

DRAFT
NATIONAL ANTI-CORRUPTION STRATEGY



CENTRAL VIGILANCE COMMISSION

Preface

The National Anti-Corruption Strategy represents a blue print for commitment and action by the various stakeholders to the governance process. It aims at systematic and conscious reshaping of the country's national integrity system. The strategy recommends a set of action to be taken by the government and a set of action by the political entities, judiciary, media, citizens, private sector and civil society organisations. To ensure that the strategy does not remain a mere document, it is envisaged to ensure its effective implementation by developing suitable parameters for evaluating and monitoring the progress of its implementation. The CVC would review the progress on an annual basis and submit a report to the Parliament.

Comments or suggestions on the draft National Anticorruption Strategy should reach the Commission (contact given below) by 20th Sep 2010. For any clarifications please contact:

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I. CORRUPTION IN INDIA

State of Corruption in India

India's stellar performance in rankings on growth indicators and its innovative approaches to poverty alleviation are often compromised by absence of noticeable efforts in governance reforms for ensuring high levels of integrity, enhanced transparency and probity in public and corporate life. It is a commonly held view that political and bureaucratic corruption, public funds embezzlement, fraudulent procurement practices and corruption in the enforcement and regulatory institutions and consumer exploitation by private companies/ contractors plague Indian public life. Studies and public surveys have reinforced this public perception and have consistently shown that corruption persists in India despite many steps by the government. Examining the root causes of corruption in India and understanding its several manifestations is necessary to place the problem in its context and is an essential prerequisite for policy formulation.

Forms of Corruption

Corruption in India has multiple channels of expression. One of the ways of advancing our understanding of the problem is to distinguish between the many forms it takes. A widely accepted distinction, one that can be applied to the Indian context, is that between petty and grand corruption. Petty corruption is either the collusive or coercive action of a public official vis-a-vis a member of the public to subvert the system over relatively small transactions. It therefore mostly involves down the line public officials. Grand corruption is the subversion of the system by senior government officials and formations of the political executive, usually in collusion with private sector players. In India both forms of corruption are prevalent as result of which corruption has become endemic to Indian society. It is also noteworthy that even a matter as important as national security could be at risk due to various forms of corruption.

IMPACT OF CORRUPTION AND THE NEED FOR A NATIONAL ANTI-CORRUPTION STRATEGY

Impact of Corruption

Globally, there is a general consensus amongst most academics and policy makers that the debilitating effects of corruption permeate through all aspects of public life. Several studies have shown that corruption not only stifles growth, it also perpetuates inequalities, deepens poverty, causes human suffering, dilutes the fight against terrorism and organised crime, and tarnishes India's image globally. The impact of corruption is multi fold, encompassing: political costs, economic costs, social costs, environmental costs and issues of national security.

(a) *Political Costs:* The political costs of corruption are manifested in weakened public trust in political institutions, reduced political participation, perversion of the electoral process, restricted political choices available to citizens and loss of legitimacy of the democratic system.

(b) *Economic Costs:* Corruption reduces economic efficiency by misallocation of resources in favour of rent seeking activities, increasing the cost of public transactions, acting as an additional tax on business thereby reducing investment, reducing genuine business competition.

(c) *Social Costs*: The effect of corruption on the social fabric of society is perhaps the most alarming damage of all. It undermines people's trust in the political system, in its institutions and its leadership. Corruption distorts the value systems and wrongly attaches elevated status to occupations that have rent seeking opportunities. This results in a disillusioned public, a weak civil society, which attracts unscrupulous leaders to political life. Eventually, there is a risk that demanding and paying bribes could become the norm.

(d) *Environmental Costs*: Environmental degradation is an indirect but serious consequence of corrupt systems. Environmentally devastating projects are given preference in funding, because they are easy targets for siphoning off public money into private pockets.

(e) *Issues of national security*: Corruption within security agencies can lead to a threat to national security, including through distortion of procurement, recruitment of ineligible persons, providing an easy route for smuggling of weapons and terrorist elements into the country and money laundering.

Need for a National Anti-Corruption Strategy

Given the dire consequences of corruption, it is quite evident that it needs to be explicitly taken into account in India's overall development strategy. The absence of institutions and legislations crafted to combat corruption is not the problem in India given the wide range of anti-corruption related steps taken in the past six decades, however significant gaps still remain between the policy and practice. Existing anti-corruption interventions are mostly punitive in nature. For integrity to become embedded in public life, it is important that India shifts from this punitive approach to a more holistic preventive and participatory approach. Moreover, a tendency has set in where the fight against corruption is seen as the job of a few anti-corruption agencies, whereas in reality it is the responsibility of every citizen and organisation. Therefore, a need was felt for a single comprehensive strategy that harmonises the efforts of withal stakeholders to fight corruption and sets an agenda for collective action.

Hence, a comprehensive approach to fill this gap – an approach that targets the root causes of corruption, while strengthening detection and enforcement mechanisms, and introducing systemic reform – is the need of the day. In doing so, it is important to acknowledge that corruption is a reflection of both social and political values as well as weak institutions. Given the entrenchment of corruption in Indian society, for any strategy against corruption to be successful, sustained commitment from all actors of society, including political leaders, various government agencies, civil society, media, the private sector and the common man, will be imperative. It has been widely recognized that a realistic strategy to combat corruption needs to be a participatory one that enlists input in devising, as well as, cooperation in implementing, from these various actors. This document also focuses on the importance of values and ethics and the role of education and awareness, so as to bring in the citizen as a key player in the fight against corruption.

Bearing the above facts in mind the endorsement of various stakeholders, including government bodies, persons from the legal field, politics, civil servants, members of civil society organisations and the private sector, have been sought through a series of consultations, surveys and group discussions to arrive at national consensus on how to deal with the problem of corruption. The ensuing strategy is the first ever comprehensive strategy on corruption in India and provides a framework for developing ways and means of preventing and combating corruption in a comprehensive, co-ordinated, inclusive, and sustainable manner.

NATIONAL ANTI-CORRUPTION STRATEGY: VISION, MISSION, OBJECTIVES AND APPROACH

Vision: A nation built on good governance, transparency and integrity, and free from all forms of corruption, and a responsible society aware of its ethical responsibilities.

Mission: To channelize, integrate the resources and build synergy into the efforts of all stakeholders in society to promote integrity in governance and progressively eliminate corruption from India through effective prevention, detection and punishment of all corrupt activities.

Objectives: To ensure adherence to ethical standards and integrity in the functioning of the Indian Republic by engaging all stakeholders by:

- (a) Raising public awareness to promote zero tolerance towards corruption;
- (b) Undertaking effective preventive measures to minimise the scope for corruption;
- (c) Strengthening legal and regulatory framework and capacity building of the institutions of accountability as well as enforcement agencies;
- (d) Creating sustainable deterrence against corruption by strict and prompt enforcement of anti-corruption laws and regulations;
- (e) Enhancing collaboration amongst all stakeholders in ensuring that corruption cases are detected, reported, and prosecuted properly;
- (f) Reducing opportunities of investment and utilization of wealth earned through corrupt means.

Approach

A need was expressed by various stakeholders to develop, adopt and maintain a National Anti-Corruption Strategy (NACS) in India. The Central Vigilance Commission (CVC) with the endorsement of the Vigilance Advisory Council therefore decided to assist the government in formulating an anti-corruption policy.

Formulation of the NACS was a multi-step process which involved: (a) assessing the status of corruption at various levels of governance; (b) diagnosing its causes; (c) understanding the expectations of all stakeholders; and (d) proposing various strategies to combat corruption in an effective and efficient manner. The NACS was formally drafted after obtaining the endorsement of all stakeholders through surveys, interviews, group discussions and consensus building. Based on the feedback received on the draft, necessary amendments were made to ensure that the resultant strategy is practical from an implementation stand-point, with a high probability of success. The NACS then came into being once it was endorsed by all the stakeholders.

The strategy itself is hinged upon a multi-pronged approach to tackle corruption. It relies on a combination of prevention, enforcement and awareness raising measures, embedded within the ethical, legal, institutional, social and systemic framework of governance in India. It aims to address both petty and grand corruption by engaging multiple stakeholders of society and by encouraging international cooperation on issues related to corruption. It provides concrete recommendations and action steps to be undertaken in order to progressively eliminate corruption.

The sections that follow will provide an elaborate account of the many facets of this strategy.

II. LEGAL AND REGULATORY FRAMEWORK FOR FIGHTING CORRUPTION

Legal and regulatory frameworks underpinning public life play a vital role in controlling corruption in a country like India which has a strong legal tradition and where independent regulatory agencies play an important role even in the regulation of basic areas such as transmission of electricity (Electricity Regulatory Commissions) and distribution of water (Water Boards). Therefore, it is important to re-align the legal and regulatory structures to ensure that anti-corruption measures are given their rightful place.

LEGAL FRAMEWORK

The legal structure of society forms an important pillar in the fight against corruption. If corruption is to be cured, the need for a strong legal framework against the same is almost axiomatic. In India, the legal framework for curbing and controlling corruption is primarily based on statutory and common law. While existing legislations and executive orders have gone a long way towards reducing corruption levels in India, there still remain some areas that require change.

Prevention of Corruption Act, 1988

The Prevention of Corruption Act, 1988 (**PC Act**) was enacted with the intended purpose of consolidating and amending the law relating to the prevention of corruption. While the PC Act has had a significant impact, there are areas that continue to act as bottlenecks in the fight against corruption and need to be improved upon. Some of these are discussed below.

Prior sanction: One such area is the requirement of obtaining prior sanction of an appropriate authority before any court takes cognizance of an offence by a public servant. Past experience has shown that these provisions have often resulted in long delays due to: (a) inordinate delays in according sanction; (b) the provision being used to shield public servants though a wrong has been committed (usually to protect colleagues since the sanctioning authority is normally a senior officer of the “accused” officer); and (c) the sanction accorded being challenged at the trial stage and cases being discharged on the basis that the sanctioning authority had not applied its mind while according sanction. Further, this provision goes beyond the protection offered under the Criminal Procedure Code, 1973 (which only protects actions in discharge of official duty). It may be advisable to: (a) provide that no prior sanction would be required in cases where the officer is caught red handed; and (b) in other cases, prescribe a clear timeframe within which the sanctioning authority must communicate its decision either according sanction for prosecution or rejecting the same.

Protection of whistle-blowers and witnesses: Another aspect that may be mentioned here is the lack of provisions for protection of whistle-blowers and witnesses. The only provisions in the PC Act that, to a very limited extent, provide for protection of whistle-blowers are Sections 5 and 24. While both of these provisions provide some degree of protection against prosecution, they do not afford any protection against action that may be taken by the wrong-doer or his associates.

Unlike the United States of America or the United Kingdom, which have specific legislations for whistle blower protection (Whistleblower Protection Act of 1989 in the USA and the Public Interest Disclosure Act of 1998 in the UK), India also does not have any separate legislation for the protection of whistle-blowers or even one for witnesses. A specific legislation for protecting whistle-blowers has been recommended on many occasions, including in the Law Commission of India’s 179th Report, pursuant to which a bill titled

“Public Interest Disclosure (Protection of Informers) Bill, 2002” was proposed. Subsequently, a bill for this purpose has also been circulated to the States. However, no legislation to this effect has yet been passed. While some degree of whistle-blower protection is provided by the Central Vigilance Commission (CVC) in terms of a notification issued by the Government of India (which itself was issued only as an interim arrangement), on many occasions, this protection is rejected on technical grounds.

The lack of a legislation and adequate mechanism for protection of whistle blowers and witnesses has often resulted in complaints not being made out of fear of reprisals or in complaints being made on an anonymous basis or using pseudonyms, which are then either ignored or not investigated properly, resulting in inaction. Given past cases of severe reprisals even to the extent of deaths suffered by complainants against corruption, such as in the case of Satyendra Dubey, Satish Shetty and Manjunath Shanmugham, it is important that appropriate legislative provisions for protection of whistle-blowers and witnesses be introduced either through amendments to the PC Act or through a separate legislation. The act should include whistle blowing against private corporations and business & protection to the whistle blowers till completion of investigations.

Corruption by private entities: The PC Act does not expressly seek to punish corrupt acts of private parties, except to a limited extent through Section 8, 9 (dealing with persons accepting gratification to use their influence on a public servant in the conduct of an official act) and Section 12 (dealing with abetment, pursuant to which a person offering a bribe could be punished). However, there is no direct provision prohibiting a private person from offering a bribe or engaging in other corrupt practices. Such a provision is required to ensure that all parties to a corrupt are dealt with adequately and is specially important in cases of “collusive corruption” where the private person may be the initiator and where the public servant may even have rejected the bribe.¹ This matter was to be considered further pursuant to the recommendations made in the 4th report (**ARC Report**) of the Second Administrative Reforms Commission (**ARC**). However, there have been no developments in this regard. In this context, it may also be useful to create a distinction between the penalties for commercial bribery for a benefit and a mere facilitation payment to get the benefit of an existing right.

Enforcement action: Past experience has shown that in many cases, there are inordinate delays in prosecution of public servants against whom complaints have been made. In cases of corruption, it is extremely important that prosecution take place within a short timeframe as delays can affect the morale of the complainant and also increase the possibility of reprisals.² Therefore, concrete steps need to be taken to ensure that prosecution or other action against the wrong-doer is completed in a timely manner, including by simplifying legal and administrative procedures. Further, exemplary punishments should be meted out to public officials convicted of corruption and the fact of such punishment should be widely disseminated. This will not only act as a deterrent to the officials, but will also bring to the public’s attention that steps are being taken to curb corruption.

Bribing Foreign Officials: The PC Act does not contain any provisions to deal with the cases where Indian citizens engage in corrupt activities with a foreign public official. Such a provision is required for bringing India’s anti-corruption laws in line with the mandatory requirement of UNCAC.

¹ A reference may be made UK Bribery Act, 2010 which covers both bribing and accepting a bribe as offences. Article 15 of the United Nations Convention against Corruption also makes it mandatory to adopt such legislative and other measures as may be necessary to establish as criminal offences in respect of giving or offering directly or indirectly of undue advantage to a public official.

² This fact has also been recognized by the Law Commission of India in its 166th Report.

Confiscation of property: It is well documented that the provisions of the PC Act in this behalf are inadequate since confiscation is only permitted after prosecution for the relevant offence.³ To effectively deter public servants from engaging in corrupt activities, it is important that the very possession of properties disproportionate to known legal sources of income of a public servant be declared as an offence and such properties be confiscated by the state even pending prosecution. Adequate provisions in this regard need to be introduced through amendments to the PC Act or through a separate legislation that allows for civil forfeiture

Tax agreements

A substantial portion of wealth created through corrupt means finds its way to bank accounts outside the sovereign jurisdiction of India. Government of India has signalled its resolve to unearth unaccounted money parked outside India. The steps being taken in this regard include amending the Income Tax Act, 1961 to enable the Central Government to enter into agreements even with non-sovereign jurisdictions for exchange of information and other purposes. Steps have already been initiated for negotiations for entering into agreements for the exchange of information with other nations and renegotiation of the double tax avoidance treaty with Switzerland is in process. India is an active participant in the global efforts to facilitate exchange of tax information and to take action against tax evasion. These efforts need to be strengthened to eliminate opportunities for investment of wealth earned through corrupt activities.

Right to Information Act, 2005

The Right to Information Act, 2005 (**RTI Act**) has been one of the key initiatives of the Indian government for preventing and curbing corruption. However, one of the major criticisms of the RTI Act has been the availability of a number of grounds for exemption from providing information. In this regard, reference may be made to Sections 8(1)(e) and 8(1)(j) of the RTI Act which provide broad exemptions from disclosure. Further, Section 11 provides an easy route for contesting any disclosure of information that has been provided by the third party. In order for the RTI Act to become even more effective a tool against corruption, the scope of exemptions from disclosure of information that are available under it should be reduced.

Further, the RTI Act does not provide any exemption from disclosure of information that is privileged and need not be disclosed before a court of law in terms of Sections 122 to 126 of the Indian Evidence Act, 1872. It would be advisable that such privileged information not be required to be mandatorily disclosed under the RTI Act.

Prevention of Benami Transactions

The Benami Transactions (Prohibition) Act, 1988 (**Benami Act**) prohibits benami transactions and even provides for Government acquisition of property held benami. However, the rules to make the confiscation of property and other provisions effective have not been issued. This hampers the ability of the Government to take steps under this legislation and take action in the multitude of cases where resources acquired through corrupt practices are held benami. Steps should be for effective implementation of the Benami Act, including by passing rules for confiscation of benami property.

Most of the wealth in India which is accumulated through corrupt means gets invested in benami immovable property, gold and jewellery, high value consumer goods and other

³ *Delhi Development Authority vs. Skipper Construction* AIR 1996 SC 2005; 166th Report of the Law Commission of India.

conspicuous consumption. The unique identification project presents an opportunity to curb this menace effectively. Quoting the unique identity number or presenting other appropriate identity documents should be made compulsory for all immovable property transactions, purchase of gems and jewellery and for any other major expenditure above a certain threshold, and clear records regarding the same should be maintained. This would ensure that property is not sold to non-existent persons or in fictitious names and would provide information about any expenditure disproportionate to known sources of income.

REGULATORY FRAMEWORK

Regulators are important stakeholders for ensuring good governance and healthy competition. They play a crucial role in economic development. Therefore, it is imperative that they lead by example and set the highest standards of integrity. Any anti-corruption program concerning regulators and the regulated should therefore include the following key elements:

- Serve to establish transparent systems and procedures that reaffirm commitment to public service and integrity;
- Empower stakeholders to report and combat corruption without fear of retribution;
- Set adequate policies, protocols, and monitoring/reporting mechanisms, including procedural actions and sanctions to counter corrupt practices.

Regulators in India

The Government of India has established various authorities to regulate different aspects of the economy. In the Indian context, regulators carry wide ranging powers to make, authorize, recommend and govern policy decisions and administer and execute government programs. Owing to the very stature and nature of powers vested in them, there is a potential for corruption at all levels (regulators and the regulated) in the discharge of functions. It is globally accepted that corruption at such levels deters investment and undermines competitiveness, brings a loss of credibility and ultimately weakens the economic growth of a country. Hence there is a pressing need that regulators develop, implement and monitor an effective anti-corruption program for themselves and the stakeholders..

Effective ethical framework as part of anti corruption strategy can consider the following:

- Must be locally owned and driven to a great extent;
- Oriented towards developing robust preventive mechanism;
- Aimed at developing appropriate communication and educative mechanism to spread core values and ideals the regulator stands for;
- Creating public awareness on anti-corruption strategy, complaint and whistle blowing mechanisms;
- Creating a strong monitoring and reporting mechanism by posting periodic updates on the respective web sites and sharing of the information with other regulators or Government agencies for appropriate action;
- Framing of appropriate sanctions against payment of any unauthorized or unacceptable consideration in dealing with the stakeholders or regulators.
- On overall basis, shall be reflective of expectations as to the stakeholders empowerment, education, and self regulatory measures to prevent corruption and send zero tolerance message to all

A. Suggested recommendations for developing ethical framework for the Regulators

Review of existing structure of the regulatory regime

Existing regulatory authorities play the dual role of formulation of rules / regulations / policies and also control and monitoring of the activities of the operators (the regulated). Internationally, regulators and exchanges have coped by, among others, exchanges outsourcing their regulatory functions to other regulators or by separating the market regulator from the market operator.⁴ Govt. may think of having two tier structure for regulators to avoid concentration of powers in few hands and thereby address the risks of corruption and fraud.. This may include creation of a unified regulator⁵, distinct from the central bank of the country, in a phased manner to overcome supervisory difficulties and reduce compliance costs.

Transparency in recruitment

There is a need for transparent process for selection of incumbents to Head the regulators and other functionaries. Process of selection and appointment of various functionaries (executives and non executives) of the regulators shall be streamlined by formation of appropriate standing committees for search, selection and appointment. Governance structures that rely on the independent appointment and authority of boards of directors or trustees enable putting in place adequate internal controls and oversight on those with discretionary authority or who handle public funds and hence there is a need for transparency in appointment of key personnel of the Regulatory authorities

Setting up guidance for appropriate ethical frameworks

To make the anti-corruption program practical and workable it is imperative that anti corruption and ethical values (as provided at *Annexure 1*) are given due cognizance at the time of development of framework like code of conduct or development and communication of such a policy document. At a broad level, coverage of the said issues will send a clear message on high standards of ethical conduct, expected behavior and action contemplated for non-compliance by officers/employees besides defining clearly what actions and behaviours constitute bribery and corruption. Further, communication of these as “best practices”, would serve to create consistency in purpose and approach across all regulators. Extensive specific prohibitions of transactions among parties with potential conflicts of interest are another common means to prevent the potential for corruption.

Whistle blowing/grievance reporting mechanisms

Setting up appropriate whistle blowing mechanisms is a very important step in detection of actual or attempted policy violations. Apart from providing confidence to stakeholders that their grievances would be dealt with in a fair, safe and confidential manner, these would also serve to deter unethical and corrupt behavior once effectively implemented. Please refer to *Annexure 2* for factors to be considered in establishing whistle blowing mechanism.

Specific administrative policies

To provide suitable direction in advocating, implementing, monitoring and reporting on issues related to anti-corruption, it is recommended that regulators set up and communicate to their

⁴ Study on Indian Capital Market reform (Nov 2007) by USAID and NISM.

⁵ McKinsey & Co on India Banking 2010 Towards a High-performing Sector.

employees, appropriate administrative policies that regulate activities. *Annexure 3* contains recommended administrative policies. These administrative policies may be made available in the public domain to make the internal functioning of the regulator transparent.

Coordination with other regulators and agencies as part of Anti-Corruption strategy

Under the present system, in case of employee involvement in corrupt activities, enquiry is conducted internally and the punitive measures are two pronged – minor penalties and major penalties – depending upon the gravity of issue, evidence produced and loss caused to the Government / regulator / stakeholders. In case outsiders are involved, case is referred to the concerned agency (like Police / ACB / CBI). However there is no proactive mechanism to collate information including information on employees’ assets on a continuous basis and share the same on a periodic basis with other regulators / agencies. There is a need to establish appropriate mechanism for coordination with other agencies (details at *Annexure 4*).

Communication, education and training on Anti-Corruption

In view of their relevance to critical sectors that contribute to an economy, apart from exercising good governance, regulators also need to play an important role in disseminating information and educating various stakeholders on anti-corruption. In certain aspects, it is recommended that the regulators could consider taking on broader roles in imparting knowledge on the subject to its stakeholders (for details please refer to *Annexure 5*).

B. Framework for the regulators and the regulated

Prescribing self regulatory measures for important constituents

In many instances, regulators prescribe self regulatory measures for their stakeholders (for example brokers in capital markets and practicing public accountants). Such measures govern the conduct of participants in the regulator’s area of operation and serve as an important line of defence against unethical activity contributing to corruption. As these measures promote equity and inclusive growth amongst participants, they serve to promote lesser interventions by the regulator and hence reduce the potential for corruption through abuse of power.⁶ The contractual relationship provides more flexibility and it allows Self Regulatory Organisations (SROs) to react more quickly because it is based on the SRO’s rulebook and the consensus on adherence by the SRO’s members. Also, the process of revising the SRO contractual agreement can be a less cumbersome process than having to change statutory laws.

Self regulations may include the operational aspects of the regulators / profession, like:

- Acceptance of any office post retirement especially from the conflict of interest viewpoint, like accepting independent directorship or other position in a company;
- Ceiling on/ regulation of fees / other remuneration to be received;
- Period of continuity (like rotation of auditors once in three years in case of statutory auditors for top listed entities on BSE / NSE); and
- Mechanism to ensure independence of the constituents of the regulators.

It is recommended that regulators may consider defining and communicating appropriate self regulation measures to participants as set out at *Annexure 6* (not exhaustive).

⁶ UNCTAD Model for Self Regulation – 2007

Coordination with other regulators and agencies as part of Anti-Corruption strategy

Appropriate machination should be in place to share any information on the nature of corrupt practices indulged in by any entity, including intelligence information on a confidential note on the entities coming under multiple regulators – like a listed insurance or banking company or mutual fund or power or telecom company. And such mechanism shall facilitate sharing of evidence, if any, for the loss caused to the Government / regulator / stakeholders to enable any other empowered agency to recover the loss from the entity. Besides referring the case to the concerned agency (like Police / ACB / CBI) the information shall also be couched in a manner to take deterrent action by other concerned regulators including expulsion or barring of such entity from dealing in the respective market (details at ***Annexure 6***).

Automated payment and refund processes - tool for minimizing the corrupt practices

Regulation to make most payments through ECS or RTGS or cards or through the bank accounts will not only minimise dependence on cash payments and reduce velocity of money in the system but also has potential to reduce the scope for corrupt practices.

III.

STRATEGY TO ADDRESS POLITICAL AND ADMINISTRATIVE CORRUPTION

POLITICAL CORRUPTION

From a political perspective, corruption could be referred to as the abuse of any office of trust for private gain with deviations from set responsibilities and use of their positions to serve private ends and secure private gains. This type of corruption also falls in the category of what may be termed as “Grand Corruption”.

Key factors that are the root causes of political participation in corruption are:

- (a) Political will is a decisive factor in determining whether a country can enforce the constitutional, legal and the institutional provisions available to combat corruption. Establishment of institutions like the Lok pal and implementation of a nationwide anti-corruption strategy would clearly demonstrate political will and sends a positive signals to one and all.
- (b) Ethics and standardization of norms are a mandatory minimum measures for establishing credibility of the political institutions. The Parliament and State Legislatures’ role in holding the executive accountable is a powerful tool nevertheless compulsions of electoral politics sometimes force stalemates.

ADMINISTRATIVE CORRUPTION

Administrative corruption occurs at the implementation stages of government plans, schemes and even delivery of services. The two main causes of administrative corruption are: (a) inability of the civil servants to resist extraneous influences; and (b) active collusion.

Absence of accountability, integrity and transparency, in the face of monopoly power coupled with discretion to exercise such power are the contributing factors for increase of administrative corruption. High expectation of corruption and low probability of getting caught creates a culture of immunity. Corruption could still prevail in spite of there being systems, procedures, laws and codes of conduct if informal cliques guide government activity.

Inaccessible, Non Responsive, Cumbersome systems

There is a widespread perception today that bureaucracy is characterized by inaccessibility, non responsiveness, and mired in complex cumbersome systems, procedures and rules. Acceptance of bribe by the top management makes the subordinates follow the leader. Similarly, the use of influence to secure appointments to civil service or posts in government, desired posts or to transfer to a desired place or to get promoted emboldens one to indulge in corruption which becomes progressively routine. Growing extraneous interference in administration and the nexus developing between the corrupt elements among the government servants and the politicians also compounds the problem.

Political Finance & Electoral Funding

Present day politics also faces the challenge of reconciling the presence of money in politics with the risks it poses to democratic values and good governance. Political parties require resources to sustain campaigns and party organisations. To keep the system functioning, it is expected that parties would depend on voluntary contribution from party activists and sympathizers. However, modern politics requires a high degree of professionalism in management. Many services cannot be delivered by voluntary engagement. To cover the costs of running organisations, recruiting and training new political leaders, and reaching out to voters in election campaigns, parties and candidates typically require considerable support

from monetary and non-monetary resources from outside its membership contributions. The sources of funding these are sometimes highly questionable with brazen display of money and muscle power that are best avoidable as they diminish the value of citizens and effect the atmosphere of free and fair elections. They also present the risk of political establishment getting hijacked by the funders as people funding political parties could typically expect a kind of “Return on Investment” by seeking favors that are mostly against a nation's interest.

Parties in India raise money for both elections and inter-election purposes through private donations, which are usually not well regulated,. There is no state funding except for free time on the state-owned media on a basic slab-plus-pro rata time based on past electoral performance. Election expenditure limits – 2.5 million rupees per candidate in a constituency in 2009 elections were ineffective because they applied to candidates only, exempting parties and independent supporters under Explanation 1 of Section 77(1) of the Representation of the People Act. Even with the steady tightening of reporting requirements and the amendment of Section 77(1) to exempt fewer categories of party expenditure from candidates’ spending limits, there are still some loopholes for exploitation. The 2003 introduction of tax-deductibility has, to a partial and limited extent, incentivized transparent payments by companies and individuals. From fiscal years 2003-04 and onward, payments are listed on the Election Commission of India’s Web site for amounts over twenty thousand rupees which have to be disclosed by parties to the Commission.

RECOMMENDATIONS

Any anti-corruption strategy that aims to reduce both political and administrative corruption must address the following:

(a) Strengthening political will to confront corruption- Need for Top Down & Bottom up Approach

- (i) Strong political will towards rooting out corruption will ensure its containment and this would be a Top down approach. It is important to recognise that political will does not flow only from the top down. There are bottom-up sources of political will as well. In some cases, these sources may public officials on the frontlines of service delivery who are strongly committed to controlling, preventing, and exposing waste, fraud, and abuse and also includes citizens groups, civil society organisations, and the private sector.
- (ii) To start with young parliamentarians/ legislators should take the lead in exhibiting an anti-corruption stance through personal integrity and clean image.
- (iii) Anti-Corruption policies should be mandatory clauses by the election commission to be included in party manifestoes of all political parties.
- (iv) Political parties and leaders should avoid conflict of interest in their activities and especially so while nominating members to important public offices.
- (v) It is necessary to institutionalise a process where, in matters of corruption, laws should be uniform for all. Cases of criminal pursuit of corrupt politicians are mostly the result of political score settling if not judicial intervention.

(b) Building ethical competence in public officials

A competency-based training approach to professional ethics for public officials can provide a relevant framework for building the capacity for ethics and integrity among public officials. In order to exercise administrative discretion effectively and properly, officials need to be able to prioritise relevant 'core values' in the context of law, policy, organisational objectives, competing rights and interests, and broad community values. Officials need to develop skills in recognising the merits of the principled positions which may be taken by others, so as to be in a position to build consensus on possible courses of action, and public trust in the responsiveness of the organisation. Further, ethics and integrity should be included in the performance review of public officials.

(c) Strengthening Administrative Reforms:

- (i) Introduction of information technology and automation of corruption prone processes in administration has great potential for increasing efficiency, economy, convenience, speed, transparency, accountability and integrity in transactions, provided care is taken at the outset itself to simplify the processes involved and eliminate factors contributing to corruption.
- (ii) A personnel system based on patronage and political loyalty should be replaced with the concept of neutrality of professional civil service. An appropriately sized merit based professional non-partisan civil service with adequate motivation is of crucial importance in any anti corruption strategy.
- (iii) Promoting accessibility and responsiveness is critical for anti corruption strategy. Access to institutions without hindrance, transparency in public affairs and access to information on government functions and rights of citizens and responsiveness of functionaries are integral parts of good governance instrumental to prevention of corruption.
- (iv) Involving regulators, oversight agencies and organisations like CVC, CBI etc while drafting new policies would ensure that potential corruption and risks could be mitigated for the government well in advance.
- (v) Involving the private sector on good corporate governance measures and committing them to a holistic integrity pact that they will not use unfair means in their dealings especially with Government is a necessity.

(d) Political Finance & Electoral Funding:

- (i) Creation of a State Fund for funding elections with contributions to the fund being tax exempt. State funding of elections or parties, can be one of direct and/or indirect public subsidies – the latter being tax credits, free media time on state media, etc. – to parties combined with fairly strong regulations on intra-party governance, transparency, accountability of public and party funds.
- (ii) Private funding reforms can complement state subsidies with incentivisation for the sources of party funding from large private donors to large numbers of small donors and membership fees by instituting tax incentives for such small donations only.
- (iii) It is recommended that current expenditure ceiling on candidates be abolished, as it is meaningless to cap candidate spending while allowing huge loopholes for party and supporter spending. An overall cap encompassing all

such sources of funds would be more appropriate.

- (iv) State funding, as much in kind as possible to reduce fungibility and diversion, can be provided to parties.
- (v) Disclosure of donor identities and amounts should be mandatory and companies which are significant government contractors should be barred.
- (vi) The State should use the lever of state funding to impose internal democracy, accountability, and disclosure requirements on the functioning of political parties.
- (vii) A system to debar or suspend politicians involved in corruption charges could be a mechanism to instil some fear of political survival.
- (viii) Every day disclosure of receipt and expenditure by political parties through websites. All political payments through plastic cards/bank accounts including last mile payments to volunteers & party workers.

Source:

- 1. Corruption, Anti Corruption and Remedies -India 2004 & 2009 - Rameesh Kailasam*
- 2.UNDP. 1997 Corruption and Good Governance, Discussion Paper 3*
- 3.Theobald, R. (1990). Corruption Development and Underdevelopment. London:Macmillan.*
- 4.Derick W. Brinkerhoff, U4- "Unpacking the concept of political will to confront corruption"*
- 5.India in Transition Electoral and Party Finance Reform-E. Sridharan University of Pennsylvania Institute for the Advanced Study of India (UPIASI) 2009*

IV. STRENGTHENING INSTITUTIONS TO EFFECTIVELY COMBAT CORRUPTION

Institutions provide the structure that give shape and content to any strategy to combat corruption. Some key institutions that play an important role in reducing corruption levels are: the judiciary, enforcement agencies, disciplinary committees and investigating agencies. Their role and required reforms within them to improve performance in the Indian context are discussed below.

JUDICIARY

Since it has a pivotal role in curbing corruption, the judiciary should not only guard its independence from other wings of the government but it should also ensure that it does not itself get afflicted with the canker of corruption. It may use a two pronged strategy to combat corruption: (a) through systemic checks and balances on itself; and (b) speedy disposal of corruption cases. Some suggestions that may be useful for the judiciary to combat corruption within itself and in society are discussed below.

National Judicial Council

A Nation Judicial Council (**Council**) tasked with investigating corrupt activities of the judiciary would go a long way towards controlling corruption within the judiciary. While such a suggestion has been considered in the past, it is important that the role and constitution of the Council be carefully structured so as to balance the twin goals of increasing judicial responsibility and protecting the independence of the judiciary. In order to achieve this, it may be useful to constitute the Council with majority judicial membership.

Regular Integrity Checks

Apart from an integrity check which may be conducted at the time of initial appointment of the judges of various courts, there should be systems for monitoring the fairness, integrity, honesty and transparency of judges at regular intervals. Therefore, the integrity check conducted at the time of elevation of judges to the High Court or the Supreme Court may be repeated at regular intervals to ensure the continued integrity of the incumbent after appointment. This task could be undertaken under the aegis of the Council.

Special Courts for Corruption Cases

The time taken for prosecution of corruption cases is a major bane of the Indian system. This allows the guilty to get away as they are not dealt the punishment due to them and is a major concern for the innocent as they suffer while frivolous and malicious cases against them drag on.

In this context, it is relevant that despite provision of special judges in the PC Act, there is considerable backlog of cases in various states as well as the centre. The delays are mostly on account of non-establishment of special courts in some states, special judges entrusted with cases other than corruption, resource constraints of the courts etc. To enhance efficient case disposal, adequate strength of judges along with requisite support staff should be sanctioned. A mandatory outer time limit of one year should be set for disposal of corruption cases.

In this regard, some of the best practices contained in the special statutes of Orissa and Bihar,⁷ as mentioned below, are worth emulating:

- A Special Court/Judge shall not normally adjourn any trial;
- The Special Court/Judge shall endeavour to dispose of the trial of the case within a period of one year from the date of its institutions or transfer;
- A judge may act on the evidence recorded or partly recorded by his predecessor.

In addition, the following recommendations of the ARC also may be considered for implementation, in consultation with the superior judiciary:

- Normally special judges shall be entrusted only with the anti corruption related cases;
- The Supreme Court and the High Courts may lay down guidelines to preclude unwarranted adjournments and avoidable delays.

Finally, the resolution of the XVII biennial conference for convening of annual Meeting in the National Judicial Academy of the three wings (Judiciary, Prosecution/Police & Forensic Sciences) to enhance sensitivity on the issues of corruption should receive serious consideration.

ENFORCEMENT AGENCIES FOR PREVENTING AND INVESTIGATING CORRUPTION

The Santhanam Committee, which was constituted in 1962, laid foundation of one of the most important institutions for fighting corruption namely the CVC, as well as reorganisation of the Delhi Special Police Establishment into the CBI. Thus, when it comes to creation of institutions for fighting corruption, the country had demonstrated its commitment much earlier than many other countries. However, gaps still remain between the statutes, policies and their actual implementation which has led to limited success in combat efforts.

The Central Vigilance Commission (CVC)

The present statute restricts the ability of the CVC to make a sustainable impact on the ground. In this context, the following issues require immediate attention:

- The creation of a body that prevents corruption by: (a) overseeing and coordinating the implementation of anti-corruption policies; and (b) increasing and disseminating knowledge about the prevention of corruption, is advisable. At present the main charter of CVC is to oversee the vigilance work of the central government departments and the public sector undertakings within the framework of the existing government policy. This is also at variance with the global standards and the requirements under the envisaged under UN Convention Against Corruption (UNCAC).
- The Supreme Court⁸ had earlier struck down the “single directive” that had provided immunity to the senior civil servants from suo moto action of the CBI. After deliberation government restored the provision through statute and entrusted the authority of pre-enquiry scrutiny to secretary of the administrative department. This has diluted the powers of superintendence of the CVC and the CBI.

⁷ The most notable study in this regard has been done by the second Administrative Reforms Commission which was constituted to review the contemporary governance challenges and issue recommendations on good governance. Its fourth report, namely “Ethics in Governance” specifically dealt with issues of probity, transparency and fight against corruption.

⁸ *Vineet Narain v. Union of India* (1996) 2 SCC 199.

- Although CVC is responsible for exercising superintendence over the vigilance administration of the central government departments and the public sector undertakings, the power of selection of the full time CVOs is not vested in it.
- Although CVC is vested with the authority to advise the government and public sector organisations, there are no sanctions prescribed even for wilful non compliance.
- CVC is the designated nodal authority for receiving complaints under the Whistle Blower (Public Interest Disclosure & Protection of Informers) Resolution. It has neither been provided with extra resources to implement the provisions nor has sufficient authority backed by an act of parliament to ensure compliance of its orders.
- Considerable time of the commission and its officers is consumed in punitive work and little time and resources are left for performing preventive vigilance functions.

The following steps are required to be implemented to address the above gaps:

- Amendment of the CVC Act to: (a) to remove the proviso to the section 8(h); and (b) insertion of a new section to expand the mandate consistent making it a full-fledged preventive agency having authority to coordinate activities of the other agencies in so far as prevention of corruption is concerned and to generate and disseminate knowledge on corruption;
- Limiting the restrictions imposed under Section 6A of the Delhi Special Police Establishment Act only to the criminal misconduct on account of abuse of office by the senior Public Servants and vest the powers of pre-enquiry / investigation scrutiny with the CVC and not with the administrative department. Such an arrangement will also be consistent with Article 30 of the UNCAC which advocates a balance of immunities and privileges with the exigencies of investigation;
- Creating provisions for punitive action for wilful disregard of the directives (by clearly distinguishing the same from the guidelines) of the commission in a similar manner as prescribed in the RTI Act;
- Enactment of a Public Interest Disclosure Act and providing statutory authority and budgetary support to the CVC to implement the same;
- In the same lines as selection of senior officer of the CBI, a committee comprising of the CVC and the two Commissioners, Secretary DOPT and the Home Secretary should be established for selection of the full time Chief Vigilance Officers; CVOs to be paid salaries and perks from CVC accounts and not PSU or govt. funds.
- Adequate budgetary support for implementation of the recommendations contained in the section on systemic reforms concerning proactive vigilance.
- Creation of more posts for officers & staff in CVC.

The Central Bureau of Investigation

The CBI has withstood the test of time and continues to receive high level of demand for its service from various stakeholders, but ever increasing expectations and jurisdictional constraints have been putting an enormous burden on the organisation and stretch its ability to efficiently discharge its mandate.⁹ Before recommending steps for strengthening the CBI, it is important to first identify some of the specific bottlenecks in the effective functioning of CBI, which are:

- Highly limited jurisdiction in the present scheme of DSPE Act;

⁹ These issues have been closely examined on various occasions in the past and solutions suggested, most recently by the ARC and the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice.

- Impediment to the investigations and dilution of autonomy due to the requirement of administrative approval under Section 6A of the DSPE Act (already discussed in the previous sections);
- Need for prosecution sanction even in those offences which have no connection with the discharge of official duties and inordinate delays in sanction;
- Inadequate protection to the victims of corruption and witnesses against retaliation;
- Acute shortage of manpower at the gazetted officer level and technical experts;
- Limited expert assistance in conducting forensic audit as well as legal and capacity constraints in undertaking financial investigations leading to tracing, freezing and confiscation of assets.

The national strategy could address some of the issues mentioned above, through the following measures:

- Enactment of a CBI Act along the lines suggested by the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice¹⁰.
- There is no formal coordination mechanism between the CBI and the state Anti Corruption Bureaus. In this regard, the resolutions of the XVII Biennial conference of anti corruption heads of agencies to the extent of evolution of a system of half yearly meetings between Heads of State ACB and Heads of Zones / Branches of CBI may be fully implemented.¹¹
- The CBI Academy is a repository of knowledge and it conducts training programmes for the benefit of anti-corruption practitioners. This should be leveraged for training anti-corruption practitioners.
- Collection of statistics on corruption cases and trend analysis should be undertaken under the aegis of the National Crime Record Bureau.
- A client satisfaction survey of the complainants of anti-corruption cases with the concerned department in the aftermath of a CBI case should be conducted and government should issue guidelines on special grievance redressal mechanism for the victims of corruption, under the supervision of the Chief Vigilance Officers of the respective organisations.

Comptroller and Auditor General (CAG): The recommendations of the second ARC that: (a) any major irregularity detected /suspected by the audit should immediately brought to the notice of the government; and (b) training of the audit staff in forensic auditing, could highly benefit early detection of cases of financial frauds and abuse of authority.

National Crime Records Bureau (NCRB): ARC Report has recommended the creation of a national database, which is accessible in the public domain, containing the details of all corruption cases. It is important that such a database be created. Although the ARC recommended the inclusion of criminal as well as disciplinary cases and desired that the CVC take the lead for operational convenience, to begin with only criminal cases may be included,

¹⁰ In its 24th report 2007-08 the committee took up the issue of a separate CBI Act. It has observed that, in view of Entries 1, 8, 9 and 93 of the Union List; Entry 1 of the State List and Entries 1, 2, 3 and 4 of the Concurrent list, and by virtue of the fact that the Constitution grants express powers to the Central Government to make and implement criminal laws, legislation can be brought in for giving powers to the CBI to take cognizance of crimes.

¹¹ The resolution envisages discussion between the CBI and ACBs on various issues such as (i) Sharing of information (ii) Exchange of innovations, good practices, standard operating procedures etc., (iii) Creation of a system of sharing of resources and expertise in the field of training, (iv) Exchange of knowledge relating to latest scientific aids (v) Programme of anti corruption and vigilance work etc. Government of India should issue an advisory to all the state governments to cooperate in the implementation this recommendation.

and National Crime Records Bureau could take the lead and coordinate with the state anti corruption bodies.

State Anti Corruption Agencies: At present there is no uniformity in the organization structures of the state anti corruption bodies.¹² Although some state agencies such as Karnataka and Orissa are on a stronger footing in some aspects like absence of single directive, absolute powers of enquiry etc., there is wide variation in the comparative performance of the agencies and in general these agencies suffer from the problems of staff shortages, fast turn over, lack of proper incentives and inadequate budget support. It is therefore recommended that the central government take a lead in supporting the states in the following manner:

- During the XVII biennial conference of heads of anti corruption bureau and CBI, a resolution was passed that a national anti corruption mission should be started by the central government for modernization of the state agencies. This recommendation should be implemented under the guidance of the DOPT;
- Another resolution of the conference that a committee should be formed for the standardization of practices and organization structure of the state agencies should also be implemented.
- State agencies should be made multi disciplinary bodies and draw subject specialists from various government departments.
- As per the recommendations of the ARC, the State Vigilance Commissions/Lok ayuktas may be empowered to supervise the prosecution of corruption related cases.

Creation of Ombudsman Institutions: In India, in spite of the 1st Administrative Reforms Commission's recommendation and many attempts in the Parliament to introduce the necessary bill the institution of Lokpal (or Ombudsman) could not yet get instituted. Although CBI has jurisdiction to investigate anti-corruption criminal cases against the political executive and the Parliamentarians, such an arrangement is beset with several practical difficulties and in any case there is no body to enquire into misconduct other than criminal cases. It is therefore strongly recommended that the following recommendations of the ARC¹³ should be implemented at the earliest:

- Constitutional amendment for creation of the institution of Rashtriya Lok ayuktas having jurisdiction over all the Ministers (except the Prime Minister) and Parliamentarians;
- Entrustment of the task of national ethics building to the Rashtriya Lok Ayukta;
- Creation of similar institutions in the states for dealing with cases against people's representatives and simultaneous constitution of state vigilance commissions to look into cases against state government officials;
- Creation of local ombudsman institutions to deal with cases against Panchayat Raj institutions and other local bodies.

The Government should also actively pursue the proposal to appoint a Lok Pal who has power to look into corruption allegations and complaints.

Coordination Agency for Information and Intelligence sharing: Consequences of certain type of corruption in the enforcement, security and regulatory agencies have the potential to pose a serious threat to the security and economic stability of the country. Recurrence of such offences has underscored the need for a greater degree of cooperation among the intelligence and investigation agencies. In an increasingly networked world, this would in turn require real

¹² While vigilance commissions or anti corruption bureau or both exist in some states, the others have Lok ayuktas. Some state vigilance commissions such as Gujarat are similar in set up to the CVC; some others have a much smaller charter.

¹³ Recommendations at paragraphs 4.3.15 , 4.4.9 and 4.5.6 of the fourth report of ARC.

time accessibility of certain types of client information from the data bases of various service providers. The recently signed memorandum of understanding between the CBI and the Financial Intelligence Unit is a good example of inter agency cooperation.

In a country committed to democratic principles and having high standards of rule of law, intelligence collection and dissemination on corruption would require a fine balance between the operational requirements of law enforcement and the protection of individual privacy. It is therefore suggested that the government may first form an inter agency task force with clear terms of reference (see *Annexure 7*) for evolving the parameters and structure of intelligence cooperation, involving nodal officers from the Ministry of Personnel, Ministry of Home, Department of Revenue, Central Bureau of Investigation, Directorate of Revenue Intelligence, Directorate of Enforcement, Financial intelligence unit, Central Board of Direct Taxes, and Central Board of Excise and Customs. Based on the recommendations of the task force, the government could formally establish a coordination agency or assign the work to one of the existing agencies as an additional charter of responsibilities.

Mobilizing oversight institutions in matters of Policy & Scheme Formulations

To ensure Programmes, Schemes and Policies of the Government are well debated and possible avenues for corruption plugged in advance it is critical involve oversight institutions like CAG and CVC to ensure that the conceptualisation is robust.

While implementation of schemes and policies it would help if oversight institutions are engaged in the pre, mid and post monitoring to ensure no avenue for corruption has crept in and that necessary checks and balances are built in advance. This would enhance effectiveness of policies and programmes/schemes with greater role for oversight institutions in preventing corruption rather than a post mortem situation where the damage would have already been done.

SYSTEMIC REFORMS ACROSS PUBLIC INSTITUTIONS FOR CONTROLLING CORRUPTION

It is often seen that the enforcement of anti corruption measures alone does not reduce corruption, as corruption is a symptom of underlying systemic deficiencies such as poor governance, lack of transparency, high degree of discretion without accountability, inadequate monitoring etc. Therefore it is imperative for any action plan to address these wider issues and involve additional stakeholders outside the enforcement and regulatory agencies as well.

Promoting Transparency: It has been almost 5 years since the landmark legislation, the RTI Act was enacted. The Act triggered an enthusiastic response from the general public and thus created a suitable platform for launching it as an anti-corruption tool in the next phase. Recently the South Asia workshop on Right to Information, conducted by the Indian Institute of Public Administration¹⁴, identified some points of action, out of which the following merit consideration from an anti-corruption perspective:

- Implementation of proactive disclosure provisions in a more effective manner;
- Undertaking of public education and awareness raising programmes; and
- Incorporation of RTI syllabus in the school and college curricula.

The above mentioned recommendations could be implemented in the following manner through a result based management approach¹⁵:

¹⁴ <http://rtiworkshop.pbworks.com/f/2010-04-IIPA-WB-SAsia-RTI-Workshop-Resolution.pdf> accessed on 31 May 2010.

¹⁵ Please also refer to further recommendations regarding use of the RTI Act in the section on Social Infrastructure for Fighting Corruption.

- On the issue of proactive disclosures, lessons could be drawn from the successful model of Mexico's freedom of information programme which has leveraged technology and developed tools such as online request processing system (SISI), a keyword search engine for government responses to requests (ZOOM), and an online portal to access proactive disclosure information.
- Funding support to the civil society institutions for public awareness, on the potential of social audits and public oversight followed by capacity building of the community based organisations.
- Establishment of a task force for education curriculum revision.

Civil Service Reform:

Selection to the senior positions in the government: In its 10th report the ARC has reinforced this and observed that selection to leadership positions in the civil services is thus vital to the whole process of governance. The ARC also compared the existing systems of selection to the Senior Executive Service (SES) of various countries such as Australia, Canada, France, Malaysia, Singapore, New Zealand, USA, UK and carefully examined the recommendations of P.C. Hota committee on civil service reforms as well as Surinder Nath and arrived at the following important conclusions:

- Bringing transparency to the empanelment process of senior officers.
- Matching of domain competence. Specialization in 2 broad areas/domains by higher Civil Service Officers.
- Open competition for selection to the posts.
- Selection through a central civil service authority.

At present the government is contemplating tabling the civil services bill and the aforesaid could be addressed as part of the same.

Transparency in Board level appointments in the public sector undertakings: Often the persons short listing decisions of the Public Enterprises Selection Board (**PESB**) are rejected by ministries without proper justification. This raises doubts on the fairness and transparency of the of the selection process. The following measures should be considered:

- Setting time limits for the selection process;
- Issuance of administrative instructions that if the administrative ministry disagrees with the recommendation of the PESB, it should put forward its speaking reasons to the PESB for reconsideration.
- PESB interview board to be broad based to involve academicians top scientists. PSU Chairmen, Civil Society people lesser bureaucrats & more practising managers in PESB.

Vigilance profiling and setting of objective and transparent criteria for promotion to the senior positions in the public sector undertakings: A system of vigilance profiling of the executives who are to be considered in the level of two levels below the Board may be prepared during the interview of such posts in line with the procedure adopted by the PESB. Similarly, administrative instructions should be provided uniformly across the organizations clearly specifying the compulsory deferment of promotions to the officers awarded punishment on the grounds of corruption or moral turpitude.

Promoting a service oriented culture and streamlining of the handling of public complaints:

Learning from international best practices, India has developed a framework for Sevottam pilot project wherein 10 selected government departments have adopted an action plan for improving standards of public service through benchmarking and assessment. Other notable initiatives have been the instruments of citizen charters and centralised public grievance and monitoring system (**CPGRAMS**). Civil society has also contributed in this regard with initiatives such as citizen report card system developed by the Public Affairs Centre, Bangalore.

In order to dovetail anti-corruption agenda into the existing schemes, the following may be considered:

- Conducting client satisfaction regarding corruption free delivery of services surveys in the 10 sevottam pilot departments.
- Monitoring redressal of complaints against corruption on the CPGRAMS portal through independent experts.
- Based on the findings of the above 2 studies, conducting systems reengineering for plugging loopholes that provide opportunities for corruption.
- Reorienting the focus of complaints enquiry to system improvement, through issuance of guidelines that every enquiry report should record observations on the system loopholes which have been exploited by the culprit for his omission / omissions and the reasons for non detection at an early stage.
- In the lines of the Independent Commission against Corruption, SAR Hong Kong, a community relations wing should be established within the CVC for raising public awareness against corruption and educating public about their right to access anti corruption institutions and provide information regarding the procedures for the same.

Public Procurement Reform

Public Procurement is universally acknowledged as being highly vulnerable to corruption, collusion, fraud and manipulation. In the recent past CVC has taken commendable initiatives in terms of promoting electronic solutions and the Integrity Pacts¹⁶. There is a need for reviewing the impact of these initiatives and further reforms through the following steps:

- As per the reports submitted by the member countries to the ADB OECD Anti Corruption Initiative for Asia-Pacific, several countries in the region have enacted a Public Procurement Legislation. In India the process is guided through General Financial Rules (**GFR**). There is a strong case for legislating in this area by incorporating globally recognized practices such as debarment, appeal and review, award of compensation etc.
- CVC has periodically published study reports on the topics of practical relevance, such as leveraging technology, identification of opportunities for corruption in construction and purchase. Along the similar lines the organisation may now commission studies on standardisation of practices on pre-qualification, vendor accreditation, transparency in payment of agent commissions and fixing limits on the same, percolation of transparency to all the levels of supply chain etc., followed by issuance of guidelines, and publication of operational manuals.
- Review of the implementation of the integrity pact concept for learning the lessons and upgrading the same in launching collective action networks, and establishing sector wide sustainable transparency pacts among the procurement agencies, vendors

¹⁶ Also discussed in chapters on social reforms and role of the private sector.

and regulatory agencies. Make provisions of Integrity Pact legally enforceable to desist companies with poor integrity records to bid in government contracts.

Proactive Vigilance in Public Sector Undertakings:

Vigilance in Public Sector is basically a managerial function and it is the duty of the Chief Executive to ensure honesty and integrity in the organization assisted by the Chief Vigilance Officer (CVO) of the Public Sector. Procurement, recruitment, exercise of discretionary powers and financial management are some of the risk prone areas from anti corruption perspective. A proactive vigilance framework on the following lines could mitigate these risks to a significant extent:

- Arvind Pande Committee¹⁷ constituted by the CVC for reviewing the preventive vigilance work in the public sector, has recommended the creation of a high-powered wing within the CVC that can set standards, evaluate, and assist adherence to these standards, introduce rating systems and announce the same, establish benchmarking within the country and in collaboration with other countries, and build capacity in the entire PSE system to upgrade the quality of their structures, systems, and processes in vigilance administration. Technical advisory wing of CBI may be co-opted in this exercise for providing technical assistance and the services of the CBI Academy for consensus building and sensitization training on the aforementioned issues.
- ICAC, New South Wales, Australia is well known for its risk management approach¹⁸ to prevent corruption. CVC can adopt a similar strategy and (a) prepare a corruption risk assessment toolkit for the benefit of the CVOs and get the risk assessment studies conducted followed by mitigation strategies in a time bound manner; (b) Identify at three-four highly sensitive departments per year and *suo moto* conduct risk assessment studies; (c) Table the reports in the Parliament, as annexure to the annual reports, provide wide publicity of the reports and advise the government for applying mitigation strategies.
- MOU on Vigilance Activities: Currently, an MOU is being signed between the CMD of the organization and the administrative ministry for different functions of the PSU. It is suggested that in line with the existing practice the MOU should also include a commitment on the part of the management for the vigilance function.
- Mandatory Budgetary support for the Vigilance Function: Normally a percentage of the profit is earmarked by PSUs for corporate social responsibility. It is suggested that in line with this practice, a portion of the profit may also be earmarked for programmes for creating public awareness on anti-corruption.
- Performance Audit of Important Projects of PSUs: In line with the existing practice of performance audit carried out by the CAG, performance audit may be carried out in the important projects of PSUs to study the systems and procedures and plug the loopholes. CMD may also take the services of outside experts for audit of important projects.

• **Proactive Vigilance in the Public Sector Banks:** Keeping in mind the important role played by the banking sector in the economic development in the country, a proactive vigilance regime in these institutions will significantly contribute in the national integrity efforts. Some of the systemic improvements that could be affected in this sector are:

¹⁷ <http://cvc.nic.in/pandecomrepo.pdf> accessed on 27th May 2010.

¹⁸ <http://www.icac.nsw.gov.au/preventing-corruption/corruption-risk-management/risk-management-approach/4877> accessed on 27th May 2010.

- Monitoring through red flags: Currently, investigations by the Vigilance Department of Banks are conducted when accounts become non-performing assets or if there is any specific complaint against the staff members. Investigation after a lapse of considerable period forfeits the very purpose of objective investigation as it is difficult to correlate the situation when decision/action was taken with situation when the investigation takes place. It is therefore recommended that the vigilance departments may develop a red flag framework which would help in early detection of fraud /corruption.
- Independence of Internal Advisory Committee: As per CVC guidelines, each Bank has to set up an Internal Advisory Committee (IAC) of 3 members, preferably at the level of General Managers to scrutinize cases for determining involvement of vigilance angle or otherwise. It is suggested the institution be strengthened by selection of domain experts and making the recommendations binding except in extraordinary cases where there is any manifest prejudice, conflict of interest or suppression of material facts.

Governance Credits and benefits of a positive Approach

To recognize and reward the efforts of companies that voluntarily embody good anti-corruption policies as the core of their business existence, a system of providing “credits” in the form of tradable certificates can be considered¹⁹. The framework would work under two parts, earning of credits and utilizing them. Companies would be eligible to earn credits on various objective parameters that may include transparency in board and management functioning, quality of disclosures in financial statements, independence of directors, risk management, voluntary disclosures on conflict of interests. In terms of utilizing these credits, a framework would be evolved under which specific concessions or incentives would be made available to companies holding credits that could include additional points when evaluated for government contracts, priority clearances for major projects, governmental assistance or endorsement in tapping foreign markets, etc. A mechanism such as this will effectively demonstrate to all stakeholders that good governance and robust anti-corruption policies can lead to good business. As a direct benefit will accrue to those going beyond minimum statutory requirements, this recommendation will serve towards effectively provide incentives companies to continually raise the benchmarks on corporate governance.

E-GOVERNANCE

E-governance is a strong tool for ensuring corruption free administration by the various democratic institutions in our country. In a democracy, good governance is a right of the people and e-Governance acts as a facilitator. It helps in simplifying and promoting an accountable and transparent government. E-governance is the use of information and communication technology (ICT) to promote more efficient and effective government, greater convenient government services, greater public access to information, and more government accountability to citizens. Combating corruption can be targeted as a specific objective of e-governance. E-governance is one of the key components of a broader anti-corruption strategy enabling effective communication in addition to the increased transparency and improvement in service delivery in corrupt processes and departments.

¹⁹ The idea behind this proposal is similar to the existing system of Carbon Credits under which tradable certificates are awarded for reducing carbon emissions.

E-governance applications ensure that procedures need to be re-engineered and automated to reduce the discretionary powers of civil servants, make financial or administrative transactions traceable and open to challenge by the citizens, easily identify those responsible for particular decisions or activities, provide enhanced monitoring and auditing systems that can ensure that public finances are fully open to senior managerial scrutiny. Although ICT does little to affect these root causes, it has a potential of acting as a disruptive force that can sweep unwanted practices and corrupt practices away if well thought out and implemented.

Recommendations:

Involve e-Governance to target the goals of anti corruption and achieve the following:

| Good governance goals | How e-governance can help |
|---|--|
| <i>Increasing Transparency</i> | <ul style="list-style-type: none"> • Dissemination of government rules and procedures; citizen’s charters; government performance data to wider audience • Disclosure of public assets, government budget; procurement information • Making decisions of civil servants available to public |
| <i>Reducing administrative corruption</i> | <ul style="list-style-type: none"> • Putting procedures online so that transactions can be easily monitored • Reducing the gatekeeper role of civil servants through automated procedures that limit discretionary powers • Eliminating the need for intermediaries |
| <i>Empowerment</i> | <ul style="list-style-type: none"> • Providing communities with limited or no access to government with a new channel to receive government services and information • Reducing the brokerage power of intermediaries |
| <i>Improving government finances & accountability</i> | <ul style="list-style-type: none"> • Reducing cost of transactions for government processes • Increasing revenue by improving audit functions to better track defaulters and plug leakages by reducing corruption • Providing better control of expenditure. |

V. INTERNATIONAL COOPERATION

Increased opportunities for transnational corruption have been unintended consequences of the rapid globalisation, economic liberalisation and advancement of information and communication technologies in the past two decades. Transnational corruption manifests in various forms and it could range from bribes and kick backs in international business transactions to using the channels of off-shore banking facilities and technological aids to either launder proceeds of corruption, or to simply park domestically extracted bribes in foreign destinations. Transnational corruption has far more harmful implications on the country than domestic corruption, as quite often it takes place on a grander scale during the course of activities highly critical to the development or security of the country. Secondly, when a significant percentage of the plan budget or foreign aid disappears as corruption proceeds and flows into foreign destinations, the country is deprived of the multiplier effect of the productive expenditure to that extent.

Jurisdictional limits often cause insurmountable barriers in criminal justice responses to corruption. While national authorities are expected to respect the principles of sovereignty of the requesting country, their efforts get impeded by expediencies of diplomatic relations and by divergence of legal systems and investigative practices. Further, criminals have no such compulsions and work this to their maximum advantage to escape from the arms of law. Therefore, when corruption transcends national boundaries, only a greater degree of domestic inter-agency coordination and enhanced international cooperation would be able to tackle it successfully.

The ARC duly recognised the importance of reinforcing national efforts with international cooperation instruments such as mutual legal assistance, extradition, tracing, freezing and confiscation of assets and in this connection it has highlighted the value of international and regional conventions such as the UNCAC and ADB-OECD Anti Corruption Initiative for Asia and Pacific. UNCAC is the first legally binding global instrument that has benchmarked the desirable standards for effectively combating corruption. One of the central goals of the UNCAC, is to promote international cooperation in the fight against corruption. One full chapter is devoted for this purpose and one additional chapter is devoted for asset recovery. India is a signatory to the UNCAC and is moving towards ratification, which brings with it a set of obligations as well as opens up valuable opportunities for affecting cooperation. The ADB-OECD initiative, although not legally binding nevertheless brought in a consensus among the 28 member countries for a uniform approach to fight corruption and thus created a strong platform for cooperation. Provisions of these two instruments, therefore greatly facilitate in identifying the gaps and help in formulation of strategies.

Similarly the Financial Action Taskforce (**FATF**) on money laundering recommendations on combating money laundering mandate compliance with certain standards in respect of international cooperation. India is working towards full membership of the FATF which makes it mandatory for the country to revisit its policies in this regard. Yet another means for India to signal its readiness to cooperate with international anti-corruption initiatives is by assisting the World Bank in realising its Governance and Anti-Corruption Strategy in its Indian projects.

In addition to the above forums for international cooperation, the Global Organization of Parliamentarians against Corruption (**GOPAC**) provides an opportunity for Indian parliamentarians to align their strategy for good governance to those of parliamentarians elsewhere in the world. The GOPAC, established in 2002, is an international network of parliamentarians dedicated to good governance and combating corruption throughout the world. It attempts to build alliances amongst parliamentarians in developing codes of conduct

and indicators of performance of parliamentary oversight and to create forums for training parliamentarians on their budgetary and financial oversight role. The South Asia chapter of GOPAC is currently under development and India can play a pivotal role in setting the objectives of this regional network and in defining measurable targets.

Existing Situation

At present extradition and mutual legal assistance (MLA) is accomplished through a series of bilateral treaties and the enabling legislative provisions in this regard are the Extradition Act (No. 34 of 1962) and Sections 166 A & B of the Code of Criminal Procedure 1973 (Act No. 2 of 1974). At present India has entered into extradition treaties with 28 countries and MLA treaties² with 26 countries. In addition India has extradition arrangements with 10 countries. Further, India along with other SAARC countries has signed a Convention on Mutual Assistance in Criminal Matters in 2008. The Policy Planning Division of the Ministry of Home Affairs is the nodal ministry responsible for receiving the requests of MLA and acts while the INTERPOL division of the CBI compiles the requests to be sent outside.

Roadmap for Enhancing International Cooperation

Ratification of and adherence to treaties: While there is no denying the fact that the bilateral treaty route is a comprehensive method of cooperation, it involves a lengthy procedure which is reinforced by the fact that India has so far been able to enter into very few bilateral treaties. It is therefore advisable that India should increasingly ratify and get the benefit of provisions of international and regional conventions /treaties and participate as an active member in the international bodies. The UNCAC provides a robust mechanism for international cooperation, and ratification of the convention would open the doors of cooperation in many ways. Similarly acquiring full membership of the FATF will facilitate better cooperation on mutual legal assistance. Similarly, India could promote ratification of the SAARC convention on mutual legal assistance by all the member countries which would facilitate mutual legal assistance on widest possible terms (except arrest) as defined in part II of the convention.

By virtue of section 3(4) of the Extradition Act, in the absence of a bilateral treaty, the central government may notify any international convention as the means for extradition. UNCAC in turn, by virtue of article 44 (6) allows such notification process. Therefore, India could notify accordingly at the time of deposition of instruments of ratification.

Strengthening of legislative provisions: The Extradition Act has comprehensive provisions that cover a wide range of issues. Nevertheless there is scope for a few amendments to convey a strong message of zero tolerance of corruption and facilitation of extradition of fugitives of corruption and economic offences. These are:

- Expansion of the Schedule under section 31(2) to cover all the offences under the PC Act, as well as section 3 of the Prevention of Money Laundering Act, 2002 (PMLA), so that the offenders cannot misuse the political offences clause.
- Clear provisions in the Act for prosecution of Indian Nationals in lieu of extradition.
- Clear provisions regarding evidentiary requirements that are applicable to requests received from the civil law countries.

When it comes to recovery of proceeds of crime, cooperation under the provisions of Chapter IX of the PMLA is available only when the requirements under the PMLA are satisfied. It would be helpful if similar provisions are incorporated in the PC Act for dealing with offences of disproportionate assets. The existing provisions are also deficient in respect of following aspects of direct recovery which need to be strengthened through appropriate legal amendments.

- Provisions of civil forfeiture of proceeds of corruption
- Management of frozen assets on the basis of a foreign arrest or framing of charges
- Allow for civil litigation by the country for repatriation of illegally acquired assets

Strengthening of the institution of central authority for Mutual Legal Assistance (MLA)

International and regional conventions require designation of a central authority for facilitating the process of MLA. In India, the functions of central authority are divided among the Ministry of Home Affairs (incoming requests), INTERPOL division of CBI through the concerned embassies (outgoing requests). Due to competing demands of work, absence of permanent legal staff, and shortage of resources, efficiency suffers and the processes often get delayed. Therefore there is a strong case for designation of a single executive agency as central authority for MLA with sufficient budgetary and manpower (legal and investigative) support. The central authority should have the powers to: (a) make and receive requests for assistance and to execute and/or arrange for the execution of such requests; (b) where necessary, certify or authenticate, or arrange for the certification and authentication of, any documents or other material supplied in response to a request for assistance; (c) take practical measures to facilitate the orderly and rapid disposition of requests for assistance; and (d) negotiate and agree on conditions related to requests for assistance, as well as to ensure compliance with those conditions.

Technical assistance and information exchange: Another dimension of international cooperation is the mutual sharing of best practices, shared learning of lessons among the group of practitioners and technical assistance under the framework of regional bodies. Article 60 of the UNCAC also recommends such cooperation among the member states. Also, during the fourteenth SAARC summit the Heads of Government recognised that corruption was an issue of serious concern and agreed to exchange information on national experience in combating corruption to effectively address this problem. It is therefore desirable that India assumes leadership among the SAARC countries and establishes a regional anti corruption practitioners' network.

Institutional capacity building: When it comes to competence in dealing with the international investigation matters, capacity of state anti corruption agencies is inadequate which significantly affects the success rate. The United Nations has prepared useful tools in the form of model laws, model treaties, and MLA writing tool etc. Similarly CBI Academy has, over the years developed a course curriculum on international investigations. The Central Government should therefore step up the training programmes involving the CBI Academy, as well as the upcoming International Anti Corruption Academy in Vienna for the benefit of law enforcement officials. Besides training, manuals and compendium of best practices can also be developed and circulated among agencies for facilitating self learning.

VI. ROLE OF THE PRIVATE SECTOR IN COMBATING CORRUPTION

In the last 15 years, India's private sector has witnessed phenomenal growth. This growth can be attributed to political will, financial reforms and use of advanced technology. The private sector, being a significant driver of the growth in the country, has a pivotal contribution to make in promoting good governance practices and hence needs to be given a significant role in the nation's anti-corruption programs.

The following factors should be addressed in the anti-corruption measures in relation to the private sector:

- Adequacy of legislations in the country for preventing corruption and coverage of private sector by these legislations;
- Role of private sector in reducing corruption in the country;
- Role of Industry Associations/ Bodies in reducing corruption in the country;
- Treatment of commercial bribery v/s. small payments;
- Dealing with corruption within the private sector;
- Challenges faced by small and medium sized enterprises.

Recommendations for Private Sector

Corporate Governance Measures

Many corporate governance measures have been initiated for companies in recent years²⁰. Some of these measures are recommendatory in nature²¹, while others are mandatory. Effective implementation of good governance measures is critical in enhancing integrity, accountability, transparency and conduct while these organisations deal with other private parties or public bodies. There is an important role of regulators in ensuring that the good governance measures have been implemented by performing spot checks and by taking actions against defaulting organisations and persons efficiently.

It is also essential that the good governance standards are consistently implemented in all types of organisations rather than selectively. For instance, public and private sector banks should both be subject to an equal level of anti-corruption regulation / review specially since both handle public deposits.

Organizational culture is an important component of an ethical environment. Therefore, in addition to stringent enforcement of anti corruption laws, organizations themselves, i.e., industry associations, chambers and bodies have a pivotal role in setting the right tone as far attitude towards corruption is concerned.

Industry associations, chambers and bodies should also work on the specific time bound initiatives to enhance corporate governance standards such as:

- Evaluate standards of compliance in member entities, incentivise compliances and penalise defaulters. A good deterrent for any unethical practice has been publically announced sanctions. Corporations, industry associations, chambers and bodies should be under an

²⁰ An example of the recent measures is amended Clause 49 of the Listing Agreement issued by SEBI in 2004 which among other measures require a code of conduct for all Board members and senior management of the company and separate section on Compliance on Corporate Governance in the Annual Reports of companies.

²¹ Corporate Governance Voluntary Guidelines, 2009 issued by Ministry of Company Affairs.

- obligation to make public announcement of the persons responsible for any corrupt behaviour and what sanctions have been imposed on the person responsible;
- Collective action efforts and peer reviews among corporations or industries;
- Ensuring that a judicious procedure for selection of independent directors is followed and adequate steps are undertaken for their periodic capacity building.

Integrity Pacts/ Code of Ethics²²

Integrity Pacts in procurement is a reasonably new and innovative mechanism to help governments, businesses and civil society to fight corruption in the field of public contracting. It consists of a process that includes an agreement on no corruption between the procurement agency and all bidders for a public sector contract.

These pacts have been adaptable and flexible in their application. Integrity Pacts have been used in many countries and there are many success stories from Integrity Pacts implemented in public procurement globally. In India too, the use of Integrity Pacts has been gaining momentum in public contracting. Particularly for India, Integrity Pacts hold additional relevance for the following reasons:

- Low rating in the Corruption Perception Index;
- History of scandals and delays in Public Procurements;
- Existing anti-corruption regulations have had limited success in fighting corruption.

A clearly spelled out and communicated Code of Ethics is crucial for creating an ethical environment in organisations. While preparation of a Code is mandated by regulation²³, its implementation is usually left to the organisations. A clearly articulated code along with CEO's commitment to the code sets the tone in the organisations. Extending the code by organisations to their suppliers, agents and third parties helps in creating trust and transparency in dealings.

Industry associations, chambers and other bodies should promote the use of Integrity Pacts in large public and private procurement. Further, procurement contracts in private sector should be subject to the code of ethics of the customer entity, which will help reduce incidence of corruption.

Creating a Culture of Trust

Corporations, industry associations, chambers, bodies and civil societies should promote measures to enhance the level of trust among various stakeholders.

One of the measures for enhancing trust in procurement could be collective action²³ in implementing a standard and internally recognised procedure for transparency in public procurements²⁴.

The commitment to adhere to the standardised procedure by members in procurements makes a good business case for all the stakeholders as it creates a larger market for public procurements with enhanced trust. For government as a stakeholder, such a measure brings economies in procurement as government is seen as a preferred customer by all the suppliers.

²² Also discussed in chapters on social reforms and role of institutions.

²³ Amended Clause 49 of the Listing Agreement issued by SEBI in 2004 which among other measures require a code of conduct for all Board members and senior management of company.

²⁴ A reference can be drawn to the Extractive Industries Transparency Initiative, which aims to strengthen governance by improving transparency and accountability in the extractives sector.

Challenges of Small and Medium sized enterprises

The challenges faced by large organizations and small & mid-sized enterprises (SMEs) are different. Unduly high number of points of contact between the entrepreneur and public servants with wide discretionary powers enhances the risk of corruption. The country has taken a leap in e-governance and e-trade in the last 20 years, but further reduction of human intervention in contracting, procurement and payment will be an effective tool in anti-corruption for SMEs. The licensing and returns for SMEs (for areas such as ESI, EPF, Service Tax, Sales Tax, Factories related returns, Environmental related returns etc.) should be transitioned to IT based environments to the extent possible.

Dealing with Large v/s. Small Payments

Corruption, whether involving large amounts (commercial bribery usually pertaining to large contracts where the payment is made with the objective of influencing decisions) or small payments (facilitation payments made to obtain a permit or something which is a right due) be handled with the same legislation, however, the measures adopted for preventing these two types of corruption (large v/s. small) should be distinguished. Hence, in addition to stringent enforcement of anti corruption laws, specific measures for reducing prevalence of corruption should be targeted at both types of corruption, using different mechanisms discussed above for different type of corruption, as illustrated below:

Large Payments / Commercial Bribery:

- (i) Use of Integrity Pacts, monitors and enhanced audits in Procurement;
- (ii) Collective action on implementing a standard and internally recognised procedure for transparency in public procurements;
- (iii) Industry Associations to promote public announcements of bribery and sanctions imposed;
- (iv) Private sector to be explicitly covered by anti-corruption regulations;
- (v) Mandatory training for senior management and procurement related personnel in Public and Private sector on Ethics and Anti Corruption.

Small Payments for facilitating processes:

- (i) Reducing the number of points of contact in Government by use of information technology enabled systems;
- (ii) Increasing transparency in public dealings of Government;
- (iii) Introducing concept of fast track dispute resolution pertaining to a pending matters with public offices by an independent body.

VII. SOCIAL INFRASTRUCTURE FOR FIGHTING CORRUPTION

Introduction

Social infrastructure refers to those factors which render the human resources of a nation suitable for productive work (Sullivan, 2002). In India, there is a large section of society that is socially and economically backward. Unfortunately, the manipulation of this segment has become a popular political strategy which has contributed to corruption.

Liberalization which is meant to open up the economy and improve the financial reserves of the country, has failed to do enough for the socially and economically backward. It is imperative that a high quality of basic services such as health and education be provided to all citizens, since these are not only ends in themselves, but also play a critical role in enhancing individual capabilities to participate fully in the growth of the economy. However, we find that the delivery mechanisms have fallen short not only in the health and education sectors but also in public utilities and social security.

Corruption has been recognised as a major factor hindering the development of the country and certain tools such as the Right to Information (**RTI**), Social Audit, Citizens Charter and e-Governance have been adopted to ensure improved delivery system. However, discrepancies between policy and practice remain and effective and quality implementation of these tools remains elusive. Let us examine them one by one.

Right to Information Act

Brought in order to promote transparency and accountability in the working of every public authority and for matters connected therewith. The policy of information disclosure is a step in the right direction but it is used sparingly. The Government has not taken adequate steps to disseminate information about the Act, its exact provisions and penalty clauses. People who need it most lack awareness about the Act and its importance, and illiterate and semi literate people cannot use it without help. Information dissemination about the Act is mostly done by civil society groups and activists, and at many places PIOs themselves are not aware of the provisions of this Act.

Recommendations: Emphasis should be laid on strengthening the ‘demand’ side for the law. To achieve this, civil society organisations/activists could be trained by Government institutions such as State Institute of Rural Development (**SIRD**) and Administrative Training Institute (**ATI**) on a regular basis on provisions of RTI, how to use this tool and other anti-corruption initiatives of the Government. Trained activists and CSOs could in turn train school/ college teachers, health workers, village secretaries posted in rural areas and the block and district officials on field duty should be trained to enabling them to effectively use tools such as the RTI Act.

Social Audit

Originally started in India by civil society bodies as a good governance tool, was later built into the National Rural Employment Guarantee Scheme (**NREGS**). However, this is beset with problems in implementation. NREGA mandates that Secretary, Chair and person reading out the papers in the Social Audit fora must be neutral persons, not from PRIs, government or related agencies for an independent and neutral agency to conduct the social audit. This exists only in theory. In actual practice, it is usually the district administration which firms up the date for social audit; it is not adequately communicated to people, so mostly villagers don't

turn up for the meeting and the final document of the social audit is produced by some representatives of gram panchayat without conducting any gram sabha. In other words, it is more of a formality to get the second tranche of NREGA funds, rather than a genuine concern to address NREGA related issues.

Recommendation: Strengthen civil society organisations and NGOs so that they are able to carry out the social audit effectively. This can be done by training them through state level institutions on anti-corruption issues, modes and best practices in conducting social audit and their expected role in the conduct of social audit. Also, social audit should be made mandatory for all public utilities and in education and health sector, as a tool to ensure transparency and accountability.

Citizens' Charters

This is another tool to improve access to information and empower citizens, provided the charters are based on extensive public and internal consultation, lay down minimum service standards and grievance redressal procedures clearly, and are widely disseminated.

Recommendations: Use of citizens charter made mandatory. The charter with clearly laid down information about services, government officials responsible for the delivery, timelines, penalty clauses, grievance redressal in case of non-compliance, should be prominently displayed in the offices concerned but also should be made available online and on demand. Many NGOs are already advocating its use but this needs to be strengthened further by generating demand from the community. This should be incorporated and given legal sanctity in the form of a legislation.

Integrity Pact (IP)²⁵

IP is a tool to check corruption in public contracting and procurement. 39 public sector companies have already adopted it and are using it in their procurement process. The IP was introduced in India by Transparency International with the support of the CVC. The ARC has also supported the concept of IP for controlling corruption.

Recommendations: The IP mechanism needs to be strengthened further. Here the role of civil society as an oversight body to see the actual implementation of IP in signatory companies becomes very important. Civil societies and NGOs can be trained by audit companies, government agencies and central and state vigilance agencies, for effective monitoring and implementation of IP.

Accountability of Panchayati Raj Institutions

Large scale financial irregularities and corruption have been found in PRIs. Also, for the village community who want quick redressal of their grievances and are not equipped to use the tools of good governance mentioned above, a forum (along the lines of consumer forum) can be formed. Members could include representatives from local government office, a representative from judiciary and a representative from a local civil society organisation to deal with grievances

Collaborative efforts with the government

In some areas there is a need for collaborative work between the government which has expertise and resources and civil society organisations that have greater reach among the people. Civil society organisations working on governance and corruption related issues

²⁵ Also discussed in chapters on role of institutions and role of the private sector.

should work closely with CVC in raising awareness among people about governance and anti-corruption, promoting tools of governance and anti-corruption, including the remedies available to the people against corrupt officials, and other advocacy work on governance.

ROLE OF THE MEDIA

The media has a critical role to play in the national anti corruption strategy. Under conducive circumstances it can seek out information, build public awareness, change social attitudes and provide ‘voice’ to citizens in demanding an accountable and transparent government. The media has the power to investigate, expose and track cases of corruption and act as a deterrent and a monitoring and combating tool. Thus the “fourth estate” can be an important limb of the governance structure and anti corruption measures.

For the media to achieve the above it not only needs to be free but also maintain a high degree of integrity and professionalism in upholding professional ethics.

In India, Prasar Bharathi, the public service broadcaster of the State plays a major role in broadcasting and televising parliamentary debates, question hour etc. Private channels are also playing an increasing role in awareness creation, public education, people’s participation and even investigative journalism. The media is a main stay of Indian democracy and has been fearless and critical and capable of playing an adversarial role besides acting as a watchdog on the institutions and government with informed comment and criticism and occasional exposure. Editorials which are forthright, bold, evaluative and critical appear in the press. Broadcast media has added television shows, talk shows and interviews to this repertoire. Lastly the internet has also begun playing a constructive role.

The media may possibly be the greatest ally to anti-corruption agencies. The media can support the anti-corruption struggle through reporting on corrupt behaviour by public officials, putting corruption on the public agenda, and covering corruption from diverse, wide-ranging perspectives. If a good working relationship can be established with the media, an anti-corruption agency can benefit from increased publicity that could generate broad public support for it. In turn, public support can help shield it from political backlash and create an environment for it to pursue its politically difficult mandate.

However, in spite of substantial sting operations that have brought out corruption in high places, the matters brought out by it continue to proceed painfully slowly. Often the press is subjected to test by proceedings for breach of privilege by the legislatures and contempt of court in spite of truth being the defence by the higher courts.

Another serious impediment to an independent media playing a greater role in uncovering corruption is the fact that it is rarely truly independent. There are problems of media ownership, symbiosis between business and media, relations between the authorities and the owners of the media. How independent the Indian media truly is, is a matter of debate and the line dividing objective reporting and biased presentation of news is thin and often unnoticed. The challenge before the nation is to draw a policy, guideline or norm that effectively checks these malpractices without infringing on the freedom of press. There are instances of news based media channels selling news space to publicise individuals, private parties and functions.

There are also issues concerning the way the television channels, especially the business channels, talk up and talk down share prices. Similar stances are noticed in case of print media, where stories are planted with a view to influencing the share prices. Such issues have been raised by market regulator, the Securities and Exchange Board of India (SEBI) time and again. Besides, there are personal biases which often rob the news of objectivity. Moreover as certain media houses have become very powerful, financially as well as politically, it may not

be easy to persuade them to follow norms which are not only technically correct but are also ethically sound.

Recommendations

The following measures are recommended:

(a) *Code of Conduct*: Develop a code of conduct for media organisations. These should be for print, television and other forms of media like websites, radio etc. The code should deal with technical as well as ethical aspects. It can lay down the ground rules and make their violation punishable with monetary and other penalties.

(b) *Transparency*: In order to introduce transparency in the working of the media organisations, the owners, proprietors and editors should be asked to disclose their financial, political and other interests which can have a bearing on the objectivity of the organisation. Secondly, the news organisations should also give a disclosure about their major advertisers. They may do so by posting such information on their websites every quarter.

(c) *Ombudsman*: Set up an office of Media Ombudsman on the lines of Banking Ombudsman. Media Ombudsman could be under the control of the Ministry of Information and Broadcasting. Retired journalists or people associated with media could be made Ombudsmen. Secretary, Ministry of I&B could be made an appellate authority. The body could be assisted by a technical committee and empowered to reprimand and impose penalty for violation of the code of conduct.

As the ethics cannot be codified, the viable way to check malpractices in the media would be to introduce regulations and a code of conduct with office of Media Ombudsman, comprising mainly journalists, overseeing it.

IMPORTANCE AND ROLE OF EDUCATION

The erosion of ethical values among every age group, class and section of the society can easily be classified as one of the most critical and far-reaching problems of our time. Anti-corruption education is therefore a vital component of any anti-corruption strategy. An informed citizenry is perhaps more crucial than the most sophisticated codes of conduct, laws and regulations in preventing corrupt and unethical behaviour. Anti-corruption laws and institutions are ultimately only as good as the people who uphold their founding principles, adhere to their requirements and report instances of non-compliance. There is no substitute for individual integrity in the fight against corruption and this sense of integrity needs to be inculcated amongst the country's citizens through various stages of their life.

Education is the foundation of a morally sound society as students go on to occupy positions integral to public life. Education spreads awareness against corruption and thus helps in strengthening the moral or ethical values of society. Raising general levels of awareness in the population is essential as this establishes citizens' demands for accountability, and education creates a culture of accountability by emphasizing ethical practice and by creating the need for such practice. Thus there are two basic ways in which education helps – by developing responsible citizens through education and promoting values and ethics within the educational system and by developing a sense of awareness in people so there is a greater demand of accountability and transparency. Curriculum in middle schools should include ethics and anti-corruption issues.

Examples of such initiatives can be found in Hong Kong, where the Independent Commission Against Corruption (ICAC) initiated a highly successful "moral education programme" in the early 1980s, which was set to promote integrity and positive behavioral standards through a

range of products aimed at teachers, parents and students in Hong Kong's schools and teacher colleges. A different approach was taken with the "00corruption" campaign in Mexico, using its extensive use of the internet to reach younger generations. Children are encouraged to qualify as "00 Corrupcion" Agents, and to promote transparency and integrity through a number of games and real-life exercises.

Culture & Values

The term culture would refer to our social and moral systems and all activity that are carried through generations comprising our beliefs, values, religion and behavior. Culture is the product of civilization, a way of life and establishes traditions for societies. Corruption is counter to culture and erodes cultural integrity and moral systems of societies and thus has a deep and long lasting impact on the continuous evolution of human society. The corruption of different modern cultural manifestations would be the malpractices that have entered educational systems, entertainment and mass media, as also in business and environment.

Cultural change is a necessity at times but corruption directs these changes in negative directions and all cultural products of society from governments, corporations, media, entertainment and education are impacted by and in turn impact corruption. To understand the true value of culture, we also need to understand the long lasting consequences of corruption that have permeated all aspects of modern society.

Since generally accepted social and cultural rules define and limit behaviour, individuals in India today may believe that it is necessary to work through informal channels to achieve personal objectives. This would induce people to offer or pay bribes and similar dishonest dealings, and it might induce officials to demand or accept bribes. Once corrupt patterns are established, they tend to perpetuate because breaking out of the pattern would create uncertainty.

An effective anti-corruption strategy therefore also needs to address this 'cultural' aspect of corruption and gradually change prevailing norms that have led to acceptance and propagation of corrupt actions.

Recommendations:

Any anti-corruption strategy in this regard would fundamentally focus in the following manner:

1. **Ethics Education:** This would aim at strengthening individuals in their ethical decision-making. Value conflicts and ethical dilemmas frequently arise in the daily lives of people, for example when family values, such as loyalty, clash with work ethics, such as impartiality. Ethics education should provide the skill to identify such conflicts, and instil the motivation for solving them in the best interest.
2. **Character education** is a holistic approach that includes civic education and connects the moral dimension of education with students' lives. Characteristics of socially responsible citizens in a democracy should be emphasized both in the classroom-based lessons and community activities.
3. **Citizenship and democracy education** should aim at strengthening democratic processes and participation in politics, and promote values such as representation, solidarity, participation, responsibility and pluralism. Voter education should build citizens' awareness of electoral processes, should also be considered anti-corruption education. Public and private sector ethics and organisational ethics do have strong anti-corruption

components, as they build on values such as accountability, fairness, impartiality and lawfulness.

4. **Youth anti-corruption education** should be integrated in school subjects such as civics or citizenship education. The curricula must implicitly link to cover moral issues and provide concepts such as public good and social justice that are key to understanding the need for fighting corruption. Introducing it within the school system strengthens the whole drive. Youth anti-corruption education should be linked to themes that are particularly interesting to youth, for example by linking ethics with sports: the consequences of corruption in sports - the disrespect for the value of fairness - are obvious even to younger children. Teaching should build on real life examples so that students can identify with ethical dilemmas. It is particularly important to respect students' values and rights, and to strengthen their capacities for moral judgment without indoctrination.
5. **Practice** is better than theory. Methods should include students' surveys and polls, role plays to facilitate the understanding of differing interests and to promote the ability for conflict resolution, public debates, and attending parliamentary sessions or visiting public institutions to understand how democracy works. School practice also is itself an important vehicle for transmitting values. The context in which integrity and ethics are taught needs to be free of repression and fear. Those who teach must themselves represent the values they teach.
6. **Higher education agenda:** Universities should include anti-corruption in their governance and ethics classes. From public administration, business, law and economics schools to technical and engineering professions, anti-corruption must be a part of the curriculum.
7. **Occupational Education:** Once a citizen has crossed through the stages of childhood, school education, higher education and enters professional life it is essential that anti-corruption education continue to be imbibed through a variety of means. This is in fact a critical stage of anti-corruption education since it is during one's professional life that one's integrity is regularly put to test. Occupation education is important regardless of the nature of one's profession and must be designed such that it addresses dilemmas specific to different fields of work.
8. **Organizing public awareness campaigns**, exploiting the full power of the media, NGOs, community organizations, schools etc in raising levels of awareness against corruption, while taking precautions to stop them from being misused (eg, for political ends, general denunciation, etc.)
9. **Giving citizens improved access** to information about rules and regulations pertaining to corruption in order to empower them to demand greater levels of accountability from public officials while ensuring that they themselves are complying with the same.
10. **Promoting 'zero tolerance'** for corruption culture is an essential component of any anti-corruption strategy. Adequate resources must be allocated for the same.
11. Film shows and videos of people with integrity & how they grew in society through right means.

VIII. ROLE OF CITIZENS IN ANTI-CORRUPTION

Success in the battle against corruption hinges upon citizen participation in ushering in transparency and accountability. Citizens have a tremendous potential to participate directly and contribute at bringing about change using tools such as moral appeals, exposure and embarrassment, appeals to pride, standing and responsibility besides standing up and playing a key role in exposing wrong doing and non compliances.

An anti-corruption strategy can be successful only if it makes it an obligation for any member of society who sees corrupt practice being perpetrated to immediately report such a practice. Failure to do so should be tantamount to an offence itself. By virtue of this, there would be an obligation on citizens to actively take part in preventative measures against corruption. Raising awareness on corruption is a duty of every citizen of this country. Prevention is the best weapon against corruption. While agencies like CVC and ACB etc. are leading the fight against corruption by virtue of their mandates, their success would greatly depend on the complementary mass participation of society as a whole. As large segments of citizens depend on basic services where the government has a strong monopoly, watchful and assertive citizens can exert the right pressure on the government to render these services with high levels of integrity and report instances of corruption. .

The following successful examples of citizen participation in anti corruption efforts are worthy of mention:

- 1) Awareness and building capacity for mobilization through community radio programme called Panchayat Waves in Karnataka.
- 2) Voicing concern through citizens initiative like Research for advocacy like the Report Cards Survey started by the Public Affairs Centre, Bangalore.
- 3) Citizen based monitoring and evaluation like budget analysis initiative of Bangalore, peoples charter of Lok Satta, Hyderabad etc
- 4) Joint civil society public sector initiatives in implementation of programmes like low cost housing in urban communities by SPARC, Mumbai,
- 5) Auditing like Jan Sunvai of Mazdoor Kisan Shakti Sangatan, Rajasthan
- 6) Joint management of sectoral programmes like education guaranty scheme of Madhya Pradesh, forest protection committees of West Bengal, Joint Forest Management of Andhra Pradesh etc.
- 7) Government frameworks for participatory planning like peoples Planning Campaign of Kerala

Citizen voice and responsiveness initiatives could position citizens as independent watchdogs. Some examples are:

1. Citizen oversight committees like committees for works inspection, school committees, hospital advisory boards
2. Open public documents and right to information, publication of procurement prices, tax assessments, arrear lists, list of successful bidders, discretionary grants, successful bids in major contracts, public disclosure of assets and liabilities, criminal record of politicians, election expenditure, government stationery requirements, books short listed for purchase for libraries, tax exemptions, details of works, schemes sanctioned etc,

Citizens' awareness of their rights and responsibilities need to be strengthened substantially. In order to ensure greater participation of citizens in anti corruption efforts the following should be considered:

- Constitution of citizen advisory committees to advise the CVC, ACB and the DG Vigilance and Enforcement;
- Advisory committee of citizens attached to systemic corruption prone departments with persons of absolute integrity and standing without political leanings;
- Citizen committees at the service delivery points like hospitals, schools, hostels etc;
- Citizen committees for inspection of quality of works;
- Periodic survey of service provision and corruption perception through civil society bodies;
- Expert committees for review and evaluation of programmes with the association of universities, professional agencies etc; and
- Association of citizen groups in the formulation of the anti corruption action plans of departments and their participation in publicizing and implementing it.

ANNEXURE 1
(Chapter II)

Code of conduct and ethical values document

In framing Code of conduct for regulators and / or anti corruption policy document, focus should be on the measures needed to reduce opportunities for corrupt practices and oriented towards advocating integrity in all spheres of activities. The document shall, inter alia

- Contain a clear definition of what constitutes bribery and corruption²⁶
- Use simple and concise language that can be understood by stakeholders (language translation should be made available at prominent places²⁷)
- be aimed to set the tone for expected behavior and conveys issues on actions/sanctions commensurate with the violation or offence.
- Should have a visually inviting format that encourages readership, usage and understanding.
- Contain a high level endorsement such as a letter from the Chairman, President or equivalent for commitment towards integrity.
- Appropriate decision making tools (such as examples) to assist the employees in exhibiting appropriate ethical behavior.
- Contain topical guidance based on major policies or compliance risk areas as they relate to anti-corruption. This guidance may be specific to the individual regulator
- Appropriate procedures for recognition and reward, for any effort made by any employee, towards maintaining high standards of integrity and protection of reputation of the organisation

²⁶ For example, UK's Bribery Act of 2010 provides quite a wide definition of a bribe and states that it may be a "financial or other advantage". Further the Act states that it would be an offence for a person to request, agree to receive or accept a bribe (whether or not the party actually receives a bribe)

²⁷ Practices on displaying codes of conduct in local language are followed in most EU countries where apart from English, local language translations are readily displayed in premises

ANNEXURE 2
(Chapter II)

Whistle blowing mechanism

Common factors that should be considered as a minimum in whistle blowing mechanisms across concerned regulators could include the following:

- The policy on whistle blowing should, at minimum, cover a definition of questionable and reportable practices and what constitutes actual or attempted bribery and corruption
- Further, the policy should consider setting up institutional mechanisms (such as the office of the Ombudsperson²⁸) and defining their roles and responsibilities.
- There should be a clear definition on what comprise modes of reporting (telephones, email boxes, post boxes, etc) to ensure independent and bias free treatment of complaints received.
- There should be clear demarcation of levels and reporting channels
- There should be appropriate guidance or guidelines for departmental procedures for conducting investigations, departmental action and reporting to appropriate law enforcement authorities when complaints are received.
- Additionally, there should be adequate safeguards built in to protect whistleblowers and the witnesses from retribution on any incidence reported in good faith

²⁸ In India examples of office of the Ombudsperson at regulators includes the Banking Ombudsman (RBI). Internationally, various countries have defined Ombudspersons and examples include Financial Ombudsman Service in the UK, Office of the Ombudsmen in New Zealand (covering various government departments, Universities, district health boards, etc) and Office of the Ombudsman in Australia covering the postal department, taxation, etc.

ANNEXURE 3
(Chapter II)

Recommended administrative policies to regulate employees' activities

This policy may, at the minimum, cover the following areas:

- Declarations of assets by employees²⁹
- Declaration of conflict of interest³⁰ by employees
- Accepting of gifts and hospitality by employees³¹
- Soliciting or accepting advantage³²
- Misuse of public assets (maintain propriety)
- Simplification of transaction methods and costs, to the extent feasible, by adopting e-governance and e-business practices
- Formulate appropriate integrity pact to bind its employees and the stakeholders in anti corrupt and ethical practices³³
- Conducting 360 degree performance evaluation on select officers, on a rotational basis, by incorporating questions on integrity and ethical conduct of the officer concerned to elicit views of the respondent (who can be given the option being anonymous)

²⁹ As in the prescribed code of conduct for Central Government Employees in India

³⁰ As in the United Nations Convention on Anti-Corruption 2004 Article 13.2

³¹ UK Bribery Act 2010

³² National Anti-Corruption Strategy, Government of Sierra Leone

³³ Integrity Pact document available on CVC website can be used for guidance

ANNEXURE 4
(Chapter II)

Co-ordination with other regulators and Government agencies

Suggested measures:

- Review of employees' declaration of assets on a continuous basis, by Vigilance wing
- Establishment of a mechanism for intelligence gathering about assets owned by key personnel
- Mechanism for co-ordination and sharing of information with other related agencies / statutory bodies / enforcement authorities regarding accumulation of assets disproportionate to the known sources of income / vital information on corrupt or fraudulent practices of any of the employees in these entities / stakeholders.
- Mechanism to gather intelligence on related party transactions and conflict of interest of the key management personnel
- As part of Continuous Education and dissemination of knowledge, consider appropriate mode of communication and training, sharing of knowledge, imbibing the learning from the past and adoption of best practices of any other regulator or institution on core conduct and ethical values.

ANNEXURE 5

(Chapter II)

Communication, education and training as part of anti corruption strategy

In this regard, best practices and examples include the following which could be considered in developing the ethical framework.

- Publishing the code of conduct and whistleblower channels on the websites
- Communicating clearly and unambiguously that independent decision making process is encouraged in the system. Such communication may go like this:

Decision makers shall be encouraged to adopt “Fear Not – Favor Not” culture.

A model draft is as under:

| FEAR NOT | FAVOR NOT |
|---|--|
| <ul style="list-style-type: none"> • Demonstrate Consistency in approach under identical circumstances • Be transparent and communicative with the constituents / clients / target audience • Review, periodically, to determine the effectiveness and efficacy of the strategy • Prudence does not mean stickler to the rules; it calls for merit based, well reasoned and unbiased decision making process • Adhere to common sense ethical parameters • Report control overrides | <ul style="list-style-type: none"> • Be guided by rule of law and belief that rules are meant for all and not to be bent for any • Be and appear to be Non partisan in decision making or policy framing processes • Instill sense of “ownership” and support for strategy by adopting “inclusive” approach • Establish measurable baseline indicators for benchmarking • Declare conflict of interest • Get overruled but not give up if there is logic and merit |

- Facilitating dialogical interactions or road shows with stakeholder community³⁴
- Creating public knowledge and awareness on official actions/sanctions against delinquent employees
 - Establishment of online complaint tracking system for both whistleblower complaints and others and report on the final disposal including punitive measures if any taken against the concerned officials.
 - The web site of the regulators may post periodical information on the number of complaints in the nature of corruption and bribery received by it and settled (as in CVC website regarding disciplinary cases)

³⁴ Like Vigilance Awareness Week organized by CVC to create awareness amongst the Govt. servants and public in general.

ANNEXURE 6
(Chapter II)
Self Regulatory measures

Measures and covenants, as part of Self regulation organisation (SRO), could include the following aspects:

- Self-regulation is defined³⁵ as the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines (particularly codes of practice or sectoral agreements).
- Common regulatory practices and objectives include³⁶:
 - Enforcing rules and regulations through investigations and disciplinary action;
 - Conducting operations, sales and financial practice examinations;
 - Conducting fitness screening for access to marketplace;
 - Handling customer complaints;
 - Having surveillance programs to detect violative conduct;
 - Sharing information and cooperating with other SROs; and
 - Providing a dispute resolution forum.
- An integral component of many SRO compliance programs is the development of guidebooks and other educational materials to help their members meet their regulatory responsibilities and spelling out, clearly,
- What practices that constitute unfair trade or competition amongst participants
- What practices restrict or restrain participants ability to seek or continue business
- Defining monetary limits for classes of transactions, goods or services
- All investigations, inspections and surveillance activities conducted by the SRO should be carried out independently by the SRO's staff and separated by effective firewalls from the SRO's non-regulatory activities³⁷.
- *A SRO should have statutory regulatory authority³⁸ and/or regulatory authority that are delegated to it by the government regulator(s).* The governing statute should clearly delineate the respective roles of the statutory regulators and the SROs (which is a voluntary type of organization for self discipline)
- Overall objectives of self regulators are to preserve market integrity, promote inter se integrity and protect interests of clients and stakeholders.

³⁵ The Inter-institutional Agreement on better lawmaking (31 December 2003) provides the first definition agreed by the European Parliament, Council and the Commission on self-regulation and co-regulation (as cited in self regulation in EU Advertising sector)

³⁶ SRO Consultative Committee of IOSCO conducted a survey cited in p/ 7 of UNCTAD Model for SRO -2007

³⁷ Best practices for Self Regulatory Organisations – International Council of Securities Association

³⁸ Best practices for Self Regulatory Organisations – International Council of Securities Association

ANNEXURE 7

(Chapter IV)

Terms of Reference of the Inter Agency Task Force

- i) Listing of the types of corruption / economic offences that justify unrestricted real time access to client information in the national interest , and mapping of accessibility needs of the law enforcement agencies concerned with intelligence collection / investigation of anti corruption / Money laundering / economic offenses .
- ii) Identification of service providers having the required client information.
- iii) Exploring the possibilities of utilizing existing information sharing networks and defining the structure of additional bilateral Memoranda of Understanding with the service providers.
- iv) Recommendations on the formal administrative framework and protocols for collection, collation and sharing of information.
- v) Recommendations on oversight and monitoring mechanisms for ensuring strict accountability and prevention of misuse of information.
- vi) Recommendations on the technical architecture and security protocols for the information collection /collation/ sharing systems.