4th report- Ethics in governance

Issue of the stranglehold of corruption on our polity, economy, society. Malgovernance

Good governance - measurement parameters - voice and accountability, absence of political instability & violence, govt effectiveness, reasonableness of the regulatory burden, rule of law, absence of graft.

- Ethical governance — 2 important components — ✓ , ✓

Rule of law - punishment of crime, Independent Judiciary. ~~Enforcing~~ Enforcing the contracts, proper rights
Eliminating black mkt, tax evasion

Absence of graft - Eliminating corruption among bureaucracy, political executive, legislature, Judiciary.

- Hurdles before taking of strong action against corrupt — lengthy processes, weak anti-corruption procedures, & instis. arising from the constitutional guarantee against arbitrary and vindictive action. → shielded the guilty. → eroded the accountability.

Art 311.

- Need for examination of administrative law (Jurisprudence) to rationalise and simplify ~~it~~ the procedures.
- Delays in sanctioning prosecution. (years)
  Soft-pedalling of dept enquiries because of patronage or compassion
- Integrity is much more than financial honesty.
  Premium should placed on transparency, openness, boldness, fairness, justice
- Only law cannot mandate honesty. Personnel should be inherently ethical. Moral virtuousness is the foundation of GG.
- Righteousness, character building. Taught by religions.

→ "Be the change you wish to see in the world." ←

- So, in the ultimate analysis, it is a question of ethics.

Ethics is a set of standards that helps guide conduct.

Present codes of conduct are not direct and to the point. only vague sermons. Rarely indicate prohibitions directly.

- A bureaucrat for any public servant may not be easily convicted in a court, but he can be removed from service on the grounds of loss to exchequer, incompetence etc.
- Standard for probity in public life should be not only conviction in a criminal court. but propriety as determined by suitable independent instis. Eg - 1951 - Mudgal case - an MP of Loksabha was expelled by parliament.

Prescribe stringent standards of probity in public life. instead of saving those public figures not convicted by court.

- More systematic approach to tackle corruption. Not just simplistic measures of reducing govt role - deregulation, Lib, Priv, contracting out etc. Institutional setup. Accountability, transparency, social audit, minimising discretionary powers. Changing procedures, rules, laws which breed corruption, all which make corruption a high return low risk activity. Stringent punishment, eliminating delays. will eliminate public apathy towards corruption → (permissiveness)
- Regulatory bodies should be setup in many sectors of economy which are opened up.
- Social monitoring through empowered autonomous and credible structs. Eg - RTI, ombudsman
- Focus on e-governance
- Tendency to find alibis for their own lapses. Blame game by all the instis. Bureacracy blame political executive. and vice versa.

Contents

2. Ethical framework
   - Ethics in politics, publiclife,
   - International approach
   - Ethical framework for ministers, legislators, Judiciary.
   - office of profit
   - Code of ethics for Civil services, regulatorys.

3. Legal framework for fighting corruption
   - Evolution of the anti-corruption laws in India.
   - Prevention of corruption Act - 1988
   - Corruption involving the Pvt sector
   - confiscation of properties illegally aquired by corrupt means
   - prohibition of Benami transactions

- protection of whistle blowers
- Serious economic offences
- Prior concurrence for registration of case : Section 6A of Delhi Special Police Establishment Act 1946
- Immunity enjoyed by legislators
- constitutional protection of civil servants – Art 311
- Disciplinary proceedings
- statutory reporting obligations

4. Institutional framework

- existing instts/agencies
- evaluation of the anti-corruptn machinery in India
- Lok pal
- Lokayukta
- ~~eb ebm~~ ombudsman at the local level
- Strengthening investigation and prosecution

5. Social infrastructure

- Citizens' initiatives
- False claims Act
- Role of media
- Social audit
- Building social consensus et al

6. Systematic reforms

- Importance of systemic reforms
- promoting competition
- simplifying transactions
- using IT
- promoting transparency
- integrity pacts
- Reducing discretion
- Supervision
- ensuring accessibility and responsiveness
- monitoring complaints
- re-forming the civil services
- Risk mgt for preventive vigilance
- audit
- Proactive vigilance on corruptn
- Intelligence gathering
- vigilance network
- Sector specific recommendations

7. Protecting the honest civil servant

8. International cooper

9. Relationship between the political executive and the permanent civil service.

1.

Amarkesh

1. Introduction

Ethics is a set of standards that society places on itself and which helps guide behaviour, choices and actions.

Culture of integrity is necessary to ensure ethical behaviour.
↳ involves not only setting ethical standards, but also enforcing them ~~through~~ in action, acting against their violations through institutional mechanisms.

- Anti-corruption measures — largely ineffective. Widespread public cynicism about them. Reasons — ↳ seen as mere posturing without any real intent, seen as handy weapons for partisan, political use to harass opponents.
- Corruption is deeply entrenched in the system that fighting it is futile. Cynical that corruption is inevitable. corruption has became norm.
- Two ~~views~~ approaches about the ~~reasons behind~~ ways of dealing with corruption —
  1. ~~man is~~ overemphasis on values and character. Stressing ~~on~~ ~~the~~ ~~that~~ declining values ~~as~~ as causing rise of in corruption. Assuming that only way to fight corruption is restoring the values.
  2. Belief that people are inherently socially conscious but there are some who are deviant and they are pursuing personal gain at the cost of public. These deviant behaviour has to be dealt firmly.
- Values — a sense of right and wrong. Values are intrinsic to our culture.
  ↳ need institutional support. Institutions give shape and content to values. ↳ including incentives.
- Public office and control over public purse — tempts any person
- 3 factors are aggravating the corruption and abuse of office —
  1. Arbitrary exercise of power which is a colonial legacy. Ours is a society which worships power.
  2. Enormous asymmetry of power. In our society. 90% work in unorganised sector. Out of 10% who work in organised sector, 70% are employed by govt. this asymmetry of power reduces societal pressure to conform to ethical behaviour.
  3. Govt policies — over regulation, severe restrictions on economic

activity, excess state control, monopoly of govt, scarcities. State subsidies & welfare progs In a society with asymmetry of power. → converts public servant into a patron and master.

- Competition, transparency, technology
- Overcentralization ↑ corruption.
  ↳ Power is exercised far away from the people. No public accountability.
* Large # of intermediaries between final decision makers and the public makes accountability diffused. This ↑ temptation to abuse authority.
- Empowerment of citizens for accountability — RTI, citizen charters, public involvement in public delivery of services & decision making, social auditing (instruments of accountability)
- Legal system to enforce & ethical behaviour, rule of law
- Integrity of a society depends on the quality of politics too, integrity of politicians.

Political culture

- With liberalisation, political and governance reforms should also take place to alter the incentives in politics and public office and promote integrity and ethical conduct.
- Vicious cycle of corruption → By resisting corruption much more is lost. → Delays, harassment, lost opportunity, loss of time & wages, potential danger of loss of life or limb could result from resistance to corruption and non-compliance with demands.

↳ Coercive corruption (extortionary corruption)

collusive ↓ — Bribe giver and bribe taker are colluded. Both benefit from corruption.

↳ Eg - contracts, procurement of goods, recruitment of employees, evasion of taxes, adulteration of foods and drugs, ~~corruption in police dept~~, obstruction of justice etc.

- As the economy is freed from state control, extortionary corr ↓ and collusive corr ↑
- Anti-corruption initiatives — SC ruled that contestants should file details of wealth, education, criminal antecedents RTI, Egovernance initiatives, automation of corruption prone processes,

- Large scale generation of black money, serious economic offences and fraud, money laundering
- Benami properties of corrupt public servants, assets illegally acquired
- Whistleblower laws to protect informants
- Ethics in all instts involved in governance — civil society, admin

- 3 specific areas —

1. vigilance & corruption — systemic deficiencies
2. Relationship between political executive and permanent civil service
3. Code of conduct for dif organs of govt.

2. Ethical Framework

Ethics and politics

Intro:— Standards of ethics in politics profoundly influence others in governance. → High during freedom struggle. Eroded after independence. Excesses in elections, floor crossing after elections (Horsetrading), abuse of power in public office

- Criminalisation of politics — 'participation of criminals in the electoral process'.

Causes — flagrant violation of laws, poor quality of services, protection for law-breakers on political, group, class, communal or caste grounds, partisan interference in investigation of crimes and poor prosecution of cases, delays in judicial processes, mass withdrawal of cases, indiscriminate grant of parole etc.

- criminals enter politics to influence crime investigations and to use public office for personal gain. Political parties welcome them as they can secure votes.

EC said — 'one in every 6 legislators in India faced grave criminal charges'.

- Illegal expenditure during elections — one of the root causes of corruption. Ceiling cap on expenditure. ← Prevalent measures cant enforce them ↗. Many times the expenditure has to be earned in the next 5 years to sustain in the next elections. (Electoral cycle). vicious cycle.

Recent improvements :—

despite all the ~~all~~ flaws in the functioning of a democracy,

it has a measure of self correction."

Last 3 decades. Electoral reforms

1. Improment in accuracy of electoral rolls.
   Photo identity cards, computerisation of voter lists, transparency in voter registration.
2. Disclosure of antecedents of candidates
   Declaration of assets, criminal antecedents
3. Disqualification of persons convicted of criminal offence
   ~~se in 2006~~
4. Enforcement of the code of conduct
   EC. Art 324. EC made ?.
5. Free and fearless polling
   Polling arrangements - all.
   EVMs. Death of an independent candi would not lead to the cancellation of an election.
6. Reduction in size of council of ministers
   1st ARC reco — 10%. 91st Amen — 2003 — 15% of ~~the~~ lower house

Issues in political reforms :—

Subtle forms of inducements and patronage in the ~~form~~ of chairmanships and memberships of public units.

1. Reform of political funding
   Pvt donations.
   3 patterns of state funding — a. minimalist pattern — only elections are partially subsidised through specific grants or state rendered services (UK, Aus, NZ, Canada) b. maximalist pattern — not merely elections but also other party activities (Germany, Sweden) c. intermediary patterns

Dinesh Goswami committee — 1990 — reco — ~~Ltd~~ support (fuel charges etc)
reco — ban on company donations

- SC order — 1996 — parties have to file returns under Income Tax and wealth Tax Acts.
- Indrajit Gupta committee — reco — state funding in kind.
- National committee for Review of the working of consti — reco — until better regulatory mechanism for political parties can be developed in India, State funding should be deferred
- 2003 — Election and other Related Laws Act —

Provisions —

- full tax exemption to individuals and corporates on all contributions to political parties
- disclosure of party finances and contributions over 20K Rs
- Indirect public funding.

Reco - (ARC) — Need for partial state funding

2. Tightening of anti-defection laws:

- Defection is a source of political corruption.

EC's reco — } ✗ ✗ Not specific

Reco - ARC — Issue of disqualification of members on grounds of defection should be decided by Pres!/governor on the advice of the EC. This will eliminate delays.

3. Disqualification:

Disqualification after conviction wont be sufficient ~~as~~ because of long delays. ∴ Candidates who face grave criminal charges are entering the politics. (unrelated to political agitations)

Need to reconcile between candidate's right to contest and community's right to good representation.

Reco-ARC In cases of persons facing grave criminal charges framed by a trail court after a preliminary enquiry, disallowing them to represent the people in legislatures until they are cleared of charges. Care must be taken to ensure that no political vendetta is involved in such charges. (Precaution against motivated charges or cases — Disqualification on the basis of cases filed 6 months before an election.)

4. False declarations:

Should be made an electoral offence.

5. Publication of accounts by political parties:

Audited annually. ← Reco → Should be made public

Coalition and ethics: —

Reasons for coalition politics — natural because of ~~use~~ diversity and complexity of the Indian electorate and vibrant democracy. Multiparty system

Common minimum programme ← understanding before forming the coalition. → for some-eco develop

• Ethics not followed because of opportunism and craving for power → is mandated by the electorate.

ARC Reco: The constitution should be amended to ensure that if one or more parties in a coalition with a common programme mandated by the electorate either explicitly before the elections or implicitly while forming the govt, realign midstream with others, then ~~m~~ representatives from that party shall have to seek a fresh mandate. I don't agree.

Appointment of the Chief Election commissioner:—

Art 324 ← appointed by pres on the advice of cabinet.

Reco: A collegium headed by PM, and with members as Lok sabha Speaker, leaders of opposition in LS, Law minister, deputy chairman of RS should advice pres.

• Just like the cases of NHRC chairman or CVC.

Expediting disposal of election petitions:—

At present, petitions are to be filed in HCs. Even though Representation of the people Act 1951 mandates HC, to dispose them with in 6 months, long delays persist.

Reco: special ~~dispotal~~ tribunals should be constituted in HCs for speedy disposal.

Grounds of disqualification for membership:—

Art 102 • Parliament can pass laws to include any other criteria
Art 191

Reco: ~~For~~ A law should be enacted which lists out all grounds to remove any ambiguities.

→ Ethics in public life

All public functionaries are trustees of the people. Authority should be exercised only in public interest.

• Frame work of ethics should include — codes of ethics, disclosure of personal interests, mechanism to enforce ↑, norms for disqualification

• Discretion ↑ with the level in the hierarchy.

What constitutes ethical standards? — committee on standards in public life in UK. — Nolan committee — 7 principles.

1. Selflessness (public interest) SAHILOO (Avatar ;))
2. Integrity — Holders of public office should not work for illegitimate interest
3. objectivity — in carrying out public business
4. Accountability — to public. willingness for scrutiny
5. openness — in decision making
6. Honesty — declare any pvt interests
7. Leadership — Holders should promote these principles by leadership and example

Code of ethics — covers broad guiding principles of good behaviour and governance.

code of conduct — stipulates a list of acceptable and unacceptable behaviour and action in a precise and unambiguous manner.

International approach

UN convention against corruption — 2003. prescribes a code of conduct for public officials

many countries have codes of conduct and ethics for ministers too.

Ethical Framework for ministers

GoI has prescribed a code of conduct for ministers.

• Ministers should truly follow consti, laws.
• " declare assets, liabilities, personal interests, business interests → to PM or CM. → annually.
• ~~should give up all of his business interests, stakes~~
• Shouldn't have any connections (only himself, not the family) with mgt and conduct of any business. Doesn't have to give up ownership only if the business doesn't have any dealings with the govt
• Shouldn't accept any contribution for any purpose (for personal gain)
• " receive gifts ~~from~~ with anyone with whom he may have official dealings.
→ including even family members who are dependents on the minister.

Other dos and donts too included.

→ Not comprehensive, More in the nature of a list of prohibition
Does not amount to code of ethics

There should be code of ethics. This code should include principles of minister-civil servant relationship. It should reflect Nolan committee recos.

Recos: Code of ethics for ministers.
Dedicated units should be set up in the offices of PM & CM to monitor the observance of code of ethics, code of conduct. Annual report on observance of these codes should be submitted to the legislatures

Ethical framework for legislators

Committee on Ethics of the Rajya Sabha: to oversee the moral and ethical conduct of ~~ministers~~ members. all aspects of ↑. Constituted in 1997. includes discipline & decorum in the house.
It suggested a code of conduct for members.

Committee on Ethics of Lok Sabha: (13th Lok Sabha).
Personal interests are subordinate to the duty of the public office. High standards of morality, dignity, decency, values in public life
· codes of conduct for legislators are adopted only by few States legislatures like AP, Orissa etc.

Disclosure of interest:
Rajya Sabha - MPs have to declare their interests (if any) while taking part in the proceedings of the house.
Lok Sabha - Same.

Register of interest: MPs enter all their interests in the register periodically. Made public on the permission of the speaker.

Filing assets and liabilities statement:

Enforcement of ethical norms in legislatures:- Parliament has acted firmly in some cases of violation of ~~of~~ ethics.
1951 - Mudgal case. Mudgal was expelled
2005 - 10 members of LS - questions for money. Expelled
after an enquiry by ad hoc committee

· Committee of ethics ← 1 MP of RS
· Mechanism for monitoring and enforcement of ethics

Recos: An office of 'Ethics commissioner' should be constituted in each house, under speaker or chairman, to assist committee on ethics. All states should adopt codes

Office of profit

Disqualification. → under the govt

Conflict of interest between the duties of office and their legislative functions.

office holders who are legislators cannot exercise his functions independently of the executive. Separation of powers as a legislator.

offices are often given to legislators to get their support for the govt. → a form of patronage. Chairmanships of corporations, parliamentary secretaryships of various ministers, etc.

· Separation of powers. But executive members form a subset of legislature

· offices - huge sources of corruption

· Definition of office of profit. ← legislatures are violating the principle in spirit if not in letter by adding the adhocly exempting the offices from disqualification.

· Criteria - not just remuneration

· MPLADS, MLALADS - erodes the notion of separation of powers
Unconstitutional. → should have actually gone to PRIs.
conflict of interests as legislators take up executive roles.
should not include advisory bodies. should include only offices which involve decisionmaking powers.

Recos: MPLADS, MLALADS should be abolished.
Office of profit should be defined keeping in view certain principles

Code of Ethics for civil services

Santhanam committee 1964 - Committee on prevention of corruption

· Public interest above self interest, spirit of empathy for the needy, these attitudes takes time for being rooted

· Formal, enforceable codes. → 'Conduct Rules'
central civil services (conduct) Rules - 1964 ← (only enlarged in 1964)
All India services
State services
Prevention of corruption Act.

7/4 · conduct codes should be ~~con~~ periodically enlarged & updated.

code of behaviour. catalogues specific activities deemed undesirable for govt servants, it specifies highly few general norms except like integrity, devotion to duty etc.

· There is no code of ethics for public servants in India.

Should address conflict of interest → 2006

Draft 'Public Service Bill' – with ~~MoP,P~~ Ministry of Personnel, Public Grievances and Pensions. → lays down a # of generic expectations from civil servants, referred as values. → public service values

1. observance of constitutional provisions
2. being apolitical, objective, impartial.
3. SS; Accountability and transparency in decision making
4. merit based recruitment
5. ensuring economy in public expend

Public Service Bill also lays down public service code and public service mgt code. which specifies specific duties and responsibilities. Public service Authority to oversee the implementation of the codes.

Reco: Public service values should be defined. code of Ethics should be ~~pt~~ prescribed

code of ethics for regulators

Professionals organized themselves into different types of associations ~~in~~ order to pursue common objectives and also to evolve acceptable norms of behaviour and mechanisms to enforce them.

· Indian Medical Council Act, 1956 — prescribes standards, code of ethics for doctors.
· Advocates Act, 1961 — Bar council of India.
· Chartered Accountants Act, 1949 – Institute of Ch Ac of India
→ Press council ~~of India~~ Act, 1978 – PCI – watchdog of the press. quasi-judicial body

PCI adjudicates the complaints against and by the press ~~for~~ violation of ethics.

→ all are 'internal regulators'

External regulators -

Eg - AICTE - All India council of Technical Education.
TRAI

↑ in # of e. as govt is withdrawing itself from its traditional roles

- Need for objective, transparent, fair decision making processes
  ↳ Reco

Ethical framework for the Judiciary

§ Independence of Judiciary.

SC in 1997 adopted code of conduct for judges.
comprehensive but not exhaustive. Code of ethics

A mechanism to enforce the code should be put in place.

Reco — A senior judge in SC should be designated as 'Judicial values commissioner' → He should enquire into cases of violation of the code of conduct and report to CJI.

- Judicial independence and accountability —

As of now, executive can inform the collegium of its objections. If atleast 2 judges have serious reservations about a particular appointment, it won't be made.

- No other country in the world does the judiciary have a final say in its own appointments.
- Current system of ↓ lacks accountability and transparency
- Removal of Judges — 5 stages. - 1st - giving notice, 2nd - Presiding officer accepting notice, 3rd. enquiry committee 4th. Submission of report 5th. moving the removal motion.

Difficult process.

- NCRWC - recos — National Judicial Commission.
  comprised of members from both executive, judiciary
  98th amendment bill - setting up of NJC. → CJI + 2 judges + Law minister + one eminent citizen nominated by Presi
  NJC to appoint; It also inquires into cases of misconduct

2005 - another bill — NJC — members - only judges

2006 -) — Judiciary (Inquiry) Bill — NJC / Council

2006 - Bill. NJC takes up preliminary investigations and enquiring into allegations of misbehaviour and incapacity of judges. It can impose minor measures. It issues a code of conduct. → mandates annual disclosure of assets to CJI or CJ of HC

NJC can take up any complaint made by any.

NJC can advise Pres on removal. (binding advice) What about Legislature (parliament)?

→ In major democracies, appointments are made through executive or legislature etc.

Reco:

NJC should be setup with composition of exec, judy, legis. members. — Vice pres, PM, speaker, CJI, law min, leader of opposition in the lok sabha & Rajya sabha.

For app of HC judge, CM of that state & CJ of HC should also be members.

Art 124, 217 & Judges Inquiry Act 1968 should be amended accordingly.

---

3. Legal framework for fighting corruption

Evolution of the Anti-corruption laws in India —

Before 1947. — Indian Penal code (IPC) was the main instrument.

1947 - Prevention of corruption Act. — Some improvements over IPC.

Criminal Law (Amendment) Act 1952.

Amendments in 1964 — Definition of public servant under IPC was expanded. other amendments too. on the recos of Santhanem committee.

Prevention of Corruption Act, 1988 PCA 88

Consolidation of some provisions of earlier acts.

- New concept of public duty.
- All cases under the Act are to be tried by special judges on day to day basis

Defining corruption — PCA 88 does not define.

Defining the ↗ will not do any good as it will be restrictive. any definition will never be exhaustive

Reco :— New additions to the list of offences.

- Gross perversion of constn amounting to wilful violation of oath of office
- abuse of authority
- obstruction of justice
- Squandering public money.

Collusive bribery :— Conviction rate is less than that of in Coercive bribery because bribe-giver is also a victim. In the latter

Reco : → should be dealt with stringently and separately by PCA

Burden of proof should be shifted to the accused.

Sanction for prosecution :— Not investigation

PCA 1988 — Previous sanction of the competent authority is necessary before a court takes cognizance of the offences committed by public servants. This is to prevent harassment to honest public servants from malicious complaints. This led to delays, and shielding of dishonest officials.

Reco: No sanction should be required if public servants are caught red-handed, or if they possess assets disproportionate to their income.

- often sanctioning authority is summoned in the court to give evidence for the sanction after long periods.

Reco: They should not be summoned. Any required info by the courts should be sought in the beginning stages of the prosecution itself.

Reco : Presiding officer of a House of legislature should be designated as the sanctioning authority for MPs & MLAs. (as of now PCA 88 doesn't say that MPs or MLAs are public servants).

Reco: For expediting sanctions, in the cases where GoI is the sanctioning authority, a committee with member as CVC and secy should be empowered to give sanction. In case, the dishonest pub servant is secy himself, CVC and cabinet secy should be ....

Liability of corrupt public servants to pay damages :—

As of now, corrupt officials are punished but there is no civil liability as there is no provision of compensation. → Criminal punishment. → for the loss to the exchequer or bribegiver.

Reco : There should be civil liability.

Speeding up trails under the PCA:-

Causes of delays — tendency of the accused to obtain frequent adjournments on one plea or the other. tendency to challenge every interim order of trial court in HC or SC. Heavy work load on Special Judges (non-corruption cases)

Reco: Fixing time limits for various stages of trail. → Amendments to CrPC.

Special Judges should be primarily responsible for corruption cases

Proceedings should be ensured to be held on a day-to-day basis. (not implemented even though stipulated in PCA).

. Unwarranted adjournments and delays

Corruption involving private sector:-

, in Pvt sector — not under the purview of PCA

Pvt businesses bribe govt officials. Booked under ab the offence of abetment of bribery.

→ As many public services are being provided by pvt sector, they should be brought under PCA. NGOs too.

. Accounting and auditing standards in the pvt sector.

Standards of procedures.

Transparency. conflict of interests

. Companies Act 1956 — governs the internal processes of a company

If violation of provisions ← penalised. Corporate governance

criminal & civil offences. → bribery — not specified

Recos — PCA should include in it's purview, pvt sector providers of public services. Also NGOs.

confiscation of properties illegally aquired by corrupt means:

Many not convicted.

PCA provides for confiscation on conviction

But attachment of ~~pre~~ to illgotten property is done only after court has taken cognizance of the offence. This gives enough time for the accused to hide his property.

Reco: Burden of proof should be shifted to the accused which can show that property is acquitted by legal means, non-corrupt disproportionate to income

Prohibition of Benami transactions

denoted immoral transfers of property in names of others or even fictitious names, with an intention to escape from certain laws

• Benami transactions (Prohibition) Act - 1988 — to prohibit Benami " ,

This act is ineffective, not implemented, not implementable

Protection to whistleblowers:

Manjunath Shanmugam — IOL — killed in 2005 (Mahantesh - 2012 - Bangalore - BEML housing scam)
↳ Petrol pump owners who were selling adulterated petrol. ↳ by petrol mafia

Satyendra Dubey — NHAI — exposed rampant corruption in construction of roads.
↳ killed in 2003.

Public Interest Disclosure (Protection of Informers) Act - 2010 (whistleblower Act 2010). ↳ safeguards to whistleblowers against victimization in the organisation. → anonymity of identity, police protection

Serious Economic offences:

Rapid pace of the growth of the economy is a cause.

Large scale impact on the economy and the public.

Tax evasion, counterfeiting, distorting share markets, frauds in banking, smuggling, money laundering, insider trading.

• Need of constantly updating the laws. many existing laws.

• often invested by police. Some states have Economic offences wings.

central law violations — central agencies - CBI etc (specialised agencies)

• prevalent Punishment quantum — not enough of a deterrent. High gain low risk activity.

1993 — NN. Vohra Committee — nexus between violators of economic laws, politicians, govt functionaries.

• Criminal jurisprudence in India based on proof beyond doubt is too weak an instrument to control frauds.

Naresh Chandra Committee — on corporate audit and Finance.
↳ 2002. ↳ SFIO. (Serious Frauds Investigation office)
setup in 2003. ↳ deals with corporate frauds.

Need expertise to investigate economic offences.

Recos: A new law on serious economic offences should be enacted. as e under existing laws, getting conviction is difficult.

SFIO should investigate all cases. ← attached to Cabinet secretariat.

10/4

Serious Frauds Monitoring Committee — should be set up to oversee the investigation of such offences. → headed by cabinet secy.

Prior concurrence for registration of cases

Delhi Special Police Establishment Act, 1946. → Under PCA 88, it is 'proposed to'

GoI's approval is needed to inquire into offences committed by higher level officials. → for CBI, ~~EVC~~ → under PCA 88

often misused ~~by~~ to protect senior public servants.

Rationale — Higher officials need to be protected from demoralizing frequent enquiries

Reco :— empowered committee of CVC and Secy of the dept. (described earlier). (But in many cases, corruption may be diffused throughout many departments)

Immunity enjoyed by legislators :

NCRWC - reco — Art 105(2) — immunity covers corruption cases too. Should be amended to exclude this immunity.

Constitutional protection to civil servants — Art 311

Doctrine of pleasure — Art 310.

311 — (with some exceptions) Dismissed or removed only by an authority equal to or superior to appointing authority. only After an inquiry.
Opportunity to be heard during inquiry. ~~Not heard~~
Not heard for quantum of punishment. (42nd amend)

- Safeguards against arbitrary dismissal. security of tenure.
- Fundamental principle of natural justice demands these safeguards
- If there are no safeguards, dismissed servants appeals in Courts which ↑ the burden on judiciary (SC)
- Besides 311 doesn't act as an obstacle in dealing with corrupt.
- Also it is the rules of inquiries and not 311 which is causing delays.

→ Arguments in favour of retaining 311.

" " repealing :—

- "Procedure has become more important than the substance"
- 311 tied down the disciplinary authorities with technical detail.
- many other democracies — right to hearing is not guaranteed. only under the discretion of the authority.

· Permanency of civil service is being questioned in the new environment.
Excessive protection. Not reasonable
· Long processes. Appeals, revisions etc.

Amarkesh

Hota committee – recos to make civil services responsive, citizen, friendly, ethical.
→ reco – amend 311 to facilitate summary removal of corrupt officers. (from service. without any inquiry)

NCRWC – also recommended

ARC – " with the provisions of judicial review now available in our constn, the protection available to govt employees is indeed formidable even outside 311 "

Life time security irrespective of performance. notion should be removed

Recos: 310, 311 should be repealed
A law which contains all necessary terms and conditions of services should be enacted to replace 310, 311. Care should be taken to protect bonafide actions of public servants; to save from arbitrary disciplinary actions.

Disciplinary Proceedings

Central civil Services (Classication, Control, Appeal) Rules – 1965 (CCA rules) → prescribes the penalties. Minor, Major.

Disciplinary proceedings are broadly same for states and central govt employees → Initiation, progress, culmination. → dept or CBI, ACB etc

· Several stages are involved in the proceedings. To and fro correspondence between investigation agencies and CVC. (preliminary investigation, reporting to CVC, 'First stage Advice' by CVC), defence statement of the accused, final orders in minor cases, further investigation in major cases, reporting, , '2nd stage Advice' by CVC, final orders.)

Time taken will be between 1 year for minor cases and ~~5 years~~ 20 months for major cases.

1. CVC oversees vigilance admin, working of CBI. CVC clears initiation and completion of inquiries (only Group A, B officials)
2. Chief Vigilance officer (CVO) in each dept conducts preliminary investigations

11/4 3. DoPT's role in cases involving All India Services.

4. CAT; (tribunals). Many times stays disciplinary proceedings on technical grounds.

Mota committee: recos: Measures like frequent resort to proceedings for minor penalties, relieving the inquiry officer of all other duties while conducting inquiry, etc.

→. Time limits are not followed

Reco – Procedures should be made simple
Emphasis on documentary evidence. Next oral evidence
Appellate mechanism within dept itself

Statutory Reporting obligations ✗
by the citizens. protection from harassment.
Cr PC 1973 – Person should report to magistrate or officer of law any corrupt practice. ✓
No mechanism to enforce it.

---

4. Institutional framework

Existing institutions

Union govt:
Administrative vigilance Division of the DoPT is the nodal agency for dealing with vigilance and anti-corruption. oversees eradication of corruption.

CVC:– Santhanam Committee reco.
↳ set up by a resolution 1964. Statutory status was given in 2003
Central vigilance commission Act 2003

CVC superintends over the working the CBI, vigilance admin. vigilance units in depts – CVO heads. He advises and assists the secy. CVO is link between CVC and dept. and CBI.
CVO collects intelligence., investigates, reports to CVC.

CBI:– DSPE Act 1946
Division of CBI – Special P E. ← 3 wings. 1. Anti-corruption Division, 2. Economic offences wing. 3. Special crimes Division.
Conventional crimes
offences of bribery & corruption

Vigilance Systems in State govts :-

Similar insts. (some have) Vigilance Commissions, anti-corruption bureaus, Lokayuktas. Dif patterns of orgs.

AP - has all the 3.

Evaluation of the anti-corruption machinery in India :-

Not good. Conviction rate is very low. Even cases registered is low when compared to the existent corruption. Delays. Many cases are pending. Backlog of cases in trail courts is ↑.

Lok pal :

↳ reco by 1st ARC. Lok pal bill has been introduced several times.

Similar to Ombudsman in Scandanavian countries.

It is supposed to be a watchdog over the integrity of ministers and MPs.

↳ Bulwark of democratic govt against the tyranny of officialdom.

Lok pal enquires into cases of corruption against public functionaries.

Recos: confined to MPs, ministers. no pvt complaints

There should be organic link between CVC & Lokpal as CVC deals with public officials. (Collusion between &), political patronage for ↓.

CVC should enjoy full functional autonomy, but CVC should work under the overall guidance of Lok pal.

- Lok pal should have 3 members. - (board) - transparency, objectivity, expertise.
  - One from SC (serving or retired judge)
  - 2nd - eminent jurist.
  - 3rd - Central Vigilance commissioner (ex-officio.

- office of PM. - PM is 1st among equals (among ministers). But not like any other minister.
  (lynchpin of govt)
  PM leads and the ministers in framing of policies, decision making and execution of those policies.
  PM's unchallenged authority and leadership are critical to ensure cohesion and sense of purpose in govt. Govt survives on the survival of PM. If PM's conduct is open to formal scrutiny by extra-parliamentary authorities, then the govt's stability is eroded and parliament's supremacy is in jeopardy. Undermines PM's capacity to lead the govt. Weakens his position which leads to lack of harmony, coordination.
  Even if PM is guilty, parliament should be the judge of the matter.

12/4 Most often it is PM's personality, vision, leadership issues which determine electoral outcomes.

Reco Same principles applies to CM of the state too. CM should be out of Lokayukta's jurisdiction. But CM's can be under Lokpal (what is the logic?) → But in some states he comes under it's.

Reco: Effective mechanisms to facilitate it's interaction with the public. → This will create better understanding of the environment, build checks and balances in it's functioning, prevents abuse of authority

Reco: Lokpal should be given constitutional status.
Name change to Rashtriya Lokayukta.

Reco: Selection of Lokpal — a committee — Vice pres, PM, leaders of opposition, CJI, Speaker of L.S.
Members of Lokpal — tenure — 3 years. Shouldnt hold any office under govt except that of CJI.

Lokayukta:

1st ARC recos. Investigates misconduct of public servants, including political executive, legislators, officers of state govts, local bodies, PSE's, other govt instts.
Enquiries on suomoto basis, and on the basis of complaints received from public. Generally - a retired judge (HC or SC) 5 year term.

CM + CJI + Speaker + leader of opp

→ . Many Lokayuktas does not have an independent investigating authority and ∴ depends on govt agencies to carry investigation.
many LA's —
. Mere grievance redressal orgs rather than ombudsman.
. 17 States have LA's. Not uniform in functions, org setup
. Some LA's are also acting as →
, , — CM under it's purview.
, , — independent investigation machinery.
, , — expenditure charged on consolidated fund.
, , — powers to punish for contempt.

• Working of LAs — 1st LA - Maharashtra 1972. No credibility
Orissa abolished LA, Haryana too. Punjab too. All because of conflicts.
Even if LAs indicts ministers, or legislators, no action is taken,
↳ MP, their annual reports are not laid before Legislatures

Karnataka Lokayukta: active. Retired judge of SC.
Jurisdiction over CM too. Anti corruption Bureau forms part of it. So it has independent investigation machinery.

Lokayuktas Conference — 2003. proposed a bill for uniformity.

Reco: there should be vigilance commission (SVC) to deal with petty cases of lower functionaries. This reduced the burden on LA and makes it effective.
organic link between SVC & LA.
Give LA constitutional status to insulate it from political influences.

Ombudsman at the local level ← *
Decentralisation without proper safeguards can ↑ corruption.
Accountability mechanisms.
Reco: A system of Local Bodies Ombudsman should be established to hear complaints of corruption against local bodies. ↳ for a group of districts.
Overall superintendance over the local Bodies ombudsman should vest in the Lokayukta.

• Kerala — Dmb. 1999.
• is needed because of large # of representatives. This can relieve burden on LA.

Strengthening investigation and prosecution
Prosecution is often a weak link in the chain of anti-corruption laws enforcement.
Efficient prosecutors. — with integrity, competence.
Supervised. Trained. Equipped with economic, accounting, audit, legal, technical, skills.
• Inter-agency info exchange and mutual assistance among various enforcement and investigative agencies. — 'Directorate of Enforcement' Economic Intelligence Agencies etc.

T3/4

As of now there is 'Economic Intelligence Council' (EIC) chaired by Fin min. representatives from key ministries, intelligence & investigative agencies. 18 Regional EIC's are set up in 1996, for coordination.

5. Social Infrastructure

Citizens initiatives:

Civil society, media — role in educating citizens about the evils of corruption, raising their awareness levels.

Accountability,

→ Civil society refers to formal as well as informal entities and includes the pvt sector, the media, NGO's, professional associations, informal groups of people from dif walks of life

- Changes in the public attitude to Corruption.

Independent commission Against Corruption (ICAC) - Hong Kong.

ICAC has brought. public became ~~passive~~ active from passive opposers of corruption. All through publicity campaigns.

India - civil society initiatives grew from early 1990's.

- Jan sunwai by MKSS (Rajasthan) and Parivartan (Delhi)
- campaign for electoral reforms and citizen's charters by Loksatta (Hyd)
- ~~etc~~ → public hearings. Scrutiny of all documents of schemes etc.

Because of MKSS, Raj govt created ward sabhas and gave them power to conduct social audit.

- Pressure on govt to reform, Monitoring mechanisms, Educating public, Advice on systemic reforms } NGO's roles.
- Govt can facilitate civil society's participation by —

1. inviting it to oversee govt progs. 2. establishing credible complaints mechanisms. 3. giving access to info. 4. public awareness campaigns 5. assessing public service delivery periodically. 6. Improving public's trust in ~~govt~~ state instts' integrity. 7. Setting service standards.

- Citizen's charters - for accountability and citizen friendliness.

Almost every govt dept issued citizen's charters. But fallen into disuse. only pious declarations. No mechanism to enforce them.

CC's should have enforceable standards, obligations, time limits, remedies / compensation in case of not meeting the standards.

Large public contracts. Civil soc should be involved in assessment of ethics in awarding. → helped by professional agencies.
There should be institutional mechanism for getting this feedback.
Based on this assessment, public agencies could be given a rating.

- Incentives for citizens who participates in efforts against C.
  False claims law. Rewards for reporting. Prompt action on their complaints acts as motivation. ←
- School awareness progs. to bring attitudinal changes.
- Innovative Reward schemes — Eg: % of the income unearthed in Income Tax raids based on the info givers.

False claims Act

USA → — any person who has knowledge about a fraud committed by another person or entity, may file a law suit on behalf of the govt. If fraud is established in a court of law, the person is rewarded with a % of recovery.
It also offers protection to whistleblowers.

Reco: A law on the lines of this should be enacted.
This law would help in curbing collusive corruption. It will help in building a culture of fair play in private and public orgs.
It will motivate the public to fight actively against C.

Role of media

↳ role in monitoring, prevention, control of C.
Inform and educate public. Expose C.

Investigative journalism, Daily reporting.

* → very often there is no systematic arrangement to take note of these allegations and to follow them up.

Reco: There should be institutional mechanism as part of complaints monitoring mechanism in all public offices to rectify this.

- Very often media does not verify allegations before putting them in public domain. Reasons — Competition, motivated charges etc.

Reco: Media should evolve Code of Conduct and norms, ~~and a self reg~~ for screening info, and all stakeholders (including the accused) should be given a fair chance to put forth his version.

- Press council: prescribed a code of conduct for ~~the~~ print media. No code for electronic media.

* Min of Info & Bro prepared a draft Broadcasting Services Regulation Bill. ← Bro Regulatory Authority of India (BRAI)
BRAI gives licenses, oversees e-media, lays down norms of Bro. provides a self-regulatory mechanism.

- Social audit:

- Building societal consensus:
Broad consensus. Election manifestos of political parties.

6. Systemic reforms

Monopoly + discretion − accountability = corruption.

- Creating more commissions, drafting laws, codes etc — no impact with systemic & fundamental governance reforms.

Importance of systemic reforms

Holistic approach — punitive measures + preventive measures (systemic reforms)
↳ acts as deterrent ↳ reduces opportunities for C.
↳ by making systems transparent, ↑ accoun, & reducing discretion, rational procedures & processes etc.

Eg — recent initiatives —
Railway passenger bookings; registration and stamps (maha) - for transparent property valuation tables; e-cops (punjab); e-governance (E-seva in AP); Rural kiosks (Rural Service Delivery Points) in AP.
↳ to ensure reach of E-seva to rural areas.

e-cops — online registration of complaints, (not just police. Any complaint

• Lack of transparency
weak account mechs
Complex bureaucratic procedures } fertile grounds for corruption.

{large scale reforms of both systems & procedures

Certain general principles in reforms

Requires in-depth study of each of govt functions.

Promoting competition

Public services. → Many areas — monopolies of govt.

2 successful initiatives —

1. de-monopolisation in telecom sector.
2. growing role of pvt players in providing direct marketing services to farmers outside the govt-controlled mandis in MP.

• Telecom sector —
till recently a monopoly.
↳ large scale corruptn
DoT — now a policy maker. separated from provision of services.

APMA

• Agri Produce Marketing Act 1972 of MP. — Earlier only the traders of officially designated mandis were permitted to buy the produce from farmers. Officials of the mandi-samitis and the traders colluded to cheat the farmers by paying them less than the fair price.

This act was amended. Now farmers and traders can transact business outside the .

→ *. deregulating in one area may increase corruption elsewhere. Pvt agencies which replace govt in service delivery may be even more corrupt. ∴ such demonopolisation and competition should be accompanied by a 'regulatory mechanism' to protect public interest.

Recos: Every govt dept should identify areas where monopoly can be eliminated and where competition can be introduced.

Simplifying transactions

Elaborate hierarchies.
Complex work methods
Diffusion of responsibilities
• Multiplicity of layers in every decision making process. — causes delays & corruption. → whenever abuse of authority is noticed, another layer of admin is added in the hope that this would act as check.
Each additional layer adds to delay, corruption

overcrowding — reason for jumping the queues

15/4

Single window clearance system → one stop service centre. — simplifies procedures & reduces layers. → requires full automated back up of all related offices

'Positive silence' sanctions — deemed sanction of an application upon expiry of stipulated period for such sanction. eg- licences

Eg: AP — E-Seva model. E-seva offers the services of some 13 state and local govt orgs, 3 central govt orgs and 9 pvt sector orgs under one roof.

Services include → payment of public service bills, provision of birth & death certificates, payment of property tax, train and bus reservations, Pvt mobile bill payments, receipt of passport applications, transfer of shares, driving licenses

- Updating outdated, complex procedures — eg: licences, registration etc

Recos: • Broad principles of reforms — adoption of SWS, minimising hierarchical tiers, ~~stipo~~ timelimits etc
• Existing departmental Manuals and codes need to reviewed and simplified periodically. Updated; ~~less~~ & discretion.

Using IT

ICT can transform and redefine processes and systems of governance → e-governance is next logical step in the use of ICT in ↗, to ensure participation in decision making

- Access to info
- MIS
- e-service delivery

} 3 visible outcomes of ICT

Eg Gyandoot project in MP — ~~access to info is~~ provided ~~to~~ info to about prevailing agricultural produce prices at auction centres and easier processes for obtaining copies of land records. through kiosks which are connected through internet. Entire cost-borne by PRI.

Bhoomi profect — karna. Lands records were computerised. Now no need to pay bribes to obtain ↗.

- Some ICT projects failed. (Pilot projects)
- Existing admin structs & processes should be reengineered to make them adapt ICT.
- challenge is to upscale and replicate ~~into~~ on large scale.

Bottlenecks — infrastructure, ~~capabi~~ skills of personnel.

~~Re N~~ Recos: All depts should draw up plans for using IT.
Reengineering the present structs & processes.
NIC should build the skills of personnel.

Promoting transparency

Transparent — means that processes of decision making and working are open to public scrutiny. public's participation. Grass-root level democracy.
RTI.

Integrity pacts

↳ An agreement between public agency procuring goods and the bidder for a public contract declaring that no bribes are transacted. overseen and scrutinised by independent, outside observer. Eg ONGC — MoU with Tran International India & CVC. 2006.

Reco: ↳ should be given a place in legal framework.

Reducing discretion

at lower levels in the hierarchy.
Eg: points system in transfers.
There are large # of govt activities where discretion can be totally eliminated. They can be automated by IT.
Eg: registration of births & deaths, etc

Reco: Decision making on important matters (where promptness is not required, should be assigned to a committee rather than individuals. (Board Vs Secy).

Supervision

↳ is one ~~kind of check~~ mechanism of checks & balance against discretion.
Dept officers feel that it is not their responsibility to curb corruption in their offices as there are independent anti-corruption agencies. But these are no substitute for measures of ~~through~~ — Random inspections, surprise visits, confidential feedback from citizens, putting procedures in place which make it difficult to seek bribe, use of decoy clients etc.

Reco: Annual performance report — one parameter which should evaluate integrity too.

16/11 be included for evaluation of the subordinates ie measures taken by to check corruption.

- Superiors try to play safe ion evaluating integrity in APR, as there is little accountability ~~of reporting~~ about the way they evaluate their subordinates.

→ Reco: If are booked under PCA 88, superiors should be asked to explain why they gave clean chit in APR.

Surprise inspections - should be more rigorous in offices having dealings with public, check posts, toll tax collection points, parking lots, pollution check mobile vans, weights and measures, quarries, mines, pay and accounts offices etc.

- on-site inspection of works executed, verification of genuineness of beneficiaries.
- of establishment sections and cash branches to verify prompt accounting of cash received etc
- Surprise verification of cash in the possession of officers having public dealings.
- internal Reviews of price paid for a wide range of purchases made by different field departments, local bodies, parastatals

Reco Comparison of prices with market prices, with dif prices paid (for same product) by dif offices of same dept.

Ensuring accessibility and responsiveness

to the public. of their needs, redressal of grie

- Need for the disclosure of info about their rights, concessions, facilities available in each dept, details of authorities
- Need to service standards.; appeal procedures.
- various small measures like — help desks, automatic call centres, single window front office for providing info.
- codify the services.
- Regular, time bound, courteous interaction between citizens and officials. For this, business process in govt depts should be reengineered so that back office functions are segregated and front office should be a 'single window'.

Reco: All services through a common point (delivery of) ← there can be outsourced to an agency.

- Limiting public interaction to designated officers.
- 'Single window front office' with a file tracking system.

Monitoring complaints

Many offices in India have a complaint monitoring system but not working. Long periods to get a response.

Reco: online complaint tracking system in every office.

- External, periodic mechanism of audit of complaints in offices.
- Responsibility to be fixed for lapses and remedial measures.

Reforming the civil services

Accountability.

- There is a need for clear assignment of duties and responsibilities with structured and interlocking accountability at each level in the hierarchy.
- Supervisory and oversight responsibilities of controlling officers.
- Inbuilt system of rewards and punishments.

objective.

- Now — no performance audit.

Need → to monitor and objectively evaluate the performance of officers

Risk mgt for preventive vigilance

classification of various positions in govt as 'high risk of corruption', medium, low on the basis of degree of discretion and public interaction.

- Evaluation of personnel on the basis of integrity. 'high risk' med, low.

low risk personnel → high risk job.

Risk profiling of personnel — to be done by committee of eminent persons.

Integrity test.

Audit ✗

audit authorities do not convey info of serious irregularities to anti-corruption bodies, currently. They convey to CAG. and only when CAG's report is laid before legislature, irregularities comes to light. ← lot of delays. Enough time to cover up, to destroy evidence

requires forensic audit for investigation.

Reco

If any irregularity is unearthed, that should be immediately

12/4

reported to investi agencies.
Audit teams should be trained for forensic audit.

Proactive vigilance on corruption

→ attempts to reduce the scope for C in the long run.
Suspected corrupt elements are identified, ~~as~~ they are weeded out or ~~to~~ ensured that they do not occupy sensitive positions.

→ ~~are~~ taken up by vigilance commission, not by depts.

Reco: Taking proactive vigilance measures should be primarily a responsibility of the head of the office.

Intelligence gathering

Gathering intelligence about their own personnel. — Security and investigative agencies.

· ways of → about public servants.

↳ keeping surveillance, studying their life styles, their decisions, complaints ~~about~~ on them, ~~etc~~ feedback, etc.

Risk profiling using this intelligence.

Vigilance network

Reco: A national database containing the details of all corruption cases at all levels should be created, placed in public domain, regularly updated.

· this is a tool for monitoring by authorities and public.

---

7. Protecting the honest civil servant

· vigilance activity may ~~reduce~~ create aversion for risk taking among public servants.

· some bona fide decisions (with out any motive of personal gain) can cause losses. Those civil servants need to be protected.

Eg: PSEs — managerial decision making.

· Protection from baseless, malafide, malicious, motivated complaints

· Existing safeguards —

Eg: 'Single Point directive' — of CBI — requires prior permission of the Union govt for initiating investigation against an officer of the rank of a joint secy. (in PSEs too).

Eg: ~~a case~~ only CBI or state anti-cor agency can register a case

under PCA 88.
Vigilance commissions have to recommend for registration of a case.

- Both safeguards — leading to obstacles and delays

Reco: An impartial agency should screen cases of prior permission for investigation and sanction prosecution. → CVC.

8. International cooperation

Corruption transcends national boundaries.
Coop in areas like money laundering, freezing of assets, extradition, asset recovery, sharing evidence, etc.

- UN Declaration against corruption. - 1996.
  UN Convention " " - 2003 — legal instrument against corruption. → mutual assistance.

9. Relationship between the political executive and the permanent civil service

Art 53 - Presi exercises power through officers subordinate to him.
As advice of ministerial council is binding on presi, such advice is binding on officers. under Art 77.
Presi frames rules for the conduct of business of govt.
GoI (Allocation of Business) Rules
GoI (Transaction of Business) Rules — governs how power is exercised

- secy to advise the minister about the course of action, propriety and legality of his orders.
- Relationship between the secy and the minister is organic.
  Secy has constitutional ~~right~~ mandate to advise the minister.
  " once his advice has been suitably considered, unless the minister passes an illegal order, the secy is bound to implement it. "
- Civil servant is required to implement the orders of govt without bias, with honesty, without fear or favour.

- ✳ one reason of friction is there is no system of specifying of accountability this needs their relationship to be defined. one the basis of output - outcome framework

18/4

Outputs or results are specific services that civil servants deliver. → so should be the basis for evaluation of their performance.

outcomes — is the success in achieving social goals.

Political executive decides what outputs should be included so that the desired outcomes can be achieved.

. so is accountable for outcomes.

→ • Another reason for friction — arbitrary transfer and posting of civil servants at the behest of ministers.

"Transfer is the politicians' basic weapon of control over the bureaucracy." "Transfer industry." "whenever a new govt is formed, there is a tidal wave of transfers on the basis of caste or community or monetary considerations." — S C.

Leads to demoralisation, divisions on the basis of C,C, Spread of corruption.

→ Evolving detailed, clear, objective, transparent transfer policies

Ensuring administrative continuity and stability by discouraging frequent transfers. Minimum tenures depending on the nature of the posting.

• Premature transfers (only on sound administrative grounds) which should be spelt in the transfer orders. Civil servants should be given right to appeal.

• This Instrument should not be used as an instrument for punishment by circumventing the procedure laid down for disciplinary proceedings.

• on the paper, the reasons for transfer may be shown as administrative reasons. But may be only a cloak for the real intent.

→ one suggestion is transfers should be left to bureaucracy itself. managed through autonomous personnel boards (Civil Service Boards) eg

Draft Public Service Bill – 2006 – "Central Public Services Authority."

· Another area of conflict – interference of minister in ~~dat~~ day-to-day functioning of subordinate officers. Bureaucracy should be allowed to discharge its duties as per the authority delegated to it. Ministers often issue instructions, formal or informal.

'District Incharge Minister' – several states have created this institution to review development activities in the district. Often they exceed their brief and instruct on issues which come under officers' domain. Bad practice.

Amarkesh