :  
OVERCOMING THE BARRIERS

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# Abstract

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Indian organisations often face allegations or charges of red-tapism whereby collected evidences for future planning with sustainable development become inaccessible due to a number of reasons. Whereas it is pertinent to note that, governance of a state/nation depends upon the trust of the people to receive tangible/intangible opportunities for development in the socio-economic, legal environment. When there is deficit of trust due to corrupt practices, tracing the source for decision becomes a herculean task. The authors hypothesize that the evidences collected through investigations end up being discarded or locked up and stacked in files and never is considered for relevant for future decisions. We propose to find the actionable forces who try to use ‘power’ to strategically attain their desired goals. The paper intends to discuss the role of interested groups or state actors (top bureaucratic, politicians, and business houses) who have access to such information where scientific probe could be set up and evidence gets collected for larger good of the society. The authors hypothesize that stakeholders would incrementally destroy the core evidences such that relevant information gets disjointed for future decision making and sustainable development to give themselves a raised platform to continue their power wielding. The authors intend to compare UK model of evidence generation with that of Indian model. We propose to highlight the necessary changes to formulate relevant laws and procedures with respect to evidence collection and the accessibility of information of the policy making decisions of the governments.

**Key words:** State actors, governance, decision making, evidence collection, sustainable development.

## GOVERNANCE WITH SUSTAINABLE DEVELOPMENT: OVERCOMING THE BARRIERS

The evidence based scientific model of decision making and proper treatment of the evidences has been a theory which has found alignment with the whole vision of the governments and citizens worldwide. The modernist approach to the evidence generation and policy making has shown that countries especially like UK have benefitted immensely from the experiences. The rationalist assumptions of evidence has always been under severe criticism and it is to be noted that the relevance and importance of the correct and verifiable evidences can never be curtailed and the importance is enhanced by the fact that the need of today in the subcontinent has to be of an informed policy decisions, which contributes immensely towards the interactive regime of the governments and improves the efficiency of the social systems as “Reflexive social learning” forms the basis for such an interactive regime. The expanded use of piloting new policies and programmes by the current Indian Government is considered to provide very narrow and constricted scope for evaluation to derive reliable evidence of whether policies work. There is a need for greater clarity about the role of evaluation in situations where piloting essentially constitutes treatment and research of causes. More emphasis should be placed on developing a sound evidence base for policy through long term impact evaluations of policies and programmes.

### INTRODUCTION

The whole set up of enlightenment has strongly stood in guard against post modernist<sup>1</sup> attacks on notions of rationality. Despite the ‘rage against reason’<sup>2</sup> the theorists still feel that the scientific inquiry has gained mass connect and is the order of the decade. The yearning to understand that the policies are dependent on the basis of what works for whom this underlies the view of evidence based policy making as it simply means policies ought to, should and would work better if we understand how policy mechanisms bring about change in social systems to achieve desired outcomes<sup>3</sup>. The modernist approach has been seen over the past few decades to base the policies on the researched evidences, in UK and few other parts of the world. An era of knowledge, awareness and information boom has increased public scrutiny and intervention in the various social, economical and political areas. The

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<sup>1</sup> Postmodernism is a very wide term used in various fields, it largely is a reaction to scientific or objective efforts to explain reality.

<sup>2</sup> Bernstein, *Philosophy and Literature*, 1986, Vol. 10, No.2 pp. 186-210

<sup>3</sup> Pawson & Tilley, *Realistic Evaluation*, 1997, Sage Publications, London

governments thus have to take recourse to the evidence based policy making decisions to justify their stand and keep themselves in the reckoning with the public. The Organization for Economic Cooperation and Development<sup>4</sup> (1994) has argued that ‘results-oriented management’ provides a new management paradigm. As the case is the practices used by various management organizations can prove to be a key determinant for the governance with sustainable development.

The relationship of social science and policy had been initiated in the UK with the report of the Heyworth Committee<sup>5</sup> on Social Science when it recommended an expansion on the social science research and led to the establishment of the Social Science Research Council (SSRC)<sup>6</sup>. The increase in public expenditure and the demand for information on social problems has clear linkage with the effect and impact on public policies. However the relationship has always been a problematic one in the UK due to political culture, which has largely been tilting towards the evidence based policy rather than the ‘rational knowledge’. India is going through a very similar process, the government<sup>7</sup> initiated the liberalization era in the 1990’s<sup>8</sup> and India ushered into a completely changed era from there and the results are now clearly being seen as it is considered the next superpower with China<sup>9</sup>, but unlike China, the Indian Model of governance suffers from Vote bank Politics approach and therefore there is a difficulty in implementing policies.

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<sup>4</sup><http://www.oecd.org/development/evaluationofdevelopmentprogrammes/1886527.pdf> Last Accessed on 12<sup>th</sup> September, 2012, Organization for Economic Co-operation and Development.

<sup>5</sup>Heyworth Committee Report (Recommendations), HC Deb 28 April 1969 vol. 782 c946

<sup>6</sup> Social Science Research Council, (SSRC) was created by Act of Parliament in 1965 and later it came to be known as Economic and Social Research Council, (ESRC) from 1<sup>st</sup> January, 1984 (Donovan, C. 2002)

<sup>7</sup> The 11<sup>th</sup> Five Year Plan, 2007-12.

<sup>8</sup>[www.india.gov.in](http://www.india.gov.in), The economic liberalisation in India refers to ongoing economic reforms in India that started on 24 July 1991

<sup>9</sup> The Chinese government follows a communist regime, therefore being under strict control and monitoring. Oded Shenkar and Mary Ann von Glinow, *Paradoxes of Organizational Theory and Research: Using the Case of China to Illustrate National Contingency Management Science*, Vol. 40, No. 1, Focused Issue: Is Management Science International? (Jan., 1994), pp. 56-71

Indian investigative agencies in the past few years have failed to align the need or research oriented evidence, based decision and policy making with the delivery of it. What begs of the country's high command is the approach that many think is expected from a powerful democratic nation and brings into line the highest standards of professionalism with best practices, and sets the benchmark for opaque functioning of the Governmental offices and the Corporate houses. In the last decade India saw an upsurge in multiple scams and this led to a political turmoil. Hence the country has opened to debate whether the treatment of evidence needs to be dealt more efficiently or not.

There are two main forms of evidence required in this approach to improving governmental effectiveness. The first evidence to promote accountability in terms of results – evidence that government is working effectively. The second is evidence to promote improvement through more effective policies and programmes – evidence of how well such policies and programmes 'work' in different circumstances.<sup>10</sup> These two forms of evidences are different in nature. The first is primarily in the form of information on attributes of performance and is reflected in the growth of performance management in the government. The second form of evidence is qualitatively different from the first.

The paper proposes that both the forms of evidences in the Indian scenario need to be cohesively made to work in an amicable and a harmonious way.

The paper deals within its ambit the best practices implemented in the UK model of evidence and tries to align them with the current Indian system and suggest the necessary changes to the status quo.

Evidence can inform the development and implementation of policy in number of ways. The emphasis is usually placed upon the two aspects included in Plewis'<sup>11</sup> definition:

- i. Evidence of the likely effectiveness of policy options to inform decisions on what policy action to take.

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<sup>10</sup> Sophia Sutcliffe and Julius Court, *Evidence Based Policy Making : What is it? How is it? What relevance for developing countries*, Can be accessed at <http://www.odi.org.uk/resources/docs/3683.pdf>

<sup>11</sup> Plewis, I. '*Educational inequalities and education action zones*', in C. Pantazis and D. Gordon (eds), *Tackling inequalities: where are we now and what can be done*. Bristol: Policy Press 2000.

- ii. Second; evidence from evaluations of policies as implemented to informed decisions on whether to continue or how to adjust and improve policies and to contribute to the evidence base to inform future consideration of policy options.

The lesser attention is paid to other important aspects out of which the first of these is evidence of problems and needs requiring public policy intervention; a better understanding of the specific nature and incidence of social problems is fundamental to improving the effectiveness of policy responses. The second related aspect concerns the process of objective setting; thus, an improved understanding of the problem to be addressed and of the effectiveness of public policy options will help to inform the deliberations of key stakeholders in the process of setting objectives.

The current situation is a far cry from the one that enthralls faith and confidence, the modern government must be aware, that evaluation in particular is required to play an enhanced role in providing information on performance to enhance accountability and ‘control by results’ and in providing evidence of what works to inform policy learning and improvement.

It has been quoted by Kogan<sup>12</sup> that governments will seek to legitimize their policies with reference to the notion of evidence based decision making but use research evidence only when it supports politically- driven priorities. The Indian subcontinent has been a testimony of the fact that the ultimate goal and the objective of a politician is to be re-elected to power than to respect policy making or treatment of evidences.<sup>13</sup> As J.M. Keynes<sup>14</sup> once famously said: ‘There is nothing a politician likes so little as to be well informed; it makes decision making so complex and difficult.’ The ideal model of evidence based policy making is predicated upon certain assumptions relating to the nature of knowledge and evidence;

- i. the way in which social systems and policies work;
- ii. the ways in which evaluation can provide the evidence needed;
- iii. the basis upon which we can identify successful or good practice;

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<sup>12</sup> Kogan, M. ‘*The impact of research on policy*’, in F. Coffield (ed.), *Research and policy in lifelong learning*. Bristol: Policy Press, 1999

<sup>13</sup> Cook, T.D. ‘*Lessons learned in evaluation over the past 25 years*’, in E. Chelimsky and W.R. Shadish (eds), *Evaluation for the 21st century: a handbook*. Thousand Oaks: Sage. 1997

<sup>14</sup><http://finohta.stakes.fi/NR/rdonlyres/6577217E-7F88-4A2E-8D03-BD8007D450AB/0/OxmanCC.pdf>

- iv. and the ways in which evaluation evidence is applied in improving policy and practice.

The notion of evidence based policy and practice has found suitability with the rational decision making model of the 'policy process' Such a conceptualization of the process of policy formulation and implementation has long dominated the field of policy studies<sup>15</sup>. Thus it appears to be proper heuristics both available and representative based upon the principle of satisficing<sup>16</sup>. By applying rational decision making model we can scrutinize evidence more efficiently and we can achieve more benefits. If policy is goal-driven, evaluation should be goal oriented. Such evaluation completes the cycle and provides feedback to improve the policy.<sup>17</sup>

In order to counter the heuristics model we need to have a rational decision making model based on facts (Evidences). 'The ideal form of knowledge to provide a firm new basis for this project is seen as derived through quantitative methodologies, empirically – tested and validated'. The study of the Performance and Innovation Unit of the UK<sup>18</sup> cabinet office on improving the role of analysis in policy making, it puts the ultimate need of better data, modelling especially econometric and more use of longitudinal and experimental research designs – an essentially quantitative agenda. The 1999 cabinet office report<sup>19</sup> on developing 'professional policy making' has talked about the need of the government being of skilful policy makers who have specific knowledge thus having specialization in economics, statistics and science disciplines.

### **The Best practices of the UK model and aligning the Indian system with it**

Making policies based on sound and proper evidence is not a new innovative piece of thinking, what is new and interesting however, is the increasing emphasis that has been placed on the concept in the UK over the last decade. The term Evidence Based Policy gained

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<sup>15</sup> H.K. Colebatch, *Policy*, Open University Press, *Buckingham*, 1998, p.122

<sup>16</sup> Accessed on 12<sup>th</sup> September, 2012

<http://www.courses.cs.tamu.edu/cpsc681/walker/has.essay>.

<sup>17</sup> Parsons, W. *Public policy: an introduction to the theory and practice of policy analysis*. Cheltenham, 1995

<sup>18</sup> *Adding it up: improving analysis and modelling in Central Government*. London: Central Office of Information, 2000

<sup>19</sup> *Professional policy making for the twenty first century*. Strategic Policy Team. London: Cabinet Office, 1999b

political mileage under the Blair administration since 1997. It was intended to signify the entry of a government with a modernising mandate, committed to replacing ideologically-driven politics with rational decision making. Evidence Based Policy has now become a focus for a range of policy communities, whether government departments, research organisations or think-tanks.<sup>20</sup>

The figure below provides a generic characterisation of the flow of evidence in the policy process. The differentiation between the agenda setting, formulation and monitoring. The figure symbolizes the need for different evidences for different policies and different parts in the making of policies.

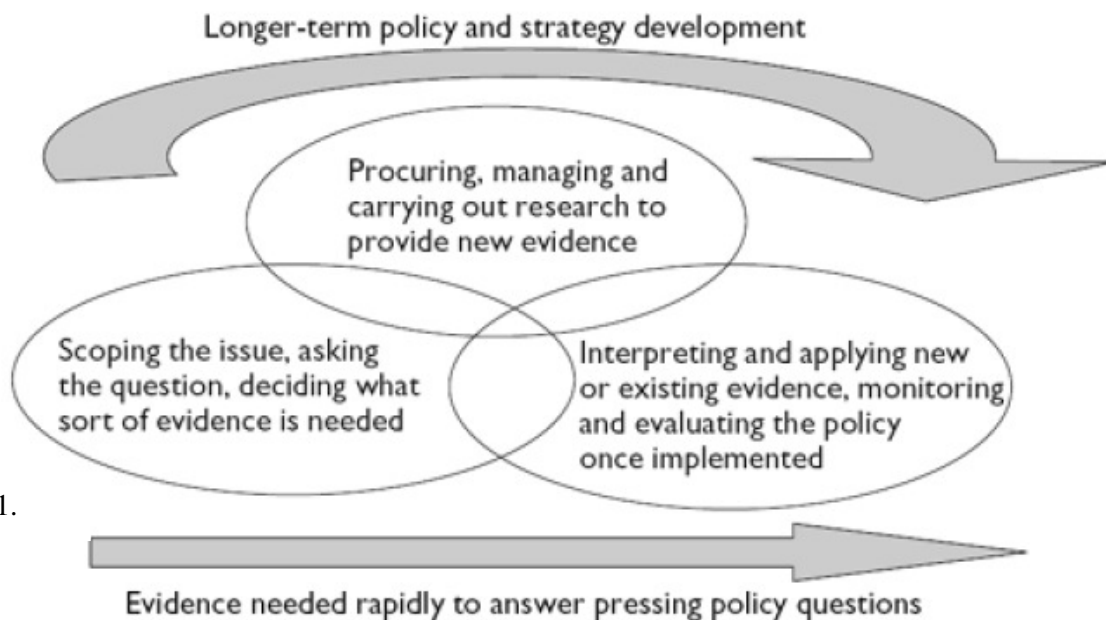


Figure 1.

Source : Shaxson (2005)

Although the emphasis has been on evidence based policymaking since 1999 in England, only in September did the Cabinet Office publish ‘Professional Policy Making for the Twenty First Century’ which sets out three themes (vision, effectiveness and continuous improvement) and nine key characteristics which policymaking should aspire to:-<sup>21</sup>

<sup>20</sup> Ian Sanderson, *Evaluation, Policy Learning and Evidence-Based Policy Making*, Public Administration, Vol. 80. No. 1, 2002 pp.1-22

<sup>21</sup> Professional Policy Making for the Twenty First Century (Strategic Policy Making Team, Cabinet Office) <http://www.policyhub.gov.uk/docs/profpolicymaking.pdf>



- Forward looking: takes a long term view of the likely impact of policy
- Outward looking: takes account of influencing factors and learns from elsewhere
- Innovative and creative: questions the status quo and is open to new ideas
- Evidence based: uses the best available evidence from a wide range of sources
- Inclusive: is fair and takes account of the interests of all
- Joined up: works across institutional boundaries and considers implementation
- Reviews: keeps policy under review
- Evaluates: builds evaluation into the policy process
- Learns lessons: learns from experience of what works and what does not

### **A few of the Specific tools used by the UK government**

#### *Overview and Checklist*

1. **Impact Assessment and Appraisal: guidance checklist for policy makers :** Policy decisions need to be informed by taking account of key issues and the needs of different groups to deliver a fairer, more inclusive and more competitive society. The Strategy Unit has compiled a checklist which is designed to help policymakers identify those issues and provides guidance on best practice so that they can provide effective advice to Ministers. This quick reference guide replaces the Policy Makers' Checklist which was previously on the Cabinet Office Regulatory Impact Unit website.

#### *Strategy and Policy Evaluation*

2. **Strategy Survival Guide:** The Strategy Survival Guide aims to support strategy development and promote strategic thinking in government. It encourages a project-based approach to developing strategy and describes four typical project phases. It also discusses a range of skills and useful tools and approaches that can help to foster

strategic thinking. It is offered as a resource and reference guide, and is not intended as a prescription or off-the-shelf solution to successful strategy work.

3. **Magenta Book: Guidance notes on Policy Evaluation** : The Magenta Book is a series of guidance notes on policy evaluation and analysis which are intended to help 'intelligent customers' and 'intelligent providers' determine what constitutes high quality work in the field of policy evaluation and analysis. The guidance notes complement HM Treasury's Guide to Economic Appraisal , which is more commonly known as *The Green Book* and other sources of guidance from within government
4. **Green Book: Appraisal and evaluation in Central Government:** The Green Book provides guidance on the economic appraisal of cost and benefits of policy options to HM Treasury. It sets out the general approach to carrying out options' appraisal (combined with cost benefit analysis) of all government intervention. This is a requirement for all expenditure and of all new policy actions which may have an impact on businesses, charities, the voluntary or the rest of the public sector. The Green Book discusses risk and uncertainty in general terms.
5. **Regulatory Impact Assessment (RIA)** : Regulatory Impact Assessment is a tool developed by the Cabinet Office, which aims to improve the chain of causality between evidence and advice (Shaxon, 2005: 102). *'In August 1998, the Prime Minister announced that no proposal for regulation which has an impact on business, charities or the voluntary sector should be considered by Ministers without a regulatory impact assessment being carried out.'*<sup>16</sup> It is a methodology for designing precise, targeted regulations that achieve legitimate policy aims with the minimum burden on those affected.

*Ensuring Key Perspectives are Included*

6. **Incorporating regional perspectives** into policy making toolkit (Subnational) (Cabinet Office, ODPM, 2002): This tool kit aims to ensure that policymaking is informed by a proper understanding of regional issues and priorities. It is intended to be a practical resource to support new thinking and a set of ideas and techniques that can be used to design better policymaking processes. The toolkit contains exercises to promote learning, encourage successful working and promote integrated policy development.
7. **International Comparisons in Policy Making Toolkit (CMPS, 2002)**: This toolkit is a response to the *Modernising Government* White Paper, which stated that government needed to become ‘*more forward and outward looking*’ (Cabinet Office, 1999), meaning learning lessons from other countries and integrating the European Union and international dimension into policymaking; ‘expand your horizons’. The toolkit pack is intended to provide practical help and guidance to policymakers in the use of international comparisons in policymaking.
8. **Gender Impact Assessment: a framework for gender mainstreaming** : The Gender Impact Assessment provides help for policymakers in incorporating a gender perspective into policies that takes account of the different needs, characteristics and behaviors of the users at which they are aimed.
9. **Managing risks to the public: Appraisal Guidance (HM Treasury, 2005)** :This is a supplementary guide to the Green Book, Appraisal and Evaluation in Central Government. It provides guidance for developing and assessing proposals that affect the risk of fatalities, injury and other harm to the public in line with the Government’s Principles of Managing Risks to the Public – openness and transparency, involvement, proportionality and consistency, evidence and responsibility<sup>22</sup>. The

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<sup>22</sup> [www.hmtesury.gov.uk/media/C87/A1/risk\\_principles\\_180903.pdf](http://www.hmtesury.gov.uk/media/C87/A1/risk_principles_180903.pdf).

guide also contains a tool to help structure and make explicit the evaluation of concerns that may exist about risks of fatality and harm.

### *Testing Policy Ideas*

- 10. Policy Pilots:** Policy piloting is an important tool in policy development, delivery and the identification of what works. Policy pilots are an important innovation in recent years which allow for the phased introduction of major government policies or programmes. This means that policies can be tested, evaluated and adjusted where necessary, before being rolled out nationally. A recent review of pilots by the UK Cabinet Office (2003) identified impact pilots, process pilots and phased implementation projects.

### *Public-orientated Tools*

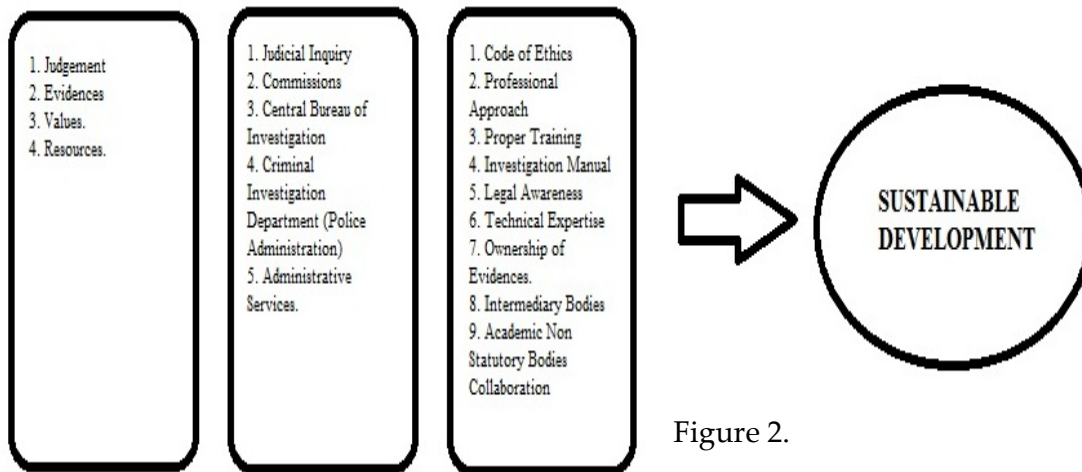
- 11. Concern Assessment Tool:** The Concern Assessment tool puts forward a framework for understanding people's concerns in order that they can be considered in policy development, and in the development of related consultation arrangements and communication strategies. The assessment framework is based around six risk characteristics that research suggests are indicators of public concern. Two of the characteristics relate to the nature of the hazard (Familiarity and Experience; and Understanding), two relate to the risk's consequences (Fear or Dread; and Equity and Benefits) and two relate to risk management (Control and Trust).
- 12. Community Engagement How to Guide :** Community planning aims to improve the quality and delivery of public services. At its heart is the importance of ensuring that all groups and communities are equally involved in the planning and managing of local services. The aim of this guide is to provide community planning partners, including community representatives, with help in this process.

**13. Connecting with Users and Citizens :** This report aims to inform and encourage public sector service providers to develop new and effective ways of involving local people in improving the services they use. The guide is centred on examples of good practice from a range of sources, setting out how specific issues, involved in consulting, communicating with and involving service users, have been tackled. It encourages the cross-fertilisation of ideas from local government, health and criminal justice.

*Getting Better Advice and Evidence*

**14. Expert Advisory Bodies for Policymakers:** Permanent Advisory bodies are appointed by the government for independent advice on policy issues. They vary in mandate, agenda and appointment. Germany's Council of Economic Experts is charged with a broad mandate, while many advisory bodies are limited to single issues, such as the arts or science policy. Sometimes advisory bodies are afforded substantial leeway over their own agenda; sometimes studies are undertaken only on request of government. In some cases, members of these bodies are appointed solely by the government, while in others interest groups have input as well.

***PROBLEMS IN ENSURING EVIDENCE BASED INVESTIGATION TO REACH THE STAGE OF SUSTAINABLE DEVELOPMENT.***



The above model suggests that the areas that affect sustainable development and the actors that carry out various investigations and evidence collection the suggestions for the improvement of the process of the governance all contribute towards the governance with sustainable development.

In the Indian context what essentially is lacking is the will of the governmental authorities to implement policies and also make policies that find their base in sound evidences.

The Indian government has had to face challenges with respect to the deficit of trust of its citizens due to various scams that have engulfed the government in the recent past.

There is a strong culture of votebank politics and the hierarchical structure is dominating the ethical and moral consideration of policy making for the larger good of the public.

Though the argument of the country being huge and very diverse in nature seems tenable for the perfect implementation of laws and policies, but there has been absolutely no inclination towards making a uniform system of evidence generation techniques and treatment of the generated evidence and thus the policies made on the collected evidences shall be up to date.

In India's case it can be safely assumed that an experimenting society would be active, preferring innovation to inaction; it would be an evolutionary, learning society and an honest society, committed to reality testing, to self criticism and to avoiding self-deception ; it would be non-dogmatic, accountable, decentralized and scientific.

Dunsire (1986)<sup>23</sup> argued that under conditions of uncertainty about the ex ante ‘correctness’ of policy decisions and about capacities to implement policies as intended, there is a need to strengthen the role of evaluation in providing up-to-date, relevant information on actual performance, and to build capacity to take action to modify policy design and implementation in the light of such information.<sup>24</sup>

In a situation like India where there are parallel and multiple agencies that collect evidences<sup>25</sup> it is not a preferable scenario to be in, as the country’s central bureau of investigation which was created under the Delhi Special Police Establishment Act, 1946<sup>26</sup> has been under the Prime Minister’s office for long and also there is a double standard of initiating CBI investigation when the CBI wants to conduct inquiry it has to first take permission from the State government but when there is a need felt by the High Courts of states or The Supreme Court then there is no prior permission required by the CBI to investigate and collect evidence. Therefore, there has been a special draft and recommendation by the Parliamentary committee’s which have recommended the replacement of DSPE act by an independent CBI Act keeping in view the constraints and rising challenges. There also has been a Draft CBI Act of 2010 to the effect.<sup>27</sup>

Another lacunae in the Indian model that needs to be reconciled is that the bureaucratic authorities and other judicial authorities that are given the task of inquiry when the court think that the investigation has not been properly done or needs even more inquest on the issue they are not fully trained and equipped at the collection of the evidences.

Then there are special Commissions that are set up for looking into matters pertaining specially to a specific area viz. National Commission for Women<sup>28</sup>, who address the issues and collect evidences for the action of the government in cases against the violation of rights of women. The most basic problem with such commissions is that most of the members of the commission are or have been the part of the youth wing of the political parties and are not

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<sup>23</sup> A. Dunsire, ‘A cybernetic view of guidance, control and evaluation in public sector’ in F.X. Kaufmann, G. Majone, V. Ostrom and W. Wirth (eds), *Guidance, control and evaluation in the public sector*. Berlin : Walter de Gruyter

<sup>24</sup> Ian Sanderson, *Evaluation, Policy Learning and Evidence Based Policy Making*,

<sup>25</sup> Refer to Figure 2.

<sup>26</sup> Delhi Special Police Establishment Act, 1946 can be Accessed at <http://www.cbi.gov.in>

<sup>27</sup> The draft can be accessed at

[http://www.prsindia.org/uploads/media/draft/draft\\_cbi\\_act2010.pdf](http://www.prsindia.org/uploads/media/draft/draft_cbi_act2010.pdf)

<sup>28</sup> Can be Accessed at <http://ncw.nic.in/>

properly trained to collect evidences and conduct investigation in a proper manner. In the most recent incident of violence against Women in the Indian state of Sikkim the team was sent to collect evidence from the area and there was a lackadaisical attitude of the team that was reported, well such incidences have become common because of the various actors involved and multiple channel of authorities and evidence collection agencies being present at one point of time. There is a lack of proper training for evidence collection and there being no agency to treat the evidences correctly it ends up being discarded more often than not.

An important dimension of investigation conducted by CBI or Commission is based through a policy making is centralised in the authority at the centre or state takes the decision to probe an issue and authorises the members to investigate. Paradoxically, there have been number occasions where central government held the controls of exercise of powers of CBI. It continuously provided orders to make CBI highly dependent on itself i.e., government even in conducting its operations. For example it is well known During Rajiv Gandhi's time, a Single Directive was issued by the government, prescribing that no case against an officer of the rank of Joint Secretary and above would even be registered without written permission from the head of the government. Later, Havala case, the Supreme Court struck down the Directive as illegal, but the Government of India has again brought it back by including it in the Central Vigilance Commission Act of 2003, which was passed recently by the Parliament. Earlier, it was only a set of executive instructions; now it has become a part of law. There is dichotomy where autonomy of premier institutions of investigation get scuttled by ensuring 'due permission'. This leads to confusion where actors are dependent and interdependent on each other for conduct of investigation, Government as competent authority – the agencies who directly or indirectly maintain relations they said Government, and power dynamics between both the institutions.

Many times the appropriate evidence collection mechanism gets effected while conduct of investigation which is based on three fundamental aspects, namely:- (i) legislation, (ii) Institution policies and most importantly (iii) the bureaucratic and administrative practices.

The Illustrative proof of the need to bring a professional integrated approach towards evidence and investigation has been the bofors scam and the fodder scam where there were allegations of red tapism and the integrity of the investigations and the presentations of evidences was questioned.



The case of Bofors deal has been a glaring example of how the investigative agency and the evidence collection system in the Indian Subcontinent need an overhauling, there are calls for serious changes being made to the system in order to increase efficiency of the evidence collection and presentation of the evidences in the proper order.

In the Bofors deal , the political power wielding took precedence over proper decision making and policy formulation. And due to the weak presentation of the case by the CBI it has been said that the accused have all been let out on the basis of no case being made against them.<sup>29</sup>

This was a peculiar case where there was no collection of proper evidences even when there were obvious problem of the Prime Minister's Involvement in the matter, when the Swedish Court to extradite the accused in absence of a bilateral treaty simply wanted a court order and the CBI failed to even furnish that.

Although, the sensitivity is of substantial concern, where matters concerning investigation to be conducted as per the orders given competent authority, i.e., the Government at the State or the Centre, Judicial inquiry, an important question is how can dealing with evidence collection, role of various investigating agencies lead to sustainable development. The notion of evidence based policy and practice enhances the chances of rational decision making of the planners<sup>30</sup>.The policy planners in dealing with investigation are often influenced by various factors, namely (i) the problem in investigation, the values of political party, informational resources, and internal and external stakeholders. When standard operating procedures<sup>31</sup>, are laid down in order to formulate good policy for investigation<sup>32</sup> in a very similar way like the Green Book or the Magenta Book of the UK model, then there is very less scope of investigators lacking in what is essentially the building block of the way evidences are to be collected. Such an endeavour, which contains inherent checks and balances in the system, leads to sustainable development. The complexity mounts, when there are multiple

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<sup>29</sup> The article on the extradition

<http://www.frontlineonnet.com/fl2405/stories/20070323004212300.htm>

<sup>30</sup> Nutley, S. and Webb, J.(2000). "*Evidence and the policy process*",in H.T.O Davis, S.M.Nutley and P.Smith (eds) *what works? Evidence-based policy and practice in public services*.

<sup>31</sup> Standard Operating Procedures Human Ethics Committee, Tata Memorial Centre Tata Memorial Hospital <http://www.tatamemorialcentre.com/research/pdf/TMC-HEC-SOP.pdf> Accessed on 5th September, 2012

<sup>32</sup> National Human Rights Commission Report, 1998-99

organisations like (i) Investigations conducted police administration, (ii) Central Bureau of Investigation, (iii) Judicial inquiry (iv) National Commission for women conduct varied forms of investigation. Additionally, the non-state actors like non-governmental organisations and media often use pressure tactics like sting operations, media campaigns<sup>33</sup> to either to probe into or conduct parallel investigations to exert pressure.

In Indian, Bureaucratic system there is a gap when it comes to a very important aspect of evidence collection and the issue of Immunity v. Permission for a competent authority and when the subordinate in good faith follows the orders of the authority and therefore keeping at stake the any code of operating procedures.

#### **STEPS NEED TO BE TAKEN TO IMPROVE THE SCENARIO IN THE INDIAN SUB CONTINENT**

1. The policymakers need to understand the value of evidence and become more informed as to what research is available and must necessarily know how to gain access to it and be able to critically appraise it.
2. The relationship works only when the policy makers and the researchers work hand in hand, more closely together to ensure that there is an agreement between policymakers and researchers, and within the research community, as to what constitutes evidence.
3. The researchers and policymakers must be made to 'own' evidence and therefore gain commitment and buy-in at appropriate levels.
4. In the central government *this usually means getting Ministers and senior policy officials to sign up to the ownership of a project and the evidence that goes to support it* this involves making a commitment to use findings whether or not they support the project, and therefore not to continue with the policy or programme, if the evidence reveals that it is ineffective
5. Better incentives also need to be established to encourage the use of evidence.
6. Institutional bridges needs to be built which provide for better interaction

The authors suggest that the need of the hour is for an inclusive approach to allow statutory as well as non statutory academic bodies to collect evidences. The early involvement of in-

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<sup>33</sup> <http://www.tehelka.com/> Accessed on 12<sup>th</sup> September, 2012

house and 'outside' researchers in the policymaking process. More integrated teams would help researchers to better understand the sorts of questions that they need answered

7. Setting up of Intermediary bodies :- as is evident from the UK experiment with the setting up of such intermediaries that contribute towards the research process for eg. National Institute for Clinical Excellence; the NHS Centre for Reviews and Dissemination; the Cochrane collaboration; in education the Centre for Evidence-informed Education Policy and Practice; in social policy, centres such as the Centre for the Analysis of Social Exclusion at the LSE, the Social Care Institute for Excellence, the Campbell collaboration and the ESRC Centre for Evidence based policy and practice.

We hereby highlight measures through which sustainable development could be achieved.

1. Officers undertaking Investigation should not have political affiliations/patronages.

The Central and State Government, exercising its executive powers nominate the officials to conduct investigation. It is also observed that there a greater political control over the members conducting investigation and there by leading to possibility of misuse of authority, led to uncivilized mistreatment, erosion professional approach organisation. As employees of administrative services, the investigative officers are often under the threat of being transferred or suspended, which is often used by any ruling party politician to bend the investigating officers succumb to their whimsical considerations. Once the political party in government appoints members to conduct investigation, it should not interfere with the modalities of investigation and the results thereon. The outcomes of the investigations should emerge as a natural process.

We hereby submit that there should however be no instructions by the government with regards to actual operations of investigation in the field. In conduct of investigation work, members of police department, Central Bureau of Investigations or commissions, probe a case with a degree of professionalization In regard to investigation work, and any interference with investigation would be detrimental to the findings itself. An element of discomfoting relations and scope for feudalistic approach may be present on account of the roles they play i.e., 'the governor' and 'the governed'. This is often termed as pluralistic ways of governance due to dichotomy where government is formed by elected representatives for a 'term' office

and administration of governance is run through the shoulders of administrative staff. The representing officers during an investigation are often subjected to illegal orders, punitive actions hurdles in promotions, only for non compliance of the instructions by the members of the ruling government. We therefore, suggest that broad policy guidelines and directions should be laid down the members in government and investigating agencies to establish norms of expected performance norms such that the outcomes will be subjected to social audited. This helps in verification of general health and the functioning of the investigating officers in the state.

2. Adequate training should be provided at the time of collection of evidence and ensure proper handling such that sample of evidences are not damaged. In the Indian set up of police investigations most of the time the subordinates under the officer who has been given the charge of collection of evidences more often than note end up destroying the crime scene, and do not have proper training to collect the necessary details. Infrastructural facilities available to the Investigating Officers specially in regard to accommodation, mobility, connectivity, use of technology, training facilities etc. are grossly inadequate and they need to be improved on top priority. It is recommended a five year rolling plan be prepared and adequate funds are made available to meet the basic requirements of personnel and infrastructure of the police. The training infrastructure, both at the level of Central Govt. and State Govts., should be strengthened for imparting *state-of-the-art* training to the fresh recruits as also to the in-service personnel. *Hand-picked* officers must be posted in the training institutions and they should be given adequate monetary incentive<sup>34</sup>(Mallimath Committee recommendations)

3. Awareness should be provided about various legal provisions and consequences in case of shoddy investigation or poor investigation

4. Commencement of Investigation should be devoid of vendetta politics.

The government should investigate graft allegations impartially and prosecute anyone found culpable. "Politics should not be allowed to obscure the truth in the current corruption and misappropriation concerns. Investigations should be done impartially and all those found to have been involved in any crime prosecuted and what they have stolen recovered the case of the Godhra riots has taken precedence in the Indian Legal circles for quite some time now,

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<sup>34</sup> The Mallimath Committee Report can be Accessed at [http://indialawyers.files.wordpress.com/2009/12/criminal\\_justice\\_system.pdf](http://indialawyers.files.wordpress.com/2009/12/criminal_justice_system.pdf)

the CBI has brought out clear evidences against the ruling state government as the central government was of a different party, there were conclusive evidences gathered and charges were pressed against the minister just because the CBI took up the matter by the commands of the Central government and garnered proper evidences. Citing corruption as the country's major hindrance to development, it is time leaders should take serious measures as they lose huge sums of money through misappropriation. "Unless our leadership addresses this matter decisively, all other noble efforts to fight poverty, promote national cohesion and stability".

The pillars of governance do not get strengthened when the ruling government fails to maintain a transparent and accountable model of administration. Periodic self introspections and corrective measures could build a corrupt free and unbiased administration. The popularity of governance grows in ensuring appropriate delivery mechanisms. The political parties will track down the happening and should nib the bud at the grass root level, improves the systemic functioning of administrative operations.

5. Investigation Manuals should be developed to future references providing code of conduct during investigation process and all officials shall be required to abide by the same (guidelines).

Every incident, be it a crime, accident, natural disaster, armed conflict, or other, leaves traces at the scene. The goal of the subsequent investigation is to correctly interpret the facts, reconstruct the events and understand what happened. Due to the transient and fragile nature of those traces, their reliability and the preservation of their physical integrity depend to a very large extent on initial actions at the scene of the incident. Evidence integrity can be achieved with very limited means by observing a key set of guiding principles. Acting with care and professionalism throughout the crime scene investigation process is critical for the admissibility of evidence for court purposes as well as for human rights inquiries and humanitarian action.

The manual will provide the compendium of available tools for the judiciary and law enforcement agencies and will result in consultative process involving a number of reputable individuals, institutions and organizations, who would contribute a variety of different perspective to this cross-cutting issue, all grounded in the same basic principles common to all scene of offences.

It often ideal to have Investigations Manual serve as advisory, and it is considered as a sacrosanct document, prepared by the all Investigations Agencies, which can made as a referral to all officers who indulge in conduct of investigation. Investigation Manuals serve as guidelines in ensuring relevant protocols are duly followed for conducting internal preliminary fact-finding administrative investigations and the members responsible for any deviations during application of any investigative techniques, methods and procedures. The manual aims at raising awareness of the importance of good practices in crime scene investigations and the nature and relevance of physical evidence. It covers issues related to the work at the scene, from the actions of the first responder(s) to the submission of evidence to the laboratory. As such, it provides the very basis for enabling more evidence-based reconstruction of events.

The primary target audience of the manual is non-forensic personnel, i.e. first responders and any person involved in the crime scene investigation process without full-fledged training, to help them understand the importance of their actions and the consequences of not applying basic principles of good practice. The manual also targets policymakers, the judiciary and others having to assess, and/or base decisions on evidence presented to them.

Professionals with proficiency in conduction of investigation are expected to be the staunch followers of protocols towards techniques, methods and procedures to be applied to a particular Investigation. Therefore Investigations' Manual instils duty clubbed with responsibility rather than rights.

6. The Officer heading the investigation shall take high moral grounds in dealing with collection of evidences, preservation of evidences and filing the report with supportive findings. When members of government and the administrative services jointly take the onus of disposing justified complaints as a part of the duty, devoid of vote bank politics, this eliminates the basic doubt one would have i.e., whether such courses of action are done from perspective of duty and thus whether it has moral worth. That is why there have always been philosophers who absolutely denied the reality of this dutiful disposition in human actions, attributing everything that people do to more or less refined self-interest and the concept of morality<sup>35</sup>. It is indeed absolutely impossible by means of experience to identify with

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<sup>35</sup> Alasdair MacIntyre, "*Truthfulness, Lies, and Moral Philosophers: What Can We Learn from Mill and Kant?*" in Grete B. Peterson (ed.), *The Tanner Lectures on Human Values*, vol. 16 (1995), pp. 307, 336.

complete certainty a single case in which the maxim of an action—however much it might conform to duty rested solely on moral grounds and on the person’s thought of his duty. It sometimes happens that governance is all about making considerable sacrifice in performing some good action, and equally well supported by the power to motivate individuals while accepting the moral ground of duty. The following mentioned below points will help in building strong governance which will lead to sustainable development where in investigators should internalise the following concerns.

- a) Have sense of duty rather than a secret impulse of self-appreciation.
- b) Take credit only for having a more high-minded intellectual contribution
- c) Should not acclaim credit for cracking down on initiatives taken by the secret-informers.
- d) Reflect high moral worth for generating visible and invisible sources of information generations.

## **Conclusion**

There is a consensus that the rule of law and good governance are the foundation for achieving sustainable development goals. Various corporate houses have taken initiatives by incorporating recommendations of Corporate Governance to promote the rule of law and good governance throughout the world. Surprisingly, these corporations have made considerable progress over the years. However, despite these efforts and the growing number of Laws and regulations, evidence based investigations need to improve in quality standardisations and general goodwill. Governments tend to show deterioration due in significant part to lack of implementation, enforcement, and compliance with regards to investigation agencies. A strengthened focus on compliance and enforcement efforts could overcome these problems and would be a critical investment for advancing sustainable development. Implementation depends on a lack of corruption, adequate funding, bureaucratic efficiency and public co-operation, Therefore, the sustainable development context is a function of pre-existing conditions and the impacts of policies. It includes outcomes relating to all three sustainable development dimensions (environmental, economic and social)

