

INSTITUTIONAL FRAMEWORK FOR ANTI-CORRUPTION IN INDIA

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1. Introduction

Corruption is a global phenomenon and its severity varies in Country to another Country. Corruption is symptom of weakness in political, social, legal and economic systems. Even where corruption is wide spread, its practitioners strive to keep it hidden from public life. Corruption is not a new nor is it confined to any particular part of the world. It has serious implications and consequences for the growth of democracy, promotion and protection of fundamental rights. There is a wide spread perception that the level and pervasiveness of corruption gains significance. Corruption has become a major challenge to governance and society. It is undesirable in any society, its effect on the developing economy is more debilitating as it hampers socio-economic development of the nation.

Corruption has been considered one of greatest challenges impeding the growth of contemporary India. Though India's economy stands tall and firm, it has not realized its true potential as corruption has, in the present scenario, inhibits and undermines not only the economic growth, but also the effective functioning of democracy. Corruption, a social menace, has made our country susceptible to and defenseless against the oncoming forces of anti-social elements. Corruption in India is a consequence of the nexus between bureaucracy, politics and criminals. India is now no longer considered a soft State. It has now become consideration State where everything can be had for a consideration. Corruption has a corrosive impact on economy. It worsens our image in the international market and leads to loss of overseas opportunities.

In India, corruption in India flows from the political class. It manifests latently in party activities and election funds. Further, political patronage gives an aura of invincibility and respectability to corruption and deprives it of all moral and legal fears. David Bayley observes that -The presence of corruption is an important hindrance to economic growth and progressive social change¹.

It is now commonly agreed that corruption has vitiated India's public life like a cancer spreading over a human body. All sectors, be they administrative or political or economic,

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have come under the ever-increasing onslaught of corruption. There are many reasons as to why this has happened. Political actors of all shades including Ministers, Legislators, office-bearers of political parties, and other political officeholders are involved in corruption².

The Nation's progress is seriously hampered by all pervasive corruption. Weeding out corruption today is a major challenge before Indian society. To eradicate the evil of corruption, the Central Government has enacted Anti-Corruption Laws³ to deal with the prevention of corruption and constituted commissions such as Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI) and Anti-Corruption Bureau (ACB) to enforce the Anti-Corruption Laws effectively.

The Santhanamm Committee on the prevention of corruption in India defines the corruption as "any improper or selfish exercise of power and influences attached to a public office or to the special position one occupies in a public life"⁴ Corruption is the use of public office for private gain: "It is the effective implementation of the rule of law that confers legitimacy on the State. If the rule of law is compromised by corruption, the State loses its legitimacy"⁵.

2. Objectives of the Study

The following major objectives are framed for this study:

- F To understand the nature and causes of corruption in the society.
- F To examine the different anti-corruption laws formulated in India.
- F To analyses the institutional mechanism for anti-corruption in India.

3. Methodology

For this study used secondary data, the various sources like books, papers, articles, official websites were used to collect required data and information.

3. Institutional Framework for Anti- Corruption

In pursuance of the recommendations made by the Committee on Prevention of Corruption, popularly known as the Santhanam Committee, the Central Vigilance Commission was set up by the Government of India by a Resolution dated 11.2.1964. At the federal level, key institutions are including the Central Vigilance Commission (CVC), The Central Bureau of Investigation (CBI), The Office of the Comptroller and Auditor General (C&AG) and the State Level Anti -Corruption Bureaus (ACB) of each State are created to combating the corruption in India. The following institutions are established by government of India to control the Corruption in Government Institutions.

4. Supreme Court of India

The Supreme Court of India is the highest judicial forum and final court of appeal of India established under the Constitution of India, which declares it as the highest constitutional court and guardian of the Constitution. It is consisting of the Chief Justice of India and 30 other judges. The Supreme Court has Original Jurisdiction, appellate Jurisdiction and advisory jurisdiction.

As the highest Court of appeal, the Supreme Court acts as the highest appellate court in India which takes up appeals primarily against the verdicts of the High Courts and other courts and tribunals of India. The Supreme Court has extensive original jurisdiction in regard to enforcement of fundamental rights. It also acts as the court to hear disputes between various governments in the country. The Supreme Court of India possesses the power of constitutional review.

The Constitution of India under Article 145 empowers the Supreme Court to frame its own rules for regulating the practice and procedure of the Court as and when required (with the approval of the President). Accordingly, "Supreme Court Rules, 1950" were framed. The 1950 Rules were replaced by the Supreme Court Rules, 1966. In 2014, Supreme Court notified the Supreme Court Rules, 2013 replacing the 1966 Rules effective from 19th August, 2014.

5. Central Bureau of Investigation (CBI)

During the World War II, the Government of India issued an ordinance in 1943 constituting a Special Police Force (SPF) for the investigating of certain offences committed in connection with the affairs of the Central Government. The said ordinance lapsed with the end of the war. In the year 1946, the Indian Parliament has enacted the Delhi Special Police Establishment (DSPE) Act, 1946. The Act was intended to create a Special Police Establishment (SPE), as a specialized agency, for making enquiries and investigations into certain specified offences. Section 5 of the Act provides that the Central Government can, with the concurrence of the State Governments, extend the jurisdiction of the SPE to all the States.

The Special Police Act is envisaged as supplementary to the State Police Forces, enjoying great powers of investigation in cases notified under Section 5 in respect of offences notified under Section 3 of the Delhi Special Police Establishment (DSPE) Act, 1946 which can of course be exercised in a State only with the consent of the Government of that concerned State. The Central Bureau of Investigation (CBI) in its present form came into being in 1963 through the resolution adopted by the Government of India pursuant to the

recommendations of the Committee on Prevention of Corruption (Santhanam Committee). The Resolution also specified the types of cases which would be investigated by the CBI, which of course continues to derive its legal powers for investigation from the aforesaid Act⁶.

The Central Bureau of Investigation (CBI) was the successor Police Organization to the Delhi Special Police Establishment (DSPE). The DSPE Act, 1946 granted the DSPE the jurisdiction to work alongside State Governments and to investigate categories of crimes allegedly committed by Central Government employees or offenses connected to the departments of the government. As India's economy continued to grow, there was concern that the number of investigations needed would overwhelm the DSPE. In response, the government passed Resolution No. 4/31/61-T in 1963, creating the CBI and merging it with the DSPE⁷.

The legal powers of investigation of CBI were derived from the DSPE Act, 1946. This Act confers concurrent and coextensive powers, duties, privileges and liabilities on the members of Delhi Special Police Establishment (DSPE) with Police Officers of the Union Territories. The Central Government has may extend to any area, besides Union Territories, the powers and jurisdiction of members of the CBI for investigation subject to the consent of the Government of the concerned State. While exercising such powers, members of the CBI of or above the rank of Sub Inspector shall be deemed to be officer's in charge of Police Stations of respective jurisdictions. The CBI can investigate only such of the offences as are notified by the Central Government under the Delhi Special Police Establishment Act, 1946.

The CBI's Investigation plays a conspicuous role in the political and economic life of the nation. Firstly, it deals with criminal cases pertaining to corruption, fraud committed by government department, Delhi Public Sector under takings and financial institutions. Secondly, it deals with economic crimes including banks frauds. Thirdly, it deals with special crimes viz., Terrorism, Blasts. Fourthly, it investigates Cyber Crime Cases.

An analytical appraisal of the functioning of the CBI reveals that it has established itself as a premier, investigating agency of the Central Government which create awe and fear in the minds of corrupt official and plays a vital role in preservation of essentials for being the most potent agency for checking the corruption which is eating into the vitals of Indian democracy. Due to its meritorious work it has been kept directly under cabinet secretary and not Ministry of personnel since January 30, 2003.

Corruption in public services assumed alarming from the during the Second World War. Hence, the Government of India set up Special Police establishment (S.P.E) in 1941

to investigate cases of bribery and corruption in transactions with which the war and supply departments were concerned. At the end of 1942, cases of corruption in the Railway department were also entrusted to it.

On April, 1963, the central Bureau of Investigation (CBI) was set up and the Special Police Establishment (S.P.E) was made one of its divisions. It did not any change in the jurisdiction, powers and function of the Establishment. The CBI plays a supplementary role to the States' Police Force. To avoid duplication of efforts, the administrative arrangement has been arrived at between the Central and the State Governments regarding the type of cases to be earmarked for the CBI. The cases which essentially and substantially involve Central government employees or their officers, or certain state government employees are referred to the CBI. The CBI can also take up cases against employees of statutory bodies or public undertakings established and financed by the Government of India

The CBI has three main divisions- (i) Anti-Corruption Division (ii) Special Crime Division (iii) Economic Offences Division. The Bureau is headed by a Director by assisted by 3 additional directors and 15 joint directors, a legal advisor and supporting staff.

The CBI became responsible for the investigation of crimes then handled by the DSPE, for collection of intelligence relating to certain types of crime, participation in the work connected with Interpol, maintenance of crime statistics, study of specialized crimes and coordination of laws relating to crime. The CBI retains the investigative powers of the DSPE. Initially, the CBI only had the power to investigate offenses in the Union Territories⁸.

5.1. Motto of CBI: Industry, Impartiality and Integrity

5.2. Mission of CBI: To uphold the Constitution of India and law of the land through in-depth investigation and successful prosecution of offences; to provide leadership and direction to police forces and to act as the Nodal Agency for enhancing inter-state and international cooperation in law enforcement.

5.3. Vision of CBI: Based on motto, mission and the need to develop professionalism, transparency, adaptability to change and use of science and technology in our working, the CBI will focus on.

- 1) Combating corruption in public life, curb economic and violent crimes through meticulous investigation and prosecution.
- 2) Evolve effective systems and procedures for successful investigation and prosecution of cases in various law courts.
- 3) Help fight cyber and high technology crime.

- 4) Create a healthy work environment that encourages teambuilding, free communication and mutual trust.
- 5) Support state police organizations and law enforcement agencies in national and international cooperation particularly relating to enquiries and investigation of cases.
- 6) Play a lead role in the war against national and transnational organized crime.
- 7) Uphold Human Rights, protect the environment, arts, antiques and heritage of our civilization. 8. Develop a scientific temper, humanism and the spirit of inquiry and reform.
- 8) Strive for excellence and professionalism in all spheres of functioning so that the organization rises to high levels of endeavor and achievement.

5.4. Functions of CBI

The CBI is the premier investigating police agency in India. It is an elite force playing a major role in preservation of values in public life and in ensuring the health of the national economy. It is also the nodal police agency in India which coordinates investigation on behalf of Interpol Member countries. The services of its investigating officers are sought for all major investigations in the country. It was constituted under the following six heads:

- i) Investigation and Anti-Corruption Police Establishment.
- ii) Technical Division
- iii) Crime Records and Statistics Division iv) Research Division
- v) Legal and General Division
- vi) Administrative Division.

5.5. Investigation and Anti-Corruption Division (Delhi Special Police Establishment)

1. Cases in which public servants under the control of the Central Government are involved either by themselves or along with State Government servants and or other persons.
2. Cases in which the interests of the Central Government or of any public sector project or undertaking, or any statutory corporation or body set up and financed by the Government of India are involved.
3. Cases relating to breaches of Central Laws with the enforcement of which the Government of India is particularly concerned, e.g.
 - a. Breaches of Import and Export Control orders.
 - b. Serious breaches of Foreign Exchange Regulation Act.
 - c. Pass port frauds.
 - d. Cases under the Official Secrets Act pertaining to the affairs of the Central Government.

e. Cases of certain specified categories under the Defense of India Act or Rules with which the Central Government is particularly concerned.

4) Serious cases of cheating or fraud relating to the Railways, or Posts and Telegraphs Department, particularly those involving professional criminals operating in several States.

5) Crime on the High Seas

6) Crime on the Airlines

7) Important and serious cases in Union Territories particularly those by professional criminals.

8) Serious cases of fraud, cheating and embezzlement relating to Public Joint Stock Companies.

9) Other cases of serious nature, when committed by organized gangs or professional criminals, or cases having ramifications in several States including Union Territories, serious cases of spurious drugs, important cases of kidnapping of children by professional inter-state gangs, etc. These cases will be taken up only at the request of or with the concurrence of the State Government /Union Territories Administrations concerned.

10) Collection of intelligence about corruption in the public service and projects and undertakings in the public sector.

11) Prosecution of cases investigated by this Division.

12) Presentation of cases before Enquiry officers in which departmental proceedings are recommendation of this Division.

5.6. Functions of the Technical Division

Following are the functions of the Technical Division

1) Technical assistance in investigation of cases involving accounts.

2) Specialized assistance in cases involving Railway and Postal accounts.

3) Assistance in cases involving assessment of Income-Tax, Excise Duty etc.

4) Examination of accounts and assets etc., in cases relating to allegations of disproportionate assets.

5) Examination of cases investigated by the Bureau which have an Income-Tax aspect, and communication of information with a view to enabling the Income-Tax Department to recover the evaded tax.

5.6.1. Crime Records and Statistics Division

1) Maintenance of All-India Statistics of crime.

- 2) Study of All-India trends in thefts and losses, and recoveries of fire-arms and ammunition, and note forgery and counterfeit coining.
- 3) Collection and dissemination of information about important Inter-State criminals.
- 4) Preparation and circulation of reports and reviews relating to crime in India

5.6.2. Functions of Research Division

- 1) Analysis and study of specialized crimes and of problems of a general nature affecting the Police, e.g.
 - i. Trends and causes of serious crimes in different areas.
 - ii. Preventive measures, their effectiveness and relationship with crime.
 - iii. Improvement in methods of investigation, utility and results of introducing scientific aids and equipment.
 - iv. Inadequacy of laws; co-ordination of laws relating to crime in various States.
 - v. Criminal gangs operating in more than one State wandering Gangs-Ex-Criminal Tribes-habitual offenders.
 - vi. Crime amongst the Tribal people
 - vii. Inter-state note-forgery and counterfeiting.
 - viii. Social factors in crime.
 - ix. Industrialization and crime.
- 2) Participation in the work of Central Forensic Science Advisory committee and the Central Medico Legal Advisory Committee.

3.7 Functions of Legal and General Division

5.6.3. Legal Division

- 1) Legal advice in cases investigated by the investigation and Anti- Corruption Division.
- 2) Conducting prosecution in important cases.
- 3) Review of judicial decisions relating to criminal law and procedure for publication in the Central Bureau of Investigation Gazette.
- 4) Compilation and circulation of Law Digest.
- 5) Inadequacy of and amendments to laws.
- 6) Co-ordination of laws relating to crime in various States.

5.6.4. General Division

- 1) Matters relating to organization, policy and procedure.

- 2) Inter-State conference relating to crime and anti-corruption work.
- 3) Appreciation reports regarding modes of corruption in various Government Departments and Public Undertakings.
- 4) Correspondence with Ministers and States on general questions relating to Policy, procedure, etc.
- 5) Training Courses in Anti-corruption work.
- 6) C.B.I. Gazette.
- 7) Photographic section.

3.7.3 Administration Division

5.6.5. All establishment and accounts matters.

CBI investigations have a major impact on the political and economic life of the Nation. The following broad categories of criminal cases are handled by the CBI:

- i. Anti-Corruption Division: Cases of corruption and fraud committed by public servants of all Central Govt. Departments, Central Public Sector Undertakings and Central Financial Institutions.
- ii. Economic Crimes Division: Deals with cases including bank frauds, financial frauds, Import Export & Foreign Exchange violations, large-scale smuggling of narcotics, antiques, cultural property and smuggling of other contraband items etc.
- iii. Special Crimes Division: Deals with cases such as cases of terrorism, bomb blasts, sensational homicides, kidnapping for ransom and crimes committed by the mafia/the underworld.

The Central Bureau of Investigation is the Principal investigative agency of the Union Government in anti-corruption matters. It is observed that the conviction rate of CBI is nominal because it is the highest anti-corruption agency to prevent corruption in India. Even though this institutions conviction rate is not up to the mark. It shows that so many lacunas in investigation division and prosecution division. The prosecution has failed to prove the guilty of the accused person. This makes one doubt the sincerity of CBI. This data clearly suggests that the CBI has to be strengthened more legally and more powers should be entrusted so that it could function effectively and afford for the benefit of many and for the nation's development.

6. Santhanam Committee's Recommendations

With ever rising corruption, parliament got alarmed. On its insistence, a committee

consisting of seven members -- 5 M.Ps and 2 senior officials of the Ministry of Home Affairs and with K. Santhanam as Chairman- was appointed in June 1962. It was authorized review existing instruments for combating corruption and advising on practical steps to make anti- corruption measures more vigorous.

The investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 were henceforth brought under the purview of the Central Vigilance Commission section 8 of the Central Vigilance Commission, 1999.

7. Vigilance Machinery at the Administration level

Two types of vigilance organization at the department level exist; (a) The Administrative Vigilance Division in the Ministry of Home Affairs and (b) the Vigilance Unit in the respective Ministries and Development and their counter parts in the public sector undertakings. The Administrative Vigilance Division was established in August, 1955. It assumed the over-all responsibility and provided the necessary drive, direction and co-ordination to ensure sustained and vigorous action by individual ministers and departments. The Ministry of Home Affairs deals with cases involving the All India Service personnel.

7.1. Central Vigilance Commission

The Central Vigilance Commission is to consist of three directorates, viz., the Directorate of General Complaint and Redress, the Central Police Organization and the Directorate of Vigilance. The Central Vigilance Commissioner is to be the chief executive of the Commission. He is to be appointed by the President for the period of Six years or until he attains the age of 65 years whichever is earlier.

The Commission was located in the Ministry of Home Affairs in the initial stages but accorded a statutory status. In addition to the Commissioner, it consists of a Secretary, one Officer on special duty, one Chief Technical Commissioner, 3 Commissioners for departmental Enquiries, 2 Under-Secretaries and 6 Technical Commissioners. Its jurisdiction extends to all employees of the Central Government and the employees in the public undertakings, corporate bodies and other organizations dealing with matters falling within the executive powers of the Central Government. Even the Delhi Metropolitan Council and the New Delhi Municipal Committee fall within the jurisdiction of the Commission.

7.2. Functions of the CVC

To undertake an enquiry into any transaction in which a public servant is suspected or alleged to have acted for an improper purpose or in a corrupt manner.

To investigate into any complaint against a public servant who has exercised or refrained

from exercising his powers for improper or corrupt purposes.

To asks for reports from agencies so as to enable it to exercise general check and supervision over the vigilance and anti-corruption work in them.

To take over under its direct control complaints for further action which may pertain either (i) to ask the Central Bureau of Investigation (CBI) to register a regular case and investigate it or (ii) to enlist it for enquiry to the CBI or the concerned agency.

To initial review of procedure and practices of administration which concern the maintained of integrity in the administration.

Since 1999 under section 8 of the Central Vigilance Committee the Commission investigates offences committed under the Prevention of Corruption Act 1988. The commission reviews the progress of investigations into offences alleged under the Act and also the progress of the action on requests for sanctioning prosecution under the Act.

The Commission is required to submit an annual report the Ministry of Home Affairs about its activities. The Ministry of Home Affairs places this report before each House of parliament.

The Government considered the recommendations of the Santhanam Committee too far reaching. Hence, they rejected partially. Instead of setting up a statutory commission of high officers, the Government established a commission of non-officials in 1964.

8. Controller and Auditor General (C&AG)

The Provisions regarding the appointment and conditions of services of the CAG are laid down in Article 148 of the Indian Constitution. The CAG is appointed by the President by warrant under his hand and seal for a period of six years or up to the age of 65 years, whichever is earlier.

8.1. Functions of C&AG

To audit the accounts of Central and State Governments and the governments of Union Territories having legislative assemblies.

To audit and report on all expenditure from the Contingency Funds and Public accounts of Union and the State.

To audit and report on all trading, manufacturing, profit and loss accounts, etc., kept by any Department of the Union or States.

To audit and report on the receipts of expenditure of (a) all bodies and authorities "substantially Financed" from the Union or State revenue (b) government companies, and (c) other corporations or bodies, when required by laws.

9. The Right to Information Act, 2005

An Act provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and state Information and for matters concerned therewith or incidental thereto.

The basic objective the right Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. An informed citizenry will be better equipped to keep necessary vigil on instruments of the government and make the government more accountable to the governed. The act has created a practical regime through which the citizens of the country may have access to information under the control of public authorities.

10. The Lokpal and Lokayukta Act, 2013

An Act to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

Whereas the Constitution of India established a Democratic Republic to ensure justice for all; and whereas India has ratified the United Nations Convention Against Corruption; and whereas the Government's commitment to clean and responsive governance has to be reflected in effective bodies to contain and punish acts of corruption; Now, therefore, it is expedient to enact a law, for more effective implementation of the said Convention and to provide for prompt and fair investigation and prosecution in cases of corruption.

11. Indian Public Anti-Corruption Initiatives

Legislation: At the time of writing (May 2014), there are a number of corruption-related bills in India's parliamentary system; the bills include the Judicial Standards and Accountability Bill 2010, the Whistle Blowers Protection Bill 2011, the Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill 2011, and the Public Procurement Bill 2012, as stated in a February 2014 Indian Express article.

12. Conclusion

Corruption in any form treated as an incurable disease is caused by may be social and economic evils in the society. It damages the moral and ethical fibers of the civilization. Undisputedly, corruption breeds many evils in the society. Once the seed of corruption starts growing it takes roots slowly and gradually and cancerously. It passes through the

whole Nation and becomes a perilous disease. To fight against pervasive, institutionalized corruption is a daunting task, yet it is as necessary as breathing for the survival of government, a state or a civilized society. This fight needs to be systematic, incremental and collective, guided by a national anticorruption strategy that institutes structural reforms to minimize the opportunities for corruption in institutions, establishes ethical codes of conduct and strategies that stigmatize corrupt behavior, and uses the power of punishment to effectively deter corrupt activities.

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