

RECENT INNOVATIONS IN TACKLING CORRUPTION IN THE CIVIL SERVICES IN INDIA

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I. BACKGROUND

A generally accepted historical fact is that, like human deviance, human ingenuity has not known its limits. The cruellest crime is also often the most bizarre. Deviant behaviour, for their own benefit, by those entrusted with the task of rendering service to the community, loosely called 'corruption', is a malaise that has afflicted even ancient society, although its dimensions and ramifications have varied with time. The Indian subcontinent is no exception. For instance, the classic treatise *Arthasashtra* by Kautilya in the 4th Century B.C gives a lucid account of corruption as it prevailed in the Mauryan administration. Indian history of subsequent times is also replete with graphic accounts of official misconduct. In this context, we know that just as many forms of social control have sought to restrain individual proclivity to deviance. Civilized and democratic governments have found it necessary to regulate the conduct of their civil servants in different ways, so that there is no dilution of the major objective of a free and fair delivery of service to the common citizen.

The Central Bureau of Investigation (CBI) of India, a pre-eminent federal investigating agency, deals not only with anti-corruption matters but major conventional and economic crime as well. Founded under the name Special Police Establishment (SPE), it was primarily intended to look into cases of corruption involving the handling of federal

government funds by federal civil servants, starting with World War II, when large military and naval contracts were awarded and there was a need to keep a vigilant eye on public expenditure. The Delhi Special Police Establishment Act, promulgated in 1946, lends statutory backing to the CBI, which acquired its present nomenclature in 1963.¹

The birth of the CBI itself was a sequel to the report of the Committee on Prevention of Corruption (popularly known as the Santhanam Committee after its distinguished Chairman who was a former Minister and Member of Indian Parliament) set up in 1962 *inter alia* with the following terms of reference:

- (i) to suggest measures calculated to produce a social climate both amongst public servants and in the general public in which bribery and corruption may not flourish; and
- (ii) to suggest steps for securing public support for anti-corruption measures.

In the first of its two reports submitted in 1963, the Santhanam Committee sought the creation of a Central Vigilance Commission headed by a Central Vigilance Commissioner (CVC) with considerable autonomy and status so as to consolidate

¹ Legal support to anti-corruption work was strengthened in 1947 with the enactment of the Prevention of Corruption Act, that was replaced by a more Draconian legislation of the same name in 1988, which considerably expanded the definition of 'public servant'.

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the fragmented anti-corruption work that was being performed by the various Ministries of the federal government. In the Committee's view, the two main tasks of the CVC were:

- (i) prevention of corruption and maintenance of integrity; and
- (ii) ensuring just and fair exercise of administrative powers vested in various authorities by statutory rules or by non-statutory executive orders.

The CVC has been performing an exemplary advisory role since 1963, although there is a school of thought that the Commission could have been more effective had it been given legal authority under a parliamentary statute. Sensitive possibly to this point of view, the Supreme Court of India, in the celebrated Vineet Narain case (1998), issued many directives regarding the selection and appointment of the CVC and the Director of the CBI. For the first time, the Director of the CBI was to be given a minimum tenure of two years in office. The Court also vested the superintendence of the CBI in the CVC. While the two functionaries have been appointed in accordance with the procedure prescribed by the Court, a bill conferring statutory authority on the CVC is pending in Parliament.

The CBI is the sword-arm of the federal government for investigating corruption-related cases. But the fight against corruption is also carried on by a system of Vigilance Officers headed by a Chief Vigilance Officer (CVO) in each government ministry, as well as government-owned Public Sector Undertakings (PSUs). Preventive vigilance throughout the country is exercised through these CVOs who are expected to scrutinize major contracts entered into by the departments/

undertakings concerned, and also conduct vigilance checks on erring employees. The efficacy of CVOs can be argued, but the fact remains that internal vigilance has contributed to a significantly lower rate of corruption than countries which do not have this system. 'Agreed Lists' of civil servants who had come to adverse notice are also maintained both by the CBI and the departments. These serve as a guide for career advancement and for placing them in positions which offer minimum opportunity for indulging in corruption.

In addition, every state - there are 25 in India - has its own Anti-Corruption Bureau (ACB), manned by police officers and headed by the Director-General of Police, that looks into the conduct and affairs of state government employees. The Vigilance Commissioner of each state oversees the ACB's work and obtains government sanctions for prosecuting government officers at various levels before the courts of law.

II. DIMENSIONS OF THE PROBLEM

The high level of corruption in public establishments has been a matter of great concern to successive governments. There are indications that the ill is all pervasive, and afflicts even those who have the authority to take crucial decisions involving large sums of public money. Transparency International, which ranks countries on the basis of a Corruption Perception Index, in its last report, put India in 68th place. Statistics from *Crime in India 1997*, an official publication of the National Crime Records Bureau (NCRB) functioning under the Ministry of Home Affairs (MHA), are illustrative, though only partially, of the situation (Annexures A and B).

III. MECHANICS OF ANTI-CORRUPTION WORK IN INDIA

Anti-corruption organizations in India generally adopt two means to combat the evil. Whenever they suspect corruption, or have received a definite report of an instance of corruption in a government agency, they initially opt for a Preliminary Enquiry (PE) or a Detailed Enquiry (DE), as it is called in a few states. This is a purely administrative action aimed at unearthing more facts than are available. While there is no statutory provision for this, courts have countenanced this as admissible preparatory work before launching action under the Prevention of Corruption Act. Once the PE or DE concludes that, *prima facie*, the facts collected make out an offence under the Prevention of Corruption Act, a Regular Case (RC) is registered under the Act and a full-fledged investigation, as set out in the Criminal Procedure Code (Cr. PC) 1973, is launched. Where material unearthed is insufficient for an RC, a report is sent to the head of the government department concerned for such appropriate action, including proceedings under disciplinary rules which may or may not result in a penalty (such as censure, removal, dismissal or reduction in salary or rank), depending on the evidence adduced in a domestic enquiry. There are tribunals available to handle these enquiries.

A direct manner in which brazen acts of corruption are tackled is to trap a public servant while accepting money or any other valuable security from a member of the public. Courts have prescribed certain safeguards, such as obtaining a written complaint from the aggrieved citizen from whom money had been demanded by a corrupt public servant, before a trap is laid. This is done with a view to eliminating frivolous and motivated complaints that could demoralize the civil services. Traps

have often proved effective in bringing to book errant government officials, provided the procedure recognised by the courts is adhered to rigidly.

IV. SOME RECENT INNOVATIONS

A. Elimination of Loopholes in the Anti-graft Law

In contrast to the expression 'civil servant', we in India use the word 'public servant'. In earlier years, this term was meant to include only civil servants, but various court-based interpretations of law have brought within its ambit political figures and elected representatives of Legislatures who are also being prosecuted under the corruption laws in our country. Indeed, the definition of public servant has been enlarged to such an extent that except for employees of voluntary agencies, anybody who receives a salary from government or quasi-government bodies and works in the public interest is deemed to be a 'public servant' and can be prosecuted for criminal acts of negligence.

A very significant move against corrupt public servants has been the inclusion of a clause in the Prevention of Corruption Act 1988 which makes it criminally negligent for a civil servant or public servant to cause loss to the government or the state by an apparently wrong decision, even though he or she may not benefit from it directly. Thus, awarding contracts without following proper procedures, wasteful schemes and other items of expenditure and delayed projects could come under the ambit of this clause, and usually it is possible to prove that the civil servant (public servant) entered into collusive conspiracy with non-government officials to cause loss to the government. The rationale is that in a developing country like India, where public finances are gathered by taxing people who are not very well-off, it is important to safeguard the

use and distribution of public funds.

The CVC has also been active in the area of tightening law and procedure with a view to enhancing the deterrence of anti-corruption measures in the country. Two significant moves by the Commission are worthy of mention here. One is the request to the government to notify under the Benami Transactions Prohibition Act 1988, how to confiscate *benami* property (that is, property held by a person in the name of another in an attempt to conceal his/her ill-gotten wealth) and also how to empower the CVC in this connection. Secondly, the CVC has forwarded to the Government for its acceptance a draft legislation called the Corrupt Public Servants (Forfeiture of Property) Act, prepared by the Law Commission of India. These recommendations, if accepted by the Government, are expected to give a new thrust to the battle against corruption in the civil services.

B. Grant of Autonomy to the CBI

A traditional criticism of the CBI is that it is toothless in respect of corruption in high places, and that it usually goes after only the 'small fish'. There was some substance to this charge till a few years ago, because of the so-called single directive issued by the Federal Government, which required the CBI to secure the clearance of the Government before launching investigations against senior bureaucrats. There were in fact delays in a few instances in issuing such a clearance. The Supreme Court of India, in the already cited Vineet Narain case, struck down this directive in an obvious effort to streamline anti-corruption work and confer greater autonomy on the country's most crucial anti-graft agency. Under the new dispensation, the CBI is free to register regular cases, even against top civil servants, without being bogged down by red tape. This has given a new dimension

altogether to the fight against corruption in high places, and accounts for the large number of investigations started lately by the CBI against very highly placed officials.

C. Induction of Specialists

The CBI and State ACBs are now assisted by technical and specialised staff who advise them in the course of investigation, particularly in respect of complex issues of taxation, excise and related matters, as well as banking procedures. Indeed, in the recent past, the Reserve Bank of India had set up a Banking Advisory Board to assist the CBI. This board examines apparent irregularities committed by bank officials which are brought up for its scrutiny, and identifies instances of grave criminal misconduct pointing to *malafide*, so that these are considered by the CBI for appropriate legal action. The point at issue is that banking decisions cannot be equated with routine civil servants' decisions, and are attended by a degree of commercial risk which such a board alone can not appreciate before offering an opinion on whether a detailed criminal investigation by the CBI is warranted.

D. Use of Computers

The quality of anti-corruption work by the CBI and similar agencies in the states has been markedly improved through the use of computers. Investigators are encouraged to use computers for maintaining their day-to-day records. As a result, the load of scriptory work has come down appreciably, saving precious investigation time. Also, the review of case pending by supervisory officers has become easier, so that investigators are driven hard to speed up their work. It should be mentioned here that a major charge, one that is not without substance, against the CBI and the ACBs is that their investigations take enormous time, making their final action pointless.

Computerisation has contributed at least a little to taking care of this charge, although a lot more speed is still definitely called for.

One positive step is the CBI decision to create a website for itself. It offers a wide spectrum of information on several aspects of the agency's work, making it more transparent and people-friendly. There have already been more than 15000 visitors to the site in the year during which it has been operational. The latest decision to incorporate a 'Contact Us' module in the website offers hope that the public will be encouraged to pass on information on corruption in the civil service without fear of harassment or their identity being exposed.

E. The Role of the Central Vigilance Commission

The Central Vigilance Commission (CVC) in its reconstituted version is a multi-member body. At present, apart from its chairman (Central Vigilance Commissioner), there is one more member, who is a retired senior police officer. There is provision for a few more members to bring in the required wide-spectrum expertise. A bill outlining its composition and powers is pending before the Select Committee of Parliament. As per the Supreme Court directive and the earlier ordinance (since expired) issued to give effect to the court directive, the CVC was to exercise powers of superintendence over the CBI. This provision was intended to give needed insularity to the CBI from extraneous pressures in its investigative work. At the same time, this mechanism was expected to act as a check on possible abuse of authority by CBI functionaries. This new experiment has a lot to commend for itself.

In specific terms, the CVC is yet another forum for the common person to bring their

complaint of corruption to the attention of the appropriate department of the Government, or by the CBI itself through a preliminary enquiry, or by registration of a Regular Case (RC). This function of the CVC enlarges the network of information available to the CBI and thereby helps to broaden its operations. Moreover, it lends certain credibility and quality to information that requires CBI verification, because the CVC officer applies their mind to such information before passing it on to the CBI.

One more feature of the CVC that sharpens anti-corruption work is the discussions that the Commission holds with CBI investigators on select cases referred to it by the government for advice. On such occasions, the CBI officials will have to justify their conclusions in an investigation, or else the recommendation (either for prosecution of a civil servant in court, their arraignment before a departmental enquiry authority or for closure of a case for want of sufficient evidence) could be overturned by the CVC while forwarding its own recommendation to the government. This procedure assures that a CBI investigator will have to be objective and thorough in their investigation, and that only quality cases are pursued for action. In my view, this enhances both CBI performance and accountability.

F. Transparency in Anti-Corruption Work

The CVC has its own website that packs a lot of information on the crusade against corruption. The site has recently posted the names of senior civil servants who have come to the adverse notice of the Commission. This action has generated an animated public debate and has received wide media attention. The CVC has also directed all federal government offices to display prominently a board to the effect:

“DO NOT PAY A BRIBE. IF ANYBODY ASKS FOR A BRIBE, COMPLAIN TO THE CVO/CVC”. This is a novel experiment that aims at exerting considerable psychological pressure both on the bribe-taker and the bribe-giver. It further seeks to empower the public through transparency.

G. Mobilising Public Opinion

The CVC's focus on building public opinion in favour of rooting out corruption in the services is gratifying. Through lectures to a cross-section of the public, the CVC has been spreading the message that without the community's active cooperation, no anti-corruption campaign can succeed. An attempt has been made to involve the youth and the Non-Governmental Organizations (NGOs) in the country in this endeavour. An appeal has been made to draw on the support of bodies such as the Confederation of Indian Industry (CII), Federation of Indian Chamber of Commerce and Industry (FICCI) etc, which represent the private sector, the quality of whose interaction with the civil service at all levels is crucial to tackling corruption in government.

V. THE FUTURE

The future of anti-corruption work in India is directly linked to the role of government in the lives of people. If this shrinks, as it is expected to in India, the scope for corruption by public servants should correspondingly minimize, although new forms of deviance could emerge. In the context of the government's focus on privatisation and globalisation, there is a definite prospect of the average civil servant having much less say in economic decision making. This could greatly affect the quantum of corruption. Nevertheless, for the present, this is a knotty problem that requires dexterous handling by those heading the administration in India.

Several experiments in the past have proved only modestly effective. As a result, in the language of the CVC, corruption has become “a high profit, low risk” enterprise in the country. More than anything, there appears to be a need to tackle the mindset that has, over the years, afflicted the administrative culture and placed a premium on sloth and lack of objectivity. It is widely believed that new measures, such as according statutory status to the CVC through suitable legislation; greater autonomy to the CBI, including a minimum tenure for its Director, and mobilising NGOs and the youth in building popular opinion against administrative corruption, could pay rich dividends in course of time. There is the hope that there will be increased judicial support of these new strategies.

REFERENCES

1. Government of India (1963), *Report of the Committee on the Prevention of Corruption*.
2. National Crime Records Bureau (1999), *Crime in India 1997*.
3. The Prevention of Corruption Acts 1947 and 1988.
4. The Criminal Procedure Code 1973.
5. Vittal, N. (1999), 'Corruption as the AIDS of the Society' in *Economic Times*, New Delhi, dated May 24.
6. Vittal, N. (1999), 'The Corruption Perception Index', *Economic Times*, New Delhi, dated November 18.
7. Vittal, N. (1999), 'The Supply Side of Corruption', *Economic Times*, New Delhi, December.

ANNEXURE A

STATEMENT OF COGNIZABLE CRIMES REGISTERED, AND THEIR DISPOSAL BY ANTI-CORRUPTION AND VIGILANCE DEPARTMENTS OF STATES AND UTS UNDER THE PREVENTION OF CORRUPTION ACT AND RELATED SECTIONS OF THE INDIAN PENAL CODE DURING 1997

Pending investigation from previous year	1	3972
Cases registered during the year	2	2788
Total cases for investigation	3	6722
Cases investigated	4	5486
Cases not investigated or investigation dropped	5	335
Cases transferred to local police	6	23
Cases declared false etc during the year	7	95
Cases charge sheeted	8	1586
Cases pending dept. sanction for prosecution	9	1000
Cases sent for trial and also reported for dept. action	10	657
Cases reported for regular dept. action	11	124
Cases reported for suitable action	12	31
Cases in which charge sheet was not laid but final report submitted	13	400
Cases pending investigation at end of year	14	4573
Cases resulted in recovery or seizure	15	257178
Value of property recovered/seized (in Rs.'000)	16	149369
Percentage of cases charge sheeted to total cases investigated	17	28.9%
Cases pending trial from the previous year	18	8019
Cases sent for trial during the year	19	1766
Total cases for trial	20	9371
Cases withdrawn/discharged or otherwise disposed of	21	60
Trials completed during the year	22	875
Cases convicted	23	296
Cases acquitted or discharged	24	603
Pending trial at the end of year	25	8569
Percentage of cases convicted to trials completed	26	33.8%
Total amount of fine imposed during the year (in Rs.'000)	27	5751

(Source: *Crime in India 1997*, National Crime Records Bureau, New Delhi).

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ANNEXURE B

**STATEMENT OF PERSONS ARRESTED IN COGNIZABLE CRIME CASES
UNDER THE PREVENTION OF CORRUPTION ACT AND RELATED
SECTIONS OF THE INDIAN PENAL CODE IN STATES & UTS DURING 1997**

Persons in custody/bail during investigation at beginning of year	1	3798
Persons arrested during the year	2	3603
Persons released by police/court before trial	3	226
Persons in custody/bail during investigation at end of year	4	3853
Persons in whose cases charge sheets were laid	5	27732
Persons under trial at beginning of year	6	12825
Total persons under trial	7	1416
No. of cases withdrawn or otherwise disposed of	8	588
Persons in custody/bail during trial at end of year	9	12573
Persons in whose cases trial was completed	10	1047
Persons convicted	11	355
Persons acquitted	12	733
Percentage of persons convicted to trials completed	13	33.9%
Persons reported for regular dept. action	14	212
Persons reported for suitable action	15	163
Persons punished departmentally		
• Dismissed from service	16	9
• Removed from service	17	3
• Awarded other major punishment	18	53
• Awarded minor punishment	19	64
Gazetted or equal status officers involved in public undertakings		
• Group A officers	20	185
• Group B officers	21	266
Non-gazetted or equal status officers involved in government or public undertaking	22	2568
Private persons involved	23	493

(Source: *Crime in India 1997*, National Crime Records Bureau, New Delhi).