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Ethics in Governance – 2nd ARC

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Ethics and Politics

- Ethical Values in Politics play an important role in setting the public discourse while it is unrealistic and simplistic to expect perfection in politics in an ethically imperfect environment, the standards set in politics influence other aspect of governance.
- **Criminalization of Politics:** Participation of criminals in the electoral process, for political parties individuals with criminal background secure votes through use of money and muscle power.
- Large, illegal and illegitimate use of expenditure in elections is another root cause of corruption. Cleansing elections is the most important route to improve ethical standards in politics, to curb corruption and rectify maladministration.

Recent Improvements

- Improvement in accuracy of electoral rolls.
- Disclosure of antecedents of candidates.
- Disqualification of Persons convicted of criminal offence.
- Enforcement of code of conduct by Election Commission.
- Deputation of Central Armed Forces ensured Free and fearless polling.
- 91st amendment act, 2003 which put a cap on the size of council of ministers that fixed 15% to the strength of Lok Sabha/State Legislature.

Issues in Political Reforms

- **Reform of Political Funding:** Political parties are funded through private donations. Internationally there are three pattern of state funding for political parties and elections.
- One is the minimalist pattern, wherein elections alone are partially subsidized
- usually through specific grants or state rendered services i.e. UK, Ireland, Australia.
- 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.

- 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.
- The Representation of the People Act, 1951 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.

Recommendation

A system for partial state funding should be introduced in order to reduce the scope of illegitimate and unnecessary funding of expenditure for elections.

Tightening of Anti-Defection Law

- It represents manipulation of the political system for furthering private interests, and has been a potent source of political corruption.
- The **91st Amendment to the Constitution** was enacted in 2003 to tighten the anti-defection provisions of the Tenth Schedule.
- 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’. Thus made defections virtually impossible and is an important step forward in cleansing politics.

Recommendation

The issue of disqualification of members on grounds of defection should be decided by the President/Governor on the advice of the Election Commission.

Disqualification

- The heinous offences listed murder, abduction, rape, dacoity, waging war against India, organized crime and narcotics offences. It also seems reasonable to disqualify persons facing corruption charges, provided the charges have been framed by a judge/magistrate after prima facie evidence.
- The Election Commission has suggested that as a precaution against motivated cases, it may be provided that only cases filed six months before an election would lead to

such disqualification.

Recommendation

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.

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.

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.
- The Election Commission has reiterated this proposal. This needs to be acted upon early. The audited accounts should be available for information of the public.

Coalition and Ethics

- 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 prior to government formation.
- 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.

Recommendation

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

- Article 324 of the constitution stipulates the appointment of Chief Election

commissioner by the president on the advice of prime-minister.

- 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 collegium is constituted for selection of the Chief Election Commissioner and the Election Commissioners.

Recommendation

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.

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.

Recommendations

- 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, which are as follows:-

- if he holds any office of profit under the Government of India or the Government of

any State, other than an office declared by Parliament by law not to disqualify its holder.

- if he is of unsound mind and stands so declared by a competent court;
- if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
- A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.
- If he is so disqualified by or under any law made by Parliament. So far, no such law has been enacted.
- 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.

Recommendation

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.
- Ethics provides the basis for the creation of such laws and rules. Our legal system emanates from a shared vision of what is good and just.
- 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'.

Nolan Committee on Standards in Public Life in the United Kingdom

- **Selflessness:** Holders of public office should take decisions solely in terms of public interest.
- **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.
- **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.
- **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.

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

International Approach

- Various countries have, from time to time, addressed the issue of prescribing a Code of Conduct/Ethics for its Ministers, legislators and civil servants.
- There is a Ministerial Code in UK, in the US Senate a Code of Conduct and in Canada a 'Guide for Ministers'. In Belize, the Code of Conduct for public functionaries is prescribed in the Constitution itself.

Ethical framework for Ministers in India

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

- According to the Representation of the People Act, 1951 a person **before taking office as a Minister**, shall:
 - 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.
 - 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.
- **After taking office**, and so long as he remains in office, the Minister shall:
 - 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;
 - 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;
 - refrain from starting, or joining, any business;
 - 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.
- **A Minister should**
 - 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;

- o not to permit a member of his family, contract debts of a nature likely to embarrass or influence him in the discharge of his official duties.

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:

- Ministers must uphold the highest ethical standards;
- Ministers must uphold the principle of collective responsibility
- Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies;
- Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;
- Ministers in the Lok Sabha must keep separate their roles as Minister and
- constituency member;
- Ministers must comply with the requirements which the two Houses of Parliament lay down from time to time;
- Ministers must recognize that misuse of official position or information is violation of the trust reposed in them as public functionaries;
- Ministers must act objectively, impartially, honestly, equitably, diligently and in a fair and just manner.

Present Code of Conduct

- 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.

Recommendations

- In addition to the existing Code of Conduct for Ministers, 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.
- Dedicated units should be set up in the offices of the Prime Minister and the Chief Ministers to monitor the observance of the Code of Ethics and the Code of Conduct. The unit should also be empowered to receive public complaints regarding violation of

the Code of Conduct.

- The Prime Minister or the Chief Minister should be duty bound to ensure the observance of the Code of Ethics and the Code of Conduct by Ministers. This would be applicable even in the case of coalition governments where the Ministers may belong to different parties.
- An annual report with regard to the observance of these Codes should be submitted to the appropriate legislature. This report should include specific cases of violations, if any, and the action taken thereon.
- The Code of Ethics should inter alia include broad principles of the Minister-civil servant relationship and the Code of Conduct.
- The Code of Ethics, the Code of Conduct and the annual report should be put in the public domain.

Ethical Framework for Legislators

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.

A Guideline for Rajya Sabha Members

- Members must not do anything that brings disrepute to the Parliament and affects their credibility.
- Members must utilize their position as Members of Parliament to advance general well being of the people.
- Members holding public offices should use public resources in such a manner as may lead to public good.
- Members should desist from giving certificates to individuals and institutions of which they have no personal knowledge and are not based on facts.
- Members should not lend ready support to any cause of which they have no or little knowledge.
- 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.
- Members should not misuse the facilities and amenities made available to them.
- Members should not be disrespectful to any religion and work for the promotion of secular values.
- Members should keep uppermost in their mind the fundamental duties listed in part IV A of the Constitution.
- Members are expected to maintain high standards of morality, dignity, decency and

values in public life.

The Committee on Ethics of the Lok Sabha

The members should abide by the following general ethical principles:

- Members must utilize their position to advance general well being of the people.
- 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.
- Conflict between private financial/family interest should be resolved in a manner that the public interest is not jeopardized.
- Members holding public offices should use public resources in such a manner as may lead to public good.
- Members must keep uppermost in their mind the fundamental duties listed in Part-IV of the Constitution.
- Members should maintain high standards of morality, dignity, decency and values in public life.

Filing Assets and Liabilities Statement

A new Section, 75A (the Representation of the People (Third Amendment) Act, 2002), has been inserted which stipulates that every elected candidate for a House of Parliament or the Legislature of the State, shall, within ninety days from the date on which he/she makes and subscribes an oath or affirmation, files the details of his/her assets/liabilities to the Chairman of the Council of State or the Legislative Council.

Recommendations

- An Office of 'Ethics Commissioner' may be constituted 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.
- In respect of States, the Commission recommends the following:
 - All State legislatures may adopt a Code of Ethics and a Code of Conduct for their Members.
 - Ethics Committees may be constituted with well defined procedures for sanctions in case of transgressions, to ensure the ethical conduct of legislators.
 - 'Registers of Members' Interests' may be maintained with the declaration of interests by Members of the State legislatures.
 - Annual Reports providing details including transgressions may be placed on the Table of the respective Houses.

- An Office of 'Ethics Commissioner' may be constituted by each House of the State legislatures. This Office would function under the Speaker/Chairman, on the same basis as suggested for Parliament.

Code of Ethics for Civil Servants

A draft 'Public Service Bill' 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.

The Seven Social Sins

The Seven Social Sins, as quoted by Mahatma Gandhi in "Young India", 1925.

- Politics without principles
- Wealth without work
- Leisure without conscience
- Knowledge without character
- Commerce without character
- Science without humanity
- Worship without sacrifice

- 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.

Recommendations

- 'Public Service Values' towards which all public servants should aspire, should be defined and made applicable to all tiers of Government and parastatal organizations. Any transgression of these values should be treated as misconduct, inviting

punishment.

- Conflict of interest should be comprehensively covered in the Code of Ethics and in the Code of Conduct for officers. Also, serving officials should not be nominated on the Boards of Public undertakings. This will, however, not apply to non-profit public institutions and advisory bodies.

Ethical Framework for the Judiciary

An independent judiciary enjoying public confidence is a basic necessity of the rule of law.

The Supreme Court of India in its Full Court Meeting held on May 7, 1997 unanimously adopted a charter called the '**Restatement of Values of Judicial Life**', generally known as the **Code of Conduct for judges**.

- No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.
- A Judge should practice a degree of aloofness consistent with the dignity of his office.
- A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.
- A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.
- A Judge is expected to let his judgments speak for themselves. He shall not give interviews to the media.
- A Judge shall not accept gifts or hospitality except from his family, close relations and friends.
- A Judge shall not hear and decide a matter in which a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised.
- A Judge shall not speculate in shares, stocks or the like.

Recommendations

- A National Judicial Council should be constituted, in line with universally accepted principles where the appointment of members of the judiciary should be by a collegium having representation of the executive, legislature and judiciary.
 - The Council should have the following composition:
 - The Vice-President as Chairperson of the Council
 - The Prime Minister
 - The Speaker of the Lok Sabha
 - The Chief Justice of India
 - The Law Minister
 - The Leader of the Opposition in the Lok Sabha

- The Leader of the Opposition in the Rajya Sabha
 - In matters relating to the appointment and oversight of High Court Judges, the Council will also include the following members:
 - The Chief Minister of the concerned State, The Chief Justice of the concerned High Court.
- 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 with the task of recommending appointments of Supreme Court and High Court Judges. It should also 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.
- 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.

Legal Framework for Fighting Corruption

Evolution of the Anti-Corruption Laws in India

- In the pre-independence period the Indian Penal Code possessed a chapter on '**Offences by Public Servants**' which provided the legal framework to prosecute corrupt public servants.
- **The Prevention of Corruption Act 1947:** 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. The Act also provided that the statement by bribe-giver would not subject him to prosecution.
- **The Criminal Law (Amendment) Act, 1952:** The punishment specified under Section 165 of IPC was enhanced to three years instead of the existing two years. Section 165A was inserted in the IPC stipulated that all corruption related offences should be tried only by special judges.
- **Amendments in 1964:**
 - The **definition of 'Public Servant'** under the IPC was expanded. 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.
 - **The Prevention of Corruption Act, 1988** has salient features as follows:

- The term 'Public Servant' is defined in broader than what existed in the IPC.
- A new concept – 'Public Duty' is introduced in the Act.
- 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 with stringent Penalties.
- Immunity to bribe giver, investigation by an officer of the rank of DySP, access to bank records, have been retained.

Anti-corruption policies lay down by United Nations Convention:

- Each State Party shall endeavor to establish and promote effective practices aimed at the prevention of corruption.
- Each State Party shall endeavor to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

Corruption is a wide term even 'The Prevention of Corruption Act' and 'United Nations Convention against Corruption' does not define corruption.

Recommendations

- The following should be classified 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 favoring or harming someone.
- Obstruction of justice.
- Squandering public money.

Note:

Collusive Corruption: It is a form of corruption in which bribe giver and bribe taker together fleece society for personal gains creating a win-win situation for themselves. In cases of collusive corruption, the 'burden of proof' should be shifted to the accused.

Coercive Corruption: It is a form of corruption in which the bribe giver is victim of extortion, he is compelled to pay for a simple service else delay, harassment follow victim.

Section 7 of the Prevention of Corruption Act needs to be amended to provide for a special offence of 'collusive bribery'. An offence could be classified as 'collusive bribery' if the outcome or intended outcome of the transaction leads to a loss to the state, public or public interest.

- In all such cases if it is established that the interest of the state or public has suffered because of an act of a public servant, then the court shall presume that

the public servant and the beneficiary of the decision committed an offence of 'collusive bribery'.

- The punishment for all such cases of collusive bribery should be double that of other cases of bribery. The law may be suitably amended in this regard.

Sanction for Prosecution

- Section 19 of the Prevention of Corruption Act provides that previous sanction of the competent authority is necessary. The objective of this provision is to prevent harassment to honest public servants through malicious or vexatious complaints.
- Although it has been seen that sanctioning authority shield dishonest officials. The intention of the legislation appears to be to provide adequate protection to public servants in the discharge of their legitimate official duties.
- Sanctioning authorities are often not able to attend the court because of other official preoccupation and this also contributes to delay in concluding trial.
- Such a protection is not required for offences which are basically based on the direct evidence of:
 - Demand or acceptance of bribes.
 - Obtaining valuable things without or with inadequate consideration.
 - Cases of possession of assets disproportionate to the known source of income.

Recommendations

- 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.
- 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.
- The Presiding Officer of a House of Legislature should be designated as the sanctioning authority for MPs and MLAs respectively.
- 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.
- The substantial delay in obtaining sanction for prosecution from government, with the result that corrupt officials are often not brought to book.
- The Commission has recommended that at the level of the Union Government, the sanction for prosecution should be processed by an Empowered Committee consisting of the Central Vigilance Commissioner and the Departmental Secretary to Government.

Liability of Corrupt Public Servants to Pay Damage

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- No civil liability for the wrong doer nor is there a provision for compensation to the person/organization which has suffered the damage due to a public servant misconduct.
 - The circumstances of cases where such damages would be payable, the principles of assessing the damages and the criteria for awarding the damages to the persons who have been wronged should be clearly spelt out.
 - It should also be ensured that adequate safeguards are provided so that bona fide mistakes should not end in award of such damages, otherwise public servants would be discouraged from taking decisions in a fair and expeditious manner.

Recommendation

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.

Speeding up of Trails under the Prevention of Corruption Act

- Major cause of delay in the trail of cases is the tendency of the accused to obtain frequent adjournments.
- There is also tendency by accused to challenge every interim order and obtaining stay from High court and Supreme Court during trial.
- Designated special judges for conduct of corruption trial cases remain involved with other non- corruption cases.

Recommendations

- A legal provision needs to be introduced fixing a time limit for various stages of trial. This could be done by amendments to the CrPC.
- Steps have to be taken to ensure that judges declared as Special Judges under the provisions of the Prevention of Corruption Act give primary attention to disposal of cases under the Act.
- Only if there is inadequate work under the Act, should the Special Judges be entrusted with other responsibilities.
- It has to be ensured that the proceedings of courts trying cases under the Prevention of Corruption Act are held on a day-to-day basis, and no deviation is permitted.
- The Supreme Court and the High Courts may lay down guidelines to preclude unwarranted adjournments and avoidable delays.

Corruption involving Private Sector

- Corruption in private sector does not come under purview of the Prevention of Corruption Act. However if the private sector is involved in bribing any public authority then he is liable to be punished for the offence of abetment of bribery under the prevention of corruption act.
- However if private officials are performing public services and NGOs receiving state aid both their officials should come under ambit of Prevention of Corruption act.

Note:

In India the **company act 1956** provides the statutory framework which governs the internal processes of company.

Recommendations

- 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.

Confiscation of properties illegally acquired by corrupt means

The corrupt public servant should be denied the ownership of his/her ill gotten wealth. The special judge is empowered under Criminal Law Amendment Ordinance 1944 to attached the illegal property of civil servant on an interim basis. Depending upon the outcome of criminal case, the attached property is either forfeited or released.

Recommendation

The corrupt public servants (forfeiture of property) Bill as suggested by the law commission should be enacted without further delay.

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.
- The Benami Transactions (Prohibition) Act, 1988 the Act precludes the person who acquired the property in the name of another person from claiming it as his own.

Recommendation

Steps should be taken for immediate implementation of the Benami Transactions (Prohibition) Act, 1988.

Protection to whistleblowers

There is very close connection between the public servant's willingness to disclose corruption in his organization and protection given to him and his/her identity. If adequate statutory protection is granted then corruption cases can come out.

Recommendation

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 include tax evasion, counterfeiting, distorting share markets, falsification of accounts, frauds in the banking system, smuggling, money-laundering, insider –trading and even bribery.
- Presently these offences are governed by **the Indian Penal code, the Banking Regulation Act 1949, the Companies Act, 1962, the income tax act, 1961**. However, the quantum of punishment under these laws is not enough of a deterrent.

Recommendations

- A new law on 'Serious Economic Offences' should be enacted.
- A Serious Economic Offence may be defined as:
 - One which involves a sum exceeding Rs 10 crores;
 - One which is likely to give rise to widespread public concern
 - One where investigation and prosecution are likely to require highly specialized knowledge of the financial market or of the behavior of banks or other financial institutions;

- involves significant international dimensions in the investigation of which there is requirement of legal, financial, investment and investigative skills to be brought together;
- **A Serious Frauds Office (SFO)** should be set up attached with cabinet secretariat (under the new law), to investigate and prosecute such offences as per recommendation of the **Mitra Committee**.
- **A Serious Frauds Monitoring Committee** should be constituted headed by the Cabinet Secretary, should have the Chief Vigilance Commissioner, 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 Lokayukta and shall follow its directions.
- In all cases of serious frauds the burden of proof regarding its non-existence, shall lie on the accused.

Immunity Enjoyed by Legislators

- The National Commission to Review the Working of the Constitution recommended to amend Article 105(2) to clarify that the immunity enjoyed by Members of Parliament under parliamentary privileges should not cover corrupt acts committed by them in connection with their duties in the House.
- A preferential treatment to legislators violates Right to equality and equal protection of law wherein the Members of Parliament are immune from prosecution for their corrupt acts if they are related to voting or speaking in the Parliament.

Recommendations

- The Commission, while endorsing the suggestion of the National Commission to Review the Working of the Constitution, recommends that suitable amendments be effected to Article 105(2) of the Constitution to provide that the immunity enjoyed by Members of Parliament does not cover corrupt acts committed by them in connection with their duties in the House or otherwise.
- The Commission also recommends that similar amendments may be made in Article 194(2) of the Constitution in respect of members of the state legislatures.

Institutional Framework

The Administrative Vigilance Division of the Department of Personnel & Training is the nodal agency for dealing with vigilance and anti-corruption cases.

Various institutions which are working at Union level are:

- The Central Vigilance Commission
- Vigilance Units in Ministries
- Central Bureau of Investigation

Central Vigilance Commission (CVC)

- The central vigilance commission was set up as per Santhanam Committee recommendation and it was accorded a statutory status following a judgment of Supreme Court in Vineet Jain v. Union of India through Central Vigilance Act, 2003.
- The CVC advises the Union Government on all matters pertaining to maintenance of integrity in administration.
- It exercises superintendence over the working of the Central Bureau of Investigation.

Vigilance Units in the Government of India

- All ministries /Departments in the Union government have a **chief vigilance officer** who heads the vigilance division of the organization concerned assisting and advising the secretary or Head of office in all matters related to vigilance.
- He also provides an organic link between his organization and the central vigilance commission on the one hand and his organization and the central bureau of investigation on the other.

Central Bureau of investigation (CBI)

- CBI is the principal agency of union government in anti-corruption matters. It derives its powers from the Delhi Special Police Establishment Act, 1946.
- It investigates all cases registered under the Prevention corruption act, 1988. It also investigates cases against state government officials if case is entrusted to CBI.
- It investigates all cases of economic offences and conventional crimes such as offences related to- internal security, espionage, sabotage and other offences under IPC and the laws notified under section 3 of the DSPE Act, 1946.

Vigilance systems in State Governments

- 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.
 - In **Tamil Nadu** the vigilance commissioner is a serving secretary to government and functions as secretary though he brings out an annual report in his capacity as Vigilance commissioner.
- In **union territory** the Chief Secretary himself acts as Vigilance Commissioner.

- Some states have adopted the pattern of the union government and set up internal vigilance organization 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 higher formations and vigilance commissioner.

The Lokpal

The First Administrative Reforms Commission had recommended the establishment of the institution of Lokpal to enquire against public functionaries such as ministers and MPs in case of corruption.

The commission is of the view that the Lokpal should be a three member body for bringing expertise, ensuring transparency and objectivity. The chairman should be from judiciary, the second member should be an eminent jurist and the third should be the central Vigilance Commissioner(ex-officio).

Prime Minister and Lokpal

Arguments to include him under ambit of Lokpal

- Prime Minister is a public servant and in democracy all public servants are accountable to the citizen who is sovereign.
- As per Westminster model the Prime Minister is first among equals in council of ministers, therefore whatever rules apply to other ministers, should apply to Prime Minister as well.

Arguments against Prime Minister's inclusion under Lokpal

- If the Prime Minister's conduct is open to formal scrutiny by extra-parliamentary authorities then government's viability is eroded and parliament's supremacy is in jeopardy.
- A Prime Minister facing formal enquiry by a Lokpal would cripple not only the government but the authority of Prime Minister with parliamentary support is synonymous with nation's dignity and prestige , therefore if Prime-minister is indeed guilty of serious indiscretions then parliament can remove him by no-confidence .
- However a minister's official conduct cannot be scrutinized by Prime Minister as he does not have time or energy to personally investigate therefore Lokpal enquiry can help to know about a minister's misconduct. But the final decision to remove the minister must vest in parliament on the advice of Prime-minister.

Recommendations

- The Constitution should be amended to provide for a national Ombudsman to be called the Rashtriya Lokayukta. The role and jurisdiction of the Rashtriya Lokayukta should be defined in the Constitution while the composition, mode of appointment and other details can be decided by Parliament through legislation.
- 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.
- The Rashtriya Lokayukta should consist of a serving or retired Judge of the Supreme Court as the Chairperson, an eminent jurist as Member and the Central Vigilance Commissioner as the ex-officio Member.
- The Chairperson of the Rashtriya Lokayukta should be selected from a panel of sitting Judges of the Supreme Court who has 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 Lokayukta

- In the wake of the recommendations of the first Administrative Reforms Commission, many State Governments enacted legislation to constitute the Lokayukta to investigate allegations against officers of State government.
- The Lokayukta is generally a retired Judge of the High Court or the Supreme Court and normally appointed for a five-year term on the basis of a joint decision involving the Chief Minister, the Chief Justice, the Speaker of the House and leader of the Opposition.
- The expenditure on the Lokayukta is, in some States, charged on the consolidated fund of the State providing requisite financial independence for the institution. Some Lokayuktas have powers to punish for contempt.
- The entire structure of the anti-corruption machinery in the States needs reconsideration. On the one hand, curbing corruption at the cutting edge level would require a machinery having wide reach which could investigate a large number of cases of corruption effectively. On the other hand, curbing corruption at the highest level would require a mechanism with adequate powers, expertise and status which could investigate cases against high public functionaries like Ministers.

- If the Lokayukta is to be effective, it would neither be appropriate nor feasible to make this institution investigate petty cases against junior functionaries as its primary effort. Therefore, it is necessary to have the equivalent of the Central Vigilance Commission at the state level to deal with cases of corruption among public servants.

Recommendations

- 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 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 Commissions 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 local level

- The 73rd and the 74th amendments to the Constitution have firmly established decentralization of powers however decentralization without proper safeguards can increase corruption. A disturbing trend visible is the growing corruption and capture of power by local political elites with questionable integrity.
- A system of Local Bodies Ombudsman for a group of districts to check corruption at local level.
- The overall superintendence over the Local Bodies Ombudsman should vest in the

Lokayukta of the state, who should be given revisionary powers over the Local Bodies Ombudsman.

Recommendations

- A local bodies Ombudsman should be constituted for a group of districts to investigate cases against the functionaries of the local bodies. The State Panchayati Raj Acts and the Urban Local Bodies Act should be amended to include this provision.
- The local bodies Ombudsman should be empowered to investigate cases of corruption or maladministration by the functionaries of the local self governments, and submit reports to the competent authorities for taking action. The competent authorities should normally take action as recommended. In case they do not agree with the recommendations, they should give their reasons in writing and the reasons should be made public.

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.
- 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.
- 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.

Recommendations

- The State Vigilance Commissions/ Lokayuktas may be empowered to supervise the prosecution of corruption related cases.
- The investigative agencies should acquire multi-disciplinary skills and should be thoroughly conversant with the working of various offices departments. They should draw officials from different wings of government.
- Modern techniques of investigation should also be deployed like electronic surveillance, video and audio recording of surprise inspections, traps, searches and seizures.

- A reasonable time limit for investigation of different types of cases should be fixed for the investigative agencies.
- There should be sustained step-up in the number of cases detected and investigated. The priorities need to be reoriented by focussing on 'big' cases of corruption.
- The prosecution of corruption cases should be conducted by a panel of lawyers prepared by the Attorney General or the Advocate General in consultation with Rashtriya Lokayukta or Lokayukta as the case may be.
- The anti-corruption agencies should conduct systematic surveys of departments with particular reference to highly corruption prone ones in order to gather intelligence and to target officers of questionable integrity.
- The economic offences unit of states needs to be strengthened to effectively investigate cases and there should be better coordination amongst existing agencies.

Social Infrastructure

Citizens' Initiatives

- The citizens' voice can be effectively used to expose, denounce and restrain corruption.
- 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.

International Example

- The Independent Commission against Corruption (ICAC) of Hong Kong has produced exemplary results over the last quarter century by strengthening the ability of civil society to question corruption.
- The credit for raising the consciousness of the community in Hong Kong about fighting corruption, goes largely the vigorous public education campaigns carried out by the ICAC to bring the changes in the public attitude to corruption.

Civil Society engagements to fight Corruption

- 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 utilization certificates and then, handing them over to the concerned villagers for scrutiny in public hearings called Jan Sunwai.
- Campaign for Electoral Reforms and Citizens' Charters by Lok Satta, Hyderabad.

Government should provide an environment whereby citizens' groups can effectively participate in its efforts to root out corruption. **Some measures that could facilitate this are:**

- inviting civil societies to oversee government programmes;
- enforcing access to information;
- 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;
- incorporating corruption as a subject in the education curriculum.

Citizens' Charter

- The Charter is an undertaking a public service organization gives to the citizens, to provide a high level of service while meeting the standards contained in the declaration.
- Citizen charters make administration both accountable and citizen friendly.

Rating of Public Offices

- Citizens may be involved in the assessment and maintenance of ethics in major government offices and institutions with large public contacts.
- A database 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.

Initiatives for facilitating Citizen Participation:

- Enacting a **False Claims Law** is one way of incentivizing citizens' participation. A reward system for reporting cases of corruption could also help in bringing to light cases of corruption.
- **School awareness programmes** can be very effective in bringing about attitudinal changes in the society.
- Change will come when the incentives to throw out a corrupt system become stronger than the incentives to retain such a system.

Recommendations

- Citizens' Charters should be made effective by stipulating the service levels and also the remedy if these service levels are not met.
- Citizens may be involved in the assessment and maintenance of ethics in important government institutions and offices.
- Reward schemes should be introduced to incentivize citizens' initiatives.

False Claims Act

In United States False Claims Act makes it possible for interested citizens to approach any court in any judicial district for recovery of the proceeds of corruption.

Recommendations

- Legislation on the lines of the US False Claims Act should be enacted, providing for citizens and civil society groups to seek legal relief against fraudulent claims against the government. This law should have the following elements:
- Any citizen should be able to bring a suit against any person or agency for a false claim against the government.
- If the false claim is established in a court of law, then the person/ agency responsible shall be liable for penalty equal to five times the loss sustained by the exchequer or society.
- The loss sustained could be monetary or non-monetary as in the form of pollution or other social costs. In case of non-monetary loss, the court would have the authority to compute the loss in monetary terms.
- The person who brought the suit shall be suitably compensated out of the damages recovered.

Role of Media

- A free media educate the people on corruption, investigative reporting can serve as an important tool to bring updates about the investigation going on in cases.
- The press council prescribes a code of conduct for the print media. However no such code exists for the electronic media, a Bill is pending to set up a Broadcasting Regulatory Authority of India with both licensing and overseeing the electronic media.

Recommendations

- It is necessary to evolve norms and practices requiring proper screening of all allegations/complaints by the media, and taking action to put them in the public domain.
- The electronic media should evolve a Code of Conduct and a self regulating mechanism in order to adhere to a Code of Conduct as a safeguard against malafide action.
- Government agencies can help the media in the fight against corruption by disclosing details about corruption cases regularly.

Social Audit

Social audit through civil society is another way in preventing the wrongdoing of public officials.

Recommendation

Operational guidelines of all developmental schemes and citizen centric programmes should provide for a social audit mechanism.

Building Societal Consensus

To fight corruption, it is necessary to form a broad based consensus. Political Parties should take a lead in building a consensus to fight against the corruption by enacting legislation.

Systemic Reforms

A mix of punitive and preventive measures is required to tackle corruption. Preventive measures known as 'systemic reforms' have been taken like:

- **Railway Passenger Bookings Railways:** the computerization of railway passenger bookings has eliminated middlemen, decongested booking offices.
- **e-cops Punjab:** This seeks to ensure online registration of complaints and see the 'real time' progress of cases.
- E-governance in Andhra Pradesh, E- Choupals in Madhya Pradesh serve as important initiatives for improving the service delivery.

Ways to Reduce Corruption

- Introduction of an element of **competition** in the provision of public services like the gradual de-monopolization of the telecom- sector.
- The growing role of privates sectors in providing the direct marketing services to farmers outside the government-controlled Mandis in Madhya Pradesh.

Recommendations

- 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.

Simplifying Transactions

Hierarchies cause diffusion of responsibilities, multiplicity of layers in decision making process breeds corruption.

Recommendations

- 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 online 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.
- 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.

Using Information and Technology

- 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 sector in the decision making process of governance.
 - The **Gyandoot project in Madhya Pradesh** provides the information about prevailing agriculture produce prices.
 - **Bhumi project in Karnataka** computerized the land records.

- Lack of good infrastructure and the inadequate capability of personnel is a major factor which need to be taken into account.

Recommendations

- Each Ministry/ Department/ Organization 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.

Promoting Transparency

Right to Information Act, 2005 a path breaking initiative is an important step in ensuring the transparency in administration.

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.

Recommendation

- 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.

Reducing Corruption

- Corruption is greater in a system with excessive discretion in hands of official machinery particularly at lower levels.

- There are large number of activities where discretion can be totally eliminated by using information and technology such as issuing of 'Birth and Death certificate'.

Recommendations

- 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'.

Supervision

- Most governments and their agencies have a hierarchical structure. It has been generally observed that the departmental officers turn a blind eye to the corruption under their watch as they think that independent agencies would take care of it.
- The confidential reports of officials are not always recorded with due care.
- Surprise inspections by supervisory officer are yet another useful tool to detect wrong doing in public offices.

Recommendation

- The supervisory role of officers needs to be re-emphasised. It bears reiteration that supervisory officers are primarily responsible for curbing corruption among their subordinates, and they should take all preventive measures for this purpose.
- Each supervisory officer should carefully analyze the activities in his/her organization/office, identify the activities which are vulnerable to corruption and then build up suitable preventive and vigilance measures. All major instances of loss caused to the government or to the public, by officials by their acts of omission or commission should be enquired into and responsibility fixed on the erring officer within a time-frame.
- In the Annual Performance Report of each officer, there should be a column where the officer should indicate the measures he took to control corruption in his office and among subordinates. The reporting officer should then give his specific comments on this.

- Supervisory officers who give 'clean certificates' to subordinate corrupt officers in their Annual Performance Reports should be asked to explain their position in case the officer reported upon is charged with an offence under the Prevention of Corruption Act. In addition, the fact that they have not recorded adversely about the integrity of their subordinate corrupt officers should be recorded in their reports.
- Supervisory officers should ensure that all offices under them pursue a policy of suo motu disclosure of information within the ambit of the Right to Information Act.

Ensuring Accessibility and Responsiveness

The **Rustomjee Committee on Administrative Reforms** had identified 187 services required by the citizens in different departments and had fixed time-limits for their disposal.

Recommendations

- Service providers should converge their activities so that all services are delivered at a common point. Such common service points could also be outsourced to an agency, which may then be given the task of pursuing citizens' requests with concerned agencies.
- Tasks, which are prone to corruption, should be split up into different activities that can be entrusted to different persons.
- Public interaction should be limited to designated officers. A 'single window front office' for provision of information and services to the citizens with a file tracking system should be set up in all government departments.

Monitoring Complaints

Very often complaints are not handled with due care and most often departments do not furnish information about the status of complaint.

Recommendations

- 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 analyze the systemic deficiencies so that remedial measures are taken.

Reforming the Civil Services

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- 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.
 - 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.

Risk Management for Preventive Vigilance

- To classify various positions in government as 'high risk of corruption', 'medium risk of corruption' and 'low risk of corruption'.
- 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.
- 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'.
- It would, therefore, be better if risk profiling of officers is done by a committee of 'eminent persons'

Recommendations

- Risk profiling of jobs needs to be done in a more systematic and institutionalized 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:
- 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.

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.

Recommendations

- It should be prescribed that as soon as any major irregularity is detected or suspected by the audit team, it should be immediately taken note of by government. A suitable mechanism for this may be put in place. It shall be the responsibility of the head of the office to enquire into any such irregularity and initiate action.
- Audit teams should be imparted training in forensic audit.
- Each office should make an annual public statement regarding pending audit queries.

Proactive Vigilance on Corruption

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 position. In this regard, the following main tools have to be included:

- List of Officers of Doubtful Integrity
- Agreed list of suspected officers
- List of undesirable contact men
- Annual Property Returns
- Vigilance Clearance

Intelligence Gathering

Gathering intelligence about their own personnel is a practice followed by security and investigative agencies through keeping surveillance over suspected public servants, studying their lifestyles , analysis of complaints. Incentive money from funds is used to gather information.

Recommendation

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

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.

Recommendation

- A national database containing the details of all corruption cases at all levels should be created. This database should be in the public domain.
- Identified authorities should be made responsible for updating the database regularly.

Protecting the Honest Civil Servant

Some genuine mistakes in managerial decision making in public sector undertakings are committed which could raise questions about the bona-fides of decision maker. The CVC has recognized this possibility of genuine commercial decisions gone wrong without any ulterior motive.

Banking Sector

- 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.
- The Chief Vigilance Officer (CVO), while taking a decision in each case, considers the advice of the committee.
- The '**single point directive**' which is 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.
- 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.
- By virtue of the procedural instructions, CVC has to recommend sanction of prosecution to Government in respect of civil servants coming within its jurisdiction.
- 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.

Recommendations

- Every allegation of corruption received through complaints or from sources cultivated

by the investigating agency against a public servant must be examined in depth at the initial stage itself before initiating any enquiry.

- The supervisory officers in the investigating agencies should ensure that only those public servants are prosecuted against whom the evidence is strong.
- In matters relating to allegations of corruption, open enquiries should not be taken up straightaway on the basis of complaints/source information. Secret enquiry should be taken to protect the integrity of civil servant in question.
- The evaluation of the results of verification/enquiries should be done in a competent and just manner.
- Capacity building in the anti-corruption agencies should be assured through training and by associating the required experts during investigations.

International Cooperation

- 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.
- 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 favors, maintenance of secrecy and regulation of political activity consistent with impartiality and inspiring public confidence.
- 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.
- 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.
- 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.
- 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.

Relationship between the Political Executive and Permanent Civil Service:

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 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 relationship between the Minister and the civil servant should be more objective. 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.
- 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. 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 publicized** 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.
- **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.
- 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 officer.
- It is necessary to spell out the relationship between the Political executive and the bureaucracy in a comprehensive manner.