



COMPLETE SUMMARY

**2ND ARC REPORT
ON ETHICS IN
GOVERNANCE**

ETHICS IN GOVERNANCE



*“You must be the change
you wish to see in the world.”*

Mahatma Gandhi

2 Hrs MARATHON-II

#UPSC #IAS

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Before we Begin...

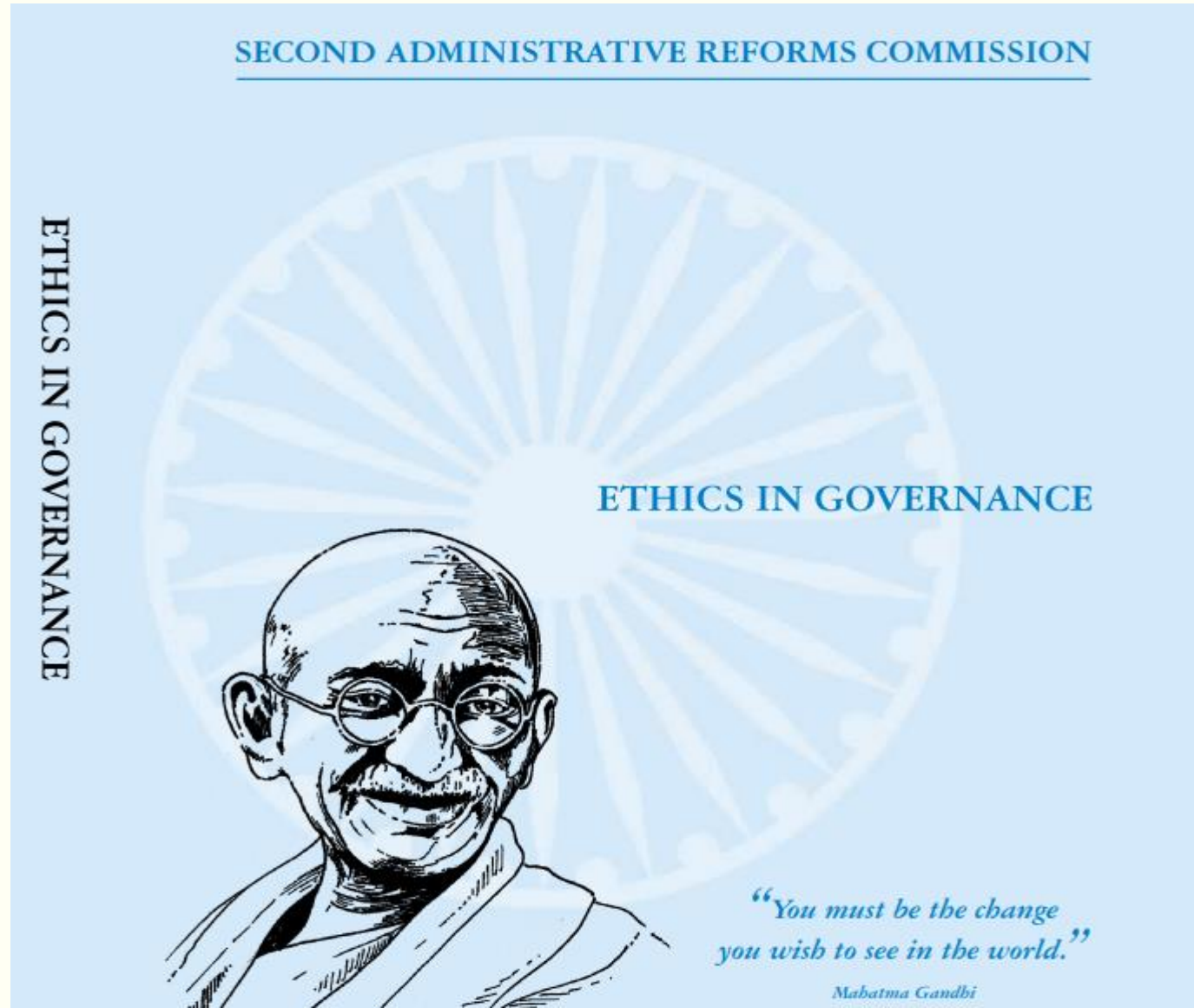
- Consistency is the key (Plan to cover all relevant ARC reports)
- Just going through the pdf won't suffice, classes will have elaborate explanation, interlinking and dynamic interaction (questions will be asked)
- Will serve the purpose of both fresher and veterans
- What mode of language u want ?
- Finally, power-packed class, full attention required for your better understanding

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Quotes & Visuals

- “As human beings, our greatness lies not so much in being able to remake the world - that is the myth of the atomic age - as in being able to remake ourselves”- Mahatma Gandhi
- “Rivers do not drink their waters themselves, nor do trees eat their fruit, nor do the clouds eat the grains raised by them. The wealth of the noble is used solely for the benefit of others.”



Introduction

- Ethics is a **set of standards that society places on itself** and which help guide behaviour, choices and actions.
- The standards do not, by themselves, ensure ethical behaviour; that requires a robust culture of integrity
- The crux of ethical behaviour does not lie in bold words and expressions enshrined as standards, but in their adoption in action, in sanctions against their violations, in putting in place competent disciplinary bodies to investigate allegations of violations and impose sanctions quickly and in promoting a culture of integrity
- Corruption is an important manifestation of the failure of ethics. The word 'corrupt' is derived from the Latin word 'corruptus', meaning 'to break or destroy'.

Introduction

- The word 'ethics' is from the original Greek term ethikos, meaning 'arising from habit'. It is unfortunate that corruption has, for many, become a matter of habit, ranging from grand corruption involving persons in high places to retail corruption touching the everyday life of common people
- Anti-corruption interventions so far made are seen to be ineffectual and there is widespread public cynicism about them
- Corruption is so deeply entrenched in the system that most people regard corruption as inevitable and any effort to fight it as futile
- There are two, somewhat contrary, approaches in dealing with corruption and abuse of office. **The first is overemphasis on values and character**

Introduction

- Many people lament the decline in values and the consequent rise in corruption.
- The implicit assumption is that until values are restored, nothing much can be done to improve the conduct of human beings
- **The second approach is based on the belief that most human beings are fundamentally decent and socially conscious, but there is always a small proportion of people, which cannot reconcile individual goals with the good of society**
- Such deviant people tend to pursue personal gain at the cost of public good and the purpose of organized government is to punish such deviant behaviour

Introduction

- If good behaviour is consistently rewarded and bad behaviour consistently punished, the bulk of the people follow the straight and narrow path
- However, if good behaviour is not only not rewarded, but is actually fraught with difficulties and bad behaviour is not only not punished, but is often extravagantly rewarded, then the bulk of the people tend to stray from the honourable path
- In the real world, both values and institutions matter. Values are needed to serve as guiding stars, and they exist in abundance in our society.
- **A sense of right and wrong is intrinsic to our culture and civilization.** But values need to be sustained by institutions to be durable and to serve as an example to others. Values without institutional support will soon be weakened and dissipated

Introduction

- Public office and control over public purse offer enormous temptation and opportunity to promote private gain at public cost.
- Therefore, creation of institutions and designing of incentives are of utmost importance in promoting ethical conduct of public servants
- In our society, corruption and abuse of office has been aggravated by three factors.
- **First, there is a colonial legacy of unchallenged authority and propensity to exercise power arbitrarily.** In a society which worships power, it is easy for public officials to deviate from ethical conduct.
- **Second, there is enormous asymmetry of power in our society.** Nearly 90% of our people are in the unorganized sector

Introduction

- And nearly 70% of the organized workers with job security and regular monthly wage are employed by the state directly or through public sector undertakings.
- Almost all these employees are 'educated' in a largely illiterate and semiliterate society and economically even the lowliest of public servants are better off than most people in the country.
- What is more, their employment in government comes with all the trappings of power.
- Such asymmetry of power reduces societal pressure to conform to ethical behaviour and makes it easy to indulge in corruption
- **Third, as a conscious choice, the Indian state in the early decades after Independence chose a set of policies whose unintended consequence was to put the citizen at the mercy of the State**

Introduction

- Over regulation, severe restrictions on economic activity, excessive state control, near-monopoly of the government in many sectors and an economy of scarcity all created conditions conducive to unbridled corruption
- It is generally recognized that monopoly and discretion increase the propensity to corruption while competition and transparency reduce corruption. This has been dramatically witnessed in India in the wake of economic liberalization
- Similarly, wherever technology and transparency have been introduced, corruption has been significantly contained. Computerization and access to information have made many services from railway reservation to issuing of driving licenses increasingly free from corruption

Introduction

- A factor which increases corruption is over-centralization. The more remotely power is exercised from the people, the greater is the distance between authority and accountability (**73rd & 74th CAA**)
- It is well recognized that every democracy requires the empowerment of citizens in order to hold those in authority to account.
- **Right to Information**, effective citizens' charters, opportunity and incentives to promote proactive approach of citizens, stake-holders' involvement in delivery of public services, public consultation in decision making and social auditing are some of the instruments of accountability that dramatically curbed corruption and promoted integrity and quality of decision making
- Therefore, enforcement of rule of law and deterrent punishment against corruption are critical to build an ethically sound society

Introduction

- Perhaps the most important determinant of the integrity of a society or the prevalence of corruption is the quality of politics
- But if honesty is incompatible with survival in politics, and if public life attracts undesirable and corrupt elements seeking private gain, then abuse of authority and corruption become the norm. In such a political culture and climate, desirable initiatives will not yield adequate dividends
- Competition and decentralization certainly reduce corruption in certain sectors.
- But if the demand for corruption is fueled by inexhaustible appetite for illegitimate funds in politics, then other avenues of corruption will be forcibly opened up.

Introduction

- As a result, even as corruption declines in certain areas, it shifts to other, sometimes more dangerous, areas in which competition cannot be introduced and the state exercises a natural monopoly.
- What is needed with liberalisation is corresponding political and governance reform to alter the incentives in politics and public office and to promote integrity and ethical conduct
- All forms of corruption are reprehensible and we need to promote a culture of zero tolerance of corruption
- Delays, harassment, lost opportunity, loss of precious time and wages, uncertainty and, at times, potential danger of loss of life could result from resistance to corruption and non-compliance with demands. In such cases, the citizen is an unwilling victim of **coercive corruption**

Introduction

- Awarding of contracts for public works and procurement of goods and services, recruitment of employees, evasion of taxes, substandard projects, collusive violation of regulations, adulteration of foods and drugs, obstruction of justice and concealing or doctoring evidence in investigation are all examples of **collusive corruption**
- Corruption is a global phenomenon and has also become a serious global concern. The **United Nations Convention against Corruption** was adopted by the UN General Assembly in October **2003**, providing an international instrument against corruption
- The ADBOECD Anti-Corruption Action Plan, which has been signed by the Government of India, is a broad understanding to further the cause of inter-regional cooperation in the matter of prevention of corruption

Introduction

- The World Bank has also declared war against corruption by refusing to fund projects whose implementation is tainted by corrupt practices
- A joint statement was issued by IMF and World Bank agreeing on a framework for preventing and combating fraud and corruption in the activities and operations of their institutions
- In India, some recent anti-corruption initiatives are steps in the right direction. The Supreme Court has ruled that candidates contesting elections should file details regarding their wealth, educational qualifications and criminal antecedents along with their nomination papers.

Introduction

- The Right to Information Act, which has recently been enacted, is a potent weapon to fight corruption. The introduction of information communication technologies, e-governance initiatives and automation of corruption prone processes in administration have succeeded in reducing corruption
- Much more remains to be done however, and beyond the realm of existing regulation.
- The escalating levels of corruption in various segments of our economy resulting in large scale generation of black money, serious economic offences and fraud, and money laundering leading even to the funding of terrorist activities against the State, have created a grave situation which needs to be dealt with severely.

Introduction

- Benami properties of corrupt public servants need to be forfeited, as also the assets illegally acquired from corrupt practices. Whistleblower legislation has to be put in place to protect informants against retribution.
- Also, we have to suitably strengthen the institutional framework for investigating corrupt practices and awarding exemplary punishment to the corrupt thereby raising the risk associated with corrupt behavior
- Ethics in governance, however, has a much wider import than what happens in the different arms of the government
- Such an effort needs to include corporate ethics and ethics in business; in fact, there should be a paradigm shift from the pejorative 'business ethics' to 'ethics in business'

Introduction

- There is need for ethics in every profession, voluntary organization and civil society structure as these entities are now vitally involved in the process of governance.
- **Finally, there should be ethics in citizen behaviour because such behaviour impinges directly on ethics in government and administration**

Ethical Framework

▪ Ethics and Politics

- Any discussion on an ethical framework for governance in a democracy must necessarily begin with ethical values in politics. Politics and those engaged in it, play a vital role in the legislative and executive wings of the State whose acts of commission and omission in working the Constitution and the rule of law become the point of intervention for the judiciary
- Excesses in elections (in campaign-funding, use of illegitimate money, quantum of expenditure, imperfect electoral rolls, impersonation, booth-capturing, violence, inducements and intimidation), floor-crossing after elections to get into power and abuse of power in public office became major afflictions of the political process over the years

Ethical Framework

- **Criminalization of politics** – ‘participation of criminals in the electoral process’ - is the soft underbelly of our political system
- Large, illegal and illegitimate expenditure in elections is another root cause of corruption
- **Recent Improvements**
 - *Improvement in Accuracy of Electoral Rolls:*
 - Printed electoral rolls/CDs have been made available for sale.
 - Computerization of entire electoral rolls of over 620 million voters has been initiated.
 - The provision of photo-identity cards for all voters has been started

Ethical Framework

- *Disclosure of Antecedents of Candidates:*
 - The Supreme Court has directed that a candidate should declare any conviction by a court or whether a criminal case is pending against him;
 - The direction to file a declaration of assets and liabilities of the candidate and family members would enable a check at the time of the next elections
- *Disqualification of Persons Convicted of Criminal Offence:*
 - The Supreme Court ruled in 2005 that Section 8(4) of the Representation of the People Act was unconstitutional as it violated equality before law. (link Lily Thomas case 2013, SC Judgement)

Ethical Framework

- *Enforcement of the Code of Conduct:*
 - Using its over-all powers to “superintend, control and direct” elections under Article 324 of the Constitution, the Election Commission has made the Code of Conduct for elections binding in all respects, issuing directions regarding timings of campaigns, prohibition of festoons/cutouts, insistence on daily expenditure statements, appointment of a large number of observers, ordering of re-poll in specific polling booths and other such steps
- *Free and fearless polling:*
- Policing arrangements have been improved, including greater use of Central Forces and holding of elections for more than one day in a State, and measures like sealing of borders, etc.

Ethical Framework

- Electronic voting machines have been introduced throughout the country (in the parliamentary elections of 2004)
- It has been decided that the death of an independent candidate would not lead to the cancellation of an election
 - Reduction in size of Council of Ministers:
 - A recommendation to restrict the size to 10% was made by the first Administrative Reforms Commission more than three decades ago. The Constitution (Ninety-first Amendment) Act, 2003 restricts the size of the Council of Ministers to 15% of the strength of the Lower House in Parliament/State legislature.
 - The amendment is a step towards moderating the number of Ministers to some extent

Ethical Framework

Issues in Political Reforms

1. Reform of Political Funding

In India, one of the sources of funding of political parties has been through private donations. **Internationally**, there are **three broad patterns** of state funding for political parties and elections.

One is the **minimalist pattern**, wherein elections alone are **partially subsidized** usually through specific grants or state rendered services

The UK, Ireland, Australia, New Zealand and Canada are examples of this pattern, while the US is a variant of the same with election funding being largely private and subjected to strict reporting and disclosure requirements as well as limits on contributions

Ethical Framework

The second, maximalist pattern of state funding involves public funding not merely for elections but even for other party activities, as in Sweden and Germany.

This pattern involves less detailed regulation of contributions and expenditure because parties are dependent largely on state support and local requirements enforce internal democracy as well as general transparency

In between, there are a variety of mixed patterns involving partial reimbursement for public funding of elections on a matching grant basis such as in France, Netherlands and South Korea

Ethical Framework

- While the Representation of the People Act puts limits on election expenditure, company donations to political party were banned in 1969 but later allowed by an amendment of the Companies Act in 1985.
- The **Dinesh Goswami Committee** on Electoral Reforms set up in 1990 recommended limited support, in kind, for vehicle fuel, hire charges of microphones, copies of electoral rolls etc., while simultaneously recommending a ban on company donations
- Another Committee, the Indrajit Gupta Committee on State Funding of Elections has recommended partial state-funding mainly in kind
- However, the National Committee for Review of the Constitution has expressed the view that until better regulatory mechanism for political parties can be developed in India, state funding of elections should be deferred.

Ethical Framework

- **2nd ARC recommends** - a system for partial state funding should be introduced in order to reduce the scope of illegitimate and unnecessary funding of expenditure for elections

2. Tightening of anti-defection law:

- The 91st Amendment to the Constitution was enacted in 2003 to tighten the anti-defection provisions of the Tenth Schedule, enacted earlier in 1985
- **2nd ARC recommends** - The issue of disqualification of members on grounds of defection should be decided by the President/Governor on the advice of the Election Commission

3. Disqualification:

Ethical Framework

- **2nd ARC recommends** - Section 8 of the Representation of the People Act, 1951 needs to be amended to disqualify all persons facing charges related to grave and heinous offences and corruption, with the modification suggested by the Election Commission

4. False Declarations:

- The Election Commission has recommended that all false declarations before the Returning Officer, Electoral Officer, Chief Electoral Officer or the Election Commission should be made an electoral offence under Section 31 of the Representation of the People Act

5. Publication of Accounts by Political Parties:

Political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited annually and bring the relevant information in public domain

Ethical Framework

6. Coalition and Ethics

- **2nd ARC recommends** - The Constitution should be amended to ensure that if one or more parties in a coalition with a common programme mandated by the electorate either explicitly before the elections or implicitly while forming the government, realign midstream with one or more parties outside the coalition, then Members of that party or parties shall have to seek a fresh mandate from the electorate

7. Appointment of the Chief Election Commissioner/Commissioners

- **2nd ARC recommends** - A collegium headed by the Prime Minister with the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Law Minister and the Deputy Chairman of the Rajya Sabha as members should make recommendations for the consideration of the President for appointment of the Chief Election Commissioner and the Election Commissioners

Ethical Framework

8. Expediting Disposal of Election Petitions

- **2nd ARC recommends** - Special Election Tribunals should be constituted at the regional level under Article 323B of the Constitution to ensure speedy disposal of election petitions and disputes within a stipulated period of six months.
- Each Tribunal should comprise a High Court Judge and a senior civil servant with at least 5 years of experience in the conduct of elections (not below the rank of an Additional Secretary to Government of India/Principal Secretary of a State Government).
- Its mandate should be to ensure that all election petitions are decided within a period of six months as provided by law.
- The Tribunals should normally be set up for a term of one year only, extendable for a period of 6 months in exceptional circumstances

Ethical Framework

9. Grounds of Disqualification for Membership

- Article 102 of the Constitution provides for disqualification for membership of either House of Parliament under certain specific circumstances
- **2nd ARC recommends** - Appropriate legislation may be enacted under Article 102(e) of the Constitution spelling out the conditions for disqualification of membership of Parliament in an exhaustive manner. Similarly, the States may also legislate under Article 198 (e)

Ethics in Public Life

- Ethics is grounded in the notion of responsibility and accountability. The fundamental principle in a democracy is that all persons holding authority derive it from the people; in other words, all public functionaries are trustees of the people

Ethical Framework

- The role of ethics in public life has many dimensions. At one end is the expression of high moral values and at the other, the specifics of action for which a public functionary can be held legally accountable.
- Any framework of ethical behaviour must include the following elements:
 - a) Codifying ethical norms and practices.
 - b) Disclosing personal interest to avoid conflict between public interest and personal gain.
 - c) Creating a mechanism for enforcing the relevant codes.
 - d) Providing norms for qualifying and disqualifying a public functionary from office

Ethical Framework

- One of the most comprehensive statements of what constitutes ethical standards for holders of public office came from the Committee on Standards in Public Life in the United Kingdom, popularly known as the Nolan Committee, which outlined the following seven principles of public life:
 1. **Selflessness:** Holders of public office should take decisions solely in terms of public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends
 2. **Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties

Ethical Framework

3. **Objectivity:** In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choices on merit

4. **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office

5. **Openness:** Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands

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

Ethical Framework

7. **Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest

- Although all citizens are subject to the laws of the land, in the case of public servants there must be standards of behaviour more stringent than those for an ordinary citizen
- It is at the interface of public action and private interest that the need arises for establishing **not just a code of ethics but a code of conduct.**
- A code of ethics would cover broad guiding principles of good behaviour and governance while a more specific code of conduct should, in a precise and unambiguous manner, stipulate a list of acceptable and unacceptable behaviour and action.

Ethical Framework

Ethical Framework for Ministers

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

1. In addition to the observance of the provisions of the Constitution, the Representation of the People Act, 1951, and any other law for the time being in force, a person before taking office as a Minister, shall:
 - a) disclose to the Prime Minister, or the Chief Minister, as the case may be, details of the assets and liabilities, and of business interests, of himself and of members of his family. The details to be disclosed shall consist of particulars of all immovable property and the total approximate value of (i) shares and debentures, (ii) cash holdings and (iii) jewellery;

Ethical Framework

b) sever all connections, short of divesting himself of the ownership, with the conduct and management of any business in which he was interested before his appointment as Minister

c) with regard to a business concern which supplies goods or services to the Government concerned or to undertakings of that Government (excepting in the usual course of trade or business and at standard or market rates) or whose business primarily depends on licenses, permits, quotas, leases, etc., received or to be received from the Government concerned, divest himself of all his interests in the said business and also of the management thereof appointment as Minister associated with the conduct or management or ownership of the said business.

Ethical Framework

- Provided, however, that he may transfer in the case of (b) his interest in the management, and in the case of (c) both ownership and management, to any adult member of his family or adult relative, other than his wife (or husband, as the case may be), who was prior to his appointment as Minister associated with the conduct or management or ownership of the said business
- The question of divesting himself of his interests would not arise in case of holding of share in public limited companies except where the Prime Minister, or the Chief Minister, as the case may be, considers that the nature or extent of his holding is such that it is likely to embarrass him in the discharge of his official duties.

Ethical Framework

2. After taking office, and so long as he remains in office, the Minister shall:-

- (a) furnish annually by the 31st March to the Prime Minister, or the Chief Minister, as the case may be, a declaration regarding his assets and liabilities;
- (b) refrain from buying from or selling to, the Government any immovable property except where such property is compulsorily acquired by the Government in usual course;
- (c) refrain from starting, or joining, any business;

Ethical Framework

(d) ensure that the members of his family do not start, or participate in, business concerns, engaged in supplying goods or services to that Government (excepting in the usual course of trade or business and at standard or market rates) or dependent primarily on grant of licenses, permits, quotas, leases, etc., from that Government; and

(e) report the matter to the Prime Minister, or the Chief Minister as the case may be, if any member of his family sets up, or joins in the conduct and management of, any other business

3. No Minister should:-

a) personally, or through a member of his family, accept contribution for any purpose, whether political, charitable or otherwise

Ethical Framework

b) associate himself with the raising of funds except for the benefit of (i) a registered society, or a charitable body, or an institution recognised by a public authority and (ii) a political part

4. A Minister should-

a) not accept valuable gifts except from close relatives, and he or members of his family should not accept any gifts at all from any person with whom he may have official dealings; and

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

Ethical Framework

- A Minister may receive gifts when he goes abroad or from foreign dignitaries in India. Such gifts fall into two categories.
- The first category will include gifts, which are of symbolic nature, like a sword of honour, ceremonial robes etc. and which can be retained by the recipients.
- The second category of gifts would be those which are not of symbolic nature. If its value is less than Rs. 5,000/- it can be retained by the Minister
- A Minister should follow the instructions given from time to time by the Prime Minister in matters relating to attending functions arranged by foreign missions in India or abroad, and also for accepting the membership of any foreign trust, institution or organization other than UN Organizations of which India is a Member

Ethical Framework

5. A Minister should-

- (a) while on official tour, as far as practicable, stay in accommodation belonging to himself or maintained by Government, Government undertakings, public bodies or institutions (such as circuit houses, dak bungalows etc) or in recognised hotels; and
- (b) avoid attending, as far as possible, ostentatious or lavish parties given in his honour

The Commission has examined the code of conduct in other countries and is of the view that a Code of Ethics and a Code of Conduct for Ministers should include the following:

- a. Ministers must uphold the highest ethical standards;

Ethical Framework

- b. Ministers must uphold the principle of collective responsibility;
- c. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies;
- d. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;
- e. Ministers in the Lok Sabha must keep separate their roles as Minister and constituency member;
- f. Ministers must not use government resources for party or political purposes; they must accept responsibility for decisions taken by them and not merely blame it on wrong advice

Ethical Framework

- g. Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way, which would conflict with the duties and responsibilities of civil servants;
- h. Ministers must comply with the requirements which the two Houses of Parliament lay down from time to time;
- i. Ministers must recognize that misuse of official position or information is violation of the trust reposed in them as public functionaries;
- j. Ministers must ensure that public moneys are used with utmost economy and care;
- k. Ministers must function in such a manner as to serve as instruments of good governance and to provide services for the betterment of the public at large and foster socio-economic development; and

Ethical Framework

I. Ministers must act objectively, impartially, honestly, equitably, diligently and in a fair and just manner

2nd ARC recommendations:

- a) In addition to the existing Code of Conduct for Ministers, there should be a Code of Ethics to provide guidance on how Ministers should uphold the highest standards of constitutional and ethical conduct in the performance of their duties
- b) Dedicated units should be set up in the offices of the Prime Minister and the Chief Ministers to monitor the observance of the Code of Ethics and the Code of Conduct. The unit should also be empowered to receive public complaints regarding violation of the Code of Conduct

Ethical Framework

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

Ethical Framework

Ethical Framework for Legislators

Ethical Framework for Legislators in Other Countries:

1. The US Constitution, in Article I, Section 5, grants broad authority to Congress to discipline its Members
2. The UK House of Commons adopted the present Code of Conduct for its Members vide their Resolution dated 19th July, 1995

The Committee on Ethics of the Rajya Sabha:

Chapter XXIV of the Rules of Procedure and Conduct of Business in the Council of States, provides for constitution of the Committee on Ethics to oversee the moral and ethical conduct of Members.

Ethical Framework

The following is the existing framework of the Code of Conduct for Members of the Rajya Sabha:

- The Members of Rajya Sabha should acknowledge their responsibility to maintain the public trust reposed in them and should work diligently to discharge their mandate for the common good of the people.
- They must hold in high esteem the Constitution, the Law, Parliamentary Institutions and, above all, the general public.
- They should constantly strive to translate the ideals laid down in the Preamble to the Constitution into a reality.

The Committee on Ethics of the Lok Sabha

Ethical Framework

There is a Committee on Ethics of the Lok Sabha to oversee the moral and ethical conduct of Members of that House

Apart from the existing norms, the Committee recommended that the members should abide by the following general ethical principles:

- i. Members must utilize their position to advance general well being of the people.
- ii. In case of conflict between their personal interest and public interest, they must resolve the conflict so that personal interests are subordinate to the duty of public office.
- iii. Conflict between private financial/family interest should be resolved in a manner that the public interest is not jeopardized.

Ethical Framework

iv. Members holding public offices should use public resources in such a manner as may lead to public good. v. Members must keep uppermost in their mind the fundamental duties listed in Part-IV of the Constitution. vi. Members should maintain high standards of morality, dignity, decency and values in public life

Only a few State Legislatures such as Andhra Pradesh, Orissa etc. have adopted Codes of Conduct for their Legislators

While the enunciation of ethical values and codes of conduct puts moral pressure on public functionaries, they need to be backed by an effective monitoring and enforcement regime.

Legislatures the world over have adopted different models for this purpose. The Canadian Conflict of Interest and Post-Employment Code for public office holders (2006) relies on an Ethics Commissioner to oversee the Code and to provide advice

Ethical Framework

2nd ARC recommendations:

- a) An Office of 'Ethics Commissioner' may be constituted by each House of Parliament. This Office, functioning under the Speaker/Chairman, would assist the Committee on Ethics in the discharge of its functions, and advise Members, when required, and maintain necessary records
- b) In respect of States, the Commission recommends the following:
 - i. All State legislatures may adopt a Code of Ethics and a Code of Conduct for their Members
 - ii. Ethics Committees may be constituted with well defined procedures for sanctions in case of transgressions, to ensure the ethical conduct of legislators
 - iii. 'Registers of Members' Interests' may be maintained with the declaration of interests by Members of the State legislatures

Ethical Framework

- iv. Annual Reports providing details including transgressions may be placed on the Table of the respective Houses
- v. An Office of 'Ethics Commissioner' may be constituted by each House of the State legislatures. This Office would function under the Speaker/Chairman, on the same basis as suggested for Parliament

Recommendations regarding office of profit:

- a) The Law should be amended to define office of profit based on the following principles:
 - i. All offices in purely advisory bodies where the experience, insights and expertise of a legislator would be inputs in governmental policy, shall not be treated as offices of profit, irrespective of the remuneration and perks associated with such an office

Ethical Framework

ii. All offices involving executive decision making and control of public funds, including positions on the governing boards of public undertakings and statutory and non-statutory authorities directly deciding policy or managing institutions or authorizing or approving expenditure shall be treated as offices of profit, and no legislator shall hold such offices

iii. If a serving Minister, by virtue of office, is a member or head of certain organizations like the Planning Commission, where close coordination and integration between the Council of Ministers and the organization or authority or committee is vital for the day-to-day functioning of government, it shall not be treated as office of profit

(The use of discretionary funds at the disposal of legislators, the power to determine specific projects and schemes, or select the beneficiaries or authorize expenditure shall constitute discharge of executive functions and will invite disqualification under Articles 102 and 191, irrespective of whether or not a new office is notified and held.)

Ethical Framework

- b) Schemes such as MPLADS and MLALADS should be abolished.
- c) Members of Parliament and Members of State Legislatures should be declared as 'Public Authorities' under the Right to Information Act, except when they are discharging legislative functions

Code of Ethics for Civil Servants

The current set of 'enforceable norms' are 'Conduct Rules', typified by the Central Civil Services (Conduct) Rules - 1964 and analogous rules applicable to members of the All India Services or employees of various State Governments

Ethical Framework

The code of behaviour as enunciated in the Conduct Rules, while containing some general norms like 'maintaining integrity and absolute devotion to duty' and not indulging in 'conduct unbecoming of a government servant', is generally directed towards cataloguing specific activities deemed undesirable for government servants.

There is no Code of Ethics prescribed for civil servants in India although such codes exist in other countries

A draft 'Public Service Bill' now under consideration of the Ministry of Personnel, Public Grievances and Pensions seeks to lay down a number of generic expectations from civil servants, which are referred to as "values". **The salient 'values' envisaged in the Bill are:**

Ethical Framework

Allegiance to the various ideals enshrined in the preamble to the Constitution

- Apolitical functioning
- Good governance for betterment of the people to be the primary goal of civil service
- Duty to act objectively and impartially
- Accountability and transparency in decision-making
- Maintenance of highest ethical standards
- Merit to be the criteria in selection of civil servants consistent, however, with the cultural, ethnic and other diversities of the nation

Ethical Framework

- Ensuring economy and avoidance of wastage in expenditure
- Provision of healthy and congenial work environment
- Communication, consultation and cooperation in performance of functions i.e. participation of all levels of personnel in management

Box 2.8: The Seven Social Sins

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

1. Politics without principles
2. Wealth without work
3. Leisure without conscience.
4. Knowledge without character
5. Commerce without morality
6. Science without humanity
7. Worship without sacrifice

Ethical Framework

2nd ARC recommendations:

- a) 'Public Service Values' towards which all public servants should aspire, should be defined and made applicable to all tiers of Government and parastatal organizations. Any transgression of these values should be treated as misconduct, inviting punishment
- b) Conflict of interest should be comprehensively covered in the Code of Ethics and in the Code of Conduct for officers. Also, serving officials should not be nominated on the Boards of Public undertakings. This will, however, not apply to non-profit public institutions and advisory bodies

Ethical Framework

Ethical Framework for the Judiciary

- Independence of the judiciary is inextricably linked with judicial ethics. An independent judiciary enjoying public confidence is a basic necessity of the rule of law. Any conduct on the part of a judge, which demonstrates a lack of integrity and dignity, will undermine the trust reposed in the judiciary by the citizens. The conduct of a judge should, therefore, always be above reproach
- Other than impeachment under Articles 124(4) and 217(1), there is no mechanism to proceed against any inappropriate behaviour or misdemeanour of judges

Ethical Framework

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

It reads as under:

- a) Justice must not merely be done but it must also be seen to be done. The behaviour and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary
- b) A Judge should not contest the election to any office of a club, society or other association; further he shall not hold such elective office except in a society or association connected with the law
- c) A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned

Ethical Framework

- d) A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination
- e) A Judge shall not speculate in shares, stocks or the like
- f) A Judge should not engage directly or indirectly in trade or business, either by himself or in association with any other person
- The issue of appointment and removal of judges was examined by the **National Commission to Review the Working of the Constitution**. The Commission recommended the constitution of a **National Judicial Commission** which would have the effective participation of both the executive and the judicial wings of the State “as an integrated scheme for the machinery for appointment of judges”

Ethical Framework

- **The Government introduced the Constitution (Ninety-eighth Amendment) Bill in the Lok Sabha in 2003. This Bill sought to create a National Judicial Commission (NJC) headed by the Chief Justice of India with two Judges of the Supreme Court next to the CJI in seniority; the Union Minister for Law and Justice; and one eminent citizen to be nominated by the President in consultation with the Prime Minister, as members.**
- **The Bill also proposed to empower the National Judicial Commission to draw up a code of ethics for judges, and to inquire into cases of misconduct of a judge (other than those punishable with his/her removal). This Bill could not be passed**
- **The Law Commission in its 195th Report, examined the draft Judges (Inquiry) Bill, 2005**

Ethical Framework

- The Law Commission observed that the Bill of 2005, which provides for the establishment of a National Judicial Council consisting only of judges is constitutionally valid and is consistent with the concept of independence of the judiciary, judicial accountability and doctrine of separation of powers

2nd ARC recommendations:

a) A National Judicial Council should be constituted, in line with universally accepted principles where the appointment of members of the judiciary should be by a collegium having representation of the executive, legislature and judiciary. The Council should have the following composition:

Ethical Framework

- The Vice-President as Chairperson of the Council
- The Prime Minister
- The Speaker of the Lok Sabha
- The Chief Justice of India
- The Law Minister
- The Leader of the Opposition in the Lok Sabha
- The Leader of the Opposition in the Rajya Sabha
- In matters relating to the appointment and oversight of High Court Judges, the Council will also include the following members:
 - The Chief Minister of the concerned State

Ethical Framework

- The Chief Justice of the concerned High Court
- b)** The National Judicial Council should be authorized to lay down the Code of Conduct for judges, including the subordinate judiciary
- c)** The National Judicial Council should be entrusted with the task of recommending appointments of Supreme Court and High Court Judges. It should also be entrusted the task of oversight of the judges, and should be empowered to enquire into alleged misconduct and impose minor penalties. It can also recommend removal of a judge if so warranted
- d)** Based on the recommendations of the NJC, the President should have the powers to remove a Supreme Court or High Court Judge

Ethical Framework

- e)** Article 124 of the Constitution may be amended to provide for the National Judicial Council. A similar change will have to be made in Article 217. Also, since the Council is to have the authority to oversee and discipline judges, further changes will need to be made to Article 217
- f)** A Judge of the Supreme Court should be designated as the Judicial Values Commissioner. He/she should be assigned the task of enforcing the code of conduct. Similar arrangement should also be made in the High Court
- g)** It also recommended for the constitution of NJAC (struck down by SC in 2015)

Legal Framework for Fighting Corruption

- In the pre-independence period, the Indian Penal Code (IPC) was the main tool to combat corruption in public life. At that time the need for a special law to deal with corruption was not felt
- However the Second World War created shortages which gave opportunity to unscrupulous elements to exploit the situation leading to large scale corruption in public life
- Hence the **Prevention of Corruption Act, 1947** was enacted to fight the evils of bribery and corruption
- The **Criminal Law (Amendment) Act, 1952** brought some changes in laws relating to corruption

Legal Framework for Fighting Corruption

- **Amendments in 1964:** The anti-corruption laws underwent comprehensive amendments in 1964. The definition of 'Public Servant' under the IPC was expanded (The Santhanam Committee had also recommended an expanded definition of the term 'Public Servant')
- The definition of 'criminal misconduct' was expanded and possession of assets disproportionate to the known sources of income of a public servant, was made an offence
- **The Prevention of Corruption Act, 1988:** It consolidates the provisions of the Prevention of Corruption Act 1947, the Criminal Law Amendment Act, 1952 and some provisions of IPC
- **The salient features of the Act are as follows:**

Legal Framework for Fighting Corruption

- a) The term 'Public Servant' is defined in the Act. The definition is broader than what existed in the IPC
- b) A new concept – 'Public Duty' is introduced in the Act
- c) All cases under the Act are to be tried only by Special Judges
- d) Proceedings of the court have to be held on a day-to-day basis
- e) CRPC is amended (for the purposes of this Act only) to provide for expeditious trial

Issues in Prevention of Corruption Act, 1988

A. Definition of Corruption

Legal Framework for Fighting Corruption

- **The Prevention of Corruption Act does not provide a definition of ‘Corruption’**
- **In particular, there are four types of official conduct which cause immense damage to public interest, which do not explicitly constitute violation of criminal law**
- **The first** and possibly the most important of these is gross perversion of the Constitution and democratic institutions, including, wilful violation of the oath of office
- **The second** such class of offences is abuse of authority unduly favouring or harming someone, without any pecuniary consideration or gratification

Legal Framework for Fighting Corruption

- Third, obstruction or perversion of justice by unduly influencing law enforcement agencies and prosecution is a common occurrence in our country
- Finally, squandering public money, including ostentatious official lifestyles, has become more common. The public exchequer at large suffers and both public interest and citizens' trust in government are undermined
- Thus, **2nd ARC recommends** that there is need for classifying the following as offences under the Prevention of Corruption Act:
 - 1. Gross perversion of the Constitution and democratic institutions amounting to wilful violation of oath of office**

Legal Framework for Fighting Corruption

2. Abuse of authority unduly favouring or harming someone

3. Obstruction of justice

4. Squandering public money

B. Concept of Collusive Bribery

- **Prevention of Corruption Act does not differentiate between ‘coercive’ and ‘collusive’ corruption**
- Systemic reforms are very effective in combating coercive corruption
- The negative impact of collusive corruption is much more adverse and the government and often the society, at large, are the sufferers

Legal Framework for Fighting Corruption

2nd ARC recommends - 'collusive' corruption needs to be dealt with by effective legal measures so that both the bribe-giver and the bribe-taker do not escape punishment

Also, the punishment for collusive corruption should be made more stringent. In cases of collusive corruption, the 'burden of proof' should be shifted to the accused

C. Sanction for Prosecution

- Section 19 of the Prevention of Corruption Act provides that previous sanction of the competent authority is necessary before a court takes cognizance of the offences
- Although the intention of this provision is clear, it has been argued that this clause has sometimes been used by a sanctioning authority to shield dishonest officials

Legal Framework for Fighting Corruption

2nd ARC recommends –

- a) Prior sanction should not be necessary for prosecuting a public servant who has been trapped red-handed or in cases of possessing assets disproportionate to the known sources of income
- b) The Prevention of Corruption Act should be amended to ensure that sanctioning authorities are not summoned and instead the documents can be obtained and produced before the courts by the appropriate authority
- c) The Presiding Officer of a House of Legislature should be designated as the sanctioning authority for MPs and MLAs respectively

Legal Framework for Fighting Corruption

d) The requirement of prior sanction for prosecution now applicable to serving public servants should also apply to retired public servants for acts performed while in service

e) In all cases where the Government of India is empowered to grant sanction for prosecution, this power should be delegated to an Empowered Committee comprising the Central Vigilance Commissioner and the Departmental Secretary to Government. In case, sanction is required against a Secretary to Government, then the Empowered Committee would comprise the Cabinet Secretary and the Central Vigilance Commissioner. Similar arrangements may also be made at the State level

D. Liability of Corrupt Public Servants to Pay Damages

Legal Framework for Fighting Corruption

2nd ARC recommends –

- In addition to the penalty in criminal cases, the law should provide that public servants who cause loss to the state or citizens by their corrupt acts should be made liable to make good the loss caused and, in addition, be liable for damages. This could be done by inserting a chapter in the Prevention of Corruption Act

E. Speeding up Trials under the Prevention of Corruption Act:

- The Commission feels that there is need to fix a time limit for various stages of trial in corruption cases. This could be done through an amendment to the CrPC. More importantly, the existing provisions for conducting trials on a day-to-day basis should be meticulously adhered to

Legal Framework for Fighting Corruption

Corruption Involving the Private Sector

- Corruption in the private sector does not come under the purview of the Prevention of Corruption Act.
- Hence the second ARC recommended that the Prevention of Corruption Act should be suitably amended to include in its purview private sector providers of public utility services
- Non-Governmental agencies, which receive substantial funding, should be covered under the Prevention of Corruption Act

Prohibition of 'Benami' Transactions

Legal Framework for Fighting Corruption

- A law entitled The Benami Transactions (Prohibition) Act, 1988 was passed in 1988
- The Act precludes the person who acquired the property in the name of another person from claiming it as his own
- The wealth amassed by corrupt public servants is often kept in 'Benami' accounts or invested in properties in others' names
- Strict enforcement of the the Benami Transactions (Prohibition) Act, 1988, could unearth such properties and make property accumulation difficult for corrupt officers and also work as a deterrent for others
- The Second ARC Recommended for Immediate Implementation of it

Legal Framework for Fighting Corruption

Protection to Whistleblowers

- Whistleblowers play a crucial role in providing information about corruption
- The Law Commission in its 179th Report has proposed a Public Interest Disclosure (Protection of Informers) Bill, which provides protection to whistleblowers
- **2nd ARC recommends –**
- legislation should be enacted immediately to provide protection to whistleblowers on the following lines proposed by the Law Commission:

Legal Framework for Fighting Corruption

- Whistleblowers exposing false claims, fraud or corruption should be protected by ensuring confidentiality and anonymity, protection from victimization in career, and other administrative measures to prevent bodily harm and harassment
- The legislation should cover corporate whistleblowers unearthing fraud or serious damage to public interest by willful acts of omission or commission
- Acts of harassment or victimization of or retaliation against, a whistleblower should be criminal offences with substantial penalty and sentence

Legal Framework for Fighting Corruption

Serious Economic Offences

- These economic offences include tax evasion, counterfeiting, distorting share markets, falsification of accounts, frauds in the banking system, smuggling, money laundering, insider trading and even bribery
- There are a large number of laws governing economic offences. These include the Indian Penal Code (IPC); the Banking Regulation Act, 1949; the Companies Act, 1956; the Customs Act, 1962; the Income Tax Act, 1961; the Essential Commodities Act, the Conservation of Foreign Exchange and the Prevention of Smuggling Activities Act, the Foreign Exchange Management Act, the Prevention of Food Adulteration Act, the Indian Patents Act etc

Legal Framework for Fighting Corruption

- On the recommendations of **Naresh Chandra Committee** a **Serious Frauds Investigation Office (SFIO)** was set up in 2003 as a specialized multi-disciplinary organisation to deal with cases of serious corporate frauds
- But as the economic offences are complex thus Second ARC recommended that a new law on 'Serious Economic Offences' should be enacted
- Further a Serious Frauds Office (SFO) should be set up (under the new law), to investigate and prosecute such offences. It should be attached to the Cabinet Secretariat.
- This office shall have powers to investigate and prosecute all such cases in Special Courts constituted for this purpose.

Legal Framework for Fighting Corruption

- The SFO should be staffed by experts from diverse disciplines such as the financial sector, capital and futures market, commodity markets, accountancy, direct and indirect taxation, forensic audit, investigation, criminal and company law and information technology
- The SFO should have all powers of investigation as stated in the recommendation of the **Mitra Committee**. The existing SFIO should be subsumed in this
- A Serious Frauds Monitoring Committee should be constituted to oversee the investigation and prosecution of such offences
- In case of involvement of any public functionary in a serious fraud, the SFO shall send a report to the Rashtriya Lokayukta and shall follow the directions given by the Rashtriya Lokayukta

Legal Framework for Fighting Corruption

- In all cases of serious frauds the Court shall presume the existence of mens rea of the accused, and the burden of proof regarding its non-existence, shall lie on the accused

Prior Concurrence for Registration of Cases in DSPE Act

- The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Central Government where such allegation relates to the employees of the Central Government of the level of Joint Secretary and above
- It has been argued that given the prevailing corruption ridden environment, there is danger of such a provision being misused to protect corrupt senior public servants

Legal Framework for Fighting Corruption

- The counter argument is that officers at the level of Joint Secretaries and above have an important role in decision making in the government
- The Commission on balance is of the view that it would be necessary to protect honest civil servants from undue harassment, but at the same time in order to ensure that this protection is not used as a shield by the corrupt, it would be appropriate if this permission is given by the Central Vigilance Commissioner in consultation with the Secretary to Government concerned and if the Secretary is involved, a committee comprising the Central Vigilance Commissioner and the Cabinet Secretary may consider the case for granting of permission.
- In case of Cabinet Secretary such permission may be given by the Prime Minister

Legal Framework for Fighting Corruption

Constitutional Protection to Civil Servants – Article 311

➤ **Arguments in Favour of Retaining Article 311**

- The safeguards under Article 311 are focused and that the framers of the Constitution were mindful of the rare eventualities in which even such minimal safeguards would not be necessary.
- Indeed, the safeguard of an opportunity of being heard has been held to be a **fundamental principle of natural justice**
- The requirement that only an authority which is the appointing authority or any other authority superior to it can impose a punishment of dismissal or removal also appears reasonable as the government follows a hierarchical structure

Legal Framework for Fighting Corruption

- It is argued that it is the rules governing disciplinary enquiries, and not Article 311 itself, that are responsible for the delays in enquiry and even in the removal of delinquent government servants

➤ Arguments in Favour of Repealing Article 311

- The increase in corruption and inefficiency in Government has been acknowledged as requiring major “surgery”.
- The role of Government as a model employer cannot take away from the fact that public good must override individual right, certainly of the corrupt and inefficient public servant
- **2nd ARC recommends -**

Legal Framework for Fighting Corruption

- The rights of a civil servant under the Constitution should be subordinate to the overall requirement of public interest and the contractual right of the State.
- It cannot be an argument that a corrupt civil servants rights are more important than the need to ensure an honest, efficient and corruption-free administration.
- Ultimately, the public servant, an agent of the State, cannot be superior to the State and it is his fundamental duty to serve the State with integrity, devotion, honesty, impartiality, objectivity, transparency and accountability

Legal Framework for Fighting Corruption

- **Hence Article 311 need not continue to be a part of the Constitution. Instead appropriate and comprehensive legislation under Article 309 could be framed to cover all aspects of recruitment and service, even with regard to dismissal, removal or reduction in rank**

Disciplinary Proceedings

- The term, “Disciplinary Proceedings” has not been defined under any legislation or rules
- The Commission is of the view that the existing regulations governing disciplinary proceedings need to be recast and the following broad principles should be followed in laying down the new regulations

Legal Framework for Fighting Corruption

- a) The procedure needs to be made simple so that the proceedings could be completed within a short time frame
- b) Emphasis should be on documentary evidence, and only in case documentary evidence is not sufficient, recourse should be made to oral evidence
- c) An appellate mechanism should be provided within the department itself
- d) Imposition of major penalties should be recommended by a committee in order to ensure objectivity

Institutional Framework

Existing Institutions/Agencies

➤ **Union Government**

- The **Administrative Vigilance Division of the Department of Personnel & Training** is the nodal agency for dealing with Vigilance and Anti-corruption
- The other institutions and agencies at the Union level are - (i) The Central Vigilance Commission (**CVC**); (ii) Vigilance units in the Ministries/Departments of Government of India, Central public enterprises and other autonomous organisations; and (iii) the Central Bureau of Investigation (**CBI**)

Institutional Framework

Central Vigilance Commission

In pursuance of the recommendations made by the Committee on Prevention of Corruption, popularly known as the **Santhanam Committee**, the Central Vigilance Commission was set up by the Government of India.

It was accorded **statutory status**, consequent upon the judgement of the Hon'ble Supreme Court in **Vineet Narain v. Union of India**, through the **Central Vigilance Commission Act, 2003**.

The CVC advises the Union Government on all matters pertaining to the maintenance of integrity in administration.

It **exercises superintendence over the working of the Central Bureau of Investigation**, and also over the vigilance administration of various Ministries and other organizations of the Union Government

Institutional Framework

Vigilance Units in the Government of India

- All Ministries/Departments in the Union Government have a Chief Vigilance Officer (CVO) who heads the Vigilance Division of the organization concerned, assisting and advising the Secretary or Head of Office in all matters pertaining to vigilance

The Central Bureau of Investigation

- The Central Bureau of Investigation (CBI) is the principal investigative agency of the Union Government in anti-corruption matters.
- **It derives its powers from the Delhi Special Police Establishment Act, 1946** (DSPE Act) to investigate certain specified offences or classes of offences pertaining to corruption and other kinds of malpractices involving public servants

Institutional Framework

- It has three units - (i) **Anti-corruption Division**, (ii) **Economic Offences Wing**, and (iii) **Special Crimes Division**
- It also investigates cases against public servants of State Governments, if the case is entrusted to the CBI

Vigilance Systems in State Governments

- At the level of state governments, similar vigilance and anti-corruption organizations exist, although the nature and staffing of these organisations vary between and across state governments.
- While some states have Vigilance Commissions and anti-corruption bureaus, others have Lokayuktas

Institutional Framework

- **For ex** - Andhra Pradesh has an Anti Corruption Bureau, a Vigilance Commission and a Lokayukta. Tamil Nadu and West Bengal have State Vigilance Commissions to oversee the vigilance functions
- The Lokpal
- The first Administrative Reforms Commission had recommended the establishment of the institution of Lok Pal
- To provide an element of a continuum in the fight against corruption from the Union to the States, from the top to the grass roots, it may be useful to provide a connect with the State Lokayuktas and name the proposed Lok Pal as the 'Rashtriya Lokayukta'
- One issue which has been debated for long is whether the office of Prime Minister should be brought under the jurisdiction of the Lok Pal

Institutional Framework

- Those who believe that the Prime Minister's conduct should be scrutinized by the Lok Pal rightly argue that all public servants should be accountable.
- In a democracy, the citizen is the sovereign, and every public servant holds office to serve the citizens, spending tax money and exercising authority under the laws made on citizens' behalf or under the Constitution, which we, the people, gave unto ourselves.
- Therefore, no functionary, however high, should be exempt from scrutiny by the Lok Pal
- **But, the 2nd ARC recommends that The Prime Minister should be kept out of the Jurisdiction of the Rashtriya Lokayukta. The Reasons are:**

Institutional Framework

- The Prime Minister's unchallenged authority and leadership are critical to ensure cohesion and sense of purpose in government, and to make our Constitutional scheme function in letter and spirit
- If the Prime Minister's conduct is open to formal scrutiny by extra-Parliamentary authorities, then the government's viability is eroded and Parliament's supremacy is in jeopardy
- **Recommendations regarding Rashtriya Lokayukta**
 - a) The Constitution should be amended to provide for a national Ombudsman to be called the Rashtriya Lokayukta. The role and jurisdiction of the Rashtriya Lokayukta should be defined in the Constitution while the composition, mode of appointment and other details can be decided by Parliament through legislation

Institutional Framework

- b) The jurisdiction of Rashtriya Lokayukta should extend to all Ministers of the Union (except the Prime Minister), all state Chief Ministers, all persons holding public office equivalent in rank to a Union Minister, and Members of Parliament
- c) The Rashtriya Lokayukta should consist of a serving or retired Judge of the Supreme Court as the Chairperson, an eminent jurist as Member and the Central Vigilance Commissioner as the ex-officio Member
- d) The Rashtriya Lokayukta should also be entrusted with the task of undertaking a national campaign for raising the standards of ethics in public life

Institutional Framework

▪ Recommendations regarding Lokayukta

- a) The Constitution should be amended to incorporate a provision making it obligatory on the part of State Governments to establish the institution of Lokayukta and stipulate the general principles about its structure, power and functions
- b) The Lokayukta should be a multi-member body consisting of a judicial Member in the Chair, an eminent jurist or eminent administrator with impeccable credentials as Member and the head of the State Vigilance Commission as ex-officio Member
- c) The jurisdiction of the Lokayukta would extend to only cases involving corruption. They should not look into general public grievances

Institutional Framework

- d) The Lokayukta should deal with cases of corruption against Ministers and MLAs
- e) The Anti Corruption Bureaus should be brought under the control of the State Vigilance Commission
- f) The Lokayukta should have its own machinery for investigation. Initially, it may take officers on deputation from the State Government, but over a period of five years, it should take steps to recruit its own cadre, and train them properly
- g) All cases of corruption should be referred to Rashtriya Lokayukta or Lokayukta and these should not be referred to any Commission of Inquiry

Institutional Framework

- **Recommendations regarding Ombudsman at Local Level**
 - a) A local bodies Ombudsman should be constituted for a group of districts to investigate cases against the functionaries of the local bodies. The State Panchayat Raj Acts and the Urban Local Bodies Act should be amended to include this provision
 - b) The local bodies Ombudsman should be empowered to investigate cases of corruption or maladministration by the functionaries of the local self governments, and submit reports to the competent authorities for taking action
- **Recommendations Strengthening Investigation and Prosecution**

Institutional Framework

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

Institutional Framework

- e) The anti-corruption agencies should conduct systematic surveys of departments with particular reference to highly corruption prone ones in order to gather intelligence and to target officers of questionable integrity
- f) The economic offences unit of states need to be strengthened to effectively investigate cases and there should be better coordination amongst existing agencies

Social Infrastructure

Citizens' Initiatives

- This calls for the engagement of civil society and the media in educating citizens about the evils of corruption, raising their awareness levels and securing their participation by giving them a 'voice'
- Civil society here refers to formal as well as informal entities and includes the private sector, the media, NGOs, professional associations and informal groups of people from different walks of life
- The excellent work done by civil society organizations can be analyzed by following example:

Social Infrastructure

- The **Mazdoor Kisan Shakti Sangathan (MKSS)** in Rajasthan, a well-known NGO, started uncovering corruption in local public works by gaining access to employment rolls, vouchers, beneficiary lists, and completion and utilisation certificates and then, handing them over to the concerned villagers for scrutiny in public hearings called Jan Sunwai
- **Parivartan, an NGO** based in Delhi, used the Right to Information law to expose corruption in the Public Distribution System
- Importance of Citizen Charter
- Citizens' Charters make administration both accountable and citizen-friendly. The Citizens' Charter should contain specific provisions and set out specific obligations for the public services, the time within which the department would be obliged to provide a service or to respond to a query or complaint

Social Infrastructure

- False Claims Act
- In the United States, the False Claims Act makes it possible for interested citizens to approach any court in any judicial district for recovery of the proceeds of corruption
- There is need for legislation on the lines of the US False Claims Act, which will make it possible for interested citizens and civil society groups to seek legal relief for the recovery of the proceeds of corruption and claim a share
- Role of Media
- A free media has a crucial role in the prevention, monitoring and control of corruption

Social Infrastructure

- Investigative reporting by media or reporting of instances of corruption as they occur can be a significant source of information on corruption
- The Press Council was reconstituted to maintain and improve the standards of newspapers and news agencies in India.
- The Press Council of India has prescribed a Code of Conduct for the print media. However, no such code exists for the electronic media.
- The Ministry of Information and Broadcasting has prepared a draft Broadcasting Services Regulation Bill which proposes to set up a Broadcasting Regulatory Authority of India (BRAI) with both licensing and oversight functions covering the electronic media

Social Infrastructure

Social Audit

- Social audit through client or beneficiary groups or civil society groups is yet another way of eliciting information on and prevention of wrong doing in procurement of products and services for government, in the distribution of welfare payments, in the checking of attendance of teachers and students in schools and hostels, staff in the hospitals and a host of other similar citizen service-oriented activities of government

Systemic Reforms

- Better preventive measures act as ‘Systemic Reforms’ as they seek to improve systems and processes
- Some of the initiatives taken in recent years in this direction are listed below:
 - Railway Passenger Bookings (Indian Railways)
 - E-Cops (Punjab): This seeks to ensure on-line registration of complaints and their systematic follow-up
 - E-Governance in Andhra Pradesh (E- Seva), and Kerala (FRIENDS standing for Fast, Reliable, Instant, Effective Network for Distribution of Services)

Systemic Reforms

- Some of the steps needed are listed below:

1. Promoting Competition

- The case of telecommunication is one of the most successful examples of curbing corruption through introduction of competition
- **2nd ARC recommendations**
- Each Ministry/Department may undertake an immediate exercise to identify areas where the existing 'monopoly of functions' can be tempered with competition. A similar exercise may be done at the level of State Governments and local bodies
- Some Centrally Sponsored schemes could be restructured so as to provide incentives to states that take steps to promote competition in service delivery

Systemic Reforms

▪ 2. 2nd ARC recommendations regarding Simplifying Transactions

- There is need to bring simplification of methods to the center-stage of administrative reforms. Leaving aside specific sectoral requirements, the broad principles of such reforms must be: adoption of 'single window' approach, minimizing hierarchical tiers, stipulating time limits for disposal etc
- The existing Departmental Manuals and Codes should be thoroughly reviewed and simplified with a responsibility on the Head of the Department to periodically update such documents and make available soft-copies on-line and hard copies for sale
- A system of rewards and incentives for simplification and streamlining of procedures may be introduced in each government organization

Systemic Reforms

- The principle of 'positive silence' should generally be used, though this principle cannot be used in all cases.
- Wherever permissions/licenses etc are to be issued, there should be a time limit for processing of the same after which permission, if not already given, should be deemed to have been granted

3. Using Information Technology

2nd ARC recommends –

- a) Each Ministry/Department/Organisation of government should draw up a plan for use of IT to improve governance. In any government process, use of Information Technology should be made only after the existing procedures have been thoroughly re-engineered

Systemic Reforms

b) The Ministry of Information and Technology needs to identify certain governmental processes and then take up a project of their computerization on a nationwide scale

c) For computerization to be successful, computer knowledge of departmental officers needs to be upgraded. Similarly, the NIC needs to be trained in department specific activities, so that they could appreciate each other's view point and also ensure that technology providers understand the anatomy of each department

4. Recommendations regarding Integrity Pacts

The Commission recommends encouragement of the mechanism of 'integrity pacts'. The Ministry of Finance may constitute a Task Force with representatives from Ministries of Law and Personnel to identify the type of transactions requiring such pacts and to provide for a protocol for entering into such a pact

Systemic Reforms

5. Recommendations regarding Reducing Discretion

- a) All government offices having public interface should undertake a review of their activities and list out those which involve use of discretion. In all such activities, attempt should be made to eliminate discretion. Where it is not possible to do so, well-defined regulations should attempt to 'bound' the discretion
- b) Decision-making on important matters should be assigned to a committee rather than individuals. Care has to be exercised, however, that this practice is not resorted to when prompt decisions are required
- c) State Governments should take steps on similar lines, especially in local bodies and authorities, which have maximum 'public contact'

Systemic Reforms

6. Recommendations regarding Monitoring Complaints

- a) All offices having large public interface should have an online complaint tracking system. If possible, this task of complaint tracking should be outsourced
- b) There should be an external, periodic mechanism of 'audit' of complaints in offices having large public interface
- c) Apart from enquiring into each complaint and fixing responsibility for the lapses, if any, the complaint should also be used to analyse the systemic deficiencies so that remedial measures are taken

Systemic Reforms

7. Recommendations regarding Reforming the Civil Services

The administrative system should be transformed so that at every level of the civil service, there is a clear assignment of duties and responsibilities with structured and interlocking accountability in which the government servant can be held accountable for the manner in which he/she performs his/her duty

There also has to be an in-built system of rewards and punishments, with criteria being laid down which can eliminate arbitrariness and subjectivity in granting rewards or awarding punishments

Systemic Reforms

8. Recommendations regarding Risk Management for Preventive Vigilance

- a) Risk profiling of jobs needs to be done in a more systematic and institutionalized manner in all government organizations
- b) Risk profiling of officers should be done by a committee of 'eminent persons' after the officer has completed ten years of service, and then once in every five years. The committee should use the following inputs in coming to a conclusion:
 - i) The performance evaluation of the reported officer
 - ii) A self-assessment given by the reported officer focusing on the efforts he/she has made to prevent corruption in his/her career

Systemic Reforms

iii) Reports from the vigilance organization

iv) A peer evaluation to be conducted confidentially by the committee through an evaluation form

9. Recommendations regarding Proactive Vigilance on Corruption

a) Timely submission and scrutiny of assets and liabilities statements of public servants should be ensured

b) These should be put in the public domain

c) Annual lists of public servants of doubtful integrity should be prepared in all departments in consultation with the anti-corruption agencies.

d) The list should contain names of those officers who have been found to be lacking in integrity in the course of an inquiry or after an inquiry. For example:

Systemic Reforms

- i) those convicted in a Court of Law on a charge of lack of integrity or for an offence involving moral turpitude but on whom penalty other than dismissal, removal or compulsory retirement is imposed;
- ii) those awarded a major penalty departmentally for lack of integrity or on charges of gross dereliction of duty in protecting the interest of Government
- iii) those against whom major proceedings for a penalty, or trial involving lack of integrity or moral turpitude is in progress; and
- iv) those who were prosecuted but acquitted on technical grounds
- e) There should be a mandatory annual review of officers who have attained the age of 50/55 years or completed 25 years of service, based on Annual Reports, other records, and general reputation in order to retire officers of doubtful integrity compulsorily

Systemic Reforms

- f) Government servants, who display exemplary capacity to identify major irregularities and scandals and bring corrupt elements to book and plug major loopholes which cause substantial loss to public exchequer, should be rewarded. Such officers should be protected from harassment
- g) There should be public shaming of known corrupt officers

Protecting the Honest Civil Servant

- **Risk-taking should form part of government functioning**
- The Central Vigilance Commission has recognized this possibility of genuine commercial decisions going wrong without any motive whatsoever being attached to such decisions
- There are genuine apprehensions about the system's ability to protect an honest public servant
- The 'single point directive' which is now a statutory provision as a result of amendments made to the Delhi Special Police Establishment Act, requires prior permission of the Union Government for initiating investigation against an officer of the rank of a Joint Secretary and above in the Government of India and its equivalent in the Central Public Undertakings

Protecting the Honest Civil Servant

- By virtue of the procedural instructions, CVC has to recommend sanction of prosecution to Government in respect of civil servants coming within its jurisdiction
- Both the 'single point directive' and the "requirement of prior sanction for prosecution" have been called to serious question as obstructive of the statutory right of the investigating agency and an unnecessary interference in the judicial process
- The crucial question is one of ensuring a balance between equality before law and protection of an honest civil servant who has his reputation to safeguard, unlike a corrupt one. Such a balance could be achieved by an impartial agency which would screen cases of prior permission for investigation and sanction prosecution of public servants involved in corruption.

Protecting the Honest Civil Servant

- The Commission has already recommended that the Central Vigilance Commission should be empowered to give such permission
- There is need for a special investigation unit in Lok Pal (Rashtriya Lokayukta) to investigate allegations of corruption against investigating agencies.
- This unit should be multi-disciplinary and should also investigate cases of allegations of harassment against the investigating agency.
- Similar units should also exist in States under the State Lokayuktas

International Cooperation

- Corruption transcends national boundaries. Therefore, national anti-corruption measures need reinforcement at the international level with mutual assistance and cooperative law enforcement initiatives against corruption in areas such as bribing of and by foreign nationals, mutual legal assistance, gathering and transferring evidence, money laundering, technical assistance and information exchange, extradition, tracing, freezing, seizure and confiscation of illicit funds transferred abroad, asset recovery and repatriation, etc.
- The **United Nations Declaration against corruption and bribery** in international commercial transactions adopted by the General Assembly in December 1996 is an important milestone

International Cooperation

- It deals with both public and private sectors
- The **United Nations Convention against Corruption adopted by the UN General Assembly in October 2003** provides an effective international legal instrument against corruption which has been signed by India and **ratified in 2011**
- Further the **ADB OECD Anti Corruption Action Plan for Asia Pacific** which has been signed by the Government of India is not a binding agreement but a broad understanding to further the cause of inter-regional cooperation in the matter of prevention of corruption

Relationship between the Political Executive and the Permanent Civil Service

- The Constitution separates the executive into two parts. In terms of **Articles 53 and 154**, the executive power of the Union and the States vests in the President or Governor directly or through officers subordinate to him.
- These officers constitute the permanent civil service and are governed by Part XIV of the Constitution
- The other part of the executive is the 'political'. The President or Governor is required to act according to the aid and advice of his Council of Ministers, appointed under Articles 73 and 163 of the Constitution

Relationship between the Political Executive and the Permanent Civil Service

- Work is allocated among Ministers as per the Government of India **(Allocation of Business)** Rules and the manner in which the officers are required to help the President or Governor to exercise his executive functions is governed by the Government of India **(Transaction of Business)** Rules
- The relationship between the Secretary and the Minister is organic.
- The Minister has the mandate of the people to govern, but the Secretary has an equivalent constitutional mandate to advise the Minister.
- Once his advice has been suitably considered, unless the Minister passes an illegal order, the Secretary is bound to implement it.

Relationship between the Political Executive and the Permanent Civil Service

- A civil servant is required to implement the orders of government without bias, with honesty and without fear or favour
- It is precisely in this area that a degree of a difference of opinion begins to emerge between the political executive and the civil servants
- This happens because there is no system of specifying of accountability, thus making the relationship between the political executive and the permanent civil servants only issue sensitive.
- This underscores the criticality of defining the relationship between the Minister and the civil servant more objectively.
- This is possible only if we put the relationship in an **output-outcome framework**

Relationship between the Political Executive and the Permanent Civil Service

- Another area which has tension in the relationship is the arbitrary transfer and posting of civil servants at the behest of Ministers and other political leaders particularly in the states (**transfer Industry**)
- The Fifth Pay Commission made several recommendations about evolving detailed, clear, and transparent transfer policies
- **First**, the Commission recommended that detailed guidelines should be formulated and publicised by each department as part of a comprehensive transfer policy, so that arbitrariness in transfers is eliminated altogether, and transfers are effected in as transparent a manner as possible
- **Second**, in order to ensure administrative continuity and stability to incumbents, frequent transfers should be discouraged, and a minimum tenure for each posting of officers should be predetermined

Relationship between the Political Executive and the Permanent Civil Service

- **Third**, any premature transfer before the completion of the prescribed tenure should be based on sound administrative grounds, which should be spelt out in the transfer order itself.
- **Fourth**, the instrument of transfer should not be allowed to be misused either by bureaucrats themselves or by politicians in power
- **The Draft Public Services Bill, 2006 moots the idea of constituting a Central Public Services Authority for good governance**
- Another likely area of conflict between the Minister and the officers is the influence exercised by the Minister in the day-to-day functioning of subordinate officers
- These practices are unhealthy as they can have a propensity to check an officer's initiative and impinge on the authority delegated to him

Footnotes

▪ **NJAC**

- NJAC was established by amending the Constitution of India through the **99th Constitution Amendment Act 2014**
- SC held it to be unconstitutional as it would undermine the independence of the judiciary
- NJAC is a body responsible for the appointment and transfer of judges to the higher judiciary in India. JAC Bill sought to replace the collegium system of appointing the judges of Supreme Court and 24 High Courts with judicial appointments commission wherein the executive will have a say in appointing the judges
- ***A new article, Article 124A***, (which provides for the composition of the NJAC) was to be inserted into the Constitution

Footnotes

- **The Bill provided for the procedure to be followed by the NJAC for recommending persons for appointment as Chief Justice of India and other Judges of the Supreme Court (SC), and Chief Justice and other Judges of High Courts (HC)**
- **In May 2011, the Indian Government ratified two UN Conventions - the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organised Crime (UNTOC) and its three protocols**