

Legal Framework to Combat Corruption in India

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Abstract

“Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the king’s revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out(while) taking money (for themselves)” – Kautilya.

Perhaps no period of history can boast of absence of corruption. Yes, degrees can be different but deviance has survived all along. So it appears reasonable that, at best, corruption can only be controlled but not crushed completely. This is because corruption is also a form of deviance from social and legal norms, and deviance itself is a debatable concept. Although there has been some evidence that bureaucratic corruption to some degree leads to development, the general consensus is that corruption is bad for the overall development of countries.

Where obsolescence and irrelevance of social and legal norms tries to shackle human progress, contrary to otherwise avowed aims, then people start bypassing such norms thereby giving rise to the phenomenon of corruption too. Sometimes, very ridiculous situations arise because of weeds of laws hampering growth of useful crops of laws. Though corruption cannot be justified in any way, yet for its containment sincere efforts are needed by reorienting the existing laws, institutions and practices

Many a scam has staggered and has been staggering the development and welfare of the Nation. To preserve the progressive welfare measures of the State by preventing bribery and corruption the law makers have thought of enacting Anti-Corruption Laws in India and protect the system from the evil of corruption.

KEYWORDS: Corruption, Human Rights, Democracy, Rule of Law, Development, Corruption Perception Index, Transparency International, UNODC, UNCAC, UNDP, OHCHR, CVC, PCA, Public Servant, Money Laundering, FEMA, RTI, Lokpal, Lokayukta, CBI, Asset Recovery, Black Money.

A. Objectives of the Research Work

(i) To examine the evolution, nature and scope of corruption in India.

<http://www.ukessays.com/essays/economics/can-corruption-be-good-for-economic-development-economics-essay.php>(visited on 19-07-2015)

Ibid.

<http://toi.in/tdvzHY>(visited on 19-07-2015)

- (ii) To know the existing laws, institutions and structures dealing directly or indirectly with the processes of controlling corruption.
- (iii) To assess the awareness and voices against the growing menace of depravity of public as well private officials.
- (iv) The main law, i.e. The Prevention of Corruption Act 1988, is discussed with focus thereon.
- (v) The problems and challenges encountered by the country in the war against corruption are also touched with due reference, and so on.

B. Research Methodology

The research methodology adopted for the present study is doctrinal in nature. Sources of information are essentially secondary. The researcher has placed heavy reliance upon library sources, reports, journals, web journals, articles from newspapers and magazines and legal databases. Methods of analysis are critical and comparative.

Historically, law was passed on from lawyer to lawyer as a set of doctrines, in much the same way as happened with the clergy. Legal training developed in the middle ages within a religious rhetorical tradition, with the monasteries existing as centres of learning. The doctrinal method lies at the basis of the common law and is the core legal research method. Until relatively recently there has been no necessity to explain or classify it within any broader cross-disciplinary research framework.

1.1 Evolution of Anti-Corruption Laws in India

India's history is replete with countless anti-corruption measures and subsequent punishments. The Rig Veda, a sacred Hindu text described as "the oldest literary monument of the Indo-European races," discusses the prevention of corruption and extortion. *Vishnu and Manu* punished people who accepted bribes and punished corrupt government officials with property forfeiture. Though British colonial rule saw its fair share of deceitful practices, Britain still attempted to minimize such acts. During his tenure as governor general, Lord Cornwallis, in contrast to Warren Hastings, implemented policies such as increasing East India Company servants' salaries, prohibiting such servants from receiving presents, and opening the doors for the creation of the Indian Civil Service—all actions whose purposes were to decrease corruption. In the nineteenth century, before the collapse of colonialism in India, Britain passed the Indian Penal Code to construct a proper legal criminal system.

In the pre-independence period, the Indian penal Code (IPC) was the main tool to combat corruption in public life. The Code had a chapter on 'Offences by Public Servants'. Sections 161 to 165 provided the legal framework to prosecute corrupt public servants. At that time the need for a special law to deal with corruption was not felt.

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 law makers 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.

1.1.1. Prevention of Corruption Act, 1988

J M Kelly, *A Short History of Western Legal Theory* (Clarendon Press, 1992) 89.

<http://www.sacred-texts.com/hin/vedaread.htm>

The prevention of Corruption Act 1988 consolidates the provisions of the Prevention of Corruption Act, 1947, the Criminal Law Amendment Act, 1952 and sections 161 to 165 of IPC. Besides, it has certain provisions intended to effectively combat corruption among public servants. The salient features of the Act are as follows:

- (i) The term 'Public Servant' is defined in the Act. The definition is broader than what existed in the IPC.
- (ii) A new concept – 'Public Duty' is introduced in the Act.
- (iii) 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.
- (iv) All cases under the Act are to be tried only by Special Judges.
- (v) Proceedings of the court have to be held on a day-to-day basis.
- (vi) Penalties prescribed for various offences are enhanced.
- (vii) Criminal Procedure Code (for the purpose of this Act only) to provide for expeditious trial (Section 22 of the Act provides for amended Sections 243, 309, 317 and 397 of Cr.PC). 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.
- (viii) Other existing provisions regarding presumptions, immunity to bribe – giver, investigation by an officer of the rank of Dy.S.P., access to bank records etc. has been retained.

The Corruption Act, *inter alia*, widened the scope of the definition of a "public servant" enhanced penalties provided for offences in earlier laws. Since the Prevention of Corruption Act 1988 is the main law for dealing with offences of pertaining to corruption in India.

1.1.1.1 Speeding up Trials under the Prevention of Corruption Act 1988

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 Cr.PC. 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, 1988 made the following provisions:

- (i) All cases under the Act are to be tried only by a Special Judges.
- (ii) The proceedings of the court should be held on a day-to-day basis.
- (iii) 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.

Received the assent of the President on 9-9-1988. Published in the Gazette of India (extraordinary) Part-II, Sec.1. Dt.12-9-1988, pp. 1-13.

The experience with the trial of cases under the Act has been disappointing in spite of the provisions which were considered as path-breaking at the time. Although the judges trying corruption cases under the Prevention of Corruption Act, 1988 have been declared as Special Judges, they have been saddled with numerous other non-corruption cases with the result that trials in corruption cases get delayed. To avoid such delays and speeding up the trials the Prevention of Corruption Act 1988, provides for appointment of special judges dealing with corruption cases only.

1.1.2 Other Legislations to Tackle Corruption

India is a large country with a population of over a billion people. It is also the second most populous country after China in the world. It is one of the fastest growing economies in the world and attracting huge investments from the developed countries.

In spite of healthy growth indices, a vast population still lives in poverty. The progress of the country is seriously hampered by all pervasive corruption. Weeding out corruption today is a major challenge before Indian society. To eradicate the evil of corruption the Central Government has enacted Laws, dealing with the prevention of corruption in India.

By the end of the twentieth century, India, like many other large countries, had created a number of offices promulgating anti-corruption measures, such as the Administrative Vigilance Division in the Department of Personnel and Training, CBI, Vigilance Units in the Ministries and departments of the Government of India, disciplinary authorities, and the CVC. The CVC, CBI and ACB work to eradicate the offenses laid out in the PCA.

Apart from the Prevention of Corruption Act, 1988, the Law makers have enacted the following Laws and Provisions to eradicate the corruption in India.

1.1.2.1. Constitutional Provisions

The Constitution of India reiterated the former Prevention of Corruption Act, 1947 provision that no civil servant can be prosecuted and punished by an authority subordinate to the one which made the original appointment. Further guarantees are provided for civil servants such as the right to be heard when charged of corruption during the investigation (but not when penalties are being imposed). Noteworthy is the provision which makes the appointing authority to make the final determination whether an inquiry is warranted at all (by giving its reasons in writing). Further, the President of

Dharam Chand Jain, Effective Legal and Practical Measures for combating Corruption: A criminal justice Response – An Indian Perspective. 138th International Senior Seminar Participant's Paper. http://www.unafei.or.jp/english/pdf/RS_No77/No77_12PA_Jain.pdf (as visited on 29 July 2014)

Delhi Special Police Establishment Act, 1946, Prevention of Corruption Act, 1947, Sections 161 to 165A of the Indian Penal Code, The criminal Law Amendment Ordinance, 1944, and the Prevention of Corruption Act, 1988

Central Vigilance Commission [CVC], Vigilance Manual 1 (6th ed. 2005)

Ibid.

<http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm>

India or the Governor of a State may prevent an inquiry in the name of national security. While this provision was originally intended to protect the civil servants from harassment, it, in fact, has turned out to be a hindrance in that sometimes no consent is given by the appointing authority, or if given, it comes too late that too grudgingly. Veerappa Moily, Chair, ARC-2, quoting the 2004 report of the Central Vigilance Commission showed that “out of the 153 cases for sanction, 21 cases were pending for more than 3 years, 26 cases between 2-3 years, 25 between 1-2 years. The departmental enquiries are soft-pedaled (sic) either out of patronage or misplaced compassion.

1.1.2.2. Prevention of Money Laundering Act, 2002

Many public servants are able to hold their ill-gotten wealth in foreign countries, which they subsequently transfer to their homeland through money laundering, disguising them as funds, apparently from a legal source. This Act empowers the Directorate of Enforcement, India and Financial Intelligence Unit, India, both agencies of the Government of India, to investigate and prosecute such persons under this Act.

1.1.2.3. Right to Information Act, 2005

It is a fact that too much secrecy in public administration breeds corruption. The main objectives of the Right to Information Act, 2005 are as follows:

- (i) To provide for setting out the practical regime of right to information for citizens,
- (ii) To secure access of information under the control of public authorities,
- (iii) To promote transparency and accountability in the working of every public authority,
- (iv) The constitution of Central Information Commission and State Information Commission, and
- (v) For matters connected or incidental thereto.

1.1.3. Miscellaneous Laws

At present, in India following laws are working to fight the malaise of corruption:-

- (i) Indian Penal Code, 1860
The code defines many offences, public servant. It contains punishment provisions for frauds, misappropriation, criminal conspiracy, mala fide acts as well as attempts, so on and so forth.
- (ii) The Delhi Special Police Establishment Act, 1946
This is the Act under which CBI has been created.
- (iii) Fundamental rights guaranteeing freedom of expression, right to equality go a long way to reduce arbitrariness and giving freedom to institutions taking up the cause of transparency, like media and research institutions. Arbitrariness and opaqueness are both life blood of corruption. Our fundamental rights strike at these two impediments in the path eradication of corruption.
- (iv) Income Tax Act, 1961
This Act checks generation of unaccounted money through evasion of taxes.
- (v) The Extradition Act, 1962
It helps in bringing the absconding criminals hiding in other countries to the book.
- (vi) Code of Criminal Procedure, 1973

http://arc.gov.in/10th/ARC_10thReport_preface_contents.pdf

- The code contains provisions for investigation and trials.
- (vii) The Benami Transactions (Prohibition) Act, 1988
It defines and determines the benami properties often product of corruption.
 - (viii) Securities and Exchange Board of India Act, 1992
This law has created SEBI vowing to bring transparency in trading of stocks, shares. The SEBI too has ample means to know the inflow of unaccounted money in shares and stocks.
 - (ix) The Competition Act, 2002
This act provides for elimination of monopoly, hegemony, cartelization. More often than not, companies try to indulge in these practices by hobnobbing with the powers-that-be. The Act has ample provisions for prevention and punishment of such corrupt deeds.
 - (x) The Central Vigilance Commission Act, 2003
This law has established ace body of Central Vigilance Commission of India to bring in cleanliness in administration.
 - (xi) Adoption principle of separation of powers in the constitutional scheme. (Separation of Power has been held by the Supreme Court to be a basic feature of the Constitution vide State of West Bengal v. Committee for Protection Democratic Rights, AIR 2010 SC 1476). It brings in system of checks and balances so that no institution can become absolutist and arbitrary in its functioning.
 - (xii) The Lokpal and Lokayuktas Act, 2013
The Act seeks to create highest ombudsman like institution to keep an effective watch on almost all administration. The government is in the process of making rules for practical functioning of these much touted watchdogs.
 - (xiii) The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
Recently many instances have surfaced where allegations have flying thick and fast that the governments are acquiring lands of farmers for pittance forcibly then the same land is given to big capitalists. As there is always a huge gap between the market rates and the acquisition rates, so the corrupt politicians have been accusingly found adopting *modus operandi* of taking hefty illegal sums underhand from the industrialists. The Act proposes to curb such bad deals to the landowners.
 - (xiv) Showing its commitment, the Indian Government has lately enacted a legislation The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 with an objective to deal with the menace of black money and assets held outside India.

1.1.4. Proposed Legislations

Six crucial anti-corruption bills are still due for consideration and passage:

- (i) The Whistle Blowers Protection Bill, 2011
It provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrongdoing in government bodies, projects and offices. The wrongdoing might take the form of fraud, corruption or mismanagement. The Act will also ensure punishment for false or frivolous complaints.

- (ii) The Right of Citizens for Time Bound Delivery of Goods and Services Bill, 2011. The Bill seeks to confer on every citizen the right to time-bound delivery of specified goods and services and to provide a mechanism for grievance redressal. The Bill makes it mandatory for every public authority to publish a Citizen's Charter within six months of the commencement of the Act, failing which the official concerned would face action, including a fine of up to Rs. 50,000 from his salary and disciplinary proceedings.
- (iii) The Prevention of Bribery of Foreign Public Officials Bill, 2011
The legislation makes accepting or giving bribe by foreign public officials a criminal offence. Those found guilty of corruption under this Bill, can be imprisoned for up to seven years among others penal provisions. As per the proposed Bill, the government can attach, seize and confiscate property of offenders. The Bill empowers the Central Government to enter into agreements with other countries for enforcing this law and for exchange of investigative information. Presently bribery by foreign nationals is not covered under any domestic anti-corruption laws. It is to address this remedy that this Bill was initiated.
- (iv) The Judicial Standards and Accountability Bill, 2012
The Bill tries to lay down enforceable standards of conduct for judges. Under the Bill, judges are required to declare details of their and their family members' assets and liabilities. Significantly, it creates a mechanism to allow any person to complain against judges on grounds of misbehaviour or incapacity.
- (v) The Public Procurement Bill, 2012.
The Bill seeks to regulate public procurement by all Ministries and Departments of the central government, Central Public Sector Enterprises and bodies controlled by the Central Government to ensure transparency, fair and equitable treatment of bidders. This will promote competition and enhance efficiency in the procurement process. The Bill will create a statutory framework for public procurement which will improve the accountability, transparency and enforceability of the regulatory framework.
- (vi) The Prevention of Corruption (Amendment) Bill, 2013.
The main intention of the Amendment is to prosecute the bribe givers in the offence of consensual bribery. At present, no domestic law has provision to punish a bribe giver. The Bill defines the term 'corruption' and changes provision relating to protection from frivolous prosecution, also ensures more effective compliance of the UNCAC. The Bill provides for punishing any public servant who obtains any financial or other advantage at least three years of imprisonment in addition to a fine.

1.2. Important Institutional Framework

- (i) Lokpal,
- (ii) Lokayukta,
- (iii) Chief Vigilance Commissioner (CVC),
- (iv) Central Bureau of Investigation (CBI),
- (v) Judiciary,
- (vi) Anti-Corruption Branches in states

- (vii) Vigilance Departments
- (viii) Comptroller & Auditor General (CAG),
- (ix) Election Commission of India,
- (x) Professional Bodies like Medical Council of India (MCI), Bar Council of India (BCI), Press Council of India (PCI), University Grants Commission (UGC) etc.
- (xi) Computerization of administration,
- (xii) Competition Commission of India,
- (xiii) Securities & Exchange Board of India (SEBI),
- (xiv) Ombudsman in Banks,
- (xv) Enforcement Directorate,
- (xvi) RBI and Know Your Customer (KYC or due diligence stipulations).
- (xvii) Authorities under Prevention of Money Laundering Act, 2002
- (xviii) National Human Rights Commission (NHRC)
- (xix) Women Commission of India

1.3. Reorientation and Reforms of Existing Laws and Structures

To retain effectiveness and relevance of existing laws their amendment and reforms become unavoidable requirement. Our legislature, judiciary, academic institutions and civil society have time to time made contributions in awakening the need of reorientation or creation, as the case may be, of these laws.

1.3.1 Judicial Corruption and Judicial Reforms

Transparency International as well as other similar bodies have been for a long time been pointing out the spread of corruption in judiciary. The opaque system of appointment of judges has been criticized as paving way for unaccountability of judges. Now more and more voices are being raised where restoration of faith of people in this vital institution has found prominence. Collegium system is increasingly under attack for its inherent flaws. The consultation bedrock of collegium system has been found missing practically.

Consultative processes are founded on the possibility of disagreement; such disagreement is an effective check on the prejudices of any single functionary. In establishing a process that allows no genuine room for disagreement, the Supreme Court propounded a mechanism for appointments that is unjustifiable as a matter of constitutional law and counterproductive in practice. If there is one key lesson that emerges from the Subramaniam episode, it is to reform the mechanism for judicial appointments that makes the process genuinely participatory — unlike the charade that passes in the name of constitutional law today.

On the back of wide support from the judicial fraternity as well as political parties for replacing the apex court's collegium system of appointment of judges with the Judicial Appointments Commission, disciplining judges seems to be next on the government's agenda.

1.3.2. Reforms in Bureaucracy/Executive

<http://timesofindia.indiatimes.com/home/opinion/edit-page/Reform-judicial-appointments/articleshow/37532819.cms?intenttarget=no> (visited on 29-07-2014)

All central government employees will now have to declare their immovable/movable assets and liabilities as well as those of their spouses and dependents by July 31 every year. The Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limited for Exemption of Assets in Filing Returns) Rules, 2014 make it mandatory for central government employees to file a statement listing their and their spouse/dependents' cash in hand; bank deposits; investments in bonds, debentures, shares and units in.

Holding that much of the deterioration in bureaucracy is because of political interference, it said that civil servants should not act on verbal orders given by political executives and all actions must be taken by them on the basis of written communication. Bureaucrats in India have always complained of political interference while discharging their duties. The Supreme Court, on October 31, addressed that issue in a landmark verdict. The court ruled that bureaucrats should not act on verbal orders given by political bosses, as it sought an end to frequent transfers and suggested a fixed tenure to insulate them from political interference.

1.3.3. Cost Auditing of Private Companies

Taking inspiration from the principles of UNCAC the government has decided to start cost auditing of some private companies. The government has recently ordered maintenance of cost records and audit for real estate companies, hospitals and educational institutions to drive in transparency and keep a check on their costing. The move will bring in the much-required transparency in fixing of prices in areas like housing and treatment costs at hospitals, while keeping a check on the fee charged by private educational institutions.

These crucial sectors were out of the ambit of cost audit so far and there was no clear way to determine whether the costs being charged to consumers were appropriate.

1.3.4. Autonomy of CBI

On May 8, 2013, using unusually scathing language, the Supreme Court called the country's premier investigating agency, the Central Bureau of Investigation a 'caged parrot'. However, in December, the SC gave more teeth to the CBI, ruling that the investigative agency need not take any prior approval from the Centre to prosecute senior bureaucrats in court-monitored corruption cases. By doing away with the provisions of prior sanction from the Centre, it cleared the deck for the agency to prosecute bureaucrats allegedly involved in the Coalgate scam.

In a significant judgment, the Supreme Court has recently gave the CBI a free hand to inquire into corruption charges against top bureaucrats by striking down a law that

<http://toi.in/CwJq1b>(visited on 19-07-2015)

(<http://www.rediff.com/news/slide-show/slide-show-1-year-end-special-10-landmark-judgments-of-2013/20131220.htm#10>)(visited on 19-07-2015)

<http://timesofindia.indiatimes.com/india/Govt-orders-cost-audit-for-real-estate-hospitals-and-educational-institutions/articleshow/37548740.cms?intenttarget=no>(visited on 19-07-2015)

(<http://www.rediff.com/news/slide-show/slide-show-1-year-end-special-10-landmark-judgments-of-2013/20131220.htm#8>) (visited on 19-07-2015)

mandated the agency to seek the Centre's nod before investigating officers of the rank of joint secretary and above.

The SC bench said, "It is difficult to justify the classification which has been made in Section 6A because the goal of law in PC Act, 1988, is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences." The court said the classification under Section 6A neither eliminated public mischief nor achieved positive good. "On the other hand, it advances public mischief and protects crime-doer. The provision thwarts an independent, unhampered, unbiased, efficient and fearless inquiry/investigation to track down corrupt public servants," it said.

1.3.5. Electoral Reforms

"Negative voting will lead to systemic change in polls and political parties will be forced to project clean candidates. If the right to vote is a statutory right, then the right to reject candidate is a fundamental right of speech and expression under Constitution," the court said.

1.3.5.1 Disqualification of Convict Legislators

On July 11, 2013, the Supreme Court held that charge-sheeted Members of Parliament and MLAs, on conviction for offences, will be immediately disqualified from holding membership of the House without being given three months' time for appeal, as was the case before.

Notwithstanding the focus on Lokpal in recent years, one must not overlook the fact that there's no magic bullet to tackle corruption. What is required is an anti-corruption architecture comprising several coordinated reform measures. These include a robust judicial mechanism with a high rate of disposal of cases. No Lokpal can be effective without this.

The Supreme Court's direction that trial proceedings in cases of corruption and serious crimes against MPs and MLAs must be completed within a year is a welcome development. Read along with the previous apex court order stipulating immediate disqualification of legislators if convicted and sentenced to more than two years' imprisonment, the move will have a salutary impact on Indian politics should it be implemented rigorously.

Recently, the top court advised that legislators facing trial should not be made ministers. Though it stopped short of laying down any law on this score but underlining the need to uphold constitutional morality it left the decision of appointment of ministers to the discretion of PM/CM.

<http://timesofindia.indiatimes.com/india/Top-babus-beware-CBI-can-probe-without-Centres-nod/articleshow/34748405.cms> (visited on 19-07-2015)

(<http://www.rediff.com/news/slide-show/slide-show-1-year-end-special-10-landmark-judgments-of-2013/20131220.htm#4>) (visited on 19-07-2015)

<http://timesofindia.indiatimes.com/home/opinion/edit-page/SC-order-expediting-cases-against-tainted-legislators-must-be-strictly-implemented/articleshow/31856256.cms?intenttarget=no> (visited on 19-07-2015)

<http://www.thehindu.com/news/national/prime-minister-and-chief-ministers-should-not-include-people-with-criminal-records-in-cabinet-sc/article6356060.ece>

The central government, as if on a cue from the court, has proposed decriminalization of politics by debarring those candidates from fighting elections who are facing trial for heinous crimes.

1.3.6 Witch Hunting of Honest Officers may have Deadening Effect on Decision Making

But it is not the first time the SC has ruled so. Earlier also similar decisions had been given. But there always remain discordant voices which do not agree wholly with such verdicts.

At a time when there is much debate about the paralysis in decision making in the Indian Administrative Service and other subordinate services, Supreme Court's judgment on striking down the single directive does not really bring much cheer and actually throws out the baby with the bathwater. This will make it extremely difficult for honest officers to remain decisive as well.

The government has, in an overwhelming majority of cases, systematically disregarded honesty and competence while favouring pliability and personal connections. The price of this systematic and willful corrosion of public institutions has and will be paid not merely by upright individuals but by the people of India as a whole.

Therefore, while there are strong concerns to fight corruption by giving free hand to investigative agencies, at the same time, many sensible persons have highlighted the need to protect well-meaning public servants so that their talent and experience can be utilized for the nation without fear or favour.

1.3.7 Tax Simplification

Other tax reforms proposals expected to simplify procedure with attendant and intended consequence of containment of corruption are: (i) Direct Tax Code & (ii) General Sales Tax

1.4 Confiscation of Assets

Many states have started taking extreme measures of confiscation of assets of corruption. This is similar to unearthing and bringing back black money.

The Committee on Prevention of Corruption, appointed by the government to report on measures needed for prevention of corruption and whistle blower protection in the State, has recommended establishment of special courts to confiscate assets amassed through corruption. The committee, headed by former Chief Secretary M. Mohankumar, noted in its report submitted to Chief Minister Oommen Chandy that so far the properties

<http://toi.in/oycKAa>

<http://timesofindia.indiatimes.com/home/opinion/edit-page/SC-should-have-outlined-some-safeguards-to-protect-upright-bureaucrats-from-motivated-probes/articleshow/34793570.cms?inttarget=no> (visited on 19-07-2015)

<http://timesofindia.indiatimes.com/home/opinion/edit-page/High-price-of-honesty-By-targeting-bureaucrats-with-integrity-UPA-has-contributed-to-the-degeneration-of-state-institutions/articleshow/31552732.cms?inttarget=no> (visited on 19-07-2015)

of none of those accused in corruption cases had been confiscated. Establishment of special courts on the lines of that in Bihar would help to speed up trial.

1.5. e-Governance: a Tool to Tackle Corruption

India wants "core internet infrastructure" to be part of an international legal system that would accommodate governments, civil society and other stakeholders. In typical Indian diplomatic style, its position can be interpreted to mean everything and nothing.

An MEA team, led by joint secretary Vinay Kwatra, told Net Mundial (forum for internet governance) in Brazil, "The elements of India's approach on internet governance respond to its growing complexity and rests in supporting the dynamism, security and openness of a single and unfragmented cyberspace. We also support innovation and robust private sector investment to augment internet's continuing growth and evolution."

Utility of Aadhaar cannot be overemphasized in containing corruption. Apart from helping keep government spending honest and accurate, it could make all the difference in financial inclusion, for instance, as electronic KYCs and micro-ATMs take banking to remote corners. Instead of discarding it as Nilekani's or the UPA's project, the next government should give it a fair chance to stabilize and start demonstrating its uses.

In a decisive push to the UPA government's Aadhaar project and Direct Benefits Transfer (DBT) scheme by Prime Minister Narendra Modi himself, his office has directed the Planning Commission to collect data on these schemes in 300 priority districts and submit a status report by August 15.

The Prime Minister's Office (PMO) has asked the plan panel to gather information on Aadhaar and DBT with respect to five key government schemes — MGNREGA, pensions, scholarships, Public Distribution System and domestic cooking gas.

1.6. Recovery of Black Money

Government has been taking steps to pursue the money allegedly stashed away abroad.

Recently, it has constituted an SIT to unearth the black money. The SIT, headed by former Supreme Court Judge **M B Shah** and Vice Chairman Arijit Pasayat has 11 members in the panel who are the heads of a number of investigative and enforcement agencies of the country. Government has sanctioned a budget of Rs 8.93 crore for the

<http://www.thehindu.com/news/national/kerala/corruption-committee-recommends-special-courts-to-confiscate-assets/article3965305.ece> (visited on 19-07-2015)

<http://timesofindia.indiatimes.com/india/India-for-inclusive-internet-governance/articleshow/34170534.cms?inttarget=no> (visited on 19-07-2015)

<http://indianexpress.com/article/opinion/editorials/identity-politics/> (visited on 19-07-2015)

<http://www.financialexpress.com/news/upa-s-aadhaar-dbt-schemes-get-boost-from-pm-narendra-modi/1271682> (visited on 19-07-2015)

http://www.finmin.nic.in/the_ministry/dept_revenue/measures_taken_by_govt_Black_Money.pdf
(visited on 19-07-2015)

infrastructure and logistical requirements of the Special Investigation Team (SIT) set up to combat the menace of black money in the country.

The Supreme Court has also made known its anguish that the Centre had committed "gross contempt of court" by not complying with its three-year-old judgment directing disclosure of names of Indian account holders in a Liechtenstein bank given to it by Germany.

Showing its commitment, the Indian Government has lately enacted a legislation The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 with an objective to deal with the menace of black money and assets held outside India.

1.7. Judiciary: a Guardian of Rule of Law

Rule of Law is an antidote for corruption. All the institutions working to apply and uphold Rule of Law are in a way working against corruption too, whether directly or indirectly. Undeniably judiciary is the final stage for resolution of disputes impinging on probity of public life. Masses of India look up to courts for getting justice. Our judiciary has shown grit and determination to pronounce that Rule of Law, fundamental rights- a form of human rights, judicial review, independence of judiciary are basic features of the constitution. These values of the constitution cannot be watered down.

Justice Y.V. Chandrachud listed four basic features which he considered unamendable in the case of *Indira Nehru Gandhi v. Raj Narain*:

- sovereign democratic republic status
- equality of status and opportunity of an individual
- secularism and freedom of conscience and religion
- 'government of laws and not of men' i.e. the rule of law

1.8. Regulatory Bodies Strengthened By Judicial Pronouncements

Vineet Narain's case is a land mark case in the landscape of judiciary's whip cracking on corruption. The apex court, in that case, went all blazing to bring into prominence the loopholes in the system of investigation, prosecution, police machinery, its independence, accountability and transparency.

Point wise commentary is as under:

1.1.1. Central Bureau of Investigation; and Central Vigilance Commission

- i. The Central Vigilance Commission (CVC) shall be given statutory status.

http://www.business-standard.com/budget/article/budget-govt-allocates-rs-8-93-crore-for-sit-on-black-money-114071100488_1.html (visited on 19-07-2015)

<http://timesofindia.indiatimes.com/India/Not-naming-foreign-bank-account-holders-contempt-Supreme-Court-to-govt/articleshow/34086392.cms?intenttarget=no> (visited on 19-07-2015)

AIR 1975 SC 2299

AIR 1998 SC 889

- ii. Selection for the post of Central Vigilance Commissioner shall be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and others with impeccable integrity to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the Committee. This shall be done immediately.
- iii. The CVC shall be responsible for the efficient functioning of the CBI. While Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for over viewing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning. The CBI shall report to the CVC about cases taken up by it for investigation; progress of investigations; cases in which charge sheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with competent authorities, especially those in which sanction has been delayed or refused.
- iv. The Central Government shall take all measures necessary to ensure that the CBI functions effectively and efficiently and is viewed as a non-partisan agency.
- v. The CVC shall have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it.
- vi. Recommendations for appointment of the Director, CBI shall be made by a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as members. The views of the incumbent Director shall be considered by the Committee for making the best choice. The Committee shall draw up a panel of IPS officers on the basis of their seniority, integrity, experience in investigation and anti - corruption work. The final selection shall be made by Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee. If none among the panel is found suitable, the reasons thereof shall be recorded and the Committee asked to draw up a fresh panel.
- vii. The Director, CBI shall have a minimum tenure of two years, regardless of the date of his superannuation. This would ensure that an officer suitable in all respects is not ignored merely because he has less than two years to superannuate from the date of his appointment.
- viii. The transfer of an incumbent Director, CBI in an extraordinary situation, including the need for him to take up a more important assignment, should have the approval of the Selection Committee.
- ix. The Director, CBI shall have full freedom for allocation of work within the agency as also for constituting teams for investigations. Any change made by the Director,

CBI in the Head of an investigative team should be for cogent reasons and for improvement in investigation, the reasons being recorded.

- x. Selection/extension of tenure of officers upto the level of Joint Director (JD) shall be decided by a Board comprising the central Vigilance Commissioner, Home Secretary and Secretary (Personnel) with the Director, CBI providing the necessary inputs. The extension of tenure or premature repatriation of officers upto the level of Joint Director shall be with final approval of the Board. Only cases pertaining to the appointment or extension of tenure of officers of the rank of Joint Director or above shall be referred to the Appointments Committee of the Cabinet (ACC) for decision.
- xi. Proposals for improvement of infrastructure, methods of investigation, etc. should be decided urgently. In order to strengthen CBI's in-house expertise, professionals from the revenue, banking and security sectors should be inducted into the CBI.
- xii. The CBI Manual based on statutory provisions of the Cr. P.C. provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the concerned officials.
- xiii. The Director, CBI shall be responsible for ensuring the filing of charge-sheets in courts within the stipulated time limits, and the matter should be kept under constant review by the Director, CBI.
- xiv. A document on CBI's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI.
- xv. Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.
- xvi. The Director, CBI should conduct regular appraisal of personnel to prevent corruption and/or inefficiency in the agency.

1.8.2 Enforcement Directorate

- i. A Selection Committee headed by the Central Vigilance Commissioner and including the Home Secretary, Secretary (Personnel) and Revenue Secretary, shall prepare a panel for appointment of the Director, Enforcement Directorate. The appointment to the post of Director shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee.

- ii. The Director, Enforcement Director like Director, CBI shall have a minimum tenure of two years. In his case also, premature transfer for any extraordinary reason should be approved by the aforesaid Selection Committee headed by the Central Vigilance commissioner.
- iii. In view of the importance of the post of Director, Enforcement Directorate, it shall be upgraded to that of an Additional Secretary/Special Secretary to the Government.
- iv. Officers of the Enforcement Directorate handling sensitive assignments shall be provided adequate security to enable them to discharge their functions fearlessly.
- v. Extensions of tenure upto the level of Joint Director in the Enforcement Directorate should be decided by the said Committee headed by the Central Vigilance Commissioner.
- vi. There shall be no premature media publicity by the CBI/Enforcement Directorate.
- vii. Adjudication/commencement of prosecution shall be made by the enforcement Directorate within a period of one year.
- viii. The Director, Enforcement Directorate shall monitor and ensure speedy completion of investigations/adjudications and launching of prosecutions. Revenue Secretary must review their progress regularly.
- ix. For speedy conduct of investigations abroad, the procedure to approve filing of applications for Letters Rogatory shall be streamlined and, if necessary, Revenue Secretary authorised to grant the approval.
- x. A comprehensive circular shall be published by the Directorate to inform the public about the procedures/systems of its functioning for the sake of transparency.
- xi. In-house legal advice mechanism shall be strengthened by appointment of competent legal advisers in the CBI/Directorate of Enforcement.
- xii. The Annual Report of the Department of Revenue shall contain a detailed account on the working of the Enforcement Directorate.

1.8.3 Nodal Agency

- i. A Nodal Agency headed by the Home Secretary with Member (Investigation), Central Board of Direct Taxes, Director General, Revenue Intelligence, Director, Enforcement and Director, CBI as members, shall be constituted for coordinated action in cases having politico-bureaucrat- criminal nexus.
- ii. The Nodal Agency shall meet at least once every month. Working and efficacy of the Nodal Agency should be watched for about one year so as to improve it upon the basis of the experience gained within this period.

1.8.4 Prosecution Agency

- i. A panel of competent lawyers of experience and impeccable reputation shall be prepared with the advice of the Attorney General. Their services shall be utilized as Prosecuting Counsel in cases of significance. Even during the course of investigation of an offence, the advice of a lawyer chosen from the panel should be taken by the CBI/Enforcement Directorate.
- ii. Every prosecution which results in the discharge or acquittal of the accused must be reviewed by a lawyer on the panel and, on the basis of the opinion given, responsibility should be fixed for dereliction of duty, if any, of the concerned officer. In such cases, strict action should be taken against the officer found guilty of dereliction of duty.
- iii. The preparation of the panel of lawyers with approval of the Attorney General shall be completed within three months.
- iv. Steps shall be taken immediately for the constitution of an able and impartial agency comprising persons of unimpeachable integrity to perform functions akin to those of the Director of Prosecutions in U.K. On the constitution of such a body, the task of supervising prosecutions launched by the CBI/Enforcement Directorate shall be entrusted to it.
- v. Till the constitution of the aforesaid body, Special Counsel shall be appointed for the conduct of important trials on the recommendation of the Attorney General or any other law officer designated by him.'

How the Supreme Court took cue from international institutions can be seen from below: 'The learned amicus curie had urged us to issue directions for the appointment of an authority akin to the Special or Independent Counsel in the United States of America for the investigation of charges in politically sensitive matters and for the prosecution of those cases and to ensure that appointments to sensitive posts in the CBI and other enforcement agencies and transfers therefrom were not made by the political executive. We are of the view that the time for these drastic steps has not come. It is our hope that it never will, for we entertain the belief that the investigative agencies shall function far better now, having regard to all that has happened since these writ petition were admitted and to the directions which are contained in this judgment. The personnel of the enforcement agencies should not now lack the courage and independence to go about their task as they should, even where those to be investigated are prominent and powerful persons.

In view of the problem in the States being even more acute, as elaborately discussed in the Report of the National Police Commission (1979), there is urgent need for the State Government also to set up credible mechanism for selection of the Police Chief in the States. The Central Government must pursue the matter within the State Governments and ensure that a similar mechanism, as indicated above, is set up in each State for the selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendent of Police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a

Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralizing the police force, it has also the adverse effect of politicizing the personnel. It is, therefore, essential that prompt measures are taken by the Central Government within the ambit of their constitutional powers in the federation to impress upon the State Governments that such a practice is alien to the envisaged constitutional machinery. The situation described in the National Police Commission's Report (1979) was alarming and it has become much worse by now. The desperation of the Union Home Minister in his letters to the state Governments, placed before us at the hearing, reveal a distressing situation which must be cured, if the rule of law is to prevail. No action within the constitutional scheme found necessary to remedy the situations is too stringent in these circumstances.

In the result, we strike down Directive No. 4.7(3) of the Single Directive quoted above and issue the above directions, which have to be construed in the light of the earlier discussion. The Report of the Independent Review Committee (IRC) and its recommendations which are similar to this extent can be read, if necessary, for a proper appreciation of these directions. To the extent we agree with the conclusions and recommendations of the IRC, and that is a large area, we have adopted the same in the formulation of the above directions. These directions require the strict compliance/adherence of the Union of India and all concerned.'

Prakash Singh & Ors v. Union of India and Ors on 22 September, 2006 was also a milestone in awakening the need for police reforms as the police are directly connected to investigative aspect of corruption matters.

1.9. Electoral reforms given legal force by the court judgments

India is a democratic state where political representatives hold enormous power. For ensuring that such power is not abused by politicians of dubious character we have to take care to have a process in place which can ensure return of representatives of impeccable integrity and public life. For this purpose, electoral reforms hold the key. Judiciary too, wherever feasible, has been pushing for such much needed reorientation of electoral processes so that we can have a clean and vibrant democracy respecting tenets of rule of law.

1.1.1. Antecedent of Candidates

In Case of *Union of India v. Association for Democratic Reforms* etc. the Supreme Court has ruled that disclosure of information related to character and antecedents of a candidate is compulsory as under:

- (i) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past - if any, whether he is punished with imprisonment or fine?
- (ii) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or

2006 (8) SCC 1
AIR 2003 SC 2363

more, and in which charge is framed or cognizance is taken by the Court of Law. If so, the details thereof.

- (iii) The assets (immovable, movable, bank balances etc.) of a candidate and of his/her spouse and that of dependents.
- (iv) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.
- (v) The educational qualifications of the candidate

1.9.2 None Of The Above Option

The apex court in case of *PUCL v. UOI* has ordered accounting of negative voting by making provision of none of the above (NOTA) button on the ballot units.

"Negative voting will lead to systemic change in polls and political parties will be forced to project clean candidates. If the right to vote is a statutory right, then the right to reject candidate is a fundamental right of speech and expression under Constitution," the court said.

1.9.3 Disqualification of Convict MP/MLA

On July 11, 2013, the Supreme Court held that charge-sheeted Members of Parliament and MLAs, on conviction for offences, will be immediately disqualified from holding membership of the House without being given three months' time for appeal, as was the case before.

However, in December, the SC gave more teeth to the CBI, ruling that the investigative agency need not take any prior approval from the Centre to prosecute senior bureaucrats in court-monitored corruption cases. By doing away with the provisions of prior sanction from the Centre, it cleared the deck for the agency to prosecute bureaucrats allegedly involved in the Coalgate scam.

1.9.4 Fast tracking of criminal proceedings against MP/MLAs

Notwithstanding the focus on Lokpal in recent years, one must not overlook the fact that there's no magic wand to tackle corruption. What is required is an anti-corruption architecture comprising several coordinated reform measures. These include a robust judicial mechanism with a high rate of disposal of cases. No Lokpal can be effective without this.

The Supreme Court's direction that trial proceedings in cases of corruption and serious crimes against MPs and MLAs must be completed within a year is a welcome development. Read along with the previous apex court order stipulating immediate disqualification of legislators if convicted and sentenced to more than two years'

PUCL v. UOI, writ petition (civil) No. 161 of 2004 (SC) unreported

<http://www.rediff.com/news/slide-show/slide-show-1-year-end-special-10-landmark-judgments-of-2013/20131220.htm#4>(visited on 19-07-2015)

Lily Thomas v. UOI & others, writ petition (civil) No. 490 of 2005

<http://www.rediff.com/news/slide-show/slide-show-1-year-end-special-10-landmark-judgments-of-2013/20131220.htm#8>(visited on 19-07-2015)

imprisonment, the move will have a salutary impact on Indian politics should it be implemented rigorously.

1.10. Prevention of Corruption Act, 1988 Provisions Interpreted Judicially

The main ingredients of the charge of an offence under Section 7 of the PC Act as observed in *R.S. Nayak v. Antulay and Others* the Supreme Court opined that:

- i. That gratifications are acquired as a public servant
- ii. That he must show to have obtained or attempted to obtain from any person, any gratification other than legal remuneration.
- iii. That the gratification should be as a notice or reward for doing or forbearing to do in the exercise of his official functions, favour or disfavours to any person.

The Section does not require that the public servant must, in fact be in an official act, favour or service at the time of the demand or receipt of the gratification.

In the case of *Inder Dyaldas Advani v. State of Bombay* it was held that it is not necessary that the act for doing which the bribe is given be actually performed. A representation by a public servant that he has done or will do an act impliedly includes a representation that it was or within his power to do the act.

The appellant filed criminal appeal and an application for suspension of sentence under Section 389 Criminal Procedure Code. The High Court observed that in the present scenario regarding corruption in which corrupt fearlessly accept money and as the appellant was in jail only for a few months held that it was not a fit case for suspension of sentence and dismissed the application.

1.10.1. M.L.A. /M.P. is a Public Servant

In *Habibulla Khan v. State of Orissa* The Court held that an M.L.A., is not a public servant under Section 21 of the Indian Penal Code, but he comes within the purview of sub-clause (viii) of clause (c) of Section 2 of the 1988 P.C. Act, 1988 as held by the High Court of Orissa, an M.L.A. “holds an office” and “performs public duty”. In the appeal, the Supreme Court proceeded “assuming” that M.L.A. is a public servant.

In a later decision, in the case of *P.V. Narasimha Rao v. State (C.B.I.)*, the SC has said:

- i. A Member of Parliament does not enjoy immunity under Article 105(1) or under Article 105(3) of the Constitution from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for the purpose of speaking or by giving his vote in Parliament or in any committees thereof.
- ii. A Member of Parliament is a public servant under Section 2 (c) of the Prevention of Corruption Act, 1988.

<http://timesofindia.indiatimes.com/home/opinion/edit-page/SC-order-expediting-cases-against-tainted-legislators-must-be-strictly-implemented/articleshow/31856256.cms?inttarget=nc>(visited on 19-07-2015)

AIR 1984 SC 684
AIR 1952 Bom 58
1995 (2) SCC 437
1998 Cr LJ2930

Since there is no authority competent to remove a Member of Parliament and to grant sanction for his prosecution under Section 19(1) of the Prevention of Corruption Act, 1988, the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but till provision is made by Parliament in that regard by suitable amendment in the law, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Section 7, 10, 11, 13, and 15 of the 1988 Act against a Member of Parliament in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be.

1.10.2. Minister is a Public Servant

In the case of *M. Karunanidhi v. Union of India*: The Supreme Court held that a Minister, Prime Minister and Chief Minister inclusive, is decidedly a public servant in terms of clause (12) of Section 21 Indian Penal Code itself, which corresponds to clause (i) of clause(c) of Section 2 of the 1988 Act. The Supreme Court held that a Minister is appointed and dismissed by the Governor and is therefore subordinate to him, that he gets salary for the public work done or the public duty performed by him and that the said salary is paid to him from the Government funds.

Theoretically there is no time limit or bar for launching prosecution under the Act. Even MPs and MLAs come under the ambit of “public servant” and “public duty” in *Jharkhand Mukti Morcha* case the Apex Court of India held that the “public duty” is one in which public or State has interest at large and MPs represent the people of their constituency to the highest law making body. There is also their representation in deciding control over the executive. To that extent they perform public duty and fall within the purview of the Prevention of Corruption Act, 1988.

1.10.3. Chairman of Co-operative Society is a Public Servant

In *State of Maharashtra v. Laljit Rajesh Shah* The Supreme Court held The Chairman of the Cooperative Society is a public servant under Section 2 (c) of the PC Act 1988.

1.10.4. Ex-public Servant can be Prosecuted under P.C Act, 1988

The Calcutta High Court in *Manmal v. State of West Bengal* held that when a ‘Public Servant’ ceased to be a public servant, he is neither entitled to the advantages of a public servant nor can be saddled with the liabilities attached to the office of a public servant and it cannot be said that in certain respects he is a public servant under the Prevention of Corruption Act, 1988 and in certain other respects he is not a public servant and finally held that a retired public servant cannot be prosecuted for the offence of criminal misconduct specified in Section.5 of the P.C.Act,1988.

The decision of the Calcutta High Court was challenged before the Supreme Court and the Supreme Court reversed the conclusions of the Calcutta High Court decision reported in *State of West Bengal V. Manmal*, 1977 where in the Supreme Court held that

1998 CrLJ 2930
AIR 2000 SC 937
1974 CrLJ 92
AIR 1977 SC 1772

the crucial date for the purpose of attracting the provisions of the P.C.Act is the date of the commission of the offence when the person arraigned must be “Public Servant”. Retirement, resignation, dismissal or removal of a ‘public servant’ would not wide out the offence, which he committed while in service. Therefore a person ceased to be a “Public Servant” can also be prosecuted for the offence of criminal misconduct specified in Section 5 of the Prevention of Corruption Act, 1988.

1.11. Issuance of Verdicts and Extent of their Implementation

Though court verdicts have time and again served nice purpose in changing the ghettoizing *status quo* and ecosystem of corruption, yet it is also a fact that full implementation of such verdicts containing pearls of wisdom has remained a far cry. As a result we have noticed courts exasperation in subsequent verdicts.

Non-implementation of the 1997 judgment in the money laundering case shows that freeing the CBI from political interference is a challenge even for the apex court.

On May 8, 2013, using unusually scathing language, the Supreme Court called the country's premier investigating agency, the Central Bureau of Investigation a 'caged parrot'

“Our first exercise will be to liberate CBI from political interference.” This is what the Supreme Court said while deliberating the coal scam status report. It is not the first time that the court will be embarking on such a project.

The gist of the allegations made in the hawala case petition was that financial support was given to terrorists by clandestine means using tainted funds from “hawala” transactions. The CBI had failed to investigate this properly and prosecute those involved. This was done to protect people who were influential and powerful.

1. The court adopted the procedure of “continuing mandamus” that allowed it to issue interim orders from time to time. One order was similar to what was done in the coal scam. It asked the CBI not to report the progress of investigations to the person occupying the highest office in the executive.

None of these directives was implemented honestly. Control over the CBI was not fully transferred. The CVC Act of 2003 allowed the CVC to exercise superintendence only over corruption cases registered by the Delhi Special Police Establishment (DSPE). The CVC Act resulted in introducing a system of dual control over the CBI — one exercised by the CVC in respect of corruption cases and the other by the Central government in respect of other cases. The court agreed that since the Minister concerned was answerable to Parliament for the efficient functioning of the premier investigation agency, he must have the power to (i) review the working of the agency (ii) give it broad policy directions regarding investigation and prosecution of cases (iii) appraise the quality of work of its officers, and (iv) call for information about the progress of cases. It is this part of the hawala case judgment which the present court may review. However, the hawala case judgment did mention that none of these powers “would extend to permit the Minister to interfere with the course of investigation and prosecution in any individual case.”

1.11.1. Single Directive

The government has always succeeded in selecting its own man to head the organisation because all the three officers who constitute the committee to select the CBI

chief are bureaucrats who are generally willing to toe the government's line. Besides constituting this committee, the CVC Act did not lay down the procedure for selection of the head of the organisation.

The security of tenure, which was guaranteed by the judgment, did not work because the government succeeded in dangling the carrot of post-retirement benefits before the CBI chief. The judgment did not say, as was done by the National Police Commission, that the head of a police organisation should not be eligible for any government post after retirement.

Lastly, the hawala case judgment declared the Single Directive null and void. The court found it bad in law. It required a police agency to seek permission from the executive to initiate investigation into a criminal offence, which is contrary to law. It also violated the canon of equality in the application of laws. The CVC Act of 2003 infringed these basic principles of legal jurisprudence by resurrecting the Single Directive.

That the judgment and the measures it prescribed failed to free the CBI from political interference is obvious from recent developments — the present CBI Director showing the coal scam investigation report to the Law Minister and other functionaries of the government. In fact, even before this case occurred, Justice J.S. Verma, the author of the hawala case judgment, had realized that the CBI continued to be influenced by political considerations in its work: “The blame cannot be laid elsewhere. It is too much of a coincidence that in sensitive matters, the outcome of the CBI's investigation invariably depends on the political equation of the accused with the ruling power, and it changes without compunction with the change in that equation.”

The hawala case judgment is not the only one, which has not been implemented fully. The Supreme Court's judgment in *Prakash Singh* also remains unimplemented in most States.

The Supreme Court has to think out of the box not merely to make recommendations to “liberate” the CBI but also to ensure their implementation.

Notwithstanding ideological differences, all political parties when in power behave similarly in regard to the issue of autonomy of CBI. Here all differences dissolve on this matter, though there is no letup in the rhetoric of a party while in opposition. No matter which political party rules the country, CBI is always kept handmaid of the government of the moment. None of the parties has shown genuine concern to grant justified and acknowledged independence to the premier investigation agency of the country.

Conclusion

In spite of some vestiges of cynicism there is a surging hope that the work of institutions operating in the field of anti-corruption activities would not go waste. Present context is shaped by influence of education, technology, global integration, international law, increasing presence of international institutions in almost all fields whether economics, commerce, industry, foreign capital, companies, military groups, academics, research, intellectual property rights, international law, human rights, politics, culture.

Supra 33

<http://www.thehindu.com/opinion/op-ed/from-hawala-scam-to-coalgate-full-circle-for-supreme-court/article4677411.ece> (visited on 19-07-2015)

Nowadays no country, including India, can afford to remain aloof from flux of international initiatives. All organizations, before entering into any relation, ask for arrangements for anti-corruption strategies. It gives heart to us that India too has risen up to the occasion by framing a national anti-corruption strategy wherein all cherished goals of UNCAC and other international institutions aiming at elimination of endemic of corruption have got deserved attention and idealization. A smart and beautiful bunch of legislations and institutions have already taken birth with a sincere promise of deliverance from the devil of deviance named as corruption. Yet, to fill deficiencies still, we are speedily taking strides for bringing in innovative instruments into our legal system

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