

Corruption in Governance and Lokpal: The Perspective of 2nd Administrative Reforms Commission in India

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Abstract: *In the country like India where the discretionary powers are conferred upon administrative institutions. This concentration of power is responsible for the breeding of corrupt practices. As Lord Acton rightly said, "Power corrupts; absolute power corrupts absolutely". Procedures to seek remedies against administrative actions are woefully inadequate. Courts exercise control over administrative actions, but they have only a peripheral role. The administrative departments themselves have a control mechanism which has been found to be grossly inadequate to redress the grievances of people. Hence, there has been a need to have a strong anti-corruption body free from the influence of the government that can keep a check on public institution. So, a strong lokpal may be the appropriate authority for this purpose. This paper tries to highlight the perspective of Second Administrative Reforms Commission regarding corruption and lokpal.*

Keywords: *Administrative Reforms Commission, Benami Transactions (Prohibition) Act, Central Vigilance Commission, Chief Justice, Chief Minister, Constitution, Corruption, Ethics, Governance, Government, Grievance Redress Machinery, High Court, Legislature, Lokayukta, Lokpal, Parliament, Prevention of Corruption Act (PCA), Prime Minister, Public Administration, Recommendations, Responsive, Supreme Court, Transparent.*

I. Introduction

The relationship between governance and corruption connotes a system and participation. The basic question is why citizens participate in corruption. In other way, how does the system of governance generate or pave the way for corruption? According to World Bank's Policy Research Working Paper no.2196, there are six dimensions to measure and analyze the concept of governance and the sixth indicator of measurement is the control of corruption which analyzes the perception of corruption.^[1] Corruption has prevailed in society since time immemorial. In the modern world, however, corruption is associated with public office. To a common man, corruption is associated with giving or accepting some kind of compensation in the form of money, office or position for a service rendered in an illegal form, or by overstepping one's legal authority. It is a kind of reward promised or taken, or gratification expected for a service that is rendered in the course of fulfillment of one's normal administrative or other lawful duties. It may be construed as, "offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person" as also "the use of office for private profit". It may manifest itself in a simple form such as the purchase of a railway ticket by paying an extra amount to the ticket collector or procuring a license for the establishment of an industrial unit or a contract for the construction of a building project. Sometimes, it may take more subtle forms such as in the distribution of election tickets or in the change of political affiliations of the members of the political parties.

Prevention of Corruption Act, 1988 indirectly defines corruption as, "Whoever being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain gratification whatever, other than legal remuneration as a motive or a reward for bearing to do any official act or for showing or for bearing to show, in the exercise of his official functions favour or disfavor to any person with the Central or State Government or Parliament or Legislature of any State or with any public servant as such."^[2]

The United States Agency for International Development (USAID) defines corruption as the abuse of public office for private gain.^[3] According to the Council of Europe's Multidisciplinary Group of Ministers, corruption is bribery and can be said to constitute the combined effect of monopoly of power plus discretion in decision-making in the absence of accountability. Amongst the major causes of corruption, the important ones are, greed, circumstances, opportunities, and other temptations that include party funds, money for patronage, apprehension of loss of office, need for extra money to maintain standards, etc.^[4] In an expanding economy on account of rapid industrialization and growth of an acquisitive society, a conflict of values inevitably occurs. The age-old concept of values of judging people by what they are rather than what they have crumbles and people easily succumb to corruption. This apart, the rising cost of living and the wide gap between real wages and the opportunities to make quick money encourages corrupt practices among public servants and businessmen. Besides, Indian society tolerates amassing of wealth and it is seen as a symbol of competence. Other reasons are consumerism and desire for an ostentatious lifestyle and evil social practices like dowry and pressure of payment for education.

The Santhanam Committee described corruption as, “improper or selfish exercise of power and influence attached to public office or to the special position one occupies in public life”.^[5] This committee has identified certain procedural causes of corruption. These are: red tape and administrative delay; unnecessary regulations; scope of personal discretion; cumbersome procedures; scarcity of goods and services and lack of transparency. Thus, we have a situation where on the one hand enterprising businessmen are ready to pay “speed money” and on the other civil servants agree to exercise discretion, not infrequently, for ulterior motives. Other reasons for corruption are where officers on behalf of the State engage private companies to perform specific tasks or public works or provide services and these companies, in collusion with officials, indulge in corrupt practices such as overcharging, providing low quality work, etc. Secondly, wide discretionary powers conferred to people with specialized skills and knowledge as in the field of defense projects can lead to corrupt practices. Thirdly, lack of transparency, unclear, ambiguous and technically complicated regulations lead to corruption, as the public is unable to exercise effective control.

In India the enforcement agencies for preventing and investigating corruption are the Central Vigilance Commission (CVC), The Central Bureau of Investigation (CBI), Comptroller and Auditor General (CAG), National Crime Records Bureau (NCRB) and Creation of Ombudsman Institutions i.e. Lokpal. The first Lokpal Bill was introduced by Shanti Bhushan in 1968 and passed in the 4th Lok Sabha in 1969 but could not get through in the Rajya Sabha. Subsequently, Lokpal bills were introduced in 1971, 1977, 1985, 1989, 1996, 1998, 2001, and 2005 and in 2008, yet they were never passed. Each time, the bill was introduced to the house and referred to some committee for improvements, a joint committee of parliament, or a departmental standing committee of the Home Ministry and before the government could take a final stand on the issue, the house was dissolved. Presently, the Lokpal Bill, 2011 is pending for consideration with the Parliament.

II. First Administrative Reforms Commission And Lokpal

At the time of 1960-70, a comprehensive examination of India’s public administration was conducted and dissatisfaction with the country’s administrative system was escalating and becoming more articulate as well as the wind was blowing in favour of a wide ranging enquiry into the public administration of the country. In November 1965, the Government of India headed by Lal Bahadur Shastri announced its intention of setting up an Administrative Reforms Commission to conduct a comprehensive examination of public administration in India. The Commission was formally constituted in January, 1966 with Morarji Desai as its chairman. He himself left the Commission in March 1967 on his becoming Deputy Prime Minister of India and the Minister of Finance in the Central Government. K. Hanumanthaiya, a member of the Commission, was appointed as chairman in his place. In 1970, at the end of the prescribed term of the Commission, the Commission consisted to K. Hanumanthaiya and four other members, three of them were serving members of Parliament and one a retired civil servant. Originally, the composition of the Commission was one chairman and five members but H.C. Mathur, a member, died in the third year of the Commission’s functioning.^[6] The main recommendations^[7] regarding grievance redressal machinery are:

- The Commission recommended a two tier machinery to redress the grievances of public i.e. Lokpal and Lokayukta. The Lokpal should deal with complaints against Ministers and Secretaries of Central Government as well as in the states. The Lokayukta, one for the Centre and one in each State, should attend complaints against rest of the bureaucracy.
- Each government department should have a suitable machinery to receive and investigate complaints and set in motion the administrative process to provide remedies.
- These authorities should be demonstrably independent and impartial.
- The Lok Pal should be appointed by the President on the advice of the Prime Minister with the consultation of the Chief Justice of India and the Leader of Opposition in Lok Sabha. The status of Lok Pal should be as the Chief Justice of India and can be removed only by impeachment. The Lokayukta shall have his powers, functions and procedures as the Lok Pal and the status should be analogous to the Chief Justice of a High Court.
- The tenure of the Lok Pal should be five years subject to the eligibility of reappointment for another term of five years.
- It was recommended that the Lok Pal would be ineligible for any appointment under the Government or in any government undertaking after retirement from his post.
- The Lok Pal would be free for choosing his own staff with the prior permission of the government.
- The Lok Pal may either act on the complaints made by an affected citizen or on his own cognition. He shall investigate cases related to maladministration, involving acts of injustice, corruption and favoritism. The investigations and proceedings should be conducted in private and should be informal in character.
- After receiving a complaint, the Lok Pal may in his discretion inquire into an act of injustice as well as an allegation of favoritism to any person or of the accrual of personal benefit or gain to the administrative authority responsible for the act at the Centre and states level. If he investigates and finds that injustice has been done, he shall suggest remedial action to the concerned department. If the department does not act on

it, he can report to the Prime Minister or the Chief Minister as the case may be, who shall report back within two months. If he is not satisfied, then he may bring it to the notice of the Parliament or the Legislature. If there are criminal charges against a public official, he can bring it to the notice of the Prime Minister or the Chief Minister and they can then set the machinery of law in motion and inform the Lok Pal.

III. National Commission to Review the Working of the Constitution (2002)

The National Commission to Review the working of the Constitution (NCRWC) was established by an executive resolution issued by the Secretary, Department of Legal Affairs, Ministry of Law, Justice and Company Affairs on February 22, 2000.^[8] The resolution states that the government decided to set up the review Commission in order to fulfill its pledge contained in the President's address to the inaugural joint session of Parliament after the constitution of 13th Lok Sabha in October 1999. This Commission was chaired by Justice M. N. Venkatchaliah, retired Chief Justice of Supreme Court of India and former chairman of National Human Rights Commission. There were ten members in this Commission to review the Constitution.^[9] The final report was submitted to the Government of India on March 31, 2002 with 248 recommendations. So, the main recommendations regarding corruption and lokpal are:

- The Constitution should make the appointment of Lok Pal. But the office of the Prime Minister should be kept out of the purview of the Lok Pal (para 6.21.1).
- The Petitions Committee of Parliament should be attached as the supplementary body to the institution of Lok Pal for ventilation, investigation and to redress the grievances of public against the administration (para 5.9.2).
- For fighting the corruption Public Interest Disclosure/ Whistle-Blower Act should be enacted to protect the informants (para 6.16.3).
- A law should be framed for those public servants who are making a loss to the State by malafide actions or omissions and be made liable to loss or damages (para 6.17).
- Section 8 of the Benami Transactions (Prohibition) Act, 1998 should be immediately amended for acquiring benami property as well as the benami property of public and non-public servants should be forfeited (para 6.19).
- The Constitution should make a provision for obliging the states to establish the institution of Lokayuktas (para 6.23.2).
- The Commission suggested that accepting money or any other valuable consideration to speak or vote in a particular manner in the Parliament should be considered into the corrupt acts. For this purpose Article 105(2) of the Constitution which provides immunity to MPs or MLAs under Parliamentary privileges must be amended. (para 5.15.6).

IV. The Second Administrative Reforms Commission (ARC) On Corruption And Lok Pal

The Second ARC was constituted in 2005 and submitted its 4th report on 'Ethics in Governance'⁵ in January 2007. The terms of reference of this Commission^[10] regarding corruption are:-

- Strengthening pro-active vigilance to eliminate corruption and harassment to honest civil servants.
- Addressing systemic deficiencies manifesting in reluctance to punish the corrupt.
- Identify procedures, rules and regulations and factors which lead to corruption, suggest measures to combat corruption and arbitrary decision making, and a framework for their periodical review in consultation with the stakeholders.
- The Commission has examined the relevant laws, codes and manuals, which deal with ethics and corruption. It has studied the institutional framework that investigates corruption. It has also looked at the corruption-prone processes in government and examined the systems, rules and procedures, which govern these processes. The status of recommendations after action taken by the Government of India is highlighted in the following table.

Table-1

Status of the Recommendations of 2nd ARC on Ethics in Governance

Major Headings	Total Recommendations	Accepted	Rejected	Partially Accepted	Pending
Ethics in Politics	18	--	18	--	--
Ethics in Civil Services	03	02	--	1	--
Ethics in Judiciary	06	02	02	02	--
Ethics and Corruption	32	14	15	--	03
Ethics and Grievances Redress Machinery	25	19	06	--	--
Ethics in Citizen Centric Services	50	44	04	02	--
Total	134	81	45	05	03

Source: Report of the Second Administrative Reforms Commission on 'Ethics in Governance'.

Table-1 highlights that all the 18 recommendations have been rejected by the Government of India regarding ethics in politics and legislative functions. It is demoralizing fact that politicians and legislators do not want to observe the ethical standards in political life. Two of the three recommendations regarding civil services are accepted. Only two recommendations pertaining to judiciary have been accepted. 14 of the 32 recommendations are accepted by the government about corruption. Regarding the public grievances redress machinery, 19 recommendations have been accepted. 44 recommendations regarding citizen centric and service delivery system are accepted. However, specific recommendations, which are most urgent for transparent, responsive and ethics based governance aspects, either rejected or under examination.

4.1. Governance and Corruption

Corruption is an important manifestation of the failure of ethics. Anti-corruption interventions made so far are seen to be ineffective and there is widespread public cynicism about them. The interventions are seen as mere posturing without any real intention to bring the corrupt to book. They are also seen as handy weapons for partisan, political use to harass opponents. Corruption is so deeply entrenched in the system that most people regard corruption as inevitable and efforts enshrined in the prevention of Corruption Act, 1988 as futile. ^[11] In this regard the Commission has recommended that:

- The offences should be classified into four categories, first, gross perversion of the Constitution and willful violation of the oath of democratic institution office. Second, abuse of authority by favouring or harming or harassing someone. Third, obstruction or perversion of justice by unduly influencing law enforcement agencies and prosecution is a common occurrence in our country. Last, squandering public money, including ostentatious official life-styles etc. ^[12]
- The Prevention of Corruption Act (PCA) discusses various offences and penalties but bribe giving is not defined separately as an offence. ^[13] The Commission suggests that section 7 of this Act needs to be amended and include collusive bribery as a special offence. If it causes a loss to the state, public or public interest then the punishment should be double. ^[14]
- It is provided in PCA that the previous sanction of the competent authority is necessary before a court takes cognizance of the offences. ^[15] But the Commission has opined that prior sanction should not be necessary for prosecuting a public servant who has been trapped red-handed or in case of possessing assets disproportionate to the known sources of income.
- The Presiding Officer in a Legislature should be designated as the sanctioning authority for MPs and MLAs respectively. The Commission suggested that there is a need to delegate the power of sanctioning authority to a Committee of Central Vigilance Commissioner and Departmental Secretary. In the case of

differences between two, the matter should be resolved at the level of Central Vigilance Commission. When the sanction is required against Secretary, then the empowered committee should comprise Cabinet Secretary and the Central Vigilance Commissioner. The sanction granting order should be issued within two months. In case of refusal, the reasons should be placed before the respective Legislature annually. Such arrangements may be introduced at the state level.^[16]

- A new chapter of the penalty and pay damages in criminal cases of corrupt public servants should be introduced in P.C.A. The decision of the Government on this recommendation is pending. To speed up the trial under the P.C.A. needs to be fixed a time limit for various stages of trial and proceedings of courts by amending the criminal procedure code day-to-day basis. The Supreme Court and the High Courts may provide some guidelines to preclude unwarranted adjournments and avoidable delays.^[17]
- Private sector service providers and NGOs receiving substantial funding should be covered under the P.C.A.^[18] Again the decision of the Government is pending about this recommendation. Discretion should be eliminated from all the government offices having public interface. Decision making on important matters should be assigned to a committee instead of an individual.
- It is again accepted that the illegal acquired property must be forfeited and the Corrupt Public Servants (Forfeiture of Property) Bill be enacted without further delay. Supervisory officers should be primarily responsible for curbing corruption through annual performance report. If any officer, who gives a clean chit to his corrupt subordinate then he should be asked to explain his probation in this regard.^[19] Submission and scrutiny of assets and liability statements of public servants should be ensured and put in the public domain. Annual list of public servants of doubtful integrity should be prepared in all departments in consultation with the anti-corruption agencies.^[20]
- The Benami Transactions (Prohibition) Act, 1988 precludes the person who acquired the property in the name of another person from claiming it as his own. It is accepted by the Government that steps should be taken for immediate implementation of the Benami Transactions (Prohibition) Act, 1988.^[21] The whistleblowers of government and corporate sector, who expose false claims, fraud or corruption be protected by ensuring confidentiality and anonymity, protection from victimization in career and other administrative measures to prevent bodily harm and harassment.^[22]
- A law on `Serious Economic Offences should be enacted and the definition of this law may include the involvement of a sum exceeding Rs 10 crore, widespread public concern, require highly specialized knowledge of financial market, significant international dimensions where the requirement of legal, financial investment and investigative skills be brought together.^[23] Serious Frauds Investigation Office (SFIO), which was set up in 2003 as a specialized multi-disciplinary organization to deal with cases of serious corporate frauds should be attached with the `Serious Frauds Office` (SFO). A serious frauds monitoring committee^[24] (SFMC) should be constituted to oversee the investigation and prosecution of such offences headed by Cabinet Secretary. When the public functionary is involved in a serious fraud, the SFO shall send a report to the Rashtriya Lokayukta and act according to the provided directions.^[25]
- The Commission suggested that accepting money or any other valuable consideration to speak or vote in a particular manner in the Parliament should be considered into the corrupt acts. For this purpose Article 105(2) of the Constitution which provides immunity to MPs or MLAs under Parliamentary privileges must be amended. Same arrangement should be made in Article 194(2) for members of the State legislatures.^[26]

4.2. Ethical Governance and Lokpal

Most of the public grievances crop up due to the inherent nature of the bureaucracy. There is a built in relationship between the increasing number of public grievances and the nature of the ever growing bureaucracy. The institution of Lokpal is considered as the citizen's defender. So, the Commission highlighted the following recommendations in this regard:-

- The Constitution should be amended to establish the institution of a national ombudsman known as Rashtriya Lokayukta. The role and jurisdiction of the ombudsman should be defined in the Constitution while the composition, mode of appointment and other details can be decided by Parliament through legislation. The jurisdiction of Rashtriya Lokayukta includes all Ministers of 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. This institution should have a serving (more than three years of service) or retired Judge of the Supreme Court as Chairman, an eminent jurist as member and the Central Vigilance Commissioner as the ex-officio member. The Chairman and Member should be selected by a committee.^[27] The Rashtriya Lokayukta should also be entrusted to raise the standards of ethics in public life.^[28] The Constitution should be amended to make obligatory for state governments to establish the institution of Lokayukta having multi-member body consisting of a retired Supreme Court or Chief Justice of High Court, an eminent jurist or administrator with impeccable credentials as member and head of the State Vigilance Commission as ex-officio member. The Chairman and member should be selected by a Committee.^[29]

- The jurisdiction of this institution would extend only to corruption cases against Ministers and MLAs but not to general public grievances. There should be a State Vigilance Commission to tackle the cases of state government officials with three members. The Anti Corruption Bureau should be brought under the control of the State Vigilance Commission. All the corruption cases should be referred to Rashtriya Lokayukta or Lokayukta but not referred to any Commission of Inquiry.^[30] The Government has decided to accept the recommendation.
- It is accepted that there should be an ombudsman for local bodies to investigate cases of corruption or maladministration against the functionaries. For this purpose the respective acts of Panchayats and Urban Local Bodies should be amended.^[31]

V. Conclusion

After going through the recommendations of the Commission and the action taken report of the government, it seems that the government is not at all serious about the problems of corruption. Moreover, the Government is not even ready to consider its recommendations pertaining to MPs and MLAs conduct within and outside the legislature. Similarly, it does not want any change in the Prevention of Corruption Act, 1988. Ironically, the major recommendations are facing hostility and resistance because these are intended to bring the basic changes in the administrative system of India. It is directly attributable to lack of political commitment or willingness to reforms and bureaucratic resistance to change. Reforms depend upon capable leadership, correct diagnosis and grasp of the situation, proper sense of timing, wider support base, careful planning and phasing of proposals, command over resources and above all a sound understanding of political environment.

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- [11] The Prevention of Corruption Act, 1988, Section 6.
- [12] The Fourth Report of 2nd ARC, op. cit., (para 3.2.1.10).
- [13] The Prevention of Corruption Act, 1988, Section 7
- [14] The Fourth Report of 2nd ARC, op.cit (para 3.2.2.7).
- [15] The Prevention of Corruption Act, 1988, Section 19.
- [16] The Fourth Report of 2nd ARC, op. cit (para 3.2.3.2).
- [17] Ibid, (para 3.2.5.6).
- [18] Ibid, (para 3.3.7).
- [19] Ibid, (para 3.4.10).
- [20] Ibid, p. 154.
- [21] Ibid, (para 3.5.4).
- [22] Ibid, (para 3.6.4).
- [23] Ibid, (para 3.7.19).
- [24] The Chief Vigilance Commissioner, Home Secretary, Finance Secretary, Secretary Banking/Financial Sector; a Deputy Governor, RBI; Secretary, Department of Company Affairs; Law Secretary and Chairman Security Exchange Board of India (SEBI) etc. should be its members.
- [25] The Fourth Report 2nd ARC, op. cit., (para 4.7.19).
- [26] Ibid, (para 3.9.4).
- [27] The Committee should include the Vice-President of India, the Prime Minister, the Leader of the Opposition, the Speaker of the Lok Sabha and the Chief Justice of India.
- [28] The Fourth Report 2nd ARC, op. cit., (para 4.3.15).
- [29] Ibid, pp (para 4.4.9).
- [30] Ibid, (para 4.4.9).
- [31] Ibid, (para 4.5.6).