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# ETHICS IN GOVERNANCE

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# 1 INTRODUCTION

Ethics is a set of standards that society places on itself and which help guide behaviour, choices and actions. The standards do not, by themselves, ensure ethical behaviour; that requires a robust culture of integrity. The crux of ethical behaviour does not lie in bold words and expressions enshrined as standards, but in their adoption in action, in sanctions against their violations, in putting in place competent disciplinary bodies to investigate allegations of violations and impose sanctions quickly and in promoting a culture of integrity.

Corruption is an important manifestation of the failure of ethics. The word 'corrupt' is derived from the Latin word 'corruptus', meaning 'to break or destroy'. The word 'ethics' is from the original Greek term ethikos, meaning 'arising from habit'. It is unfortunate that corruption has, for many, become a matter of habit, ranging from grand corruption involving persons in high places to retail corruption touching the everyday life of common people.

Anti-corruption interventions so far made are seen to be ineffectual and there is widespread public cynicism about them. The interventions are seen as mere posturing without any real intention to bring the corrupt to book. They are also seen as handy weapons for partisan, political use to harass opponents. Corruption is so deeply entrenched in the system that most people regard corruption as inevitable and any effort to fight it as futile. This cynicism is spreading so fast that it bodes ill for our democratic system itself.

There are two, somewhat contrary, approaches in dealing with corruption and abuse of office. The first is overemphasis on values and character. Many people lament the decline in values and the consequent rise in corruption. The implicit assumption is that until values are restored, nothing much can be done to improve the conduct of human beings. The second approach is based on the belief that most human beings are fundamentally decent and socially conscious, but there is always a small proportion of people, which cannot reconcile individual goals with the good of society. Such deviant people tend to pursue personal gain at the cost of public good and the purpose of organized government is to punish such deviant behaviour. If good behaviour is consistently rewarded and bad behaviour consistently punished, the bulk of the people follow the straight and narrow path. However, if good behaviour is not only not rewarded, but is actually fraught with difficulties and bad behaviour is not only not punished, but is often extravagantly rewarded, then the bulk of the people tend to stray from the honourable path.

In the real world, both values and institutions matter. Values are needed to serve as guiding stars, and they exist in abundance in our society. A sense of right and wrong is intrinsic to our culture and civilization. But values need to be sustained by institutions to be durable and to serve as an example to others. Values without institutional support will soon be weakened and dissipated. Institutions provide the container, which gives shape and content to values. This is the basis of all statecraft and laws and institutions. While incentives and institutions matter for all people, they are critical in dealing with the army of public servants – elected or appointed – endowed with authority to make decisions and impact on human lives and exercising the power to determine allocation of resources. Public office and control over public purse offer enormous temptation and opportunity to promote private gain at public cost. Therefore, creation of institutions and designing of incentives are of utmost importance in promoting ethical conduct of public servants.

In our society, corruption and abuse of office has been aggravated by three factors. First, there is a colonial legacy of unchallenged authority and propensity to exercise power arbitrarily. In a society which worships power, it is easy for public officials to deviate from ethical conduct. Second, there is enormous asymmetry of power in our society. Nearly 90% of our people are in the unorganized sector. Quite a number of them lead

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a precarious existence, depending on subsistence wages with no job security. And nearly 70% of the organized workers with job security and regular monthly wage are employed by the state directly or through public sector undertakings. Almost all these employees are 'educated' in a largely illiterate and semiliterate society and economically even the lowliest of public servants are better off than most people in the country. What is more, their employment in government comes with all the trappings of power. Such asymmetry of power reduces societal pressure to conform to ethical behaviour and makes it easy to indulge in corruption.

Third, as a conscious choice, the Indian state in the early decades after Independence chose a set of policies whose unintended consequence was to put the citizen at the mercy of the State. Over regulation, severe restrictions on economic activity, excessive state control, near-monopoly of the government in many sectors and an economy of scarcity all created conditions conducive to unbridled corruption. In addition, many state subsidies and beneficiary-oriented programmes in a situation of asymmetry of power converted the public servant into patron and master and reduced most citizens into mendicants. This at once enhanced opportunities to indulge in corruption and reduced the citizens' capacity to resist extortionary demands.

The experience of the past six decades in our country and elsewhere offers us valuable lessons in curbing corruption. It is generally recognized that monopoly and discretion increase the propensity to corruption while competition and transparency reduce corruption. This has been dramatically witnessed in India in the wake of economic liberalization. As competition came in and choice expanded, corruption plummeted. Telephones, steel, cement, sugar and even two-wheelers are among the many sectors, which have seen enhanced supply and choice, reducing or even eliminating corruption. Similarly, wherever technology and transparency have been introduced, corruption has been significantly contained. Computerization and access to information have made many services from railway reservation to issuing of driving licenses increasingly free from corruption.

A factor which increases corruption is over-centralization. The more remotely power is exercised from the people, the greater is the distance between authority and accountability. The large number of functionaries between the citizen and final decision-makers makes accountability diffused and the temptation to abuse authority strong. For a large democracy, India probably has the smallest number of final decision makers. Local Government is not allowed to take root and power has been concentrated both horizontally and vertically in a few hands. The net results are weakened citizenry and mounting corruption.

It is well recognized that every democracy requires the empowerment of citizens in order to hold those in authority to account. Right to Information, effective citizens' charters, opportunity and incentives to promote proactive approach of citizens, stake-holders' involvement in delivery of public services, public consultation in decision making and social auditing are some of the instruments of accountability that dramatically curbed corruption and promoted integrity and quality of decision making.

Therefore, enforcement of rule of law and deterrent punishment against corruption are critical to build an ethically sound society.

Perhaps the most important determinant of the integrity of a society or the prevalence of corruption is the quality of politics. If politics attracts and rewards men and women of integrity, competence and passion for public good, then the society is safe and integrity is maintained. But if honesty is incompatible with survival in politics, and if public life attracts undesirable and corrupt elements seeking private gain, then abuse of authority and corruption become the norm. In such a political culture and climate, desirable initiatives will not yield adequate dividends. Competition and decentralization certainly reduce corruption in certain sectors. But if the demand for corruption is fuelled by inexhaustible appetite for illegitimate funds in politics, then other avenues of corruption will be forcibly opened up. As a result, even as corruption declines in certain areas, it shifts to other, sometimes more dangerous, areas in which competition cannot be introduced and the state exercises a natural monopoly. What is needed with liberalisation is corresponding political and governance reform to alter the incentives in politics and public office and to promote integrity and ethical conduct.

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All forms of corruption are reprehensible and we need to promote a culture of zerotolerance of corruption. But some forms of corruption are much more pernicious than others and deserve closer attention. In a vast majority of cases of bribery, the citizen is a victim of extortion and is compelled to pay a bribe in order to get a service to which he is entitled. Experience has taught most citizens that there is a vicious cycle of corruption operating and they often end up losing much more by resisting corruption. Delays, harassment, lost opportunity, loss of precious time and wages, uncertainty and, at times, potential danger of loss of life or limb could result from resistance to corruption and non-compliance with demands. In such cases, the citizen is an unwilling victim of coercive corruption. But there are several cases of collusion between the bribe giver and corrupt public servant. In such cases of collusive corruption, both parties benefit at immense cost to society. Awarding of contracts for public works and procurement of goods and services, recruitment of employees, evasion of taxes, substandard projects, collusive violation of regulations, adulteration of foods and drugs, obstruction of justice and concealing or doctoring evidence in investigation are all examples of such dangerous forms of corruption. As the economy is freed from state controls, extortionary corruption declines and collusive corruption tends to increase. We need to fashion strong and effective instruments to deal with this growing menace of collusive corruption, which is undermining the very foundations of our democracy and endangering society.

Corruption is a global phenomenon and has also become a serious global concern. The United Nations Convention against Corruption was adopted by the UN General Assembly in October 2003, providing an international instrument against corruption. The ADBOECD Anti-Corruption Action Plan, which has been signed by the Government of India, is a broad understanding to further the cause of inter-regional cooperation in the matter of prevention of corruption. The World Bank has also declared war against corruption by refusing to fund projects whose implementation is tainted by corrupt practices. At the annual meeting of the International Monetary Fund and the World Bank Group in Singapore in 2006, a joint statement was issued with major multilateral financial institutions agreeing on a framework for preventing and combating fraud and corruption in the activities and operations of their institutions.

In India, some recent anti-corruption initiatives are steps in the right direction. The Supreme Court has ruled that candidates contesting elections should file details regarding their wealth, educational qualifications and criminal antecedents along with their nomination papers. The Right to Information Act, which has recently been enacted, is a potent weapon to fight corruption. The introduction of information communication technologies, e-governance initiatives and automation of corruption prone processes in administration have succeeded in reducing corruption.

Much more remains to be done however, and beyond the realm of existing regulation. The escalating levels of corruption in various segments of our economy resulting in large scale generation of black money, serious economic offences and fraud, and money laundering leading even to the funding of terrorist activities against the State, have created a grave situation which needs to be dealt with severely. Benami properties of corrupt public servants need to be forfeited, as also the assets illegally acquired from corrupt practices. Whistleblower legislation has to be put in place to protect informants against retribution. Also, we have to suitably strengthen the institutional framework for investigating corrupt practices and awarding exemplary punishment to the corrupt thereby raising the risk associated with corrupt behaviour.

Ethics in governance, however, has a much wider import than what happens in the different arms of the government. An across-the-board effort is needed to fight deviations from ethical norms. Such an effort needs to include corporate ethics and ethics in business; in fact, there should be a paradigm shift from the pejorative 'business ethics' to 'ethics in business'. There is need for ethics in every profession, voluntary organization and civil society structure as these entities are now vitally involved in the process of governance. Finally, there should be ethics in citizen behaviour because such behaviour impinges directly on ethics in government and administration.

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# 2 ETHICAL FRAMEWORK

## Ethics and Politics

Any discussion on an ethical framework for governance in a democracy must necessarily begin with ethical values in politics. Politics and those engaged in it, play a vital role in the legislative and executive wings of the State whose acts of commission and omission in working the Constitution and the rule of law become the point of intervention for the judiciary. While it is unrealistic and simplistic to expect perfection in politics in an ethically imperfect environment, there is no denying the fact that the standards set in politics profoundly influence those in other aspects of governance. Those in politics have a clear and onerous responsibility.

Excesses in elections (in campaign-funding, use of illegitimate money, quantum of expenditure, imperfect electoral rolls, impersonation, booth-capturing, violence, inducements and intimidation), floor-crossing after elections to get into power and abuse of power in public office became major afflictions of the political process over the years. Political parties, governments and more importantly the Election Commission and the Supreme Court have taken several steps since the late 1980s in an attempt to eliminate the gross abuses that had virtually become the norm.Yet, there is a widespread view that much more needs to be done to cleanse our political system. Along with that of corruption, this issue was raised in every public hearing held by the Commission during its visits to the States.

Criminalization of politics – 'participation of criminals in the electoral process' - is the soft underbelly of our political system. The growth of crime and violence in society (to the point of encouraging 'mafia' in many sectors) is due to a number of root causes. Flagrant violation of laws, poor quality of services and the corruption in them, protection for law-breakers on political, group, class, communal or caste grounds, partisan interference in investigation of crimes and poor prosecution of cases, inordinate delays lasting over years and high costs in the judicial process, mass withdrawal of cases, indiscriminate grant of parole, etc., are the more important of the causes.

Large, illegal and illegitimate expenditure in elections is another root cause of corruption. While there are formal limits to expenditure and some steps have been put in place in an attempt to check them, in reality, actual expenditure is alleged to be far higher. Abnormal election expenditure has to be recouped in multiples to sustain the electoral cycle! This results in 'unavoidable' and ubiquitous corruption altering the nature of political and administrative power and undermining trust and democracy. Cleansing elections is the most important route to improve ethical standards in politics, to curb corruption and rectify maladministration.

Recent Improvements Despite all the flaws in the functioning of a democracy, it has a measure of self correction. As stated earlier, significant efforts have been made over the last two decades to bring about meaningful electoral reforms. Some have observed that the past decade has seen more political reform in India than in any other large democracy after the Second World War. Briefly stated, the more important of the reforms relate to :

- **Improvement in Accuracy of Electoral Rolls:**

a) The Election Commission has made efforts to make voter registration more accessible to voters and involve, to some extent, post offices in revision of Electoral rolls.

b) Printed electoral rolls/CDs have been made available for sale.

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c) Computerisation of entire electoral rolls of over 620 million voters has been initiated.

d) The provision of photo-identity cards for all voters has been started.

- **Disclosure of Antecedents of Candidates:**

a) The Supreme Court has directed that a candidate should declare any conviction by a court or whether a criminal case is pending against him;

b) The direction to file a declaration of assets and liabilities of the candidate and family members would enable a check at the time of the next elections.

- **Disqualification of Persons Convicted of Criminal Offence:**

a) The Supreme Court ruled in 2005 that Section 8(4) of the Representation of the People Act was unconstitutional as it violated equality before law. Now all convicted candidates stand at an election on the same footing, whether at the time of conviction they were incumbent legislators or not. (However, during the term of a legislator, exemption from disqualification does apply if an appeal is pending and sentence is stayed).

- **Enforcement of the Code of Conduct:**

a) Using its over-all powers to "superintend, control and direct" elections under Article 324 of the Constitution, the Election Commission has made the Code of Conduct for elections binding in all respects, issuing directions regarding timings of campaigns, prohibition of festoons/cutouts, insistence on daily expenditure statements, appointment of a large number of observers, ordering of re-poll in specific polling booths and other such steps.

- **Free and fearless polling:**

a) Policing arrangements have been improved, including greater use of Central Forces and holding of elections for more than one day in a State, and measures like sealing of borders, etc.

b) Electronic voting machines have been introduced throughout the country (in the parliamentary elections of 2004).

c) It has been decided that the death of an independent candidate would not lead to the cancellation of an election.

- **Reduction in size of Council of Ministers:**

a) A recommendation to restrict the size to 10% was made by the first Administrative Reforms Commission more than three decades ago. The Constitution (Ninety-first Amendment) Act, 2003 restricts the size of the Council of Ministers to 15% of the strength of the Lower House in Parliament/State legislature. The amendment is a step towards moderating the number of Ministers to some extent.

***Issues in Political Reforms***

Despite the measures taken, improvements are marginal in the case of important problems of criminalization, the use of money in elections, subtle forms of inducements and patronage in the form of chairmanships and memberships of public units and the anomaly of legislators functioning as disguised executives. More effective steps have, therefore, been suggested and the Commission would like to deal with the more important of them.

**a) Reform of Political Funding**

In India, one of the sources of funding of political parties has been through private donations. Internationally, there are three broad patterns of state funding for political parties and elections. One is the minimalist pattern,

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wherein elections alone are partially subsidized usually through specific grants or state rendered services. Candidates are accountable to the public authority for observance, reporting and disclosure of expenditure for the limited election period. The UK, Ireland, Australia, New Zealand and Canada are examples of this pattern, while the US is a variant of the same with election funding being largely private and subjected to strict reporting and disclosure requirements as well as limits on contributions.

The second, maximalist pattern of state funding involves public funding not merely for elections but even for other party activities, as in Sweden and Germany. This pattern involves less detailed regulation of contributions and expenditure because parties are dependent largely on state support and local requirements enforce internal democracy as well as general transparency. In between, there are a variety of mixed patterns involving partial reimbursement for public funding of elections on a matching grant basis such as in France, Netherlands and South Korea.

While the Representation of the People Act puts limits on election expenditure, company donations to political party were banned in 1969 but later allowed by an amendment of the Companies Act in 1985. The Dinesh Goswami Committee on Electoral Reforms set up in 1990 recommended limited support, in kind, for vehicle fuel, hire charges of microphones, copies of electoral rolls etc., while simultaneously recommending a ban on company donations. Subsequent developments include parties being forced to file returns under the Income Tax and Wealth Tax Acts after the Supreme Court issued notices and also passed an order on 4th April, 1996 which effectively repealed Explanation-I of Section 77 of the Representation of People Act and clubbed expenditure by third party(s) as well as by the political party under the expenditure ceiling limits prescribed under the Representation of People Act. Another Committee, the Indrajit Gupta Committee on State Funding of Elections has recommended partial state-funding mainly in kind. However, the National Committee for Review of the Constitution has expressed the view that until better regulatory mechanism for political parties can be developed in India, state funding of elections should be deferred.

Parliament in 2003 unanimously enacted the Election and Other Related Laws (Amendment) Act in a spirit of bipartisanship. The Act contains the following key provisions:

- Full tax exemption to individuals and corporates on all contributions to political parties.
- Effective repeal of Explanation I under Section 77 of the Representation of the People Act. Expenditure by third parties and political parties now comes under ceiling limits, and only travel expenditure of leaders of parties is exempt.
- Disclosure of party finances and contributions over Rs.20,000.
- Indirect public funding to candidates of recognized parties – including free supply of electoral rolls (already in vogue), and such items as the Election Commission decides in consultation with the union government.
- Equitable sharing of time by the recognized political parties on the cable television network and other electronic media (public and private).

***Thus as stated by Second ARC, In order to eradicate the major source of political corruption, there is a compelling case for state funding of elections. As recommended by the Indrajit Gupta Committee on State Funding of Elections, the funding should be partial state funding mainly in kind for certain essential items.***

**b) Tightening of anti-defection law:**

Defection has long been a malaise of Indian political life. It represents manipulation of the political system for furthering private interests, and has been a potent source of political corruption. The anti-defection legislation that was enacted to combat this malaise, fixed a certain number above which defection in a group was

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permitted. Legalising such selective defection however, provided opportunities for transgressing political ethics and opportunism. There is no doubt that permitting defection in any form or context is a travesty of ethics in politics.

The 91st Amendment to the Constitution was enacted in 2003 to tighten the antidefection provisions of the Tenth Schedule, enacted earlier in 1985. This Amendment makes it mandatory for all those switching political sides – whether singly or in groups – to resign their legislative membership. They now have to seek re-election if they defect and cannot continue in office by engineering a 'split' of one-third of members, or in the guise of a 'continuing split of a party'. The Amendment also bars legislators from holding, postdefection, any office of profit. This Amendment has thus made defections virtually impossible and is an important step forward in cleansing politics. Besides, the Election Commission has also insisted on internal elections in political parties to elect their leaders.

The Election Commission has recommended that the question of disqualification of members on the ground of defection should also be decided by the President/Governor on the advice of the Election Commission. Such an amendment to the law seems to be unfortunately necessary in the light of the long delays seen in some recent cases of obvious defection.

***The Second ARC also recommended that the issue of disqualification of members on grounds of defection should be decided by the President/Governor on the advice of the Election Commission.***

**c) Disqualification:**

It has been suggested that disclosure of past acquittals in respect of serious criminal charges will be of value. Given the delays in our criminal justice system, disqualification after conviction for crimes may be an insufficient safeguard. There are candidates who face grave criminal charges like murder, abduction, rape and dacoity, unrelated to political agitations. In such cases, there is need for a fair reconciliation between the candidate's right to contest and the community's right to good representation. As a rule, it would be rash and undemocratic to disqualify candidates on some pretext or other. An election outcome must be decided by the people who are the ultimate sovereigns through the ballot box. Election by indiscriminate disqualification is a stratagem sometimes resorted to by dictatorships to pervert the democratic process. However, in the present situation, on balance, in cases of persons facing grave criminal charges framed by a trial court after a preliminary enquiry, disallowing them to represent the people in legislatures until they are cleared of charges seems to be a fair and prudent course. But care must by exercised to ensure that no political vendetta is involved in such charges and people facing charges related to political agitations are not victimized.

***Thus the Second ARC recommended that Section 8 of the Representation of the People Act, 1951 needs to be amended to disqualify all persons facing charges related to grave and heinous offences and corruption, with the modification suggested by the Election Commission.***

**d) False Declarations:**

The Election Commission has recommended that all false declarations before the Returning Officer, Electoral Officer, Chief Electoral Officer or the Election Commission should be made an electoral offence under Section 31 of the Representation of the People Act (now restricted to statements relating to preparation/ revision, inclusion/exclusion in electoral rolls). The proposed amendment will act as an effective deterrent against false statements.

**e) Publication of Accounts by Political Parties:**

Political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited annually. This needs to be acted upon early. The audited accounts should be available for information of the public.

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**Other Issues**

- **Coalition and Ethics**

The phenomenon of coalition politics has emerged as a strong presence in the Indian polity in recent years. The very diversity and complexity of the Indian electorate and our vibrant democracy has made this a familiar aspect of our electoral process. Coalitions are often necessitated by the fact that, in a multiparty system such as ours, it is difficult today for a single party to obtain a clear majority in the Legislature. In order to make coalitions legitimate, it is necessary for the coalition partners to reach an understanding based on broad-based programmes to ensure that the goals of socio-economic development are met. Such an understanding needs to be translated into a common minimum programme and announced either prior to the election or before the formation of the coalition government.

The ethics of coalition government is, however, seriously strained when the coalition partners change partnerships mid-stream and new coalitions are formed, primarily driven by opportunism and craving for power in utter disregard of the common minimum programme agreed to for the realization of the goal of socio-economic development. The common programme, which has been explicitly mandated by the electorate prior to the election, or implicitly after the election but before the formation of the government, becomes non-existent, and the power given by the people is abused. To maintain the will of the people, it is necessary to lay down an ethical framework to ensure that such exercises in opportunism, through redrawing of coalitions between elections, do not take place.

***The Second ARC recommended that 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 government, realign midstream with one or more parties outside the coalition, then Members of that party or parties shall have to seek a fresh mandate from the electorate.***

- **Appointment of the Chief Election Commissioner/Commissioners**

The present procedure of appointment of the Chief Election Commissioner and other Election Commissioners, is laid down in Article 324 of the Constitution and stipulates that they are to be appointed by the President on the advice of the Prime Minister. During debates in the Constituent Assembly on the procedure for appointment, there were suggestions that the person appointed as the Chief Election Commissioner should enjoy the confidence of all parties and therefore his appointment should be confirmed by a 2/3 majority of both the Houses. Thus even at that stage, there was a view that the procedure for appointment should be a broad based one, above all partisan considerations. In recent times, for statutory bodies such as the National Human Rights Commission (NHRC) and the Central Vigilance Commission (CVC), appointment of Chairperson and Members are made on the recommendations of a broad based Committee. Thus, for the appointment of the Chief Vigilance Commissioner, the Committee consists of the Prime Minister, the Home Minister and the Leader of the Opposition in the Lok Sabha, whereas for the NHRC, the Committee is chaired by the Prime Minister and has as its members, the Speaker of the Lok Sabha, the Home Minister, the Leader of the Opposition in the Lok Sabha, the Leader of the Opposition in the Rajya Sabha and the Deputy Chairman of the Rajya Sabha.

Given the far reaching importance and critical role of the Election Commission in the working of our democracy, it would certainly be appropriate if a similar collegium is constituted for selection of the Chief Election Commissioner and the Election Commissioners.

***The Second ARC recommended that a collegium headed by the Prime Minister with the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Law Minister and the Deputy Chairman of the Rajya Sabha as members should make recommendations for the consideration of the President for appointment of the Chief Election Commissioner and the Election Commissioners.***

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- **Expediting Disposal of Election Petitions**

Election petitions in India are at present to be filed in the High Court. Under the Representation of the People Act, such petitions should be disposed of within a period of 6 months. In actual practice however, such petitions remain pending for years and in the meanwhile, even the full term of the House expires thus rendering the election petition infructuous. There have been suggestions from other high level committees and eminent persons that a separate judicial set-up may be required. The National Commission to Review the Working of the Constitution (NCRWC) recommended that special election benches should be constituted in the High Courts earmarked exclusively for the disposal of election petitions.

The Commission is of the view that given the huge existing case load in the High Courts, it would be possible to ensure speedy disposal of election petitions only by setting up Special Tribunals as provided for under Article 323B of the Constitution. While doing so, it would have to be specifically ensured that the decisions of such tribunals are final with appeal jurisdiction being restricted to the Supreme Court alone as already provided in the Constitution. Such Tribunals may have two members, one a Judge of the High Court, and the other, an administrative member. In case of difference of opinion between the two, the matter may be referred to the High Court.

***The Second ARC recommended that Special Election Tribunals should be constituted at the regional level under Article 323B of the Constitution to ensure speedy disposal of election petitions and disputes within a stipulated period of six months. Each Tribunal should comprise a High Court Judge and a senior civil servant with at least 5 years of experience in the conduct of elections (not below the rank of an Additional Secretary to Government of India/ Principal Secretary of a State Government). Its mandate should be to ensure that all election petitions are decided within a period of six months as provided by law. The Tribunals should normally be set up for a term of one year only, extendable for a period of 6 months in exceptional circumstances.***

- **Grounds of Disqualification for Membership**

Article 102 of the Constitution provides for disqualification for membership of either House of Parliament under certain specific circumstances. In view of recent development leading to expulsions of some Members of Parliament, it may be desirable to comprehensively spell out other circumstances under which the Members of Parliament can be disqualified. This could be done by enacting such a law under Article 102 (e). This would remove any ambiguity in the matter and also re-affirm the supremacy of Parliament in all such matters.

***The Second ARC recommended that Appropriate legislation may be enacted under Article 102(e) of the Constitution spelling out the conditions for disqualification of membership of Parliament in an exhaustive manner. Similarly, the States may also legislate under Article 198 (e).***

## Ethics in Public Life

Ethics is grounded in the notion of responsibility and accountability. In democracy, every holder of public office is accountable ultimately to the people. Such accountability is enforced through a system of laws and rules, which the elected representatives of the people enact in their legislatures. Ethics provides the basis for the creation of such laws and rules. It is the moral ideas of people that give rise to and shapes the character of laws and rules. Our legal system emanates from a shared vision of what is good and just.

The fundamental principle in a democracy is that all persons holding authority derive it from the people; in other words, all public functionaries are trustees of the people. With the expansion of the role of government, public functionaries exercise considerable influence over the lives of people. The trusteeship relationship between the public and the officials requires that the authority entrusted to the officials be exercised in the best interest of the people or in 'public interest'.

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The role of ethics in public life has many dimensions. At one end is the expression of high moral values and at the other, the specifics of action for which a public functionary can be held legally accountable. Any framework of ethical behaviour must include the following elements:

a. Codifying ethical norms and practices.

b. Disclosing personal interest to avoid conflict between public interest and personal gain.

c. Creating a mechanism for enforcing the relevant codes.

d. Providing norms for qualifying and disqualifying a public functionary from office.

A system of laws and rules, however elaborate, cannot provide for all situations. It is no doubt desirable, and perhaps possible, to govern the conduct of those who occupy positions in the lower echelons and exercise limited or no discretion. But the higher the echelon in public service, the greater is the ambit of discretion. And it is difficult to provide for a system of laws and rules that can comprehensively cover and regulate the exercise of discretion in high places.

One of the most comprehensive statements of what constitutes ethical standards for holders of public office came from the Committee on Standards in Public Life in the United Kingdom, popularly known as the Nolan Committee, which outlined the following seven principles of public life:

1. **Selflessness:** Holders of public office should take decisions solely in terms of public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

2. **Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.

3. **Objectivity:** In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

4. **Accountability**: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

5. **Openness:** Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

6. **Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

7. **Leadership:** Holders of public office should promote and support these principles by leadership and example.

These principles of public life are of general applicability in every democracy. Arising out of such ethical principles a set of guidelines of public behaviour in the nature of a code of conduct becomes essential for public functionaries. Indeed any person who is privileged to guide the destiny of the people must not only be ethical but must be seen to practice these ethical values. Although all citizens are subject to the laws of the land, in the case of public servants there must be standards of behaviour more stringent than those for an ordinary citizen. It is at the interface of public action and private interest that the need arises for establishing not just a code of ethics but a code of conduct. A code of ethics would cover broad guiding principles of good behaviour and governance while a more specific code of conduct should, in a precise and unambiguous manner, stipulate a list of acceptable and unacceptable behaviour and action.

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## Ethical Framework for Ministers

Government of India has prescribed a Code of Conduct which is applicable to Ministers of both the Union and State Governments. The Code of Conduct merits reproduction here.

- In addition to the observance of the provisions of the Constitution, the Representation of the People Act, 1951, and any other law for the time being in force, a person before taking office as a Minister, shall:

a. Disclose to the Prime Minister, or the Chief Minister, as the case may be, details of the assets and liabilities, and of business interests, of himself and of members of his family. The details to be disclosed shall consist of particulars of all immovable property and the total approximate value of (i) shares and debentures, (ii) cash holdings and (iii) jewellery;

b. Sever all connections, short of divesting himself of the ownership, with the conduct and management of any business in which he was interested before his appointment as Minister; and

c. With regard to a business concern which supplies goods or services to the Government concerned or to undertakings of that Government (excepting in the usual course of trade or business and at standard or market rates) or whose business primarily depends on licenses, permits, quotas, leases, etc., received or to be received from the Government concerned, divest himself of all his interests in the said business and also of the management thereof.

Provided, however, that he may transfer in the case of (b) his interest in the management, and in the case of (c) both ownership and management, to any adult member of his family or adult relative, other than his wife (or husband, as the case may be), who was prior to his appointment as Minister associated with the conduct or management or ownership of the said business. The question of divesting himself of his interests would not arise in case of holding of share in public limited companies except where the Prime Minister, or the Chief Minister, as the case may be, considers that the nature or extent of his holding is such that it is likely to embarrass him in the discharge of his official duties.

- After taking office, and so long as he remains in office, the Minister shall:-

(a) Furnish annually by the 31st March to the Prime Minister, or the Chief Minister, as the case may be, a declaration regarding his assets and liabilities;

(b) Refrain from buying from or selling to, the Government any immovable property except where such property is compulsorily acquired by the Government in usual course;

(c) Refrain from starting, or joining, any business;

(d) Ensure that the members of his family do not start, or participate in, business concerns, engaged in supplying goods or services to that Government (excepting in the usual course of trade or business and at standard or market rates) or dependent primarily on grant of licenses, permits, quotas, leases, etc., from that Government; and

(e) Report the matter to the Prime Minister, or the Chief Minister as the case may be, if any member of his family sets up, or joins in the conduct and management of, any other business.

- No Minister should:-

(a) personally, or through a member of his family, accept contribution for any purpose, whether political, charitable or otherwise. If any purse or cheque intended for a registered society, or a charitable body, or an institution recognized by a public authority, or a political party is presented to him, he should pass it on as soon as possible to the organisation for which it is intended; and

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(b) associate himself with the raising of funds except for the benefit of (i) a registered society, or a charitable body, or an institution recognised by a public authority and (ii) a political party. He should, however, ensure that such contributions are sent to a specified office bearer, etc. of the society or body or institution of party concerned and not to him. Nothing herein before shall prevent a Minister from being associated with the operation for disbursement of funds raised as above.

- A Minister, including the Union Ministers, the Chief Ministers and other Ministers of State Governments/ Union Territories, should not permit their spouse and dependents to accept employment under a Foreign Government, in India or abroad, or in a foreign organisation (including commercial concerns) without prior approval of the Prime Minister. Where the wife or a dependent of a Minister is already in such employment, the matter should be reported to the Prime Minister for decision whether the employment should or should not continue. As a general rule, there should be total prohibition on employment with a Foreign Mission.
- A Minister should

(a) Not accept valuable gifts except from close relatives, and he or members of his family should not accept any gifts at all from any person with whom he may have official dealings; and

(b) Not permit a member of his family, contract debts of a nature likely to embarrass or influence him in the discharge of his official duties.

- A Minister may receive gifts when he goes abroad or from foreign dignitaries in India. Such gifts fall into two categories. The first category will include gifts, which are of symbolic nature, like a sword of honour, ceremonial robes etc. and which can be retained by the recipients. The second category of gifts would be those which are not of symbolic nature. If its value is less than Rs. 5,000/- it can be retained by the Minister. If, however, there is any doubt about the estimated value of the gifts, the matter should be referred to the Toshakhana for valuation. If the value of the gift, on assessment is found to be within the prescribed limit of Rs.5,000/- the gift will be returned to the Minister. If it exceeds Rs.5,000/- the recipient will have the option to purchase it from the Toshakhana by paying the difference between the value as assessed by the Toshakhana and Rs.5,000/-. Only gifts of household goods which are retained by the Toshakhana, such as carpets, paintings, furniture etc. exceeding Rs.5,000/- in value, will be kept in Rashtrapati Bhavan, Prime Minister's House or Raj Bhavan as State property.
- In case of grant of an award by any organisation to a Minister/a person holding the Minister's status/ rank, the following procedure may be followed:-

(a) The credentials of the organisation giving award may be gone into;

(b) If the credentials of the body giving the awards are unimpeachable, the award as such, may be accepted but the cash part should not be accepted;

(c) If the awards relate to the work done by the individual prior to his holding the office of Minister, such awards may be accepted but in all such cases, specific approval of the Prime Minister or the Chief Minister as the case may be, should be obtained. The Chief Minister and other Ministers shall have to take permission of the Prime Minister and the Union Home Minister; and

(d) Those instances, where a Minister is to receive any award by any organisation which has connections with any Foreign Agencies/Organisations, such a Minister/ a person holding the Minister's status/rank, will have to seek prior approval of the Prime Minister of India.

- A Minister should follow the instructions given from time to time by the Prime Minister in matters relating to attending functions arranged by foreign missions in India or abroad, and also for accepting the membership of any foreign trust, institution or organisation other than UN Organisations of which India is a Member.

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- The authority for ensuring the observance of the Code of Conduct will be the Prime Minister in the case of Union Ministers, the Prime Minister and the Union Home Minister in the case of Chief Ministers, and the Chief Minister concerned in the case of State Ministers except where it is otherwise specified. The said authority would follow such procedure as it might deem fit, according to the facts and circumstances of each case, for dealing with or determining any alleged or suspected breach of this Code.

The Code of Conduct is a starting point for ensuring good conduct by Ministers. However, it is not comprehensive in its coverage and is more in the nature of a list of prohibitions; it does not amount to a Code of Ethics. It is therefore necessary that in addition to the Code of Conduct, there should be a Code of Ethics to provide guidance on how Ministers should uphold the highest standards of constitutional and ethical conduct in the performance of their duties. The Code should be based on the overarching duty of Ministers to comply with the law, to uphold the administration of justice and to protect the integrity of public life. It should also lay down the principles of minister-civil servant relationship. The Code of Ethics should also reflect the seven principles of public life as enumerated.

The Commission has examined the code of conduct in other countries and is of the view that a Code of Ethics and a Code of Conduct for Ministers should include the following:

a. Ministers must uphold the highest ethical standards;

b. Ministers must uphold the principle of collective responsibility;

c. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies;

d. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;

e. Ministers in the Lok Sabha must keep separate their roles as Minister and constituency member;

f. Ministers must not use government resources for party or political purposes; they must accept responsibility for decisions taken by them and not merely blame it on wrong advice.

g. Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way, which would conflict with the duties and responsibilities of civil servants;

h. Ministers must comply with the requirements which the two Houses of Parliament lay down from time to time;

i. Ministers must recognize that misuse of official position or information is violation of the trust reposed in them as public functionaries;

j. Ministers must ensure that public moneys are used with utmost economy and care;

k. Ministers must function in such a manner as to serve as instruments of good governance and to provide services for the betterment of the public at large and foster socio-economic development; and

l. Ministers must act objectively, impartially, honestly, equitably, diligently and in a fair and just manner.

The authority for ensuring the observance of the present Code of Conduct is the Prime Minister in the case of Union Ministers, the Prime Minister and the Union Home Minister in the case of Chief Ministers, and the Chief Minister concerned in the case of Ministers of the State Government. The Commission is of the view that dedicated units should be set up in the offices of the Prime Minister and the Chief Ministers of the states to monitor the observance of the Code of Conduct. An annual report indicating violations should be submitted to the appropriate legislature for consideration. Besides, the present Code of Conduct is not in the public

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domain and, as a result, members of the public are perhaps not aware that such a code exists. The Commission would like to recommend that the Code of Conduct for Ministers, duly amplified, should be put in the public domain as some other countries have done. As coalition politics has become the order of the day it is particularly appropriate to ensure that the ministers from the coalition partners both at the Centre and the State also adhere to the Code of Ethics/Conduct and the Prime Minister and the Chief Ministers are duty bound to put violation of these Codes in public domain.

## Ethical Framework for Legislators

Among the four pillars of an ideal democratic structure, the legislature has the most important position. It is the expression of the will of the people and the executive is answerable to it. This demands that the requirement of ethical standards for the executive must be preceded by an equally emphatic requirement of ethical standards for legislators.

One way of avoiding conflict between public and private interest is through disclosure of one's interest. This by itself cannot resolve the conflict of interest but is a good first step as it acknowledges the possibility of such a conflict. Legislatures in different countries have adopted different approaches to this issue. In some countries the automatic outcome of such a disclosure is abstention from participation in the decision making process, whereas in other countries, the decision is left to the Chair. In India, disclosure of interest is provided in both Houses of Parliament, in different ways. It has been ruled by the Chairman of the Rajya Sabha that a Member having a personal pecuniary or direct interest on a matter before the House is required, while taking part in the proceedings in that matter, to declare the nature of interest.

The Rules of Procedure and Conduct of Business in the Lok Sabha prescribe that if the vote of a Member in a division in the House is challenged on grounds of personal, pecuniary or direct interest in the matter to be decided, the Speaker may examine the issue and decide whether the vote of the Member should be disallowed or not and his decision shall be final.

Further there is Committee on ethics in both Rajya Sabha and Lok Sabha.

### The Committee on Ethics of the Rajya Sabha

Chapter XXIV of the Rules of Procedure and Conduct of Business in the Council of States, provides for constitution of the Committee on Ethics to oversee the moral and ethical conduct of Members. The following is the existing framework of the Code of Conduct for Members of the Rajya Sabha:

The Members of Rajya Sabha should acknowledge their responsibility to maintain the public trust reposed in them and should work diligently to discharge their mandate for the common good of the people. They must hold in high esteem the Constitution, the Law, Parliamentary Institutions and, above all, the general public. They should constantly strive to translate the ideals laid down in the Preamble to the Constitution into a reality. The following are the principles which they should abide by in their dealings:

(i) Members must not do anything that brings disrepute to the Parliament and affects their credibility.

(ii) Members must utilize their position as Members of Parliament to advance general wellbeing of the people.

(iii) In their dealings if Members find that there is a conflict between their personal interests and the public trust, which they hold, they should resolve such a conflict in a manner that their private interests are subordinated to the duty of their public office.

(iv) Members should always see that their private financial interests and those of the members of their immediate family do not come in conflict with the public interest and if any such conflict ever arises, they should try to resolve such a conflict in a manner that the public interest is not jeopardized.

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(v) Members should never expect or accept any fee, remuneration or benefit for a vote given or not given by them on the floor of the House, for introducing a Bill, for moving a resolution, putting a question or abstaining from asking a question or participating in the deliberations of the House or a Parliamentary Committee.

(vi) Members should not take a gift, which may interfere with honest and impartial discharge of their official duties. They may, however, accept incidental gifts or inexpensive mementoes and customary hospitality.

(vii) Members holding public offices should use public resources in such a manner as may lead to public good.

(viii) If Members are in possession of confidential information owing to their being Members of Parliament or Members of Parliamentary Committees, they should not disclose such information for advancing their personal interests.

(ix) Members should desist from giving certificates to individuals and institutions of which they have no personal knowledge and are not based on facts.

(x) Members should not lend ready support to any cause of which they have no or little knowledge.

(xi) Members should not misuse the facilities and amenities made available to them.

(xii) Members should not be disrespectful to any religion and work for the promotion of secular values.

(xiii) Members should keep uppermost in their mind the fundamental duties listed in part IV A of the Constitution.

(xiv) Members are expected to maintain high standards of morality, dignity, decency and values in public life.

**The Committee on Ethics of the Lok Sabha**

There is a Committee on Ethics of the Lok Sabha to oversee the moral and ethical conduct of Members of that House. The Committee on Ethics (Thirteenth Lok Sabha) in its First Report observed that norms of ethical behaviour for members have been adequately provided for in the Rules of Procedure and Conduct of Business in the Lok Sabha, directions by the Speaker and in the conventions which have evolved over the years on the basis of recommendations made by various Parliamentary Committees. Apart from the existing norms, the Committee recommended that the members should abide by the following general ethical principles:

i. Members must utilize their position to advance general well being of the people.

ii. In case of conflict between their personal interest and public interest, they must resolve the conflict so that personal interests are subordinate to the duty of public office.

iii. Conflict between private financial/family interest should be resolved in a manner that the public interest is not jeopardized

iv. Members holding public offices should use public resources in such a manner as may lead to public good.

v. Members must keep uppermost in their mind the fundamental duties listed in Part-IV of the Constitution.

vi. Members should maintain high standards of morality, dignity, decency and values in public life.

Only a few State Legislatures such as Andhra Pradesh, Orissa etc. have adopted Codes of Conduct for their Legislators.

While the enunciation of ethical values and codes of conduct puts moral pressure on public functionaries, they need to be backed by an effective monitoring and enforcement regime. Legislatures the world over have adopted different models for this purpose. The Canadian Conflict of Interest and Post-Employment Code for public office holders (2006) relies on an Ethics Commissioner to oversee the Code and to provide advice. The

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Ethics Commissioner is an Officer of Parliament appointed under Section 72.01 of the Parliament of Canada Act. The Commissioner reports on the inquiries he conducts pursuant to the Members' Code and makes annual reports to the House of Commons on his activities in relation to its Members. Based on the recommendations of the Nolan Committee, the House of Commons has established the office of Parliamentary Commissioner for Standards. The Commissioner's main responsibilities are:

- Overseeing the maintenance and monitoring the operation of the Register of Members' Interests.
- Providing advice on a confidential basis to individual Members and to the Select Committee on Standards and Privileges about the interpretation of the Code of Conduct and Guide to the Rules relating to the Conduct of Members.
- Preparing guidance and providing training for Members on matters of conduct, propriety and ethics.
- Monitoring the operation of the Code of Conduct and Guide to the Rules and, where appropriate, proposing possible modifications of it to the Committee.
- Receiving and investigating complaints about Members who are allegedly in breach of the Code of Conduct and Guide to the Rules, and reporting his findings to the Committee.
- In addition, the Commissioner's office is responsible for maintaining and monitoring the operation of various registers and lists; providing advice about them; and receiving and investigating complaints about them.

Thus the Second ARC recommended to constitute an Office of 'Ethics Commissioner' by each House of Parliament. This Office, functioning under the Speaker/Chairman, would assist the Committee on Ethics in the discharge of its functions, and advise Members, when required, and maintain necessary records.

Further to maintain ethics in Legislature Second ARC recommended that:

- The Law should be amended to define office of profit based on the following principles:

I. All offices in purely advisory bodies where the experience, insights and expertise of a legislator would be inputs in governmental policy, shall not be treated as offices of profit, irrespective of the remuneration and perks associated with such an office.

II. All offices involving executive decision making and control of public funds, including positions on the governing boards of public undertakings and statutory and non-statutory authorities directly deciding policy or managing institutions or authorizing or approving expenditure shall be treated as offices of profit, and no legislator shall hold such offices.

III. If a serving Minister, by virtue of office, is a member or head of certain organizations like the Planning Commission, where close coordination and integration between the Council of Ministers and the organization or authority or committee is vital for the day-to-day functioning of government, it shall not be treated as office of profit.

- The use of discretionary funds at the disposal of legislators, the power to determine specific projects and schemes, or select the beneficiaries or authorize expenditure shall constitute discharge of executive functions and will invite disqualification under Articles 102 and 191, irrespective of whether or not a new office is notified and held. Hence Schemes such as MPLADS and MLALADS should be abolished.
- Members of Parliament and Members of State Legislatures should be declared as 'Public Authorities' under the Right to Information Act, except when they are discharging legislative functions.Code of Ethics for Civil Servants

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## Code of Ethics for Civil Servants

The inculcation of values facilitating the subordination of the self to a larger, societal good, and engendering a spirit of empathy for those in need of ameliorative state interventions are not skills which could be easily imbibed after joining the civil services. Such attitudes need nurturing over not merely individual life-times, but through successive generations - the 'right' ethos takes long to evolve. It must also be accepted that the existing framework for maintaining and promoting the norms of 'right conduct' cannot be enforced through a rigid mindless enforcement of laws and rules. It is all a question of striking the right balance. Within the civil services there are formal, enforceable codes setting out norms of expected behaviour with 'sanctions' prescribed for unacceptable departures from such norms. There are also inchoate conventions of propriety and acceptable behaviour without formal sanctions but with nonobservance of such practices and conventions attracting social disapproval and stigma.

The current set of 'enforceable norms' are 'Conduct Rules', typified by the Central Civil Services (Conduct) Rules - 1964 and analogous rules applicable to members of the All India Services or employees of various State Governments.

The code of behaviour as enunciated in the Conduct Rules, while containing some general norms like 'maintaining integrity and absolute devotion to duty' and not indulging in 'conduct unbecoming of a government servant', is generally directed towards cataloguing specific activities deemed undesirable for government servants. There is no Code of Ethics prescribed for civil servants in India although such codes exist in other countries.

A draft 'Public Service Bill' now under consideration of the Ministry of Personnel, Public Grievances and Pensions seeks to lay down a number of generic expectations from civil servants, which are referred to as "values". The salient 'values' envisaged in the Bill are:

- Allegiance to the various ideals enshrined in the preamble to the Constitution
- Apolitical functioning
- Good governance for betterment of the people to be the primary goal of civil service
- Duty to act objectively and impartially
- Accountability and transparency in decision-making
- Maintenance of highest ethical standards
- Merit to be the criteria in selection of civil servants consistent, however, with the cultural, ethnic and other diversities of the nation
- Ensuring economy and avoidance of wastage in expenditure
- Provision of healthy and congenial work environment
- Communication, consultation and cooperation in performance of functions i.e. participation of all levels of personnel in management.

The draft Bill also envisages a Public Service Code and a Public Service Management Code laying down more specific duties and responsibilities. Violation of the Code would invite punishments akin to the current major and minor penalties by the heads of institutions/ organizations. A 'Public Service Authority' is also envisaged to oversee implementation of the Code and values indicated above and to render advice in the matter of the values and the Code. The Commission has decided that a detailed examination of the proposed draft Bill will be appropriately made in its forthcoming report on Civil Services Reforms.

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The various issues discussed above are not significant only for the civil services. They are important for all segments of the bureaucracy and, equally so, for all local bodies and their employees. After the 73rd and the 74th Amendments of the Constitution, the local bodies now have an important role to play in the nation's development and have major executive powers. It is essential that the need for relevant codes for these bodies and their employees, and for any public authority, is recognized.

## Ethical Framework for the Judiciary

Independence of the judiciary is inextricably linked with judicial ethics. An independent judiciary enjoying public confidence is a basic necessity of the rule of law. Any conduct on the part of a judge, which demonstrates a lack of integrity and dignity, will undermine the trust reposed in the judiciary by the citizens. The conduct of a judge should, therefore, always be above reproach.

The closely related aspect of the accountability of judges is the mechanism for removal of judges for deviant behaviour. Other than impeachment under Articles 124(4) and 217(1), there is no mechanism to proceed against any inappropriate behaviour or misdemeanour of judges. At the time of framing the Constitution, it was felt that judicial conventions and norms would constitute strong checks. However, the impeachment provisions have turned out to be impracticable as it is virtually impossible to initiate any impeachment proceedings, let alone successfully conclude them. There are five stages, all of them difficult to accomplish.

First is a mandatory presentation of not less than hundred Lok Sabha members or fifty Rajya Sabha members for giving notice. At the second stage, the Speaker or the Chairman has to admit the motion; if he does not admit it, the matter ends there. In the third stage, if there is one, a committee is appointed to conduct an enquiry. The fourth stage is that the committee makes a report and forwards it to the Speaker or the Chairman. The fifth and final stage is reached when the two Houses of Parliament proceed to act in the manner prescribed by Section 6(3) of the Judges (Inquiry) Act. Inadequacy of the existing mechanism was affirmed in the K Veeraswami case, 1991(3) SCC 655 and the infructuous impeachment proceedings in the case of V Ramaswami even after adverse findings of the Judges' Committee under the Judges Inquiry Act, 1968.

Hence Second ARC recommended for constitution of NJAC ( which has already been done). Apart from that it had recommended that

- The National Judicial Council should be authorized to lay down the Code of Conduct for judges, including the subordinate judiciary.
- The National Judicial Council should be entrusted the task of oversight of the judges, and should be empowered to enquire into alleged misconduct and impose minor penalties. It can also recommend removal of a judge if so warranted.
- Based on the recommendations of the NJC, the President should have the powers to remove a Supreme Court or High Court Judge.
- Article 124 of the Constitution may be amended to provide for the National Judicial Council. A similar change will have to be made in Article 217. Also, since the Council is to have the authority to oversee and discipline judges, further changes will need to be made to Article 217 (Clause 4).
- A Judge of the Supreme Court should be designated as the Judicial Values Commissioner. He/she should be assigned the task of enforcing the code of conduct. Similar arrangement should also be made in the High Court.

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# 3 LEGAL FRAMEWORK FOR FIGHTING CORRUPTION

## Corruption in Public Sector

In the pre-independence period, the Indian Penal Code (IPC) was the main tool to combat corruption in public life. At that time the need for a special law to deal with corruption was not felt.

However the Second World War created shortages which gave opportunity to unscrupulous elements to exploit the situation leading to large scale corruption in public life. This situation continued even after the war. The lawmakers concerned about this menace, felt that drastic legislative measures need to be taken. Hence the Prevention of Corruption Act, 1947 was enacted to fight the evils of bribery and corruption.

**The Prevention of Corruption Act 1947:** This Act did not redefine nor expand the definition of offences related to corruption, already existing in the IPC. Similarly, it also adopted the same definition of 'Public Servant' as in the IPC38. However the law defined a new offence - 'Criminal misconduct in discharge of official duty' - for which enhanced punishment (minimum 1 year to maximum 7 years) was stipulated. In order to shift the burden of proof in certain cases to the accused, it was provided that whenever it was proved that a public servant had accepted any gratification, it shall be presumed that the public servant accepted such a gratification as a motive or reward under Section 161 of IPC. In order to prevent harassment to honest officers, it was mandated that no court shall take cognizance of offences punishable under Sections 161,164 and 165 without the permission of the authority competent to remove the charged public servant. The Act also provided that the statement by bribe-giver would not subject him to prosecution.39 It was considered necessary to grant such immunity to the bribe-giver, who might have been forced by circumstances into giving a bribe. If this immunity was not provided, all complainants would become liable for punishment, which would deter them from giving complaints against any public official who accepted a bribe.

**The Criminal Law (Amendment) Act, 1952** brought some changes in laws relating to corruption. The punishment specified under Section 165 of IPC was enhanced to three years instead of the existing two years. Also a new Section 165A was inserted in the IPC, which made abetting of offences, defined in Sections 161 and 165 of IPC, an offence. It was also stipulated that all corruption related offences should be tried only by special judges.

**Amendments in 1964:** The anti-corruption laws underwent comprehensive amendments in 1964. The definition of 'Public Servant' under the IPC was expanded (The Santhanam Committee had also recommended an expanded definition of the term 'Public Servant'). The CrPC was amended to provide in camera trial if either party or the court so desires. The presumption which was available under Section 4 of The Prevention of Corruption Act, was extended to include offences defined under Sections 5(1) and 5(2). The definition of 'criminal misconduct' was expanded and possession of assets disproportionate to the known sources of income of a public servant, was made an offence. Section 5(A) was amended so as to empower the State Governments to authorize officers of the rank of Inspectors of Police to investigate cases under the Act (earlier, this could be done only with the approval of the Magistrate (The Santhanam Committee recommended this). Police officers, competent to investigate cases under the Act, were empowered to inspect bankers' records, if they had reasons to suspect commission of an offence under the Act (This power is available under Section 94 CrPC, but only after a case has been registered. This was also one of the recommendations of the Santhanam Committee).

**The Prevention of Corruption Act, 1988:** It consolidates the provisions of the Prevention of Corruption Act 1947, the Criminal Law Amendment Act, 1952 and some provisions of IPC. Besides, it has certain provisions

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intended to effectively combat corruption among public servants. The salient features of the Act are as follows:

- The term 'Public Servant' is defined in the Act. The definition is broader than what existed in the IPC.
- A new concept – 'Public Duty' is introduced in the Act.
- Offences relating to corruption in the IPC have been brought in Chapter 3 of the Act, and they have been deleted from the Indian Penal Code.
- All cases under the Act are to be tried only by Special Judges.
- Proceedings of the court have to be held on a day-to-day basis.
- Penalties prescribed for various offences are enhanced.
- CRPC is amended (for the purposes of this Act only) to provide for expeditious trial
- It has been stipulated that no court shall stay the proceedings under the Act on the grounds of any error or irregularity in the sanction granted, unless in the opinion of the court it has led to failure of justice.
- Other existing provisions regarding presumptions, immunity to bribe giver, investigation by an officer of the rank of DySP, access to bank records etc have been retained.

***Issues in Prevention of Corruption Act, 1988***

**A. Definition of Corruption**

The Prevention of Corruption Act, 1988, lists offences of bribery and other related offences and the penalties from Sections 7 to 15. These offences broadly cover acceptance of illegal gratification as a motive or reward for doing or forbearing to do any official act, or favouring or disfavouring any person; obtaining a valuable thing without consideration or inadequate consideration; and criminal misconduct involving receiving gratification, misappropriation, obtaining any pecuniary advantage to any person without any public interest, or being in possession of pecuniary resources or property disproportionate to his known sources of income. Attempts to commit such offences and abetment are also listed as offences, in keeping with the principles usually applied in criminal law. The accent is thus on consideration, gratification of all kinds and pecuniary advantage. The Prevention of Corruption Act does not provide a definition of 'Corruption'.

However, experience of the past decades shows that such an indirect definition of corrupt practices is paradoxically restrictive and a whole range of official conduct, detrimental to public interest, is not covered by strong penal provisions.

I***n particular, there are four types of official conduct which cause immense damage to public interest, which do not explicitly constitute violation of criminal law.***

- The first and possibly the most important of these is gross perversion of the Constitution and democratic institutions, including, wilful violation of the oath of office. Constitutional functionaries have sometimes been found to indulge in such constitutional perversion out of partisan considerations or personal pique. In most such cases, there may be neither illegal consideration nor pecuniary advantage, nor any form of gratification involved. In some of those cases, the Supreme Court held individuals holding high office guilty of gross misconduct amounting to perversion of the Constitution. In such cases, except public opinion, political pressure and dictates of the conscience of the individual, there are no legal provisions to punish the perpetrators.
- The second such class of offences is abuse of authority unduly favouring or harming someone, without any pecuniary consideration or gratification. In such cases, often partisan interests, nepotism and personal

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prejudices play a role, though no corruption is involved in the restrictive, 'legal' sense of the term. Nevertheless, the damage done by such wilful acts or denial of one's due by criminal neglect have profound consequences to society and undermine the very framework of ethical governance and rule of law.

- Third, obstruction or perversion of justice by unduly influencing law enforcement agencies and prosecution is a common occurrence in our country. Again in most such cases, partisan considerations, nepotism and prejudice, and not pecuniary gain or gratification, may be the motive. The resultant failure of justice undermines public confidence in the system and breeds anarchy and violence.
- Finally, squandering public money, including ostentatious official life-styles, has become more common. In all such cases, there is neither private pecuniary gain nor specific gain or loss to any citizen. There is also no misappropriation involved. The public exchequer at large suffers and both public interest and citizens' trust in government are undermined.

***Hence Second ARC recommended that there is need for classifying the following as offences under the Prevention of Corruption Act:***

- ***Gross perversion of the Constitution and democratic institutions amounting to wilful violation of oath of office***
- ***Abuse of authority unduly favouring or harming someone***
- ***Obstruction of justice***
- ***Squandering public money***

**B. Concept of Collusive Bribery**

In any corrupt transaction, there are two parties - the bribe-giver and the bribe taker. The offence of bribery can be classified into two categories. In one category the bribe giver is a victim of extortion, he is compelled to pay for a simple service, because if he does not submit to the extortionary demands of the public servant, he ends up losing much more than the bribe. The delays, harassment, uncertainty, lost opportunity, loss of work and wages - all resulting from non-compliance with demands for a bribe - are so great that the citizen is sucked into a vicious cycle of corruption for day-to-day survival. Besides, there is another category of cases where the bribe-giver and bribe-taker together fleece society, and the bribe giver is as guilty or even more guilty than the bribe-taker. These are cases of execution of substandard works, distortion of competition, robbing the public exchequer, commissions in public procurement, tax evasion by collusion, and causing direct harm to people by spurious drugs and violation of safety norms. These two categories of corruption are also termed as 'coercive' and 'collusive' corruption respectively. With the rapidly growing economy, cases of coercive corruption are on the increase, and, at times, these often assume the magnitude of 'serious economic offences'. Prevention of Corruption Act makes acceptance of illegal gratification by a public servant for doing any official act an offence. Though giving bribe is not separately defined as an offence, the bribe-giver is guilty of the offence of 'abetment' and is liable for the same punishment as the bribe-taker.

However, the Prevention of Corruption Act does not differentiate between 'corecive' and 'collusive' corruption.

Systemic reforms are very effective in combating coercive corruption. Besides, even though the general conviction rate in cases of corruption is low, it is observed that the rate of conviction in cases of coercive corruption is more than in collusive corruption. The reason for this is, the bribe-giver is also the victim and because of the immunity provided to him under Prevention of Corruption Act, he often comes forward to depose against the bribe-taker. Besides, the 'trap cases' by the vigilance machinery are quite effective in such cases. The same is not true for 'collusive' corruption. Getting conviction in these cases is extremely difficult as both, the bribe-

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giver and the bribe-taker collude and are beneficiaries of the transaction. The negative impact of collusive corruption is much more adverse and the government and often the society, at large, are the sufferers.

***The Commission is of the view that 'collusive' corruption needs to be dealt with by effective legal measures so that both the bribe-giver and the bribe-taker do not escape punishment. Also, the punishment for collusive corruption should be made more stringent. In cases of collusive corruption, the 'burden of proof' should be shifted to the accused.***

### C. Sanction for Prosecution

Section 19 of the Prevention of Corruption Act provides that previous sanction of the competent authority is necessary before a court takes cognizance of the offences. The objective of this provision is to prevent harassment to honest public servants through malicious or vexatious complaints. The sanctioning authority is expected to apply his/her mind to the evidence placed before him/ her and be satisfied that a prima facie case exists against the accused public servant. Although the intention of this provision is clear, it has been argued that this clause has sometimes been used by a sanctioning authority to shield dishonest officials. There have also been cases where there have been inordinate delays in grant of such sanction. There have also been instances where unintentional defects in the grant of sanction has been used by the accused to challenge the sanction and have it set aside, thus nullifying the entire proceedings.

***Thus the Second ARC Recommended that:***

a. ***Prior sanction should not be necessary for prosecuting a public servant who has been trapped red-handed or in cases of possessing assets disproportionate to the known sources of income.***

b. ***The Prevention of Corruption Act should be amended to ensure that sanctioning authorities are not summoned and instead the documents can be obtained and produced before the courts by the appropriate authority.***

c. ***The Presiding Officer of a House of Legislature should be designated as the sanctioning authority for MPs and MLAs respectively.***

d. ***The requirement of prior sanction for prosecution now applicable to serving public servants should also apply to retired public servants for acts performed while in service.***

e. ***In all cases where the Government of India is empowered to grant sanction for prosecution, this power should be delegated to an Empowered Committee comprising the Central Vigilance Commissioner and the Departmental Secretary to Government. In case of a difference of opinion between the two, the matter could be resolved by placing it before the full Central Vigilance Commission. In case, sanction is required against a Secretary to Government, then the Empowered Committee would comprise the Cabinet Secretary and the Central Vigilance Commissioner. Similar arrangements may also be made at the State level. In all cases the order granting sanction for prosecution or otherwise shall be issued within two months. In case of refusal, the reasons for refusal should be placed before the respective legislature annually.***

### D. Liability of Corrupt Public Servants to Pay Damages

While corrupt acts of a public servant are liable for punishment under the Prevention of Corruption Act, there is no civil liability for the wrong doer nor is there a provision for compensation to the person/ organization which has been wronged or has suffered damage because of the misconduct of the public servant.

***Hence Second ARC recommended that in addition to the penalty in criminal cases, the law should provide that public servants who cause loss to the state or citizens by their corrupt acts should be made liable to make good the loss caused and, in addition, be liable for damages. This could be done by inserting a chapter in the Prevention of Corruption Act.***

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**E. Speeding up Trials under the Prevention of Corruption Act:**

The average time taken by trial courts in the disposal of cases has increased over the years. A major cause of delay in the trial of cases is the tendency of the accused to obtain frequent adjournments on one plea or the other. There is also a tendency on the part of the accused to challenge almost every interim order passed even on miscellaneous applications by the trial court, in the High Court and later, in the Supreme Court and obtaining stay of the trial. Such types of opportunities to the accused need to be restricted by incorporating suitable provisions in the CrPC. It may also be made mandatory for the judges to examine all the witnesses summoned and present on a given date. Adjournments should be given only for compelling reasons.

In order to ensure speedy trial of corruption cases, the Prevention of Corruption Act made the following provisions:

a. All cases under the Act are to be tried only by a Special Judge.

b. The proceedings of the court should be held on a day-to-day basis.

c. No court shall stay the proceedings under the Act on the grounds of any error or irregularity in the sanction granted, unless in the opinion of the court it has led to failure of justice.

***The Commission feels that there is need to fix a time limit for various stages of trial in corruption cases. This could be done through an amendment to the CrPC. More importantly, the existing provisions for conducting trials on a day-to-day basis should be meticulously adhered to.***

## Corruption Involving the Private Sector

Corruption in the private sector does not come under the purview of the Prevention of Corruption Act. However, if the private sector (or any person engaged by them) is involved in bribing any public authority then he/she is liable to be punished for the offence of abetment of bribery under the Prevention of Corruption Act. A large number of public services, which were traditionally done by government agencies, are being entrusted to non-government agencies. In such cases, persons engaged by the private agency replace the role of erstwhile public servants. It is therefore necessary to bring such agencies within the fold of the Prevention of Corruption Act. Also, a large number of Non-Governmental Organizations receive substantial aid from government. As these agencies spend public money it would be desirable that persons engaged by such organizations be deemed to be public servants for the purpose of the Prevention of Corruption Act.

***Hence the second ARC recommended that the Prevention of Corruption Act should be suitably amended to include in its purview private sector providers of public utility services.***

***Non-Governmental agencies, which receive substantial funding, should be covered under the Prevention of Corruption Act. Norms should be laid down that any institution or body that has received more than 50% of its annual operating costs, or a sum equal to or greater than Rs 1 crore during any of the preceding 3 years should be deemed to have obtained 'substantial funding' for that period and purpose of such funding.***

## Prohibition of 'Benami' Transactions

The Law Commission, in its 57th and 130th Reports, had recommended enactment of a legislation prohibiting Benami transactions and acquiring properties held Benami. A law entitled The Benami Transactions (Prohibition) Act, 1988 was passed in 1988. The Act precludes the person who acquired the property in the name of another person from claiming it as his own. Section 3 of the Act prohibits Benami transactions while Section 4 prohibits the acquirer from recovering the property from the Benamidar.

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Section 5 of the Act permits acquisition of property held benami. It states

"(1) All properties held benami shall be subject to acquisition by such authority, in such manner and after following such procedure as may be prescribed.

(2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1)".

Unfortunately, Rules have not been prescribed by the government for the purposes of sub-section (1) of Section 5, with the result that the government is not in a position to confiscate properties acquired by the real owner in the name of his benamidars. The wealth amassed by corrupt public servants is often kept in 'Benami' accounts or invested in properties in others' names. Strict enforcement of the the Benami Transactions (Prohibition) Act, 1988, could unearth such properties and make property accumulation difficult for corrupt officers and also work as a deterrent for others.

***The Second ARC Recommended for Immediate Implementation of it.***

## Protection to Whistleblowers

Whistleblowers play a crucial role in providing information about corruption. Public servants who work in a department/agency know the antecedents and activities of others in their organization. They are, however, often unwilling to share the information for fear of reprisal. There is a very close connection between the public servant's willingness to disclose corruption in his organization and the protection given to him and his/her identity. If adequate statutory protection is granted, there is every likelihood that the government would be able to get substantial information about corruption.

The Law Commission in its 179th Report has proposed a Public Interest Disclosure (Protection of Informers) Bill, which provides protection to whistleblowers. The Bill has provisions for providing safeguards to the whistleblowers against victimization in the organization. It also has a provision that the whistleblower may himself seek transfer in case he apprehends any victimization in the current position. In order to ensure protection to whistleblowers, it is necessary that immediate legislation may be brought on the lines proposed by the Law Commission.

***Hence the second ARC recommended that legislation should be enacted immediately to provide protection to whistleblowers on the following lines proposed by the Law Commission:***

- ***Whistleblowers exposing false claims, fraud or corruption should be protected by ensuring confidentiality and anonymity, protection from victimization in career, and other administrative measures to prevent bodily harm and harassment.***
- ***The legislation should cover corporate whistleblowers unearthing fraud or serious damage to public interest by willful acts of omission or commission.***
- ***Acts of harassment or victimization of or retaliation against, a whistleblower should be criminal offences with substantial penalty and sentence.***

## Serious Economic Offences

Economic Offences, called frauds in common parlance (the term itself has been defined in the Indian Contract Act) have become a matter of concern because of an increasing trend both in terms of size and complexity. This worrying trend has its roots in the rapid pace at which the Indian economy is growing and the financial sector is diversifying. The impact of some of these crimes is widespread and can cause much damage to the economy seriously affecting the public at large and sometimes even becoming a threat to national security.

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These economic offences include tax evasion, counterfeiting, distorting share markets, falsification of accounts, frauds in the banking system, smuggling, money laundering, insider trading and even bribery. In a world of increasing financial activity, with new instruments for such activity and new technology to facilitate it, the present laws are not adequate to combat new economic crimes.

There are a large number of laws governing economic offences. These include the Indian Penal Code (IPC); the Banking Regulation Act, 1949; the Companies Act, 1956; the Customs Act, 1962; the Income Tax Act, 1961; the Essential Commodities Act, the Conservation of Foreign Exchange and the Prevention of Smuggling Activities Act, the Foreign Exchange Management Act, the Prevention of Food Adulteration Act, the Indian Patents Act etc. In a large number of these Acts, investigations are carried out by the police. Some states have also established Economic Offences Wings to guide such investigations. In respect of some Central Laws, investigations are taken up by designated agencies under the law. The Central Bureau of Investigation also takes up cases by way of referral by other authorities or on directions by the government or the courts. It is generally felt that the punishment provided under the existing laws is not enough of a deterrent; as a result these offences have become a high gain low risk activity.

On the recommendations of Naresh Chandra Committee a Serious Frauds Investigation Office (SFIO) was set up in 2003 as a specialized multi-disciplinary organisation to deal with cases of serious corporate frauds. It has experts from the financial sector, capital market, banks, accountancy, forensic audit, taxation, law, information technology, company law, customs and investigation. SFIO presently carries out investigations under the provisions of Sections 235 to 247 of the Companies Act. Its Charter includes forwarding of its investigation reports on violations of the provisions of other Acts to the concerned agencies for prosecution/appropriate action.

**A Serious Economic Offence may be defined as :**

- One which involves a sum exceeding Rs 10 crores; or
- Is likely to give rise to widespread public concern; or
- Its investigation and prosecution are likely to require highly specialized knowledge of the financial market or of the behavior of banks or other financial institutions; or
- Involves significant international dimensions; or
- In the investigation of which there is requirement of legal, financial, investment and investigative skills to be brought together; or
- Which appear to be complex to the Union Government, regulators, banks, or any financial institution.

***But as the economic offences are complex thus Second ARC recommended that a new law on 'Serious Economic Offences' should be enacted.***

***Further a Serious Frauds Office (SFO) should be set up (under the new law), to investigate and prosecute such offences. It should be attached to the Cabinet Secretariat. This office shall have powers to investigate and prosecute all such cases in Special Courts constituted for this purpose. The SFO should be staffed by experts from diverse disciplines such as the financial sector, capital and futures market, commodity markets, accountancy, direct and indirect taxation, forensic audit, investigation, criminal and company law and information technology.***

***The SFO should have all powers of investigation as stated in the recommendation of the Mitra Committee. The existing SFIO should be subsumed in this.***

***A Serious Frauds Monitoring Committee should be constituted to oversee the investigation and prosecution of such offences. This Committee, to be headed by the Cabinet Secretary, should have the Chief Vigilance Commissioner,***

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*Home Secretary, Finance Secretary, Secretary Banking/ Financial Sector, a Deputy Governor RBI, Secretary, Department of Company Affairs, Law Secretary, Chairman SEBI etc as members.*

*In case of involvement of any public functionary in a serious fraud, the SFO shall send a report to the Rashtriya Lokayukta and shall follow the directions given by the Rashtriya Lokayukta.*

*In all cases of serious frauds the Court shall presume the existence of mens rea of the accused, and the burden of proof regarding its non-existence, shall lie on the accused.*

## Prior Concurrence for Registration of Cases in DSPE Act

The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Central Government where such allegation relates to the employees of the Central Government of the level of Joint Secretary and above; and

such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

It has been argued that given the prevailing corruption ridden environment, there is danger of such a provision being misused to protect corrupt senior public servants, and if at all such a protection is to be given, the power should vest with an independent body like the CVC, which can take an objective stand.

The counter argument is that officers at the level of Joint Secretaries and above have an important role in decision making in the government. Also while taking these decisions or rendering advice they should be able to do so without any fear or favour. Exposing these officers to frequent enquiries could have a demoralizing effect on them and encourage them most of the time to 'save their skin' and not act in a manner that would best serve the public interest.

***The Commission on balance is of the view that it would be necessary to protect honest civil servants from undue harassment, but at the same time in order to ensure that this protection is not used as a shield by the corrupt, it would be appropriate if this permission is given by the Central Vigilance Commissioner in consultation with the Secretary to Government concerned and if the Secretary is involved, a committee comprising the Central Vigilance Commissioner and the Cabinet Secretary may consider the case for granting of permission. In case of Cabinet Secretary such permission may be given by the Prime Minister.***

## Constitutional Protection to Civil Servants – Article 311

Civil servants in India enjoy unique protection in terms of specific provisions in Part XIV of the Constitution, which authorize the regulation of their conditions of service.

The procedure laid down in Article 311, subject to the provisos, or exceptions, therein, is intended to, first, assure a measure of security of tenure to government servants, who are covered by the Article and, second, provide certain safeguards against arbitrary dismissal or removal of a government servant or reduction to a lower rank. These provisions are enforceable in a court of law and where there is an infringement of Article 311 orders passed by the disciplinary authority are ab-initio void. The provisions of Articles 310 and 311, apply to all government servants.

**Arguments in Favour of Retaining Article 311**

- The safeguards under Article 311 are focused and that the framers of the Constitution were mindful of the rare eventualities in which even such minimal safeguards would not be necessary. Indeed, the safeguard of an opportunity of being heard has been held to be a fundamental principle of natural justice. Even if

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Article 311 were to be repealed, it is argued, the need for giving an opportunity to be heard cannot be dispensed with. The requirement that only an authority which is the appointing authority or any other authority superior to it can impose a punishment of dismissal or removal also appears reasonable as the government follows a hierarchical structure where the appointing authority for different categories of employees are assigned to different levels- the obvious principle being that for positions having higher responsibility, the appointing authority is higher up in the hierarchy.

- Moreover, if Article 310 stands without the procedural safeguards of Article 311, it is highly unlikely that the rules governing disciplinary proceedings and departmental inquiries can be dispensed with on the ground that the President or the Governor have a right to dismiss an official from service without proving charges after due inquiry. In such a situation the only outcome would be an increase in litigation concerning service matters.
- It is argued that it is the rules governing disciplinary enquiries, and not Article 311 itself, that are responsible for the delays in enquiry and even in the removal of delinquent government servants.

**Arguments in Favour of Repealing Article 311**

- It can be argued that if the decisions of the judiciary did not obviate the need to act against delinquent officials, then why retain the Article with its potential to protect the corrupt through any unintended interpretation? Indeed, it is not as if in all cases involving Article 311 the Supreme Court has taken a 'pro Government' stance. There are cases where the apex court has struck down the actions of the disciplinary authority or the Government.
- The increase in corruption and inefficiency in Government has been acknowledged as requiring major "surgery". The role of Government as a model employer cannot take away from the fact that public good must override individual right, certainly of the corrupt and inefficient public servant. It is no doubt essential that reasonable opportunity is provided to a government official against what might be arbitrary or vindictive action. But this should be only reasonable, not excessive, and that must be the criteria for assessing the nature of legal protection that the employee must receive. The protection required to be provided in terms of security of tenure or permanancy in the civil service must not lead to a situation where delayed action becomes common reason for emboldening errant officials into committing acts against public interest.
- It has been held that, for proper compliance with the requirement of 'reasonable opportunity' as envisaged in Article 311(2), a government servant against whom action is contemplated should, in the first instance, be given an opportunity to deny the charges. If, as a result of an inquiry, the charges are proved and it is proposed to impose any of the penalties of dismissal, removal, or reduction in rank, such penalty may be imposed on the basis of the findings of the inquiry. It is not necessary to give him any opportunity of making a representation on the penalty.

***The second ARC recommended that the rights of a civil servant under the Constitution should be subordinate to the overall reqirement of public interest and the contractual right of the State. It cannot be an argument that a corrupt civil servants rights are more important than the need to ensure an honest, efficient and corruption-free administration. Ultimately, the public servant, an agent of the State, cannot be superior to the State and it is his fundamental duty to serve the State with integrity, devotion, honesty, impartiality, objectivity, transparency and accountability.***

***Hence Article 311 need not continue to be a part of the Constitution. Instead appropriate and comprehensive legislation under Article 309 could be framed to cover all aspects of recruitment and service, even with regard to dismissal, removal or reduction in rank.***

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## Disciplinary Proceedings

The term, "Disciplinary Proceedings" has not been defined under any legislation or rules. A working definition would, however, run something like; Action initiated to find whether an employee has violated a prescribed or implicit code of ethical and professional conduct to enable the employer to impose penalties like forfeiture of employment or denial of employment related benefits on the guilty. In the entire repertoire of measures to deal with misconduct by civil servants, disciplinary proceedings occupy a special place as the entire process is carried out within the civil service system. It is axiomatic that an efficient disciplinary system promotes efficiency and professionalism and drastically inhibits recourse to external judicial processes.

CCA Rules envisage two kinds of penalties. Minor penalties consist of "Censure", "Withholding of promotion for a specified period", and "Withholding of increment and recovery from the salary of whole or part of pecuniary loss caused by the employee". Minor penalty can be imposed after calling for and considering the explanation of the accused employee. Major Penalties comprise reduction in rank through reversion to a lower scale of pay or to the parent cadre etc, compulsory retirement, removal or dismissal from service. Such penalties can be imposed only after a detailed inquiry except in cases covered by the second proviso to Article 311(2) i.e. in the eventuality of conviction for a criminal offence, on grounds related to security of the state and where an inquiry is considered not practicable.

But there is no congruence between the time taken in completion of various stages and the schedule prescribed for their completion by the CVC; and, while it would be unrealistic in such cases to expect 'immediate report of the offence', the discovery of the commission of misconduct' is shockingly delayed.

In fact, it is not very clear, on the whole, as to how such 'misconducts' come to light whether a significant number of cases could be detected within the organization or whether most such cases were disclosed through complaints of 'affected-outsiders'. These are aspects on which greater clarity and empirical evidence are clearly required.

***The Commission is of the view that the existing regulations governing disciplinary proceedings need to be recast and the following broad principles should be followed in laying down the new regulations.***

- ***The procedure needs to be made simple so that the proceedings could be completed within a short time frame.***
- ***Emphasis should be on documentary evidence, and only in case documentary evidence is not sufficient, recourse should be made to oral evidence.***
- ***An appellate mechanism should be provided within the department itself.***
- ***Imposition of major penalties should be recommended by a committee in order to ensure objectivity.***

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# 4 INSTITUTIONAL FRAMEWORK

## Existing Institutions/Agencies

### Union Government

The Administrative Vigilance Division of the Department of Personnel & Training is the nodal agency for dealing with Vigilance and Anti-corruption. Its tasks, inter alia, are to oversee and provide necessary directions to the Government's programme of maintenance of discipline and eradication of corruption from the public services. The other institutions and agencies at the Union level are - (i) The Central Vigilance Commission (CVC); (ii) Vigilance units in the Ministries/Departments of Government of India, Central public enterprises and other autonomous organisations; and (iii) the Central Bureau of Investigation (CBI).

- **Central Vigilance Commission**

In pursuance of the recommendations made by the Committee on Prevention of Corruption, popularly known as the Santhanam Committee, the Central Vigilance Commission was set up by the Government of India. It was accorded statutory status, consequent upon the judgement of the Hon'ble Supreme Court in Vineet Narain v. Union of India, through the Central Vigilance Commission Act, 2003. The CVC advises the Union Government on all matters pertaining to the maintenance of integrity in administration. It exercises superintendence over the working of the Central Bureau of Investigation, and also over the vigilance administration of various Ministries and other organizations of the Union Government.

- **Vigilance Units in the Government of India**

All Ministries/Departments in the Union Government have a Chief Vigilance Officer (CVO) who heads the Vigilance Division of the organization concerned, assisting and advising the Secretary or Head of Office in all matters pertaining to vigilance. He also provides a link between his organisation and the Central Vigilance Commission on the one hand and his organisation and the Central Bureau of Investigation on the other. Vigilance functions performed by the CVO include collecting intelligence about corrupt practices of the employees of his organisation; investigating verifiable allegations reported to him; processing investigation reports for further consideration of the disciplinary authority concerned; and referring matters to the Central Vigilance Commission for advice wherever necessary.

- **The Central Bureau of Investigation**

The Central Bureau of Investigation (CBI) is the principal investigative agency of the Union Government in anti-corruption matters. It derives its powers from the Delhi Special Police Establishment Act, 1946 (DSPE Act) to investigate certain specified offences or classes of offences pertaining to corruption and other kinds of malpractices involving public servants. The Special Police Establishment, which forms a division of the Central Bureau of Investigation, has three units, viz. (i) Anti-corruption Division, (ii) Economic Offences Wing, and (iii) Special Crimes Division. The Anti-corruption Division investigates all cases registered under the Prevention of Corruption Act, 1988 as also cases of offences under any other sections of the IPC or other law if committed along with offences of bribery and corruption. The Anti-corruption Division investigates cases pertaining to serious irregularities allegedly committed by public servants. It also investigates cases against public servants of State Governments, if the case is entrusted to the CBI. The Special Crimes Division investigates all cases of economic offences and conventional crimes; such as offences relating to internal security, espionage, sabotage, narcotics and psychotropic substances, antiquities, murders, dacoities/robberies,

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cheating, criminal breach of trust, forgeries, dowry deaths, suspicious deaths and other offences under IPC and other laws notified under Section 3 of the DSPE Act.

- **Vigilance Systems in State Governments**

At the level of state governments, similar vigilance and anti-corruption organizations exist, although the nature and staffing of these organisations vary between and across state governments. While some states have Vigilance Commissions and anti-corruption bureaus, others have Lokayuktas. Andhra Pradesh has an Anti Corruption Bureau, a Vigilance Commission and a Lokayukta. Tamil Nadu and West Bengal have State Vigilance Commissions to oversee the vigilance functions. The Vigilance Commissioner in Tamil Nadu is a serving Secretary to Government and functions as a Secretary though he brings out an Annual Report in his capacity as Vigilance Commissioner. Maharashtra has a combination of an Ombudsman and a Vigilance Commissioner, a multi-member body called the Lokayukta with a retired Judge of the higher judiciary as the Chairman and a retired civil servant as Vice Chairman. There are Vigilance Commissioners in the States of Assam, Bihar, Gujarat, Jammu & Kashmir, Meghalaya and Sikkim. In the Union Territories, the Chief Secretary himself acts as the Vigilance Commissioner. Some States have adopted the pattern of the Union Government and set up internal vigilance organizations with dual responsibility of reporting to the Vigilance Commissioner and the departmental head with subordinate units in offices of Heads of Departments and the districts reporting to the higher formations and the Vigilance Commissioner.

### Evaluation of the Anti-Corruption Machinery in India

*The working of the Anti corruption machinery has been analyzed below:*

- The conviction rate in cases by CBI is low compared to the cases registered, which nevertheless is double that of the State Anti Corruption organizations. The numbers of cases of the CBI pending for trial at the beginning of the year 2005 was 4130 and 471 more cases were added during the year. But only 265 cases could be disposed of during the year. Similarly, in the States there were 12285 cases pending at the beginning of 2005, and 2111 cases were added during the year. But only 2005 cases were disposed of during the year. If one were to assume that no cases are filed from now onwards, it would take about six years to clear the backlog in the states.
- There has been rapid increase in the number of cases registered and investigated by the State Anti-Corruption organizations after 1988.
- The number of cases pending for investigation before the State Anti Corruption organizations has been increasing.
- The number of cases disposed of in trials each year is much less than the number of cases filed, indicating that the backlog of cases in trial courts is increasing.

### Recommendations Regarding Lokpal

The first Administrative Reforms Commission had recommended the establishment of the institution of Lok Pal. The Lok Pal Bill has been introduced several times but due to various reasons it has not been enacted into law. The Lok Pal is supposed to be a watchdog over the integrity of Ministers and the Members of Parliament. The Indian Lok Pal was intended to be similar to the institution of Ombudsman existing in the Scandinavian countries. The institution of Ombudsman has emerged 'as a bulwark of democratic government against the tyranny of officialdom'. The Lok Pal Bill provides for constitution of the Lok Pal as an independent body to enquire into cases of corruption against public functionaries, with a mechanism for filing complaints and conducting inquiries etc. The Lokpal should deal with allegations of corruption against Ministers and Members of Parliament.

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Allegations of corruption against government officials are dealt with departmentally and also by the Central Bureau of Investigation under the Central Vigilance Commission. In some cases of corruption there may be collusion between the Ministers and the officers. Therefore there should be an organic link between the Lok Pal and the Central Vigilance Commissioner. The reason for this is that an overarching approach to fighting corruption in high places is necessary. Corruption at the political level is at times with the connivance of officials. Some cases of corruption involving officers may also point towards political patronage and involvement. Thus the linkage between the CVC and the Lok Pal would enable sharing of information and prompt action against all persons involved. It may also be provided that all cases of corruption involving Ministers or Members of Parliament which also have elements of connivance or collusion by officials, should be enquired into by the Lok Pal only. While the Central Vigilance Commission should enjoy full functional autonomy, it should nevertheless work under the overall guidance and superintendence of the Lok Pal.

The Commission is of the view that the Lok Pal should be a three-member body. This would bring in the expertise and insight of more than one person which would be essential for transparency and objectivity. Moreover, the multi-member characteristic would render it more immune to any extraneous influence. The Commission is also of the view that of the three members, the Chairman should be from the judiciary (a serving or retired Supreme Court Judge), the second member should be an eminent jurist and the third should be the Central Vigilance Commissioner (ex-officio).

The Chairperson of the Rashtriya Lokayukta should be selected from a panel of sitting Judges of the Supreme Court who have more than three years of service, by a Committee consisting of the Vice President of India, the Prime Minister, the Leader of the Opposition, the Speaker of the Lok Sabha and the Chief Justice of India. In case it is not possible to appoint a sitting Judge, the Committee may appoint a retired Supreme Court Judge. The same Committee may select the Member (i.e. an eminent jurist) of the Rashtriya Lokayukta. The Chairperson and Member of the Rashtriya Lokayukta should be appointed for only one term of three years and they should not hold any public office under the government thereafter, the only exception being that they can become the Chief Justice of India, if their services are so required.

The Rashtriya Lokayukta should also be entrusted with the task of undertaking a national campaign for raising the standards of ethics in public life.

The jurisdiction of Rashtriya Lokayukta should extend to all Ministers of the Union (except the Prime Minister), all state Chief Ministers, all persons holding public office equivalent in rank to a Union Minister, and Members of Parliament. In case the enquiry against a public functionary establishes the involvement of any other public official along with the public functionary, the Rashtriya Lokayukta would have the power to enquire against such public servant(s) also.

**The Prime Minister should be kept out of the Jurisdiction of the Rashtriya Lokayukta. The Reasons are:**

- The Prime Minister's office was merely the first among equals in conception, over time the Prime Minister became the leader of the executive branch of government. The Cabinet accepts collective responsibility once decisions are made. That is why all policy debates are customarily within the Council of Ministers away from public gaze, and Ministers are not free to express their reservations or differences of opinion in public. It is the function of the Prime Minister to lead and to coordinate among the Ministers in framing of policies, decision making and execution of those policies and decisions. The Prime Minister's unchallenged authority and leadership are critical to ensure cohesion and sense of purpose in government, and to make our Constitutional scheme function in letter and spirit. The Prime Minister is accountable to the Parliament, and on his survival, depends the survival of the government. If the Prime Minister's conduct is open to formal scrutiny by extra-Parliamentary authorities, then the government's viability is eroded and Parliament's supremacy is in jeopardy.

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- Theoretically, each member of the legislature is elected by his/her constituents in our model of government. But over the past century, elections even in parliamentary system have become plebiscitary in nature. Most often, the Prime Minister's personality, vision, and leadership are the issues, which determine the electoral outcomes. Similarly, the opposition focuses its energies and hopes on its leader. The electoral contest is transformed into a test of acceptability of the leaders. The constituency contests have thus become increasingly dependent on the larger question of whose governmental leadership people trust or seek at that point of time. Given this overwhelming political reality, it would be unwise to subject the Prime Minister's office to a prolonged public enquiry by any unelected functionary. Ultimately, the Parliament is the best forum we can trust to enforce integrity in the office of the Prime Minister.

**Recommendations Regarding Lokayukta**

- The Constitution should be amended to incorporate a provision making it obligatory on the part of State Governments to establish the institution of Lokayukta and stipulate the general principles about its structure, power and functions.
- The Lokayukta should be a multi-member body consisting of a judicial Member in the Chair, an eminent jurist or eminent administrator with impeccable credentials as Member and the head of the State Vigilance Commission as ex-officio Member. The Chairperson of the Lokayukta should be selected from a panel of retired Supreme Court Judges or retired Chief Justices of High Court, by a Committee consisting of the Chief Minister, Chief Justice of the High Court and the Leader of the Opposition in the Legislative Assembly. The same Committee should select the second Member from among eminent jurists/administrators. There is no need to have an Up-Lokayukta.
- The jurisdiction of the Lokayukta would extend to only cases involving corruption. They should not look into general public grievances.
- The Lokayukta should deal with cases of corruption against Ministers and MLAs.
- Each State should constitute a State Vigilance Commission to look into cases of corruption against State Government officials. The Commission should have three Members and have functions similar to that of the Central Vigilance Commission.
- The Anti Corruption Bureaus should be brought under the control of the State Vigilance Commission.
- The Chairperson and Members of the Lokayukta should be appointed strictly for one term only and they should not hold any public office under government thereafter.
- The Lokayukta should have its own machinery for investigation. Initially, it may take officers on deputation from the State Government, but over a period of five years, it should take steps to recruit its own cadre, and train them properly.
- All cases of corruption should be referred to Rashtriya Lokayukta or Lokayukta and these should not be referred to any Commission of Inquiry.

**Ombudsman at the Local Level**

The 73rd and the 74th amendments to the Constitution have firmly established decentralization of powers and functions to the third tier of the government hierarchy on a statutory footing as a measure of democratisation calculated to bring government closer to the people and increase the accountability of the local administration. However, concern has been expressed that decentralisation without proper safeguards can increase corruption, if the process is not simultaneously accompanied by the creation of suitable accountability mechanisms otherwise available at the level of the Union Government and state governments.

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This gives greater scope for corruption. A disturbing trend visible is the growing corruption and capture of power by local political elites with questionable integrity.

The Commission is of the view that a system of Local Bodies Ombudsman may be established to hear complaints of corruption against local bodies (elected members as well as officials). Such Ombudsman may be constituted for a group of districts. The Local Bodies Ombudsman should have powers to enquire into allegations of corruption against public functionaries in local bodies. They should be empowered to take action against the elected members if they are found guilty of misconduct. For this, the State Panchayat Raj Acts, and, the Municipalities Acts would have to be amended to prescribe the details. The overall superintendence over the Local Bodies Ombudsman's should vest in the Lokayukta of the state, who should be given revisionary powers over the Local Bodies Ombudsman.

In the wake of the larger Constitutional role now envisaged for decentralised local governments, it would be a good initiative to have a separate vigilance oversight agency to investigate allegations of corruption and maladministration against elected executives and members of the three tiers of these local bodies and their paid personnel. The total number of such elected personnel is so large that it is virtually impossible for the state Lokayuktas to exercise effective vigilance over these bodies.

The Commission is of the view that the Ombudsman should be appointed under the respective Panchayat Raj/Urban Local Bodies Acts in all States/UTs., for a group of connected districts. The Ombudsman should be empowered to investigate cases of corruption or maladministration by functionaries of local self government institutions. It is often argued that constitution of Local Ombudsman would lead to duplication of efforts since the Lokayukta is already there. The Commission has already recommended that the Lokayukta should investigate cases only against Ministers or equivalent rank public functionaries and legislators. Therefore, there would be no clash of jurisdiction between the Local Ombudsman and the Lokayukta. However, in order to provide proper guidance to the Local Ombudsman, they should be placed under the overall guidance and superintendence of the Lokayukta.

**Strengthening Investigation and Prosecution**

Prosecution is often a weak link in the chain of anti-corruption law enforcement and there are instances where prosecutors have facilitated the discharge of a delinquent officer. It is, therefore, crucial that cases of corruption are handled by efficient prosecutors whose integrity and professional competence is above board. The Supreme Court did mandate a key safeguard in corruption cases, by decreeing that a panel of lawyers, answerable to a body similar to that of the Director of Prosecutions in the United Kingdom should be created to review the prosecution of corruption cases. As the Supreme Court observed, this panel of "competent lawyers of experience and impeccable reputation shall be prepared on the advice of the Attorney General." According to the Supreme Court, each case of prosecution by the CBI will have to be reviewed by a lawyer from the panel, and responsibility for unsuccessful prosecution should be fixed. It would be desirable that the Lokayuktas/ State Vigilance Commissions are empowered to supervise the prosecution of corruption related cases. This would provide the much needed oversight of the prosecutors on the one hand, and guidance to the prosecutors on the other.

Corruption prevention and enforcement in an increasingly electronic environment both in government institutions and outside, requires specific measures to equip the investigating agencies with electronic investigating tools and capability to undertake such investigation. Systematic training of officers in this area more particularly at the state level is essential.

In view of the complexities involved in investigating modern-day corruption, the investigating agencies should be equipped with economic, accounting and audit, legal, technical, and scientific knowledge, skills and tools of investigation. More specifically they require specialised knowledge of forensic accounting, audit in different

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fields like engineering depending on the nature of the case. It would be advisable to have officials in the investigative agencies drawn from different wings of government.

Inter-agency information exchange and mutual assistance among various enforcement and investigative agencies such as the Directorate of Enforcement, Economic Intelligence Agencies including those relating to direct and indirect taxes as well as the State investigating agencies can play a key role in unearthing serious cases of frauds and economic offences. In recognition of this fact, Ministry of Finance has set up an elaborate nodal agency for this purpose. Under the present system, there is an Economic Intelligence Council chaired by the Union Finance Minister with representatives from key Ministries and investigative and intelligence agencies at the national level. Eighteen Regional Economic Intelligence Committees (REICs) were also set up in 1996 and reactivated in 2003 to, inter alia, ensure operational coordination between various enforcement and economic intelligence agencies as well as similar State level agencies. The REICs are required to meet on a monthly basis. There is perhaps need for the Ministry of Finance to monitor the work of the REICs so that they become more effective nodal agencies for checking fraud and corruption arising from economic and related offences.

It has been also noticed that the cases filed relate mostly to those based on complaints or press reports, being reactive action on the part of the anti-corruption agencies. Few cases emanate out of the department's own efforts. Streamlined vertical corruption runs through several levels of the official hierarchy in corruption prone departments, and does not receive the attention it deserves. This calls for strengthening sources of information to specifically target officers involved in the chain of hierarchical corruption. Anti-corruption agencies should conduct systematic surveys of departments with particular reference to highly corruption prone ones in order to gather intelligence and to observe officers at the higher levels with questionable reputations.

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# 5 SOCIAL INFRASTRUCTURE

## Citizens' Initiatives

The citizens' voice can be effectively used to expose, denounce and restrain corruption. This calls for the engagement of civil society and the media in educating citizens about the evils of corruption, raising their awareness levels and securing their participation by giving them a 'voice'. This introduces a new dimension to the concept of accountability of government to the people otherwise than through the traditional horizontal mechanisms of legislative and legal accountability of the executive and internal vertical accountability. Civil society here refers to formal as well as informal entities and includes the private sector, the media, NGOs, professional associations and informal groups of people from different walks of life.

The excellent work done by civil society organizations can be analysed by following example:

The Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan, a well-known NGO, started uncovering corruption in local public works by gaining access to employment rolls, vouchers, beneficiary lists, and completion and utilisation certificates and then, handing them over to the concerned villagers for scrutiny in public hearings called Jan Sunwai. Instances of large-scale corruption were unearthed in these public hearings regarding false muster rolls, false bills and vouchers, and false completion and utilisation certificates. As a result of these public hearings facilitated by MKSS, the government in Rajasthan was finally persuaded to introduce serious reforms such as the creation of a ward sabha that was given the power to conduct social audit of government programmes, approve proposals for public works and certify proper execution of works. Parivartan, an NGO based in Delhi, used the Right to Information law to expose corruption in the Public Distribution System by insisting on access to stock registers maintained by fair price shops, and expose that large quantities of rice, wheat and oil intended for the public had been diverted to the open market.

Civil society groups have put pressure on erring governments to reform corrupt practices. They have also provided monitoring mechanisms to track corruption by educating members of the public and associating them in anticorruption efforts. They have helped generate demand for reducing corruption and introducing systemic reforms. On the whole, these civil society engagements are pathbreaking initiatives that have emerged out of an urge to serve the needs of the common man and have involved a great deal of educating people and mobilizing them.

The successful initiatives of civil society groups underscore the criticality of educating people and raising their awareness in fighting corruption. Though such initiatives come from the society, the government can create an environment whereby the citizens' groups can effectively participate in its efforts to root out corruption. Some measures to facilitate this could be:

- Inviting civil societies to oversee government programmes;
- Establishing and disseminating service standards;
- Establishing credible complaints mechanisms;
- Assessing public confidence in anti-corruption institutions, judiciary and law enforcement and in desigining programmes to improve trust levels;
- Enforcing access to information;

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- Educating society on the events of corruption and to instil moral commitment to integrity;
- Using public hearings to audit government activities where audiences gather to hear details of public work schemes and residents provide their own perception;
- Initiating government or private sector sponsored public education and awareness campaigns through radio, newspapers and the television;
- Holding integrity workshops and public hearings at the national and local levels at regular intervals to discuss problems and suggest changes involving all participants;
- Surveying and assessing public service delivery periodically;
- Surveying corruption perceptions in general or specific sectors of government functioning;
- Incorporating corruption as a subject in the education curriculum; and
- Setting up websites on corruption - containing information, facilitating dialogue and feedback from citizens, associating former public servants in lobbying against corruption.

*Importance of Citizen Charter*

Citizens' Charters make administration both accountable and citizen-friendly. The Citizens' Charter should contain specific provisions and set out specific obligations for the public services, the time within which the department would be obliged to provide a service or to respond to a query or complaint. The Commission feels that in order to make these charters effective tools for holding public servants accountable, the charters should clearly spell out the remedy/penalty/compensation in case there is a default in meeting the standards spelt out in the charter. It would be better to have a few promises which can be kept rather than a long list of lofty declarations which are impractical.

Citizens may be involved in the assessment and maintenance of ethics in major government offices and institutions with large public contacts. This assessment could be done at the state, district and sub-district levels. The assessment may be made from the perception of citizens who have been in touch with such offices, with the help of professional agencies. A mechanism needs to be put in place in government offices so that a data base of all visitors is maintained. The professional agency should contact these persons and get their feedback. Based on these feedbacks, the public office could be given a rating.

A policy of incentivising citizens' participation should be actively pursued. A reward system for reporting cases of corruption could also help in bringing to light cases of corruption. Prompt action on citizens' complaints apart from redressing the grievance also motivates others to bring their grievances to the notice of authorities.

School awareness programmes can be very effective in bringing about attitudinal changes in the society. Such programmes are ideally taken up in high schools and should educate students about the role of citizens in a democracy, the role of civil society, harmful effects of corruption, principles of collective assertion in fight against corruption, some exposure to functioning of public institutions etc.

## False Claims Act

The existing provisions in the Indian Penal Code and other enactments are not adequate to enable interested citizens and civil society groups to approach courts for recovery of the proceeds of corruption and provide for a share in the proceeds. In the United States, the False Claims Act makes it possible for interested citizens to approach any court in any judicial district for recovery of the proceeds of corruption.

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Under the Federal False Claims, any person who has knowledge about a fraud committed by another person or entity, may file a law suit on behalf of the Federal Government. And if the fraud is established in a court of law, the person committing the fraud is penalized and the plaintiff is rewarded with a percentage of recovery. The Law was enacted during the Civil War52 to control fraud in Federal contracts. It was amended in 1986 and given more teeth. The amendments to the False Claims Act in US in 1986 were carried out as the Congress felt that government alone cannot win the war against frauds and sought to create incentives for private citizens to come forward and supplement government's efforts. A significant feature of the law is the protection it offers to whistle blowers. The Commission has recommended the enactment of a law to provide protection to whistleblower. It would be appropriate to emphasise the fact here that

"insider information" regarding false claims made to a government office, in a case of collusion would be more forthcoming with the passing of that law.

There is need for legislation on the lines of the US False Claims Act, which will make it possible for interested citizens and civil society groups to seek legal relief for the recovery of the proceeds of corruption and claim a share. Such a law would help in curbing corruption where the fraud has been committed in collusion with a public servant. But more important, such a law would help in building a culture of fair play in private and public organizations.

## Role of Media

A free media has a crucial role in the prevention, monitoring and control of corruption. Such media can inform and educate the public on corruption, expose corruption in government, private sector and civil society organizations and help monitor codes of conduct while policing itself against corruption.

Investigative reporting by media or reporting of instances of corruption as they occur can be a significant source of information on corruption. Daily reporting of instances of corruption as they occur is another type of contribution. Timely action should be taken by the authorities to immediately respond to such reports, to appraise the correct facts, to take steps to bring the culprits to book and to keep the press and the public informed from time to time of the progress of such action. It has been the common experience that very often there is no systematic arrangement to take note of these allegations and to follow them up.

The collation of reports appearing in different sections of the media and their follow up should be an integral part of complaints monitoring mechanism in all public offices.

It has been observed that sometimes under pressure of competition, the media does not verify allegations and information before putting them in the public domain. Occasionally, such allegations/complaints are motivated. It is necessary to evolve norms and practices that all allegations/complaints would be duly screened, and the person against whom such allegations are made is given a fair chance to put forth his version.

The Press Council was reconstituted to maintain and improve the standards of newspapers and news agencies in India. The Press Council of India has prescribed a Code of Conduct for the print media. However, no such code exists for the electronic media. The Ministry of Information and Broadcasting has prepared a draft Broadcasting Services Regulation Bill which proposes to set up a Broadcasting Regulatory Authority of India (BRAI) with both licensing and oversight functions covering the electronic media. The Bill also proposes to lay down norms and provide for a self-regulatory mechanism to ensure observance of a liberal Content Code. There has also been a proposal for the formation of a Media Commission. The Commission is not going into the details of these proposals. The Commission is of the view that since the electronic media plays a role as important as the one played by the print media, there is need to have a code for the electronic media covering different aspects of its functioning.

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## Social Audit

Social audit through client or beneficiary groups or civil society groups is yet another way of eliciting information on and prevention of wrong doing in procurement of products and services for government, in the distribution of welfare payments, in the checking of attendance of teachers and students in schools and hostels, staff in the hospitals and a host of other similar citizen service-oriented activities of government. This will be a useful supplement to surprise inspections on the part of the departmental supervisors. The Commission, without entering into details of all these, would like to suggest that provisions for social audit should be made a part of the operational guidelines of all schemes.

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# 6 SYSTEMIC REFORMS

A holistic approach for combating corruption would require an optimum mix of punitive and preventive measures. Punitive measures act as a deterrent whereas preventive measures reduce opportunities for corruption by making systems transparent, increasing accountability, reducing discretion, rationalsing procedures etc. Better preventive measures act as 'Systemic Reforms' as they seek to improve systems and processes.

Some of the initiatives taken in recent years in this direction are listed below:

- **Railway Passenger Bookings (Indian Railways):** The computerization of railway passenger bookings, including 'on-line' booking and e-ticketing has eliminated the middlemen, decongested booking offices and brought considerable transparency to the Railway reservations process.
- **E-Cops (Punjab):** This seeks to ensure on-line registration of complaints and their systematic follow-up enabling complainants to ascertain the outcome and the higher police echelons to keep 'real time' watch over the manner the 'cutting edge' level functionaries act on complaints.
- **E-Governance in Andhra Pradesh (E- Seva), and Kerala (FRIENDS standing for Fast, Reliable, Instant, Effective Network for Distribution of Services):** These provide improved service delivery by simplifying transactions between government and citizens involving use of information technology for payment of utility bills or seeking different services on a single platform. Mention may also be made of the initiative 'E-Choupals' in Madhya Pradesh for the benefit of farmers selling their produce.

But looking at the magnitude of existing corruption such initiatives are far too few. The lack of transparency that generally shrouds government operation and programmes is a fertile ground for corruption. The weakness of accountability mechanisms also provides opportunities for corruption. Bureaucratic complexity and procedures make it difficult for the ordinary citizen to navigate the system. What is required is large scale reform of both systems and procedures.

***Some of the steps needed are listed below:***

### A. Promoting Competition

Most public services in India are provided by government in a monopolistic setting. Such a situation by its very nature is conducive to arbitrariness, and complacence with a high probability of a section of functionaries taking advantage of the 'departmental hegemony' for corruption. Introduction of an element of competition in the provision of public services is thus a very useful tool to curb corruption.

The case of telecommunication is one of the most successful examples of curbing corruption through introduction of competition. Our telecommunication sector was, until recently, the exclusive preserve of government. Such monopolistic control lead to a high incidence of corruption. The Indian Telegraph Act, 1885, stipulated that it was only the Department of Telecommunication, which could operate as the policy maker, service provider and the licensor in the field of telecommunications. As a result of policy reforms, which introduced competition, private players have been allowed in the international and national long distance sectors as well as in the form of private cellular services. Policymaking has thus been separated from provision of services. The result has been a drastic lowering in the cost of services and the universal recognition of a major decline in corrupt practices.

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Ending government's monopoly in a large number of service sectors and allowing others to compete can play a major role in reducing corruption. To a large extent, therefore, dismantling monopolies and introducing competition go together. However, deregulating in one area may increase corruption elsewhere. The process can itself be subverted and sometimes private agencies, which replace the government agencies in service delivery could be even more corrupt. It is, therefore, necessary that such demonopolisation and competition is accompanied by a 'regulation mechanism' to ensure performance as per prescribed standards so that public interest is protected.

***Hence the second ARC Recommended that***

- ***Each Ministry/Department may undertake an immediate exercise to identify areas where the existing 'monopoly of functions' can be tempered with competition. A similar exercise may be done at the level of State Governments and local bodies. This exercise may be carried out in a time bound manner, say in one year, and a road map laid down to reduce 'monopoly' of functions. The approach should be to introduce competition along with a mechanism for regulation to ensure performance as per prescribed standards so that public interest is not compromised.***
- ***Some Centrally Sponsored schemes could be restructured so as to provide incentives to states that take steps to promote competition in service delivery.***
- ***All new national policies on subjects having large public interface (and amendments to existing policies on such subjects) should invariably address the issue of engendering competition.***

**B. Simplifying Transactions**

The causal relationship between incidence and intensity of corruption and the complex nature of work methods needs no elaboration. An ordinary citizen who has just to pay a bill to the government could be condemned to making multiple visits to government offices. There is high probability of such a citizen ending up greasing the palms of officials to avoid harassment. Similarly, elaborate hierarchies not only breed complex work methods but also cause diffusion of responsibility. Time honoured practices like "territorial" distribution of work also, for instance, tend to cause overcrowding and consequent motivation to 'jump queues' by paying speed money or employing touts and middlemen. The practice of laying down methodologies through manuals has fallen in disuse. Properly deployed, and regularly upgraded, such documents can be a great source of demystifying administrative procedures and promoting accountability. In the era of Information Technology and Right to Information, such documents can be an excellent source for 'simplifying transactions' inasmuch as they would afford a degree of clarity to the literate service user.

One of the maladies of administration in India is the multiplicity of layers in every decision making process. Apart from delays, this contributes to corruption. Whenever abuse of authority is noticed, another layer of administration is added in the hope that this would act as a check. More often than not, each additional layer further adds to delay and corruption without solving the original problem.

***Hence the second ARC Recommended that:***

- ***There is need to bring simplification of methods to the center-stage of administrative reforms. Leaving aside specific sectoral requirements, the broad principles of such reforms must be: adoption of 'single window' approach, minimizing hierarchical tiers, stipulating time limits for disposal etc.***
- ***The existing Departmental Manuals and Codes should be thoroughly reviewed and simplified with a responsibility on the Head of the Department to periodically update such documents and make available soft-copies on-line and hard copies for sale. These manuals must be written in very precise terms, and phrases like 'left to the discretion of', 'as far as possible', 'suitable decision may be taken' etc should be avoided. This should be followed for all rules and regulations governing issue of permissions, licenses etc.***

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- *A system of rewards and incentives for simplification and streamlining of procedures may be introduced in each government organization.*
- *The principle of 'positive silence' should generally be used, though this principle cannot be used in all cases. Wherever permissions/licenses etc are to be issued, there should be a time limit for processing of the same after which permission, if not already given, should be deemed to have been granted. However, the rules should provide that for each such case the official responsible for the delay must be proceeded against.*

### C. Using Information Technology

The relationship of the government with its constituents, citizens and businesses, and also between its own organs can be transformed through the use of the tools of modern technology such as Information and Communication Technology (ICT). The digital revolution has the potential to transform and redefine processes and systems of governance. The most visible impact has been in access to information and data, in building management information systems and in the field of electronic service delivery. E-Governance is the logical next step in the use of ICT in systems of governance in order to ensure wider participation and deeper involvement of citizens, institutions, civil society groups and the private sectorin the decision making process of governance.

***Hence second ARC Recommended that:***

- *Each Ministry/Department/Organisation of government should draw up a plan for use of IT to improve governance. In any government process, use of Information Technology should be made only after the existing procedures have been thoroughly re-engineered.*
- *The Ministry of Information and Technology needs to identify certain governmental processes and then take up a project of their computerization on a nationwide scale.*
- *For computerization to be successful, computer knowledge of departmental officers needs to be upgraded. Similarly, the NIC needs to be trained in department specific activities, so that they could appreciate each other's view point and also ensure that technology providers understand the anatomy of each department.*

### D. Integrity Pacts

One mechanism that can help in promoting transparency and creating confidence in public contracting is the use of 'integrity pacts'. The term refers to an agreement between the public agency involved in procuring goods and services and the bidder for a public contract to the effect that the bidders have not paid and shall not pay any illegal gratification to secure the contract in question. For its part, the public agency calling for bids commits to ensuring a level playing field and fair play in the procurement process. An important feature of such pacts is that they often involve oversight and scrutiny by independent, outside observers. Such pacts have contributed significantly to improved transparency and public confidence in the manner in which major deals in Government and public sector organizations are concluded. Many national legal systems now give considerable weightage to such pacts.

***Hence the second ARC Recommended that***

- *The Commission recommends encouragement of the mechanism of 'integrity pacts'. The Ministry of Finance may constitute a Task Force with representatives from Ministries of Law and Personnel to identify the type of transactions requiring such pacts and to provide for a protocol for entering into such a pact. The Task Force may, in particular, recommend whether any amendment in the existing legal framework like the Indian Contract Act, and the Prevention of Corruption Act is required to make such agreements enforceable.*

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### E. Reducing Discretion

Opportunities for corruption are greater in a system with excessive discretion in the hands of the official machinery particularly at lower levels. Such opportunities can be minimized by reducing discretion and maximizing transparency in the system and introducing strict accountability for actions. The most successful anti-corruption reforms are those that seek to reduce discretionary benefits, which are controlled by public officials.

There are a large number of governmental activities where discretion can be totally eliminated. All such activities could be automated and supported by IT. Registration of 'Births and Deaths' and recruitment of teachers based on marks secured in qualifying exams are examples of this. Where it is not possible to eliminate discretion, then the exercise of powers should be bound by well-defined guidelines to minimize discretion. Effective checks and balances should be built over exercise of discretion.

***Hence the second ARC Recommended that***

- ***All government offices having public interface should undertake a review of their activities and list out those which involve use of discretion. In all such activities, attempt should be made to eliminate discretion. Where it is not possible to do so, well-defined regulations should attempt to 'bound' the discretion. Ministries and Departments should be asked to coordinate this task in their organizations/offices and complete it within one year.***
- ***Decision-making on important matters should be assigned to a committee rather than individuals. Care has to be exercised, however, that this practice is not resorted to when prompt decisions are required.***
- ***State Governments should take steps on similar lines, especially in local bodies and authorities, which have maximum 'public contact'.***

### F. Supervision

Most governments and their agencies have a hierarchical structure. In such a structure, one of the important tasks of each functionary is to supervise the work of the official immediately next, reporting to him/her. Supervision provides effective checks and balances against the discretion vested in public functionaries. The very fact that not many cases are initiated against corrupt officials by the department itself is an indicator that the supervision function is not being given the attention it deserves.

Controlling corruption in an office or an organization should primarily be the responsibility of the head of the office. Moreover, as all government offices/agencies have a hierarchical structure, each level should be responsible for taking preventive steps to minimize the scope of corruption for the levels below it. It has generally been observed that with the constitution of independent agencies to combat corruption, departmental officers feel that it is not their responsibility to curb corruption in their offices/subordinates or turn a Nelson's eye to the problem. It needs to be emphasized that the external anti-corruption machinery with their limited resources and reach can, in no way, be a substitute for anti-corruption measures taken by officers in leadership positions.

These measures could be random inspections, surprise visits, confidential feedback from citizens/ clients, putting procedures in place which make it difficult to seek bribe, use of decoy clients etc. It is, therefore, suggested that reporting officers while evaluating the performance of their subordinates should clearly comment on the efforts made by the latter to check corruption. There should be a column in the self-assessment portion of the Annual Performance Report wherein each supervisory officer should indicate the measures he/she took to check corruption in his/her office and amongst his/her subordinates, and what were the outcomes of such measures. The Reporting officer should then give his/her comments on this self-evaluation.

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It has been observed that confidential reports of officials are not always recorded with due care and diligence by the reporting officers. Reporting officers tend to play 'safe' by not commenting objectively on the integrity of a public servant even when certain unethical practices have come to his/her notice. This is mainly because there is little accountability of reporting officers about the way they evaluate their subordinates. Colourless entries such as 'nothing adverse has come to notice' are quite common. There is, however, need to make supervision more proactive in rooting out corruption. In order to ensure that reporting officers evaluate and record accurately about the integrity of their subordinates, it should be mandated that in case a reporting officer has given a 'clean chit' in his assessment of any officer and such an officer is charged with any offence under the Prevention of Corruption Act and the corrupt act took place wholly or partly during the year under report, then the reporting officer should explain why that officer was given the 'integrity certificate'.

Surprise inspections by supervisory officer are yet another useful tool to detect wrong doing in public offices. Such inspections should be more rigorous in offices having dealings with the public, check posts, toll tax collection points, parking lots, pollution check mobile vans, weights and measures and meter checking centres, quarries, mines, works in progress, pay and accounts offices, relief distribution centres during calamities, etc. On-site inspection of works executed and verification of genuineness of beneficiaries is another variant of such surprise inspection. Surprise checks could extend to establishment sections and cash branches more particularly of taxation departments to verify prompt accounting of cash received, depositing of cheques and drafts in government account, accuracy of preparation of pay bills, remittances of recoveries from salaries of government employees in government account, etc in order to detect misappropriation of funds. Surprise verification of cash in the possession of officers having public dealings has had a salutary effect in discouraging acceptance of bribes while in the office. This is a measure, which should be extended through all offices, making it mandatory for senior officers to periodically undertake this function.

Reviews/checks could be conducted internally for information relating to price paid for a wide range of purchases made by different field departments, local bodies and parastatals for stationery, computer accessories and office equipment, consumables and department specific purchases like lighting and sanitation requirements, drugs and pharmaceuticals, hospital requirements; clothing requirements of hospitals, uniformed services, education institutions and hostels; books and other educational accessories and construction materials. These checks should not be limited to comparison of price of articles purchased in one office at a single point of time with market prices, but should extend to a period of say one or two years with the market price prevailing. Such comparison should extend to the price paid by different offices of the same department during the same period and also the prices paid by different departments for the same product. Similar comparative analysis could also be useful in departments which obtain periodical returns from citizens, such as various tax departments.

Corruption can take place when a public servant does something illegal in order to benefit the citizen. Passing an illegal assessment order to favour a tax assessee is an example. Corruption, as in the case of "speed money", can take place even while doing the right thing. Corruption may take place through deliberate negligence on the part of the public servant. Allowing an illegal consignment through a checkpost is an example of this. The creation of an institutionalized system to prevent corruption, after a careful analysis of instances of corruption, is an essential first step to effectively tackle corruption. This should be the primary responsibility of all supervisory officers.

### G. Ensuring Accessibility and Responsiveness

Departments of government have to be accessible to members of the public and responsive to their needs and aspirations and also responsible for prompt redressal of theirgrievances. To ensure this, it is necessary that the facilities, concessions and rights which are available to them in each department should be made public and the details about authorities who are competent to grant them together with the procedure for securing the same and getting their grievances redressed should be put in the public domain. There is need to define

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service standards. Every department should be required to take steps to understand the problems of its customers, define the standards which the department would maintain in the provision of its services and specify the conditions which customers should fulfil to qualify for the same. Appeal procedures available in case the customers want further redressal should also be indicated. It is also essential to ensure timely disposal of applications. In order to do this, time limits need to be prescribed for disposal of different categories of applications.

Help desks at the cutting edge level, prominent display of names of officials, automatic call centres and simplified computerized systems of service delivery are steps in the right direction. Concentration of tasks which are corruption prone in a few hands should be avoided. These tasks should be, as far as possible, broken up into activities which are handled by different people. Public interaction should be limited to the head of office and some designated officers. This can be supported by a 'single window front office' for providing information.

Accessibility of government servants to the public should be so designed as to ensure regular, time bound and courteous interaction between the citizens and official functionaries. To this end, business process in government departments should be re-engineered so that back office functions are segregated and take place in a time bound manner based on the principle of 'first in first out', with the minimum scope for discretion while the front office should be a "single window" for provision of services to citizens in full public view.

### H. Monitoring Complaints

Recourse to complaints is an important tool in the hands of a citizen to get his/her grievance redressed. Very often these complaints are not handled with due care. Most public offices in India have a complaint monitoring system, but more often than not, the system does not work, as the complaint ends with the official against whom the charges are alleged. It usually takes several months for a complainant to get a response from the government (if at all there is a response). This contrasts adversely with the scenario in some countries.

***Hence second ARC Recommended that***

- ***All offices having large public interface should have an online complaint tracking system. If possible, this task of complaint tracking should be outsourced.***
- ***There should be an external, periodic mechanism of 'audit' of complaints in offices having large public interface.***
- ***Apart from enquiring into each complaint and fixing responsibility for the lapses, if any, the complaint should also be used to analyse the systemic deficiencies so that remedial measures are taken.***

### I. Reforming the Civil Services

Civil Services reforms are the basic mandate for reduction of corruption in the administrative system. The administrative system should be transformed so that at every level of the civil service, there is a clear assignment of duties and responsibilities with structured and interlocking accountability in which the government servant can be held accountable for the manner in which he/she performs his/her duty. Such assignment should be specific and categorical and include in concrete terms the supervisory and oversight responsibilities of the controlling officers. This should go all the way up the line so that the interlocking accountability forces every level of government servants to function efficiently. There also has to be an in-built system of rewards and punishments, with criteria being laid down which can eliminate arbitrariness and subjectivity in granting rewards or awarding punishments. At present, there is no incentive to work diligently and efficiently and no adverse consequences of shirking work, indulging in corruption or failing to achieve an acceptable level of efficiency. At present, not only is there no performance audit but even the old system of awareness of an officer's strengths, weaknesses and reputation seems to have become a thing of the past. It is high time that a robust system of performance audit to periodically monitor and objectively evaluate the performance of officers is introduced for every level of the civil service.

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### J. Risk Management for Preventive Vigilance

The risk of corruption in government depends on the nature of the office and its activity and the character of the person holding that office. An office having more discretion and more public interface is more vulnerable to corruption than an office in which there are no discretionary powers. This implies that it may be possible to classify various positions in government as 'high risk of corruption', 'medium risk of corruption' and 'low risk of corruption'.

Similarly, individual government servants vary in their level of integrity, ranging from those who indulge in outright extortion to those who are absolutely upright.A risk management system to prevent corruption should seek to minimize risk by ensuring that 'low risk personnel' should hold 'high risk jobs' and vice versa. This would work efficiently only if a risk profiling is done for different jobs and also of government servants. The placement policy should then ensure deployment of 'low risk staff' to 'high risk jobs'.

Risk profiling of government officials poses a challenge in the sense that the present system of performance evaluation discourages a reporting officer from giving anything 'adverse'. Moreover, categorizing an official as 'high' risk based on an adverse rating by one reporting officer may not be fair (unless a glaring misconduct has come to notice). It would, therefore, be better if risk profiling of officers is done by a committee of 'eminent persons' after the officer has completed ten years of service, and then once in every five years. The committee should use the following inputs in coming to a conclusion:

- The performance evaluation of the reported officer.
- A self-assessment given by the reported officer focusing on the efforts he/she has made to prevent corruption in his/her career.
- Reports from the vigilance organization.
- A peer evaluation to be conducted confidentially by the committee through an evaluation form.

One method to assess the integrity of a person is the integrity test. It is like an ordinary 'paper-pencil' test wherein the candidate has to answer various questions. It is also similar to a personality test. These tests are used in some developed countries to identify suspected corrupt persons. Integrity tests, like all tests, are imperfect, and can lead to wrong conclusions and are thus not a foolproof method to evaluate integrity of a person. Therefore, taking displinary action based on such a test would not stand the scrutiny by a court, but these can be used as one of the inputs while risk profiling an officer.

***Hence the second ARC Recommended that:***

- ***Risk profiling of jobs needs to be done in a more systematic and institutionlised manner in all government organizations.***
- ***Risk profiling of officers should be done by a committee of 'eminent persons' after the officer has completed ten years of service, and then once in every five years. The committee should use the following inputs in coming to a conclusion:***

*i.* ***The performance evaluation of the reported officer.***

*ii.* ***A self-assessment given by the reported officer focusing on the efforts he/she has made to prevent corruption in his/her career.***

*iii.* ***Reports from the vigilance organization.***

*iv.* ***A peer evaluation to be conducted confidentially by the committee through an evaluation form.***

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### K. Audit

The audit authorities often do not convey information which has come to their knowledge in respect of serious irregularities in which criminal misconduct is involved, to the anti-corruption bodies. The information becomes available to the anti-corruption bodies only when the audit report of the CAG is laid before the Parliament or the State Legislature as the case may be. By the time a serious irregularity (which is detected in audit and reported to the department for response as an audit query and incorporated as a part of the annual audit report laid before the house), comes to the knowledge of the anti-corruption bodies, a lot of time is lost. Such delays not only alert the culprits in the organization but also give them enough time to cover their tracks and destroy the evidence and material records thus making it extremely difficult for the investigating agencies to successfully complete their investigations. In view of this, it would be desirable to make a standing arrangement with CAG and the AG to report such instances as soon as they are unearthed in audit. A second innovation in this regard would be to equip the agency concerned in the mechanics of forensic audit so that aspects crucial for criminal investigation could be taken due care of. It would be in the fitness of things if the anti-corruption bodies are equipped to undertake such forensic audit of government departments where major irregularities come to their notice. The idea is to have an in-house forensic team in these offices. Similar capability could be built in the local fund audit department. To start with, a forensic audit training course could be conducted to develop expertise in this regard. The Commission will examine the details of audit mechanisms in its report on 'Financial Management'. The entire process of audit must come into public gaze through publication of pending audit observations annually.

### L. Proactive Vigilance on Corruption

Preventive vigilance attempts to eliminate or reduce the scope for corruption in the long run. The current approach to proactive vigilance is based on the recommendations of the Santhanam Committee in 1964. The main emphasis in proactive vigilance has been on identifying suspected corrupt elements and then devising mechanisms to weed them out or to ensure that they do not occupy sensitive positions. In this regard, the following main tools have been evolved:-

- **List of Officers of Doubtful Integrity:** This is a list of Officers/Executives maintained in the organization/ departments which contains the names of all officers against whom disciplinary action on some vigilance related issue is pending or who is undergoing punishment on a vigilance related matter.
- **Agreed List of Suspect Officers:** This is a list of Officers/Executives in PSUs/Banks on whom there is a strong suspicion of indulging in corruption. The list is prepared by the Chief Vigilance Officers of organizations and the Central Bureau of Investigation. These officers are kept under watch.
- **List of Undesirable Contactmen:** The Central Bureau of Investigation prepares a list of middlemen, touts etc. dealing with sensitive organizations and shares the information with senior officers in the concerned organizations on 'need to know basis'.
- **Annual Property Returns:** This is another tool to identify suspected corrupt elements/practices.
- **Vigilance Clearance:** Vigilance clearance is obtained from the CVC for Board level appointments in PSUs and PSBs. Besides, the Government of India has established procedures for getting vigilance clearance before appointing an officer.

The above listed measures are, by and large, at the initiative of the vigilance machinery.

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*Hence Second ARC Recommended that:*

*The Commission feels that such measures should also be initiated by the departments/ organizations themselves, as the inputs available with them about their officials and the tasks they perform are much more than with an external machinery. Following are some measures which can be taken by the departments/organization:*

- *Timely submission and scrutiny of assets and liabilities statements of public servants should be ensured.*
- *These should be put in the public domain.*
- *Annual lists of public servants of doubtful integrity should be prepared in all departments in consultation with the anti-corruption agencies. The list should contain names of those officers who have been found to be lacking in integrity in the course of an inquiry or after an inquiry. For example:*

*i. those convicted in a Court of Law on a charge of lack of integrity or for an offence involving moral turpitude but on whom penalty other than dismissal, removal or compulsory retirement is imposed;*

*ii. those awarded a major penalty departmentally for lack of integrity or on charges of gross dereliction of duty in protecting the interest of Government;*

*iii. those against whom major proceedings for a penalty, or trial involving lack of integrity or moral turpitude is in progress; and*

*iv. those who were prosecuted but acquitted on technical grounds.*

- *There should be a mandatory annual review of officers who have attained the age of 50/55 years or completed 25 years of service, based on Annual Reports, other records, and general reputation in order to retire officers of doubtful integrity compulsorily. This would presuppose that making realistic entries relating to integrity in the annual performance reports should be made mandatory unlike the present practice of being vague and silent on this aspect. Officers should be required to be graded based on levels of integrity.*
- *Government servants, who display exemplary capacity to identify major irregularities and scandals and bring corrupt elements to book and plug major loopholes which cause substantial loss to public exchequer, should be rewarded. Such officers should be protected from harassment.*
- *There should be public shaming of known corrupt officers.*

### M. Intelligence Gathering

Gathering intelligence about their own personnel is a practice followed by security and investigative agencies. There could be several ways of gathering intelligence about public servants. These include keeping surveillance over suspected public servants, studying their life-styles, studying the decisions the have made, analysis of complaints, feedback from citizens and peer group. Incentive money from secret funds are used at times to gather such information. Although all such measures may not always be desirable or practical, a supervisory officer should assess the integrity of his/her subordinates based on his/her handling of cases, complaints and feedback from different sources. This could then become an important input for risk profiling of officers.

### N. Vigilance Network

There are a large number of disciplinary cases and also criminal cases relating to corruption pending with various authorities. One reason for this large pendency is that these are rarely reviewed by supervisory officers. It would be desirable to create a national database of such cases unpdated regularly, which should be in the public domain. This, apart from providing a tool for monitoring of all such cases by authorities at different levels, would generate public opinion for quick action in such cases. This national database should have information on preliminary enquiries, regular inquiries with all enquiring agencies and all disciplinary authorities,

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investigation, prosecution trial, punishments and penalties, recovery of assets, and appeal, review and revision processes covering both disciplinary and criminal cases linking the entire government machinery and all departments and other organizations to which the executive power of the State extends. The network should cover cases of both elected and paid public servants, cases under the Prevention of Corruption Act, and other white collar economic offences by public servants involving public property or resources and public conduct under the Indian Penal Code. In addition, the internet should have information on all annual property statements and all other related information involving conflict of interest. It would be useful to incorporate in the network all information on officers of doubtful integrity, suspect officers, contractors, suppliers, etc blacklisted by government for corruption, information relating to touts, liaison men etc. Part of this information would be accessible to the general public, part to all the departments, and the entire information to anti-corruption bodies. The Central Vigilance Commission may take the lead in establishing such a networked database

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# 7 PROTECTING THE HONEST CIVIL SERVANT

The raison d'être of vigilance activity is not to reduce but to enhance the level of managerial efficiency and effectiveness in the organization. Risk-taking should form part of government functioning. Every loss caused to the organization, either in pecuniary or non pecuniary terms, need not necessarily become the subject matter of a vigilance inquiry. One possible test for determining the bona-fides could be whether a person of common prudence working within the ambit of the prescribed rules, regulations and instructions, would have taken the decision in the prevailing circumstances in the commercial/operational interests of the organization.

Even more than in government, managerial decision-making in public sector undertakings and day-to-day commercial decisions in public sector banks, offers considerable scope for genuine mistakes being committed which could possibly raise questions about the bona-fides of the decision-maker.

The Central Vigilance Commission has recognized this possibility of genuine commercial decisions going wrong without any motive whatsoever being attached to such decisions.

In case of the commercial banks, appropriate attention is being paid to this aspect while deciding on the involvement of a vigilance angle in the complaints/disciplinary cases relating to the banking sector. For that purpose, each bank has set up an internal advisory committee of three senior officers, to scrutinize the complaints received in the bank and also the cases arising out of inspections and audit etc, to determine involvement of vigilance angle, or otherwise, in those transactions. The committee records reasons for arriving at such a conclusion and sends it to the CVO. The CVO, while taking a decision in each case, considers the advice of the committee. Such records are maintained by the CVO and made available to an officer, or a team of officers of the Central Vigilance Commission for scrutiny when it visits the bank for the purpose of vigilance audit. All decisions of the committee on the involvement of the vigilance angle, are expected to be taken unanimously. In case of difference of opinion among the members, the majority view may be stated. The CVO refers its recommendations to the disciplinary authority. In case of difference of opinion between the disciplinary authority and the CVO, the matter is referred to the Central Vigilance Commission for advice. The investigation/inquiry reports of audit and inspection, involving a vigilance angle are the competent authority in the bank decides to close the case, if the officer involved is of the level for which the Vigilance Commission's advice is required.

There are genuine apprehensions about the system's ability to protect an honest public servant. Fortunately, there are sufficient safeguards in the law and procedure to ensure protection of an honest civil servant against baseless, mala-fide, malicious and motivated complaints.

The 'single point directive' which is now a statutory provision as a result of amendments made to the Delhi Special Police Establishment Act, requires prior permission of the Union Government for initiating investigation against an officer of the rank of a Joint Secretary and above in the Government of India and its equivalent in the Central Public Undertakings.

Sanction for prosecution of a public servant is required from the Government or the appropriate authority under Section 19 of the Prevention of Corruption Act, 1988 and Section 197 of the Indian Penal Code as applicable in so far as such offences relate to and form part of official conduct. Investigation within the organization itself is subject to prior approval of the Superintendent of Police concerned in the case of CBI. A case under the Prevention of Corruption Act can only be registered by the Special Police Establishment of the CBI or the anti-corruption agency of a state and not by the civil police. Only a special judge is competent

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to take cognizance of an offence of corruption. By virtue of the procedural instructions, CVC has to recommend sanction of prosecution to Government in respect of civil servants coming within its jurisdiction. In States, where Vigilance Commissions are in existence, it is the Vigilance Commission who examines and recommends sanction for prosecution.

Both the 'single point directive' and the "requirement of prior sanction for prosecution" have been called to serious question as obstructive of the statutory right of the investigating agency and an unnecessary interference in the judicial process. The Supreme Court, in them Jain Hawala case, had annulled the then executive direction of the Union Government requiring its prior permission for commencing investigations in cases involving Joint Secretaries and above. It was to nullify this that the Union Government brought in a statutory requirement in the Delhi Special Police Establishment Act. The ground for this inclusion was to safeguard honest civil servants and senior public sector executives including from nationalized banks engaged in policy advice and commercial decisions respectively. While there is no doubt that honest public servants do require to be protected, it is equally essential to assure citizens that such provisions for prior permission for investigation and sanction for prosecution are not used as tools in the hands of Government to favour and protect corrupt public servants. The Central Vigilance Commission has instituted a mechanism for screening cases of public sector executives within its jurisdiction. The question is one of exercising due discrimination to protect an honest civil servant from being dragged through investigative processes involving harassment and loss of prestige and enormous anguish.

There is a general perception among officers and managers that anti-corruption agencies do not fully appreciate administrative and business risks and that they tend to misinterpret the motives where the decision has gone awry or where a loss is caused in a commercial transaction. Such a perception is not without foundation. It is essential therefore for the investigating agencies to establish that their actions are designed in such a way as to protect honest officers. This depends on the ethical standards and professional competence of the personnel manning anti-corruption agencies. Allegations can be made by dishonest subordinates against whom the officer has initiated disciplinary proceedings or he may have stood in the way of dishonest intentions of the corrupt subordinate. More sinister could be the role of "aggrieved" outsiders who failed to have their wrongful way.

It is generally assumed by the investigating agencies that (1) a decision should be wrong for there to be corruption, and (2) it is easier to involve everyone in the chain of decision making and allege 'conspiracy' than to take pains to find out the individuals who are actually involved. It is often overlooked that a corruption can take place even when the decisions are correct and that it also takes place at specific points inside and outside the system. This entrenched approach to investigation has led to conviction rates being dismally low, honest functionaries getting demoralized and dishonest ones often going scot free.

The crucial question is one of ensuring a balance between equality before law and protection of an honest civil servant who has his reputation to safeguard, unlike a corrupt one. Such a balance could be achieved by an impartial agency which would screen cases of prior permission for investigation and sanction prosecution of public servants involved in corruption. The Commission has already recommended that the Central Vigilance Commission should be empowered to give such permission.

There is need for a special investigation unit in Lok Pal (Rashtriya Lokayukta) to investigate allegations of corruption against investigating agencies. This unit should be multi-disciplinary and should also investigate cases of allegations of harassment against the investigating agency. Similar units should also exist in States under the State Lokayuktas.

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# 8 INTERNATIONAL COOPERATION

Corruption transcends national boundaries. Therefore, national anti-corruption measures need reinforcement at the international level with mutual assistance and cooperative law enforcement initiatives against corruption in areas such as bribing of and by foreign nationals, mutual legal assistance, gathering and transferring evidence, money laundering, technical assistance and information exchange, extradition, tracing, freezing, seizure and confiscation of illicit funds transferred abroad, asset recovery and repatriation, etc. In particular, strengthening of provisions relating to the prevention of laundering of the proceeds of corruption and safeguards to prevent offshore financial centres from harbouring the proceeds of grand corruption are essential steps to control corruption.

The United Nations Declaration against corruption and bribery in international commercial transactions adopted by the General Assembly in December 1996 is an important milestone. It deals with both public and private sectors. The Declaration is in the nature of political commitment backed by actions to be taken through institutions at national, regional and international levels subject to each country's Constitution, fundamental legal principles, laws and procedures. The Declaration, call for enactment and enforcement of laws prohibiting bribery in international transactions, laws criminalizing the bribery of foreign public officials and laws ensuring that bribes are not tax deductible. It also calls for international cooperation in punitive measures relating to investigation, prosecution and extradition.

Another UN initiative is the international Code of Conduct for public officials adopted in December 1996 to guide the member-states in their efforts against corruption through a set of guiding principles that public servants should follow in the performance of their duties in relation to loyalty, integrity, efficiency, effectiveness, fairness, impartiality, prevention of conflict of interest, disclosure norms, acceptance of gifts and favours, maintenance of secrecy and regulation of political activity consistent with impartiality and inspiring public confidence.

In addition, the UN has prepared a manual on anti-corruption policy and an anti-corruption tool kit as a policy guide and an operational tool. The United Nations has also prepared a model law on money laundering and proceeds of crime.

The United Nations Convention against Corruption adopted by the UN General Assembly in October 2003 provides an effective international legal instrument against corruption which has been signed by India but is yet to be ratified. The Convention binds the signatories to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court to extradite offenders and to undertake measures to support tracing, freezing, seizure and confiscation of proceeds of corruption. Asset recovery is a fundamental principle of the Convention even though the needs of the countries seeking illicit assets have to be reconciled with the legal and procedural safeguards of the countries whose assistance is sought.

Countries seeking the return of looted assets often face severe problems in recovery due to problems arising from diversity of legal systems, difficulties in meeting the evidentiary and procedural requirements of developed countries, intermingling of such proceeds with other assets etc. Developing countries are further constrained in these efforts due to the lack of finacial resources and expertise to successfully investigate and prosecute such cases to a logical conclusion. Capacity building domestically combined with effective coordination at the international level, especially in the area of technical assistance, coordination and communication will be crucial for making headway in this critical area.

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Further the ADB OECD Anti Corruption Action Plan for Asia Pacific which has been signed by the Government of India is not a binding agreement but a broad understanding to further the cause of inter-regional cooperation in the matter of prevention of corruption.

As a backgrounder to the agreement, the leaders had the Uniform Framework for Preventing and Combating Fraud and Corruption prepared by an Anti Corruption Task Force established by the constituent International Financial Institutions. As per the Joint Statement, the signatory institutions "recognize that corruption undermines sustainable economic growth and is a major obstacle to the reduction of poverty". Corruption affects growth by raising costs at a given level of efficiency of operations, and/or by reduction in efficiency. As for poverty, the most direct adverse impact will be seen if funds meant to combat poverty are misused and misappropriated.

The Uniform Framework has come up with the following definitions. A corrupt practice is "the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party". A fraudulent practice is "any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation". A coercive practice is "impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party". A collusive practice is an "arrangement between two or more parties designed to achieve an improper purpose including influencing improperly the actions of another party".

The principle and guidelines for investigations form the bulk of the Uniform Framework document. The relatively more important principles and guidelines are noted below. Each organisation will have a Investigative Office responsible for conducting investigations. The purpose of an investigation by the Investigative Office is to examine and determine the veracity of allegations of corrupt or fraudulent practices with respect, but not limited, to projects financed by the organisation and allegations of misconduct on the part of the organisation's staff members. The Investigative Office is to perform its duties independently from those responsible for or involved in operational activities and from staff members liable to be the subject of investigations and shall also be free from improper influence and fear of retaliation. The investigative findings are to be based on facts and analysis, which may include reasonable inferences. Recommendations shall be based on such findings.

An important provision in the framework is about the source of complaints. The Investigative Office shall accept all complaints irrespective of their source, including complaints from anonymous or confidential sources. Since anonymous complaints too are accepted, a quantum jump in the number of complaints can be expected. The principles and guidelines are not limited to generalities only.

International cooperation is not merely between governments but also between international private sector business and professional bodies and the national chapters; and international networking and mutual assistance between civil societies in the task of prevention of corruption in the public and private sectors. Private and public sector can have mutually cleansing or corrupting relations. Initiatives on the part of Indian private sector, professional groups and civil societies are also areas to be pursued.

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# 9 RELATIONSHIP BETWEEN THE POLITICAL EXECUTIVE & CIVIL SERVICE

The Indian Constitution provides for separation of powers between the legislature, executive and judiciary with well-defined roles and responsibilities for each one of them. Since India is a parliamentary democracy, there is an interface between the legislature and the executive at the level of the Council of Ministers, which is collectively responsible to the legislature. The Constitution separates the executive into two parts. In terms of Articles 53 and 154, the executive power of the Union and the States vests in the President or Governor directly or through officers subordinate to him. These officers constitute the permanent civil service and are governed by Part XIV of the Constitution.

The other part of the executive is the 'political'. The President or Governor is required to act according to the aid and advice of his Council of Ministers, appointed under Articles 73 and 163 of the Constitution. Because the advice is normally binding, such advice for the officers becomes an order which they must obey under Articles 77 and 166 respectively. The President and Governor frame rules for the conduct of business in the government. Work is allocated among Ministers as per the Government of India (Allocation of Business) Rules and the manner in which the officers are required to help the President or Governor to exercise his executive functions is governed by the Government of India (Transaction of Business) Rules. What this means is that though officers are subordinate to the President or Governor, they carry out the orders of the Council of Ministers in accordance with the rules framed in this behalf. The Rules of Business of Government do provide for the Secretary to the Government to advise his Minister about the course of action proposed in a particular matter and to submit to him a note which tells him about the propriety or legality of his orders and suggest that either such orders not be given or that they be suitably modified.

The relationship between the Secretary and the Minister is organic. The Minister has the mandate of the people to govern, but the Secretary has an equivalent constitutional mandate to advise the Minister. Once his advice has been suitably considered, unless the Minister passes an illegal order, the Secretary is bound to implement it. The Minister, on his part, is required to support the Secretary who is implementing his order. Once a law is framed or rules and regulations are approved, they apply to everyone, whether a member of the political executive or of the permanent civil service. A civil servant is required to implement the orders of government without bias, with honesty and without fear or favour. It is precisely in this area that a degree of a difference of opinion begins to emerge between the political executive and the civil servants.

This happens because there is no system of specifying of accountability, thus making the relationship between the political executive and the permanent civil servants only issue sensitive. This underscores the criticality of defining the relationship between the Minister and the civil servant more objectively. This is possible only if we put the relationship in an output-outcome framework. Outputs or key results are specific services that the civil servants produce and deliver, and therefore, the civil servants should be held to account for the delivery of key results, which becomes the basis for evaluation of their performance. Outcome is the success in achieving social goals and the political executive decides what outputs should be included so that the desired outcomes or social goals can be achieved. In such a scheme, the political executive becomes accountable to the legislature and the electorate for the outcome. The political executive is judged on the basis of whether it has chosen the right outputs to achieve social goals. If this is done, the relationship between the political executive and permanent civil service would have been objectively defined.

Another area which has tension in the relationship is the arbitrary transfer and posting of civil servants at the behest of Ministers and other political leaders particularly in the states.

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In fact, the process of transfers of civil servants is perceived to be so lucrative that it is popularly known as the transfer industry.

The Fifth Pay Commission made several recommendations about evolving detailed, clear, and transparent transfer policies. First, the Commission recommended that detailed guidelines should be formulated and publicised by each department as part of a comprehensive transfer policy, so that arbitrariness in transfers is eliminated altogether, and transfers are effected in as transparent a manner as possible.

Second, in order to ensure administrative continuity and stability to incumbents, frequent transfers should be discouraged, and a minimum tenure for each posting of officers should be predetermined, and it should normally be three to five years, except in cases where longer tenures are justified on functional grounds, like continued availability of certain specialized skills. In the case of sensitive posts, where opportunities exist for developing vested interests, the tenure should be defined for a shorter period, which may be two to three years.

Third, any premature transfer before the completion of the prescribed tenure should be based on sound administrative grounds, which should be spelt out in the transfer order itself. The civil servant should be given the right to appeal against such an order if he feels aggrieved, and a provision for a summary procedure to deal with such a situation should be made within each department. In case of emergency, when such an order is made in the exigencies of public interest and has to be implemented at once, representation against the transfer order should be dealt with by an authority superior to the officer ordering the transfer after personal discussion, if possible, on the same day.

Fourth, the instrument of transfer should not be allowed to be misused either by bureaucrats themselves or by politicians in power. It should not be used as a means of punishment by circumventing the procedure laid down for disciplinary proceedings.

The Draft Public Services Bill, 2006 moots the idea of constituting a Central Public Services Authority for good governance. In terms of Article 19(e) of the Bill, the Authority has been charged with the responsibility of ensuring that: "the transfers and postings of public servants are undertaken in a fair and objective manner and the tenure of the public servant in a post is appropriately determined and is maintained consistent with the need to maintain continuity, and the requiremets of good governance". However, the recommendations of the Authority in these matters cannot be mandatory, but only advisory.

Another likely area of conflict between the Minister and the officers is the influence exercised by the Minister in the day-to-day functioning of subordinate officers. Efficient running of activities of a ministry or department requires delegation of powers and functions to the various levels of bureaucracy. Once this delegation has been done, the bureaucracy should be allowed to discharge its duties, of course as per the delegated authority. It has often been observed that Ministers issue instructions, formal or informal, to influence the decisions of the subordinate bureaucracy. It has also been observed that officers, instead of taking decisions on their own, look up to the Ministers for informal instructions. Several states have created an institution of 'District Incharge Minister' to review the development activities in the district. There have been instances when District Ministers have exceeded their brief and issued instructions on issues which come totally within the officer's domain.

These practices are unhealthy as they can have a propensity to check an officer's initiative and impinge on the authority delegated to him. It could lead to decisions which are not in public interest and also demoralised a consencious civil servant. Hence, it is necessary to spell out the relationship between the politcal executive and the bureaucray in a comprehensive manner

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