National Integrity Systems

Transparency International

Country Study Report

India 2003

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Abbreviations

ACB  Anti Corruption Bureau
AG  Accountant General
AIR  All India Reporter; All India Radio
AIR SCW  All India Reporter Supreme Court Weekly
Art.  Article of the Constitution of India
AP  Andhra Pradesh (name of one of the states in India)
CAG  Comptroller& Auditor General of India
CAPART  Council for Advancement of People’s action and Rural Technology
CBI  Central Bureau of Investigation
CEC  Chief Election Commissioner
CHRI  Commonwealth Human Rights Initiative
CM  Chief Minister
COFEPOSA  Conservation of Foreign Exchange and Prevention of Smuggling Act
COPU  Committee on Public Undertakings
CP  Chief of Police
CrPC  Criminal Procedure Code
CPI  Communist Party of India
CPI(M)  Communist Party of India (Marxist)
CVC  Central Vigilance Commission/Commissioner
CVO  Chief Vigilance Officer
DDA  Delhi Development Authority
DGP  Director General of Police
DGS&D  Director General of Supplies& Disposal
DRI  Directorate of Revenue Intelligence
DSPE  Delhi Special Police Establishment Act
FDR  Fixed Deposit Receipt
FERA  Foreign Exchange Regulation Act
FICCI  Federation of Indian Chamber of Commerce & Industry
IAS  Indian Administrative Service
IGP  Inspector General of Police
IPS  Indian Police Service
J&K  Jammu & Kashmir
JT  Judgment Today
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>KVIC</td>
<td>Khadi and Village Industries Corporation</td>
</tr>
<tr>
<td>MLA</td>
<td>Member of the Legislative Assembly</td>
</tr>
<tr>
<td>MP</td>
<td>Madhya Pradesh (name of one of the states in India); Member of Parliament</td>
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<tr>
<td>MSP</td>
<td>Minimum Support Price</td>
</tr>
<tr>
<td>NALSA</td>
<td>National Legal services Authority</td>
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<td>NCP</td>
<td>National Congress Party</td>
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<tr>
<td>NCRB</td>
<td>National Crime Record Bureau</td>
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<td>NCRWC</td>
<td>National Commission on the Review of the Working of the Constitution</td>
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<tr>
<td>NDC</td>
<td>National Defence College</td>
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<tr>
<td>NGO</td>
<td>Non-Government Organization</td>
</tr>
<tr>
<td>NHRC</td>
<td>National Human Rights Commission</td>
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<tr>
<td>NJC</td>
<td>National Judicial Commission</td>
</tr>
<tr>
<td>NOC</td>
<td>No Objection Certificate</td>
</tr>
<tr>
<td>PAC</td>
<td>Public Accounts Committee</td>
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<tr>
<td>PADI</td>
<td>People’s action for Development India</td>
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<tr>
<td>PIL</td>
<td>Public Interest Litigation</td>
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<tr>
<td>POC Act</td>
<td>Prevention of Corruption Act</td>
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<tr>
<td>POTA</td>
<td>Prevention of Terrorism Act</td>
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<tr>
<td>PP</td>
<td>Public Prosecutor</td>
</tr>
<tr>
<td>PSU</td>
<td>Public sector Undertaking</td>
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<tr>
<td>PUCL</td>
<td>Peoples’ Union for Civil Liberties</td>
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<tr>
<td>PUDR</td>
<td>Peoples’ Union for Democratic Reform</td>
</tr>
<tr>
<td>RP Act</td>
<td>Representation of People’s Act</td>
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<tr>
<td>SAHRDC</td>
<td>South Asian Human Rights Documentation Centre</td>
</tr>
<tr>
<td>SAL</td>
<td>Social Action Litigation</td>
</tr>
<tr>
<td>SC</td>
<td>Supreme Court</td>
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<tr>
<td>SCC</td>
<td>Supreme Court Cases</td>
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<tr>
<td>SCR</td>
<td>Supreme Court Reporter</td>
</tr>
<tr>
<td>Sec.</td>
<td>Section of the Act</td>
</tr>
<tr>
<td>UPSC</td>
<td>Union Public Service Commission</td>
</tr>
<tr>
<td>UOI</td>
<td>Union of India</td>
</tr>
<tr>
<td>UP</td>
<td>Uttar Pradesh (name of one of the states in India)</td>
</tr>
<tr>
<td>VC</td>
<td>Vigilance Commissioner</td>
</tr>
</tbody>
</table>
India

Executive Summary

Corruption in India is due to many factors, most important being the activities of the politicians. It is not the consequence of the political system as such. Constitution is what people make of it. There have been attempts to frustrate the ideals of the Constitution, subvert the rule of law, find out flaws in the system so as to exploit the loopholes, and use political power to keep the executive in subordination so as to serve their ends.

In spite of the above, on the positive side, it may be indicated that political and administrative institutions in India are strong and independent to a great extent. The Supreme Court, the High Courts, the Election Commission, the CAG, the Union Public Service Commission, the Central Vigilance Commission, and the National Human Rights Commission have at proved their mettle. Others like the Press Council of India, the Commissions on Scheduled Caste, Scheduled Tribes, Women and Child Welfare have played their role in affecting checks and balances as well as assertion of rights of people and strengthening the traditions of these institutions over a period.

The civil society has scored over many hurdles and valiantly contested cases in various areas, especially pertaining to the rights of the dispossessed, the forgotten, the weaker sections of society, gender discrimination, and corrupt practices. Some of them have approached the apex court for redress of injustice and wrong practices. It has sought and succeeded in securing transparency in the electoral process through the declaration of the background of candidates pertaining to education, criminal record, and financial assets and liabilities. It has also been successful in getting a Supreme Court decision on denying the immunity to members of the legislature for corrupt practice committed in connection with voting in the House.

The media is active, relatively free and has exposed many a scandal.

However, the study reveals that yet more has to be done in the area of political and electoral, judicial, legal, administrative, and institutional reforms as well as acknowledging the role of the civil society.

- First, electoral reforms are necessary to keep away the criminal elements from accessing the system of power.
- Two, the political party system is required to be transparent, democratic, and ethical. The party funds must be open to scrutiny of audit. Elections within the party must be held regularly. And the legislatures must be prevented, by law, from changing allegiance from the party for the sake of deriving ministerial benefits.
- Three, judiciary must be made more effective by providing more resources in terms of manpower, provision of technology, and financial autonomy for securing quicker justice.
- Four, in order to take more stringent and effective action against the corrupt, there is need for legislation on forfeiture of assets acquired through corrupt means.
- Five, the Right to Information Bill must be enacted for the whole country.
- Six, the Financial Responsibility Bill to provide for fiscal austerity, as proposed by the Planning Commission, may be enacted.
• Seven, the jurisdiction of the Central Bureau of Investigation needs to be extended to the whole country and not be dependent upon the approval of the state government.
• Eight, reforms in the revenue system must be secured. It is an area that is perceived to be most oppressive to the poor farmers.
• Nine, E-governance must be introduced to bring about better governance and the concept of SMART (simple, moral, accountable, responsive, and transparent), be implemented.
• Ten, the Citizen Charters with effective mechanism for redress of grievances must be issued by all departments having public dealings so that people know their entitlements and the method of securing these.
• Eleven, efforts must be made to reduce the exercise of discretion in matters of routine administrative decisions.
• Twelve, to the extent possible, procedures must be streamlined, simplified, and made more transparent.
• Thirteen, the tenure of government officers in important and responsible positions must be fixed so that they are not threatened by the fear of transfer.
• Fourteen, the institution of the Lokapal (Ombudsman) must be established on the national level. This has been pending for a long time.
• Fifteen, the institution of the Lokayukt (Ombudsman in the States), wherever it exists must be strengthened for a meaningful action and proper contribution.
• Sixteen, the institution of the Central Vigilance Commission must be made more autonomous by an act of legislation.
• Seventeen, coordination between the various intelligence agencies must be ensured. They should also support efforts of the local enforcement agencies.
• Eighteen, attempts must be made to insulate the civil servants from partisan politics.
• Nineteen, the whistleblowers should not only be protected but also encouraged.
• Twenty, the size of the Cabinet and the council of Ministers be limited both at the Union and State Government levels through a law.

Overall, India has a strong potential for being a reasonably corruption-free society, if politicians accept corruption as a serious problem and consciously take measures to deal with it. If this does not happen, then there is hope in the institution of the judiciary and the civil society to bring about structural changes by forcing reform. The bureaucracy can also construct its own framework of rules, procedures, actionable code of conduct so as to enforce norms of probity, transparency, and openness.
Country Overview

India is the largest state on the South Asian subcontinent. It is about 1,127,000 square miles in area, one-third the size of the United States and a country of great distances. From the Himalayan mountains in the North to the Indian Ocean in the South is 2,000 miles and some 1,700 miles from the Western border with Pakistan to the Eastern Border with Myanmar. India accounts for a meagre 2.4 per cent of the world surface area, yet it supports and sustains a whopping 16.7 percent of the world population. It has wide variety of climates and landscapes, from snow-covered mountains and lush green forests to dry brown plains and sandy deserts.

The population of the country, according to the 2001 Census Report, stood at 1,027 million (531.3 million males, and 495.7 million females). It now stands at 1,070 million and is growing at the rate of 27 million per year. It is equivalent to the population of United States of America (283 m), Germany (82 m), Turkey (67 m), United Kingdom (59 m), Italy (58 m), Spain (39 m), Poland (39 m), and Canada (31m) on the one hand and Russia (146 m), Japan (127 m), and Australia (19 m) on the other, all combined together.

India had been under the British rule till 15 August 1947 when it gained independence. It may be a new nation but an ancient civilization and therefore its modern democratic framework, its political culture, and political processes are greatly influenced by both its traditional past and its contemporary experience.

India, a Union of States, is a sovereign, socialist, democratic republic with a parliamentary form of government. The Republic is governed in terms of a Constitution that was adopted on 26 November 1949 and became operational on 26 January 1950. It is among the longest in the world, with 395 articles, 12 schedules and, till September 2003, has been amended 87 times. The Constitution created a democratic republic with parliamentary form of government and a federal system which now comprises of 28 states, and 7 Union Territories.

The main institution of governance at the Centre are the Executive composed of the President, Vice President and the Council of Ministers (headed by the Prime Minister to aid and advise the President in the discharge of his functions, and the bureaucracy; the Legislature composed of a bicameral Parliament, the Lok Sabha (House of the People), and the Rajya Sabha (Council of States). While President is a constitutional head, the real power is concentrated in the hands of the Prime Minister and his Council of Ministers.

There is Union Government at the Centre, and 35 separate Governments in the 28 states, and 7 Administrations of the 7 Union Territories. The Constitution distributes legislative powers between the Union Parliament and State Legislatures, but provides for vesting of residual powers with the Union government. Power to amend the Constitution also vests in the Union Parliament. The Union Government is the government at the centre.

The legislative powers of Parliament and State Legislatures are contained in Article 245 and Seventh Schedule of the Constitution. There are three lists: List I - Union List. It contains 97 items on which the Union Parliament can legislate. This includes defence of India, armed forces and their deployment, atomic energy, mineral resources, Central Bureau of Investigation, foreign affairs, citizenship, extradition, railways, highways, shipping, ports, airways, currency, Reserve Bank of India, Banking, Union Public service Commission, interstate relations, etc. List II - State list includes 66 items. Some of these are public order, police, prisons, reformatories, local government, public health and sanitation, agriculture, trade and commerce within the state, works, lands and buildings, land revenue, local taxes, etc. List III - Concurrent List - consists of 47 items for which both the Parliament and the State Legislatures can legislate depending upon the need. Some of these items are criminal law, criminal procedure, preventive detention, marriage, divorce, transfer of property, administration of justice, civil procedure, forests, adulteration of foodstuffs, education, statistics, factories, social and economic planning etc. The Union List gives the Centre
exclusive authority to act in matters of national importance and includes among its 97 items defence, foreign affairs, currency, banking duties, and income taxation. However, in case of any conflict between the state law and the Union law, the Union law prevails. (The paramount position of the Centre is underscored by the power of Parliament to create new states, and even to abolish a state by ordinary legislative procedure without recourse to constitutional amendment.)

The country has never been under a military ruler. Except for a short period of 19 months (1975-77) when the emergency was proclaimed in accordance with the Constitution, when some of the democratic procedures were suspended, the country had always been under democratic governance.

Under the Emergency Provisions of the Constitution (Part XVIII), the President may suspend the right to freedom and the right to constitutional remedies in situations of national emergency. In this context, Art. 352 of the Constitution states "If the President is satisfied that a grave emergency exists whereby the security to India or any part of the territory thereof is threatened, whether by war, or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect." The proclamation automatically lapses if not supported by Parliament within two months. The emergency proclaimed on June 26, 1975, by the then President F. A. Ahmed on the advice of the then Prime Minister, Indira Gandhi, was imposed in response to an alleged internal threat to internal security by political opposition.

The system is resilient. The successful elections are a demonstration of the durability of the idea of democracy. Elections have never been cancelled or stopped. The governments in the Centre and the states do get changed as a result of elections either due to the incumbency factor or changing combination of parties.

The governance is based on the principle of parliamentary system. The system is stable. There is no intrusion into the domain of others. The amendments to the Constitution were made in the light of continued experiences. Some of the amendments made during the emergency were withdrawn again by a procedure of amendment in order to undo the wrong. There is thus flexibility in the Constitution to that effect. The Constitution is however strong so far as the basic structure is concerned. This cannot be altered even under the provisions of the Constitution. Some of the items are:

- Supremacy of the Constitution.
- Rule of law.
- Principle of separation of power.
- Fundamental rights.
- Parliamentary system.
- Judicial review.
- Principle of free and fair elections.
- Independence of the judiciary, etc.

The Judiciary

The Constitution provides for a judiciary with an integrated national system of courts with the Supreme Court at the apex, High Courts at the states level and a hierarchy of subordinate courts at the district levels. Panchayat (village council) courts also function in some states under various names like Nyaya Panchayats, Panchayat Adalat, Gram Panchayat, Kachheri etc. to decide civil and criminal disputes of petty local nature. Different state laws provide for jurisdiction of these courts. Each state is divided into judicial districts presided over by a District and Session Judge.
The Supreme Court of India consists of 26 Judges (including the Chief Justice). It has original jurisdiction in any dispute arising between the Government of India and one or more states (b) between the Government of India and any state and or states on the one side and one or more state on the other (c) between two or more states.

The High Court stands at the head of the State’s judicial administration. There are 21 High Courts in the country, three having jurisdiction over more than one state. Among the Union Territories, Delhi alone has a High Court of its own. Other six Union Territories come under jurisdiction of different states High Courts. Each High Court comprises of a Chief Justice and such other judges as the President may appoint from time to time. The total sanctioned number of Judges and Additional Judges in different High Courts is 655 against which 497 were in position as on 1 August 2003. The strength of High Court Judges has recently been increased to a total of 749.

Attorney General
The Constitution provides for an Attorney General, who is appointed by President, gives advice to the Government of India on legal matters, and to perform such other duties of a legal character as may be referred or assigned to him by the President. He is the only person who can attend the meetings of the Houses of Parliament without being its member, but cannot vote.

Machinery of Government
The machinery of Government consists of a number of ministries/departments, whose number and character keeps on varying from time to time according to needs, volume of work, relative importance, political compulsions and orientations. However, the Ministries/Departments are constituted under the Government of India (Allocation of Business) Rules, 1961. As on 30 January 2003, the Government of India consisted of 51 Ministries, and 50 departments under the main ministries, including 4 Independent Departments - Atomic Energy, Ocean Development, Space, and Development of North Eastern Region; Cabinet Secretariat, President’s Secretariat, Prime Minister’s Office and an independent Planning Commission.

Public Services
India is perhaps one of the few countries where the public services have been accorded a constitutional status. Article 312 of the Constitution provides for the creation of All India Services common to the Union and the States. At present there are three All India Services—The Indian Administrative Service, Indian Police Service and the Indian Forest Service. A unique feature of the All India Services is that the members of these Series are recruited and trained by the Centre, but their services are placed under various State cadres and they have the liability to serve both under the Centre and State governments. The All India Services in a way strengthens the unitary character of the Indian federation. Besides the All India Services, there are also a number of Central Services, recruited and trained for work at the Central Level and States have their own Services, recruited and trained by them for work in the states. Some of the Central services are:

- **Group A:**
  - Indian Foreign Service.
  - Indian Audit and Account Service.
  - Indian Defence Accounts service.
  - Indian Revenue Service.
  - Indian trade service.
Indian Custom and Central Excise Service.
- Central Information Service.
- Indian Ordinance Factories Service.
- Indian Postal Service.
- Indian Railway Traffic Service.
- Indian railway Accounts Service.
- Indian Railway Personnel Service.
- Indian Defence estates service.

- **Group B:**
  - Central Secretariat service.
  - Railway Board secretariat service.
  - Armed forces Headquarters Civil Service.
  - Central Appraisers service.
  - Delhi, Andaman Island, Daman, Daman, and Diu Civil Service.
  - Pondicherry Civil service, etc.

The Constitution provides for an independent body known as Union Public Service Commission (UPSC) for recruitment to higher civil posts of Group A and Group B under the Central Government. There is also a Staff Selection Commission, set up in 1976, which is entrusted with the work of making recruitments to all civil posts of Group B and non-technical posts of Group C in the Central Government. Similarly Constitution also provides for independent State Public Service Commissions for recruitment of services in the various State Governments.

**Comptroller and Auditor General**

The Constitution also provides for the appointment of an independent Comptroller and Auditor-General, who is appointed by the President to prescribe the form in which accounts of the Union and States are to kept, and conducts audit of accounts. His reports on accounts of the Union and states are submitted to the President and respective Governors and are placed before Parliament and state legislatures.

**Election Commission**

Another independent authority set up under the Constitution is the Election Commission of India, consisting of a Chief Election Commissioner and two other Commissioners with the powers of superintendence, direction and control of the preparation of electoral rolls and the conduct of elections for members of Central and State legislatures and the Union Territories, and the Offices of the President and Vice President. The Chief Election Commissioner and two Commissioners of the election Commission are appointed by the President of India, and function under the rules laid down under the Constitution. They are accountable for their actions to the law of the Constitution and can be removed from their offices for violation of the constitutional mandate and misuse of powers only through a procedure as applicable to the removal of a Supreme Court Judge.

**Government in States**

The system of government in states is very much similar to the Union. The Executive consists of Governor and Council of Ministers with Chief Minister as its head to aid and advise the Governor in exercise of his functions except in so far as he is by or under the Constitution.
required to exercise his functions or any of them in his discretion. The Governor of a state is
appointed by the President of India by warrant under his hand and seal (Article 155) for a
term of 5 years, but holds office during the pleasure of the President (Article 156). Therefore,
by implication, he can be removed by the President. The executive power of the state is
vested in the Governor.

Party System

Political parties and the party system in India have been greatly influenced by the cultural
diversity, social, ethnic, caste, community and religious pluralism, and shaped by the
traditions of the nationalist movement, the contrasting style of party leadership, and clashing
ideological perspective. The two major categories of political parties in India are national and
state, and are so recognized by the Election Commission of India on the basis of certain
specified criteria. As of June 2001, there were six national parties (seven after the split in the
Janata Dal in August 1999) and 38 regional parties recognized as such by the Election
Commission of India operating in the Indian political scene.

The National parties are Indian National Congress, Bharatiya Janata Party, Communist Party of
India, Communist Party of India (Marxist), Bahujan Samaj Party, and Janata Dal. As per its
later notification (June 29, 2000), the Election Commission, had decided to de-recognize seven
regional parties in some Sates based on their poll performance. These are Haryana Vikas,
Party, NTR-TDP (Lakshmi Parvati), Rashtriya Janata Dal in Manipur, Shiv Sena in Dadar, Nagar
and Haveli, United Minority Party in Assam, Samajwadi Janata Party in Chandigarh and Samta
Party in Haryana. (De-recognition means that the party is denied the benefits of free air time
at the Doordarhsan and AIR (Government TV and Radio channels respectively), and free
supply of electoral lists at the time of elections and is not invited by the Election Commission
for any consultations regarding the dates, program schedule of impending elections. However,
the reserved election symbol may continue to be used by the derecognised parties for a period
of six years, during which period they can retrieve their status.5)

A political party is recognized as a National Party when either (1) the candidates put up by it
in any four State or more at the last General Election to the House of people or to the
Legislative Assembly of the States have secured not less than six per cent of the total valid
votes polled in the respective States, and in addition has returned at least four members to
the House of People from any State of States, or (2) its candidates have been elected to the
House of People from at least two per cent of the total number of parliamentary constituencies
in India, and the said candidates have been elected from not less than three states. Similarly,
a political party is recognized as a State Party if (a) the candidates set up by it in the last
General Election to the House of People or the Legislative assembly of the state concerned
have secured not less than six percent of the valid votes polled in that State, and in addition it
has returned at least two members to the Legislative Assembly, or (b) it wins at least three
percent of the total number of seats in the Legislative Assembly of the State, or (c) at least
three seats in the Assembly.6

The Media

The country has a very strong print and electronic media with several independent (as well as
government owned) TV and Radio channels that keeps a constant vigil on the sources and
exercise of power. It is free and fearless and does not hesitate to expose the scams,
wrongdoing, and other violation of norms.

News Agencies

India has a number of independent News Agencies and a vibrant, dynamic and free, strong
and fearless press electronic media, details of which are given at a later stage of this report at
the appropriate place.
Corruption Profile

Corruption in all societies is as old as the power itself. However, the forms and manifestation of corruption have been continually changing. Almost all countries in the world today are plagued with the cancer of corruption irrespective of their stages of development. Corruption is not merely a distinguishing feature of developing countries, it is common even in the developed societies. However, its nature, volume and dimensions differ largely from country to country and from one environment to another.\(^7\)

Although the incidence of corruption in public life is a worldwide phenomenon, yet in recent years it has assumed frightening proportions. Naturally, India (the largest democracy in the world) is not free from the evils of political and bureaucratic corruption. It has not only spread to every part of the governmental machinery, but has had a more rapid growth among the professional politicians, the party men at all levels and even in the highest echelons of political leadership both at the state and the central levels. The record of no political party in India is better than that of any other on that score. The existence of a colossal public cynicism towards it, people’s acceptance of corruption in public life and the feeling that those indicted of political corruption invariably go scot-free and in the process amass more “power, status and wealth” have led to a situation, where even the most determined efforts to fight the evil have failed. It has given credence to Voltaire’s notion that corruption is an evil that grows respectable with age. It has almost become a national pastime in India to talk about corruption, condemn others of corruption, but there is precious little that is done in practical terms to curb the incidence which is having a cancerous growth in all sectors of the body politic. The government seems to be aware of the existence of the evil all round. It is also aware of the possible ways to check its monstrous growth, but seems to be lacking in will to enforce such measures effectively.

This section is mainly concerned with an analysis of the nature of political and bureaucratic corruption in India, and its major implications with a view to examining some of the anti-corruption strategies adopted by the government in the past fifty years, and to reflect upon the measures to be adopted for making these more effective.

Corruption in India: a Historical Legacy

India inherited a legacy of corruption from its ancient rulers\(^8\) who always expected some gifts (in the form of the nazaranā) from their subjects. One of the important aspects of the employers’ function in those days was to extract money from the common folks to enrich the treasury of the rulers. Appointments to the key positions were made on family considerations. Most often, a "prime minister's son succeeded his father, a governor's son the governor, a judge's son a judge, a village headman's son the headman. Replacing relatives in good positions, irrespective of merit, gained merit in the eyes of the people".\(^9\) Thus, nepotism as an evil was an acceptable concept in those days and the vocabulary had no proper word for it.

Corruption in India is also a legacy of the colonial system. As colonial governments were generally regarded as alien and hence illegitimate, consequently cheating and deceiving such an alien power was considered a fair game. The roots of political corruption in developing states thus lie in the colonial order or native tyrannical rule from which they have emerged as independent democratic states. In colonial times, the government was carried on by the aliens, and the citizens developed an attitude of irresponsibility and felt obliged to thwart the government in every possible way, including cheating and other corrupt methods. The cheating of foreign rulers in government came to be admired as a patriotic virtue.
Before Independence from colonial rule, corruption was nourished in a number of developing countries by the colonial officials themselves, who encouraged it by accepting expensive gifts, jewels, money, favours and undue hospitality from the influential elite native groups to grant them undue favours either against other similar groups or to individuals for their own private gains. Examples abound in the Colonial Administration in India during the 18th-20th century. where the incumbent officials (whether British, French or the Portuguese) amassed huge wealth during their tenure in India and had become the White Nabobs or Maharajas before leaving the country. Some of them like Robert Clive and Warren Hastings had to even face trials in their own countries after their return for such misdemeanour. However, it was during World War II that the spectre of corruption raised its head when there was sudden increase in administration, opportunities for corruption due to large scale purchases and procurement of defence material and constructions, manipulation, and intrigues of foreign financial and business powers. But when that colonial system was replaced by an independent democratic system, the former attitude did not disappear at all, but has percolated down to the post-independence period with greater vengeance, and thus today cheating government is not generally considered by many as any immoral act. The value system of people in modern times has now declined to such a low ebb as makes any exceptionally honest official behaviour appear as a pleasant surprise.

Consequently, in India, corruption has become a social phenomenon. It is widespread and has increased at a fantastic pace. There is hardly any area of activity that has remained wholly free from the impact of corruption. In fact, corruption has now become institutionalised and a commonly accepted way of life. In India, acceptance of bribes, commissions, under-the-table payments, and gifts, by the politicians or the bureaucrats are no longer frowned upon, and even subtle ways have been discovered to create a legitimate veneer and consider these as a part of normal life activities. In short, such an ethos has been created in the society that corruption has ceased to be regarded as a crime any longer.

Political Corruption: Various Interpretations

A large majority of people believe that political corruption, distinct from administrative one, cannot be so easily observed. But on the dimensions of political corruption in India people are quite familiar with the following issues. The acquisition (through fraudulent and illegal means) of large areas of farmland by the senior officials and political leaders; the abuse and exploitation of official position to enrich themselves directly or indirectly by using their relatives as proxies, grant of favour to members belonging to their caste by overriding the due procedure, and overlooking the claim of others by using favoured officials as instruments, the use of political position to defeat the purpose of judicial process; retention of corrupt but well-entrenched political bosses in order to prevent loss of power in relation to a political party; abuse of governmental machinery for party purposes; launching enterprises with government support and then enriching themselves; doing business with government in the name of firms owned by them but nominally managed by their wives; use of public funds by statutory bodies to bolster up business concerns who act as financiers of public parties; and misappropriation of public funds or the inability of governments to render accounts for public expenditure.

Political corruption is thus, one of the species of wide-range, multidimensional nature of corruption but it can however, be distinguished from other types of corruption. Broadly speaking, political corruption is the misuse of political power for private profits. In political corruption, money enters as a secondary factor in the anatomy of corruption. Here, political influence is pressed into service in order to please the political bosses or earning promotions. Political corruption implies corrupting the political life of a nation at all levels. In its broader aspect, it seeks to politicise all walks of life and in its narrower sense, legitimises unholy political sections for benefiting vested interests whether personalised or institutional.
An analysis of political corruption in India reveals some theoretical constructs and important characteristics which may be identified. Political corruption:

- Corrupts the entire body politic whether individuals, groups, institutions, or political process;
- Implies exercise of pressures and influence power;
- Becomes widespread when an unethical political man assumes supremacy in decision-making;
- Makes easy headway in a land of economic inequalities, social backwardness and moral decline;
- Acquires the form of defection, factionalism, and political bargaining;
- Uproots all political systems while its off-shoots particularly destroy democracies in developing societies;
- Differs from other types of corruption because its unethical effect demoralises the entire fabric of the society doomed in poverty, illiteracy and backwardness in India has its roots in the colonial and feudal order, which is reflected even today in the functioning of the Indian political system and it has maintained a continuum despite the change in political elites and leadership;
- Has promoted political patronage as against establishment of social and economic norms.

Consequently, the successive elections, parliaments and legislation have failed to checkmate its ugly effects. The problem seems to have become monolithic beyond easy repairs. In India, the continued existence of "practically one party rule" for almost four decades, the unconvincing opposition and political apathy of the common man have provided unintended support to the phenomenon of political corruption.

The entire infrastructure in modern Indian society is built on the edifice of corruption. It has percolated down from top to the bottom. Very often political corruption in India takes place in collusion with the bureaucracy in the shape of huge kickbacks in big national and international deals which go undetected and unpunished for obvious reasons. In India, the connection between corruption and the steady deterioration of the basic administrative system has not been adequately understood and focussed upon.

This proposition is very well illustrated by a number of incidences of political corruption that have attracted public attention in India since Independence. Major incidences include:

- As early as 1948, Krishna Menon, Defence Minister of the GOI was involved in a dubious purchase of 4,000 jeeps, supply of rifles, and other defence materials.
- Mudgal Affair (1951), Mr. Mudgal a member of the Parliament was accused of taking money as bribe for asking question in the Parliament.
- Jeep Scandal Case (1955) Jeeps bought for the use of the army in which a huge amount of money was alleged to have exchanged hands as bribe and the decision influenced by the then Defence Minister, Mr. V. K. Krishna Menon.
- The Mundhra Deal (1957), related to some shares of a failing private concern were bought by the Life Insurance Corporation (LIC) a public undertaking as an undue favour to help that private firm—the decision was influenced by the Chairman of the LIC - Justice Chagla enquiring into the deal invoked the principle of Ministerial Responsibility, as a result of which the then Finance Minister. T.T. Krishnamachari had to resign.
• P.S. Kairon Case (1963), the Chief Minister of Punjab who was incarcerated due to the corrupt activities of his sons.

• Bakshi Gulam Mohammed, (J&K) (1963-64) Chief Minister of the state of Jammu & Kashmir, was alleged to have squandered a huge amount of money due to alleged corrupt deals.

• Nagarwala Mystery (1971), in which a huge sum of money was withdrawn from the State Bank of India, by one Mr. Nagarwala, posing as an emissary of the then Prime Minister Mrs. Indira Gandhi.

• Exercise of extra-constitutional authority (by spouses, relatives and friends of politicians in power, the most significant being of Sanjay Gandhi during Emergency (1975-76) (see below).

• The rise of professional politicians – the Antulite Phenomenon (1970s) (see below).

• HDW Deal 1981.

• Fairfax Affair (1987) A Commission consisting of two Supreme Court Judges, justice M.P.Thakkar and Justice S.Natarajan began probing the Fairfax affair in April 1987. It inquired into the arrangements entered into with the Fairfax Group Inc., an American detective agency to probe FERA (Foreign Exchange Regulation Act) violations and indicted the former finance minister V.P.Singh in their report, Mr. V.P.Singh later became the Prime Minister of India in 1989.

• Land Allotment case Bangalore (involving R K Hegde, Chief Minister of Karnataka) (1989) 1989, a Commission of Inquiry headed by Supreme Court Judge Kuldeep Singh inquired into irregularities in the allotment of 110 acres of land in Bangalore by the Bangalore Development Authority to non-resident Indians and the sale of 22,622 sq. Meters of land in Mysore to a private builder during Mr. Ramakrishna Hegde's Chief Ministership. The Commission indicted Mr. Hegde in its report, as result of which he had to quit his post of Chief Minister.

• Fodder scandal involving Balram Jakhar a former Speaker of Lok Sabha (1989) A former speaker the Lok Sabha (the Lower House of Indian Parliament) DR Balram Jakhar was accused of promoting the interests of a foreigner friend, Mr. Brady, by waiving import duty in return for 50 fodder making machines. Mr. Jakhar's outfit, the Bharat Krisha Samaj (Indian Agriculturist Society), allegedly played a dubious role in a deal that relieved the Indian public of Rs. 36 million in taxes and over Rs. 35 million in foreign exchange. Although the case is still pending but no action is likely to take place. Dr. Jakhar the former speaker of Lok Sabha later became the Minister of Agriculture in the Cabinet of Mr. Narasimha Rao (1991).

• Airbus A 320 Deal (April 1990). In April 1990, the Central Bureau of Investigation filed an FIR (First Information Report) in the Police Station against the Senior Officials of the Civil Aviation Ministry and Indian Airlines for the hasty purchase of A-320 Aircraft. The officers were charged of bribery and negligence in negotiating the purchase amounting to Rs. 25,000 million. However, nothing came out of this initiative.

• Bofors Pay Off (1987- still continuing) Perhaps the most celebrated case of political corruption, which has not been finally settled and has assumed international dimensions has been the alleged kickbacks in the purchase of Bofors 155m FH-778 guns. The Swedish Radio had in 1987 charged that a Commission worth 33 million Swedish Kroners (about Rs. 65 million) was made to an Indian firm in respect of a deal worth billions of rupees for the supply of the Bofors guns. It was alleged that the Commission was paid in foreign exchange to the persons and friends nearest
to the then Prime Minister Rajiv Gandhi. (For more details, see below). In the recent judgement of the High Court of India which came after 17 years of the filing of the case, the Court has cleared the deceased Prime Minister Rajiv Gandhi of all charges of alleged corruption, saying that the prosecution has failed to prove any charges of corruption.14

- Harshad Mehta’s Suit Case Episode (1993) (see below).
- JMM Bribery Case (see below) against the then Prime Minister PV Narasimha Rao (1992).
- Cases against Bihar Chief Minister Rabri Devi and her husband, Laloo Prasad Yadav, the former Chief Minister of Bihar (1999-2000 still continuing).15 The kind of intrinsic damage that such cases of political corruption have done to the administrative machinery in India has not been appropriately evaluated. Whereas Laloo Prasad is involved in two fodder-scam related cases concerning misuse of power in purchase of fodder for the cattle by Laloo Prasad Yadav, the then Chief Minister of Bihar, his wife Rabri Devi who became Chief Minister after Laloo Prasad Yadav was forced to resign is also implicated in one such case as she had not been able to prove that she owned a dairy farm her husband had shown in the income tax returns as the source of his income. Therefore, she is alleged to have aided and abetted her husband’s illegal earnings. The CBI, the Income Tax Department, and the Enforcement Directorate had unearthed Rupees 42.52 lakhs (about US$ 90,000) said to belong to Laloo Prasad who had not been able to give a satisfactory explanation to the investigating agencies as to how he amassed the wealth.16 He is now (June 2004) a Cabinet Minister at the Centre in charge of Railways in the present Congress Government led by Dr. Manmohan Singh.

Apart from the open acceptance of money or things in kind for favours rendered, political corruption in India has manifested in various other ways. It can take many forms, levels, magnitudes and frequencies. Prominent amongst these are given under the following headings.

Exercise of Extra-Constitutional Authority

The most important arenas for political corruption are legislature, elections and the administration17 apart from the traditionally accepted parameters of political corruption in these arenas.18 In India, it has at least assumed two new directions. The first is the emergence of extra-constitutional centres of power who exercise enormous influence and authority on behalf of the legitimately constituted institutions and authorities. The irony in such situations is that while the conduct of legitimate authority in many cases had ostensibly remained above board, the sons and daughters or close relations of the constitutional authority amassed huge wealth, power, and status by resorting to the exercise of undue influence. There are instances of proxy rules by the spouse of the Chief Minister of a State, who has been alleged of corruption in a public deal. Invariably in all cases, there has been a tendency on the part of the constitutional authority to protect their relations and protégés, to pretend ignorance of their alleged corrupt needs and even to resort to their defence in public whenever allegations of this kind had been made in the press or by the opposition.

Since the very first decade of Independence many top political leaders including some chief ministers, central ministers and even the highest office of the prime minister have been indicted by the Inquiry Commissions on such matters.19 Whether it relates to the activities of Surender Singh Kairon son of Pratap Singh Kairon, the then Chief Minister of Punjab, Suresh Ram, son of Jagjivan Ram son of a Union Minister of Defence, Sanjay Gandhi son of Mr. Indira Gandhi, the then Prime Minister, Kantilal Desai son of the then Prime Minister Morarjibhai Desai, or Laloo Prasad Yadav husband of Rabri Devi, the Chief Minister of Bihar. the issue of
those aspiring for and wielding extra-constitutional authority, interfering with the process of governance and taking undue advantage of the positions of the high office held by the parents or spouses has come to the fore recently and in fairly quick succession. In all these cases described above relations of the duly constitutional authorities have misused their proximity with their relations and have exercised their power and influence on their behalf for their personal gains – hence the use of extra constitutional authority as a form of political corruption. The role of ambitious wives, husbands and other kinsmen contributing new elements of unsavouriness to the process of administration has come under severe criticism. The practice, however, still persists. The most significant question here is not one that concerns just personalities or individuals but the danger that emanates from the development of a political culture that will be detrimental ultimately to the welfare of the people.20

Raising of Political Funds by Professional Politicians

The other new direction in which political corruption has spread into the body politic in India has been the emergence of a new breed of politicians, who have become synonymous with what in Indian politics has recently been termed as the phenomenon of ‘the Antulites’. Politics in India has come to acquire the character of a big business, in which the fund raising qualities of a professional politician attract the largest premium. Elections having become an expensive proposition, the emphasis in each party seems to have shifted from honesty to capacity to raise funds through any manner and by any means. In the pre- and post-1975 emergency era, the erstwhile Congress Party was accused of raising a large amount of funds through donations in the shape of advertisements to a party souvenir, the costs of which were highly disproportionate to the amount of advertisement space bought by the big businessmen.21

Even in normal times, the leaders who are able fundraisers have generally come to the forefront. It is clear that such fund raising activities consist largely of collecting substantial contribution from proprietors or directors of large commercial or industrial firms. These firms, before parting with the funds, naturally want to make sure that there would be a satisfactory return for such firms. The net effect of this process, as an ex-civil servant puts it, “can only be to mortgage much of the political system to ‘money-power’. 22 Thus the present procedure of raising election funds can be the biggest single source of corruption.

There is no state funding of elections. The various political parties raise funds from their supporters. Recently, the Government has framed rules by which the parties can accept funds to the tune of 5% of the profits of a business organization in a financial year provided a resolution is passed to that affect by the Board of Directors. Under the new Election and Other Related Laws (Amendment) Bill passed by the parliament on 30 July 2003, there is no cap on the contributions made by individuals, but contributions are to be made by cheques. All contributions will attract income-tax relief. Parties will have to make a list of all contributions in excess of Rs. 20,000 for audit.23 As mentioned above, the fund raising capacity of an individual has reached its perfection in the manner A.R. Antulay, a former chief minister of Maharashtra, sought to establish one trust after another. Eventually he had to resign from the office following an indictment by the High Court of the state. However, he personified, as one commentator has put it, “a form of rule in which arbitrariness is not peripheral but essential”. “In the Antulay phenomenon”, he points out, “statecraft is severed from politics, manipulation replaces diplomacy, the arbiter of conflicting interests in society himself becomes a sectional interest opposed to the rest of society,” and the state is robbed of its legitimacy as the regulator of civil society. At the very heart of the Antulay phenomenon lies a confusion between the private and public spheres, the frequent merger of the one into the other. He not only sold political favours to his friends and private contacts, but also reduced politics to a trade in favours to be dispensed and bought. This took an unconcealed and particularly brazen form in the allotment of cement quotas for which high donations to Antulay’s Trusts were the quid pro quo.24
In this game of exhorting donations, Antulay is not unique in the country, but represents a whole new crop of politicians belonging to all parties. The distinction between this breed of new politicians and the older generation of politicians, who were similarly indicted (for raising political funds through dubious means) for corruption in raising money for political purposes by illegal means, like Pratap Singh Kairon and Biju Patnaik, former chief ministers of Punjab and Orissa respectively, is that they used their power often arbitrarily pruning down norms - not only to advance public interests, but also, and mainly, to achieve public goals. For the new politicians, power or authority is not, or primarily not, an instrument to subserve public goals. Hence the blurring of the necessary distinction between the private and the public becomes in their case, easy and natural, almost inevitable.25

Writing about the corruption in public life with respect to the raising of funds during elections (particularly through 'souvenir' (a kind of a felicitation magazine or a booklet which contains information, messages, articles about the function or the event in which many businessmen or industrialists place advertisements on substantial payments in order to help the organisers meet the expenses of the event.) on the eve of the Sixth general election in 1977), Arun Shourie, a well-known commentator of the political scene and presently a Minister in the Government of the Union, has, after quoting original documents, shown that large funds were collected by the professional politicians and that even though prima facie cases had been established against them for illegally collecting large sums of money, the persons responsible were rewarded by high offices and the only person to pay the penalty was the person who investigated and wrote the document specifying the amounts and the account numbers with several banks. In disgust Shourie asks:

When the people have no choice but to reinstate those who defalcated with a thousand million in the last round will the latter not be emboldened to defalcate with a few thousand crores (a crore is ten million) in the current one? Can intelligence agencies that swear one thing today and its opposite tomorrow, serve even the rulers, to say nothing of their doing any good to the country? Do we not minimize the problem when we look upon the politician as the corrupter of public life? What about the 1,151 enterprises, that donated the 1128 million? Is the businessman less corrupt? Is the average citizen less?26

These are indeed very pertinent and formidable questions which seem to defy any answer today.

The Kickbacks from Government Purchases: The Bofors Scandal - Accusations against Prime Minister Rajiv Gandhi

Perhaps the most celebrated case of political corruption, which has not yet been finally settled and assumed international dimensions pertained to the alleged kickbacks in the purchase of Bofors 155m FH-778 guns. The Swedish Radio had in 1987 charged that a Commission worth 33 million Swedish Kroners (about Rupees 65 million) was made to an Indian firm in respect of a deal worth billions of rupees for the supply of the Bofors guns. It was alleged that the Commission was paid in foreign exchange to the persons and friends nearest to the then Prime Minister Rajiv Gandhi. A Joint Parliamentary Committee which inquired into the deal found nothing wrong, and absolved the Prime Minister Rajiv Gandhi. But the Government was indicted by the Comptroller and Auditor General of India for improprieties in the entire negotiations and the deal. There was such a public outcry against it that it became a major issue in the General Elections of 1989, which led to the defeat of Rajiv Gandhi’s Government. The Central Bureau of Investigations is still pursuing the case to unravel the mystery of political kickbacks alleged to have been paid in the deal, but according to latest indications, the issue seems to have been pushed under the carpet even by the present Vajpayee Government (1998).27

A recent analysis and defence of the Bofors affair by Vir Sanghvi, a well known political columnist, suggests that there is no shred of evidence as yet that anybody who received any
money from Bofors shared it with any public servant, let alone with Rajiv Gandhi, the then PM.
Despite all the anti-Hinduja publicity (the Hinduja brothers are wealthy industrialists of Indian
origin having their business empire in Britain and were allegedly involved in this deal as
commission agents) the investigation in the case has been going on since January 1990 and is
still not finalized. The case is being exploited periodically for political purposes. In a recent
decision, a Delhi High court has exonerated Rajiv Gandhi of his implication in the case. It
would be surprising if the CBI secures any kind of conviction under the Prevention of
Corruption Act. It is not a crime to take a commission and the CBI has no proof that bribes
were paid out of those commissions. The CBI has recently admitted that there is no evidence
so far to suggest that any private segment received money in the Rs. 14370 million Bofors
contracts for supply of 400 Howitzer guns to the Army in March 1986.28 The whole Bofors saga
boils down to three different points: One, there is no limit to the irresponsibility of Indian
politicians when it comes to their own advancement. They will say anything if it helps them go
ahead. Two: a lot of time has been wasted on a case that amounts to nothing; bigger scams
now occur every day. And three: nobody considers it worthwhile to defend a man who is dead
and whose party is in opposition. Whatever else Rajiv Gandhi was – and in handling Bofors, he
was both inexperienced and badly advised—he was completely innocent of the charges
levelled against him. Sixteen years later, not one shred of evidence has surfaced.29

Bribing MPs to Save Government: Accusation against the Prime Minister
Narasimha Rao and some Cabinet Members

One of the major political fallouts of the Bank Securities scam of 1991 (swindling of bank
money on phoney securities from the Public Sector Banks) has been the accusation of bribe
against the then Prime Minister Narasimha Rao himself. In 1993, Harshad Mehta, the main
accused in the securities scam had alleged in a crowded press conference that he had
personally handed over a suitcase containing Rupees 6.7 million to Prime Minister Narasimha
Rao at his official residence at New Delhi’s Race Course Road. Later another Rupees 3.3 million
was delivered to the Prime Minister’s men. Although people were sceptic about Rao's
involvement in the scandal, yet the opposition made it an issue for a 'No-confidence motion'
against the Government. The hasty no-confidence motion brought out by the opposition
parties, the Bharatiya Janata Party (BJP) and the Communist Party (Marxist) (CPM) in the
Parliament was ignominiously defeated through clever manipulation of the managers of the
Congress Party in power when they bought out a dozen of vote enough to defeat the motion.

The Harshad Mehta's suitcase episode demonstrates two realities about corruption in India.
The first is that it is more widespread than before; and second is, that it hardly matters. There
was a time when a minister who accepted money from industrialists was regarded as a bit of
crook and treated with a certain disdain by his colleagues. Today, every other minister takes
money from businessmen and many will not bother to deny it. Rather justify it on the grounds
of rising cost of election expenses and explain that these funds can only be generated form
private industry. Since no businessmen will part with money for nothing. There has to be a
certain level of *quid pro quo.*30

Even if one believed that Prime Minister Narasimha Rao had not accepted any money and even
if one reckoned that the ruling regime was not corrupt, there was no way in which one could
deny that the cynical act of buying over a dozen M Ps represented corruption of a far greater
magnitude than the kind of simple bribery that Harshad Mehta had accused Rao of. When MPs
went into vote on the non-confidence motion, at least twelve were not voting on the basis of
what they regarded as being the right decision for India. They voted because they had been
bought. The main accused was Mr. Shibu Soren, leader of the regional Party Jharkhand Mukti
Morcha, (JMM) who after ten years (he helped the Narasimha Rao government survive a
crucial no-confidence vote, allegedly for a bribe) has now been charge sheeted by the Central
Board of Investigations (CBI). Initially Shibu Soren and his three JMM colleagues, Simon
Marandi, Suraj Mandal, and Sahlendra Mahato, were charged with both parliamentary
impropriety and financial misconduct but the Supreme Court gave them immunity as far as

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their conduct in the House was concerned. According to the CBI probe Shibu Soren acquired about Rs. 4.5 million, which was deposited in several accounts in the Nauroji Nagar Branch of Punjab National Bank in Delhi. A request to the Lok Sabha Speaker for permission to prosecute Soren was pending since January 2003. The Lok Sabha dissolution on 6 February 2004 came in handy, as he has ceased to enjoy immunity following dissolution of the House. The success of the commercial transaction insured the defeat of the motion and survival of the Narasimha Rao government. As reported in the press, at least one of the defecting MPs appeared drunk on the floor of the Lok Sabha. The others looked pleased and prosperous. And the Congress said that the result of the motion proved that the people were not willing to believe that the government was corrupt. 

Incidentally, former Prime Minister Narasimha Rao is presently facing enquiries and court cases in this incident of buying MPs through bribery to save his government. He resisted trial on the ground that democracy stood in danger of destruction, if techniques adopted to procure votes—whatever they may be—are subjected to judicial scrutiny. He is now awaiting judgement on the sentence after being convicted by the trial court along with Buta Singh another Minister, who has been similarly convicted for the charges of bribery. On 12 October 2000, the special trial court sentenced both the ex Prime Minister and his former cabinet colleague Buta Singh to 3 years rigorous imprisonment and a fine of Rs. 100,000 each on the charges of bribery and corruption. This speaks highly of the independence of judiciary in India. It is indeed paradoxical and abhorring, that in the former coalition government led by the National Democratic Alliance of 18 political parties and groups (where not only the intra-alliance differences are sometimes acute and irreconcilable, but the opposition parties and groups are ever ready to censor the government and stage a walk out on the slightest pretext), all the MPs in Lok Sabha (the lower House of the Parliament) cutting across party lines should unite together as one to express concern at the Supreme Court taking up a PIL to examine whether the constitutional immunity granted to MPs was a blanket one, and kept them beyond the pale of law even in cases where they were accused of taking bribes to vote in a particular way in Parliament. They saw it as an unnecessary interference by the judiciary.

Ironically Mr. Shibu Soren has now become a Cabinet Minister at the Centre in charge of Coal in the present Congress led Government of Dr. Manmohan Singh (May 2004). A Court in State of Jharkhand in India has issued a non-bailable warrant of arrest against him (20 Jul 2004) in a case of his alleged involvement in the massacre of nine persons in a mob riot in Chiruduh (Jharkhand) in 1975, but he is presently (21 July 2004) evading arrest from his place of residence in New Delhi, and nobody seems to knows his whereabouts. The Speaker of the Lok Sabha, (lower House of Parliament) Mr. Somnath Chatterjee has expressed his helplessness in ensuring his presence in the House. It has become a big political issue made out by the opposition, led by former National Democratic Alliance (NDA) supporters in the Parliament, because of which the Parliament has to be adjourned many a times.

Formation of Jumbo Council of Ministers

Another aspect of political corruption is bribing the MPs/MLAs through the inducement to give the supporting legislators berths in the Council of Ministers or give them lure of public offices to enable a party in minority or a particular political leader to continue in power resulting in the formation of jumbo sized governments. In the last ten years this has become a common feature of practically all governments both at the Centre and in many states having coalition governments. An extreme example is the constitution of the recent Government under the leadership of Chief Minister Rabri Devi in the state of Bihar after the recent Assembly elections (March 2000), wherein almost all the 66 members of the Congress (I) party, who lent support to Rabri Government in the coalition, were given berths in the Council of Ministers. One could argue that this is strictly a legitimate offshoot of the phenomenon of coalition governments, but in practical terms it amounts to a subtle aspect of political corruption, for it puts an enormous and unnecessary burden on public exchequer, and the use of government money
for keeping the legislators in one’s flock against all norms of public morality and propriety, and further opens more opportunities for corruption by the incumbent ministers. Almost all political parties have been guilty of this practice in the formation of governments, particularly in the last four General Elections (10-13th Lok Sabha), and Assembly Elections during 1995-2000. Over bloated cabinets impair efficient functioning and set a bad example for all levels of bureaucracy. An administration, steadily sapped in this manner, is bound to collapse. State cabinets of 60 and 90 ministers send a clear message to the bureaucracy that politicians are out to exploit and not administer. Recently, the Chief Minister of Uttar Pradesh has set an all time record of having 98 ministers in his council of ministers, every fourth MLA being a minister. The cabinet is now considering a proposal to bring a law aimed at limiting the size of the ministries in the states to ensure political stability. As a result of which, the last 13th Lok Sabha had enacted a law limiting the size of the Ministries both at the Centre and the States to 15% of the strength of the members of the lower House or 15, whichever is greater. Such politicians, in turn, nurture and promote sycophantic bureaucrats who help them in their deeds. A bureaucracy steeped in such parasitic culture is not likely to be able to meet the challenges of modern governance.

Money Laundering: The Jain Hawala Case

In February 1996, former Prime Minister Narasimha Rao and some of his Cabinet Ministers, and about 60 other politicians belonging to different political parties and bureaucrats were implicated in an $18 million Jain Hawala Case (money laundering scandal). It has been alleged that many political leaders including the then Prime Minister Rao, many cabinet colleagues and leaders in opposition had violated the Foreign Exchange Regulation Act (FERA) as they received money in foreign countries by means of Hawala transactions through businessmen N. K. Jain and his brothers (for their personal use). Rao was also accused of his involvement in St. Kitts’ case. ‘V.P. Singh, by leaving the Congress and the government and starting a crusade against corruption, particularly with regard to the Bofors case had directly posed a threat to Rajiv Gandhi’s position’. Narasimha Rao was then the Foreign Minister. ‘He asked the Indian Consulate (in New York) to attest and verify the signatures of the Corporation’s managing director on some documents. This resulted in a charge of criminal conspiracy against Rao…. Rao took the plea that he was not aware of the forgery, and asked the Councillor to attest the signatures after he received instructions from PMO (Prime Minister Office). The court accepted the plea and the case against Rao was dropped’.

The case was embroiled in political controversy and legal battle. At the same time allegations for taking bribes were made against him in a Delhi court by a British businessman, Pathak (an Indian of a British nationality dealing in Indian spices and food condiments). Although the outcome of all these cases has not produced any conviction, but the very fact that even the highest political authority can be accused of corruption is a serious matter. In early 2000, all the accused politicians and bureaucrats in the Jain Hawala case had been discharged by the Court as there was no sufficient evidence to prosecute them. The Court held that merely some entries in the diaries of the Jains in some code words were not sufficient evidence to hold them guilty of corruption. Mr. Narasimha Rao has been subsequently exonerated of all charges in all the cases by the Supreme Court and acquitted.

Other Forms/ Cases of Political Corruption (1993-2000)

There have been a numbers of other financial scams and political scandals which had been in the press from time to time during the last few years. (a) Recovery of 36.6 million rupees from the residence of former Minister of Communication Mr. Sukh Ram through signing of dubious telecom contract involving also his secretary Mrs. Ghosh; (b) 1390 million rupees urea import scam - due to a fraudulent contract signed in 1995 between National Fertilizer Company and a Turkish Company Karsan (in no country in the world, Rupees 1390 million would be paid in advance to any business firm to get any commodity, yet the officials in India
paid that amount without getting an ounce of the urea—a fittest case of the misuse of office and outright dismissal from service, but no action was taken against the guilty); (c) 52.5 million rupees New Delhi Municipal Committee scam, relating to irregularities in the billing and collection of electrical changes; (d) Petrol pump allotment case in which former Petroleum Minister Satish Sharma allocated 15 pumps from his discretionary quota; (e) Housing allotment case, involving former Urban Affairs Minister Mrs. Sheila Kaul and P.K.Thungan, (f) Indian Bank case involving the Chief Managing Director, who granted loans to dubious persons.

At the states level, the number of such cases is too many to be discussed in this report. The most important is the Fodder Scandal (The CBI has registered cases against the two former Chief Ministers and officials for defalcation of funds in the purchase of fodder, medicines, instruments, etc., for the cattle on the basis of alleged fake letters and nonexistent suppliers), and the drug purchase scam (misappropriation of funds in purchase of drugs, appliances and instruments) in the Health Department of the state of Bihar involving many thousand million rupees, which brought the down fall of the then Chief Minister Laloo Prasad Yadav who was indicted of involvement in those cases. The other well known cases have been the allegation against the Chief Minister of Assam, Mr. P.K. Mahanta in public security scandal - spending of disproportionate amount of funds in maintenance of public security allegation against Ms Jayaram Jayalalitha, a former Chief Minister of Tamilnadu in two corruption cases pertaining to disproportionate assets and a $ 300,000 gift case, allegedly involving foreign exchange violation (in November 2003, the Supreme Court transferred two cases of disproportionate assets against her to neighbouring state of Karnataka doubting the manner in which the Chennai court proceeded with the case and with a view to ensuring a free and fair trial); allegations against M Karunanidhi, Chief Minister of Tamilnadu accused of links with LTTE (Liberation Tigers of Tamil Elam—the rebellious militant organization in Sri Lanka in continuous war with the Sri Lankan Government since 1980s for a separate Tamil Elam) involved in the assassination of the former Prime Minister Rajiv Gandhi, which ultimately brought down the downfall of the I.K. Gujral government at the Centre in 1996. It is interesting to note that none of the accused persons in all these cases have been convicted. Indeed far from political wilderness, they are all enjoying political power in their own states. In the case of Jayalalitha, her position (between 1998-99), was of a fulcrum on which the then Vajpayee Government of the Centre rotated, till it was eventually brought down by her in April 1999, when she withdrew support and the then Vajpayee Government fell just by a single vote. It is too well known an instance of how powerful a politician can be even though he/she may be facing a number of cases of corruption in the courts of law. (Cases against J. Jayalalitha are mentioned above). Laloo Prasad Yadav’s RJD Party’s won in February 2000 Assembly Elections. He being the de facto Chief Minister of Bihar by proxy despite being in and out of the jail on corruption charges, is another example of how political corruption flourishes and gets rewarded in this part of the world because, in addition to being the proxy Chief Minister of the state of Bihar being run legally by his wife Rabri Devi, he is also the elected member of the Rajya Sabha, the Upper House of the Indian Parliament. He has now (2004) been elected as a member of Lok Sabha and has become the Union Cabinet Minister for Railways in the present Congress Government led by Dr. Manmohan Singh.

One of the consequences of the widespread corruption and unaccountability in the Indian political system has been that amongst other nations of the world, India stands high in the list of the ‘most corrupt’ nations and virtually at the bottom in the international assessments of human development. Recently Transparency International, based in Berlin, ranked 133 countries, and according to a Corruption Perception Index 2003, India’s rank is 83 with 2.8 CPI 2003 score. A recent South Asian Human Development Report produced by the Mahbub-ul-Haq Centre in Islamabad (Pakistan) has characterized corruption in South Asia as more widespread and dangerous than in other regions because it occurs at the top, is rarely punished, and affects more than 500 million people. The report has also pointed out that corrupt money has ‘wings and not wheels’ and is smuggled abroad to safe havens and not ploughed back into the domestic economy. Often corruption leads to promotion and not
prison.\(^{46}\) According to a study by Hong Kong based Political & Economic Risk Consultancy, Indonesia is seen as the most corrupt country in Asia followed by India and Vietnam.\(^{47}\)

**Criminalisation of Politics and Politicisation of Criminals**

Apart from the various forms of political corruption, India suffers from a combined process of politicisation and criminalisation of politics. Combined with other factors like politicisation of the police, it certainly poses a real threat to democracy. The most pernicious method has been the use by politicians of the services of the anti-social elements at the time of elections. One of the most disturbing features of the post-Independence era has been the trend towards the uninhibited use of muscle-power by the political parties for winning elections. As muscle-power is mostly provided by criminal elements and mafia leaders, a close nexus has come to exist between the politicians and the criminals.

There were two types of booth-capturing at the time of polls, i.e. silent and violent: both were the products of criminality. In a silent booth-capturing, detection and effective remedial action of which were not easy, the voters were given threats of dire consequences. They either forgo their right to vote or their votes are impersonated on a large-scale. The very presence of hired thugs (goons) at polling stations to oversee the operation has made it possible either to coerce the weaker sections of the electorate to vote in a particular way or enable their ballot papers being freely handled by those musclemen. Violent booth capturing took the form of snatching and running away with polled ballot boxes or open destruction of ballot papers and other records. They were again the crude handwork of goons and goondas.\(^{48}\)

However, the past three successive Chief Election Commissioners (Seshan, Gill and Lyndoh) have taken certain measures to deal with problems relating to voting malpractices.

**Criminals Becoming Law-makers**

Earlier when in difficulty at the hands of law-enforcing agencies, the criminals and mafia leaders would turn to politicians and seek their aid, and the latter often came to their help as a *quid pro quo* for the help rendered by them at the time of elections. Later in recent years, the criminal elements and mafia leaders thought that, if because of their prowess and grip over certain sections of population they could get others elected, why should they themselves not fight elections. Many of them accordingly contested the elections and quite a substantial numbers of them were elected. Some of them have come to occupy ministerial chairs. The nation is thus confronted with the ignoble phenomenon of criminalisation of politics. Experience also tells us that despite the public expression of abhorrence of criminalisation of politics, the political parties have been patronizing such undesirable elements as their candidates at the time of elections. They were guided more in this respect by the electoral prospects of the candidate rather than his personal credentials and antecedents.\(^{49}\)

Criminalisation of politics has also wrought havoc on the administration of criminal justice and the situation today is that it has become most difficult, if not well nigh impossible, to secure conviction of major culprits guilty of offences like murder, grievous hurt, intimidation and rape because of the political interference in the police investigation of the crime and the consequent inability of the police to procure credible incriminating evidence as may warrant conviction of the culprit in a court of law. In many states, the former “history-sheeters” (persons having criminal background whose records are maintained in the police station in order to keep a watch over their activities) against whom criminal cases are still pending in the courts of law have turned law makers and ministers after winning elections, which has not only seriously jeopardized the legal process, but has also posed far-reaching ethical dilemmas and concerns.\(^{50}\) When elected as lawmakers, such legislators with criminal background continue to indulge in self-seeking projects without any fear. (Under Indian law, a person is presumed to be innocent till proved guilty through a conviction by a court of law). The trials against such persons linger on for a long time till either a compromise is arrived at or the witnesses tend to forget after a long spell of time. Till the legislator is convicted, he continues to be member of
the Legislature. Moreover, sometimes, in the case of conviction, the higher court stays the operation of the sentence till the decision of the appeal, in which case also the person is assumed to be innocent. It was contended in a Supreme Court case (PUCL v Union of India, JT 2003 (2) SC 529) that 700 members of the states' Legislative Assemblies and 25–30 Members of Parliament had criminal records. (MPs can only be prosecuted with the permission of the Speaker) The intelligentsia, activists, and opinion makers are seized of the problem. The civil society and a recent law have taken the first step by which the candidates in future will have to disclose their criminal record. An order passed by the Supreme Court of India on 2 May 2002 in Civil Appeal No. 7178 of 2001 (Union of India vs. Association for Democratic Reforms and another) has directed that the Election Commission shall call for information on affidavit from each candidate seeking election to the Parliament or State legislature regarding criminal record, if any, of the candidate, his assets, liabilities and over dues to the Government or any public financial institution, and educational qualifications of the candidate. In the last General Elections to the 14th Parliament held in April/May 2004 the Election Commission of India fine-tuned the nomination form so that details about assets, liabilities and criminal antecedents of a candidate can come out more clearly than at present and leave little scope for concealing information.51

Bureaucratic Corruption in India: Its Various Forms

The all-pervasive incidence of corruption in Indian administrative system presents a picture of corrupt officials wheeling and dealing in bribery, extortion, nepotism and misuse of official position. It has given rise to a public misperception that unless proven otherwise a government servant in all probability is a corrupt official.

It must be noted however, that bureaucratic corruption in the Third World tends to differ from that of the industrialised countries in its scope and intensity. Where goods and services provided by the public authorities are far below the demand for them, as in India, it is not uncommon to see people paying a small sum to a minor official for reserving a seat in public transportation, for being admitted in a hospital, for getting a telephone connection or license, or for meeting any other administrative need. Here, scarcity of public resources and almost unlimited demand by the community give rise to such corrupt and unethical practices. As the craving for material goods and benefits continues to increase, prices for such goods and services rise. Public officials who are in charge of the provision or regulation of such services will continue to face temptation, and some may try to avail themselves of whatever opportunities their position provides them. Their actions, in turn, tend to conform the prevailing public view that officials are generally corrupt. And, of course, nothing is so corrupting as a suspicion of corruption.

Other factors causing corruption and unethical conduct among public servants are job scarcity, insufficient salary, and the ever-increasing powers being given to them by the State to regulate its economy and social affairs. The evolution of civil societies was marked by the regulation of human conduct and inter-personal and inter-institutional dealings within a framework of civil, criminal and other laws and the society at large was expected to conform to given value systems and codes of conduct. But the regulations and systems which were evolved to impart objectivity and fairness to the mechanisms of governance did not invariably achieve this objective. This increased regulatory authority creates various opportunities for money-making as, for instance, in connection with development, planning permits, contracts for construction, granting import-export licenses, collecting customs and other duties and strict accounting for foreign exchange. Experience has shown that the exercise of regulatory authority has actually contributed to an increase in corruption in various spheres of administrative control and enforcement.52

Administrative corruption in India has also been encouraged by the pervasive spread of the soft-state syndrome, a rigid bureaucracy, exclusivist process of decision-making in an over-
centralised government, abysmally low pay of civil servants and lack of stringent and effective internal control mechanism. According to N. Vittal, a former Central Vigilance Commissioner, Government of India, corruption flourishes in Indian system because of five basic reasons: (a) scarcity of goods and services (b) red tape and complicated rules and procedures (c) lack of transparency in decision-making (d) legal cushions of safety that assume everybody is innocent till proved guilty, and (e) tribalism or biradari among the corrupt who protect each other. Corruption is a low risk, high profit activity. He identifies five major players in corruption—the neta, babu, lala, jhola and dada—the corrupt politician, the corrupt bureaucrat, the corrupt businessman, the corrupt NGO and the criminal.

A consequence of a valueless polity governing the country has been the continuing erosion of the integrity of the civil services. To achieve their short-term objectives, the political executive has been deploying pliant functionaries, handpicked on considerations of their caste, community or political affiliations, to man key assignments. This has resulted in the cadres of the various civil services, including the police and judicial services, being demoralised and their functioning adversely effected. There are no more any models—unknown persons of dubious distinction can get appointments to the highest posts in the country.

A few recent major cases are given as illustration of patterns of Bureaucratic Corruption in India:

- A Chief Electrical Inspector Punjab State Electricity Board, was arrested on 28 May 2003 for possessing assets worth Rupees 28.2 million, against the Rupees 624,000, he would have accumulated in two years, had he not spent a single penny from his legitimate sources of income. It was revealed that he was taking bribes to ensure uninterrupted power supply and certifying less power (at lower loads) than they actually were and taking cut for it.

- In June 2003, the CBI arrested a personal assistant to the Union Minister for Finance, for accepting a bribe of Rupees 400,000 from a Deputy Commissioner of Income Tax, for an assured transfer. PA’s audacity was incredible. Besides Rupees 6.9 million in cash, the CBI also recovered blank cheques worth Rupees 8.5 million, indicating clearly that corruption has almost been institutionalised in the Indian system.

- A Vice Chairman of the Delhi Development Authority (scandal commonly known as DDAgate), was arrested on 26 March 2003 by CBI for showing undue favours to builders DLF Universal in exchange for Rs. 11 million. While his share was Rupees 5 million, another IAS officer benefited by Rupees 3.6 million. Both officers are under suspension at present and the probe is on. Mr. Sharma has since been released and is being reinstated.

- An Adviser to the Administrator, Chandigarh (Chandigarh is a Union Territory, the Head of the city of Chandigarh is designated as an Administrator) A CBI raid in May 2000 unearthed Rupees 3.0 million in cash, fixed deposit worth Rupees 4.6 million, gold jewellery worth Rupees 1.32 million, three vehicles and a one acre plot in West Delhi with a Maruti workshop. It also recovered a 700 sq yard plot, a 20 room building on a 300 sq yard plot, a DDA flat, the ground floor of a house, a commercial flat, a seven acre farm, a computer institute, a built-up farm house, two shops, a house on a 274 sq yard plot and yet another house — all of them spread over south and central Delhi. A petrol pump on a 5.5 hectares farm (both in Moradabad, Uttar Pradesh) plus documents of eight other immovable properties were also discovered. Purchase price (not market rates) of property and land as established from recovered documents - 30 million. No action taken so far and still in service.
• A former Chief Excise Commissioner, Delhi, was arrested in 2001 for taking a Rs. 1 million bribe from Flex Industries. CBI found Rs. 800,000 million in cash and bank deposits, two flats in Ghaziabad and a plot in Haryana, and 10 bank accounts. At present he is under suspension pending charges.60

• A former Chairman, Punjab Public Service Commission, caught red-handed while taking a bribe of Rupees 500,000 million to promote an excise inspector to the Punjab Civil Service. State Vigilance Bureau unearthed ill-gotten wealth of Rupees 280 million from him, He is on bail facing trial at present and is retired from the service.61

• A former Chairman, Central Board for Excise and Customs, was arrested in April 2001 by CBI for accepting a Rupees 200,000 million bribe through his son and for amassing ill-gotten wealth. He is alleged to have helped a Chennai-based trader get a Rupees 7.5 million duty drawback.62 Ironically he was arrested on corruption charges only a few weeks before he was supposed to address a major international conference in Den Haag (Netherlands) on “Anti-Corruption Strategies in the Department of Excise and Customs in India”, sponsored by the Netherlands Ministry of Justice in May 2001.

• A former Chairman of Maharashra Public Service Commission, Mumbai, State of Mahrashara and a former Vice Chancellor of the University of Bombay was, before his appointment to the UPSC (the Union Public Service Commission, a constitutional body to recruit for service and posts in the Union Government), accused of manipulating a Maharashtra Public Service Commission recruitment drive so that candidates who paid Rs. 300,000 got cleared in the examination. He is presently in jail awaiting trial.63

• A Central Board of Investigation (CBI) inquiry against a Head of State College Tribunal, Punjab, revealed that he had amassed assets worth Rupees 13.5 million by misusing his position as principal secretary to the then Chief Minister of Punjab,64 against whom a number of cases of Inquiries and investigations relating to corruption are being instituted by the present government.

• A former Director General of the National Crimes Records Bureau (NCB) and a 1966 batch IPS Officer of the Haryana Cadre was fined Rs. 2.5 million by the Customs authorities. Investigations had revealed that he had been running two companies — registered in the names of close relatives – and utilized his official position to under-invoice the import of metal scrap. Despite the raids and investigations that appeared to show that the Director was involved, the Union Home Ministry refused to suspend him. It was only after the DRI (Directorate of Revenue Intelligence) tapped his phone and recorded him planning to plant an AK-47 on the investigating officer and have him arrested, that the Ministry allowed the issue of suspension order.65

• A deputy Chairman of Chennai Port Trust amassed wealth to the tune of Rupees 6.6 million. Based on investigations by the state vigilance department, the Chief Vigilance Commissioner advised a major penalty against him in November 2002. But no action has been taken, and he is still serving.66

• An IAS officer was charged with having wealth disproportionate to known sources of income Rupees 20 million (alleged to be an illegally earned income) A CBI raid in April 2002 revealed that he had 24 properties spread all over Delhi, Ghaziabad, Noida, Greater Noida, Loni, Vellore and Bangalore. Cash, bank deposits and gold worth Rupees 2 million were recovered from his possession. No action seems to have taken against him. He is now retired.67
• An IAS officer, colluded with transport contactors to short supply rice from Food Corporation of India warehouses to drought affected areas. He allegedly allowed a contractor to short supply as much as 574 tonnes of rice worth Rupees 2 million. CBI investigated him, the CVC sanctioned prosecution in November 2002, but no action has been taken. He is still in service.

• An IRS officer, was caught accepting bribe of Rs. 50,000 as Commissioner (Appeals), Income Tax (IT), Mumbai. Assets worth Rs. 21 million were recovered, including flats in Delhi, Ahmedabad, Indore, plot in Agra, 22 expensive watches. He operated 13 bank accounts, travelled 16 times with family to places like the US, UK, Canada, UAE, Hong Kong, Thailand, Malaysia and Singapore. At present he is under suspension, facing charges.

• Recently the CBI found FDRs (fixed deposit receipts of the bank) worth Rs. 10.5 million, a house in South Delhi, six flats in Mumbai (in Bandra, Juhu Tara Road, Rizvi Heights), two offices in Mumbai (Mittal Chambers), a house in Mohali, three farms and several shops in Maharashtra in the name of a senior Indian Revenue Service Officer. At present he is under suspension facing charges.

Corruption at the Grassroots

Corruption in India has penetrated its soil, percolated down to the lowest levels of administration, permeated its culture, pervaded its economy, spread on to the academic institutions, and has poisoned its polity, and polluted its society. Once confined only to the macro level, it has very rapidly engulfed the micro regions, not sparing even the Municipal bodies and other local urban institutions, and remote villages and backward hamlets from its grips. With the establishment of the Panchayat (decentralised grass roots level institutions established for rural development and accorded constitutional status by the 73rd Amendment of the Constitution) system and the introduction of the scheme of Legislators’ Local Area Development Funds, the chain of corruption connecting the capital and the countryside, the Parliament and the Panchayats, the elites and the poor is now complete. "Development schemes are now making the corrupt more corrupt, adding new layers of corruption, and compelling the common man to become a party to corruption. New shades of corruption therefore have emerged on the rural scene and they have cast their shadow on the grass-root-touching the lives of those who are struggling for their very survival. Corruption has been woven into the very warp and weft of the rural fabric."

Two recent patterns of corruption at grass-roots levels are:

Misuse of Legislators’ Development Funds

In India in recent times there have been allegations that party leaders have been demanding money from the elected members of their party to the State or National Legislatures as a sort of a cut from their Local Area Development Funds (MPLADS) to be deposited to the party coffers. Under the MPLADS programmes, legislators get money from the public exchequer to fund projects in their constituencies. Each Member of Parliament and Member of Legislative Assembly get Rupees 20,000,000 ($ 450,000) every year. The Comptroller and Auditor General of India gave a report on the progress and utilization of the funds in the scheme by conducting sample checks in 241 out of 786 constituencies of both Houses of parliament. The CAG pointed out various irregularities in the implementation of the scheme as these funds were utilized in contravention of the Guidelines of the Ministry of Planning and Program Implementation. In this connection, Public Interest Litigation has been instituted in the Supreme Court in July 2003 seeking the cessation of the scheme, and legal action with regard to the misuse of funds. Some party leaders are alleged to have demanded cuts from these kickbacks for party funds. It has become another issue of grave political corruption in India.
Recently (March 2003), in the state of Uttar Pradesh, its then Chief Minister, Mayawati, was accused by her political opponents of demanding a cut from her legislators from their Local area Development Funds to be deposited in Party (Bahujan Samaj Party) coffers. She is also alleged to be involved in the Taj Mahal Corridor scandal. The Supreme Court has directed CBI to register a criminal case against her and investigate into the visible and invisible assets acquired by her. A FIR (First Information Report in the Police Station) has since been registered in the CBI against her. She has since then won elections to both Lok Sabha and Rajya Sabha (the two Houses of Union Parliament) held in May-June 2004. She has resigned her Lok Sabha seat, but continues to be a member of Rajya Sabha.

Recently in one instance, a "friendly" SP was named in the Comptroller and Auditor General's Report (March 2001) for diverting funds amounting to Rs. 2.697 million. Meant for facilitating Central Poll observers for the 2001 state assembly elections, it was used to wine and dine and shower on them several household appliances, obviously to make them look the other way from allegations of electoral malpractices. No inquiry was initiated against him despite the CAG indictment. He was recently promoted as Deputy Inspector-General.

**Combating Bureaucratic Corruption in India: A Brief Review**

Being aware of the problem of corruption in administrative system, the Government in India has from time to time adopted various means to check it. In the pre-Independence days, during the World War II, the then British Government in India had set up a special police force at the Central level, known as "The Delhi Special Police Establishment (DPSE) in 1941, in order to check the war time corruption confined to lower or middle level functionaries of certain departments actively involved in war supplies and contracts. This was given statutory status by enacting the DSPE Act 1946. With the creation of the Central Bureau of Investigation (CBI) in April 1963, the DPSE became a part of this larger anti-corruption police organisation. Meanwhile more legal powers to punish corrupt public servants were secured by the government with the enactment of "Prevention of Corruption Act 1947". These two instruments coupled with Commission of Inquiry Act of 1952 were by and large considered adequate to cope up with the degree and level of corruption prevalent at that time. However, over the years there has been a sharp decline in the efficiency and efficacy of the CBI and questions have been raised about its impartiality and competence as an investigating and a prosecuting agency.

In 1950, the Government of India had appointed A.D. Gorwala, a senior retired member of the Indian Civil Service (ICS) who in his Report on Public Administration, submitted in 1951, mentioned that "quite a few of nations’ ministers were corrupt and this was common knowledge.... That the government went out of its way to shield the corrupt".

The Report of the Santhanam Committee (1964) and the Administrative Reforms Commission (1967) recommended the creation of the institution of Lok Pal at the Centre and the Lokayuktas in the States to investigate alleged cases of corruption against ministers. As mentioned earlier elsewhere, while the various state governments in the last three decades have experimented with the constitution, abolition, and reconstitution of Lokayuktas, the Centre has yet to establish the institution of Lok Pal (despite the six abortive efforts in 1968,1971, 1977, 1989 and 1985 and the Lok Pal Bill of 1996, the latest reintroduction of the Lok Pal Bill in the Lok Sabha on 3 August 1998, and the promises of the Governments led by the BJP in the past three years ). The failure of the Lokayuktas, who had often become the victim of politics and their total ineffectiveness to check the monstrous growth of corruption is too well known and needs no documentation.

The high level of corruption in administration was supposed to be tackled by an independent Central Vigilance Commission (CVC), created through a Government resolution of 11 February
1964, but whose tenure kept on changing from initial 6 years to 3 years (1977) and again to 5 years (1990), making it weaker and more vulnerable. The jurisdiction of the CVC was extended in 1986 to cover the staff and officers of the Public Sector Undertakings. Various Ministries and Government offices also established individual Vigilance Departments to keep a track on the complaints of corruption emanating in their offices. However, despite a large number of cases of alleged corruption investigated and reports submitted to the legislature, only a small percentage of cases have been recommended for prosecution. In pursuance of the directions of the Supreme Court in the Jain Hawala Case (Vineet Narain and Others vs. Union of India and others) to confer statutory status upon the Central Vigilance Commission, the Government promulgated the Central Vigilance Ordinance, 1999 on 8 January 1999, but the bill replacing the above ordinance lapsed due to the dissolution of the Lok Sabha in April 1999, but the Commission continued to operate under the Government of India Resolution No. 371/20/99-AVD dt 4th April 1999. The Government has initiated action to reintroduce the Central Vigilance Bill in the present Lok Sabha.

In addition to the above mentioned efforts and simultaneous use of the various Inquiry Commissions appointed by the Government during the last fifty years of the Republic, there has not been any concerted, coordinated, effective and continuous fight to prevent corruption or prosecute and punish the corrupt, a miniscule of successful cases of prosecution and punishment notwithstanding.

In 1997, on the 50th anniversary of India's Independence, the then Prime Minister I.K. Gujral made an earnest call from the ramparts of the Red Fort to root out corruption and followed it up by the formation of a special cell in the Prime Minister's Office (PMO) to play the role of a watchdog over the investigating agencies. However, it did not have much impact in bringing the black sheep in the bureaucracy to book. In a survey carried out by The Hindustan Times in certain key states like Tamil Nadu, Assam, Punjab, Bihar, Uttar Pradesh, Jammu & Kashmir, Haryana, Maharashtra, and Andhra Pradesh, reports revealed that although an increasing number of Indian Administrative Service (IAS) and Indian Police Service (IPS) officers figured in corruption cases, the wheels of justice were not moving fast enough to punish the guilty. Procedural delays, political patronage and resistance from within the bureaucracy appear to be helping corrupt officials evade the long arm of the law.

The CVC Website

A former Chief Vigilance Commissioner, N. Vittal, (September 1998 to September 2002) had adopted a three-point plan to check corruption—simplification of rules and procedures, empowering the public and bringing greater transparency in publishing the names of those officials who misuse their authority and act against public interest, and the strategy of effective punishment. In his zeal to fight corruption, when in office, he also took the advantage of modern information technology and created a website for the CVC and started by posting the names of 85 IAS and 22 IPS officers against whom the CVC had, since January 1,1990 sought criminal/departmental proceedings for major penalties. Although the blackened faces on the Net sent shivers down the bureaucratic spines, few had the gumption to stand up and protest. The two associations of IAS and IPS officers sat tight-lipped. On 10 February 2000, the Punjab State Officers' Association passed a unanimous resolution condemning the CVC’s action and demanding an apology from him for the "serious misdemeanour", but no other state association responded to the lead. Meanwhile Vittal further escalated the battle by posting the names of another 78 Central Service Officers of questionable integrity, in the two revenue wings of income tax and central excise and customs. Added to the list were officers belonging to the Indian Forest Service. Rubbing salt into the wound, Vittal also sent a circular to each of the 35 Central ministries and each Central Public Sector Unit, nationalised bank and insurance company asking for suggestions on how to develop a system of ranking them on a "Corruption Perception Index" as a result of the World Bank's observation that the Delhi
Development Authority is the most corrupt organisation in India. Every year this list could be published, which would possibly help bring down the level of corruption. Although investigations against politicians are presently beyond the jurisdiction of the CVC, yet Vittal had begun a crusade against tainted politicians by asking the Income Tax Department to open tax-related allegations against them. This had made many politicians in all political parties jittery who condemned Vittal’s references and observed that the sanctity of the CVC would get diminished by such actions.80

However, the CVC felt quite satisfied with his decision of the website. For in it he saw a psychological impact on those who had committed any financial irregularity in their official dealings. It had created public opinion against extraordinary delays in initiating action against corrupt officials. The Government not reluctant to keep these tainted civil servants in sensitive positions as was being done till then. Finally, those who were on the right side of the Laxman rekha (a kind of barrier) of corruption will not cross it because they were afraid that they would also be caught on the web.81 Encouraged with the success, the CVC contemplated to launch a new programme to identify the 10 most corrupt officials every year with a view to keeping a watch on the conduct of those whose integrity was suspect. Through this exercise, it was hoped that the corrupt would know that they were being exposed and watched. This is expected to have a healthy deterrent effect.82 (Vittal retired in September 2002. The website was discontinued after his retirement on the ground that it was not fair to the officer’s reputation unless he had been indicted and a penalty awarded to him. It was therefore ceased in the interest of fair play.)

Corruption in India: The Three Phases of Public Perception

Corruption in India has passed through three different stages “(a) gaining legitimacy (b) widespread indulgence, and (c) shameless defence”.83 Apart from other social and economic compulsions, it has grown due to a steep fall in the standards of political leadership and an overall decline in the moral and ethical standards in the society.

The early years of the Republic were the days when the lingering memory of the freedom movement and the high standards of rectitude in the matters of handling of public funds helped preserve some norms of public conduct in the business of the government. Things began to change thereafter, particularly after the death of Prime Ministers Jawaharlal Nehru and Lal Bahadur Shastri. Under Mrs. Indira Gandhi, the standards of public morality had begun to decline that reached the lowest ebb under Rajiv Gandhi and his successors.

Thus corruption in India has become a way of life in all fields of activities - more so in the field of politics. It has not only gained a widespread legitimacy and indulgence, but is now being defended shamelessly. Prime Minister Indira Gandhi's statement on corruption in the late 1960s that "It was a worldwide phenomenon" heralded that dawn of the first stage of indulgence. It coincided with the enormous growth of black money (according to one estimate it accounts for 50 percent of the reported national income) and the emergence of money politics as a major factor in public life. When in the past, a scandal like Mundhra deal (in which the Chairman of a Nationalised undertaking, the Life Insurance Corporation was influenced to invest government funds in shares of Mundhra firms which was on the verge of collapsing) appeared in the press, prompt action was taken by the Parliament. The Finance Minister, the Finance Secretary and the Chairman of the Life Insurance Corporation were all made to resign. In the new era (in late 1960s) when Tulmohan scandal case erupted in Parliament, no action was taken. Similarly, in the Nagarwala case, no action could be taken, as neither Nagarwala nor the police officer investigating the case lived to tell the tale.84

The next stage was one of widespread indulgence. Corruption now became the hallmark of Indian politics and administration. Its tentacles spread everywhere and tainted the reputation
of even the Head of the Government. The Westland Helicopter deal, the HDW submarine deal, (the Government of India purchased two sub-marines from a West German company under a contract signed in 1981. A seven percent commission working out to Rupees 300 million was paid to the Indian agents of HDW under the terms of an open-ended agreement. No body involved has been brought to book.) the Bofors deal and the ‘suitcase’ allegations are well known.85

The last few years have seen the emergence of shameless defence of corruption, when attempts are being made to cover it up. Examples abound, the Foreign Minister of India delivered a note to his counterpart in Switzerland asking him to hush up the Bofors case. When this became known, he stated in Parliament that he was not aware of the contents of the note nor did he remember who had given him that note. A judge of the Supreme Court is indicted for blatant corruption after the judicial security at the Supreme Court but is bailed out from the impeachment in Parliament by the ruling party. In the securities scandal, a scammer (a person who indulges in fraudulent activities, or in scams) makes serious allegations against the Prime Minister which are of course denied but no criminal action for defamation is taken against the former. The Law Minister lends some credence to the scammer’s allegation by saying that he had been frequently visiting his cabinet colleagues with suitcases. A Governor is found involved in another St. Kitts type forgery implicating a senior opposition leader, but the whole matter is soft-pedalled. And when the opposition parties combine to table a motion of no confidence in Parliament, making corruption the prime issue, the Prime Minister’s reply to the motion is totally silent about corruption.86

Thus corruption in political life in India has assumed almost criminal proportions and has ceased to provoke also shock and disgust as it would have three decades ago.87 Corruption exists not only in the ruling party alone. But has also infected the opposition and all other political parties in equal measures. Not even the ‘Left’ enconced in its closely guarded precincts can claim to be immune to it. Some of the popular parties of the regional level seem to be wallowing in corruption totally unashamed and uninhibited. Inevitably, the administrative machinery including the top bureaucrats in many places have practically adjusted themselves to a corruption-laden regime. In fact corruption at the political level goes hand in hand with corruption at the bureaucratic level.88

Political corruption has invariably resulted into a sustained and systematic politicisation of the bureaucratic structure. It has liquidated the command and control structures of the services, leading to indiscipline, inefficiency and unaccountability among the ranks. Being used as tools for executing unlawful orders and as agents to collect funds for their political masters, a progressively growing number of employees in every sphere of functioning have amassed fortunes through corruption. As a result of the politicisation of the administrative machinery, the law-enforcing agencies have got mixed up with the very elements whose unlawful activities they are expected to check and control. As the latter enjoy the patronage and protection of politicians, a frightening triangular nexus has evolved between criminals, government functionaries and politicians. In addition political instability and the progressive decline in the values of the polity have over the years seen the degradation of the Parliamentary system, damage to the functioning of the Cabinet, disregard of the Constitution and the rule of law, and a continuing erosion of the integrity of the civil service.
The Presidential Function

The President of India is the head of state as well as the constitutional head of the executive branch of the government in India (Art 53). All executive action is expressed to be taken in the name of the President (Art 77). He is elected in directly by an electoral college constituting of elected members of Parliament and State Assemblies through a system of Proportional Representation for a period of five years and cannot be removed unless impeached by the Houses of Parliament for violation of the Constitution (Art 61). He is the formal head of the State like the British monarch. However, there are constitutional limitations on his power.

- The executive power is exercised by him in accordance with the ‘Constitution’ (Art 53).
- There is ‘a Council of Ministers with the Prime Minister at the head to aid and advise him, who shall, in the exercise of his functions, act in accordance with such advice’ (Art 74).
- Ministers can be appointed by him on the advice of the Prime Minister (Art 75).
- He may require the Council of Ministers to reconsider a particular case, and if the Council adheres to their advice, he shall have no option but to act in accordance with that advice (Art 74 Proviso).

Although he is not the ‘real’ head of the executive, yet all officers of the Union are subordinate to him and he has a right to be informed of the affairs of the Union (Art 78).

He has the power to appoint and remove (1) the Prime Minister, (2) other ministers of the Union, (3) the Attorney-General, (4) the Comptroller and Auditor-General, (5) the Judges of the Supreme Court, (6) the Judges of the high Courts of the States, (7) the Governor of a State, (8) the Finance Commission, (9) the Chairman and members of the Union Public Service Commission, (10) the Chief Election Commissioner and other members of the Election Commission, (11) other Commissions like the Scheduled Caste and Scheduled Tribe, Official Language, etc. These powers are not arbitrary but are to be exercised in accordance with various provisions pertaining to the mode of appointment of these officials prescribed in the Constitution.

The Supreme command of the Defence Forces of the Union is vested in him, but the exercise thereof is regulated by law {Art 53(2)}. Since all appropriations for expenditure on defence forces shall be voted by the Parliament. Therefore, the power to declare war or peace is regulated by the Parliament.

The legislative power of the President extends to summoning, prorogation, and dissolution the Parliament (Arts. 85, 108), delivering the Opening Address to both Houses of Parliament, nominating Members to the House, and laying reports before the House and giving assent to bills.

He also has the power to grant pardons, reprieves, respites or remissions of punishment to suspend, remit or commute the sentence of any person convicted of any offence (Art 72). This power is exercised by him on the advice of the Government. The object is to correct any judicial error. Though this power is not open to judicial review, yet the Supreme Court can interfere if the decision is irrational, arbitrary, discriminatory or mala fide.
Besides the above, he can proclaim an Emergency on the ground of threat to security of India or any part thereof, breakdown of the constitutional machinery in any state of India, or threat to financial stability (Chapter XVIII of the Constitution).

The Vice-President

The Vice-President is elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with a system of proportional representation by means of the single transferable vote through voting by a secret ballot. The term of office is for five years. He is ex-officio Chairman of the Council of States. He discharges the functions of the President during the latter’s temporary absence, illness, or any other reason by which he cannot discharge his functions.

The Prime Minister

The duties of the Prime Minister, besides presiding over the meetings of the cabinet and council of Ministry are:

- To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;
- To furnish such information relating to the administration, as the President may call for; and
- If the President so requires, to submit for the consideration of the Council of Ministers any matters on which a decision has been taken by a Minister but which has not been considered by the Council (Art 78).

The Council of Ministers

The Cabinet system is implied in the Constitution. The Leader of the party in majority or of a coalition of parties commanding majority in the Parliament is appointed to be the Prime Minister by the President. Other ministers are appointed by the President on the advice of the Prime Minister. The minister holds office during the pleasure of the President. The Council of Ministers is collectively responsible to the House of Parliament.

The number of Ministers in the Cabinet is not specified in the Constitution. It varies in accordance with the needs of the situation and the decision of the Prime Minister. Ministers may be chosen from either House of Parliament. The minister may appear in both the Houses, but he may vote only in the House to which he belongs. A person who is not a member of any House can be appointed to be a minister, but he shall have to get elected to any of the House within a period of six months (Art 75). The government consists of a number of ministries and departments. Their number depends upon the volume of work, importance of the item, political expediency, and orientation with regard to the urgency of the project. These are created by the President on the advice of the Prime Minister. The work is then conducted in accordance with the Government of India (Allocation of Business) Rules, 1961 (Art 77). The minister is assisted by the Secretary to the Government of India, who is ordinarily an officer from the Indian Administrative Service.

In August 1947, there were only 18 ministries; but in January 2003, these increased to 51 ministries and 51 Departments, including 4 independent Departments of Atomic Energy, Ocean Development, Space, and development of North Eastern Region; President’s Secretariat, Prime Minister Office, Department of Disinvestment, and the Planning Commission.
States

The executive arrangement in the States is analogous to that of the Union. The administration in conducted in the name of the Governor, with a Chief Minister and a Council of Ministers who act in the same manner as their Union counterparts. Similarly, the States also have the institutions of the same type as the Union Government has.

Conflict of Interest/Financial Interests

The stipulations regarding conflict on interest are contained in the Constitution. These are implied in the eligibility for election to the position of the President (Art 58), the Vic-President (Art 66) that they shall not hold 'any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments'. A member of any House of Parliament 'shall be disqualified ... if he holds any office of profit' (Art 102). By implication, this applies to the prime Minister, and other members of the Cabinet. Since they have to be Members of Parliament This rule also applies to the functionaries of the State governments like the Governor (Art 158), the Chief Minister, the members of cabinet, and the Members of the Legislative Assembly (Art 191).

The Committee on Ethics of the Parliament presented their Second Report to the Rajya Sabha (Upper House) on 13 December 1999. The Lok Sabha (House of People) also presented its Second report to the House on 20 November 2002. They have recommended as follows:

- **Register of members’ interest.** Every member is required to furnish information annually relating to any pecuniary interest or other material benefits that he receives. This is to include assets and liabilities, remunerated employment, shareholding and directorship, consultancy, sponsorship, etc. to the Parliament Secretariat that operates under the control of the Speaker of the House of People or Vice Chairman of the Council of States.

- **Declaration of interests.** A member having direct or indirect interest in a matter being considered in the House or a Committee is required to declare the nature of such interest notwithstanding any registration of interest in the register and desist from participating in any debate or vote taking place in the House before making such a declaration to the Speaker of the House of People or Vice Chairman of the Council of States.

- **Procedure for making complaint.** A person making a complaint the Speaker or the Vice Chairman) must declare his identity and submit supporting evidence, documentary or otherwise, to substantiate his allegations. However, the identity of the complainant could be kept secret, if requested by the complainant and agreed to by the Ethics Committee.

- **Procedure for inquiry.** A prima facie case would be taken up for examination and report. The Committee would also frame rules for regulating the procedure for conducting inquiries either by it or an officer under its authority.

- **Penalties.** If the Committee finds that a member had indulged in an unethical behaviour or misconduct or contravened any rule of the Code, it could recommend to the House for imposition of any of the penalties like censure, reprimand, suspension from the House for a specific period, or any other penalty considered appropriate.

The recommendations are in operation in spirit, though these have not been formally accepted. However, in a recent case, the Supreme Court, while acquitting J. Jayalalitha in a corruption case ordered the return of land to the corporation from whom she was alleged to have purchased for her private company on the ground breach of Code of Conduct. (R. Sai Bharathi v J. Jayalalitha; 2004 CRI. L.J. 286). The Court made a reference to the Code of
conduct for Ministers, issued in G.O.Ms. No 1350, 26-7-1968 by the Government of Tamil Nadu in the name of the Governor enjoins that a Minister, so long as he remains in office, shall ‘refrain from buying from or selling to the Government, any immovable property except where such property is acquired by the Government in usual course’. Since the Code does not have a statutory status and is not enforceable in a Court of law, it cannot be construed to impose a legal prohibition against purchase of Government property so as to give rise to a criminal offence. However, the Court observed, ‘Officers even holding posts like a Railway Property Keeper or a Cattle Pound Keeper or a Nazir who is put in charge of the sale of properties in a Court auction cannot purchase the properties over which they have control ... the fact that the Chief Minister of the state is interested in purchasing some properties, the bureaucracy will be over-enthusiastic to see that the sale goes through smoothly and at a price desired by the Chief Minister... At any rate it is plain that such conduct is opposed to the spirit of the Code of conduct if not in its letter. Morally speaking, can there be one law for small officials of the Government and another law for the Chief Minister? In matters of such nature, is the Code of conduct meant only to be kept as an ‘ornamental relic’ in a museum but not to be practised? These aspects do worry our conscience’. The Court thus ordered that ‘she must atone for the same by answering her conscience ...not only by returning the property to TANSI unconditionally but also ponder over whether she had done the right thing in breaching the Code of conduct and giving rise to a suspicion that rules and procedures were bent to acquire the public property for personal benefit’.

### Accountability

The important policy decisions are made by the Cabinet that meets frequently. Its decisions are made public through the media either by the Prime Minister or by the official spokesman of the Government. Proper records of the Cabinet meetings are kept.

The government is held accountable for its decisions. During the session of the Parliament, the members ask questions during the Question Hour. These are forwarded to the Minister in charge who replies after due preparation. Then during the Zero Hour, the members are free to raise important issues of the urgent nature in order to attract the attention of the government on the matter. There is freedom to raise issues, with the permission of the Speaker of the House and disciplines of the House.

### Legislature

The supreme legislative body of the Indian Republic is the Union Parliament, which comprises of the President of India (who has the power to summon or prorogue either Houses of Parliament or to dissolve the Lok Sabha on the recommendation of Prime Minister), and the two Houses: Lok Sabha (House of People) the Lower House, and Rajya Sabha (Council of States), the Upper House. The maximum strength of the Lok Sabha – the directly elected Lower House - envisaged by the Constitution is now 552 (530 members to represent States, 20 to represent Union Territories (and no more than two members of Anglo-Indian Community to be nominated by the President, if, in his opinion that community is not adequately represented in the House). At present it has a total strength of 545 (530 members directly elected from the states, including 79 members from Scheduled Castes and 41 members from Scheduled Tribe, and 13 from Union Territories). Rajya Sabha at present has 245 members. Of these 233 members represent the States and the Union Territories and 12 members are nominated by the President.

The election system to Lok Sabha is direct on the basis of single vote, single constituency, first past the post system. The Election to the Rajya Sabha is indirect. Rajya Sabha at present has 245 members. Of these 233 members represent the States and the Union Territories and 12 members who are distinguished citizens, achievers in their respective areas like academicians,
scientists, artists, or persons of excellence, are nominated by the President. In accordance with Article 80 of the Constitution, the President nominates twelve members who are persons having special knowledge or practical experience in respect of such matters as literature, science, art, and social service. This is done on the advice of the government, that is, the recommendations of the Cabinet.

Although there are reserved constituencies for the members of the Scheduled Castes and Scheduled Tribes for election to the Indian Parliament, yet reservation of seats for women in the Parliament has been a controversial issue, which has been under discussion for quite sometime both on the floor of the House and outside, but no consensus or agreement on the issue has reached so far.

The parliament has the cardinal functions of legislation, overseeing of administration, passing of budget, ventilation of public grievances and discussing various subject matters like developmental plans, international relations, and national policies. Even in normal times, the President can under certain circumstances assume legislative powers with respect to a subject falling within the sphere exclusively reserved for the States. Parliament is also vested with powers to impeach the President and to remove the Judges of the Supreme Court, High Courts, the Chief Election Commissioner and the Comptroller and Auditor General of India. However, unlike many other systems, like that of the US, the Parliament in India has no power to endorse or ratify any appointments to the various posts in the executive branch of the government

Parliament has also no role in appointing or removing the judges. Whereas the appointment of the Judges of the Supreme Court is made by the President after consultation with the Judges of the Supreme Court and the High Courts in the states as the President may deem necessary (Article 124), the appointment of a Judge of the High Court is also made by the President after consultation with the Chief Justice of India, the Governor of the State, and Chief Justice of the High Court concerned. (Article 217) A Judge of the Supreme Court or the High Court 'shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of the House and a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity’ (Article 124(4)). 'The Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge’ (Article 124(5)). Therefore, in view of the strict procedure for impeachment, it is not easy for the Parliament to remove a Judge as this procedure has not ever been used.

Parliament performs a major function to exercise control over the executive and make it accountable to it. Art. 75 (3) of the Constitution makes the Prime Minister and his Council of Ministers collectively responsible to it. The other ways in which the Executive is held responsible to the Parliament are:

- Through questions put to the ministers by the MPs in the Question Hour, which is the most lively and an important part of parliamentary proceedings.
- Through reviews of performance, programs and policies and the current operations of the government ministries and departments, public enterprises and other public bodies and institutions at the time of sanctioning their annual budget estimates, and through the scrutiny of their audit reports by the Public Accounts Committee of the Indian Parliament.
- Through various motions like Call Attention Motion, Adjournment Motion, Cut Motions during budget discussions, Short Term discussions on matters of urgent public importance, and matters raised in Zero Hours. In a sense Zero Hour is highly significant in that it provides a method of raising important matters that have developed suddenly. Although the opposition’s extreme tactics in recent
times to disrupt the proceedings of the House had caused public revulsion, yet no one has suggested that the right of the opposition to mount an offensive against the government be curbed.90

- Through various Committees of the Parliament. Both Houses of Parliament have a similar Committee Structure with a few exceptions. Broadly speaking Parliamentary Committees are of three types: Standing Committees, Ad Hoc Committees and now Departmentally-related Committees. While the Standing and Departmentally related Committees are elected or appointed every year or periodically, and their work goes on more or less on a continuous basis, the ad hoc committees are appointed for specific purpose, as and when the need arises, and they go out of existence, as soon as the task assigned to them is completed. Among the Standing Committees, the three Financial Committees— Estimates Committee, Public Accounts Committee and the Committee on Public Undertakings constitute a distinct group and they keep a continuous vigil on government expenditure and performance. While members of the Rajya Sabha are associated with Committees on Public Accounts and Public Undertakings, the Estimates Committee is composed of members drawn only from the Lok Sabha. The executive powers of these committees to collect information from departmental witnesses and the right of the Public Accounts Committee to be guided by the Comptroller and Auditor General in its activities make them function as the eyes and ears of the legislature in financial and economic matters.

Besides the above three financial committees, the Indian Parliament, since 1993, has 17 other Departmentally related Committees whose functions are: (a) to consider the Demands for Grants to various ministries/departments of government of India and make reports to the Houses (b) to examine such Bills as are referred to the Committee by the Chairman, Rajya Sabha, or the Speaker, Lok Sabha, as the case may be, and make reports there on; (c) to consider policy documents presented to the Houses, if referred to the Committee by the Chairman, Rajya Sabha or the Speaker, Lok Sabha, as the case may be, and make reports thereon, and (d) to consider Annual Reports of ministries/departments and make report thereon.91

Other Standing Committees in each House, divided in terms of their functions are:

- Committee on Petitions.
- Committee on Privileges.
- Committee on Government Assurances.
- Committee on Subordinate Legislation.
- Committee on Papers Laid on the Table.
- Business Advisory Committee.
- Committee on Private Members’ Bills and Resolutions of the Lok Sabha – there is no such Committee in Rajya Sabha.
- Rules Committee.
- Committee on Absence of Members from the Sittings of the Lok Sabha – there is no such Committee in Rajya Sabha.
- Committee on the Welfare of Scheduled Castes and Scheduled Tribes.
- General Purposes Committee.
- House Committee.
- Joint Committee on Salaries and allowances of Members of Parliament.
- Joint Committee on Offices of Profit.
- Library Committee.
- Committee on Empowerment of Women constituted of members from both Houses of Parliament on 29 April 1997 with a view to securing, among other things, status, dignity and equality for women in all fields.
- Ethics Committee of the Lok Sabha and Rajya Sabha.92

There are also 17 departmentally related committees in the Indian parliament.

The Ethics Committee of the Thirteenth Lok Sabha (House of People) consisted of 15 members of Parliament. Its chairman is always a Member of Parliament from the opposition party and not of the ruling party in power. Other members are drawn from all parties represented in the House.

The Ethics Committee is required to watch the conduct and behaviour of the members of parliament whilst the House is sitting. It pertains to matters of etiquette, discipline, deference to the Speaker, avoidance of agitating behaviour, use of proper language while participating in the debate, etc. It also deals with the conduct of the member during the address of the President or the Governor, as the case may be. It lays down rules of conduct for members in Parliamentary Committees of Legislature while undertaking study tours and visits to foreign countries as part of the delegation with regard to maintaining the decorum and dignity. There are also rules regarding conduct of members outside the Parliament and Legislatures of States and Union Territories like not trying to secure business from Government for a firm with which he is directly or indirectly connected, not giving certificates which are not based on facts, not making profit out of Government residence allotted to him by sub letting the premises, not unduly influencing a Government official or Minister in a case in which he is interested financially, etc.

There are 57 such rules that require the members to ‘maintain high standards of morality, dignity, decency, and values in public life’.

The Speaker of the House may *suo moto* take up for consideration cases of breach of the Code that have taken place in the House. He may also refer complaints regarding violation of the Code to Committee on Ethics or the Committee of the Privileges for examination and report.

In case of violation of the Code, the Speaker can impose any of the penalties like admonition, reprimand, censure, withdrawal from the House, suspension from the House for a specified period, and ‘any other penal action considered appropriate by the House’.93

Whereas the Code refers to all the desirable aspects, there has hardly been any case in which notice has been taken of the infractions. Moreover, even if there is any such occasion, the outcome is not public unless it is placed on the table of the House. So it can be inferred that the cases, if any, could have been of a minor nature as not to warrant a public disclosure. On the other hand, the atmosphere of *bon homie* perhaps prevents the members to be indulgent to small violations like transgressing into the well of the House, or shouting slogans, or interrupting proceedings, etc., as these gimmicks are indulged by all the parties.

**Ad Hoc Committees**

These are constituted from time to time, either by two Houses on a motion adopted in that behalf or by Speaker/Chairman to inquire into and report on specific subject.

These are of two types:

- Select or Joint Committees on Bills, which are appointed to consider and report on a particular Bill. They have to follow the procedure as laid down in the Rules of Procedure and Direction by the Speaker/Chairman.
Committees constituted from time to time, to inquire into and report on specific subjects. It is through the mechanism of such Committees that the Parliament has sought to make the executive accountable, and on several occasions in the past tried to enquire into a number of financial or other scams that were brought to its attention or raised on the floor of the House. Examples are: Joint Committees on Bofors Contracts, Joint Committee on Fertilizer pricing, Joint Committee to enquire into irregularities in securities and banking transactions, Joint Committee on Stock Market Scam, Joint Committee on Security in Parliament Complex. Other examples of Ad Hoc Committees are: Committee on the Conduct of certain Members during President’s Address, Committee on draft Five Year Plans, Railway Convention Committee, Committee on Members of Parliament Local Development Scheme etc.94

These Joint Committees and ad hoc committees constituted to probe into specific cases have been quite effective, as they had been able to investigate cases, dig out the facts, and submit reports for information and action of the House in stipulated time e.g. Joint Parliamentary Committee on Bank Security Scam, Joint Parliamentary Committee to probe the elements of pesticides in Soft Drinks like Coca Cola, Pepsi and other soft drinks etc. (constituted in early 2004—report submitted since then).

Consultative Committees

Yet another type of committees in the Parliament are the consultative committees of the Members of the Parliament attached to various Ministries. These are constituted by the Ministry of Parliamentary Affairs. The Minister/Minister of State in-charge of the Ministry concerned acts as the Chairman of the Consultative Committee of that Ministry. The main purpose of these Committees is to provide a forum for informal discussions between the government and members of Parliament on policies and programmes of the government and the manner of their implementation. Meetings of these Committees are held both during the session and intersession periods of Parliament.

National Budget

The Parliament plays a very significant role in controlling and raising of public funds. It approves and passes the National Budget and authorizes the realization of revenues through the enactment each year of a Finance and an Appropriation Act. Administration comes under close scrutiny of Parliament when the budget is under discussion. Each ministry, department, office and sub-office is on trial. They can be sanctioned money only after their activities during the previous year have been closely examined and discussed. All kinds of questions of policy, economy, grievances, complaints, adequacy or inadequacy of projects, schemes and outlays can always be raised during the budget debates and the minister concerned must give satisfactory reply.

Areas of Parliamentary Reforms

In terms of enforcing executive accountability, it is clear that in India Parliament does possess the institutional capacity to make the executive accountable to it. Within the constitutional framework, the various parliamentary procedures in India have been so designed as to give sufficient opportunities to the members of parliament to oversee the activities of the executive, but unfortunately few of them are properly utilized. The greatest obstacle to effective parliamentary control has been the apathy shown by the majority of members towards constructive criticism and supervision of government policies. Seldom, if ever, have the debates and discussions in Parliament shown a dispassionate analysis of government policies, which are very often discussed and motivated out of party considerations. As a well-known expert on Indian Constitution and Parliament has noted: “That representative democracy and parliamentary institutions have endured in India for five decades is a great
tribute to their strength and resilience. There has, however, been in recent years quite some thinking and debate about decline of Parliament, devaluation of parliamentary authority, deterioration in the quality of Members, poor levels of participation and the like. Today one notices a certain cynicism towards parliamentary institutions and an erosion in the respect for normal parliamentary processes and the parliamentarians. Clearly a wide agenda for parliamentary reforms lies ahead in India today.

Among the Standing Committees of the Indian Parliaments, the three Financial Committees—the Committee on Public Accounts (PAC), the Estimates Committee (EC) and the Committee on Public Undertakings (CPU) – keep a close watch over government spending and performance. They have been rightly recognised as the watchdog Committees. For example, the PAC and CPU act as follows:

**The PAC**

The Parliament grants enormous sums of money each year for expenditure by the various departments of the government, and makes specific appropriations under different heads. There must be some check on the dispensations of public funds by the Ministries to see whether the restraints placed by Parliament have been kept in view or any transgressions have been made, whether the money has been honestly and wisely expended for which it was granted, and whether that has been done prudently, frugally and intelligently. The PAC, by its close scrutiny of accounts, has earned a reputation for impartiality, firmness and grasp for details. The good work done by the PAC has helped greatly in improving financial control by the administration and assisted in the detection of many irregularities and even ‘dishonesties’.

(The infamous Bofor case against the former Prime Minister Rajiv Gandhi was very much the outcome of the report of the PAC, which raised questions about the quality of guns and the procedures followed in its purchase, which led to the setting of a Joint Parliamentary Committee to enquire into the matter and ultimately the fall of the Rajiv Gandhi Government in 1989. However, a Delhi High Court has recently exonerated the deceased Prime Minister Rajiv Gandhi from all charges and allegations of corruption.)

The findings of the Committee have led to more than one judicial inquiry. In the early 1960s, a Union Minister C. Subramanian had to appear before the PAC to tender evidence in the loss of millions of rupees in foreign exchange in licensing. There have been other cases of frauds in the purchase of road rollers for building roads in forward areas, and the import of substandard tyres from East European Countries for the army. The last two cases related to he purchases made by the government in the wake of the Chinese aggression in 1962. The work of the PAC is of immense benefit to the members; it enables them to get a clear idea of the working of the administration and equips them to participate effectively in the working of the House. Thus the Committee has been rightly recognised as an unshakable pillar of parliamentary democracy that overseas the accountability of administration to Parliament. By its constant vigil, the Committee has introduced financial discipline not only in expenditure, but also in revenue.

**The CPU**

While the work of the constructive and positive work done by the Estimates Committee in effecting efficiency and economy has gone a long way in strengthening the accountability syndrome, the CPU has also played a significant role. In the past 50 years, the public sector has assumed large dimensions involving an amount equivalent of about 18 per cent of the country’s GDP. Until the introduction of economic reforms due to structural adjustment programs because of the advent of globalisation, liberalisation and privatisation, the public sector in India has taken a dominant position in some vital economic and industrial areas, especially basic infrastructural sectors such as power, mining and telecommunications. The CPU keep a close watch over the way the Public Undertakings function.
Rules concerning Gifts and Hospitality for Parliamentarians

The Committee on Ethics (Thirteenth Lok Sabha) presented to the House on 20 November 2002 Second Report dealing with various aspects of the subject. It contains Code of Conduct for Members of Parliament and Legislatures of States and Union Territories. The pertinent – and active - rules are the following:

- Rule 34 of the Code: Members shall not accept any costly gifts during the tour. Members can, however, accept inexpensive mementos connected with the organization visited.
- Rule 35: The Committee or Sub-Committee, while on tour, shall not accept any invitation for lunch or dinner or other hospitality that might be extended by any private party.
- Rule 45: A member shall not receive hospitality of any kind for any work that he desires or proposes to do from a person or organization on whose behalf the work is to be done by him.
- Rule 53: In case of conflict between the personal interest of members and public interest, they must resolve the conflict so that the personal interests are subordinated to the duty of their public office.
- Rule 54: Members shall resolve conflict between private financial/family interest and public in a manner that the public interest is not jeopardized.

The Committee has not investigated any case as the rules have not yet been framed. The police can investigate the criminal conduct of a Member of Parliament if it has happened outside the precincts of the House, in which case he is treated as a common citizen. However, the Committee on Ethics has proposed incorporation of rules in the Rules of Procedure and Conduct of Business in Lok Sabha (House of People). It is proposed that (1) ‘The Committee shall (a) oversee the moral and ethical conduct of members, (b) examine every complaint relating to unethical conduct of member or connected with his parliamentary conduct referred to it and make such recommendations as deem fit, (c) frame rules specifying acts which constitute unethical conduct. (2) The Committee may also suo moto take up for examination and investigation matters relating to ethics, including matters relating to unethical conduct by members wherever felt necessary and make such recommendations as deem fit. (3) The report of the Committee may also state the procedure to be followed by the House in giving effect to the recommendations made by the Committee’.

Electoral Commission


It is further provided that the Election Commission shall consist of the CEC and such other number of Election Commissioners, if any, as the President may from time to time fix. Accordingly, on 1 October 1993, the President appointed two more Election Commissioners. The CEC and other Election Commissioners enjoy equal powers. But the CEC acts as the
Chairman of the Election Commission. The law provides that in case of difference of opinion amongst the CEC and/or two other Commissioners, the matter will be decided by Commission by majority.99

Independence of the Election Commission from the legislative or executive interference is ensured by a specific provision in Article 324 (5) of the Constitution to the effect that the CEC shall not be removed from his office except in like manner and on like grounds as a Judge of the Supreme Court and conditions of his service shall not be varied to his disadvantage after his appointment. Under the 73rd Amendment of the Constitution (1993), the State Governments are obligated to appoint State Election Commissioners to conduct elections and decide electoral disputes concerning election of members to the Panchayati Raj, institutions at the grass roots level. The other Election Commissioners or Regional Commissioners cannot be removed from office except on recommendation by the CEC. The CEC and other Election Commissioners are entitled to the same salary and other facilities as are provided to a Judge of the Supreme Court. The term of office of the CEC and other Election Commissioners is six years from the date of the assumption of office or till the attainment of the age of 65 years, whichever is earlier.100 The Election Commission of India enjoys total autonomy in its functioning as it is not dependent on the government for funding. Its expenses are derived from the Consolidated Fund of India.

A voter for the elections in India should be a citizen of India, with a minimum of 18 years of age and ordinarily resident of the constituency in which he is registered. The constituency rolls of voters are prepared by the Election Commission and includes all persons, even those living in slums and pavements. These are updated at regular intervals. The responsibility for preparation of electoral rolls and issuance of voter Identification Cards lies with the State Electoral Officers. A voter may be disqualified from voting on grounds of conviction for bribery, impersonation, removing of ballot papers from polling booth or promoting enmity between classes at the time of elections.

Through an amendment of the Representation of the People (Amendment) Act, 1999 (No. 30 of 1999) in November 1999, a new clause (c), after clause (b) was inserted, by virtue of which any class of persons can be notified by the Election Commission of India, in consultation with the Government, and the persons belonging to such notified class of persons can cast their votes by postal ballot, and not in any other manner, at elections in their constituency or constituencies, subject to the fulfilment of such requirements as may be specified in the Conduct of Election Rules, 1961.

The Parliament also enacted in June 1998, the Representation of the People (Amendment) Act, 1998 (No. 12 of 1998) in June 1998, to substitute a new section for section 159 of the Principal Act regarding requisitioning of staff for election duty. By virtue of this amended section 159, employees of Local Authorities, nationalized Banks, Life Insurance Corporation, Government Undertaking, and other Government-aided institutions, etc. can be requisitioned for deployment on election duty.

Through an order passed by the Supreme Court of India on 2 May 2002 in Civil Appeal No. 7178 of 2001 (Union of India vs. Association for Democratic Reforms and another) has directed that the Election Commission shall call for information on affidavit from each candidate seeking election to the Parliament or State legislature regarding criminal record, if any, of the candidate, his assets, liabilities and over dues to the Government or any public financial institution, and educational qualifications of the candidate. Under the new law enacted in 2003, as a sequel to the above judgement, all candidates contesting elections have now to submit detailed statement of any criminal cases pending against them, their assets and liabilities and educational qualifications before the Returning Officer, while filing their nomination papers.

The stipulations of the Supreme Court had been complied both in letter and in spirit. During the recent elections held in five States, the Election Commission had circulated a detailed form to be filled up by each candidate indicating various items specified be the Court. The affidavits
were sworn in by the candidates making declarations on various items. The information was made public and available to anyone requiring it. So there was an element of transparency. The result of this mandate was that the main political parties refrained from fielding candidates with questionable reputation or antecedents. The civil society had organized Election Watch Groups to oversee the election process. The media too gathered information from the affidavits and projected it to the public. The candidates were also required to submit election expenses every third day.

Political Parties

Political parties do not as such find any direct mention in the Constitution of India. However, there is one provision in the Constitution which is directly relevant to the functioning of political parties: the Tenth Schedule. The Tenth Schedule of the Constitution was added by the Constitution (Fifty-second Amendment) Act, 1985. It deals with the disqualification of a person for being a member of either House of Parliament (Art. 102 (2)) or the Legislative Assembly or Legislative Council of a State (Art. 191 2) on ground of defection.

In the absence of a sufficiently detailed constitutional provisions, the major onus of framing and administering the rules and regulations governing political parties in India has fallen on the Election Commission, the constitutional body responsible for conduct of elections. The Election Commission of India has the ultimate power to accord recognition and status of political parties to "the association or body of citizens of India". The Election Commission has the power to decide whether or not to register an association or body of individuals as a political party.

According to Section Article 29A (1) of the R. P. Act, 1951 it is mandatory for any association or body of individuals of India calling itself a political party to make an application to the Election Commission for its registration as a political party, within thirty days following the date of its formation. Article 29A (5) requires that the application shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India, and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity and unity of India. Sub-section (7) of Section 29A provides that no association or body shall be registered as a political party under this Section unless the memorandum or rules and regulations of such association or body conform to these provisions, i.e. the provisions of Sub-section (5) of Section 29A. The decision of the Commission in this matter is final.

A political party duly registered under R. P. Act, 1951 cannot be de-registered by the Commission on the allegation that the party had violated the law or had ceased to function in accordance with the undertaking that it would abide by the principles of secularism. The party could only be de-recognized when it is found that a party had obtained, through fraudulent means, its registration, or it was declared by the government as unlawful or when the party itself intimates the Commission that it had ceased to function or had changed its party constitution.

The recognized political parties are accorded the status of a national or state political party. For a political party to be recognized as a national party, it must be able to win a minimum of 4% of votes or more than 3% of seats in at least 4 State Legislative Assemblies; or 4% of votes or 4% of seats in the Lok Sabha. Under the amended provisions in December 2000, a party has to secure at least six per cent of the valid votes polled in any four or more states during the general elections to the Lok Sabha or State Assembly to be recognised as a national party. It also has to win at least four seats in the Lok Sabha from any state or states.

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Alternatively, the party can get a national status if it gets at least two per cent of the seats in the Lok Sabha, provided the members are elected from at least three different states.

To be recognised as a state party, a political party must poll a minimum of six per cent of the valid votes in the state at a general election, either to the Lok Sabha or the Assembly of the concerned state. Besides it should also win at least two seats in the Assembly or the party should win at least three per cent of the total number of seats in the State Assembly or a minimum of three seats, whichever is more.

The number of national parties has been varying from 4 to 14 owing to continuous review of the status based on the performance of the parties. The number of national parties was: 1951(14), 1957 (4), 1971(8), 1977 (5), 1980 (6), 1984(7), 1989 (8), 1991 (9), 1996 (8), 1998 and 1999 (7). There were no national parties in 1962 and 1967. These were at that time called multi-state parties. At present, there are 6 national parties, 45 regional parties, and 702 registered political parties.101

As per its notification on June 29, 2000, the Election Commission had decided to de-recognize seven regional parties in some Sates based on their poll performance. These are Haryana Vikas, Party, NTR-TDP (Lakshmi Parvati), Rashtriya Janata Dal in Manipur, Shiv Sena in Dadar, Nagar and Havelli, United Minority Party in Assam, Samajwadi Janata Party in Chandigarh and Samta Party in Haryana. Meanwhile, the CPI (M) and the Republican Party of India were also served notice on their de-recognition. The CPM had lost its national party status because it does not have state-level recognition in at least four states as required. The CPM's (Communist Party ‘Marxists’) presence is limited to West Bengal, Tripura and Kerala. To qualify for state level status, a party has to win at least one Lok Sabha seat for every 25 from that state, or at least one assembly seat for every 30, or six percent of votes polled in a state in a general election.102

The EC has laid down that party losing recognition as a national or state party would not lose its reserved symbol immediately. Such parties would be allowed a period of six years to retrieve their status and they can continue to use their symbols during that period. But these parties could not avail of other facilities that were given to the recognised parties, such as free time on the Doordarshan (the Government controlled National TV Channel) and AIR (the Government controlled National Radio Broadcasting Station) and free supply of copies of electoral rolls. It was also clarified that the revised criteria for recognition would not be applied to the detriment of any of the existing national or state parties.103

Functioning of Political Parties in India During the Last Fifty Years

The party system in India has gone through different phases of evolution to emerge today as a multi-party system. After Independence, the Indian National Congress inherited the legacy of the National Freedom Movement, leading to the establishment of a single party-dominant system. The Indian National Congress which was based on a broad consensus (as divergent interests and factions were accommodated within its fold) remained at the centre stage of Indian politics during 1947-1967. The charisma of Jawahar Lal Nehru and the contribution of Mahatma Gandhi to the Freedom Struggle held the electorates’ confidence. The second phase (1967-1977) is characterized by the emergence of coalition governments in the states and the gradual decline of the Congress the party facing internal dissentions. A small oligarchy consolidated power around the leadership, which led ultimately to the declaration of Emergency. The third phase (1977-1989), of the evolution of parties is characterized by the beginning of coalition governments at the Centre, the decline, split and resurrection of the Congress (I), leading to the phenomenon of the so-called dynastic rule, and the simultaneous growth of the regional parties.

The General Elections of 1977 are considered a landmark in the development of party system in India as, for the first time, a coalition of parties was able to win the elections, defeating the Congress and form the national Government. This signified the tenacity of the Indian political
system where single party dominance gave way to opening a threshold for competitive politics. It also indicated the maturity of the Indian electorate where a change of Government took place without bloodshed. The electorate displayed non-acceptance of dictatorial and repressive policies adopted during the Emergency period; opposition to suppression of freedoms; upholding democracy and democratic traditions and most important, the respect for supremacy of the Constitution. This upholds Karl Popper’s formulation that instead of asking with Plato ‘Who should rule?’ we ought to be asking ‘How can we so’ organize political institutions that incompetent rulers can be prevented from doing too much harm.104

The post 1977 Constitutional Amendments repealed those Amendments and sections which had violated the basic tenets of the Constitution.

The period between 1977-1980 saw the weakness of the coalition governments and eventual disintegration of the Janata Party indicating a lack of commitment to national politics and over-riding personal ambitions of political leaders. The Bharatiya Janata Party emerged as an alternative political party. Although the Congress(I) came back to power in 1980, yet the non-Congress parties failed to present a united opposition and challenge to the Congress I until the late 1980s.

The fourth phase beginning from 1989 onwards witnessed the re-emergence of coalition politics with a vengeance both at the Centre and the States. Not only did the Congress lose its dominant position, but a kind of multiparty system also emerged, in which the regional political parties came to play a very effective role in the formation and deformation of governments leading to political instability and frequent elections. The Ninth General Elections of 1989 threw open new trends; for the first time a minority government headed by Shri V.P. Singh was formed at the Centre; almost all the non-Congress groups, despite belonging to opposing ideologies, be it left or right, supported the National Front Government of Shri V.P. Singh. The single binding factor was to keep the Congress (I) out of power. However, his Government fell soon in 1990. The next government of Shri Chandra Shekhar could barely survive for four months. P.V. Narasimha Rao Government could complete its term (1991-1996) on the many crutches, some of which were not very clean (the subsequent political developments have shown that the minority governments do not survive for long). The coalition partners have narrow political objectives to remain in power and to bring down the government at will whenever their interests conflict with those of the government. (This is illustrated in the manner governments fell after the 11th, and the 12th General Elections. The 13th Lok Sabha led by Prime Minister Atal Behari Vajpayee had been an exception which completed its full term of 5 years, despite being coalition of 28 different political parties.

The General Elections held in April/May 20004 brought the Congress party and the Communist Party (Marxist) (CPM) into prominence and a new alliance United Party Alliance (UPA) has taken the reins of power under the Prime Ministrieship of Dr. Manmohan Singh (Congress) in the Fourteenth Lok Sabha, constituted in May 2004). The political parties rely on powerful personalities or community or religious leaders. They have their own priorities and view points. They influence the politics centred around themselves. Many political parties are formed by such leaders. The party politics in India is based more on personality than on issues or ideology. The regional parties have emerged as strong factors in national politics as many of these are partners in the ruling coalition. These parties raise issues of regional importance as well as demands for decentralization and state autonomy.

The functioning of the party system during the last fifty years has in general undergone following changes:

- Single party dominance has been replaced by multi-party system. The present day trend is indicative of Coalition Governments, where a number of political parties professing different views and programmes have to work together towards national governance based on a common agenda. Regional parties have widened the support base of political power and their importance to the national politics has increased. This has paved the way for a trend towards demands for greater
decentralization and state autonomy and a greater share of resources in the Centre-State relationships.

- The political parties often use dubious means to get into power during elections leading to criminalisation of politics, and increased role of money and muscle power. The agitational methods are now increasingly used by political parties by holding of demonstrations, hartals (sit ins), bandhs (stopping of all transport and other activities) and rallies (processions) to make their demands.

### Political Parties in Parliament and the State Legislatures

Political parties, along with Committees, are one of the significant means of organizing the work of the legislature and developing public policy. In India, since the system is parliamentary, the majority party in the Lower House forms the Government and has the advantage of controlling the Legislature as well as the Executive. In case a single party wins the majority in the Lower House, it can pass legislation in accordance with its party programme and fulfil its political agenda. It happened in case of Congress (I), when it was able to introduce sweeping changes to the Constitution through various Constitutional Amendments. In case of a coalition government, the coalition partners exert pressure to safeguard their interests that may not be the same as the national interest e.g. rolling back of increase in prices or the withdrawing of subsidies in agricultural produce.

A coalition of parties may be able to form a government but governing together is difficult and sometimes problematic. Political parties in the Parliament are responsible for maintaining discipline. But the experience of past two decades of holding up the proceedings of the Parliament on whimsical grounds has led to a decline in the prestige of Parliament due to indiscipline and disruptive activities of political parties to stall the democratic functioning of Parliament.

In the background of the foregoing analysis of the functioning of the party system in India, it is evident that the parties in India face a number of challenges. Not only have they declined in terms of their ideological orientations and commitment to the welfare of the masses, but in the recent past they have also shown tendencies of factionalism, doggedness in terms of opposition for opposition sake, and politics of agitations. At times they have displayed behaviour, which tends to be unprincipled and unconcerned for the welfare of the masses. Many of their leaders have been affected by communalism, caste, community or religious biases and are alleged to have links with mafia groups, criminals, senas (militias), and fundamentalist organizations. Changing of party or group loyalty is endemic in party organizations in India, and almost everyone is willing to defect if the grass seems to be greener on the other side. Parties make and break political alliances to maintain their influence within the party and government, and to remain in power with the aim of keeping the rivals out. Most of these factional groups are non-ideological and have no capability to govern or undertake party responsibilities.

The political parties face organizational problems with regard to discipline, defections, intra-party organizations, elections within the parties, and splits. Raising of adequate funds for party organizations and activities by legitimate means and their appropriate and effective utilization during non-election and election periods is a perennial problem. Criminalisation of politics and politicisation of criminals and the maintenance of public ethics is another area of concern in respect of party functioning.

The party funding sources are many. The membership subscriptions by party members are very meagre. Parties issue coupons for contribution to party funds at the time of elections. There is no State funding of elections in India. Despite the weak private capital resource base in India, at least at the time of independence, business has invariably been a major source of party funding. The business in India has no systematized method for giving contribution to political parties. Contributions are provided in several ways—through company donations,
through individual contributions and through industry groups. The only piece of legislation that regulates such contributions is the Indian Companies Act of 1956, as amended in 1960, 1969 and 1985. Under the Act, the business contributions are limited to the extent of Rupees 25,000 or 5 percent of the average net profit of the company for the preceding three years, whichever is greater provided the memorandum of association authorized such contributions. A recent law has increased these limits and has obligated political funding to be made through cheque. The companies are required to disclose such amounts in their annual profits and loss accounts. Although company contributions represent only a fraction of the total business donations to political parties, they have been the most controversial. By and large, political contributions stemming from business in India have been on an individual, not collective, basis made directly to selected MPs to ensure access to ministers for the purpose of obtaining industrial licenses, concessions or other benefits. While such contributions may ensure access and may aid in securing individual benefits, they do not guarantee that the business voice will dominate and determine public policy.

A major portion of income that pours into the coffers of the political parties in India is from "black money", that is "unaccounted income". And it is the black money connection between business and politics with which the politicians trade influence in return for business contributions.

In India, the raising of political funds for elections through dubious means like advertisements by business men in the party souvenirs at abnormally high costs, selling of coupons by party stalwarts is a well acknowledged fact by political leaders, as also kickbacks from defence and other deals and purchases. In the 1980s, the Congress party was alleged to have been the beneficiary of kickbacks of government contracts for major arms purchases from abroad, notoriously the $ 1.3 billion Bofors contract, which ultimately led to the defeat of Rajiv Gandhi government in 1989, although as detailed elsewhere, the Courts have recently cleared the deceased Prime Minister Mr. Rajiv Gandhi of all charges of corruption in this deal. (Similar allegations have been made in relation to the Fodder Scandal (1981), HDW Submarine Deal (1981), Airbus A 320 Deal (1990), Bank Securities Scam (1991-92); the revelations in Tehelka Episode (2001), detailed elsewhere in this report, the political ramifications of which are still heard at every election, not confined merely to the ruling parties, but with all political parties being involved in one way or other).

In India in recent times there have also been allegations that party leaders have been demanding money from the elected members of their party to the State or National Legislatures as a sort of a cut from their Local Area Development Funds (MPLADS) to be deposited to the party coffers. Under the MPLADS programs, legislators get money from the public exchequer to funds project of their choice in their constituencies. While an MP gets Rupees 2,00,0000, an MLA gets Rs. 75,000.000 per year. It is alleged that each of the legislators gets a percentage of kickbacks out of the spending of these funds on various development projects undertaken by them in their constituencies. Some party leaders have alleged to have demanded cuts from these kickbacks for party funds. It has become another issue of grave political corruption in India. The Lok Sevak Sangh a public service NGO, has taken up a PIL as a follow up action to prevent such corruption.

The Government of India prescribes the limits to which a candidate can spend money on his elections. Recently the Government of India has revised the election expenditure ceilings for the candidates contesting Lok Sabha and State Assembly seats. The ceiling for Lok Sabha constituencies have now been raised from Rs. 1.5 million to Rs. 2.5 million, and for state assembly seats from Rupees 6 million to 1 million. These have become effective from the state assembly elections in 5 states that were held in December 2003.
Areas of Reform for Political Parties

Thus in the perspective of the evolution of political parties in India during the last fifty years as described above, the following are some of the areas of reform which should be of immediate concern:

- Institutionalisation of political parties. There is need for a comprehensive legislation to regulate party activities, including criteria for registration and de-recognition of parties.
- Structural and organizational reforms of party organizations at the national, state, and local levels.
- Inner Party democracy must provide for regular party elections, recruitment of party cadres, socialization, development and training, research, thinking and policy planning activities.
- Party Funding – This issue reforms a legislation to regulate collection of party funds. Their use during non-election and election times.
- Maintenance of regular accounts, auditing, publishing, and making these available for open inspection.
- Steps to check criminalisation of political parties.
- Steps to curb the role of caste and communalism.
- Strengthening of anti-defection measures, thus requiring the amendments in anti-defection law.
- Restoration of values and morals in public life.

Supreme Audit Institution

The Office of the Comptroller & Auditor General (C&AG) of India is the supreme audit authority in the country created under the provisions of Article 148-151, in Chapter V of the Constitution. He is appointed by the President, and cannot be removed from his office except according to the procedure and grounds as provided for a Supreme Court Judge. He is not eligible for further office under the Union or a State Government after he ceases to hold his office. The constitutional provisions thus ensure that the incumbent of the office of the C&AG can neither be coerced nor allured into deviating from due performance of his functions. His duties, powers and conditions of service have been specified by the Comptroller and Auditor-General’s (Duties, Powers and Conditions of Service) Act, 1971. The C&AG’s office in India is unique as he is neither an officer of Parliament, as in UK, nor functionary of the government. He has an independent position of his own on par with the Justice of the Supreme Court.

The President, on the advice of the C&AG, prescribes the form in which accounts of the Union and states are to be kept. The C&AG’s advice is constitutionally obligatory for prescribing the form in which the accounts of the Central and State Governments are to be kept. This ensures a common form of accounts for both the Centre and the States, which is so important for uniformity and financial comparisons.

The C&AG is located at the national capital in Delhi, whereas the offices of the Accountant Generals (AG) are located at all the State headquarters. The office of the Accountant General in States is the representative of the CAG in the State. The AGs are the regional offshoots of the C&AG, but function independently of the state governments and are accountable to the C&AG. The staff of the regional offices is also part of the institution of the C&AG and are centrally appointed. All the Accountant Generals and their Deputies are officers selected by the
UPSC and are transferable all over the country. Other subordinate officers and the rest of the staff can also be shifted to any other state.

The main duties and responsibilities of the C&AG are:

- To audit all moneys paid into and expended from the Consolidated Fund of Union and that of the States/Union Territories;
- To audit all transactions of the Union and of the states relating to Contingency Fund and Public Accounts;
- To audit all trading, manufacturing, profit and loss accounts and balance-sheets and other subsidiary accounts kept in any department of the Union or of a state and in each case to report on the expenditure, transactions or accounts so audited by him;
- To audit accounts of bodies and authorities substantially financed by Government;
- To audit the accounts of Government companies, statutory corporations, which have provision for audit by him and other bodies and authorities even though not substantially financed by Government at the request of the President/Governor or his own initiative after President's/Governor's approval;
- To ensure that Appropriation Accounts and Finance Accounts of the Union have been correctly prepared;
- To prepare Accounts of the States and some Union Territories.  

The C&AG and the Parliament:

The reports of the C&AG relating to the accounts of the Centre are submitted to the President, who presents them before each House of Parliament. Similarly, the reports of the C&AG relating to the accounts of the state are submitted to the Governor of that state, who shall present them before the State Legislature. These are not released to the press and made public until they have been formally laid on the Table of the House concerned. In the House, the reports are considered by the Public Accounts Committee (PAC) and the Committee on Public Undertaking (COPU). The Committees go through the reports and obtain the advice of the C&AG about the particular observations, reviews or comments which should be examined in depth by the Committee by asking for oral evidence of the executive. Based on the written and oral evidence tendered before the Committees, the recommendations for corrective or punitive actions are made by them to the Government. The reports of such Committees are then presented before the houses of Parliament and State Legislatures where they are formally adopted, which by convention are treated as those of the entire Parliament. In a recent development it has been decided that the annual reports of every department and ministry to be placed in parliament will carry the summary of important latest audit observations of the C&AG on the ministry’s/department’s working as a separate annexure. That is another way of bringing the incidences of any financial irregularities to the notice of the Parliament and the people.

According to a perceptive analysis and evaluation, the C&AG in India has contributed immensely to public good and accountability of the executive through his numerous reports spanning from civil departments to defence, to departmentally owned commercial organizations, like Railways, Telecommunications, public sector enterprises, scientific departments and tax administration. Some of his reports (like those on purchase of 155mm. Gun for the army, known as Bofors scandal) or impropriety in management of government property have been path breaking and have changed the course of polity in India and brought political masters within the clutches of judicial scrutiny. Numerous suggestive and corrective measures contained in the reports have helped the financial administration to plug serious loopholes and improve efficiency of administration. The expertise and high professional
standards achieved by the C&AG have found recognition in the United Nations, when it appointed Indian C&AG as one of the auditors of UN agencies.\textsuperscript{111} The reports are placed on the table of the Houses and are meant to be discussed. These Reports are studied, analysed and discussed by the Public Accounts Committee.

One example of the C&AG's work involved a program known as Member of Parliament Local Area Development Scheme (MPLADS) was announced by the Prime Minister in December 1993 to enable the local MPs to identify small works of capital nature and get these executed to the tune of Rupees 1,00,00,000 (US $ 200,000) annually, based on locally felt needs in their constituencies, for a span of five years, the normal tenure. This was augmented to Rupees 2,00,00,000 (US$ 400,000) annually in 1998. Gradually, the scheme was extended to the Legislators of the State assemblies and even the representatives of the local bodies. In its report submitted in 1998, the C&AG reviewed the functioning of the Scheme from 1993-94 and 1996-97. It brought to the notice of the government irregularities in utilization of funds due to arbitrary and \textit{mala fide} use of power. In the second report of 2000, covering the period of 1997-2000, the C&AG pointed out various deficiencies in the implementation of the Scheme.

Since the audit reports were public documents, and no action was taken by the government, the Lok Satta, and Transparency International (India) have filed a Civil Writ Petition in the Supreme Court of India, under Article 32 of the Constitution, on 30 July 2003, seeking cessation of the Scheme due to misuse of funds, and action against officials guilty of dereliction of duty. It also contested on the ground that the Scheme was violates of Article 14 (equality before law) of the Constitution as it gave an unfair advantage to the incumbent against his rivals in the next election. Secondly, there was a probability of discrimination as the projects could be allocated to a particular area to benefit a particular community. And, thirdly, the Scheme was contrary to the principle of separation of power by making legislators partners in functioning of the Executive. Nothing has, however, come out of this litigation.

**Constraints on the working of C&AG**

Despite these achievements, India's C&AG is beset with several problems. His reports and suggestions do not often find the response that is needed, as he has no authority to ensure compliance. He heads an organization with a strength of over sixty thousands functionaries. Not all are adequately equipped to deal with changing economic environment and growing complexities of world of finance. It is difficult for him to do away with redundancies in staff even when there is a strong justification.

Yet it is a strong constitutional institution dedicated to the task of public good and financial accountability.\textsuperscript{112} Both the parliamentary control system and the C&AG have evolved in line with the changes in governance. There has been a shift from transaction-oriented auditing to performance auditing. The increasing importance of reviews in audit reports bears testimony to this, but there is a need to further modernize public accountability by diagnosing the reasons why a particular case of mismanagement, waste, or fraud took place, despite there being controls in the place. In the changed circumstances of economic liberalization, there is a need to clearly define the roles and responsibilities of economic decision-makers, public sector managers and non-government partners who deal with taxpayers' money, so that the principle of accountability is sustained. There is also a need to evolve new type of audit which will deal with privatisation, and environmental and gender issues, as also to address issues relating to accountability of grass-roots institutions such as Panchayats. The government should also make increasing use of the assurance mechanism available to it for compliance with the recommendations. There is a need to modernize and not change.\textsuperscript{113}

Recently a controversy has arisen over the Prime Minister Atal Behari Vajpayee's remarks at the inauguration of 22nd Conference of the Auditor-Generals in New Delhi on 28th July 2003 that while the accountability system has many legitimate checks and balances, there are complaints from civil servants that it does not leave enough scope for individual initiative. The
system has in-built disincentives for taking decisions; "in the absence of timely decisions, projects and programmes become victims of unacceptable time and cost overruns, which is as much a violation of the principle of accountability as any act of financial irregularity." He pleaded for the system "to empower and trust the executives if they have to become dynamic and produce best possible results, which he said requires a change in the mindset of auditors, since they too are part of the system and not outside it." As a reaction to these remarks of the PM, the opposition attacked him for "trying to subvert and interfere with the functioning of the independent constitutional body, the Comptroller and Auditor General of India" The C&AG Mr. Vijendra Kaul, however, maintained that "while the auditors from C&AG would not be offensive, there would be no compromise in discharging the mandate given by the Parliament...New audit techniques would be imbibed for undertaking output or value for money audit as suggested by the prime minister." This particular controversy illustrates very well the kind of independence the audit institutions enjoy in India and the fact that because of the alertness of the opposition no amount of political pressure from the Executive in power can influence their policies or decisions.

**Judiciary**

Chapter IV of the Constitution deals with the Union Judiciary. It is one of the most powerful institutions of the democratic system of government in India. It is completely independent in character and progressive in its views. It is the custodian of the Constitution, both in letter and spirit.

It comprises of a hierarchy of courts with the Supreme Court at the apex. There are High Courts in the States, District Courts of the Sessions and Subordinate Courts in the districts. Panchayats also function in some states under various names like Nayaya Panchayat, Panchayat Adalat, Gram Panchayat, etc., to decide civil and criminal disputes of petty local nature. These are in rural areas. The object is to make justice accessible to people. However, if any aggrieved person feels that local pressure has influenced the decision, he can file an appeal in district court.

The Supreme Court consists of 26 Judges, including the Chief justice of India. It has original jurisdiction in many disputes (see Article 131). There are 21 High courts in the country, three of them having jurisdiction in more than one state. Among the Union Territories, Delhi alone also has a High Court of its own. Other Union Territories come under the jurisdiction of High Courts that are contiguous or close by. The sanctioned number of Judges in the High Courts is 655. The High Court has powers of superintendence over all courts within its jurisdiction.

The Subordinate Courts have a uniform structure all over the country. Their designations are common. These are District or Additional District Judge, and Civil Judge on the civil side; Sessions Judge or Additional Sessions Judge, Chief Judicial Magistrate, and Judicial Magistrate on the criminal side. Their powers are derived from the Code of Criminal Procedure and the Civil Procedure Code.

**Appointment**

The Judge of the Supreme Court is appointed by the President of India and holds office till the age of 65 years (Art 124). He is qualified for appointment if he has been a Judge of the High Court for at least five years, or an advocate of the High Court for at least ten years, or an eminent jurist. The Judge of the High Court is also appointed by the President if he has held a judicial office for at least ten years or been an advocate of the High Court for ten years. The District Judge is appointed by the Governor of the State. All judges and magistrates in the district belong to the Judicial Service of the state. They get recruited through an open competition. Hence the recruitment is on merit. They are trained and apprenticed as per a schedule laid down by the High Court.
The High Court exercises control over district courts and courts subordinate thereto including the posting and promotion of persons belonging to the judicial service of the State (Art 235).

Independence of the Judiciary

The judicial independence has been granted by the Constitution in the form of Article 50 in the Directive Principles of State Policy proposing separation of the judiciary from the executive. In pursuant of this principle, the judiciary was separated form the executive by an amended Code of Criminal Procedure, 1973. The independence is pronounced by the following facts:

- Power to establish special courts to deal with specific matters cannot be exercised in derogation of the constitutional powers of the High Court. Such courts can only be set up under the jurisdiction and supervision of the High Court. (*L. Chandra Kumar v Union of India;* (1997) 3 SCC 261).
- Powers of appointment of Judges to the Supreme Court was assumed by the Supreme Court itself (*Supreme Court Advocates on Record Association v Union of India;* (1993) 4 SCC 441).
- Subordinate judiciary is placed beyond the control of the executive (Art 235).
- Confirmation of members of the judicial service vests in the High Court (*State of Assam v S.N. Sen;* AIR 1972 SC 1028).
- Power to transfer subordinate judges is with the High Court and not the Government (*State of Assam v Ranga Mohammad;* AIR 1967 SC 903).
- Power to fix seniority of judicial officers is vested in the High Court (*State of Bihar v Madan Mohan;* AIR 1976 SC 404).
- The government cannot penalize a judge of the district. The disciplinary control over the judiciary is with the High Court (*Panduranga Rao v The Public Service Commission, Andhra Pradesh;* AIR 1963 SC 268).
- Officers and servants of the Supreme Court and the High Court are appointed by the respective Chief Justices (Art 146 and 229).

Judicial Review

The Supreme Court, as the apex court, occupies a crucial position in the polity of the nation. It is the guardian of fundamental rights and the principle of the rule of law. A citizen has a right to constitutional remedies for the enforcement of rights conferred by the Constitution. The Supreme Court has the power to issue directions or orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari* (Art 32).

‘The law declared by the Supreme Court shall be binding on all courts within the territory of India’ (Art 141). The Court has the power to get enforcement of decrees and may issue such order as is necessary for doing complete justice in any case or matter pending before it. It may also ‘make any order for the purpose of securing attendance of any person, the discovery or production of any document, or the investigation or punishment of any contempt of itself’ (Art 142). The court may also pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it (Ibid). Under this clause, one minister of the Central Government was imposed a fine of Rupees 6 million for misuse of discretionary powers in allotment of government accommodation. Another minister was fined Rupees 6 million for irregular allotment of petrol pumps without following a fair criterion and showing favours to allottees. The cases were brought by an NGO as Public Interest Litigation
in order to expose the corrupt practices in the allotment of houses, including cases of favouritism. There has been an acute shortage of government accommodation and acquisition of a petrol pump was a lucrative proposition. Hence it is alleged that discretion was wrongly exercised in the form of out-of-turn allotments. Subsequently, the Supreme Court, while retaining the operational part of the decision reversed the order on punishment.

**Public Interest Litigation (PIL)**

By relaxing the requirement of the *locus standi* rule, the Court has accepted what is now called the Public Interest Litigation (PIL) or Social Action Litigation (SAL) initiated by any concerned citizen - but mostly such cases are initiated by voluntary organisations or Non-governmental organisations (NGOs) interested in specific matters of public interests or concerns, for example cases of human rights violations or police custody deaths are taken to courts by Peoples Union of Civil Liberties (PUCL) etc. The Court can be approached by any citizen of the country on behalf of any individual or a group in a case of violation of a human right. Many decisions on the constitutional provisions of fundamental rights have been given by the Supreme Court. PIL has created a consciousness among the people that causes can be taken on behalf of others where for reasons of financial stringency, lack of awareness of the rights, or the hesitation to approach the apex court, the individual is not able to get the benefit of the rights. This has helped protect the rights of people. This is an effective development that has enabled the Court to interpret the rights in a proactive stance. The rule of *locus standi* obstructed justice on two counts, namely '(i) how to enforce 'diffused' public rights which vest not in one person but in a multitude of persons; and (ii) how to enforce the rights of the poor who did not have the knowledge or the wherewithal to come to the courts to enforce their rights. To minimize these problems, the Supreme Court has pioneered the development of the procedure by way of public interest litigation'[^118]. The Court has thus acted as a sentinel on the *qui vive* to protect the fundamental rights.

In the context of fighting the scourge of corruption, it is pertinent to note that it is the poor man who is exploited the most and upon whom is the worst impact of the machinations of the exploiters in connivance with the bureaucracy. By interpreting the rights, the Court has made landmark judgments that have endeavoured to alleviate the sufferings of the poor. Some of these are worthy of record:

- Not to be compelled to work without wages (*Suraj v State of MP*; [AIR 1960 SC 303]).
- The individual has a right to live with dignity and all that goes with it. He has to be freed from exploitation (*Francis Coralie v Delhi Administration*; [AIR 1981 SC 746]).
- Protection from payment of wages less than the minimum amounts to forced labour. Art 23 protects the individual not only against the State but also against private person (*PUDR v Union of India*; [AIR 1982 SC 1473]).
- Equal pay for equal work (*Randhir Singh v UOI*; [AIR 1982 SC 879]).
- Persons on famine relief work to be paid minimum wages (*Sanjit Roy v State of Rajasthan*; [AIR 1983 SC 328]).
- Securing the release of bonded labour and freedom from exploitation (*Bandhua Mukti Morcha v Union of India*; [AIR 1984 SC 802]).
- Right to livelihood was highlighted in a decision which laid down that before the pavement dwellers are evicted by the municipality, they should be given notice, as their removal will deprive them of their livelihood (*Olga Tellis v Bombay Municipal Corporation*; [AIR 1986 SC 180]).

In an earlier decision (*P.V. Narasimha Rao v State*; (1998) 4 SCC 626), the Supreme Court had decided that the Member of Parliament is a public servant and therefore he is not immune
to being prosecuted, while interpreting the scope of Art 105 which states that he shall not be liable to any proceedings in any court in respect of anything said or any vote given by him in the Parliament in order to protect his freedom of speech. In this case, some of the MPs were bribed to save the government from no-confidence motion in the House. However, since there is no authority to grant sanction to prosecute a Member as per the requirement of the Prevention of Corruption Act, the Supreme Court has expressed ‘the hope that the Parliament will address itself to the task of removing this lacuna with due expedition’. As soon as it is done, the MPs indulging in corrupt practices with regard to business of the House shall be liable to be prosecuted under the Act.

In order to deal with political corruption and with a view to bringing out transparency in the process, the Supreme Court in a recent decision (PUCL v Union of India; JT 2003 (2) SC 528) has made it mandatory that any candidate contesting an election shall make a declaration (to the Returning Officer, who works under the supervision of the Chief Election Commissioner, before whom the nomination papers are filed by the candidates contesting elections) with regard to five items, viz.; (1) education, (2) criminal record, (3) charges, if any, in the court, (4) assets, and (5) liabilities. The order has taken into consideration the voter’s right to information as the act of voting is an act of expression, the freedom of which is a fundamental right. This stipulation is likely to discourage the political parties from nominating persons with dubious record to contest elections. It would also enable the voters to make a choice of a candidate based on information about the personal record and antecedents. This was necessary to prevent the criminals from contesting elections and getting elected to the legislature that is competent to frame laws.

**Legal Aid**

Art 39A stipulates, ‘The State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities’. Keeping in view the condition of the poor and the weaker sections of society who either are not aware of law or are too poor to afford a lawyer, and to fulfil the commitment of the Constitution, the Legal Services Authorities Act, 1987, was enacted. The Act ‘aims at establishing a nation-wide network for providing free and competent legal services to the weaker sections. The National Legal Services Authority (NALS) has been set up for implementing and monitoring legal aid programs in the country. The Supreme Court Legal Services Committee has been constituted under the Act. In every High Court also, the High Court Legal Services Committees are being established to provide free legal aid to eligible persons in legal matters coming before the High Courts. The Act also provides for constitution of the State Legal Service Authorities, District Legal Authorities and Taluk Legal Authorities’. 4,743,000 persons have benefited through legal aid and advice throughout the country until 2002.

**Law Commission of India**

The tasks of the Law Commission are (1) to review laws in order to identify those that require change and make suggestions for their amendments, to consider the suggestions given by groups in the ministries with a view to harmonizing them by removing contradictions, to consider references from the ministries on legal problems; (2) to examine laws that affect the poor, study the impact of socio-economic legislation; (3) to review the system of judicial administration to ensure that it is responsive to the needs of times and to secure elimination of delays and simplification of procedures; (4) to examine laws in the context of the Directive Principles of state Policy and to suggest legislation for fulfilling the objectives set out in the Preamble to the constitution; (5) to revise the Central Acts so as to remove ambiguities, anomalies and inequities; and (6) to recommend to the Government for repealing obsolete laws that have outlived their utility. The Commission has submitted 173 reports so far. The
16th Law Commission was constituted in September 2000 for a period of 3 years. It is composed of a chairman who is of the level of a Justice of Supreme Court, and 2 other members, besides a Member Secretary.

**Fast Track Courts**

Fast Track Courts have been set up on the recommendation of the Eleventh Law Commission to deal with cases pending over two years or more and cases of those under trials lodged in the in prisons. As on 26 August 2003, 1139 Fast track Courts out of 1366 were functional. These Courts disposed off 203,221 cases out of 378,071.

**Family Courts**

Under the Family Courts Act, 1984, 108 such courts have been set up for promoting conciliation in and securing speedy settlement of disputes relating to marriage and family affairs.

**Lok Adalats**

Up to 31 December 2002, as many as 154,590 Lok Adalats were held where about 14,600,000 cases were settled.

**Bar Council of India**

The Advocates Act, 1961, deals with the law relating to the legal profession. It provides for the constitution of Bar Council of India and State Bar Councils. Every practicing advocate has to be registered with the Bar Council in a prescribed manner. The Council has disciplinary powers. The object is to regulate the norms of functioning of the profession that has a bearing on the justice system as a whole.

The Bar Council of India is a powerful and audacious body. Recently, it has released names of 131 high court judges whose relations are found practicing in their courts in violation of the council rules. The Council urged the Chief Justice of India to transfer the judges to ensure fair play and transparency.

**National Judicial Academy**

The National Judicial Academy was set up in Bhopal in 1993 to provide training to judicial officers of States and the Union Territories as well as the ministerial officers of the Supreme Court and the High Courts.

**National Judicial Commission**

Following the report of the National Commission on the Review of the Working of the Constitution (2002), the Government is contemplating to set up a National Judicial Commission (NJC), comprising of the higher judiciary to regulate the administrative functioning of the system, to frame rules and procedures to regulate the deviant behaviour of the Judges, and to reduce the interference of the executive, howsoever minimum it may be at the moment. Although some people are sceptical about the efficacy of the proposed NJC, but it is likely to be good as one to streamline procedures and bring transparency in matters of the deviant behaviour of the judges.

**Other Judicial Institutions**

With a view to reducing the workload of the original judiciary so that it could concentrate on the criminal and civil cases, a few other institutions have been devised. These are (1) the
Central Administrative Tribunal that deals with the administrative law; (2) the Lok Adalat (people’s court) that approaches the problem from a conciliatory point of view in order to resolve the matter to the benefit of both the parties; (3) various Tribunals like Income Tax, Labour, etc., (4) the Juvenile Courts that deal with the children in conflict with law or those requiring the protection of law with a number of Homes under the Juvenile Justice Act 2000; (5) the Family Court under the Family Courts Act 1984 for promoting conciliation and securing speedy settlement of disputes relating to marriage and family affairs and other related matters.

Constraints

There are a few constraints on the effective working of the judicial system, however, that require to be spelled out. These include:

- **Paucity of staff.** Not only is the ratio of population to the courts in India is the lowest as compared to USA, UK, and other countries, the existing vacancies also are yet to be filled up. For instance, the strength of judges and additional judges in the High courts is 655 against which only 497 were in position as on 1 August 2003. There is thus an inadequacy of staff that finds it difficult to cope up with original work as well as appeals, interlocutory orders, and various other administrative commitments.

- **Delay in disposal of cases.** In view of the above factor, a large number of cases are pending in the courts. There are an estimated 38 million cases pending in various courts; 20 million in District Courts, High Courts and the Supreme Court, and 18 million in lower courts. Efforts are being made to reduce the burden with the help of computerisation which helps in aggregating the cases of the like type and their resolution in appeals. Supreme court has achieved success in this matter.

- **Obsolete laws.** There are 3279 old laws which are obsolete and require to be dropped.

- **Instances of corruption.** Though the higher judiciary has been clean and transparent and is held in very high esteem, yet a few cases of malfeasance have come to notice. One Judge of the Supreme Court was liable to be impeached in 1998 in the Parliament. But he was spared of the embarrassment by one political party’s abstaining vote in Parliament. Recently, one Judge of the High Court of Delhi was caught having shown favours to one of the contending parties to the cases before him. An in-house enquiry was also conducted into the conduct of a few judges in Karnataka High Court for alleged moral malfeasance. But the Supreme Court withheld the report in public interest as it was likely to tarnish the image of the system. However, it does not mean that no action was taken.

Civil Service

Civil service in India has a long tradition since the British times when the country was under the colonial rule. The Macaulay Committee, which gave India its first civil service in 1854, recommended that the patronage system of the East India Company should be replaced by a permanent civil service based on the merit system. Henceforth the service, according to the Report was ‘not a matter of favour but matter of right’. Only the best and the brightest could join the service. It was known as Indian Civil Service (ICS). The officers were trained in England. There were only 1,029 officers in 1938 and almost the same in 1947 when the colonial rule ended.
The ICS was succeeded by the Indian Administrative Service (IAS) when India got independent. The structure of the ICS was retained. The ICS officers who were in service during that period continued to serve even after Independence. In view of the constitutional commitment of creating an egalitarian society, the planning of the economy, social reform, and various other activities of the state, there was an increase in the number of IAS officers. It increased to 5,067 in 1996 from 115 in 1950; 5262 was the authorized strength in 2003.

Recruitment

India is perhaps one of the few countries where public services are recruited on a constitutional status. The recruitment of services is made under the constitutional mandate. Part XIV of the Constitution deals with Services, i.e., creation, recruitment, tenure, and discipline. The recruitment, and conditions of service are regulated by the Acts of Parliament or Legislative Assemblies (Art 309), recruited by the Public Service Commissions for the Union or for each State (Art 315), and disciplined under Art 311. The Parliament is competent to provide for creation of more all-India service common to the Union and the States (Art 312).

The method of recruitment to the civil services is well orchestrated. The three All India Services, i.e., Indian Administrative Service (IAS), Indian Police Service (IPS), and the Indian Forest Service are recruited at the level of the Union Public Service Commission (Art 315) and allocated to the states. They are also assigned to the centre on deputation. This strengthens the unitary character of the State of India. The other category recruited at the central level is called the Central Services. These include the Indian Foreign Service, Indian Audit and Accounts Service, Cantonment Service, Postal Service, Information Service, Railway Service, Revenue Services (Income Tax, Customs), and a few more. These are under the direct control of the central government and therefore beyond the control of the State Governments (although they also have roles in the states as they work in some of the Central Government Departments like, Income Tax, Customs etc.) The officers in the Central services are also recruited by the UPSC.

Training

There are national academies of training for all the services of the Union. The most prominent is the Lal Bahadur Shastri National Academy of Administration, located at Mussoorie in the state of Uttranchal Pradesh. It has the responsibility of conducting Foundational Training Courses for the All India and Central Services and other in-service refresher courses and seminars. It also conducts professional and specialized training for the IAS. Indian Postal Service officers are trained at Hyderabad. All services of the centre have their specialized training institutions. The Indian Institute of Public Administration, Administrative Staff College of India (ASCI) Hyderabad, and National Defence College (NDC) impart training to senior officer for vertical interaction of officer for various services. Similarly, there are State academies for training of officers selected for the State’s services. These are professional schools where specialized courses are given to the officers depending upon their service.

Public Service Commissions

The Public Service Commissions (PSC) are independent authorities. The Chairman and other members of the UPSC are appointed by the President of India, while those of the States by the Governor of the State. They can be removed by the President on the ground of misbehaviour after the Supreme Court, on enquiry, has reported that the Chairman or such member ought to be removed on such ground (Art 317). On ceasing to hold office they are prohibited from further employment under the Government (Art 319). It is the duty of the PSCs to conduct examinations for appointment to the services of the Union and the States. They shall be consulted on all matters relating to recruitment, appointments, promotions, disciplinary matters, etc. (Art 320). Their expenses, including salaries, allowances, and pensions are charged on the Consolidated Fund of India or of the State, as the case may be (Art 322). They
also present annual reports to the President in the case of the UPSC and the Governor in the case of the State, and these are placed in the houses of legislature (Art 323). All this goes to suggest that the functioning of the Commissions is free from interference by any agency and they can act independently.

Though all the Commissions have an excellent record of objective selection due to an impersonal approach and strict procedures, yet a few cases of irregularities in the working of the three State Commissions of Punjab, Maharashtra, and Himachal Pradesh have come to light. The officers concerned are being strictly dealt with under the judicial process that means registration of criminal cases, arrests and prosecution. The exposure and the subsequent action is a measure of the high level of intolerance of the lack of probity in the functioning of a constitutional institution in which the people have faith.

Protection and Security of Tenure

In order to insulate the officers from influence, there is job stability. Art 311 stipulates that no person shall be dismissed or removed from any authority subordinate to that by which he was appointed. There shall be an enquiry in which he is informed of the charges against him and he is given a reasonable opportunity of being heard in respect of those charges so that the officer can deny his guilt and establish innocence and defend himself by cross examining witnesses. Thus there are thus procedural safeguards for imposing major penalties. Secondly, no court can take cognizance of an offence against a Judge or Magistrate, or a public servant except with the previous sanction of the government. The object is save the innocent officials from frivolous or malicious allegations by those who are not satisfied by their orders.131

Administrative Tribunals

Art 323A provides for the constitution of administrative tribunals for adjudication of disputes and complaints with respect to recruitment and conditions of service of persons appointed to the public service and posts of the Union or the States. Administrative Tribunals Act, 1985, provides for the establishment of tribunals. Their procedures are liberal in the sense that the aggrieved person can personally appear before it and a nominal fee of Rupees 50 is paid for filing an application before it. The purpose is to provide speedy and inexpensive justice to the litigants.

Accountability

The civil services are accountable to the legislature in two ways. Firstly, the questions are asked by the members of the legislature from the minister in charge of the portfolio on various acts of omissions and commissions with regard to implementation of policies. This involves the actions of the civil servants. Secondly, the House Committees of the Parliament are empowered to seek information from the civil servants on the report of the Public Accounts Committee.

The accountability has also been desired by the Supreme Court as a ‘guarantee against arbitrariness’ on the part of the administration. Six principles of administrative jurisprudence have emerged in the process:

- Checking on abuse or detour of administrative power;
- Ensuring citizens an impartial determination of their disputes by the administration;
- Protecting people from unauthorized encroachment of their rights and interests;
- Making those who exercise power accessible;132
- No authority should be conferred with excessive discretionary power;
• Every action of the government must be informed by reason.\(^{133}\)

Even the rules framed by the administration under the main Act can be challenged if these are
(1) *ultra vires* the Constitution, (2) *mala fide*, or (3) violate procedural safeguards provided in
the enabling Act.\(^{134}\) There are decisions of the Supreme Court on these principles and norms of
fairness (*Satyavir Singh v UOI* (1985) 4 SCC 252)

In the process, a few norms of procedural fairness have emerged:

- **Natural justice.** This doctrine is intended to prevent people from arbitrary
  exercise of power, as the duty to act fairly is an aspect of equality before and
  equal protection of law (Art 14) and right to life (Art 21). (*Maneka Gandhi v Union
  of India* (1978) 1 SCC 248); (*Mohinder Singh Gill v Chief Election Commissioner
  (1978) ISCC 405). Secondly, the right to be heard, even if it is not provided in
  law, is fundamental. Any denial thereof is construed as unfair (*Olga Tellis v BMC
  (1985) 3 SCC 545*). Therefore, no one can be condemned unheard (*AR Antulay v

- **Speaking order.** The Supreme Court insists that officer exercising power must
  make a speaking order so that the link between material on record and the
  decision arrived at can be appreciated (*Union of India v Mohan Lal Capoor* (1973)
  2 SCC 836). This will ensure that the authority has applied its mind to the merits
  of the case and is in a position to establish the correctness of the reason.\(^{135}\)

- **Report of enquiry.** In administrative proceedings against an officer, the report of
  the enquiry must be made available to the charged employee so that any error in
  the reasoning can be pointed out. The Court held that if the report is not given, it
  would be treated as a violation of the principle of natural justice (*Ram Borah v

Recently, an IAS officer has approached the Supreme Court on the ground that he was being
harassed by one of the Chief Ministers of a State for refusing to replace the appointment of
4,000 primary school teachers with a ‘fake’ one prepared at the behest of the Chief Minister
and some other politicians. Since he had refused to do so, he was placed under suspension
after registration of a ‘false’ case against him. The Supreme Court has taken cognizance of the
case and has sought a reply on the writ petition.\(^{136}\)

**Transparency**

Transparency and openness, jeopardized by the Official Secrets Act (1923), were sought to be
introduced by the fiat of the Supreme Court rulings. The Court has denied the Government the
exclusive privilege of withholding a document on the ground of secrecy. It has reserved the
right to inspect the document to decide on the issue of privilege based on public interest and
the sensitive nature of the document (*State of Punjab v Sodhi Sukhdev Singh* AIR 1961 SC
493).

Second aspect of transparency is the right to know. Though the Freedom of Information Act
has been enacted in some states, yet it not a central legislation. There is pressure from
various sources for its consideration. However, the Supreme Court has decided (*S P Gupta v
Union of India* (1981) Supp SCC 87) that the right to know is inherent in the fundamental
right of freedom of speech in Art 19(1)(a). In a recent case too, the principle has been laid
down that since voting is an act of expression, the voter has a right to know the antecedents
of the candidates contesting elections, (*PUCL & Lok Satta v Union of India*; JT 2003 (2) SC
528).
Restrictions Regarding Transactions, Gifts, Etc.

The Central Civil service (Conduct) Rules are designed to check the financial improprieties of the officials by making them conform to disciplines indicated below:

- Prior intimation is to be given to any official designated for the purpose by the Department of Personnel regarding acquisition, or disposal of any immovable property by lease, mortgage, sale, gift or otherwise in his own name or in the name of any member of his family.
- Any transaction in moveable property is to be intimated to the authority within one month if value of such transaction exceeds Rupees 15,000 in the case of Group A and B officers and Rupees 10,000 (Approx. US $ 215) in the case of Group C and D officers. This included jewellery, shares, securities, debentures, loans, motor car, etc.
- Annual property return containing all particulars of immovable property inherited, owned, acquired or held by the officer on lease or mortgage is to be reported.
- Transactions in immovable property outside India and such transactions with any foreigner require prior sanction.
- Sanction is required for construction of a house.
- He cannot accept gifts or permit any member of his family to accept any gift. However, customary gifts can be accepted from members of his family and personal friends having no official dealings on weddings, anniversaries, funerals or religious functions up to the value of Rupees 5,000 for Group A, 3,000 for B, 1,000 for C, and 500 for Group D officials.
- He shall not accept any gift from any foreign firm having or likely to have official dealings.
- A retired Group A officer cannot accept any commercial employment before the expiry of two years from the date of his retirement without obtaining prior sanction. In case he does so, his pension can be withheld for such period, etc., etc.

Civil Service Reforms

The Tenth Five Year Plan has laid stress on administrative reforms. A special Chapter 6 has been devoted to ‘Governance and Implementation’. The object is to ensure that ‘formulation and implementation of policies and programs (are) equitable, transparent, non-discriminatory, socially sensitive, participatory, and above all accountable to the people at large’. It has taken note of ‘instances of loose or poor governance’ manifested in persisting fiscal imbalances, disparities in pace and level of development, denial of basic needs, lack of credibility, deterioration of physical environment, etc., and proposed measures that would bring about an improvement in performance of the delivery mechanism and the functionaries of the government in general. It has also taken note of corruption as ‘the most endemic and entrenched manifestation of poor governance’. Thus keeping in view the urgency of the Plan implementation, the Planning Commission has proposed strategies that deal with the following items:

- People’s participation;
- Decentralization;
- Right to information;
- Reforms of the revenue system;
• Civil society;
• Civil service reforms;
• Procedural reforms;
• Program formulation;
• Monitoring;
• Empowerment of the marginalized and the excluded;
• Judicial reforms;
• Using information technology for good governance.

In the area of civil service reforms, the Commission proposes the following:
• Enforcing the right to information;
• Greater transparency in policies and procedures;
• Minimizing discretion;
• Those who have the authority must be made accountable;
• Revamping the system of rewards and punishments;
• Review of the function of the Government and shedding the redundant ones;
• Improve professionalism;
• Capacity building and training;
• Rightsizing the Government;
• Stability of tenure.

All the above measures should lead to probity in conduct of the civil services. By systematic reforms of the various segments, it is expected that better governance will emerge. Monitoring and the use of information technology will go a long way in plugging the loopholes in the system. ‘E-governance denotes the application of IT to the processes of government functioning in order to bring about better governance which has been termed as SMART (simple, moral, accountable, responsive, and transparent)...One of the major initiatives envisaged in the IT sector is to take IT to the masses’ (Ibid; 187-8). The concept of E-Governance had some new applications in the state of Andhra Pradesh, where the Chief Minister Chandraprabhu Naidu has in 2001 established a Centre for Good Governance to assist the Government in achieving its goal of good governance in accordance with its vision for 2020. The Centre’s role is to guide and coordinate with Government’s governance, reform activities, and to support implementation of reform and change management. The Government of Andhra Pradesh (AP) also launched a Website on Good Governance (the website contains various types of information about the organisation and activities of Government of AP useful for the citizens) to keep a tab on the activities of all the Departments and the officials in the State, which is accessible even to common man to set a good example of transparency in administration. The former Andhra Pradesh Chief Minister, Chandrababu Naidu has found the AP Government website a means to connect with citizens. The first e-governance project called CARD (Computer-aided Administration of Registration Department) was initiated in 1998, which helps in online property title registration and stamp duty payment. It has since been extended to 239 offices, including district headquarters and most key Mandal (Circle) headquarters across the state. E-seva is another IT application of Naidu Government, which give facilities to citizens to apply online for utilities such as electricity, water and property.
Parastatals are known as Public Sector Undertakings/Enterprises in India. These continued to be established as a part of the planning process and in pursuance of the policy of mixed economy since 1950. These have been playing a crucial role in the economy of the country. At one point of time these were considered as the commanding heights of the economy. These were established in areas where private enterprise either hesitated to step in or was not competent to make huge investments. Therefore, these are the outcome of a policy framework intended as a part of the planning. Their range is very wide and spans from commerce to water resources. Some of these are as under:

- **Chemicals.** Hindustan Organic Chemicals limited (HOCL), and Hindustan Insecticides Limited (HIL).

- **Commerce.** Mines and Minerals Trading Corporation (MMTC), State Trading Corporation (STC). The annual turnover of the former was around Rupees 6,257 crores (62570 million) during 2002-3, and Rupees 2,533 crores (25330 million) for the latter.

- **Communications.** Bharat Sanchar Nigam Limited (BSNL), Mahanagar Telephone Nigam Limited (MTNL), all for the telecommunications systems, Indian Telephone Industries (ITI) for manufacture of telephone equipment, and Telecommunications Consultants India.

- **Energy.** National Thermal Power Corporation Limited (NTPC), National Hydro-Electric Corporation (NHPC), Power Grid Corporation of India Limited (PGCIL), Rural Electrification Corporation Limited (REC), Power Finance Corporation Limited (PFC), North-Eastern Power Corporation Limited, Satluj Jal Vidhyut Nigam (SJVN) regarding hydro-electric power projects, Tehri Hydro development Corporation Limited (THDC), Damodar Valley corporation (DVC), Bhakra Beas Management Board (BBMB), Power Trading Corporation of India (PTC), and Gas Authority of India Limited (GAIL).

- **Fertilizers.** The first state-owned fertilizer unit was set up in 1951. At present there are nine such units under the Department of fertilizers.

- **Finance.** There are 27 nationalized banks in the public sector with 32,655 branches, the State Bank of India being the biggest with 13,578 offices. Similarly, Life Insurance Corporation of India has seven regional offices, 100 divisional offices, and 2,048 branches. General Insurance business was nationalized in 1973 by the General Insurance Business (Nationalization) Act, 1972. This led to the amalgamation of more than 100 non-life insurance companies into four companies that have now 2,699 branch offices. Recently there has been some liberalisation in this field and the insurance sector has also been opened for private investment.

- **Industry.** In 1951, the Government set up 5 Central public sector Enterprises. These increased to 240 till March 2003. There are nine ‘diamond’ (called ‘Navratnas’ – Nine Gems) enterprises like Bharat Heavy Electrical Limited (BHEL), Bharat Petroleum and Chemicals Limited (BPCL), Gas Authority of India Limited (GAIL), Hindustan Petroleum and Chemicals Limited (HPCL), Indian Oil Company (IOC), Mahanagar Telephone Nagam Limited MTNL), National Thermal Power Corporation (NTPC), Oil and Natural Gas Commission (ONGC), and Steel Authority of India Limited (SAIL).

- **Mines.** There are four undertakings in the public sector. These are Mineral Exploration Corporation Limited (MECL), National Aluminium Company Limited (NALCO), Hindustan Copper Limited (HCL), and Bharat Gold Mines Limited (BGML).
• **National Highways.** The Central Government is responsible for the maintenance of 58,112 kilometres of the highways system. Besides, the National Highways Development Program (NHDP) has undertaken a project of having 4/6 lanes on 13,000 kilometres of the national highways. The project started in 1999 is likely to be completed in 2007.

• **Railways.** Besides being nationalized and controlled by a separate Ministry and a separate budget, railways have five undertakings under the Ministry of Railways. These are Rail India Technical and Economic Services Limited (RITES), Indian Railway Construction (IRCON) International Limited, Indian Railways Finance Corporation Limited (IRFC), Container Corporation of India Limited (CONCOR), and Konkan Railway Corporation of India (KRCL).

• **Shipping.** Shipping Corporation of India (SCI) is a public sector undertaking with a fleet of 88 vessels.

• **Disinvestment Policy.** In order to reduce its stakes in the non-strategic public sector enterprises, the Government has initiated a policy of withdrawing from the non-core areas thus ushering an era of professional management control. This was more vigorously pursued after the acceptance of the policy of liberalization and privatisation after the adoption of New Economic Policy in early 1990s. The process is transparent both in policy and procedure. Till March 2003, 48 enterprises relating to jute machinery, aluminium, hotels, phosphates, zinc, automobiles, petrochemicals, etc. have been privatised. These do not include any of those undertakings mentioned above. If the policy continues after formation of the new government in May 2004, then some of these, except the strategic areas of defence production and railways, may also be privatised.

Though these undertakings are colossal with investment running into billions of US dollars, yet the cases of corrupt practices are not many as is clear from the details mentioned in the chapter on investigating agencies. It would be difficult to state that these are immune to the problem, but one can take note of only those instances that come to notice for scrutiny and action. The Parliamentary Committee on Public Undertakings is the instrument of the Parliament to exercise control over the working of these undertakings. However, all the undertakings have a vigilance set up, besides the ones in the controlling ministries of the Government to look into the cases of corruption or frauds.

### Police and Prosecutors

#### Structure of Police

Regular police force as an institution was started in India by the Police Act of 1861. All the police forces in the country - except the metropolitan police forces (these are established by some of the Metropolitan city governments in India, like Delhi, Mumbai, Kolkata, Chennai, Bangalore, Pune, Nagpur, Hyderabad etc. to meet the requirements for extra forces for use in their cities to maintain law and order and are governed by the Police Act which has proved its resilience and relevance.) The only changes made in the metropolitan areas pertain to the nature of executive powers of police to deal with contingencies and eliminated the role of magistrate in tasks that do not require any outside intervention. Other laws that guide the functioning of police are the Code of Criminal Procedure 1973, the Evidence Act 1872, the substantive law called Indian Penal Code 1860 and other enactments that are cognizable.

There are two types of police forces. The first belongs to the State Police. Since law and order is a state subject as per the Constitution, each state has a police force consisting of Indian Police Service (IPS) officers (recruited by the UPSC) at the top, State Police Service officers
(recruited by the State PSC) in the middle and all other ranks recruited either by the PSC or the police department in accordance with set procedures and rules. The jurisdiction of each of the agency responsible for recruitment of what levels of forces are clearly outlined and norms are set up in advance and the system is well entrenched; prospects of various services are known, and, therefore, there is no confusion. For instance, an IPS officer starts his career at the middle level and reaches the top of the organization in due course, whereas the officer of the State Police Service, starting at the same level has to spend a number of years before getting the next promotion. However, the latter also are eligible for higher ranks and do achieve positions of senior level, if not the top of the organization. Secondly, the force functions in accordance with the badges of rank, and in accordance with statutes, rules, and procedures. Hence there is no scope for any ambiguity in terms of responsibility or performance of duty.

The total force in the states, including the Armed Reserves, is to the tune of 1,130,219. The police-population ratio in India is 134 policemen to a population of 100,000, whereas Russia has 1225, Singapore 1075, France 349, England 347, USA 300, Australia 274, and Japan 207.141

The other category of police is known as paramilitary forces that are under the control of the Union Government through the Ministry of Home Affairs. These are Border Security Force (183,000), Central Reserve Police Force (167,000), Central Industry Security Force (96,000), Assam Rifles (52,000), Rashtriya Rifles (48,000), Indo-Tibetan Border Police (31,000), National Security Guards (8,000). These are in addition to the Intelligence Bureau, Central Bureau of Investigation, Special Security Bureau, Narcotics Control Bureau, National Crime Record Bureau, Special Protection Group, Bureau of Civil Aviation, and the Civil Defence. All these organizations perform special tasks as their names suggest. These operate under the control of officers of the rank of Director General of Police who are appointed by the Union Government from the cadre of IPS officers. These forces are deployed by the Central Government in the States whenever the situation so requires, and are used in aid of the state police during emergencies pertaining to law and order or other contingencies. Once they are placed in the state, they operate under the command of the State Police. For serious contingencies, army may also be used in aid of civil power for which specific procedures are laid down in law and operating orders.

Training

Training to police officials is imparted in a regular manner both at the state and the central levels. IPS officers are trained at the National Police Academy at Hyderabad. Each state has its Police Academy for the training of its officers, Colleges or Schools for the middle level subordinate officers, and Recruit Centres for the Constables and Head constables. Central Police Organizations train their officers at their specialized training institutes and academies.

For purposes of uniformity, systematic training is imparted according to syllabus prepared by the Bureau of Police Research and Development, under the Ministry of Home Affairs. The central government has no role to play in the operation of State Police except providing logistic support with regards to training at its National Institute of Criminology and Forensic Sciences, New Delhi, modernization of infrastructure by giving grants, and scientific support at its Forensic Science Laboratories.

Chief of Police

The Director-General of Police is the chief of police in each state. He is an officer from the IPS, allocated to the state cadre. Cadre allotment is made by the Department of Personnel in accordance with alphabetical order and the requirement in each state. This is done in order to eliminate pressures for opting bigger states. The procedure now ensures that there is no scope for any arbitrary allotment of officers to different states. Appointments are made on the basis of an All India competition conducted by the Union Public Commission (indicated above). The
officer is protected by Article 311 of the Constitution so that the State Government is not in a position to dismiss him in case he goes against the will of the political party in power while enforcing law. He can be dismissed only after a regular enquiry is conducted by a competent authority.

Each IPS officer is allocated to a particular state at the time of recruitment. He rises to this highest position in the state through a system of regular promotions based on seniority and merit. He is normally the most senior officer or one among the top seniors who is considered competent to hold the post. The Chief Minister (CM) of the state generally keeps the portfolio of the Home department with him. Though there in nothing in writing about the tenure of the DGP, yet there is rarely an instance when he was transferred on inadequate grounds. However, whenever there is a change in the Government consequent upon the election or otherwise, there can be a change in the chief of police, the outgoing officer retaining his rank but put on another equivalent assignment. The CM incumbent also retains the officer if he has his trust. What is generally sought is an equation of trust and confidence in the capability of the police chief. The CM, if he is displeased with the chief for not toeing his line of action, can transfer him to some equivalent post. Suspension of senior officers without any reasonable ground is rare and questionable in superior courts.

It is however felt that there should be a fixed tenure of the DGP so that he is completely immune to the political influence. A writ is pending in the Supreme Court seeking directions to the Government on this issue. But even in the existing scheme of things, the DGP can refuse to obey illegal directions without any harm to him, except a transfer from the assignment. This too could be embarrassing to the government. The extent of political interference is thus a function of the stature of the police chief, his ethical standards, moral fibre, and strength of resilience. However, the force as such is empowered to work in accordance with law. There have been very few unfortunate instances when the chief did not exhibit sterling quality of leadership and succumbed to the pressures. Generally, the record of the chiefs has been good with stable tenures.

**Police Rules**

All the states have Police Rules under the Police Act, and are contained in a manual. These are required for the internal administration of the force including recruitment, promotion, discipline, management of police stations, records, seized property, duties of various ranks, wireless, motor transport, uniforms, equipment, traffic management, investigation, and multitude of other aspects like conduct of behaviour, code of conduct, relationship with courts, and other agencies of the government. Similarly, aspects of seeking scientific aids to investigation, securing the site of crime, seeking legal opinion on investigation, etc., are included. In fact, all aspects of policing are unambiguously dealt with so that there is no doubt in the exercise of powers.

**Preventive Detention**

National Security Act 1980 and Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA 1974) and (Prevention of Terrorism Act 2001 POTA) deal with preventive detention of elements that are a threat to national security through their subversive activities. The law of detention has not been misused since the cessation of Emergency (1975-77) which is known as a dark period in the history of Indian democracy. Moreover, the executive action of the State is subject to a quasi-judicial scrutiny by the Advisory Board, comprising of the higher judiciary. The order, even thereafter, can be appealed against. Hence there are adequate checks and balances on the powers of the executive.
Checks on Police Powers

Police have wide powers of arrest, search, seizure, and investigation of cases. However, all these powers are under constant scrutiny by the senior officers of the department that has a hierarchy of supervisory controls. In addition to these, while exercising any of the powers, police has to simultaneously report to the court of the jurisdiction at all stages of taking cognizance, making an arrest, seizing property in a case, and other items during the investigation of a crime. The power of arrest which is an instrument of exploitation is circumscribed by the constitutional mandate which lays down a fundamental right in the form of stipulations further expressed in detail in the Code of criminal Procedure. Article 20 lays down that ‘No person accused of any offence shall be compelled to be a witness against himself’. According to Article 21, ‘No person shall be deprived of his life or personal liberty except according to procedure establish by law’. Art 22 lays down four safeguards: (1) no person who is arrested shall be detained in custody without be informed, as soon as may be, of the grounds for such arrest, (2) nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice, (3) every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, and (4) no such person shall be detained in custody beyond the said period without the authority of a magistrate. This has been reinforced by the decision of the Supreme Court in Joginder Kumar v State of UP; 1994 (3) SCC 423, and D.K.Basu v State of West Bengal (1997) 1 SCC 416. Similarly, there are many interpretations of the apex court that ensure that the powers of police are not misused. The case law on these issues is very strong. Prem Shanker Jha v Delhi Administration : AIR 1980 SC 1535 against use of handcuffs (a pair of connected metal rings which can be tied to the prisoner and the waist of the policeman restraining him to run away) without permission of court; Khatri v State of Bihar; AIR 1981 SC 928 against custodial violence etc.

Besides the judicial scrutiny, the issues are raised in the houses of legislature during the Question Hour and police accountability is sought. Then there is the media that is free to collect information and publish lapses of police in a critical manner. It is from the media that the members of the legislature get information regarding the acts of commission and omission of police. Above all, there are the human rights watch groups who are eternally vigilant and keep a close watch over police thus preventing it from excesses. The establishment of the National Human Rights Commission is a significant step in that direction. Similarly, the State Human Rights Commissions keep a watch in their states.

Dealing with Police Corruption

In spite of various checks and balances, there are still occasions when a police officer uses his discretion for personal advantage. These pertain to decision to arrest or not to arrest, causing deliberate delay or showing extraordinary enthusiasm, registration or non-registration of a complaint regarding crime, service of processes, checking traffic violation, etc.

The following channels are being used to deal with corruption in the department:

- Police has an in-house system of dealing with these matters. Routinisation of procedures is sought by visits of senior police officers to police stations. Then there are formal periodical inspections. All matters pertaining to arrest and investigation of cases are reported to supervisory officers.

- Aggrieved persons are free to lodge their complaints with any authority in the hierarchy, even to the DGP. These are either enquired into by the officers who receive the complaints or by the Public Grievance Cell located in each district headquarters.

- In each State, there is a Vigilance Branch under the DGP or a senior officer designated by him who works on his behalf and keeps him informed.
• Since the occasions for misuse of power in traffic are greater than other areas of work, the Traffic Police has a flying squad to conduct raids and see whether powers are being utilized properly.

• At the State level, there is the Anti-Corruption Bureau that is under the control of the government and works independently of the police.

Since the checks on use of power have expanded, police corruption is now drifting from police harassment to provision of benefits or patronage to encroachers on public spaces, hawkers, and other activities where the one who pays is a beneficiary in the process and has no grievance whatsoever against any one. However, these aspects are getting the attention of the Anti-Corruption Bureau and CBI when the officers are found in possession of property and assets beyond their sources of legitimate income. Action taken by the Vigilance Branch of Delhi Police for which the information is available is indicated below:

<table>
<thead>
<tr>
<th>Action</th>
<th>1999</th>
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<th>2001</th>
<th>2002</th>
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<tbody>
<tr>
<td>Dismissal/Removal</td>
<td>150</td>
<td>127</td>
<td>99</td>
<td>78</td>
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<tr>
<td>Reduction in Rank</td>
<td>13</td>
<td>9</td>
<td>76</td>
<td>5</td>
</tr>
<tr>
<td>Forfeiture of Service</td>
<td>365</td>
<td>232</td>
<td>248</td>
<td>224</td>
</tr>
<tr>
<td>Withholding of Increment</td>
<td>165</td>
<td>163</td>
<td>143</td>
<td>51</td>
</tr>
<tr>
<td>Reduction in Pay</td>
<td>57</td>
<td>23</td>
<td>-</td>
<td>12</td>
</tr>
</tbody>
</table>

**Source:** Collected from Annual Reports of Delhi Police

### Prosecution

In the original scheme of things as per the Police Act of 1861 and the Code of Criminal Procedure, prosecution was part of police responsibilities, one of the duties of police being 'to bring offenders to justice (Sec. 23 Police Act). Hence the prosecutors were police officers with police ranks like Prosecuting Sub-Inspector or Prosecuting Inspector or Prosecuting Deputy Superintendent of Police.

In pursuance of the Directive Principles of State Policy (Art. 50) seeking separation of judiciary from the executive, separation of prosecution from police was also contemplated and brought about by an amendment in the Code of Criminal Procedure, 1973. The Prosecution Branch is now a separate agency of the government to prosecute cases in the courts. The Director of Prosecution is the head of the department. He as well as the Public Prosecutors, Additional Public Prosecutors, and Assistant Public Prosecutors are legal professionals who are recruited by the Public Service Commission.

Another element of independence has been introduced by the Supreme Court in Criminal Appeal No 366-368 of 13 April, 2000 that lays down that the Public Prosecutor (PP) can neither be involved in the investigation of a case nor can the investigating officer be compelled to seek his opinion even under the orders of the court. In view of the above, the Prosecution Branch is now an independent agency, neither under the control of police nor of the judiciary. It is expected to bring about fairness in the prosecution of case.

There is a special unit for prosecuting corruption cases. The officers are drawn from the cadre of prosecutors and dedicated to the Anti-Corruption Courts These are headed by a Court of the Session Judge who is competent to try such cases. This Court is exclusively meant to try such cases. The purpose to expedite trial and ensure a certain degree of expertise in appreciating the evidence as these cases involve financial matters involving irregularities and audits. The
Court has the same powers as the normal Court of Sessions. Since the functioning of prosecution is in the open court and the cases are heavily contested and depend upon evidence, there are less chances of corruption. Rarely has a prosecutor been caught taking bribes. Moreover, the progress of trial is under judicial scrutiny and hence serves as an invisible check upon the intentions of the prosecutor.

The Attorney-General of India

The Attorney-General is appointed by the President. He is a person who is qualified to be appointed as a Judge of the Supreme Court. It is his duty to give advice to the government upon such legal matters, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under the Constitution or any other law. In the performance of his duties, he has a right to audience in all courts in the country (Art 76). He is the only functionary who can attend the meetings of the Houses of Parliament without being its member. He has also the right to speak in or outside and take part the proceedings of either Houses, joint sitting of the Houses, and any committee of the Parliament of which he may be named as a member, but he does not have the right to vote.

Public Procurement

There are four types of procurement made by the government. These are for:

- Purchase of equipment for defence, railways, and other projects;
- Public works with regard to roads, buildings, and institutions;
- Expansion of communications and infrastructure;
- Food products.

Since government is the biggest purchaser of equipment and client for the execution of construction works, it is the source of enormous wealth and patronage in the form of contracts, lease, licenses, rights for extracting natural resources, ‘there is thus need to develop some norms to regulate, structure, discipline government discretion to confer such benefits. The government or any of its agencies should not be allowed to act arbitrarily and confer benefits on whomsoever they want’.142

The rules for all the above categories of expenditure are available and codified in the various documents of the Government of India. These are:

- General Financial Rules, 1963, modified from time to time to make them stronger;
- Public Works Department Code that lays down procedures for awarding contracts standards for construction, quality control, etc.;
- Procedures of the Directorate of Supplies and Disposal.

The Institute of Systems Studies and Analysis (ISSA), wing of the Defence research and Development Organization, Ministry of Defence, maintains data of competing weapons systems of rival manufacturers and studies on weapons effectiveness in order to assess their suitability for induction into the forces. However, for considerations of the security of the state, sensitivity of information, and in the interest of the country, the procedures are kept secret, though followed within the Department according to the rules.

The General Financial Rules are applied for procurement of supplies to the Government and any other purchases to be made by various departments. Some of the purchases are made centrally by the Directorate of Supplies and disposal in accordance with rules and regulations so as to curb the local initiative and eliminate chances of irregular procurement.
The Public Works Department (PWD) Code lays down procedures for awarding contracts, maintaining standards of construction, and quality control. All building projects, including roads, of the Government are constructed by the Central Public Works Department (CPWD) or the State’s Public Works Department. For instance, national highways are constructed by the CPWD, whereas the state roads are built by the local PWDs. These are guided by the PWD Code.

Procurement of food items is made through a support policy. The Government stipulates a Minimum Support Price (MSP) for procurement of grains through the Food Corporation of India. Whereas the market rates may be low, the State procures at a higher price in order to ensure fair and remunerative price to the farmers with a view to preventing exploitation of the marginal farmers by the market forces and the intermediaries. Quality, rates, procedure for procurement, and sites of procurement are laid down and made known to the public through advertisements and local grain markets.

All general purchases are made in accordance with the rules. In other words, the semblance of compliance with the rules has to be there, else the transaction is assumed to be suspect. The Supreme Court has laid the following principles:

- **Principle of non-discrimination.** In award of contracts, the government cannot confer benefits on individuals by acting in an arbitrary manner ‘at its own sweet will’.

- **Condition of eligibility.** The government cannot award the contract to someone who does not fulfil the prescribed condition of eligibility. Any violation thereof amounts to discrimination and appears as ‘arbitrary and without reason’ as this would exclude ‘other persons suitably situated from tendering for the contract’. The Court further stated that ‘though the state is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground’.

The Supreme Court in another decision in the case Mahabir Auto Stores v Indian Oil Corporation AIR SC 1031 has held ‘Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transaction and the nature of the dealing’.

In a few cases the award of the contract by the government and its agencies was quashed as the authority concerned failed to observe the principles. This is contained in the following cases: Yadav Medical Store v State AIR 1981 Allahabad 139; Om Prakash v State of Jammu & Kashmir AIR 1981 SC 1001; Parashram Thakur Dass v Ram Chand AIR SC 872; Doongaji & Co v State of Madhya Pradesh AIR 1991 SC 1947.

The expenditures of the government is scrutinized by the office of the Comptroller and Auditor-General of India with its offices in all the states. This not only keeps a mental check on the officials who may be tempted to transgress the limits of propriety, but also makes it possible to pinpoint discrepancies, defalcations, misuse of funds, or other irregularities while making payments of huge sums of money. The audit objections are carried to their logical conclusion, in some cases, even in the registration of criminal cases.

The defence deals are the most crucial. Since the defence equipment is a sensitive matter, its procurement cannot be based on the lowest tender. The Institute for System Studies and Analysis (ISSA), a wing of the Defence Research and Development Organization (DRDO), Ministry of Defence, maintains data of competing weapons system of rival manufacturers and
studies on weapons effectiveness in order to assess their suitability of induction into the armed forces. Moreover, the government is constrained to discuss such matters as these pertain to national security, defence, and other related issues on the grounds of 'the security of the state', 'sensitivity of information', or 'the interest of the country'.

However, it is ironical that some of the issues mentioned in the chapter on Corruption Profile relate to the defence deals like the Jeep scandal case, HDW Deal, Bofors Payoff, etc. Recently, doubts have been raised in the purchase of coffins for the fatal victims of war in Kargil. Besides, the journalists at the tehelka.com conducted a sting operation in exposing the defence officials with regard to the deals by indicating the complicity and thus the probability of presence of corrupt practices. The matter is within the purview of a judicial Commission of Enquiry.

In view of the above, Transparency International (India) has proposed to the Ministry of Defence that the Integrity Pact be signed to ensure that bribes are neither offered by the suppliers or their agents nor are demanded by the officials. The matter is still at the initial stage for consideration.

Ombudsman

The Ombudsman system is the simple and inexpensive way in which complaints of the citizens are handled. It is significant that immediately after its creation in 1966, the Administrative Reforms Commission (ARC) brought out its first report on Redress of Citizens Grievances. It proposed that an ombudsman-type institution was not only justified in order to remove the sense of injustice from the minds of adversely affected citizens, but was also necessary to instil public confidence in the efficacy of the administrative machinery. After considering many obstacles in the way of the redress of citizens’ grievances to be constituting such institutions, the ARC recommended the establishment of the special authorities for the redress of citizens’ grievances designated as Lokpal and Lokayukta. The Lokpal was intended to deal with complaints against administrative acts of Ministers and Secretaries to governments at the Central and State levels, and Lokayuktas in every state for dealing with complaints against administrative acts of specified top officials.

In pursuance of this recommendation, the Government of India for the first time in 1968 sponsored a Bill to establish the institution of Lokpal at the central level, but the bill could not muster sufficient strength and fell through. However, the state-level institution of ombudsman, the Lokayuktas, were established in many states to look into accusations of corruption against people in high places. They have special powers and also deal with corruption because the growth of corruption and increasing public mal-administration has demonstrated the inadequacy of existing judicial institutions to deal effectively with them. So the institution of Lokayukta modelled on the Scandinavian ombudsman experiences was conceived for a special purpose, the entertaining, treating and redressing of problems and grievances of the citizens directed against public mal-administration and the removal of corruption in public administration and in public functionaries.

Lok Ayuktas, were established in many states as an early response to look into accusations of corruption against people in high places. Since then, between 1989 and 2001 five Lok Pal Bills were introduced as a ritualistic gesture as every political party contesting elections invariably includes it as one of the plank of its election manifesto, but none of them has any political conviction to get it passed. The latest decision of the cabinet to reintroduce it (7th in the series) in the forthcoming monsoon session (August 2003) of the Union Parliament with an amendment that would have put Prime Minister too under its purview has - as the Bill was not introduced in the last Parliament - also come a cropper because of the non-seriousness of the political parties to discuss and approve it. The Bill could not be passed and the Parliament was dissolved in February 2004.
Some of the basic unresolved issues that at union level have ostensibly proved obstacles in its creation have been:

- Whether the Prime Minister should be included within the jurisdiction of the Lok Pal?
- Should the Lok Pal be given power to enquire into complaints in regard to “allegations” or “grievances” or both?
- Should the Lok Pal institution be single or multi-member?
- Should the Lok Pal be given power of suo motu investigations?
- Should commercial and contractual matters be excluded from the jurisdiction of the Lok Pal?
- Should the Lok Pal be supervised by a Parliamentary Select Committee?

The experience of the functioning of the Lokayuktas in the states wherever these were instituted by legislation has not been very encouraging. These were set up in Orissa (1970), Maharashtra (1971), Bihar and Rajasthan (1973), Uttar Pradesh (1975), Madhya Pradesh (1981), Andhra Pradesh and Himachal Pradesh (1983), Karnataka (1984), Assam (1985), Gujarat (1986), Kerala (1987), Punjab (1995) and Delhi-NCT (1996). The state of Orissa was the first to establish in 1970 and also the first to abolish in 1994. (to be revived again in 1995). It indicates that the institution is not only hampered by ‘unsympathetic legislation and too few resources’, but also bogged down ‘by little power, limited funds, and a lot of political encumbrances’. According to a survey report appearing in India Today, 14 July 2003, the institution is hamstrung in two ways: statutory and financial. It has no jurisdiction over IAS and IPS officers who form the fulcrum of state administration and enjoy maximum discretionary powers. It is also the victim of fund constraints that characterize state governments. In almost all states, the Lokayuktas live of a pittance of a budgetary allocation.

There are few other infirmities in the functioning of the institution of the Lokayukta:

- It does not cover the position of the Chief Minister in all states.
- In some states, even the Members of the Legislative Assembly are excluded from its ambit.
- The acts constituting the institution do not have any uniformity.
- The recommendations of the Lokayukta are not mandatory. It is the discretion of the government whether to initiate action.
- There is no independent agency to make enquiries. The Lokayukta has to depend upon the police for making investigations.
- In one of the states, after the death of the Lokyukta, the incumbent has not been appointed.

To transform the Lok Ayukta from a poodle to an energetic watchdog, the institution has to have more funds, more authority, and most importantly, be independent from political pressure. It is also necessary that some sort of an Association of Lok Ayuktas be formed to coordinate and discuss some common problems and evolve a model code for consideration by each State Government. Also the redress of grievances as well as attention to allegations of improper conduct should fall within the general purview of these institutions. For the text of a Model Lok Lok Ayukta Bill prepared by the Implementation Committee constituted by Third All India Lokayuktas Conference held at Hyderabad in 1998.

Other suggestions to make the institution more effective include:

- The establishment of the Lokayukta organization should not be optional with the state government as at present, but should be made mandatory for every state of
the country to establish such an organization. The present Acts are full of flaws and infirmities rendering the existing organizations ineffective and they need to be replaced.

- The Lokayukta should have the power to prosecute a public functionary after he is satisfied that a prima facie case is established or made out against him in the inquiry and in such a case no prior permission or sanction of the competent authority should be necessary but the judicial authority alone be trusted to exercise such power objectively.

- The Lokayuktas should have their own independent investigating and prosecuting agency which should function under the supervision and control of the Lokayukta free from all executive influence.

- Special Courts should be established to exclusively deal with corruption cases arising out of such organizations for ensuring speedy disposal and to have a deterrent effect.

- To ensure that these institutions are totally free from the influence of the executive they should be granted financial autonomy like NHRC and SHRCs.152

**Investigative/Watchdog Agencies**

**Anti-Corruption Legislation/Institutions**

As early as 1860, the British rule in India was concerned with the problem of corruption in administration. Therefore it had provided for offences of taking bribe by a public servant. The Indian Penal Code (IPC), 1860, ‘continues to provide for the basis of what constitutes use of public office for private gains’.153 Section 161 of the IPC provided punishment for taking gratification other than legal remuneration in respect of official act; Section 162 for taking of gratification by any person for influencing a public servant by corrupt or illegal means; Section 163 for taking gratification by any person for exercising influence with public servant; Section 164 for public servant abetting offences under Sections 162 and 163; and Section 165 for a public servant obtaining valuable thing without consideration from a person concerned in proceeding or business transacted by the public servant.

Besides the above, Section 165-A had provided for serious penalty for taking of bribe habitually, obtaining valuable things without consideration or inadequate consideration, criminal breach of trust, obtaining for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position or without any public interest, possessing disproportionate assets in his name or in the name of others. This section also makes the bribe giver or any abettor for the offence. Section 168 prohibits public servant unlawfully engaging in any trade. According to Section 169, he cannot buy or bid for certain property which he is not supposed to do lawfully.

During the period of the Second World War (1939-46), ‘scope of corruption had increased enormously with the handling of large contracts for construction works and supplies connected with defence’.154

The Delhi Special Police Establishment Act was enacted in 1946. A special investigation unit was set up in the War Department to handle matters relating to corruption and corrupt practices. The Prevention of Corruption Act was enacted in 1947.

Over a period of time, the following laws having a bearing on the functions of the public servant were also enacted:

- The Representation of People’s Act, 1951;
National Integrity Systems 2003

- Criminal Law amendment Act, 1958;
- Anti-Corruption Law Amendment Act, 1964;

Many of the above laws on anti-corruption, scattered all over, have now been consolidated in the Prevention of Corruption Act, 1988. It is a comprehensive legislation and incorporates offences pertaining to:

- Traps and red-handed acceptance of bribe;
- Possession of assets disproportionate to the income of a public servant; and
- Extending undue favours or gains.

It also includes offences under sections 161 to 165 of the Indian Penal Code like public servant taking gratification other than legal remuneration in respect of an official act; taking gratification, in order, by corrupt or illegal means, to influence public servant; taking gratification for exercise of personal influence with public servant, which are now part of the Prevention of Corruption Act and therefore omitted from the Indian Penal Code (IPC).

The main features of the Act are the provision of minimum sentence of six months which is not generally specified for the common offences, enhanced punishment from 3 to 5 years, empowering an officer of the rank of Inspector to investigate the case, speedy trial, widening the definition of public servant to include those working in authority or body owned or controlled or aided by the government, or any person who holds office and is authorized to exercise authority and perform any public duty, etc. According to the new definition, a Sarpanch of a Gram (Village) Panchayat is a public servant (Bhanwar Lal Mali v State of Rajasthan 1994(3) Crimes 79). Similarly, Members of Parliament and Members of the Legislative Assembly are also treated as public servants. This has been held in a landmark decision of the Supreme Court in Narasimha Rao v State, (1998) Supreme Court Cases 626). The judgment has gone in details of the Prevention of Corruption Act and various provisions of the Constitution and does not extend the immunity of Art. 105 of the Constitution in respect of activities termed as corrupt practices in the context of voting.

In another significant decision (Vineet Narain v India, (CBI) AIR 1998 SC 889), the Supreme Court has suggested how the Central Bureau of Investigation should be structured. It granted complete independence to the CBI from the Executive by placing it under the supervision of the Central Vigilance Commission, as independent and efficient CBI was considered necessary for honest governance. The key issue in the judgment was the autonomy of the CBI.155

The Court struck down the Single Directive of 1969 which required the CBI to get approval of government before investigating case against the officer of the rank of Joint Secretary to the Government of India, Executive Directors of Securities and Exchange Board of India (SEBI) and executive directors and General Managers of nationalized Banks. The Court also ‘introduced a new writ called Continuous Mandamus to monitor corruption cases’.156

This is a new tool forged by the Supreme Court in order to neutralize the inertia of the CBI and government agencies that are not prompt in investigating cases against persons in high positions. The Court in Vineet Narain v Union of India; 1998 CRI L.J. 1208, observed, ‘The sum and substance of these orders is...that none stands above the law so that an alleged offence by him is not required to be investigated...Merely issuance of a mandamus directing the agencies to perform their task would be futile and, therefore, it was decided to issue directions from time to time and keep the matter pending requiring the agencies to report the progress of investigation so that the monitoring by the Court could ensure continuance of the investigation’. The Court, however, made it clear that it did not ‘direct or channel those investigations or in any manner prejudice the right of those who might be accused to a full and fair trial’. The object was thus to get the investigation completed expeditiously by keeping the Court informed of the progress of investigation.
In August 2003, the Parliament has passed Central Vigilance Commission Act once again providing for the CBI to obtain approval of the government before conducting an enquiry into offences committed by offices of the rank of Joint Secretary. In other words, it has attempted to revive the Single Directive that was struck done by the Supreme Court. This is likely to be challenged.

Though corruption in private transactions is not dealt with in the Prevention of Corruption Act, 1988, yet the Supreme Court in another decision (DDA v Skipper Construction (1996) 4 SCC 622) enlarged the scope of principle of accountability in private dealings as were by stating that ‘even if there was no fiduciary relationship as no holder of public office is involved, if it is found that someone has acquired properties by defrauding people, the person so defrauded should be restored to a position in which they would have been but for the fraud’. It was further indicated that the burden of proving that the property was not acquired as a consequence of corrupt deals would lie on the owner of such property.

Property of the corrupt officer can be forfeited under the Prevention of Corruption Act only on his being convicted. The Supreme Court in the Skipper Case has, in an obiter, pointed out that there is a need for law providing for forfeiture of property acquired by public officers through corrupt means. Although the Benami Transactions (Prohibition) Act, 1988, provides for confiscation of property that the public servant holds in the name of the other person who is not able to account for it. But for the enforcement of this Act, the government has yet to frame rules for its operation. There is also need for a law not to permit transfer of undeclared and unaccounted for properties.

Investigative Agencies

Central Bureau of Investigation (CBI)

CBI was established as a consequence of Second World War (1939-45) when ‘the central Government had to handle large contracts for construction works and supplies connected with defence’. In order to deal with the phenomenon of corruption in the defence deals the Government of India set up a Special Investigation Unit as a part of the War Department. ‘To begin with, an executive order was issued by the government in 1941, setting up a Special Police Establishment (SPE) under a Deputy Inspector–General of Police in the Department of War, and subsequently, the Delhi Special Police Establishment Act was brought into force in 1946 and the jurisdiction of the DSPE was extended to cover bribery and corruption cases amongst Central government employees’. A post of Inspector-General of Police, SPE, was created in 1948 to head the organization.

In 1963, the SPE was converted into the CBI. The object was to have a central police organization ‘to investigate cases not only of bribery and corruption but also those relating to breach of trust in government departments and public sector undertakings and other serious crimes’. The need to have a centralized unit emerged because lot of money was allocated for public developmental projects under the Five Year Plans. It was thus necessary to have an agency that could keep a check on malfeasance by public servants. Moreover, in a command economy when the government functionaries had immense powers to grant licenses and permits, opportunities for misuse of power of patronage had multiplied. Hence an Economic Offences Wing was added subsequently. To have further specialization, two divisions were created within CBI in 1987, known as Anti-Corruption Division and Special Division.

The jurisdiction of the CBI is extended to all departments of the Central government, ministries, public sector undertakings of the Government of India, and the Union Territories. However, it can investigate cases in the states only with the permission of the State Government or when invited to do so. But the higher judiciary can direct the CBI to undertake investigation. Recently, the cases of rioting in the state of Gujarat have been transferred to the CBI for investigation.
CBI is the premier investigating agency of the government and is an elite force enjoying trust and credibility of the people and other institutions like the judiciary. It handles the following types of cases:

- Cases of corruption and fraud committed by public servants of all central government departments, central public sector undertakings, and financial institutions.
- Economic crimes, including bank frauds, financial frauds, large scale smuggling of narcotics, antiques, cultural property and smuggling of other contraband items.
- Special crimes such as terrorism, bomb blasts, sensational homicides and crimes committed by the mafia and the underworld.
- Cyber crimes.¹⁶¹

There is no bar to the investigation of cases by the CBI pertaining to normal crimes against MPs and Ministers. The only hurdle is that sanction to prosecute them has to be obtained from the competent authority in case they have committed an offence in the course of their official business.

According to Single Directive of Government of India, the CBI was required to obtain sanction of the concerned department before initiating any action against the officer of decision-making level. This created problems of pursuing complaints of corruption against officers with influence because the government had the discretion whether to permit the CBI to act on the complaint. This anomaly was rectified by the Supreme Court in the course of hearing writ petition in the *Hawala* (*Vineet Narain v UOI*; AIR 1998 SC 889) case wherein a middleman had allegedly paid huge sums of money to political heavyweights. In the course of monitoring progress in investigation by the CBI and the Enforcement Directorate, the Supreme Court decided that both agencies must be insulated from political interference so that they can investigate cases impartially. The judgment was significant in making CBI independent of governmental control and put it under the supervision of the Central Vigilance Commission, a statutory body. The Court thus quashed the directive that required CBI to seek sanction of the department before initiating action. The tenure of Director CBI was fixed for a minimum period of two years regardless of the date of retirement. In other words, a suitable officer in all respects cannot be ignored just because he has less than two years of service.

**Staff**

CBI has a total strength of 5,877 officers of all ranks. This includes officers for administration, investigation, technical advice, and support services. There is one post of Director, and three posts of Special/ Additional Directors for overall supervision. They are all of the rank of DGP and supported by Joint Directors (IGPs) who also supervise investigation of cases. The staffing structure is:

<table>
<thead>
<tr>
<th>Investigation Staff</th>
<th>Technical Wing</th>
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<tbody>
<tr>
<td>Joint Director</td>
<td>Technical Advisor</td>
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<tr>
<td>Deputy Inspector-General</td>
<td>Technical Officer</td>
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<tr>
<td>Superintendent of Police</td>
<td>System analyst</td>
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<tr>
<td>Additional Superintendent</td>
<td>Computer Programmer</td>
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<tr>
<td>Deputy superintendent</td>
<td>Assistant Programmer</td>
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<tr>
<td>Inspector</td>
<td>Executive Engineer</td>
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<tr>
<td>Sub Inspector</td>
<td>Junior Engineer</td>
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<tr>
<td>Investigation Staff</td>
<td>Technical Wing</td>
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<tr>
<td>Assistant Sub Inspector</td>
<td>199</td>
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<tr>
<td>Head Constable</td>
<td>457</td>
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<td>Constable</td>
<td>1801</td>
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<td>Income Tax Inspector</td>
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<td>Income Tax Inspector</td>
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Other officers are for administration, Library, Training Academy, and supporting staff. 
(Information collected from the Office of the CBI, New Delhi.)

**Engineering Advisory Unit**

The unit provides expert guidance in civil engineering cases in the following matters:

- Technical assistance involving sub-standard work and supplies, valuation of houses and other immovable property (real estate).
- Scrutiny and advice on the seized records relating to tenders, agreements with contractors, measurement books, work registers, survey papers, audit reports, inspections, etc.
- Advice on construction work and supplies and quality and quantity of material like cement, mortar, stones, timber, steel, etc.

Officers of the rank of Sub Inspector to Constable do not have powers to investigate. They support investigating officers who are of the rank of Inspector, Deputy Superintendent and above, in the course of investigation.

**Registration of cases**

During the year 2002, the organization registered 1159 cases involving 2014 public servants, including 1217 officers. 132 cases were registered on the orders of the Supreme Court and the High Courts. This is an indication of the confidence reposed by the higher judiciary in the CBI. In 2001, 1105 cases were taken up for investigation.

Important cases registered in 2002 were against:

- General Manager of a public sector bank and partners of a private firm for sanctioning temporary loan and subsequent loss to the bank of Rupees 4.2 million.
- Commissioner of Income Tax and private firms for connivance in the purchase of supplies thereby causing wrongful loss of rupees 1.63 million.
- CMD of Cochin refineries and four senior officers and a private firm causing a wrongful loss of Rupees 124.1 million.
- Secretary to the Government of a state for submission of forged documents relating to date of his birth.
- Former Deputy Chief Minister of a State, Chief Engineer, and Financial Advisor for entering into a criminal conspiracy with a private contractor for awarding a construction work thus causing loss of Rupees 5 million to the government.
- A retired Judge who as Chairman Dealer Selection Board allotted a retail outlet to an ineligible applicant. An amount of Rupees 3 million was allegedly collected from the parties for allotment of petrol pumps.
• Commissioner Central Excise and an Inspector for offering a bribe to Inspector of CBI to show undue favour in a case being investigated by him.
• Commissioner Seamen’s Provident Fund who misappropriated Rupees 927.8 million which he delivered to private persons for purchase of Government Securities and Bonds that were never delivered and the amount diverted for other purposes.
• Commissioner of Income Tax caught red handed while demanding a bribe of Rupees 100,000.
• Telecom District Manager caught red handed while demanding a bribe from a contractor for release of his security deposit.
• Commissioner of Income Tax for demanding a bribe of Rupees 250,000 from a private person for deciding an appeal.
• Joint Commissioner of Income Tax for possession of disproportionate assets of Rupees 12 million.
• CMD of a public sector undertaking for possessing assets to the extent of Rupees 36 million.
• Commissioner of income tax for possession of disproportionate assets to the tune of Rupees 30 million.

Investigation
Of the 1159 cases investigated by the CBI in 2002, 79.5% pertained to corruption and were investigated by the Anti-Corruption Division. These were for criminal misconduct by showing undue favours, obtaining bribes, amassing assets disproportionate to known sources of income, trap cases, etc. The remaining offences related to cases of rape, seizure of illicit arms, child sex abuse, economic offences like bogus transactions, or conspiracy and cheating for import licenses, recovery of narcotics, serious riot, etc.
Investigation was completed in 1137 cases in 2002, including those registered in earlier years. Charge sheets were submitted in the courts for trial. Important persons charge-sheeted were against:

• 2 IAS officers functioning as Chairperson and Chief executive and Deputy Chief Executive Officer of a Development Authority for cheating the government by rendering illegal advantage to private parties.
• Joint Director, Customs, for possession of disproportionate assets.
• A former Member of Parliament for unaccounted possession of pecuniary resources to the tune of Rupees 4 million.
• Deputy Director, Enforcement Directorate and others for creating a false evidence which reflected a debit of US $ 1,50,000 of a Swiss Bank against a private person showing his involvement in FERA violation.
• An IAS officer for manipulating records and allowing payments to firms without receiving full delivery of food and civil supplies.
• DGM of a nationalized bank for conniving with private individuals for siphoning out funds from the bank to the tune of Rupees 254.4 million.
• Chairman of Central Board of Customs and Excise and 5 private firms for causing pecuniary gain to firms for which his son accepted illegal gratification on his behalf.
• Regional Manager, General Manager, and Finance Manager of a public sector undertaking for dishonestly and fraudulently awarding handling and transportation contract to a firm at exorbitant rates.
• An IAS officer for possession of assets disproportionate to his sources of income.
• Chairman, Director, and Managing Director of a PSU for causing illegal pecuniary gain to a private firm by granting discounts worth Rupees 290 million thus causing wrongful loss to the Undertaking.
• Senior Deputy Director of a PSU for amassing wealth disproportionate to the tune of Rupees 9.8 million.
• Project director of a PSU for demanding a bribe of Rupees 70,000 and accepting Rupees 30,000 for clearing pending bill of a firm, etc.

Convictions
Out of 673 cases disposed in trial during 2002, 430 resulted in conviction, 196 were acquitted and 47 were disposed of in other ways. Important convictions were as follows:
• A Deputy General Manager of a PSU sentenced to two years’ rigorous imprisonment with hard labour, for accepting a bribe for settling bills.
• An Enforcement Officer for two years’ RI for accepting a bribe for not filing a case against someone.
• A Branch Manager of a bank for three years rigorous imprisonment (with hard labour), and with fine for defrauding the bank.
• An IAS officer for two years’ RI with fine for possession of assets disproportionate to his income.
• A former Minister of State for three years rigorous imprisonment and Deputy Director General with a fine, for abusing official position in making purchases at higher rates.
• An employee of a nationalised bank for 2 years rigorous imprisonment with fine for conspiring with another for illegal diversion of funds for purchase of securities.
• An Assistant Manager of a bank for two years’ RI with fine for diverting money by showing bogus transactions.
• Two private persons for seven years and five years rigorous imprisonment with fine for criminal conspiracy and cheating in procuring import license and misusing imported drugs, etc.

Regular Departmental Action
During 2002, Regular Departmental Action was initiated against officers in 186 cases on various charges of misconduct, whereas 456 cases, pertaining to the previous period, were disposed of. Out of these, 399 cases ended in punishment of officers, 57 in exoneration and 55 were disposed of otherwise. Departmental action is taken against public servants, after investigation, in those cases that are not fit to be prosecuted in the court either for reasons of weak evidence or when rules of procedure, without criminal intent, have been violated while exercising power or discretion. The CBI, in such cases, refers the matter to the concerned department of the Government for taking action in accordance with the Civil Service Conduct Rules. The disciplinary proceedings are thereafter initiated by the competent authority and penalty awarded in case the charge is proved against the officer. A penalty in this case could have an adverse effect on the officer’s career as a record thereof is made in his personal file.
Directorate of Prosecution

The Directorate is headed by Director of Prosecution, who is selected by a senior Committee, consisting of the Central Vigilance Commissioner, Home Secretary, Law secretary, and the Director, CBI. The sanctioned strength of the organization consists of 6 Additional Law Advisors, 20 Deputy Law Advisors, 96 Public Prosecutors, and 41 Prosecutors.

The functions of the Directorate are:

- Supervising and monitoring conduct of prosecution in courts.
- Filing appeals and revisions as well as appearing in appellate courts.
- Advising police officers on all matters during investigation and trial.
- Preparing a panel of special Counsels to conduct prosecution, appeals or revisions.
- Selecting Counsels for High Courts.

Constraints

The CBI operates under a number of constraints:

- There is shortage of manpower.
- The jurisdiction of CBI is not automatically extended to the whole country. The State Government has to extend its jurisdiction to its own state.
- The findings of the CBI are not often followed up seriously by the Executive.

If the trend is anything to go by, then perhaps it is time to take a re-look at the reporting structure of the CBI. There is a need to make it a more independent agency: a suggestion has been made to associate it with the office of the Chief Vigilance Commissioner or even the judiciary. Given that judicial activism is on the rise and in several cases, the courts have been directly supervising the CBI, this may also be a way of ensuring the professional integrity of the investigating agency. A conscious decision should be taken to ensure that the CBI does not lose either its reputation or its credibility by involving it in petty cases to settle political scores or follow a particular agenda.162

Anti-Corruption Bureau

The Anti-Corruption Bureau or Branch exists in every state in the country. The ACB has powers to investigate cases pertaining to corruption officers of the State as the CBI does against officers of the Central Government. It derives its powers of investigation under the Police Act. It is headed by an officer of the rank of DGP or IGP. He is independent of the State Police. He operates directly under the State Government as an autonomous entity.

The ACB collects intelligence, lays traps for red-handed catches, and investigates cases of bribery and disproportionate assets.163 There is no hierarchical, bureaucratic, or legal link between the CBI and the ACBs. They are all independent entities and function in accordance with laws that are common. But there is no clash of jurisdiction as regards the organization or in terms of the investigation, or the exercise of powers.

Watch Dog Agencies

Central Vigilance Commission (CVC)

The CVC was ‘conceptualised as an apex body for exercising control over vigilance matters in administration’ on the basis of the 1954 report of a Committee on Prevention of Corruption in 1964 (known as Santhanam Committee Report). It was established in 1964. The functions of the Commission are as under:
• To undertake an enquiry or cause an enquiry or investigation to be made into any transaction in which a public servant for the Government of India is suspected or alleged to have acted for an improper purpose or in a corrupt manner; inquiries are also conducted by the Commissioners of Departmental Inquiries, who are part of the CVC;

• Tender independent and impartial advice to the disciplinary authority in cases having vigilance angle at different stages of investigation, inquiry, appeal, review, etc.;

• Conduct inquiries through its officers, known as Commissioner of Departmental Inquiries, in important disciplinary proceedings against the said public servant;

• Exercise a general check and supervision over vigilance and anti-corruption work in Ministries/Departments of the Government of India and other organisations to which the executive control of the union extends;

• Initiate review of procedures and practices of administration insofar as they relate to maintenance of integrity in administration;

• Scrutinize and approve proposals for appointment of Chief vigilance Officers in various organizations and assess their work;

• Conduct, through its organisation of chief Technical Examiners, independent technical examination mainly from vigilance angle, of construction and other related works undertaken by various Central government organizations; and

• Organise training courses for the Chief vigilance Officers and other vigilance functionaries.

In a writ petition filed in Public Interest by Vineet Narayan in the Hawala case (AIR 1998 SC 889), the Supreme Court issued directions for giving a statutory status to the CVC. This was done through an Ordinance dated 25 August 1998. CVC was thus empowered to:

• Exercise superintendence over the functioning of the CBI insofar as it relates to investigation of offences under the Prevention of Corruption Act, 1988. The implication of the judgment is to accord a statutory status to the CVC with a view to strengthening the organization to cause an investigation to be made by the CBI for alleged commission of offences under the Prevention of Corruption Act; in other words, to make CBI more autonomous since it is no longer required to report to the government but is now accountable to the CVC, which is an independent body, thus making CBI more independent;

• Review the progress of investigation conducted by the CBI;

• Exercise the powers of a civil court trying a suit under the Code of Civil Procedure, while inquiring into a complaint against a public servant in respect of the following matters:
  o Summoning and enforcing the attendance of any person and examining him on oath;
  o Requiring the discovery and production of any document;
  o Receiving evidence on affidavits;
  o Requisitioning any public record from any court or office;
  o Issuing commissions for the examination of witnesses or documents.

• Head the committees to make recommendations for the appointments to the post of the Director, CBI, and the Director of Enforcement.
In order to ensure that there is complete independence in functioning, the Chief Vigilance commissioner and every other Vigilance Commissioner shall be ineligible for any diplomatic assignment, appointment as administrator of a Union territory and other such assignment or appointment which is required to be made by the President by a warrant under his hand and seal, or further employment to any office of profit under the Government of India or the Government of a State (Section 5(6), The Central Vigilance Commission Act, 2003).

Organisation

According to the Ordinance earlier and The Central Vigilance Commission Act, 2003, the Commission is conceived as a multi-member Commission, consisting of the Central Vigilance Commissioner (Chairman) and not more than four Vigilance Commissioners as its members. At present there are two members, the CVC and the VC. The appointments of CVC and VCs are made by the President by a warrant under his hand and seal on the recommendation of a committee consisting of (i) the Prime Minister, (ii) the Minister of Home Affairs, and (iii) the Leader of the Opposition in the House of People.

The CVC is assisted by a secretary of the rank of Additional Secretary to the Government of India, 2 Additional Secretaries (Joint Secretary), and 9 officers of the rank of Directors/Deputy secretaries. There are 14 Commissioners of Departmental Inquiries, who are nominated to conduct proceedings on behalf of the disciplinary authorities in serious and important cases. They conduct oral inquiries in important disciplinary proceedings against public servants for contravention of rules and instructions. Inquiries are different from investigation that is conducted by the police under the Code of Criminal Procedure for a criminal offence. The investigation is thus made by the CBI, whereas the inquiry is conducted by the Commissioner of Departmental Inquiries.

The CVC is constituted ‘to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988, by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central government and for matters connected therewith or incidental thereto’. This is contained in the preamble to the Central Vigilance Commission Act, 2003. Therefore, it is implied that politicians are beyond the purview of this Act unless they are part of the system as such. Otherwise, CVC has no jurisdiction over the politicians who are covered under the normal legal system for their acts of commission or omission.

There are 2 Chief Technical Examiners of the rank of Chief Engineers in the Technical Wing. They are assisted by 8 Technical Examiners of the rank of Executive Engineers, 6 Assistant Technical Examiners and other staff. The sanctioned number of officers is 283.164

Vigilance Officers in the Departments

In 1955, the Central government introduced a scheme of Chief Vigilance Officer (CVO) in each department with a view to keeping a vigil on the activities and use of discretion by the officers. The object is twofold. One, it is necessary to take preventive measures for maintaining integrity and rectitude and also to ensure efficiency. Two, it is an integral part of the responsibility of the head of the department. The CVO is assisted by the Vigilance Officers in ‘providing guidance and maintaining a constant drive for effective handling of all corruption complaints and disciplinary proceedings arising out of such complaints. They are also required to monitor the actual functioning of the department, particularly at its cutting edge, constantly review the working procedures and streamline them from time to time to eliminate scope for practice of corruption and the consequent harassment of people who come to transact work with the department’.165 The CVOs report to their respective heads of department. They keep the head informed of the conduct of suspicious officers. They are expected to oversee matters concerning vigilance and integrity. Since it is an in-house mechanism, there is no link between them and the CVC or the CBI.
Commissions of Inquiry

The Commission of Inquiry Act, 1952, as amended in 1972, allows the government to appoint a commission with (a) powers of a civil court to ensure attendance of witnesses, requisition documents, and receive evidence on affidavits, and (b) utilize the services of government officers or investigation agencies. The Act also enjoined the government to lay the Report of the Commission before the Parliament or the State Assembly, together with a memorandum of the action taken thereon within a period of six months. The Commissions of Inquiry conducted investigation into charges of corruption and abuse of power against ministers, and public scandals. The following were some of the important Commissions:

- **Chief Justice M.C. Chagla** against the Life Corporation of India having purchased shares in companies controlled by a businessman. This resulted in the resignation of the then finance minister of the central Government, Mr. T. T. Kishnamachari (1958).

- **Justice S.R. Das** against a Chief Minister of Punjab, Mr. Pratap Singh Kairon (1963) to enquire against allegations of corruption and misuse of official position were made. Seeral cares were upheld by the Das Commission. Kairon reigned on the publication of the Commission’s Report.

- **Justice N. Rajagopalan** against a Chief Minister of Jammu and Kashmir Mr. Bakshi Ghulam Mohammed, with regard to the assets and pecuniary benefits for the members of his family and friends (1965). Despite the adverse findings in the Commission’s Reports submitted on June 30, 1967, he was given the Congress (R)’s ticket to contest the Lok Sabah Elections in 1971.

- **Justice J.R. Mudholkar** appointed by the Chief Minister of Orissa (1967). R. N. Singh Deo to enquire into act of corruption and improprieties against Ministers who held office between 1947 and 1961. Justice Mudholkar found a prima facie case against Minister Harekrushna Mahtab on various counts.

- **Justice Venkatarama Aiyer** against six former Ministers of Bihar (1967). The report upheld several charges against them, but since the Ministry fell on 25 January 1968, nothing happened to the Ministers concerned.

- **Justice R. S. Sarkaria** against Chief Minister of Tamil Nadu M. Karuna Nidhi on charges of receipt of illegal gratification (1972). Several problems arose in the set up of the Commission.

- **7 Justice J.C. Shah** against the Prime Minister of India for her rule during the Emergency (1977) to inquire into the facts and circumstances relating to specific instances of subversion of lawful processes and well established conventions, administrative procedures and practices committed during the period when the proclamation of Emergency was in force. The commission submitted Fist Interim Report on March 11, 1978” the Second on April 26, 1978, and the Third and final report on August 6, 1978.


- **Justice Ranganath Mishra** enquiry on the riots in Delhi (1984) added to the Commission of Inquiry as a mechanism to secure accountability, (Source: Noorani; 224-41) and many other commissions of inquiry in various other matters like violence, riots, etc.
Since 1984 a trend has been witnessed that most of the inquiries into public or financial scams were conducted by the Joint Parliamentary Committees or by the CBI or the Lokayuktas of the concerned state, and only in some non-financial cases or localised cases, too numerous to list or collect data on, judicial inquiries were conducted by an ex-judge of the High or Supreme Court when there was a public agitation to conduct such an inquiry.

**Lok Ayukta**

The institution of the Lok Ayukta was set up as a consequence of the Interim Report on Problems of Redress of Citizens Grievances in 1966, submitted by the Administrative reforms Commission, headed by Morarji Desai, who later on became the prime Minister of India in 1977 after the lifting of the Emergency and the elections. The Report recommended the setting up of two institutions, the Lok Pal at the Centre and the Lok Ayukta in each State (Noorani; 191). Both these institutions are of the nature of an Ombudsman.

Whereas the Lok Pal has not seen the light of the day, the Lok Ayuktas have been set in a number of States. These were instituted by the acts of the States in Orissa, Uttar Pradesh, and Maharashtrta (1971); Bihar and Rajasthan (!973); Madhya Pradesh (1981); Himachal Pradesh and Andhra Pradesh (1983); Karnataka (1984); and Kerala (1999). In other words, of the 28 States in the country only, 14 have the institution in position. Since the State Legislature is required to pass the Act, this has not received the attention of all states at the moment. This depends on the political commitment of the governments in power.

Although, the institution has not yet taken deep roots, it still exists and is capable of causing a flutter among the political ranks even though the end product may not be precise and definite.

**Lok Pal**

The details about the Lok Pal and the functioning of Lok Ayuktas have been dealt with in another section of the report. The Lok Pal Bill was presented the first time in 1971. Subsequently, the exercise was repeated about time to time, and is even being talked of in the current session of the Parliament. But the bill has not been passed. On the other hand, its proposed provisions have been relaxed. The former Prime Minister Atal Behari Vajpayee in his address to the nation on the Independence Day on 15 August 2003 again gave assurance that the Bill would be brought about in the current session of the Parliament. With the change of government in May 2004, it remains to be seen to what extent it becomes a reality.

**Assessment**

It is evident from the above that the investigative institutions and those created by the Constitution have a clout and are to be reckoned with. But those which depend upon the political discretion are fragile and do not have the desired impact. This is clear from the lack of will on the part of the elected representatives who do not want to be roped into the net and desire immunity from any action that might be contemplated against them by such investigative institutions. Because of this lack of willingness on the part of the party leaders and politicians no consensus have yet been reached on the enactment of the Lok Pal Bill in the Union Parliament despite its introduction and attempts to enact it several times, and the bill so introduced always failed to muster enough strength to be passed in the Parliament and was always put off on one pretext or the other. However, all the institutions have a vital role to play in the scheme of things. The C&AG probes into the utilization of funds, and in case of any defalcation thereof, the matter can be either investigated by the CBI, or inquired into by the Commissioner of Departmental Inquiry who is part of the CVC. Similarly, the Lokayukta keeps a watch over the officers in the State, whereas the Commission of Inquiry is conducted by high-ranking judicial officer from the higher judiciary, a judge either of the High Court or the Supreme Court. The report is then considered by the government for action deemed fit.
Media

The media has been the mainstay of Indian democracy. It is immense, varied, and open in all respects. It had been fearless and critical of the authority. Even during the Emergency (1975-77), when the print media was under censorship, the national newspapers displayed their anguish and solidarity by leaving the editorial spaces blank. However, since the lifting of the Emergency, media has assumed the role of a fourth pillar of democracy in all respects thus representing the voice of people, making exposures on corruption through investigative journalism, thus laying bare the claims of politicians and bureaucracy, and pronouncing bold statements in editorials and articles that reflect the opinions of intellectuals, activists, and specialists on the current issues.

There has been no cancellation of the license of any of the media.

Magnitude of Press and Print Media

According to the Registrar of Newspapers for India, during the year 2000, there were 49,145 newspapers and periodicals published in the country. These comprised of 5,364 dailies, 339 tri/bi weeklies, 17,749 weeklies, 6,553 fortnightlies, 13,616 monthlies, 3,425 quarterlies, 431 annuals, and 1,668 bi-monthlies/half-yearlies.

The newspapers were published in 101 languages and dialects. The largest number of dailies were in Hindi (2,393), followed by Urdu (525), English (390), Marathi (371), Tamil (356), Kannada (332), and Malayalam (216). However, in terms of newspapers and periodicals as a whole, the figures were 19,685 for Hindi, 7,175 for English, followed by 2,848 for Urdu, 2,717 for Marathi, and 2,643 for Bengali.

Whereas newspapers are published in all States and Union Territories, the state of Uttar Pradesh is having the largest number of publications (8,750) with 873 newspapers. Bombay Samachar, being published form Bombay since 1822, is the oldest newspaper.

The circulation of newspapers during 2000 was 126,963,763 copies. The Times of India (English) is the largest paper, published from 7 locations and with a circulation of 1,687,099; next being Dainik Jagran (Hindi) from 11 locations and 1,138,035 copies; Malayalam Manorama from 8 locations and 1,208,001 copies; The Hindustan Times (English) from 8 locations and 847,346 copies; The Hindu (English) from 9 locations and 779,851 copies; and Ananda Bazar Patrika (Bengali) from one location with a circulation of 745,348 copies.

None of these newspapers is owned by the government. Few papers are owned by the political parties. These are not popular with the general public as these are considered as mouthpieces of the party. Therefore their clientele is limited to the party only. There is hardly any popular newspaper that compromises with the news or its presentation.

News Agencies

There are a number of national press agencies, including:

- Press Trust of India (PTI) is a non-profit organization owned by the newspapers for providing unbiased news. It was founded in 1947. It has over 100 bureaus across the country and corresponds in major cities of the world with 400 journalists.

- United News of India (UNI) was set up in 1961 and has about 90 bureaus in the country and abroad with 320 journalists and 320 stringers.

Electronic Media

Broadcasting in India started in 1927 under the nomenclature of Indian Broadcasting Service. The name was changed to All India Radio in 1936, and Akashvani in 1957. It is an effective
medium of education, information, and entertainment. There are 208 radio stations, and 327 transmitters (149 medium wave, 55 short wave, and 123 FM). Radio provides coverage to 98.8% of population and covers 90% of the area.

The television system, started in 1959, operates through a network of 1,042 terrestrial transmitters, covering 87% of population. Its maximum expansion was between 1981 during the Asian Games and 1990 when the number of transmitters increased from 19 to 519 through the INSAT (Indian National Satellite). There are 41 program centres. By the year 2000, there were 75 million homes having television sets with 375 million viewers.167

There are about 20 news channels in English, Hindi, and other regional languages. Critical issues of national importance are discussed and the national leaders exposed to free, frank and forthright interviews and discussion. Only, the Doordarshan channel belongs to the government. All the remaining channels are privately owned and hence autonomous. There are 37 million cable subscribers. Besides, skies are open to all the foreign channels, some of which like BBC and CNN have critical programs and interviews. The debates of the Parliament are also relayed on a regular basis, daily during the Question Hour, and entirely especially when there is a motion of no confidence against the government. This is done by the government's TV channel (Doordarshan).

There are, however, 83 private channels, and 33,000 cable operators.168

**Freedom of the Media**

The print media is registered under the Press and Registration of Books Act 1867, and the visual media is covered by the Cinematography Act, 1952, and the Cinematography (Registration) Rules, 1983.

There is almost complete freedom of the media. The only restrictions on the freedom of expression are contained in Art 19 of the Constitution. The grounds for imposing restrictions have to be reasonable and conform to the needs of sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

There are some watchdog institutions and laws to safeguard the freedom of the press and the television:

- **Press Council of India.** It was established under the Press Council Act, 1978, for the purpose of preserving the freedom of the press and maintaining and improving the standards of newspapers and news agencies. The Chairman of the Council is a retired Judge of the Supreme Court. It is comprised of 28 members (20 from newspapers, 5 Members of Parliament, and 3 nominated by the Sahitya (Literature) Academy, Bar Council of India, and the University Grants Commission. The Council is reconstituted every three years and acts as an autonomous quasi-judicial body. Besides ensuring the freedom of press, the Council also administers journalistic ethics and code of conduct to prevent slanderous reportage, protect public taste, and inculcate principles of self-regulation.

- **Prasar Bharti Act, 1997,** is the outcome of a decision of the Supreme Court that directed the creation of a regulatory authority to distribute the airwaves between the public corporation and the private channels (Secretary, Ministry of Information and Broadcasting, Government of India v Cricket Association of Bengal; AIR 1995 SC 1236). It thus provided freedom to the electronic media. A Board consisting of a Chairman, an executive member, and a number of part-time, full-time, ex-officio, and elected members has the object of freeing electronic media from governmental control and ensure autonomy in functioning.
• State monopoly of the press is ruled out. It was decided by the Supreme Court that the monopoly of the press was not permissible as it impinged upon the freedom of the press (Tata Press v Mahangar Telephone Ltd; AIR 1995 SC 2438).

There are decisions of the Supreme Court that have granted freedom to the media in spite of the subtle moves of the government to interfere with the same. The State cannot abridge the freedom of expression by imposing a tax upon a particular newspaper thus forcing it to raise its price and indirectly reducing the circulation thereof or making it dependent upon the government for patronage. (Express Newspapers v union of India; AIR 1958 SC 578; and Bennett Coleman v Union of India; AIR 1995 SC 106)

Censorship

The law that provided for the censorship of press was called the Press (Objectionable Matter) Act 1951. It expired in 1956. Thereafter there was no law to control the press. During the proclamation of Emergency, the Parliament enacted the Prevention of Publication of Objectionable Matter Act, 1976, having rigorous provisions. This was, however, repealed by the new government in 1977 after the lifting of the Emergency. In order to further strengthen the freedom of press, the Constitution was amended, and a new proviso Art 361A was inserted in 1978. It provided that 'No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative assembly…unless the publication is proved to have been made with malice'. The government is thus denied the opportunity and powers to twist arms of the media.

Contribution

The media in India has been a very powerful force. It has ably acted as a watchdog on the institutions of the government, thus keeping them on the toes for fear of exposure, comment, or criticism. Editorials in newspapers are forthright, bold, highly critical, and evaluative. Similarly, talk shows, and interviews are ironical, farcical, and full of hidden meaning and critique. The contribution of the media has been immense. One, it has stimulated debate on policy issues thus forcing the government to retreat on matters of public interest and importance. Two, it has exposed scams, abuses of human rights, and political corruption thus leading to enquiries against the high and the mighty, change of governments, and fall of tainted persons person from grace. Its investigative journalism is advanced. Three, the media has taken up social causes and been responsible for a number of public interest litigations in the Supreme Court thus providing relief to the people. Four, it has fought for the empowerment of the women and other weaker sections of society. Five, it is an effective instrument of conducting watch during elections when its correspondents move to various parts of the country thereby alerting the government and the Election Commission of any unusual trend that would require their attention. Six, it has lobbied for national and social causes.

The above is in spite of the few incidents when the voice of the media was attempted to be stifled. Instances such as the harassment of tehelka.com - a private TV channel, which effective February 2004 has also started publishing a weekly newspaper entitled Tehelka - that had conducted a sting operation for exposing corruption in the defence deals for which the matter is now under enquiry by a Commission; threats to the Time’s reporter Alex Perry for an article on Prime minister’s health; expulsion of Al-Jazeera’s correspondent for his reporting on Gujarat incidents; income tax raids on Outlook magazine, etc. have not deterred any one from restraining to expose and report on the nation’s happenings and undercurrent developments.
**Civil Society**

There have been five phases in the growth of civil society in India. First, there is a strong, well-established tradition of philanthropy and voluntary action for the welfare of the weaker sections, dispossessed, and the poor. All religious traditions have been voluntary giving as a core value. They organize community kitchens, medical services like hospitals and dispensaries, and other types of help for the needy. They also undertook the development of charitable and educational institutions with the object of extending egalitarianism, equality, and mutual sustenance.

The second phase of voluntary action was inspired by social reform that was necessary to counter the ills that the dormant society had developed during the colonial rule. The impact of western thought, ideas, and institutions influenced thinkers, reformers, and activists. Raja Ram Mohan Roy, the doyen of the social reform, founded the Brahmo Samaj in 1828 with 'the aim of bringing about social, political, and economic change in India'.170 Many societies of the type followed. 'These were vehicles for systematizing and collectivising voluntary action primarily at reforming the Indian society'. Hence the British Government provided a legal base in the form of Societies Act, 1860, for their registration and operation. This was followed by a host of other associations like the Prarthana Samaj in Bombay in 1867, and Arya Samaj in 1980s. This was the era of social reform designed to deal with ills of caste, child marriage, and promote widow remarriage and female education.

The third phase spread to the arena of freedom struggle during the early part of the 20th century. This was a different form of voluntary action. However, it had its social dimension when Mahatma Gandhi established Sabramati Ashram in Ahmedabad in 1917 and Sewagram in Wardha; and Dr Annie Besant organized women’s associations in Madras in 1917.

After independence in 1947 and with the beginning of the Five Year Plans, voluntarism entered into a new phase of national reconstruction. To make civil society partners in the task of economic and social development, government set up Khadi and Village Industries Corporation (KVIC), and Central Social Welfare Board (CSWB) in 1950s. The cooperative movement and trade unions also got a fillip during this period. This was also the phase of community development and the experiment of democratic decentralization.

Since all initiatives in this respect were sponsored by the government, these could not achieve their proposed objectives. Hence there were frustrations with outcomes that resulted in protest movements, both violent by the Naxalites and non-violent with a call for 'total revolution' by Jayaprakash Narayan in 1974. This was followed by the proclamation of Emergency that was propelled by other factors as well. This phase was marked by imposition of restrictions on voluntary work. Foreign Contribution Regulation Act (FCRA) 1976 was enacted. It was administered by the Ministry of Home Affairs and provided for regulation of flow of foreign funds to the Voluntary Sector. In 1999, provisions of FCRA were applicable on about twenty thousand voluntary organizations.172

It was only after the lifting of Emergency that voluntary action came into its real element and dynamism. The new generation of volunteers started focusing on issues of environment, afforestation, appropriate technology, literacy, primary health, pollution, human rights, shelter, drinking water, nutrition, sanitation, child welfare, women’s rights, communications, etc. So, broadly, the voluntary movement passed through the phases of social reform, political struggle for independence, national reconstruction, and current themes of social reform, the overall purpose being the promotion of public good and accessing the disadvantaged sections of population in the remote areas.173

**Legal Aspect**

The voluntary societies must be registered under the Societies Registration Act, 1860, or the Indian trusts Act, 1882, or the Charitable and Religious Trusts Act, 1920.
The Foreign Contribution Regulation Act, 1976, as amended in 1985, restricts the receipt and utilization of foreign contributions, through the Ministry of Home Affairs with which such associations as seek funds from abroad are required to be registered. This was done for the overall protection of ‘public interest’.

The societies are also accountable to the Income Tax Act.

**Institutions Supporting/Funding the Civil Society**

The State itself is prepared to support the work of civil society through a range of agencies including:

CAPART (Council for Advancement of People’s Action and Rural Technology). The Council was set up in 1986 to promote and assist formal voluntary effort, embodied in the Seventh Plan document. The government was desirous of promoting voluntarism and people’s action. Thus it became a major funding agency for voluntary organizations associated with rural development and dissemination of rural technology. Till 2001, ‘it funded more than 19,634 projects in partnership with some 8,500 voluntary organizations throughout the country involving an amount of Rupees 570 crores’ (one crore = ten million).174

It developed procedures, introduced transparency, and decentralization by setting up National Standing Committee and Regional Committees for processing and sanctioning applications. This was ‘conceptually and qualitatively different from what is done by the government agencies and contractors’.175

- Khadi and Village Industries Corporation (KVIC).
- Central Social Welfare Board (CSWB).
- People’s Action for Development India (PADI).
- Various ministries of Government of India dealing with development and social welfare.

**Contribution of Civil Society**

NGOs have been inspired by global agendas. Primary Health Care Policy was inspired by Alma Ata Conference; Integral Rural Development by the FAO Conference; women’s rights by Women Decade meetings at Mexico, Nairobi, Beijing; environment by the Stockholm and Rio Conferences; human rights by the Vienna Conference, etc. They have also participated in the formation of National Adult Education Program (NAEP), and the enactment of the Bonded Labour Act, the Juvenile Justice Act in which the NGOs have been given the opportunity of running the Children Homes and other statutory institutions for the children. 'The practice of advocacy involves informing, influencing, altering, modifying, implementing, discarding, and resisting or encouraging public policy'.176 Civil society has been making 'interesting, insightful, relevant, appropriate suggestions for the conduct of public policy',177 based on experience thereby 'rejecting or resisting negative public policy formulations that seemed anti-poor'.178

In the course of time, a robust civil society has emerged at the national and land local levels, including the interior of the country in order to mediate tensions between the groups, protect the interests of the poor, and give voice to the subalterns. Some of the prominent societies that have made a contribution in their fields are the following:

- PUCL: People’s Union for Democratic Liberties;
- PUDR: People’s Union for Democratic Rights;
- CHRI: Commonwealth Human Rights Initiative;
- SHRDC: South Asia Human Rights Documentation Centre;
• Transparency International, Delhi Chapter;  
• Lok Satta (People’s Power);  
• NBA: Narbada Bachao Andolan against mega dams;  
• SEWA: Self-Employed Women’s Association;  
• Lok Sevak Sangh;  
• Centre for the Study of Environment.

Besides, prominent individuals have taken up social causes in the courts, especially the Supreme Court for vindication of fundamental rights of life and dignity, property, freedom of speech, probity in electoral practices, problems pertaining to women, children, bonded labour, the mentally handicapped, prisoners, etc. Individuals like Anna Hazare and Khairnar have openly protested fighting against corrupt ministers and practices.

**Campaign against Corruption**

‘Grass root organizations are creating a pressure for transparency and neutralizing the hegemonic discourse of the state by challenging its priorities of development, procedures, and pressurizing for openness’.\(^{179}\) For instance, the slogan of the Kissan Mazdoor Sangathan Samiti is ‘Our Funds; we must know’. Similarly, a few other societies at the local level have mounted agitations and sought the manner in which funds meant for the development of people have been used in a proper manner. It is therefore a struggle for establishing the principle of accountability.

Whereas the legal approach to dealing with corruption through punishment as a deterrent has not been successful, it is felt that ‘A key approach would be to create a mass awareness and to evolve a comparative judgment based on public participation, which department is more corrupt than the others’.\(^{180}\)

Since the spotlight is on corrupt practices by public servants, the NGOs have come up with studies on corruption perception index. Two studies have been undertaken. One is by the Centre for Media Studies (CMS), and the other is by the Lok Sevak Sangh. The object of both the studies is to create awareness among the people who would then become pressure groups. For example, the CMS study has covered public distribution system, issue of driving license by the transport department, electricity department, civic services of the municipal corporation, railways, hospitals, customs and excise as these departments have public dealings.

The indirect impact of the civil society is to assert their rights wherever possible. Since they are dealing with various aspects of the society and economy, their intervention ensures, to a great extent, that the funds are used for the purposed specified. Through these forums, people are getting conscientised and demanding more of their rights. So the civil society has opened the portals of awareness and rights.

Lok Satta has been fighting the scourge of corruption in the following areas:

• Election reforms.

• Campaign for the Lok Pal (Central Ombudsman) Bill. Till the bill is passed in the Parliament, they have set up an Indian Citizen’s Vigilance Committee.

• Proper utilization of MPs Area Development Funds, discretionary funds with Members of Parliament who may spend these in accordance with rules, through the Deputy Commissioner of the area, for the projects which are either urgent or which are not otherwise covered in the normal course. Lok Sevak Sangh has filed a petition in this case on 30 July 2003.
• Insisting on the issue of Citizen’s Charters by the departments dealing with public. Similarly, the Commonwealth Human Rights Initiative (CHRI) has taken up the cause of Right to Information and the Police reforms, besides other issues of human rights. Thus the civil society has been struggling against authoritarian state power. It creates a discourse of politics of protest through constant vigilance and conceptualisation of alternatives. It has been responsible for breaking the silence on matters pertaining to democracy, freedom, equality, rights, justice, and dignity.

Checks and Balances
In order to ensure that funds are used properly, the donor agencies of the government have devised certain checks and balances.

• CAPART has streamlined the project evaluation system.
• It takes stringent action against those voluntary organizations that have misused the funds by blacklisting them and ensuring that they are debarred from getting funds again, filing civil and criminal cases, and putting them on the web site of CAPART. It has blacklisted 500 such organizations.
• Structural Adjustment Program tries to fill up the loopholes in the system to ensure that funds are utilized in a proper manner.
• CAPART has about 500 monitors to evaluate the projects.
• The Ministry of Home Affairs keeps vigil on the flow of foreign funds with a view to ensuring that these are not used for anti-national activities.
• The various Ministries of the Government have their own systems of accounting and monitoring.
• Income Tax Department has found that in the State of Uttaranchal, many NGOs did not actually exist or were non-functional.

Regional and Local Government
India has a federal structure of polity, at present comprising of 28 states and 7 Union Territories. The Indian pluralism gets adequately reflected in her federalism, which recognizes and respects diversities in the society and provides “for ample space for articulation of multiple identities consisting of 18 official languages and some 2000 dialects, a dozen ethnic and seven religious groups fragmented into a large number of sects, castes, and sub-castes, and some sixty socio-cultural sub-regions spread over seven natural geographic regions”. Indian federalism demonstrates many paradoxes. It is variously described as ‘quasi-federal’. ‘Federation without federalism’, ‘a Union of Unequal States’, ‘Federalism without Centre’. To some India is an evolving federation. To others, Indian Constitution contains unfederal and anti-federal features, which is the antithesis of true federal constitutionalism? Indian federalism is still imperfect. Often it has looked perilously fragile. And yet, after having undergone a major transformation during the last more than half a century, the federal system in India looks more stable than ever before. Indian federalism has become strong, and coherent as well as durable. The transformation of India from a dominant party system to a multi-party system has strengthened federalism. The Centre’s tendency to play truant with the spirit of federalism has created a lot of tension between the Union and the States in the past. It has attempted to usurp powers and jurisdiction of the states through parliamentary legislation by invoking relevant constitutional provisions. Thus Parliament has taken away five items (Item Nos. 11, 19, 20,29 and 36) from the State list, added five to the concurrent list.
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(Item No. 11A relating to Administration of Justice constitution and organisation of all courts, except the Supreme Court and the High Courts; Item No. 17 A relating to forests; Item No. 20A relating to population control and family planning; Item No. 33 relating to trade and commerce in and the production, supply and distribution of certain products; and Item No. 33A relating to weights and measures except establishment of standards), and three added to the Union list (Item no. 2A relating to the deployment of any armed forces of the Union; Item no. 79 relating to extension of the jurisdiction of the High Court; and Items No. 92A & B relating to the taxes on the sale or purchase of goods and on the consignment of goods). Using and misusing Article 356, the President's rule has been imposed in Indian states about 112 times between 1951 and 1998. Since the Supreme Court Judgment in the SR Bommai vs Union of India case in 1996, the imposition of President's rule in the states has become rare. The contentious issues between the Union and the states today relate to the deployment of central forces in the state appointment of Governor and his role, demands for greater state autonomy and the restructuring of the federal polity, regional movements, and identity aspirations particularly in the North-Eastern region of the country. All these have become some sort of anathema for Indian federalism. Regional parties and pro-autonomy political forces are equally divided. Most state governments pressurize and cultivate the federal government for extracting maximum resources from the national pool.

When, after Independence in 1947, India embarked on the experiment to constitute itself into a sovereign republic and modernise the state and its administration through the adoption of a 'parliamentary democracy', not many scholars and analysts in the world had believed that India would survive as a democratic nation but India's existence as a democratic state for the last 56 years of its Independence has compelled scholars to evolve a new consociational interpretation of the survival of democracy in deeply divided societies. However, the functioning of the parliamentary-federal-democratic system during the last 56 years has led to the emergence of tendencies, which have not only challenged the national authority, but have raised a number of questions concerning the stability of governance particularly at the state level. Has the Indian federation succeeded in promoting 'unity in diversity' or has it encouraged more diversities of various kinds – ethnic, social and religious? Has it been able to accurately identify and accommodate the growing needs and requirements of its vast population? Is it conceptually and structurally equipped to handle the emerging challenges of a development process in which new technologies with their integrative compulsions are destined to play a growing role? Have the central and state governments become so gigantic making them indifferent to the varied local needs of the vast populace at the grass root level? Has the existence of a series of minority governments at the centre during the last decade led to a reversal of the role of centre and state governments. Has the federalising process resulted in the crisis of governance and the stability of the government?

These questions continue to dominate the discussions amongst the academics, lawyers, constitutional experts, political leadership and others.

In the early years of the Indian Republic during the 1950s and early 1960s, it was the centralized characteristic of the Indian federalism that ensured that the institutional mechanisms of cooperative federalism do not develop. The over-centralisation of the decision-making process and the de-institutionalisation of inter-governmental relations had gone hand in hand. Today one witnesses a reversal of this trend in the federal system as many of the state governments dominated by regional political parties make undue demands on the central political leadership thus putting pressures on the stability and continuance of the Union Governments. Such and other similar developments have compelled the scholars and policy makers alike to discuss and debate the emerging issues of autonomy of state governments and other structural reforms to enable a 'confederal' operation of the political system, making the formulation and implementation of public policies a 'consociational' exercise between political elites at the two levels of government — central and provincial — with the third, now constitutionally entrenched level — local institutions of self-government — waiting in the wings.
It is a sad commentary on the functioning of the State administrations in India that even, after half a century of their evolution to the present times and despite numerous other attempts made to revamp the politico-administrative systems of state governments, based on the recommendations of various bodies like the Sarkaria Commission Reports, Reports of Finance Commissions, Plan Documents and Constitutional Amendments establishing a Third Tier of Sub-National Administration etc., the problem areas facing state administrations today have also not only basically remained the same as they were in 1960s, but over the years have become much more persisting, complex and serious in view of the changing socio-economic and political environment growing social tensions and violence, greater economic imbalances, increasing regionalism, terrorism and compulsions of the politics of coalitional governments and the processes of globalisation. For example, one of the impact of the processes of globalisation has been that every state Government is trying to attract foreign direct investments in their states for purposes of financing mega projects to develop energy, industry and other basic infra-structural facilities. The effects of economic reforms and transnationalisation are evident in areas such as industrial licensing, financial sector reforms in banking, stock market, insurance sector, telecommunications, electricity, mass media, etc.

The Emerging Major Challenges to State Governments in India

As observed by a very perceptive writer on Indian politics the three major emerging issues of governance facing the state governments in India today are: (a) how to reinforce the governing capabilities in the states, which includes inventing new ways of facilitating the participation of states in the formulation of national policies and motivating them for effective implementation, which has become all the more necessary in the context of a multi-party system and the need to forge federal coalitions for national governance. (b) how to re-establish the fast eroding credibility of state governments in the sphere of responsive and accountable governance, which has over the years further widened the gap between promise and performance due to ever growing scams and corruption in all spheres of polity, leading many of the states in perpetual indebtedness and almost on the verge of bankruptcy, and (c) how to improve the public image of the political class, which has suffered due to infiltration of corrupt and even criminal elements in significant numbers at all levels of the states’ polity. Indeed, corruption is more noticeable and more likely at the state level because the relationship of the bureaucrats and the politicians is closer and more intimate. The officers want proper postings and transfers that are within the power the political executive. Hence there is a possibility of a nexus between the two. This phenomenon is less at the central level as most of the bureaucrats are on deputation from the state governments. Moreover, the political executive at the centre is less local and belongs to the whole country. Hence the probability of a nexus is limited. Moreover, the activities at the centre are under the active scrutiny of the media that is very active.

Government in the States

The Constitution of India prescribes for a federal system of Government. It consists of one set of Government at the Union Level, and another set of Government comprising of States, which at present number 28. Besides there are 7 Union Territories, which are governed by the Union Government. The States are: Andhra Pradesh, Assam, Arunachal Pradesh, Bihar, Chattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttaranchal, Uttar Pradesh and West Bengal. As detailed earlier in the beginning of this report, the powers and functions between the Union and the states are divided according to subjects provided in three different Lists of the Union, State and Concurrent Lists under the VII Schedule of the Constitution.
The seven Union Territories are: Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, Delhi, Lakshdweep and Pondicherry. These are governed by the Union Government at the Centre.

A third Constitutional tier of Government called the Panchayat Raj system was added by the 73rd Amendment of the Constitution in 1993, by virtue of which the Panchayats at the village level already created in 1959 as an experiment in democratic decentralisation were accorded Constitutional status. Similarly through the 74th Amendment of the Constitution in the same year, the existing Municipal Local Governments were also given constitutional status. One consequence of the 73rd and 74th Amendments of the Constitution has been that both the Panchayati Raj and Municipal Government institutions at the grass-roots level cannot be abolished by the State Governments at their whims.

Government at the State Level

The machinery of government at the state level is similar to that of the Union (Central) government. The head of a state is the Governor, who is appointed for a term of 5 years by the President on the advice of the Prime Minister, and serves at his pleasure. His position is akin to the position of the President at the Centre, which is largely constitutional and honorific, but also has certain real powers. He is empowered to dismiss the Council of Ministers, dissolve the legislative assembly; refuse to give assent to a bill passed by the legislature and send it back for reconsideration and perhaps the most important, select a chief minister, when there is no clear majority of any political party in the Assembly, or advice the President under certain special conditions in his state, to proclaim emergency under Art. 356 of the Indian Constitution due to the breakdown of constitutional machinery in his state, and thus bring the state under the direct rule of the Centre. Thus he performs the role of an agent of the Central Government in the State. His position as an agent of the Central Government has sometimes become very controversial in situations when he has disregarded the advice of the chief minister against the contrary desires on the part of the higher level Central authorities.

The Governor being the constitutional Head of the state, the real executive powers are exercised by the Council of ministers led by the Chief Minister, who are collectively responsible to the state assembly, and whose members are appointed by the Governor on the advice of the Chief Minister. According to the 97th Constitutional Amendment, passed by the Parliament in 2004, the number of such ministers cannot exceed more than 15% of the strength of the Legislature, a step that has been taken to curb the practice of defections and constitution of bloated ministries, which were responsible for encouraging political corruption.

The ministers who are appointed by the Governor on the advice of the Chief Minister, are in charge of various administrative departments in the state government and are both individually and collectively responsible to the lower house of the state assembly, thus enforcing the principle of ministerial responsibility. Below the level of minister is the administrative machinery, headed by a Secretariat at the state capital.

The secretariat is divided into number of administrative departments, which consists as a hierarchy of officers with the Secretary at the apex of a pyramid structured on a wide base of clerical personnel. The hierarchy is composed of the secretary, and the special, additional, joint, deputy, under secretaries, Section Officers, Upper and Lower Division Clerks etc. The number and size of the heads of departments depend upon the number of subjects administered by the states. The heads of Department are usually called directors or commissioners. They are assisted by additional directors, joint directors, and assistant directors. Further below this level are the Directorates, and the field administration consisting of a number of Divisions and Districts. The secretariat’s primary responsibility is to assist the ministers in respect of making and modifying policies, framing legislation, sectoral planning, programme formulation, answering Assembly questions etc.
The Chief Secretary

The secretariat in every state is headed by the Chief Secretary, who is always in charge of general administration department, but his control extends to the other departments as well. He is rightly called the ‘kingpin’ of the secretariat. He generally heads the civil service in the state and provides leadership to the administrative system of the state and serves as the communication link between Central Government and other state Governments. He is also the principal adviser to the Chief Minister. As chief of all the secretaries he presides over a number of committees. He receives all-important confidential communications from the Central government and submits them to the Chief Minister.

Regional Administration (Divisional and District Administration):

For the purpose of revenue and general administration there is a hierarchy of spatial units consisting of the Division, District, Sub-Division, Tehsil/Taluka, Circle and the village. The Division is a coordinating Unit consisting of a number of Districts headed by a Commissioner. Many states may not have Divisions and the office of the Divisional Commissioner in their administrative system. The Divisional Commissioner is the Head of a Division, in which a state is territorially divided. The functions of the Divisional Commissioner are to look after revenue and general administration within his division, and he is generally responsible for the supervision and the work of the district level personnel of the division. He also acts as a court of appeal in revenue cases and undertakes regular inspection and tours to keep himself in touch with the functioning of various departments within his jurisdiction. He is comparatively a less familiar personality on the Indian administrative scene than his subordinate, the District Collector, also known as Deputy Commissioner or District Officer or District Magistrate, who is the head of a District.

The most important of the administrative unit in a state is the Revenue District, an institution going back to the 18th century and still surviving, which is the basic unit for administration in India. It is further sub-divided into sub-divisions (known as Tehsils or Talukas) and these again into smaller circles (known as Circles) consisting of a number of villages. At successive higher levels, the circle officer, the Tehsildar, the sub-divisional Officer, the collector and the Divisional Commissioner look after their respective jurisdictions. The number of districts in India according to the latest information is 527 (as in April 2002).

A district is headed by a District Collector, also known as District Officer, or Deputy Commissioner, who acts as the eyes, ears, and arms of the state government, and to the extent the state secretariat treats the office of the collector as the point through which information about field administration should pass to the state headquarters and vice versa, it lends support to the coordinating role of the collector.

Local Government in the States

The lowest tier of India’s governmental system in India at the grass roots level is the local government, which has since 1993 acquired a distinct constitutional status through the 73rd and 74th Amendment of the Constitution. The two 73rd and 74th Constitutional Amendments on Decentralization were enacted because there were (a) absence of regular elections to these institutions (b) prolonged suspensions (c) lack of financial resources and (d) inadequate representation of weaker and vulnerable sections of the population in the Panchayats and the Municipal bodies.

The local government institutions are based on rural-urban separateness. While the rural local government is known as the Panchayati Raj System comprising hierarchically integrated Zila Parishad, Panchayat Samiti and village Panchayat, the urban local government is not hierarchical. The country has three forms of urban local government: Municipal Corporations, Municipal Boards, and Nagar Panchayats, which are constituted according to the criteria of population in a particular town or the city. There is also another form of urban government
known as Cantonment Boards, which are administered by the Ministry of Defence in the Government of India. India’s local government has now two distinctive features: It is enshrined in the Constitution and it is actively associated with local and regional planning. Their constitutional status has made the establishment of panchayati raj institution and municipal bodies mandatory.

**Structure of Panchayati Raj (PR) Institutions**

The structure of PR institutions provided by the 73rd Amendment is a three-tier one at the village, intermediate, and the district level: named as Village Panchayat, Panchayat Samities, and Zila Parishads respectively.

The Village Panchayat system is to have a Gram Sabha (akin to a legislative body), consisting of all adult members of a village or a cluster of villages, and the executive body - the Panchayat to be directly elected by the members of the Gram Sabha. The Amendment provides for holding of elections of members of panchayats at all levels; reservation of seats for SCs/STs and reservation of one-third of the seats for women; five year tenure for every Panchayat, and in case of dissolution, elections are to be held within six months and appointment of a State Finance Commission by every state to review the financial position of panchayats etc. A State Election Commissioner, who would work under the Chief Election Commissioner of is also to be appointed in each state for conducting elections to the PR institutions.

**Functions of the PR Institutions**

The amendment enumerates the functions and powers of the PR institutions which are prescribed in a special Schedule of the Constitution, and recognizes panchayats as ‘institutions of self government’ with prime responsibilities of promoting economic development and ensuring social justice. The state legislature authorizes a panchayat to levy, collect and appropriate specified taxes, duties, tolls and fees and gives grants-in-aid from the consolidated fund of the state.

The functions of the PR institutions as prescribed under the new amendment include agriculture, including agricultural extension; land improvement and soil conservation; minor irrigation, water management; animal husbandry, dairying, and poultry; fisheries; social forestry and farm forestry, minor forest produce; small scale industries; khadi, village and cottage industries, rural housing; drinking water, fuel and fodder; Roads, culverts, bridges, ferries, waterways etc.; rural electrification, non-conventional energy sources; poverty alleviation programmes; education, including primary and secondary schools; technical training and vocational education; adult and non-formal education; libraries; cultural activities; markets and fairs, health and sanitation, including hospitals, primary health centres, and dispensaries; family welfare; woman and child development; social welfare; welfare of weaker sections and SCs and STs; public distribution system; and maintenance of common assets etc.

The 73rd Constitution Amendment Act 1992 incorporated a new layer of government, the Panchayati Raj System in India, which was in existence since 1959, albeit in a morbid state, and has acquired a constitutional status, and which among other things provide for Gram Sabha in a village or a group of villages. The constitution of Panchayats (the third constitutional tier of decentralised system of government at the grassroots level, already discussed in an earlier section) introduced direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for the membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one third of the seats for women; fixing tenure of five years for Panchayats and holding elections within a period of six months in the event of supersession of any Panchayat.
The amendment was considered radical as it accorded constitutional status to the third stratum of government at the local level. However, during the last eight years of its working the governments at the third stratum have not come up to the expected level. Nevertheless three changes did take place: (a) certainty of Panchayat institutions has been assured (b) continuity of the institutions through elections has been stipulated and (c) entry of weaker sections of the people including women in the power structure has become a reality.

Despite these changes, there is no evidence yet that the country is moving towards a system of decentralized governance. Elections have not been held regularly in many states, functional and financial devolution has not taken place, and administrative and financial resources have been denied to the panchayats. Other factors have been the denial of rights to Panchayats to make their own developmental plans, and the setting up of parallel power structure by both state and central governments to set up implementation machinery for developmental schemes bypassing the panchayats.

The Urban Municipalities

The Constitution 74th Amendment Act 1993 came into force in 1993. Relating to the Municipalities the Constitution now provides for among other things, constitution of three types of Municipalities, i.e., Nagar Panchayats for small urban areas and Municipal Corporation for large urban areas, fixed duration of municipalities, appointment of state election commission, appointment of state finance commission and constitution of metropolitan and district planning committees. As a result of these enactments, almost all states have set up their finance commissions, and for conducting elections to urban bodies, and all states/UTs have set up their election commissions.

While the Amendments have succeeded in giving representation to 3.4 million of people in representative bodies as against a mere total of approximately 4,900 in the Central and State Legislative bodies throughout India, which included 700,000 persons from SC/ST (Scheduled Caste and Scheduled Tribe) and a total representation of about 45% of women (and many of them being the President of the one third of local bodies), the revamped institutions of Panchayati Raj and municipal bodies have, however, not succeeded in achieving the basic objectives of local self-governance. It appears that the major thrust of these institutions was towards dispensing social justice even before they were enabled to perform their designated local tasks with locally raised resources to meet the minimum civic needs of the rural and urban citizens.

It has also been maintained by some scholars that since India was by and large an Executive Centred system, and despite the existence of a number of institutions for decentralization like the Panchayats, Samities, Parishads, cooperatives, NGOs, Municipal Committees, District Planning Committees, and so on at the grassroots level, they have failed in their role as implementing agencies for development. They have neither the capacity nor the resources to perform that role. Even they have not succeeded in their primary and essential role of mobilizing people, and monitoring or assisting in the developmental activities undertaken by the executive.

Constraints

People in the field, especially elected functionaries, are highly critical of the existing Panchayat Raj system. They point out that there is a huge gap between the precepts and the realities. Experience in their functioning has indicated that Panchayats have in reality become the power centres, not to solve problems but to oppose any good work done by them. Most persons elected as Pradhans or Sarpanchas had no qualifications or capacity to discharge their functions. And 90% of the conflicts occurring in the villages were the contribution of the Panchayats because of the growing party politics and opposition for opposition’s sake. There is a good deal of corruption at the grassroots level, and because of this and the lack of
supporting staff and expert assistance for the Panchayats, no real developmental work could be carried on.

There is also the basic issue of the conceptual dilemma, whether the Panchayats are really meant to be a third tier of local decentralized governance or merely a restatement of their enabling functions in the 11th and 12th Schedules to be left at the will and the discretion of the respective state governments. These amendments have, however, brought a qualitative change in the federal character of India, as each constituent state has become a federating unit with three layers below it — district, block/taluka/village.

This will be a unique federal feature of polity in India, "which will witness a struggle to find the proper balance, and to create an organic link with a democratic process from Gram Sabha to Lok Sabha." The new agenda is to strengthen the federal climate with greater autonomy and local initiative along with less centralized bureaucratic control. Institutional innovations are necessary conditions for strengthening the federal framework. India’s federal polity is not static. It is evolving and dynamic. As the republic crosses the half-century mark it has de facto entered the multi-level federal era—a change from just a union of states.

The federal system of India is now a multi-level federal system as against the conventional systems of dual governments, which now has a three tier system of political institutions at the Union Level (Union Government institutions), State Level (State Governments institutions), and at the third Grass roots levels, the system of Panchayati Raj Institutions after the enactment of the 73rd Amendment of the Constitution in 1993.) All of these levels have been constitutionally ordained.
Anti-corruption Activities

Government

There is neither focused program nor any direct reference to plans for dealing with corruption. However, the Tenth Five Year Plan document has a separate chapter on Governance and Implementation. The strategies spelled out by the document pertain to items that have a bearing on improving the quality of governance, thus indirectly dealing with the problem of corruption. For instance, the focus on people’s participation, acknowledgement of the role of civil society, decentralization, and right to information are one set of strategies that create an environment for transparency. The other category of strategies refers to reforms in revenue system, civil services, procedures, and the judiciary. These would deal with specifics and have a salutary effect on the style of governance. The third area pertains to monitoring and use of information technology that would help in follow up and the evaluation of projects. Taken together, these measures are likely to bring about openness, accountability, and transparency in the administration.

Donors

Almost all the United Nations and other prominent international institutions are located in India, pursuing their general objectives related to the organization’s rationale. Most of them are using the medium of the civil society for the achievement of their goals. The rationale is to seek public or community participation because these are generally for the benefit of the people at large. These agencies have taken up the issues of empowerment through education, health, uplift of women, focus on girl child, fulfilment of human rights etc. The areas of prevention of disease, awareness with regard to AIDS, clean water, care of forests, wild life, etc., are also attended to. Their funds are routed through the government.

The role of these institutions for dealing with corruption is limited in view of two constraints. One, direct anti-corruption initiatives are rare on the face of it as there is no scope for any intervention of this type with the law-making power of the government or implementation of its plans and activities. Secondly, much is not expected of them as their role is multifarious and the aspect of corruption is only an insignificant consideration that does not go beyond the interest of proper utilization of their funds. Therefore, any initiative with regard to rooting out corruption would be considered presumptuous on the part of the donors.

The interest of the donors is therefore in terms of capacity building of the developing states as a result of their concern for proper utilization of funds given as aid or loan on easy terms. The idea is to ensure that money that flows into these countries is used for the purposes it is meant, and not squandered by intermediaries, both bureaucratic and financial. Prime Minister Rajiv Gandhi had once mentioned that in India only 15% of the plan fund investments were effectively being used for the beneficiaries. The rest were being leaked on the way. This must have caused genuine concern for the donor agencies who undertook a lateral activity of building capacity of the state to combat the ills of corruption by bringing about reforms in the administration and administrative procedures with a view to plugging the loopholes in the conduits through which funds flow and attempting to get the optimum benefits of investments.

A vigorous effort made to get the details of the anti-corruption initiatives of the donor institutions did not bring any tangible results. There was no direct response from the donor agencies except the emphasis on their operations and other indirect or in-house precautions being taken by them to secure proper utilization of their funds.
In a recent case involving the release of Rs. 18,000 million of Andhra Pradesh (AP) Economic Reforms Loan II, the World Bank had reminded the former AP Chief Minister, Chandra Babu Naidu of his assurance to combat corruption and prevent leakages in spending, to strengthen the anti-corruption agencies and make the Vigilance Commissioner (VC) an autonomous institution, vested with powers to refer corruption cases against IAS and IPS officers to the Anti-Corruption Bureau (ACB), instead of the chief secretary. Responding to the World Bank’s suggestion, chief secretary Mohan Kanda has constituted a four-member committee headed by Raghottama Rao to prepare a plan of action by the end of September 2003.
Discussion of Key Issues

The NIS

If we examine some of the key issues pertaining to the operations of the system, we will find India has all the basic institutional infrastructure of the NIS components, and one of the most alert and dynamic democratic systems in the world. The detailed references to constitutional provisions, laws, rulings of the Supreme Court, procedures and processes of various independent institutions and the extension media coverage give a strong indication of intolerance of corruption. There is a lot of public resentment and awareness of the phenomenon of corruption, prevalent both at the higher and lower levels of political and bureaucratic echelons which manifests itself more vociferously at the time of elections with the intention to overthrow the existing government and capture power or embarrass the existing leadership for political gains. The most important example is the changeover of the Government in 1989 elections, when Prime Minister Rajiv Gandhi's Congress Government was voted out of power at the elections on the issue of alleged corruption in relation to purchase of Bofors guns and was replaced by a combined United Front, an alliance of several political parties and factions, led by Mr. V. P. Singh, a former Minister in Rajiv Gandhi’s Cabinet. The unsuccessful motion of Vote of No Confidence moved by a combination of Opposition parties on 18-19 August 2003, led by the Opposition leader Sonia Gandhi against the then Prime Minister Atal Behari Vajpayee's NDA Government was partly to expose the alleged corruption in the Ministry of Defence and the charges of corruption against the Defence Minister George Fernandes, in the purchase of coffins (transporting the mortal remains or the dead bodies of the soldiers perished in the Kargil War) for the Kargil martyrs at exorbitant price, is another example of such manifestations. Thus it can be said that the democratic constitutional framework in India is strong enough to absorb and withstand the shocks of such incidences of grand corruption or mega scandals and has the built-in mechanism to expose the persons responsible for such deeds to public scrutiny and punishment. It is another matter that they go unpunished because of the complexities involved in the completion of the legal process which are time consuming. And the public memory is too short to remember the misdeeds of the corrupt by the time any case of corruption comes to its final conclusion in the courts of law.

In terms of corpus of rules and regulations, it appears that a lot has been done. But in reality one feels that a lot more is yet to be accomplished for ensuring results. In other worlds, the howl may exist, but the sting appears missing.

Political Will

In India the lack of political will to enforce the various constitutional, legal and institutional provisions available to combat corruption is one of the major factors responsible for the rise of the phenomenon of corruption during the last many decades. The political leadership in India is often accused of having double standards of behaviour. When out of office, political leaders are the greatest champions of eradicating corruption from the body politic, which becomes one of their major planks to fight elections, but after winning elections and coming to power they become suddenly cool to implement their promises and begin to adopt the same very dubious methods to keep themselves in power which they had criticized earlier, and lose the zeal to take any serious steps to curb corruption. The lack of political will is evident in the political leadership’s failure even to enact a Lok Pal Bill to establish the institution at the Central level, despite the several attempts made by various political regimes one after another since the first attempt in 1967. This is also reflected in the inability of every government to undertake
comprehensive electoral reforms and agree to a code of ethics for political parties to be followed at the time of elections.

The politicians are also not prompt in taking action against the errant officers despite the reports of the CAG. They have not strengthened the institution of the Lok Ayukta in the states. They are also not serious in enacting law for confiscation of property of corrupt officers. Not much political interest has been shown by the politicians in the Mon Performing Assets of nationalized banks which run into millions, for the reason that these have been appropriated by influential persons or doled out by corrupt managers.

Recently, a new trend has emerged that uses corruption laws to settle scores with political opponents as soon as the new incumbents are in power. The phenomenon of politicisation of corruption can be seen in the state of Uttar Pradesh during recent developments resulting in change of governments. In the state of UP, former Chief Minister Mayavati and the present Chief Minister Mulayam Singh are arch political rivals. When Mayavati was the Chief Minister, she got many cases registered against Mulayam Singh for the misuse of discretionary funds available with the MLAs meant for development of local areas, under the MPLAD Scheme. In the meantime, Mayavati was ‘caught’ in a sting operation asking her MLAs to contribute to the party out of those funds. Her government fell due to dissensions. Now that Mulayam Singh is the Chief Minister, her she is involved in the Taj Mahal scandal for allegedly favouring contractors in a building project that would have caused damage to the environment and the tourist wonder. In the state of Punjab also, the present Chief Minister has got registered cases of corruption against his predecessor. This phenomenon was also visible in the state of Tamil Nadu.

Politicians, especially the legislators, are also averse to proper suggestions from the Supreme Court. They have vociferously voiced their concern for their being declared ‘public servants’ by the Supreme Court. They have reintroduced the clause of obtaining approval of the government before conducting an enquiry by an officer of the rank of Joint Secretary in Central Vigilance Commission Bill, ironically dispersed to give more power to the Commission and the CBI. They oppose the opening up of critical reports of the CAG on ‘ground of secrecy’. They willingly shake hands with corrupt politicians for the sake of retaining power at any cost.

**Capacity of Key anti-Corruption Institutions**

The various anti-corruption institutions set up to fight corruption in India do not ostensibly suffer from many in-built incapacities so far as their formal legal framework is concerned. The legal framework or the orders constituting them generally provide for adequate safeguards to enable them function independently and to carry out their functions in an impartial manner. For example, all such institutions established under the provisions of the Constitution, like the C&AG or the Election Commission or the judiciary do not in general suffer from any inadequate funding, as expenses of such institutions are not debatable and constitute the charge on the Consolidated Fund of India. However, many other institutions or offices established under the Central and or State Government Acts or Executive orders have many a time been effected by inadequate funding, or inadequate facilities or logistical arrangements provided to them by the concerned or relevant authority. This has generally been the case in respect of the functioning of the Vigilance Commissions or Vigilance Officers and the Lok Ayuktas in the states, who had been seriously handicapped in their functioning because of the lack of adequate facilities or funding or the availability of requisite manpower. However, one positive aspect of appointments to these offices had been the fact that in general the persons appointed to head these institutions had not lacked in their specialized skills to carry out their responsibilities, although that cannot be said with confidence about the capacities of the junior officials or subordinate staff. But, because of a system of transfer, deputation and short-term assignment prevailing in the government, this has not been a serious handicap for the top incumbent to discharge his functions.
There is definitely a lack of co-ordination among different institutions involved in the task of fighting corruption. Often many of such bodies have been working in conflict with each other and at cross-purposes. This has generally been the situation when a conflict or overlapping of jurisdiction occurs in cases involving the Federal government or the state or two or more states. There is definitely a case for improving inter-agency coordination and need for establishing highly technically sophisticated information centre(s) for collaboration and sharing of information. The Vohra Committee Report has mentioned that ‘Presently, there is no system/mechanism which is specifically designated to collect and collect intelligence pertaining to the linkages developed by crime syndicates/mafias with the governmental set up’.

**The Legal Framework and Autonomy**

Although India does not have any composite legal framework as a strategy to fight corruption, yet all the anti-corruption institutions existing in India do have the sanctity of law, as these bodies are created under the provision of some law or the other. There is no lack of legitimacy or inadequacy of legal framework so far as the bona fides of the anti-corruption agencies are concerned. However, in their day to day functioning, they do not, appear to function in an autonomous manner and are not immune to all kinds of pressures -- political, bureaucratic, peer groups, vested interests, trade unions, mafia groups and violent criminal elements. Legally these institutions have sufficient autonomy to function, but in practice it is compromised at every stage of their operation. The biggest challenge faced by these bodies in India is how to enable them function as autonomous units. The personnel and financial insufficiencies with which many of the officials suffer in discharging their official duties seem to be very minor in comparison to the formal and informal pressures of rewards and punishments that are brought to bear on their operations, which not only hinder the investigation and prosecution of corruption cases, but also encourage and promote more corruption and the message goes down that the corrupt can manage and get away from the clutches of anti-corruption laws.

Moreover, investigation in cases of acquisition of disproportionate assets and other financial scams are time-consuming. Not only is the CBI short of manpower, even the sanctioned posts are not filled up. Then there is delay in the courts due to various constraints. In the absence of a logical conclusion the cases end up in a limbo of oblivion thus failing to make any impact, or producing a little of it.

**Remuneration in the Public Service**

Until the implementation of the Fifth Pay Commission Report (1997), the remuneration of public services in India has been quite low and the conditions of services very dismal. But after the implementation of the Fifth Pay Commission Report, there has been a substantial increase in the basic pay scales of all classes and grades of public services and improvement in their condition of services and allowances, although they are not still at par with what prevails in the Private Sector. Many of the state Governments have also adopted the recommendations of the Fifth Pay Commission for their own employees, but the improvement in the conditions of services and allowances for the state government employee have not been on par with that of the Central government employees, leading to considerable dissatisfaction in their ranks. While many of the Public Sector Undertakings in the Central Government have also adopted the recommendations of the Fifth Pay Commission, the conditions of services of the employees of the Public Sector Undertakings in the state remain appalling. Moreover there have been cases when the State Governments have been unable to pay the salaries of their public sector employees for years together and it took the Supreme Court of India to direct the State Government to pay the salaries and arrears of their employees. This has been recently the case in the state of Bihar.
Corruption as Part of Indian Culture

The public in India has come to accept corruption as normal pattern of lackadaisical approach in every walk of official and even in corporate dealings, so much so that any clean and transparent dealings invoke surprises. A feeling exists in the general public that nothing gets done without the exchange of hush or speed money. Watching the debates on the recent no-confidence motion in the Indian Parliament (20-21 August 2003), a former Prime Minister Mr. V. P. Singh had observed: There was much cross talk of corruption. Each was busy exposing the corruption of the other. No one spoke of jointly confronting the issue evolving a consensus on issues combating corruption. No one raised their voice in the debate. How credible can the wailings of the political leaders be regarding corruption?198

Recommendations

It is obvious that the government in India could not make a dent in checking or eliminating the menace of corruption from public life. The various instruments used by the Government from time to time since Independence, like the Prevention of Corruption Act, 1947 (later consolidated in 1988), Commissions of Inquiries under the Commission of Inquiry Act 1952,199 appointment of Santhanam Committee (1964) to recommend measures for combating corruption, recommendations of the Administrative Reform Commission, Shah Commission appointed by Janata Government after Emergency (1977), establishment of the institution of Lok Ayuktas in various states, investigations by the Central Bureau of Investigation (CBI) under the Delhi Special Police Establishment Act, 1946, the system of Judicial Review of Political Corruption and the recent phenomenon of Public Interest Litigation (PIL), The Anti-Defection Law, The Foreign Exchange Regulation Act (FERA), Election Expenditure Ceilings, etc., have all proved inadequate.

As a matter of fact, the government has not given any systematic thought to this aspect so far, except the latest document on the Tenth Five Year Plan which declares that 'The universally accepted features of good governance are the exercise of legitimate political power; and formulation and implementation of policies and programs that are equitable, transparent, non-discriminatory, socially sensitive, participatory, and above all accountable to the people at large'.200 All these aspects, if attended to, shall deal with the problem of corruption. Recommendations to deal with the scourge of corruption are mentioned under specific heads:

Political/Electoral Reforms

The politician has an immense power of patronage with the bureaucracy in terms of allocation of work to officers. The power of posting and transfer vests with him. It is this power that is the lever to distribute favours upon the bureaucracy. As Dipankar Gupta states, ‘corruption manifests itself as new patronage that has suitably adjusted itself to the formal framework of a constitutional democracy’.201 This is confirmed by Das who says, ‘Politicians in power can weaken the control systems in two ways. First, by making the public bureaucracy the instrument by which they extract rent. Second, by layering in the public bureaucracy with loyalist civil servants’.202 Politicians have ‘created a patronage system in which public office has been used as a form of currency, and the loyalty of civil servant has been exchanged for parcels of patronage or privileges of public office’.203 Such a civil servant works under the protection of the politician. This ‘has helped the civil servant to buy immunity from the control systems by sharing the bribes. The sharing mechanism has made sure that the probability of detection is almost non-existent. In effect, the sharing mechanism has produced an enviable degree of system coordination which has facilitated a trouble-free vertical exchange of the proceeds, and collusive behaviour all around’.204 Das further says, ‘The corruption network with its experienced operatives resembles a well-oiled, well-coordinated collection mechanism
which is organized almost professionally, and like any professional organization, it is focused on what it does. Thus ‘whatever may be the cause and effect, political corruption and official corruption in India are interlinked’. 205

Some of the areas of reform are in the context of systemic changes for eliminating political corruption through:

- Establishment of the institution of the Lokpal (Ombudsman).
- Public declaration of assets by Members of Parliament, Legislative Assembly, Ministers, and their spouses.
- Providing for funding of the political parties through legitimate means so that the politicians do not have to depend upon misuse of power to raise funds for contesting elections.
- Compulsory audit and publication of accounts of political parties.
- Sorting out the issue of sanctioning authority to take action against members of legislature for acts of corruption committed in the course of business of the House.
- Charge-sheet for a heinous offence as a disqualification for contesting elections in order to prevent the criminal from getting into seats of power.
- Disqualification of candidates giving wrong information in the affidavit pertaining to their education, criminal record, and financial assets and liabilities.
- Confiscation of illegally acquired property acquired directly or through benami (proxy) transactions.
- Need to legislate on limiting the size of the Cabinet. The Deputy Prime Minister L.K. Advani has recently in the Lok Sabha stated that 'there should be a check on the number of ministers in a government'. A law has already been enacted to limit the number of ministers to 15% of the total strength of the lower house of the legislature or to 15, whichever is greater. 206 This statement has perhaps been made in the context of politicians changing parties and toppling governments by getting sops of ministerial appointments. Hence the Cabinet has also decided to change in Anti-Defection law which is contradictory at the moment as 'If only one person defects, he can be disqualified. But if the defection is wholesale, comprising one-third of the party, it is granted’. 207 The change is under consideration by a parliamentary standing committee. 208

Judicial Reforms

- Filling up the vacancies in the courts, especially the High Courts where as against the strength of 647 sanctioned posts, there are only 465 in position. The then Chief Justice A.S. Anand 209 remarked that even in the subordinate judiciary, the sanctioned strength was 12,300 judicial offices for a population of 1 billion and nearly 1,000 of these posts were vacant. He also pointed out that requests for at least 5,000 new courts were pending with various state governments.
- Increasing the number of judicial officers that is highly inadequate to deal with the tremendous workload of courts. Delay in dispensing justice and clogging of courts with cases under trial is due to the fact that the population-court ratio is very poor. ‘According to available statistics, while there are 51 judges per million population in England, 58 judges in Australia, 75 in Canada, and 107 in USA, there are only 10.5 judges per million population in India’. 210
• Financial and administrative powers for judiciary in order to overcome problems arising out of the neglect of this vital wing of democracy by the legislature and the executive.\textsuperscript{211}

• Introduction of computers to expedite processes of the system for online filing and submission of cases, cause list, status of cases, judgment, indexing and cross referencing of judgments, classification of laws; remote testimony, video conferencing, electronic submission of evidence, etc.\textsuperscript{212}

• The kin of the judges not to be allowed to practice in their courts in accordance with the rules of the Bar Council of India.\textsuperscript{213}

Legal Reforms

• Framing of rules for operation of the Benami Transaction (Prohibition) Act, 1988, as it has not been possible to use the Act effectively for want of rules.

• Need for law not to permit transfer of undeclared and unaccounted properties.

• Enactment of the Right to Information Act at the national level with the object of introducing transparency in administration.

• Enactment of Fiscal Responsibility Bill for fiscal austerity ‘considered necessary in an era of coalition politics’, proposed by the Tenth Five Year Plan document.\textsuperscript{214}

• Jurisdiction of CBI, the chief investigating agency in the country, needs to be extended all over the country. It should not be dependent on the approval of the state government, as in the present case.

• Scrapping of 3279 obsolete laws.\textsuperscript{215}

Administrative Reforms

• Need for systems reform so that liberalization of economy does not result in free for all as ‘liberalization seemed to nourish still more magnificent scale of corruption: mutually beneficial transactions on the stock exchange and in the sugar, power and telecommunications industries left the wardrobes of cabinet ministers bursting with cash, and Narasimha Rao himself stood in court as accused of corruption’.\textsuperscript{216}

• Reform in the Revenue System which ‘is perceived to be one of the most oppressive and corrupt systems of government’\textsuperscript{217} by the use of E-governance to ‘bring about better governance which has been termed as SMART (simple, moral, accountable, responsive, and transparent).’\textsuperscript{218} The Government of Andhra Pradesh has tried this method for land records. Any one can obtain a copy of his land record on payment of a nominal fee from the computer. This has eliminated the petty bureaucrat having the power to exploit.

• Greater transparency in policies by issuing the Citizen’s Charters for information of people.

• Minimization of discretion by standardization of routine matters ‘that would lead to a more equitable and less corrupt system’.\textsuperscript{219}

• Elimination of unnecessary intervention of human exploitative elements, wherever possible.

• Making simpler and clearer rules.\textsuperscript{220} Simplifying procedures and making them transparent to the client.\textsuperscript{221}
• Checking administrative delays. The Government of Maharashtra has issued orders in August 2003, that no file will be permitted to remain on one table for more than one week for decision/remarks; final decision shall be made within 45 days; and in case of interdepartmental concern, the maximum period of disposal shall be 3 months. In case of wilful or intentional delay, the defaulting officer shall face disciplinary action for dereliction of duty.

• Streamlining bureaucratic procedures, simplifying tax system, eliminating excessive regulations, and motivating public servants.222

• Fixing tenure of officers so that they are not threatened by the order of transfer. The Government of Maharashtra in August 2003, has issued an order fixing the tenure of officers 3 years except in special circumstances for which reasons will be given in writing. The order also stipulates that no employee will be allowed to remain in the same department for more than one tenure, and in the same station for more than two tenures.

• Reform in Taxation Department. It is proposed to use IT to minimize face-to-face contact between income tax payer and the department. 6 million taxpayers have yet to receive Permanent Account Numbers (PAN). The tool of income tax raid is used as means of harassing the assessee. And there is need for transparency in postings of officers.223

• Seeking coordination between the concerned departments dealing with organized crime syndicates, especially at the local level and the Central Enforcement Agencies like Customs and Excise, Income Tax, etc. Similarly, all the intelligence agencies of the government under different outfits must coordinate efforts within themselves.224

Strengthening the Institutions

• The Lokayukta (State Ombudsman) must be established in all states of the country. The institution, wherever it exists, requires to be given adequate resources and manpower to operate effectively.

• Strengthening the Central Vigilance Commission in accordance with the decision of the Supreme Court in Vineet Narain case (Op. cit.) and not diluting its authority as the contemplated bill passed by both the Houses.

• Action to be taken on the reports of the CAG. There is also need to evolve a mechanism for reporting such action.

• Insulating civil servants from partisan politics, as in the case of Japan.225

• Increasing the probability of the corrupt being caught.

• Proactive action by the Anti-Corruption Bureaus to take preventive measures by studying causes of delay, systems, delivery of service, and developing intelligence for taking action.

Role of Civil Society

• Mobilizing people against corruption.

• Conscientization of the masses by ‘unmasking the state’.226

• Disseminating information to allow people to monitor public services.227

• Securing of rights through pressurizing the state to abide by its regulations and procedures.228
• Providing information to people about their entitlements, and creating legal awareness.

• Using the method of Public Interest Litigation where violation of fundamental rights is involved. The civil society has scored many gains by using this remedy.

Role of Donor Institutions

Donors institution can play role in improving the government effectiveness by analysing the extent of corruption, its causes and effects; making policy recommendations; providing training and diagnostic tools; and collaboration on international level in terms of criminalizing international corruption, detecting and prosecuting transnational offences like illegal flow of money through unauthorized channels etc.

Concluding Observations

Combating corruption in India is not an easy task. Evidently, the main source of corruption has been politics, and it is there where the process of eradicating it has to start. Politics affects all aspects of peoples’ lives. Elections which are the main planks to sustain a democratic polity have become the fountainhead of corruption. Way back in 1967, Prime Minister Atal Behari Vajpayee had said that every MP elected to the Lok Sabha began his parliamentary career by making a false statement—the statement of account of his election expenses. The amount of money that any legislator spends on his elections is many times more than the farcical ceiling laid down by the Government for which he submits his account of election expenses. Having won the elections, these legislators try to recover their expenses in the first two years. What they get in the next three years is a bonus. MP-ship has thus been reduced to a business. All political corruption flows from the necessity of political parties and politicians to raise funds for election expenses that in modern times have mounted to huge proportions. All legal limits in election expenses are violated with immunity. While crimes of violence are handed with ruthless application of law, corruption and immorality are connived at.

Our detailed study may lead us to the dismal conclusion that the roots of corruption lie in the political culture and practices, and not in the political system as such. But for the democratic system, the anguish of the people, the assertions by the higher judiciary, especially the Supreme Court, the independent functioning of institutions like the Election Commission, the CAG, and the National Human Rights Commission, there would have been no possibility of establishing checks and balances. Fortunately India is a “throbbingly alive democracy”, and an open society, where the scams and incidences of corruption cannot be suppressed and swept under the floor for long. That gives a big ray of hope to India's capacity to fight the evils of corruption despite its deep-rooted tentacles in all walks of life. Any attempt on the past of any functionaries –politicians, administrations or corporate bodies or private individuals to thwart the system is met with a forceful resistance at least to bring to public knowledge the extent of damage done to the political fabric and a “wake up” call to exercise a check on the growing misuse of power. It is another matter that the checks do not sometimes prove effective enough.

The experience of India indicates that while the avowed objectives of the probes in various scandals and scams has been to find out the truth, in actual fact they seem to have had other objectives, namely (i) to seem to probe and delay the matter till public forgets the scandal (ii) to secure an instrument to smear the name of political opponent, (iii) suppress a politically damaging truth. It’s noteworthy that hardly any of these probes have led to the criminal prosecution of the indicted politicians.220

The various financial and political scams that have occurred in India point out to the emerging sophisticated pattern of political corruption. Financial bungling of such magnitude cannot take
place and let off without any repressive punitive action unless those are backed by powerful politicians. Thus corruption cannot be tackled if there is no high degree of personal integrity at the higher political levels. If the moral standards at the top are low, social values are bound to degenerate and lead to moral chaos and anarchy. Notwithstanding any institutional anti-corruption strategies that may be devised to combat the incidence of political corruption in any county – Election Commissions, Commissions of Inquiry, Vigilance Commissions, Ombudsman et al. – a strong public opinion, an appropriate social climate which abhors the corrupt and the corrupt practices and a free and vigilant press can perhaps accomplish much more than any legal or institutional device in fighting the evil of political corruption. Ultimately, it has to be a concerted attempt by the government and the people together.231

Politicians resist constraints on their power, and often seek to undercut laws and rules (as in evident in India’s criminalized, corrupt politics). A well-functioning democracy is one where politicians have the vision and public spirit to place checks on their own power, to bind themselves.232

As is evident from the above recommendations, the spectre of corruption can better be exorcised by political framework, especially the legislature that controls all strings of legislation, empowerment of various institutions, financial allocations, determination of priorities, et al. Since the executive and the judiciary operate within the ambit of legislation, rules, and procedures framed by the government, they have a secondary role in the process. If all the moves of the executive and the judiciary are negated by the legislature as it is the fountainhead of power, others being only implementers and interpreters, the initiatives of the former are dampened. This is not to belittle the contributions made by the judiciary and the importance of its role, but only to indicate the parameters within which it works. However, there have been many significant advances emanating from the decisions of the Supreme Court and the High Courts that the politicians were unable to undo, especially in the short run. ‘India’s courts...comprise a functioning independent judiciary...The rule of law, a legacy of the British rule, generally prevails’.233

The dialectical moves between the civil society and politicians, through the medium of the courts and other pressure tactics, will continue to take place in India and may contain if not completely dominate the phenomena of corruption from the society of corruption cannot be suppressed for long.

At the same time, it is also important that international institutions should take steps to encourage participatory approaches in developing countries in order to build consensus for anti-corruption drives and associated reforms. Civil society is likely to be a major ally in resisting corruption. More and more it is this ally that seeks concrete support from more developed Western countries and international agencies in actively combating corruption.234 International cooperation can help national leaders develop political resolve, and international action can convey the useful truth that we are all involved in the problem of corruption and that we must find solutions together.

**Epilogue**

Recently, some trends have been discernible which indicate positive developments in the sphere of measures dealing with corruption. These are likely to have effects gradually, but the direction is significant.

One, The President of India, in his address to the nation on the eve of the Republic Day on 25th January 2004 ( Republic Day is celebrated on 26 January every year), urged all political parties to promise and include in their poll manifestos a determination to fight corruption.235 This almost amounts to a direction. It is for the first time, perhaps, that the head of the state has sought attention of the politicians to the problem of corruption. It is likely to have the desired effect.
Two, the Parliament passed the Anti-Defection Bill through the Constitution (97th Amendment) Bill, 2003. It debars a defector from holding any public office for the duration of the remaining period of the legislature or until fresh elections. The implication is that what constituted as an incentive to change the political party is no longer available to the political turncoat who earlier joined the ruling party for a ministerial berth. The other aspect is the limit on the size of the cabinet in the states and the centre. The size of the ministries is now limited to 15% of the strength of the lower house of Parliament and state legislatures, or 15 whichever is greater. In small states, the maximum number of ministers allowed is 12%. This limitation would prevent the ruling parties on the brink of collapse to induct defectors on the promise of a ministerial post. These measures would go a long way in curbing the political malpractices.

Three, the sting operation that was conducted by the Tehelka is now an acceptable method to unravel the clandestine deals with regard to corrupt practices for political purposes. In November 2003, a Union Minister for Environment, considered as strong Chief ministerial candidate for a state, was caught on camera accepting cash and counting it in a hotel room. Though he claimed innocence and won elections, yet he was not made the Chief Minister even as his party won the elections in the state. In the same state, the outgoing Chief Minister too was ‘caught’ in such an operation involved in an attempt to win over a candidate from the other side by making inducements. He too was discredited.

Four, in the recent elections held in five states in December 2003, it was found that none of the 70 successful candidates to the Delhi Assembly was ever involved in case of corruption. However, 24 Members of Legislative Assembly were involved in cases of rioting and obstruction caused to public servants in the performance of duty. These are the usual types when the politicians participate in civil disobedience that turns unruly and cases are taken up. This is done by the politicians to espouse public causes and do not have an element of corruption.

Five, a group of over 20 organizations of the civil society had collaborated in mounting election watch in the five states where elections were held. The civil society is now vigilant and interested in collecting the antecedents of the candidates and disseminating these to the electorate. The consortium of the civil society has also decided to ask the political parties to announce their anti-corruption strategies in their manifestoes, likely to be declared soon for the forthcoming general elections to the Parliament. This will make the parties commit themselves in writing with regard to their plans. They would be embarrassed if they omit to do so. The idea is to make them commit and confront them in the future with their promises if they deviate.

Six, one NGO has approached the Supreme Court for cessation of Member of Parliament Local Area Development Scheme on the ground of misuse of funds as well as causing discrimination between candidates for contesting elections.

Seven, political parties are also now more cautious in selecting their candidates, especially after the decision of the Supreme Court and enactment of the subsequent law that makes it mandatory for the candidates to declare their background, especially pertaining to criminal records and financial liabilities. They are likely to be more circumspect in the matter and now have an excuse to deny tickets to the persons having a notorious record.

The above are some of the trends that show positive signs for improvement in the climate for national integrity in India.
Endnotes

1 See Times of India Supplement Delhi Times, 26 July 2003, p 1.
3 See announcement by the Law Minister Arun Jaitley as reported in The Times of India, 31 October 2003, 10:1-2.
8 For an account of corruption in ancient India during the Vedic period, see Upendra Thakur, Corruption in Ancient India, New Delhi: Abhinava Publications, 1970.
16 Frontline, Cover Story, India’s National magazine from the publishers of The Hindu, see http://www.frontlineonnet.com/fl1706/17060240.htm
18 For an account of how elections are rigged in India and the kind of corrupt practices associated with it, see Arul B. Louis, "How to Rig an Election", The Hindustan Times, 26 July, 1981.

21 For details of one such analysis of Souvenir Committee accounts before the 1977 General Elections, see Arun Shourie, “A Crumb for the Historian” in *Indian Express*, New Delhi, 11 April 1982. Also see A G Noorani, *Ministers’ Misconduct*, New Delhi: Vikas Publishing House, 1973, p.263. For DMK’s (a regional party in south India) method see *Times of India*, New Delhi, 18 October 1972 and Ibid., pp. 339-40 and 355. More recently the name Antulay has become inextricably bound up with the most sophisticated techniques of raising funds for ostensibly charitable, or party purposes, or for promoting more selfish interests.


25 Ibid.

26 Arun Shourie.


31 See *The Times of India*. 13 February, 04, p.1, and p. 10.


33 For some interesting examples of political corruption vs. political integrity in India, see “Reflections: Once Upon a Time”, *The Hindustan Times*, 4 January 1998, p.13: 1-2.

34 See the *Times of India*, 1 October 2000.

35 It is defined as: ‘Rigorous, that is, with hard labour’ (Section 53, Indian Penal Code).

36 See *The Times of India*, 8 May 2000, p. 11: 5.

37 For details, see *Hindustan Times*, 18, 19, 20, 21, 22,23 July 2004.


39 See *The Times of India* 3 October 2003.


41 The CBI registered a case in May 1990 alleging fabrication of documents showing existence of a bank account to the tune of $ 21 million (subsequently withdrawn leaving a nil balance) in the name of Ajeja Singh, son of Prime Minister V.P.Singh in the First Trust Corporation Limited, as the latter was considered a political opponent threatening the position of the then PM Rajiv Gandhi in 1988.


46 See *The Times of India*, Editorial, 9 November 1999.

47 As reported in *Times of India*, 3 March 2004. p.20: 8.


50 The classic case is that of Phoolan Devi, a proclaimed bandit, who spent 11 years in jail after her surrender in 1983, was eventually released by political leaders belonging to her group and was elected an M.P in the 1996 election on the strength of the caste vote. Although criminal cases were still pending against her in the year (1998), but lost the election held in 1998, but won again in 1999. She was eventually murdered in 2000. Another similar case is of Raghuraj Pratap Singh, alias Raja Bhaiya, who was a Minister in the then Kalyan Singh cabinet (1998) in Uttar Pradesh, but has a number of cases pending against him. It is the enormous delays on the part of the courts to decide the cases that is responsible for not preventing the criminals contesting the elections, as under the Indian law a person is supposed to be innocent unless proved guilty though a conviction by a court of law. See Sunil Sethi, “Criminal Virus in Body Politic”, *The Times of India*, 13 February 1998, p. 11:12. Ironically Raju Bhaiya has again become a minister in the present Mulayam Singh Government in Uttar Pradesh (2004).


52 See N. N. Vohra, “Corruption and the Indian Polity” in *Denouement* (New Delhi), December 1999, pp.7-10.


55 Vohra.

56 *India Today* (New Delhi), 7 July 2003, p. 32.

57 *India Today*, 7 July 2003, p. 33.


59 *India Today*. 7 July 2003, p. 33.

60 Ibid., p. 34.

61 Ibid.

62 Ibid.

63 Ibid. p. 37.

64 Ibid.

65 *The Hindustan Times*, New Delhi, 17 July 2003.


67 Ibid.


71 *India Today*, 7 July 2003, p.36.

72 The Act was later replaced by a slightly improved version in 1988.


The Central Vigilance Commission Act, 2003, received the assent of the President on 11 September 2003. Under the Act, the CVC has now been given a statutory status.

See The Hindustan Times, 4, 6, 7, 8, 9, 10, 11, 12, and 13 November 1997, p. 7 of each issue.

See India Today, 6 March 2000, pp. 29-35


See The Times of India, 15 April 2000, p.11: 6-8.


Ibid.

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For a detailed analysis of the issue see O. P. Dwivedi and R. B. Jain, India’s Administrative State, New Delhi: Gitanjali Publishing House, 1985, pp. 137-164.


India, Lok Sabha, Committee on Ethics, Second Report, Lok Sabha Secretariat, New Delhi, November 2002.


96 For details see M.K. Jain, "CAG got your tongue?" in the Hindustan Times, 8 August 2003, p. 121: 3-8.


98 Ibid., p. 404.


100 Ibid.

101 The Hindustan Times, 6 April 2004.

102 The Times of India, 1 October 2000, p. 9: 6-7.


105 Election and Other Related Laws (Amendment) Bill 2003, which allows individuals and corporations to make political donations and offers tax concessions to corporations for doing so. As Reported in The Times of India, 1 August 2003, p. 14: 1-2.


111 Tiwari, p.156.

112 Ibid., pp. 156-57

113 Interview with Mr. V.N. Kaul, the C&AG of India, as reported in Times of India, 28 July 2003, p. 12: 7,8.

114 Times of India, 29 July 2003, p. 11, 1-2.

115 Ibid.


117 S.S. Gill, 111-4.


120 Ibid. p.631.

121 See Chapter on Judiciary in India 2004.

122 India 2002, p.630.

123 The Hindustan Times, 29 July 2003.

See chapter on Judiciary, India 2004.


Ibid., p. 118.

Ibid., p. 149.

See Sec. 197, Code of Criminal Procedure.


It is an aspect of the fairness doctrine. The object is to ensure that reasons for a decision are recorded and not kept off the record. In Mahavir Prasad v State of Uttar Pradesh, 1 SCC 764, the Supreme Court observed that if the administrative authority is permitted to keep its errors off the record by not indicating reasons, it would be difficult to review the decision judicially. Recording of reasons for a decision is hence a statutory requirement. In a recent case (State of Punjab v Bhag Singh, 2004 AIR SCW 102), the Supreme Court has quoted Lord Denning in Breen v Amalgamated Engineering Union (1971 (1) All ER 1148, ’The giving of reasons is one of the fundamentals of good administration’ and failure to give reasons amounts to denial of justice. The Supreme Court said, ’Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reason at least sufficient to indicate an application of mind to the matter before the Court. Another rationale is that the affected party can know why the decision has gone against him’.


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See Verma and Kusum, 2000, p. 43.

See Ramana Dayaram Shetty v International Authority of India, AIR 1979 SC 1625.

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For a critical analysis of the creation of these institutions in India, see R.B. Jain, Contemporary Issues in Indian Administration, Delhi: Vishal Publications, 1976, pp. 359-397.


Ibid.

See ”Long Walk to Justice” in India Today, 7 July 2003, pp. 40-44.
150 Lewis and Singh, p. 32.
151 See Ibid., pp. 235-75.
152 Sixth Lokayuktas Conference, op. cit, New Delhi, 2001.
155 See S.P. Sathe, Judicial Activism in India, New Delhi: Oxford University Press, p. 119 and 221.
157 Massey, p.120.
158 Narasimhan, p. 254.
159 Singh N.K., p. 246.
160 Ibid., pp. 246-7.
163 Efforts were made to collect statistics of performance of Anti-corruption Bureaus (ACBs). This was not possible as no central records are maintained. However, all ACBs are active in the States.
164 The information has been collected from Chief Vigilance Commission, Annual Report, New Delhi, 2000.
165 Narasimhan, p. 264.
166 For more details and extensive discussion on the subject see Noorani, p. 223.
168 See The Hindustan Times, 6 April 2004.
171 Ibid., p. 6.
172 Tandon, p.30.
175 Ibid, p. 7.
176 Tandon, p. 139.
177 Ibid, p. 140.
178 Ibid.
182 See Outlook, 22 September, 2003, pp. 20-1.
183 Akhtar Majeed, “In India the constitution holds the key to resolving conflicts” in _Federations_ Vol. 2, No. 3, March 2002, p.6.

184 See Institute of Social Sciences, "Current Issues in Indian Federalism", Background Paper 2, Roundtable on Mechanisms of Inter-Governmental Relations in India, 22 April 2002.


186 See Institute of Social Sciences, p. 11.


189 For a very penetrating analysis of the problems of federalism in India, see B. D. Dua and M. P. Singh, (eds.), _Indian Federalism in the New Millennium_, New Delhi: Manohar, 2003.


192 India 2003, p. 48.

193 Most of these critical observations were made by various scholars and some of the executive and elected functionaries involved at various levels of Panchayati Raj system at a seminar organized by Surya Foundation, an NGO, at the India International Centre in New Delhi on 26 March 2002, which Professor R. B. Jain had the privilege to attend and participate.


195 Ibid.


203 Ibid.

204 Ibid., p.193.

205 Ibid., p. 194.


207 Ibid.


210 As stated by H.D. Shourie, See The Times of India, 12 August, 1998.


212 The Hindustan Times, 2 December, 2002.


215 See Debroy.

216 Khilnani, p.98.

217 Tenth Five Year Plan, p.182.

218 Ibid., p.187.

219 Ibid., p. 184.


221 Ibid., p. 101.

222 Ibid., p. 102.

223 The Kelkar report which made some recommendations in 2002 for reform in administration of direct taxes has made suggestions that ought to be considered. See Prem Shanker Jha “That Knock on the Door” in The Hindustan Times, 1 September, 2003.

224 Vohra Committee Report.

225 Das, p. 197.

226 Kamat, pp. 121-6.


228 See Khilnani, p. 128.


232 Times of India, 28 September, 2003, p. 18: 3-8

233 Yasheng Huang & Tarun Khanna: “Can India Overtake China”, Foreign Policy, Washington D.C., July/August 2003, p. 78.


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Secretary, Ministry of Information and Broadcasting, Government of India v Cricket Association of Bengal: AIR 1995 SC 1236.
State of Punjab v Bhag Sing: 2004 AIR SCW 102
Supreme Court Advocates-on-Record v Union of India: (193) 4 SCC 441.
Union of India v Mohan Lal Capoor: (19730) 2 SCC 836.
## Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adalat</td>
<td>Court</td>
</tr>
<tr>
<td>Bandh</td>
<td>Stopping of all transport and other activities; a form of protest</td>
</tr>
<tr>
<td>Benami</td>
<td>Proxy</td>
</tr>
<tr>
<td>Benami property</td>
<td>Property in the name of another person</td>
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<tr>
<td>Cognizance</td>
<td>To take notice of</td>
</tr>
<tr>
<td>Crore</td>
<td>Ten Million</td>
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<tr>
<td>Doordarshan</td>
<td>National Television Network</td>
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<tr>
<td>Gram Sabha</td>
<td>Village Council</td>
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<tr>
<td>Hartal</td>
<td>Sit-in</td>
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<tr>
<td>Hawala</td>
<td>Illegal transfer of money</td>
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<tr>
<td>Khadi</td>
<td>A coarse cloth woven by the wheel operated by hand.</td>
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<tr>
<td>Kissan</td>
<td>Farmer</td>
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<tr>
<td>Lok</td>
<td>People</td>
</tr>
<tr>
<td>Lok Ayukta</td>
<td>An ombudsman in the State</td>
</tr>
<tr>
<td>Lok Pal</td>
<td>Ombudsman at the Centre</td>
</tr>
<tr>
<td>Lok Sabha</td>
<td>House of the People</td>
</tr>
<tr>
<td>Lok satta</td>
<td>People’s Power</td>
</tr>
<tr>
<td>Mazdoor</td>
<td>Labourer</td>
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<tr>
<td>Nazrana</td>
<td>Gift</td>
</tr>
<tr>
<td>Nyaya Panchayat</td>
<td>Village court</td>
</tr>
<tr>
<td>Panchayat</td>
<td>A village council</td>
</tr>
<tr>
<td>Panchayati Raj</td>
<td>Democratic decentralization</td>
</tr>
<tr>
<td>Rajya Sabha</td>
<td>Council of States</td>
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<tr>
<td>Rashtriya</td>
<td>National</td>
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<tr>
<td>Samachar</td>
<td>News</td>
</tr>
<tr>
<td>Sarpanch</td>
<td>Head</td>
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<tr>
<td>Sena</td>
<td>Militia</td>
</tr>
<tr>
<td>Shri</td>
<td>Mr</td>
</tr>
</tbody>
</table>