

Legal Framework for Prevention of Corruption in India: An Overview

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I. Introduction:

The first question that comes to mind while writing a paper of this nature is “why is this being written?” especially when writing for the gathering of learned, informed and distinguished colleagues. This author asked herself the same question.

The objective of writing this paper is not to make an innovative suggestion but to bring into focus what is already there in the rule book and to see if they can be used effectively. Corruption is favorite topics of every drawing room get together where we indulge ourselves either being angry about the rampant corruption or cribbing about the corrupt personnel. In this perspective the idea is to focus on the available legal frame work in India for the prevention of corruption.

II. The Dilemma of Definition:

Although every person has a definition of corruption there is no legal definition of corruption in the *Prevention of Corruption Act 1988*. However the Act gives different instances of corruption:

1. Public servant taking gratification other than legal remuneration in respect of an official act.
2. Taking gratification, in order by corrupt or illegal means, to influence a public servant.
3. Taking gratification for exercise of influence on public servant.²

The word gratification is explained in the Act³ as not being restricted to money or pecuniary gratification or gratification estimable in money. Similarly legal remuneration is not restricted to remuneration which a public servant can lawfully demand but includes all remuneration he is permitted by the government or the organization he serves to accept⁴. A public servant therefore is any person:

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² Sections 7-9, Prevention of Corruption Act, 1988.

³ Explanation (b) to Section 7 of the Prevention of Corruption Act, 1988.

⁴ Explanation (c) to Section, 7 of the Prevention of Corruption Act, 1988.

- In the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- In the service or pay of the of the Local Authority;
- In the service or pay of a corporation established under Central, Provincial or State Act, or an authority or body owned, controlled or aided by the Government or Government Company as defined under Section 617 of the Companies Act, 1956;
- Any Judge including any person empowered by Law to discharge whether by himself or as a member of any body of persons, any adjudicatory function;
- Any person authorized by Court of Justice to perform any duty, in connection with administration of justice including a liquidator, receiver or commissioner appointed by such court

There are about 12 such examples under Section 2 (c) of the Act. A full text is avoided for fear of losing the flow and flair of the paper. However it may be beneficial to note that where a “public servant” induces a person to believe erroneously that his influence in the with Government has obtained for him the title for that person and thus induces that person to give the public servant some money or any other gratification as a reward for his services the public servant becomes guilty of indulging in corrupt practices⁵. A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do or has not done comes within this expression⁶.

While dwelling on the definition of corruption, as mentioned earlier, every person has his or her definition of corruption. The way AEsopo’s Fables and Pancha Tantra stories are interpreted by the generation next is not only interesting but often amusing. However on a more serious note, when we say something is dishonest or corrupt then it is to be measured against a yardstick like the Meter scale preserved in Paris. Well, the million dollar question is what is and who sets this yardstick? Can it be said, like the Natural Law School thinker, that it is the Universal conscience or the Universal morality or Universal righteousness? Would that not be invoking Kelsonian “purity”? Yet the understanding and definition of corruption has changed over the years. Thus, examples of corruption are imposed upon us by the State which yields a mixed result. A simple example is that Section 171 B of the Indian Penal Code states that giving and taking of any

⁵ Explanation (e) to Section, 7 of the Prevention of Corruption Act, 1988.

⁶ Explanation (d) to Section, 7 of the Prevention of Corruption Act, 1988.

gratification amounts to bribery. Under the Prevention of Corruption Act, a person who offers a bribe is not made subject to prosecution⁷.

III. The Public- Private Dichotomy:

Are the public servants alone guilty of corruption? What about the large number of employees and employers who work in the private sector? It is often said that the private sector, in many ways, is linked with the public sector so if the public sector maintains a high standard and corruption free practices, then the private sector will automatically be free of corruption. This may be true to an extent but not fully. Corrupt practices are not limited only to money matters. There are other corrupt practices with which the public sector may not be concerned at all. The UN Convention against Corruption mandates⁸ that:

- ❖ Each party must according to the fundamental principle of domestic law.
- ❖ Enhance auditing and accounting standards in the private sector.
- ❖ Where ever appropriate provide effective, proportionate and dissuasive civil, administrative and criminal penalties for failure to comply those measures.
- ❖ Disallow the Tax deductibility of expenses that constitute bribe.

Measures to achieve these ends include—

- Promoting cooperation between law enforcement agencies and relevant private entities.
- Promoting the development of standards and procedures designed to safe guard the integrity of the relevant private entities including codes of conduct.
- Promote transparency between the private entities.
- Prevent misuse of procedures relating to private entities.
- Preventing conflict of interest by imposing restriction as appropriate and for a reasonable period of time on the on the former public officials for employment in the private sector.
- Ensure that the private enterprises, taking into their structure and size have sufficient internal auditing control to assist in preventing and detecting acts of corruption.
- Prevent as far as practicable :
 - i. Establishment of off book accounts.
 - ii. Making off book and inadequately identified transactions.

⁷ Section 24, The Prevention of Corruption Act, 1988.

⁸ Article 12 UN Convention against Corruption.

- iii. Recording non-existent expenditures
- iv. Prevent entries of liabilities with incorrect identification of their objects.
- v. Use of false documents.
- vi. Internal destruction of book keeping documents earlier than foreseen by law.

IV. A Multidimensional Kaleidoscope:

IV. I. Privatisation of Corruption: *Individual v. Collective*

Corruption is privatized in various degrees and it may be individual or collective. When it is extracted only for a group and the individual will only get pittance or will have limited share it is called collective. The ban and stigma on corruption necessitates collusion, connivance or conspiracy between individuals or at least certain closeness or confidentiality. In such situations corruption becomes a secret social activity. This also individualises a social phenomenon although being an economic offence it also has a collective social impact. It can also be in form of abuse of power by a group, class, institution or the ruler. Many well documented cases of grand corruption are of this category and often involve political parties and they affect the larger society. Conspiracy between individuals is often extended into larger practice involving colleagues, friends, partners and associates. Gradually this develops into a larger network.

Understanding the privatization of corruption involve this two very different yet similar sides of the same coin. One cannot ignore the vested interests the anti corruption activities are up against.

IV. II. The Beneficiary: *Extractive v. Redistributive*

A common question is who benefits from corruption. A safe answer is that a few benefit visibly but all suffer invisibly. This involves both State agent and non state actors. The equation of benefit and suffering is rarely balanced. When the flow of resource is from the society to the State it is called extractive and when it is from the State to the Society it may be termed redistributive. Examples of the former are Mobutu of Zaire⁹; Duvaliers of Haiti¹⁰; Suharto of Indonesia¹¹; Marcos of Phillipines¹²; and Stroessner of Paraguay¹³. Another example would be extracting undue tax benefits. In the latter situation State is the weaker party, individuals are

⁹ 1965-1997.

¹⁰ 1957-1986.

¹¹ 1967-1998.

¹² 1965-1986

¹³ 1954-1985

active partners and the public servants are the passive partners. The main beneficiary of the resource extracted is the individuals or the various social and economic interest groups. Thus a State resource is depleted and gets redistributed among the selected few. It is believed that this kind of corruption occurs in weak political regimes and economic systems. The State is rendered incapacitated and politically impotent.

IV. III. Political and Bureaucratic Corruption: *Grand v. Petty*

Political or grand corruption takes place at the highest level of political authority, when the politician and the political decision maker who are entitled to formulate, establish and implement the laws are themselves corrupt. Often the politicians use the power they are armed with to sustain power. So the decisions and policies are tailored to assist at this end.

Bureaucratic or petty corruptions are seen at the hospitals or schools or police or licensing authority. It is a predicament and irritant in everyday life. It skews public spending, impedes and obstructs market and increases cost. The former is out of greed but the latter can be out of need.

V. An Ethical Issue:

V. I. Ethics Committee of the Parliament of India

The magnitude of corruption is directly related to the characteristic of the people and the type of leader and system they choose to be governed by. The Ethics Committee Report¹⁴ of the Parliament has stated that it is difficult to eradicate corruption all together. The ethical question in corruption cannot be dealt entirely by legislation alone. It is an issue relating to the standard of behaviour and there cannot be a single remedy. A mere code of conduct cannot solve this malady although a code of conduct may help to control the malady. Two very interesting suggestions made by the Committee are:

- ✚ People should be educated to not to elect people with dubious distinctions.
- ✚ Political parties should try to play a crucial role by denying tickets to persons who are criminals, corrupt or have anti-social proclivities.
- ✚ In order big money and other considerations to play mischief with the electoral process, the committee was of the view that instead of secret ballot the question of holding election to Rajya

¹⁴ Third report presented on 12 August 2002, Adopted on 3 December, 2003, Rajya Sabha Secretariat.

Sabha and Legislative Councils in the States by open ballot may be examined.

- ✚ Electoral Reforms are to be brought about for cleansing public life.
- ✚ There is an urgent need for restoring credibility of people's representatives and dignity of the people's institutions.
- ✚ Committee is concerned about the increasing trend of disorderly proceedings in Legislatures. The leaders of the political parties should effectively cooperate with the presiding officers of the legislatures in enforcing discipline.
- ✚ The Government must be more responsive and accommodating towards the Opposition.

V. II. Codes of Conduct of the Professional Bodies

The tendency is to draw a “*lakshman Rekha*” around us by establishing a strict code of conduct especially by the professional bodies. We forget that lakshman rekha are an invitation to overstep its limits. Some important Codes of conduct are:

- Indian Medical Council (Professional conduct Etiquette and Ethics) Regulation, 2002
- The Advocates Act, 1961
- Election Commission- Model Code of Conduct for Political parties and Candidates.

Salient features of all these model code of conduct are:

- Abstention from maintenance of confidentiality
- Abstention from charging of reasonable professional fees
- Abstention from absenteeism of duty.
- Abstention from advertising and soliciting work.
- Abstention from soliciting rebates and commission.
- Abstention from caste and communal feeling.

V. III. Organisations set up for Control and Regulations

Sl. No.	Organisation	Enabling Enactment
1	Central Vigilance Commission	Central Vigilance Commission Act, 2003
2	Lokpal (proposed)	Lokpal Bill, 2003
3	Audit and Comptroller General	Constitution of India
4	Election Commission	Constitution of India
5	Telecom Regulatory Authority	Telecom Regulatory Authority of India Act, 1997

6	Insurance Development Authority	Insurance Development Authority Act
7	Information Officers	Right to information Act
8	Electricity Regulatory Authority	Electricity Act
9	Judicial Council (Proposed)	

Interestingly despite so many measures India still ranks high in corruption. This entire legal frame work is not very strong on the **protection of the “Whistle Blower”**, **assessment of impact of corruption in the educational sector** and **detection of economic offences**. Both the issues are of major concern in prevention as well as in controlling corruption.

VI. Protecting the Whistle Blower:

A whistle blower is an important player in the process of prevention and control of corruption. It is a person who is in the know of things and is willing to alert the controlling authority by disclosing the corrupt act or practice that take place. However if not well protected then he may suffer in many ways including the loss of life of his own or his dear ones. There is a Whistle Blowers resolution under the Central Vigilance Commission Act, 2003 has some important features:

- The CVC is the designated agency for receiving such complains against employees of central Government or any Corporation established under a Central Act.
- The CVC shall ascertain the identity of the complainant and keep it confidential. However if the complainant reveals his identity to another person or authority or makes a public disclosure then the CVC is not bound to keep his identity a secret.
- It will not act on anonymous complain.
- While proceeding with the investigation the whistle blower’s name shall be kept a secret and if some how it is known to others they will be requested to keep the name confidential.
- If the identity of the whistle blower is revealed despite the Vic’s directive against it, the CVC will take appropriate action. The CVC can call upon the CBI or the Police for assistance.
- If the whistle blower feels victimized then he may file fresh complaints with the CVC for protection and the CVC will take steps in this regard.
- The CVC can issue appropriate directions to the Government for protection of complainant and witnesses.

- If the complaint is motivated or vexatious, the CVC may take appropriate steps.

The Whistle Blowers Protection Act, 2014 envisages the following:

Whistleblowing is when an employee reports suspected wrongdoing. Officially this is called ‘making a disclosure in the public interest’. Whistleblowing is important to safeguard the effective delivery of public services, and to ensure value for money. It serves to protect and reassure the workforce, and to maintain a healthy working culture and an efficient organisation.

Whistleblowing has become much more high profile in recent years; as well publicised cases such as Hillsborough and the Mid Staffordshire NHS Foundation Trust inquiry have shown. A greater public need for transparency, coupled with wider access to knowledge and information and its dissemination through social and other media, mean that there is an increasing scope to uncover and report on wrongdoing.

Having a good quality whistle blowing policy is particularly important in the current economic climate. A clear, accessible policy is vital during cost reductions to protect the public purse from waste, as well as to improve trust in public institutions. Government delivery chains are becoming more devolved, introducing complexity into the process for making disclosures and monitoring cases. There is the risk that employees at ‘arm’s-length’ to departments are not aware of their rights and do not know how to blow the whistle.

This is the first phase of a series of work on whistle blowing. This report provides the context around whistle blowing and examines the procedures in place for employees to whistle blow within government departments. We focus on the importance of a framework to support whistle blowing, namely having a high quality, clear and accessible policy and process. However, having this framework is only the first step. Phase two of our work will be focused on examining how departments implement and publicize policies, the skills and culture needed to support them, and the role of the ‘prescribed person’.

We reviewed 39 whistle blowing policies across government against eight criteria on a five-point scale. We identified common areas of strength and areas for improvement. We often found strong performance in setting a positive environment for whistleblowing to occur. In general, the policies aimed to engage with whistleblowers; they clearly expressed the importance of whistle blowing to the organisation, and highlighted the moral obligation to report concerns. However, the policies we reviewed sometimes failed to outline suitable alternatives to line managers when making a disclosure or explain when the confidentiality of a whistleblower may be compromised.

Some policies did not mention the risks and limitations of disclosures outside the organisation or highlight the benefits of seeking independent advice.

VII. Detection of Economic Offences:

Again there is the definitional problem. It is difficult to come up with a straight jacket definition of economic crime. They are generally technology driven and is committed by a specialized group or expert or trained individual using professional and specialized skills. Most of them relate to stock market, Cyber space, etc. Some major economic crimes are—

Money Laundering;
Insurance Crimes;
Healthcare frauds;
Credit Card crimes;
Telecommunications;
Pornography;
Crimes against Environment;
Computer crimes etc.

More than legislation the Judiciary has been of help in controlling and detection of economic offences. In *Vineet Narain v. Union of India*¹⁵ the Supreme Court tried to save an investigating agency by invoking what is called “Continuing Mandamus”. This resulted in the CBI and the CVC getting some degree of professionalism and independence. Concerned with the gravity of the situation several committees have been set up

- **The Vohra Committee Report, 1993:** Found nexus between politicians and criminals. Involvement of the Police, Customs and Tax departments help in commission of large scale economic crimes. No punishment was given since the offence was not revealed, but where punishment was given it was very nominal and disproportionate with the magnitude of the benefit gleaned from the offence.
- **The Mitra Committee Report, 2001:** Found that the criminal jurisprudence of the country based on *the doctrine of proof beyond reasonable doubt* was inadequate for controlling fraud especially bank fraud. To prevent financial fraud the committee suggested strict implementation of the Regulator’s Guidelines. Financial fraud or scams were to be treated as serious offence and the burden of proof was shifted to the accused with a separate investigating authority. Setting up of Statutory Fraud

¹⁵ (1988) S.C.C. 266

Committee under the Reserve Bank of India. A Serious Fraud Office on the UK model was suggested to be set up.

VIII. Corruption in Educational Sector:

Almost nothing is available on corruption in the Educational sector and how it impacts upon the quality, access ethics and equity. It cannot be denied that prevention of corruption should begin at the level of education. A birds eye view of the nature of corruption in education and its impact can be seen below¹⁶.

Persons / Authority Involved	Corrupt Practice	Impacts upon
Construction of building and other infrastructures	<ul style="list-style-type: none"> • Fraud in public tendering • Embezzlement 	Access and Quality
Purchase of books and equipments	<ul style="list-style-type: none"> • Fraud in public tendering • Embezzlement • Bypassing criteria 	Equity and Quality
Teacher Appointment and Management	<ul style="list-style-type: none"> • Favouritism • Nepotism • Bribe 	Quality
Teacher Behaviour	<ul style="list-style-type: none"> • Ghost Teachers • Bribes- <ol style="list-style-type: none"> 1. for admission 2. for assessment 3. for exams 	<ul style="list-style-type: none"> • Access • Quality • Equity • Ethics
Finances	<ul style="list-style-type: none"> • Distortion of legislation & Policy • Inflation of cost and activities • Opacity of financial transactions 	<ul style="list-style-type: none"> • Access • Quality • Equity
Specific Allowances	<ul style="list-style-type: none"> • Favouritism • Nepotism • Bribe • Bypassing criteria 	<ul style="list-style-type: none"> • Access • Equity
Examinations	<ul style="list-style-type: none"> • Favouritism • Nepotism • Bribe • Selling Information 	<ul style="list-style-type: none"> • Equity • Ethics
Information System	<ul style="list-style-type: none"> • Manipulation • Selection • Censorship 	<ul style="list-style-type: none"> • Access • Quality • Equity

¹⁶ EFA Global Monitoring Report, 2005.

Successful strategies for improving accountability and transparency in education sector include the following three components.

VIII. I. Creation and Maintenance of Regulatory System: The existing legal Frame work should focus more on transparency, rewards and penalties and developing a code of conduct. Defining well targeted measures for allocation of fund etc.

VIII. II. Strengthening Management Capacities: So that the regulatory system becomes enforceable. It will also increase institutional capacity in various areas, promote ethical behaviour and prevent fraudulent activities.

VIII. III. Encourage enhanced Ownership of Management process: Involves development of participatory mechanism., increase access to information especially with the help of information and communication technology and helping the community to exert stronger social control.¹⁷

IX. Effective Laws and Defective Impacts:

Accountability means responsibility for performance. Administration is the function of implementing policies and programmes so that objectives behind the policies and programmes are achieved. Although India has the best articulated policies and programmes, when it comes to implementation, it is found that:

IX. I. Policies are not implemented at all: An example of the first type is the Benami Transaction Prohibition Act, 1988. Section 5 of the Act says that benami property will be confiscated by the Government Section 8 says that Government will prescribe the rules under which the confiscation of benami property can take place. Even after lapse more than 13 years the Government has not issued instructions.

IX. II. If they are implemented, they have totally counterproductive results: An example may be seen in the many anti-poverty programmes launched by the government with great vigour

IX. III. Even if they are implemented, there is great inefficiency in implementation: An example of inefficiency in implementing the

¹⁷ Excerpted from Hallak, Jaques, Poisson and Muriel. 2002 "Ethics and Corruption in Education" Workshop held at IIEP, Paris 28-29 November 2001.

programmes is in the context of people dying of hunger and starvation in Orissa. The Food Corporation of India (FCI) had made available, a few lakh tones of foodgrains free to the State Government of Orissa. The year 2001 was a bad year and hardly 30% of the area was planted with paddy. Nevertheless, the FCI has been able to procure almost the quantity of foodgrains under the procurement programme in the year 2000, which was a normal year. Yet the FCI was not made a part of the implementation of distribution programme in Orissa.

The anti-poor implementation of pro-poor policies is a perverse and a unique feature of the Indian administration.

Another example of how laws originally enacted with certain objectives are finally implemented in such a way to totally defeat not only the objective but prove counter productive is the fate of the SICA – **Sick Industries Companies Act** – and the agency BIFR-**Bureau of Industrial Finance Reconstruction** – set up under SICA. In the 80s this was enacted based on a similar law in Germany where if the capital of a company is wiped out then it becomes virtually the property of the creditors. But gradually in our country, SICA became an instrument by which the labour aristocracy can use it as an instrument to protect the employment of those who are employed even in loss making companies.

The first factor what comes in the way of effective implementation of policies is the failure of the system of checks and balances, which the constitution provides. The judiciary, executive and the legislature have their role to play. If the agencies, which are designed to play their respective roles, do not function effectively, corruption is the inevitable outcome.

The issue of political interference in administration has been raised by many as one of the reasons why implementation of policies do not take place. Sometimes government orders may affect one or other political interest and the issue becomes political. If only the civil servants were to remember the vital amendment to the Franklin principle, perhaps we may be able to resist political pressures and set up a new tradition. Benjamin Franklin said: Nothing is more certain in life than death and taxes. For a civil servant, nothing is more certain than death, taxes, transfer and retirement. If the civil servants start internalizing this policy it will be possible to resist the political pressures and ensure that the policies are effectively implemented.

X. Policies--- Effects and Side Effects:

In building this culture of inefficiency and non-implementation of policies, the role played by judiciary also needs to be taken note of.

X. I. Policy of Fairness, Non-Discrimination and Non-arbitrariness: In practice, all those admonitions for ensuring “fairness”, “non-discrimination”, for eschewing “arbitrariness” have reinforced the tendency to play safe. They have led the administration to tie itself firmly to rules of thumb.

- Parity across the board Promotions go strictly by years the man has put in and not the merit and efficiency of his service. Thus merit and efficiency in service has gone out of date.
- Even when evidence is staring you in the face that the bidder will not be able to complete the contract within the artificially low rate he has quoted in his tender document, one has to go by HQ, LQ rules of thumb lest someone goes to court, lest someone put the CBI on tail.

The result is that merit is completely driven out of governance. By straining so much in favour of “equality”, “fairness”, “non-discrimination”, courts has helped make mediocrity and non-performance-the norm. Merit, excellence have become dirty words – words that prove that the interlocutor is an elitist, one who has no sympathy for the downtrodden. One who is bent upon perpetuating privilege and inequity.

X. II. Policies relating to Maintenance of Law and Order:

The implementation, especially of policies relating to maintenance of law and order, often lead to very bizarre consequences.

- In Assam, the Army is repeatedly asked to step in as the negligence and worse of Politicians give the terrorists the upper hand. The situation has but to be brought in hand, and that very Army is made the butt of condemnation by the Politicians.
- A Policeman in that state who is killed by the terrorists is soon forgotten, his family is packed off with a compensation of Rs.25,000, while the terrorists who have killed that very policeman are given a lakh each if they “surrender”, they are giving a Maruti car each, they are assured jobs, they are allowed to retain their weapons.
- And where our forces have defeated the terrorists most decisively, the Punjab the situation is the worst. Mr. K.P.S. Gill, who rebuilt a shattered and infiltrated Punjab Police and who, by personal example as much as by anything else, led that force to defeat terrorism in Punjab and thereby saved Punjab for the country, is today beleaguered and set upon. The Punjab Police itself, rather the officers and men in that force who fought the terrorists, are just as much in the dock; almost 1500 cases and writs are being heard against them; about 50 of them are in jail

or have been suspended from service-not because they have been convicted, but because investigations are yet to be completed and their trials are yet to begin; scores of them have to troop every other day offering explanations to courts authorities scold them, and hurl pejoratives and them¹⁸

But there are more than just double standards, much more than mere forgetfulness. There is a hankering to forget, an induced amnesia. When the country was faced with terrorism, so many were prepared to countenance anything anyone did: “Just rid of them”, they said, “Do whatever you have to.” Now that the forces have made the place safe for us, they have erased from their minds every memory of the beast that they had clamoured the forces vanquish. They have erased from their minds what these men have done for the country at the risk, nay the cost of their very lives. No human Rights Organisation questions the death of an officer or service personnel killed in encounter but the human right of the killer is rigorously protected.

X. III. The Delay in Court Proceedings:

Delays in courts, as well as the punctilious standards that the courts have laid down for natural justice have also made a contribution. Such obedience to Articles 14 and 21 desirable in governance yet they have a disabling effect. The judges have given such progressive ruling after ruling being little aware of their cumulative effect on governance. More difficulty arise because the cases in which the government gets entangled take as long as the other general cases is but one part of the problem. Over the years judgments have added one requirement after another that must be fulfilled while doing something. Each requirement can be justified in itself, but the cumulative result has to be lived to be realized. Nor has the result come about only from specific criteria that the courts have prescribed. The general tenor of rulings and their tilt have helped create an environment in which it is safer to pass files around than to take a decision, in which it is prudent to go through the motions of doing things than to actually do them.

The Central Administrative Tribunal and its Benches were meant to be a substitute for the courts. Appeals from their decisions were to lie only to the Supreme Court. They were not to be bound by the Code of Civil Procedure; they were to be guided by the general principles of natural justice. The idea was that government servants and governments would swiftly settle the matter, that both would shun lawyers and legalistic stratagems and dodges: the petitioner was given the freedom to appear in person, governments were given freedom to be represented by the concerned

¹⁸ Arun Shourie, Courts and their Judgments, Rupa & Co, (2001)

officer to avoid that plague of Indian courts – adjournments. The cases were to be settled within six months.

Step by step the Tribunals have become clones of courts. In L. Chandra Kumar, the Supreme Court declared that, the specific provision of the law notwithstanding, appeals against rulings of Tribunals would be heard by High Courts. Adjournments have become the order of the day. Both governments and employees routinely engage legal counsel. The counsel proceed as is their wont....The Committee on Service Litigation reported, “Apart from delay that generally occurs in the Ministry and Department in filing counter-reply to the applications filed by the government employees in the Central Administrative Tribunal, to a great extent the delay is enough interest in handling Government cases. The Ministries and Departments have generally to pursue the matter vigorously with the Government Counsels to ensure timely filing of the replies, etc., in the court and Counsels on their part in most cases are largely incommunicative ...” it is a familiar tale... a familiar step....each contributing an accustomed bit¹⁹.

X. IV. The Silver Lining:

It will be wrong to consider the entire Indian administration as action shy or not accountable because there have been exceptional officers who have performed under very difficult conditions, especially, where the results were felt to be more important than procedures.

- Indian bureaucracy has met the massive challenge of rehabilitation of the large mass of refugees arising after the partition in 1947.
- It was able to handle the daunting refugee problem when 10 million refugees from Bangladesh rushed to India on the eve of the Bangladesh war and emergence of Bangladesh as a separate country.
- In many states we find that when it comes to an emergency, the administration rises to the occasion. There are natural calamities like flood or earthquake or cyclone or scarcity and administrations, at least in some states, have risen to the occasions and handled the situation effectively.²⁰

This is also misused for indulging in massive cases of corruption, which are later highlighted in the audit reports of the CAG. Nevertheless, the fact remains that if the objectives are clear and there is a general awareness

¹⁹ N. Vittal, (Chief Vigilance Commissioner), “*Accountability in Administration*”, Talk delivered in IIPA on 30-01-2002, New Delhi.

²⁰ Ibid.

about the broad approach to be adopted which is result oriented, the bureaucracy and the administration will perform.

Similarly, there are public servants who are very conscientious. When on the Republic Day, there was an earthquake in Gujarat, while conducting a field visit from NUJS, it was found that there were many officials whose families were killed and whose houses were also damaged but who still reported to duty to see to it that the relief work was carried out effectively. This perhaps is the highest example of accountability and devotion to duty in a crisis. This sense of individual commitment perhaps comes only from one's own background, religious beliefs, family traditions, and teachers and so on.

X. V. Secure Civil Servants:

Some provisions that have been introduced in the Constitution with best of intentions led to totally unexpected counter productive negative results. For example, the permanent civil service has been given the assurance under Article 311, which reads as follows:

- (1) *No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*
- (2) *No Such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a responsible opportunity of being heard in respect of those charges:*

Provided that where it is proposed after such inquiry to impose upon him any penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

- (a) *where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*
- (b) *where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*
- (c) *where the President or the Governor, as the case be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.*

- (3) *If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.*

Is it necessary to have this level of protection for the bureaucracy? There is a perception that it is this level of protection which breeds corruption in the bureaucracy and indirectly helps political corruption.

X. VI. The Sisyphus Syndrome:

Accountability can be induced if there is a fair assessment of performance and performance, which is outstanding, is rewarded and the performance, which is below par, is punished. But Annual Confidential Report writing in government has again become a casualty of the culture of paralysis. Further, well-intended policies introduced to encourage affirmative action to strengthen weaker sections have had their impact on the ACRs also. If any reporting officer gives an adverse remark in the ACR, then the reporting officer has to face the consequences.

Another reason why the sense of accountability does not prevail in our government systems is what can be termed the Sisyphus syndrome.

Sisyphus in Greek mythology was given a special punishment. The punishment was that he must push a rock up the hill and by the time the rock reaches the top of the hill, it will slide down to the floor and the process has to be repeated once again. This will go on endlessly. Various projects, particularly the infrastructure projects implemented by the various departments of the Government of India and its organizations are of this nature. There are many infrastructure projects where the initial cost was say of Rs. 200 crores but ultimately it balloons up to Rs. 900 crores. This is because the project once started goes through a process of initial scrutiny, and clearances at the various stages. At a certain stage the clock is set back. Many a time this is the result of vested interests and corruption. Sometimes there is a change in the officers and the political leadership, which gives full justification for starting the process all over again. At the end of the whole exercise the project is not implemented at all or implemented with a tremendous cost overrun and time overrun. It becomes very difficult to fix responsibility in such cases about who was responsible for the time and cost overruns. This is because the files would have justified reopening of the issue again and again.

- A classic example is the Enron project. It was finalized at one stage. There was widespread criticism. There was a change of

government and the project got a new avatar with a higher cost. The net result was the project resulted in an embarrassingly high cost of power. The unusual aspect of this case was that ultimately the main company Enron itself went bankrupt.

- The Tehri Hydroelectric Project. The initial cost was 460.67 crore. After various revisions, the final cost was 898.45 crore.

It should be possible to overcome this problem of cost and time overruns by laying down some simple principles so that the Sisyphus syndrome does not become a convenient excuse for corruption to flourish.

One of the recurring reasons given by the foreign investors about their reluctance to invest in India is the delay in the decision making process in India. One reason for the delay could be universal application of the Parkinson's Law of the ever bloating bureaucracy. Perhaps a special reason for India is the Sisyphus syndrome.

It is high time that the Indian administration comes out of the Sisyphus syndrome. A simple drill like not setting the clock back in the case of projects can be a useful first step out of the Sisyphus syndrome²¹.

XI. Judicial Effort in Corruption Combat:

Combating corruption has now become a national necessity and the judiciary has come forward to help with a series of progressive and forward looking judgments.

Common Cause, A Registered Society (Petrol Pump matter) v. *Union of India*²², Pursuant to a news item in the news paper that petrol pumps were allotted to 15 persons ostensibly on the ground of poverty and unemployment when in reality they did not fulfill the required criterion and were close to the centers of power the director of Common Cause filed a PIL. The Court ordered the concerned minister to pay a fine of Rupees Fifty lakhs as exemplary damage to government exchequer. The Court held that the government today is the welfare State and provides large number of benefits to its citizen. The minister is a trustee of public property under his charge and discretion. A public servant should be personally held liable for malafide act in discharge of his duty. Malfeasance in public offices is a part of law of tort.

*Nilabati Behera v. State of Orissa*²³ was a case of custodial death of the son of Smt. Behera. The court made some very pertinent and important observations. While ordering the State government to pay a compensation

²¹ Ibid.

²² (1966) 6 SCC 530

²³ (1993) 2 SCC 746

for Rs. 150,000/- it was held that the defense of sovereign immunity is inapplicable to the concept of guarantee of fundamental right. There can no question of such defense being available to constitutional remedy.

State Bank of Patiala v. S.K Sharma²⁴ the manager of the bank was charged with misappropriation of an amount of money. Before ordering a formal inquiry a preliminary enquiry was ordered where the bank officers gathered information and submitted a report. Based on this report a formal and regular enquiry was ordered. The enquiry officer found that the charge was established. The officer challenged the findings in court. The court held that while deliberating upon matters of this nature, the court or the tribunal should enquire whether:

- A. The provision violated is of substantive nature or
- B. The provision violated is of procedural nature.

The provision violated is of substantive nature-

A substantive provision is normally to be complied with. And the test of prejudice will not be applicable in such cases.

The provision violated is of procedural nature-

1. These are generally meant for affording a reasonable and adequate opportunity to the defendant. They are conceived in his interest. Mere violation of procedure cannot be said to vitiate the enquiry except when falling under the “no notice”, “no opportunity” “no hearing” category.
2. Where the non compliance or violence is not mandatory in nature, then the complaint of violation has to be examined from the point of view of substantial compliance and can only be set aside if found prejudicial to the delinquent employee.
3. Where the non compliance or violence is mandatory in nature then it is to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is the former then it has to be seen whether the delinquent person expressly or by his conduct waived the right if so, then the order cannot be set aside if not it can be.
4. A distinction is to be made in total violation of natural justice and partial violation of natural justice. Where there is a total violation of natural justice the order can be set aside but where there is an issue of partial violation of natural justice the matter

²⁴ (1996) 3 SCC 364

is to be examined on merit and from the point of view of prejudice to the employee.

5. Where the enquiry is not on any specific rules and regulations, the totality of the proceedings vis a vis the violation of natural justice and affectation of the right of the accused is to be studied and if it is found to be prejudicial to the accused then the order is liable to be set aside.
6. The ultimate and the overriding objective is ensure fair hearing and that there is no failure to justice.
7. **There may be situations which may require cutting down the rule of audi alteram partem in public interest.**

The intention of this paper is not an in depth projection of court cases, but merely to draw an outline of the framework and hence only a glimpse of the activism is given.

XII. Concluding Submissions:

There is a acute awareness and a silent movement against corruption now. According to a survey conducted by the Centre for Media Studies²⁵ cases of petty corruption is on the decline. The small cases of bribery, cheating, speed money etc are now replaced by large technology driven large white collar economic offences. The reasons cited are the rising level of awareness, privatization of services, and computerization. This brings to mind that perhaps these can be effective for combating large scale corruption too.

e-governance: e-governance reduces corruption in several ways. It takes away discretion and so arbitrariness of decision making is reduced to a very large extent. Since detail data of transaction is maintained exposure of corrupt practices are larger. Not only has that it helped to track links so manipulation is more difficult. It also helps improve services by reducing delay and increasing quality. Being simple and accessible the citizen can exercise choice and also question the policies. Internet portals become an effective platform of interaction of the citizens. It is faster and administrative cost is reduced to a large extent if used effectively. In our country two successful experiments of e-governance are:

- ***Bhoomi-Computerisation of land records in Karnataka:*** This is an on line delivery of land records. Nearly 20 million records of land ownership of 6.7 million farmers in the State have been computerized. Now instead of running after the officials, record

²⁵ <http://economictimes.indiatimes.com/01/19/2004>.

of rights, tenancy and crops can be obtained on line. It has saved time and cost of transaction and the process is transparent.

- ***Interstate computerized check posts in Gujarat:*** Check posts on the national and express ways were computerized with an intention to check overloading of trucks, validity of documents and entry and exit of vehicles. A video camera captures the registration number of the incoming vehicle and an electronic weigh bridge automatically records weight of the vehicle and indicates over load. This creates an automatic database of in coming and out going vehicles. A central office in Ahamedabad receives these data and monitors activities. The system checks 100% cases of overloading and there is a substantial increase in revenue earnings.

The power and distance between the citizens and the civil servants breed opacity and corruption but e-governance helps to reduce both and increase efficiency.

Citizen's Charter It is a charter of understanding between the service provider and the citizen in respect of quality and quantity of the service to be provided. It is a charter of the rights of the public and obligation of public servant regarding the public service in question. A successfully implemented charter can enable the following:

- Improved service delivery.
- Greater responsiveness towards the public.
- Greater public satisfaction.
- Service befitting the investment made.

Component of a citizens' charter should incorporate the following aspects.

- i. Vision and Mission Statement.
- ii. Details of business transacted by the organization.
- iii. Details of client
- iv. Details of service provided to each client group
- v. Details of grievance redressal mechanism and how to access it.
- vi. Expectation from clients.

The need of a citizens' charter arises from the dissatisfaction of the citizen/consumer/customer with the service provided by a public sector organisation. To be useful the charter must be simple and it must describe the conditions offered. It must not be unilateral but a result of the dialogue between the customer and the cutting edge staff. The cost of the service, the

entitlement of the consumer, method of feed back and the promises made must all be a part of the charter²⁶.

Civil Society participation: The civil society is considered to be the realm of association between the house hold and the state. It has a key role to play in combating corruption. Sustained commitment, accountability and transparency along with simplification of procedure is possible to ensure only through an active and vigilant civil society. Civil society is the stake holder and ultimately affected in corruption. Only in this way necessary institutional changes can be brought about. Civil society can utilize two avenues for this purpose:

1. *Create Civil Society organizations, and*
2. *Panchayat participation.*
3. *Chamber of Commerce*
4. *Professional Associations*

Through these avenues the civil society can monitor the system generate opinion, build coalitions and become active participants in shaping the destiny of the nation. The Public Affairs Centre in Bangalore have developed an unique Report Card System which is an innovative method of tracking down corrupt public officials. Similarly Common Cause in Delhi has done considerable work in the area of public interest litigation. The Mazdoor Kisan Shakti Sangathan of Rajasthan has done commendable job in making public information regarding developmental projects in the State²⁷.

Democracy is a government by the citizens themselves. The people should realize that that they are responsible for choosing the right and proper person to represent them in national affairs. The chief malady that afflicts this nation is the absence of responsible electorate. Democracy at the grass root (Panchayat) level contemplates governance by the people themselves. Therefore good governance must address itself to all round development of the village, eradication of poverty, abolition of caste system, and ensuring constitutional rights to people. Such good governance is possible only when there is change in the mind set of the people. Governance in the panchayat must lead to upholding of truth, righteousness and justice in all its parts – social, economic and political.

In conclusion one recalls the words of an American jurist Joseph Story-

²⁶ Excerpts taken from <http://goicharters.nic.in/> Administrative reforms and Public Grievances, GOI

²⁷ Excerpts from Sunil Sondhi article available in <http://unpan1.un.org/intrdoc/groups/public/documents/APCITY/UNPAN19103.pdf>.

“The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful as well useful; its arrangements are full of wisdom and order; and its defenses are impregnable from without.....It may nevertheless perish in an hour by the folly or corruption or negligence of its only keepers, THE PEOPLE. Republics are created—these are words which I commend to you for consideration--by the virtue, public spirit and intelligence of its citizens. They fall when the wise are banished from the public councils because they dare to be honest and the profligate are rewarded because they flatter the people in order to betray them.²⁸”

²⁸ Joseph Story, Commentaries on the Constitution of the United States.