



CRIMINAL INVESTIGATION DEPARTMENT

REVIEW

SCRB, TAMIL NADU

Vol.IV

A MONTHLY JOURNAL

Issue: 3

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Visit Tamil Nadu Police Website: www.tn.gov.in/police

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From the Editor

This issue deals with the impact of corruption on the society and Anti-Corruption strategies in India.

Uncontrolled passion for power, pelf and prominence besides love of luxury and craving for creature comforts, have invariably led individuals to indulge in large scale corruption ,unmindful of the impact on the family, society, nation or the world. When vices take charge of one's personality, ethics, morals and values are invariably thrown to the winds....

Public servants occupying responsible and high positions in the society, who become enslaved by vices tend to betray the trust reposed in them by the Governments, abuse public office for private gain and thereby become liabilities to the society and a burden on the economy of the state.

The Hon'ble PM of India recently said that he was touched by a particular scene in a recent Hindi film, where a senior citizen was trying to get his pension without having to pay a bribe and failing, he strips his clothes in an act of protest "in stripping his clothes as an act of protest, this pensioner was stripping our system, exposing the ugly nakedness of the self aggrandizement of those who man our institutions of Governance" said he.

*Endowed with the potential to have a detrimental impact on the prospects for growth and poverty reduction, strangle development, hamper delivery of public services, violate human rights and ultimately undermine the legitimacy of the State, **corruption** is seen to have a profound impact on social, economic and political fabric_of the society.*

Being Law enforcers, the police are very much looked upto for cleansing the system....What is the role of the police?

"The anti-corruption machinery in the country should create deterrence against it by aggressively pursuing cases of high level corruption to their logical end. Rapid, fair, and accurate investigation of allegations of corruption against public servants at all levels should remain a priority" noted the Hon'ble Prime Minister of India in his address to the CBI officers on Nov 18,2006.

What are the measures that are contemplated by the state?

The concerns of the President of India about corruption and the 7-point oath suggested by him to Police officers demand a serious thought...his plan to root out Corruption by taking lessons from Hong Kong, generates a great deal of hope for the right thinking citizens of India.

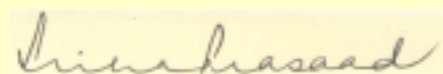
*"...corruption must be visited by the sternest action to **reform, restructure and rejuvenate** the system" said the Hon'ble Prime Minister recently and his announcement of the proposal to bring forward a Public Services Bill before the Parliament that would define a 'Public Services Code' of ethics and management, indicates a strong political will to eliminate corruption in Public life.*

*However, only when corruption is tackled at the level of the individual, by the individual himself, for the sake of the other individuals in the society, by willingly adopting a policy of **simple living and high thinking**, can the Nation realize its dream of a clean, transparent, efficient and effective delivery system.*

It is needless to say that the civil society has to develop a spirit of 'Zero tolerance' to corruption and assist the efforts of the State in eliminating this dreadful disease that has enveloped the society.....

At the dawn of the New Year there is hope that 'we shall overcome' ... the challenge and emerge victorious soon.....for 'where there is a will there is a way'....!

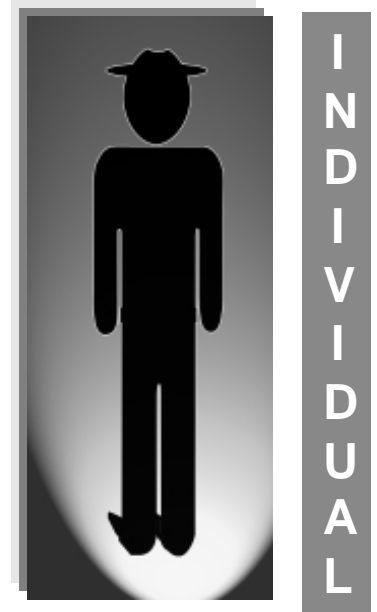
Wishing the readers a very meaningful and simple 'Happy New Year' 2007...!



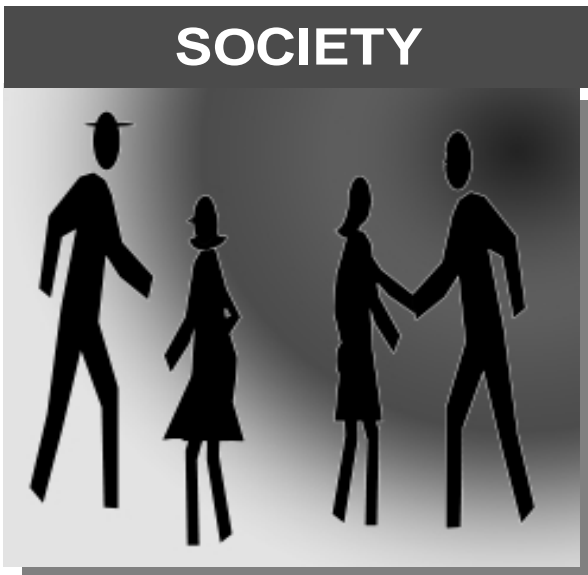
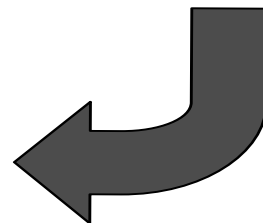
SRILAKSHMI PRASAAD, IPS,

Instructions for Authors

1. Articles submitted to the Review should be original and should be in English.
2. The length of the article should not usually exceed 5000 words.
3. Articles should preferably be sent in MS-word format in double space with wide margins. If possible, a soft copy on a floppy may also be supplied. For articles sent by email, a hard copy will be requested after the article has been accepted for publication.



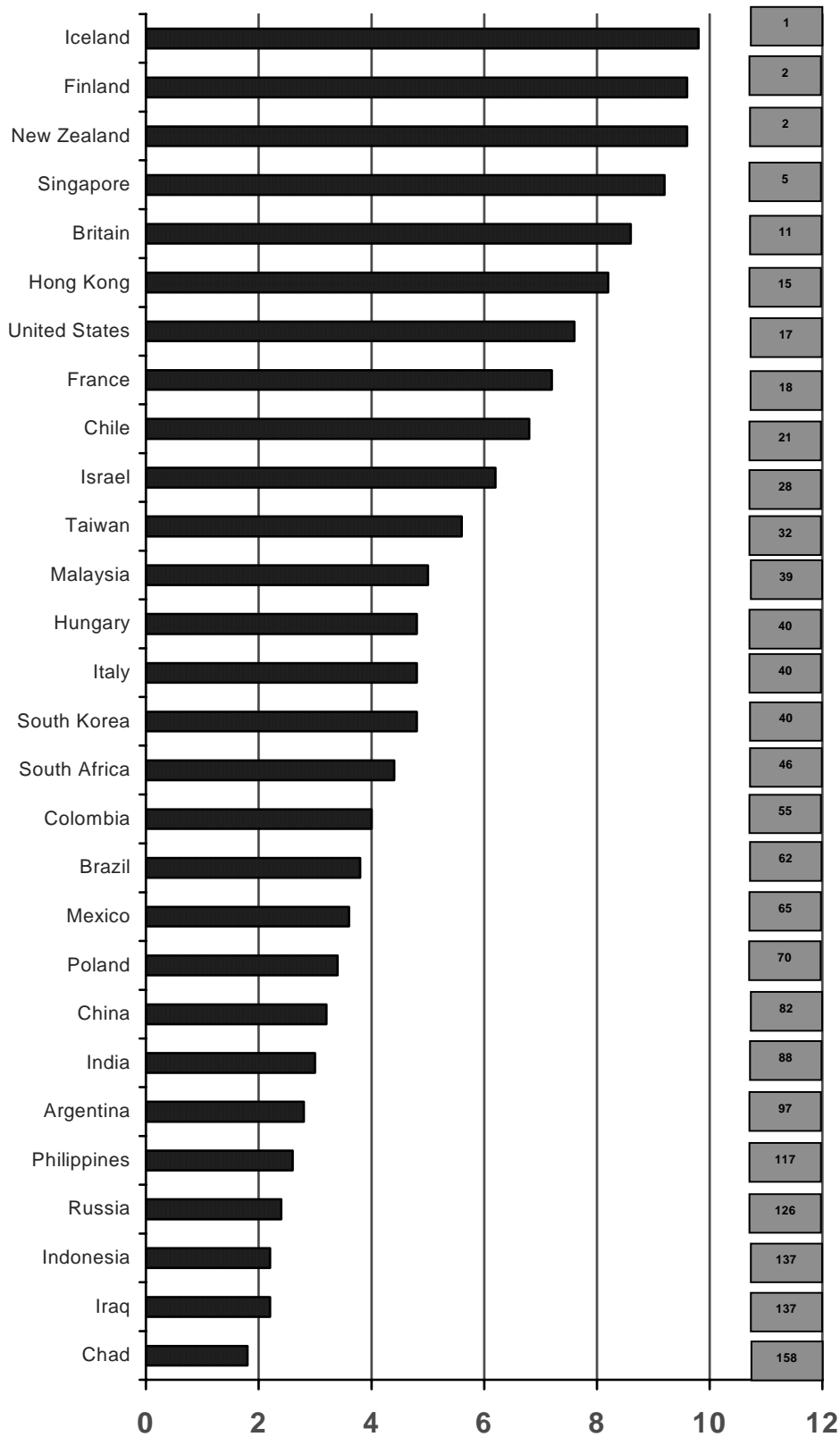
*The Corruption
Ripple effect*



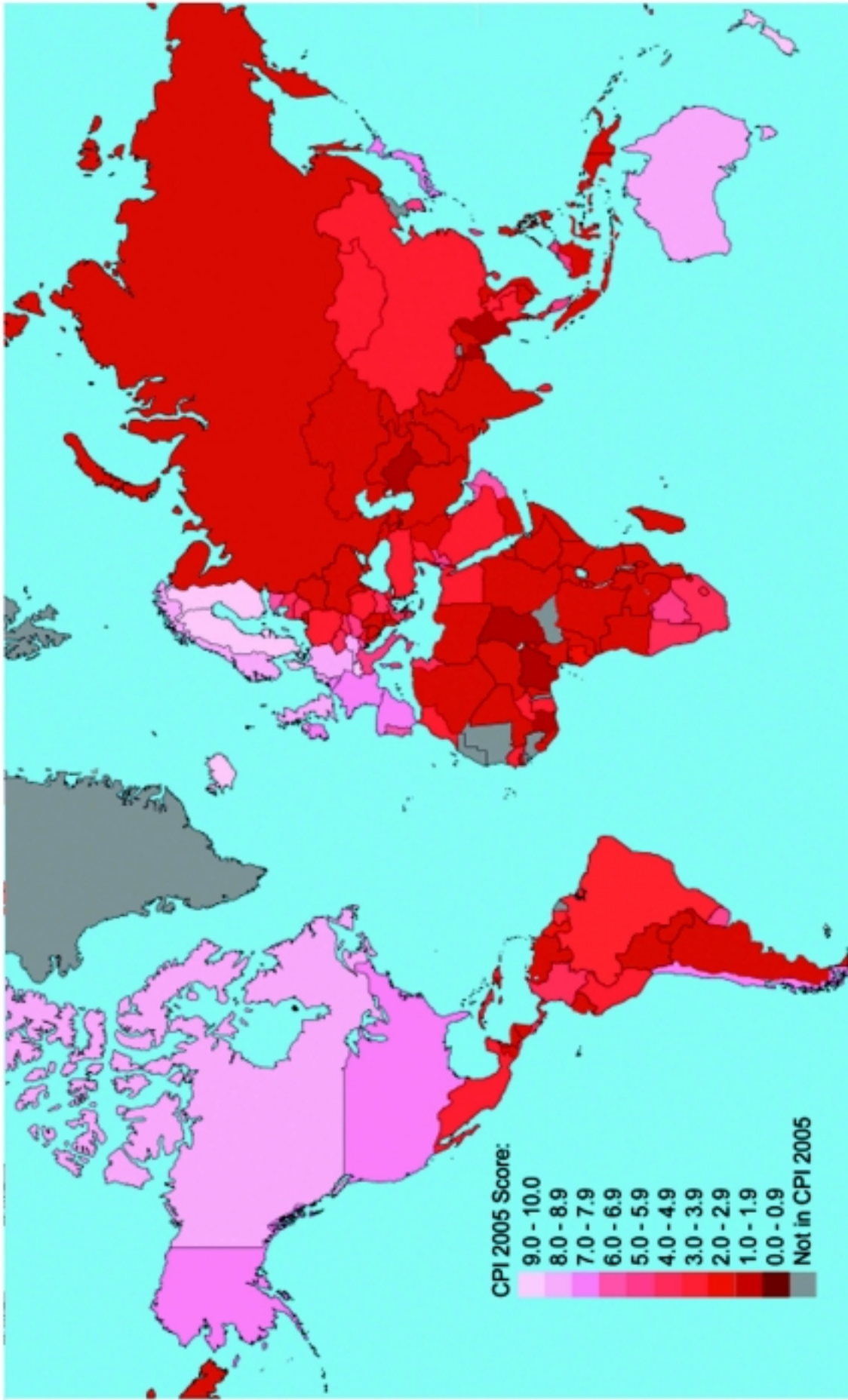
Source: Sivraj Network

Integrity and corruption

Score, 2005, 10=Least corrupt



Source: Transparency International



CORRUPTION PERCEPTIONS INDEX 2005

Source : www.transparency.org



by U. Myint

Whilst there is no single definition for corruption, common definitions include.

Corruption involves behaviour on the persons in which they improperly enrich themselves or those close to them by misusing power with which they have been entrusted. In short, corruption is the music of public power for personal gain.

National Integrity Promotion Campaign – Namibia

In broad terms, corruption is the abuse of public office for private gain. It encompasses unilateral abuses by government officials such as embezzlement and nepotism, as well as abuses linking public and private actors such as bribery, extortion, influence peddling, and fraud. Corruption arises in both political and bureaucratic offices and can be petty or grand, organized or unorganized. Though corruption often facilitates criminal activities such as drug trafficking, money laundering, and prostitution, it is not restricted to these activities. For purposes of understanding the problem and devising remedies, it is important to keep crime and corruption analytically distinct.

Some Definitions of Corruption

Handbook on fighting corruption, the Centre for Democracy and Governance

...behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them. This would include embezzlement of funds, theft of corporate or public property as well as corrupt practices such as bribery, extortion or influence peddling.

Transparency International (TI)

.....Corruption is an abuse of (Public) power for private gain that hampers the public interest ... corrupt entails a confusion of the private with the public sphere or an illicit exchange between the two spheres. In essence, corrupt practices involve public officials acting in the best interest of private concerns (their own or those of others)regardless of, or against, the public interest.

United Nations Manual on Anti – Corruption Policy

An act done with an intent to give some advantage inconsistent with official duty and the rights of others. It includes bribery, but is more

comprehensive because an act may be corruptly done, though the advantage to be derived from it be not offered by another.

Law Library’ s Lexicon

Corruption involves behaviour on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and / or those close to them, or induce others to do so, by misusing the position in which they are placed.

World Bank

The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from action in the exercise of his or her official duties.

The Solicitation or acceptance by a public official, directly indirectly of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 8 of the Convention against Transnational organized Crime

To spoil or destroy by putrid decomposition; to turn from a sound into an unsound condition; to infect,

Definitions of Corruption

taint, render morbid; to adulterate; to debase, to defile; to putrefy, rot decay; to destroy the moral purity or chastity of; to destroy or pervert the integrity or fidelity of (a person) in his discharge of duty; to induce to act dishonestly or unfaithfully; to make venal; to bribe; to pervert the text or

sense of (a law etc) by altering it for evil ends.

Oxford English Dictionary

Guilty of dishonest practices, (such) as bribery; without integrity debased in character; depraved; perverted; crooked; wicked; evil; decayed; putrid; infected; tainted. Applies to

one, exp. In public office, who acts on mercenary motives, without regard to honour, right or justice.

Webster's Unabridged Dictionary of the English Language

... the use of official position, rank or status by an office bearer for his own personal benefit.



*If man hasn't discovered
something
that he will die for, he isn't fit
to live
- Dr. Martin Luther King*





My nation is my life

Address of the President of India, H.E. Dr. A.P.J. Abdul Kalam at the Inauguration of Biennial Conference of Anti-Corruption / Vigilance Bureaus of States, UT and Officers of the CBI, New Delhi on 16 November, 2006

I have great pleasure in addressing all of you on the occasion of the Biennial Conference of the heads of Anti-corruption/Vigilance Bureaus of the States and UTs and also the officers of the CBI. My pleasure is all the more when I realize that I am addressing those who have been entrusted with the singular task of detecting and rooting out one of the most dreadful maladies afflicting our society, namely corruption. It should pain every citizen's heart when he reads his country's name included in the list of those blackened by the existence of this evil. Unfortunately, corruption has permeated all walks of life in our society and what is more disconcerting is the fact it does not seem to abate as years go by and worse still, to a large extent, it has been taken for granted as a fact of life. The society can progress only when it upholds nurtures and enriches eternal values in which honesty and integrity assume a primary position. When dishonesty and corruption cancerously eat out the life of the society.

Honesty, The best policy

Honesty is of course the best policy, but it is unfortunate that apparently many of us seem to seriously think that honesty is the best policy only if money is in it, as Mark Twain once jocularly said in his inimitable style. When I say honesty, let me hasten to clarify that I do not mean uprightness in financial dealings only. Honesty is a word that has a much more comprehensive connotation and content. It encompasses every sphere of life and is characterized by total sincerity, absolute integrity and undiluted efficiency in thought and action. These values have to be engendered and inculcated in individual's right from childhood and that is why I have been emphasizing the undeniable, primary importance of primary and secondary education. It is at these stages that these values have to be embedded deep into the impressionable minds of children so that when they grow up, they firmly walk along the groove of complete righteousness and rectitude. In such a case nothing untoward would entice them and their functioning

would become totally purposeful, efficient and fruitful, and therefore honest.

Transparency starts from Home

On 21st November 2005, I had visited Adichunchanagiri Math, attended a function of FUREC (Foundation for Unity of Religions and Enlightened Citizenship) and interacted with over 54,000 students of various schools and colleges of Karnataka. There a 10th class student Ms. M. Bhavani studying in Adichunchanagiri Composite High School, Sharavathy Nagar, Shimoga asked me the following question.

"Dear Sir, What is the role of students to stop corruption which is deeply rooted in our county just like cancer?"

Agony of the young mind is reflected in this question. For me it was an important question, since it came from a young mind. I was thinking what type of solutions we could give. My thought process was the following:

I said there are one billion people in the country and nearly 200 million homes. In general there are good citizens everywhere. However, if we find that people in few million houses

are not transparent and not amenable to the laws of the country, what can we do? These houses apart from parents have one daughter or one son or both. If the parents in these houses are deviating from the transparent path the children can use the tool of love and affection and correct the parents to come back to the right path. I asked all the children assembled in that gathering, in case parents of few children get deviated from transparency, will you children boldly tell your parents, father or mother, "You are not doing the right thing that is what we are taught by you and in the school". Most of the children spontaneously responded, "We will do it". The confidence comes from them that they have love as a tool. Similarly I have also asked the parents in some other meeting, initially there was a silence, later, many of them hesitantly agreed that they would abide by the children's suggestion since it is driven by love. They took an oath in front of me. The oath was "I will lead an honest life free from all corruption and will set an example for others to adopt a transparent way of life". Finally I told the students that they should start a movement starting from their home.

Code of Conduct

Now I am reminded of Tamil classic, which brings out the power of righteousness and provides the code of conduct for the people in high and responsible positions:

It means, people who are in high and responsible positions, if they go against righteousness, the righteousness itself will get transformed into a destroyer. Whoever deviates from righteousness, whether they are individual or states, they are responsible for their own actions. This message is brought out very clearly by the Elangovadikal in Silapathikaram. Silapathikaram is one of the five great epics written nearly 2000 years ago in Tamil language. Now I would like to discuss the Governance and delivery mechanism for the people, which is one of the requirements of the democratic system.

Trust and confidence in Governance

As a part of governance, the Government needs to provide multiple facilities and services to the people. Also, these services are required to be constantly upgraded with the use of technology for fulfilling the aspirations of the people. The Government budgets and expends a large amount of funds for fulfilling this goal in the 11th plan period Planning Commission will be spending a million crore for national development. The money for the work comes from people through taxes. It is the money collected from the people, which are being spent for the benefit of all the people and

particularly the needy. However, when it comes to reaching of the benefits to the common man, the value of the services, which reaches the citizen, is much below the expected level of satisfaction. This happens in all the services namely education, healthcare, sanitation, water, power, road, drainage, telecommunication, seeking of loans from the banks for agriculture and small-scale industries and many other areas of societal importance. Even to make the timely payment for certain services the citizens have to struggle and sometimes pay bribes to make the payment.

The Government is responsible for bringing the smiles on the faces of billion people by enacting appropriate policies, laws and facilitating societal transformation. Management style varies naturally with the policies and procedures. Our people have shown enormous resilience and have achieved phenomenal success when provided with an environment of trust and confidence in the working space. Whenever there has been a programme run on mission mode through a specially conceived management structure we have been realizing very satisfactory results whether in government, quasi-government or private. We have examples that even for governance related items; there are models where

a focused mission mode operation has helped. Now, let us look at our national challenges.

Poverty removal

Our nation is going through a major challenge of uplifting of 220 million people who are below the poverty line. They need habitat, they need food, they need health care, and they need education and employment finally resulting in a good life. Our GDP is growing at more than 8% per annum. Whereas, the economists suggest that to uplift the people below poverty line, our economy has to grow at the rate of 10% per annum consistently, for over a decade.

Integrated Action for Development:

To meet the needs of one billion people whose number will further increase, we have a mission of transforming India into a developed nation. We have identified five areas where India has core competencies for integrated action: (1) Agriculture and food processing (2) Reliable and Quality Electric power, Surface transport and Infrastructure for all parts of the country. (3) Education and Healthcare (4) Information and Communication Technology (5) Strategic sectors. These five areas are closely inter-related and when effectively addressed, would lead to food, economic, energy and national security. Implementation of these

programmes in an integrated way and in a time bound manner in a cost effective fashion and also to provide the necessary services to the citizens equitably with ease, it is essential that we use the technologies available today and work out a comprehensive e-governance system for all government to government and government to citizens transactions.

Cyber crimes: Challenges

Continuing economic growth will also mean that many of the Indians from now will be doing business in the digital world on the web. In this new era, crime, law and justice will be completely different from the present system. In the present law, for example, the jurisdiction will correspond to the location where the crime is committed and where the damage occurs – very often both being the same location. Whereas in the digital world, the crime may originate from a strange place even outside our own shores and may damage organizational wealth which will be in the digital form in multiple locations. In the 20th century, a nation's business transactions and wealth creation were based on transfer of materials from one place to the other. In the 21st century wealth is created whenever information in the form of electrons is transferred across the networks in a borderless world. Our investigation system has to build its capacity to

understand in a way that any crime committed against India or her assets by anyone from anywhere shall be detected. The Government with investigative agencies should formulate progressive and innovative crime prevention methods for the digital economy which is one of the vital components of a developed nation.

Collective Introspection to meet the challenges

Indian democracy has been functioning effectively for the last six decades. In a vibrant democracy we have accomplished many successful missions by many governments. We have brought down the poverty level to 22% with the growing population and today India is one of the emerging strong economies of the world because of our limited opening up of our economy in the post 1991 period. However, our growth rate is slow. The causes attributed for this slow growth rate are the administrative system, large accumulation of pending cases in our courts, the number of controls exercised by the administrative system and the government running many of economic activities rather than opening it up to the specialists in a competitive environment.

In spite of these severe constraints, our youth have excelled in knowledge domain and have shown a phenomenal growth in ICT sector

employing over one million people and have achieved the revenue target of \$36 billion in 2005. This gives us an idea that wherever there is an independence to perform we have performed well whereas wherever we have created large amount of dependency through complex policies, procedures and subsidies, our performance has been stunted and transparency diminishes. There is a need to introspect on this dependency syndrome, which we have created. We need to remove these dependencies systematically and allow the people to perform in a competitive environment in the global market. This will involve reformulation of policies and procedures prevalent in the legislature, executive and judiciary keeping in mind the changing scenario of the world, challenges to be faced by the economic sector in the global competitive environment and meeting the aspirations of the people in providing a higher quality of life.

All Government programmes must consider citizen as a privileged customer and become accountable for providing all the services needed by him without interruption and hassles. One of the means by which this can be ensured is the incorporation of a sound e-governance system in all the three pillars of the democracy. Keeping this

aspect in mind, I would like to share the thoughts on implementation of e-Governance system for providing transparent administration.

E-Governance for transparent administration

Good governance is being recognized as an important goal by many countries across the world. Many nation have taken up specific initiatives for open government. Smart card is the core of e-governance. Freedom of information is being redefined and supported by detailed guidelines. The Internet revolution has proved to be a powerful tool for good governance initiatives and the world is moving towards Internet governance. An important dimension of the Internet potential is the possibility of providing services any time anywhere. Along with this there is a conscious effort to put the citizen as the center of focus of the governance. Citizens are being perceived as customers and clients. E-governance has to be citizen friendly. Delivery of services to citizens is considered as a primary function of the government. Particularly in a democratic nation of a billion people like India, e-Governance should enable seamless access to information and seamless flow of information across the state and central government in the federal setup.

Need based Services

a). Training and empowerment: Services like police; land administration, special services, municipal services and income tax have been found to be the key problem areas, apart from many more. There is a need to train the personnel working in these services about the importance of providing hassle free services to the citizens. They should be specially trained to be citizen friendly. Personnel working in these departments must be provided with reasonable housing and transportation facilities including empowerment in their task. They should become accountable for the services to be provided to the citizens and also be penalized for wrong decision. We can also consider training the personnel at the grass root level in some of the advanced countries so that they can get a first hand feel of how these services are being provided in different countries. These measures will improve the quality of services being provided to the citizens and the perception about these departments. Bureaucrat should become facilitators.

b). Law enforcements: The following are the components that influence transparent society: Corruption detection, Fast police action, Court proceedings with minimal adjournments, fast judgments and there must be provision for

punishing the biased allegation bringing the accountability into the system. All these process should be completed with in a prescribed time frame and all the pending cases in the court particularly pertaining to corruption, special crimes and economic offences should be cleared in a time bound manner by setting up more special courts throughout the country.

New entrants and challenges

In Rashtrapati Bhavan, every year two times, I meet IAS and IPS Probationers. During my interaction with them one common question comes up for discussion. That is when a new officer enters into a system, there are certain possibilities, the higher ups may not be transparent and also the bottom layer. The new officer is jammed. What he should he or she should do? That was the question posed to me. I was thinking about the answer because it is a fact of life, as it can be seen, from the corruption index of the nation. I cheered the officers and told them, there are different situations, which I have come across through my friends and also directly. One situation is the person who stood for the principles in spite of difficult environment all around and even though he experiences many transfers, finally the person emerges as the winner. It is my own experience that I have shared with them based on my

experience while holding various responsible positions. If a person is extremely honest, respect comes from all around including from the higher ups. Also, there is a possibility of the higher up being shifted for the advantage of the system.

An Independent Commission against corruption

Corruption is the concern of our society, our youth and of course government also. I came across about an information through internet, about Hong Kong experience. Hong Kong, 40 years back has been described as though what we witnessed in many areas in Indian scene. But today Hong Kong is free from corruption. I was told that, this has resulted through their one action of establishing a powerful independent commission against the corruption. The independent commission has worked on three pronged approach by strict enforcement of stringent laws, prevention of corruption and community participation against corruption through continuous education. This has resulted in virtual elimination of corruption from Hong Kong in less than 10 years. I am studying this example and its suitability for application in Indian environment.

Research on CBI cases

I am happy to find that the CBI is publishing monthly journal called CBI

Bulletin for the exclusive use of police personnel, which gives an analysis of cases, important events and international experiences. There is a need to publish such a bulletin for the use of citizens highlighting certain case studies and bringing out the role of citizens in preventing corruption.

Also, it is essential to study 100 important cases which have been investigated and chargesheeted by the CBI and the final judgement would have come either from High Courts or Supreme Court. In some cases it has been seen that they were reopened and reinvestigated and different Judgements came after reopening. The case study must establish through research process, where is the problem. It may lead to corrective action nationally by the agency itself rather than giving opportunity to other agencies to point out the fault.

Oath for the Police Officers

Whenever I meet police officers, including the probationers, I used to give a **seven point oath**. I thought of sharing with you, since the officers have written to me or send e-mail stating that they found some aspect of the oaths were very relevant.

- 1) I am proud of being the member of the Central Bureau of Investigation and other anti-corruption agencies of high tradition and credibility.

- 2) I will always be citizen friendly and promote corruption free environment everywhere.
- 3) I will lead an honest life free from all corruption and set an example for others to follow. I will ensure that no one can lead me to the temptation of corruption.
- 4) I will act as a lightening thunder against all the law breakers.
- 5) I will protect the elderly, women and children against any type of crime.
- 6) I will deal with crime against citizens, efficiently with speed.
- 7) My nation is my life.

You may like to use the oath in all your establishments.

Conclusion

Conscience is the light of the Soul that burns within the chambers of our psychological heart. It is as real as life is. It raises the voice in protest whenever anything is thought of or

done contrary to the righteousness. Conscience is a form of truth that has been transferred through our genetic stock in the form of the knowledge of our own acts and feelings as right or wrong. A virtuous and courageous person can alone use the instrument of conscience. He or she can alone hear the inner voice of the soul clearly. In a wicked person this faculty is dead. The sensitive nature of his / her conscience has been destroyed by sin or corruption. Hence he or she is unable to discriminate right from wrong. Those who are leading organizations, business enterprises, institutions and governments should develop this virtue of the ability to use their own conscience. This wisdom of using the clean conscience will enable them to enjoy the freedom and remove their anxiety and worries. In this connection, I would like to recall the hymn that I have heard in a spiritual centre. It reads as follows:

Righteousness

Where there is righteousness in the heart,

*There is beauty in the character.
When there is beauty in the character,
There is harmony in the home.
When there is harmony in the home,
There is order in the nation.
When there is order in the nation,
There is peace in the world.*

It is a beautiful connectivity between heart, character, home, nation and the world. In a society we have to build righteousness among all its constituents. For the society as a whole to be righteous we need creation of righteousness in family, righteousness in education, righteousness in service, righteousness in career, righteousness in business & industry, righteousness in civil administration, righteousness in politics, righteousness in government, righteousness in law and order, righteousness in justice. My best wishes for success in your deliberations in the mission of creating a corruption free society.



"Ultimate measure of man is not where he stands in moments of comfort and convenience but where he stands at times of challenge and controversy

- - Dr. Martin Luther King





**D.MUKHERJEE, IPS.,
Director General of Police,
Tamil Nadu, Chennai – 2.**

“Do what you should
when you should
As you should”

To oversee vigilance and anti corruption measures in all Government of India departments and public sector undertakings of the Government of India, a separate division was set up in 1955 styled as the **Administrative Vigilance Division**. The Central Vigilance Commission was set up in 1964. The Central Vigilance Commission oversees the functioning of Chief Vigilance Officers attached to various public sector undertakings and Government Departments. It is also entrusted with the superintendence of CBI with reference to investigations under P.C. act and has its disposal the services of CBI for causing inquiry into complaints received by the commission. Every public sector undertaking has a chief vigilance officer whose job is not only to look into complaints of corruption involving the

ANTI CORRUPTION – STRATEGIES IN INDIA

employees of the undertaking, but also review the systems and procedures and suggest measures to plug loopholes. The institution of the CVO is also available in the various ministries of Government of India. The CVO on the one hand assists the Chief Executive in the maintenance of probity in the organisation and on the other hand reports to the Central Vigilance Commission on the vigilance activities.

While the CBI is the premier anti-corruption agency of the Government of India, similar anti-corruption bureaux are also set up by the various State Governments. In some of the important public undertakings owned by the State governments, CVOs are appointed on the pattern of Central Government undertakings.

While the CBI and the Anti-Corruption Bureaux have statutory powers for investigation, such powers are not available to the Chief Vigilance Officers. They can only conduct enquiries and don't have the powers to arrest or conduct searches. Whenever they feel that regular investigation is required they have to approach an investigating agency like CBI/State ACBx. The

CBI acts in close coordination with the CVOs and the latter serve as potential source of information to CBI. The same relationship applies to State Anti-Corruption Bureaux and Chief Vigilance Officers of State Government Undertakings.

METHODOLOGY

Corruption is being handled from two aspects – Detective and Preventive. Detection of specific instances of corruption is made possible through complaints, source information and study of income tax returns, immovable property returns, returns on wealth tax, gift tax and indirect taxes etc. Every organization is subjected to internal audit as well as statutory audit. Such audit reports very often throw up cases of corruption in corporate bodies. Apart from these, there is a constitutional body like the Comptroller and Auditor General of India. Parliamentary committees like the Estimates committee, Public accounts committee and the committee on Public Undertakings also play similar role. These bodies review from time to time the performance of each department/public sector undertaking and go into the aspect of property in all substantial transactions. Their reports are discussed in the

Parliament and adverse findings generate lot of public debate. Similar committees are available for state legislatures also. By scrutiny of these reports, very often cases of corruption are initiated. Backed up by the sources mentioned above, the CBI and the Anti-Corruption Bureaux are fighting corruption in the following predominant ways:

1. Traps

The investigation agency encourages the victims of corruption to lodge complaints against corrupt public servants with respect to specific instances. Occasionally, appeals are made through the print and electronic media to the suffering public to lodge complaints against corrupt public servants. When there is a demand for illegal gratification by a public servant to carry out a job pertaining to the complainant, the latter lodges a complaint with the investigating agency. After verifying the genuineness of the complaint the antecedents of the public servant complained against, a trap is organized. The currency notes to be offered as bribe are smeared with phenolphthalein powder and the numbers of the currency are noted in an observation memo prepared in the presence of independent witnesses. The complainant meets the public servant at the appointed place, preferably with one of the witnesses accompanying. As soon as the public

servant accepts the money, the complainant give a prearranged signal and the trap laying party rushes in. The trap amount is recovered for the public servant and his hands are dipped in the Sodium Carbonate solution in the presence of witnesses. The solution turning pink is an indication that the public servant has touched the money. He is arrested and immediately his office and residence are searched to look for incriminating documents. The searches sometimes lead to disclosure of assets disproportionate to the known sources of Income. Criminal proceedings can be launched separately for possession of disproportionate assets. If possible, the trap proceedings are video graphed from a vantage point. Conversation between the complainant and the accused public servant is audio recorded with the help of concealed recorder. The solution is got chemically evaluated to confirm the presence of phenolphthalein.

The trap procedure comes in very handy in tackling corruption at the cutting edge level. Common areas where the trap is successfully deployed are,

a) revenue officials demanding money for issuing community certificate or encumbrance certificate in respect of immovable properties.

- b) railway ticket examiner asking money to allot berth on the running train,
- c) telephone parcel clerk demanding money for booking a parcel,
- d) telephone lineman demanding money for repairing the telephone or giving connection etc.
- e) Customs officials demanding illegal gratification for showing favours in the assessment of duty on articles brought by passengers.
- f) Income tax officials demanding bribe for manipulating assessment.

2. DISPROPORTIONATE ASSETS:-

Corruption being collusive in nature, not many people come forward to lodge complaints of specific demand by public servants. The only alternative way to bring such public servants to book is to investigate into their assets. This is mostly used against senior officers. It is difficult to trap them because they don't take money directly. On the other hand they invest the ill-gotten money in movable and immovable properties which are easy to identify. In this method, a public servant is targeted on the basis of his general reputation for lack of integrity. His property returns and income tax returns are studied to arrive at a prima facie conclusion

whether he/she possesses assets disproportionate to known sources of income. Subsequently, the assets are verified through secret enquiries. Similarly, information is collected about the friends and relatives with whom the public servants has invested at the ill-gotten wealth. A preliminary assessment is also made of the likely expenditure and income during a particular period known as the check period. The check period is selected with reference to the period during which the public servant occupied a post which offered abundant opportunity for corruption.

Once having established a prima-facie case, regular investigation is launched and searches are conducted in the residential and office premises of the public servant as well as benamis.

Investigation of case of this nature is cumbersome and time consuming.

The immovable properties are got evaluated and inventory of movable assets prepared. Evidence has to be collected regarding the expenditure in detail, such as amount spent on education of children, cooking gas, electricity consumption, taxes paid, foreign travel, repairs/modification to building, fuel and maintenance charges of personal vehicle etc. Kitchen expenses are computed on the basis of index provided by Bureau of Industrial cost and prices.

The suspect officer submits claims on various incomes other than salary. These claims usually relate to rental income, petty business by member of the family, income from garden produce, agricultural income etc. Verification of these claims is a time consuming process. Finally the disproportion is worked out with the help of these inputs (1) Assets required during the check period. (2) Income and (3) Expenditure.

If the disproportion is merely 10% or less, benefit is given to the accused. If it is upto 30% the case is considered fit only for departmental action and beyond that prosecution can be risked and the case sent to the court. In grave cases, the properties are attached to the Govt. through court orders and there is provision for confiscation after successful prosecution.

3. ABUSE OF AUTHORITY

Apart form traps and cases of disproportionate assets, corruption is unearthed by probing into instances of abuse of authority by a public servant where such abuse is with a view to cause pecuniary gain to himself of anyone else and corresponding loss to the Govt. Material for such probe is collected from files relating to award of contracts, supply orders or purchase order. The institution of the Chief Vigilance Officer comes in very

handy to unearth such corruption. Instances where the lower bids were rejected without valid reasons, where knowingly substandard material is accepted, tax is evaded by private persons/corporate houses with the connivance of tax enforcement officials, usually come under the orbit of such investigation. Once the scrutiny of the file discloses prima facie abuse of authority coupled with pecuniary gain to an individual and corresponding loss to the Govt., regular investigation is launched to cover the public servants and private persons involved. Depending upon the quality of evidence collected, the case is sent for prosecution. Majority of the cases handled by CBI is of this category. While for traps a complainant is necessary cases of disproportionate assets and abuse of authority can be initiated on the basis of source information also.

4. SURPRISE CHECKS

Surprise checks are conducted by the CBI and Anti-Corruption Bureaux sometimes independently and sometimes jointly with the departmental vigilance officials at points and places of corruption at the cutting edge level. For example, surprise check on the customs authorities at ports of entry may reveal possession of unexplained money. A presumption is drawn that the money is acquired by illegal means (Fleeing

the passengers) and prosecution is launched after investigation. Surprise checks conducted at storage points sometimes lead to the detection of shortage of material with reference to the stocks, thereby requiring further investigation. Checks at the container depots may reveal goods other than those declared behind being dispatched/ imported to evade duty. Surprise checks in running trains often throw up possession of unaccounted money by Railway staff.

5. SURVEILLANCE

The CBI in consultation with the Chief Vigilance Officers prepares a list of officers of doubtful integrity. Once a public servant is put into the list it is the duty of the CVO and the CBI to keep a watch on his conduct and take

note of all acquisitions and ultimately process a case of disproportionate assets. All contract files handled by such officers are reviewed to find out if there has been any hanky panky. Such a system may be adopted by the Anti-Corruption Bureaux also.

6. PREVENTIVE VIGILANCE

In a consultation with the Chief Vigilance Officer the system in a public system undertaking is studied, points and places of possible corruption are identified to improve the system with a view to eliminate corruption. On the basis of the study of the organizational set up, its systems, points and places of possible corruption an appreciation report on the particular undertaking is prepared by the CBI and circulated to the

Department concerned for effecting improvements in the system. CBI comes across loopholes in the systems prevalent in an organization while investigating a specific case pertaining to that organization. While forwarding the report of investigation to the organization suggestions are also given for plugging loopholes. Once officers of doubtful integrity are identified it is ensured that such people are not posted at points which have scope for corruption. It is quite natural for people of integrity also to develop vested interest when their stay in a particular post is prolonged. It is the duty of the Chief Vigilance Officer to suggest job rotation for such public servants at regular intervals. Such exercises may be taken up by Anti-Corruption Bureaux also.





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Whistle Blowing – Precept and Practice

Our lives begin to end the day we become silent about things that matter - Dr. Martin Luther King, Jr.

The motherland of the Mahatmas was rocked violently on Nov 23rd, 2003... A shocked and angry nation reacted sharply though non-violently to the gruesome, **brutal murder** at Gaya, in Bihar of 31 years old Satyendra Dubey, Project Manager, Jharkhand, Golden Quadrilateral Project, National Highways Authority of India.

People at large believed that Satyendra Dubey had to pay with his life for **blowing the whistle on corruption** in the National project as it had come to light that Satyendra Dubey had written a letter to the then Prime Minister in which he reportedly pointed out that the project was hijacked by big contractors who submitted forged documents to justify their technical and financial capabilities to execute the project and that NHAI officials were conniving with the contractors for financial considerations. He alleged that by advancing money in a great hurry to the contractors and not

following up the construction work as they should, the NHAI officials were aiding and abetting diversion as well as misappropriation of funds by the contractors, resulting in huge losses to the Government of India. It was widely reported that despite a specific request by Dubey, **confidentiality** of this letter was not maintained and Shri Dubey was exposed to danger. The vested interests got him before he could get them.

Soon after the cold blooded murder, there were demonstrations, debates, reviews, resolutions and email campaigns galore. A clamour for ‘**good governance**’ and ‘**transparent administration**’ surfaced. There was a public outcry for not only the arrest of the accused but more importantly for **enacting a law** to protect ‘**Whistle Blowers**’ as was done in USA, UK, Australia & New Zealand and South Africa.

One wonders whether Shri Dubey’s life could have been saved had a ‘Whistle Blowers Act’ been in place in India at that time.....

Whistle blowing has been described by experts as an act of disclosure by a member of an organization

(former or current member) of illegal, immoral or illegitimate practices in their organization to an authority that may be able to effect corrective action.

Thus, when a **concerned citizen, motivated by public interest** discloses a wrong doing in the organization of his/ her employment of which he/she has personal knowledge, to an authority capable of investigating the complaint and correcting the wrongdoing he/she becomes a whistle blower. A citizen with a **high degree** of moral responsibility, courage and concern for his organization as well as the society at large, **cannot remain silent** in face of improper behaviour and hence blows the whistle quite unmindful of the consequences.

Whistle Blowing is **global phenomenon** and is relevant to all organization and all people because every business and every public body faces the risk of things going wrong or of unknowingly harbouring a corrupt individual.

Generally when someone comes across serious irregularities or corruption in an organization, he has **three options-**

Whistle blowing

- 1) To stay silent
- 2) To take up the matter internally with a responsible person
- 3) To inform external agencies or the media.

Doubt, fear and the **risks** involved in speaking out would work to let the person choose the safest way i.e. remain silent.

The risks involved in whistle blowing are

- 1) Whistle blowers are treated as traitors/outcasts in their organizations and are blamed for putting the organization in a difficult position.
- 2) They are attacked. Instead of evaluating their message, the full power of the organization is turned against them (“shoot the messenger syndrome”)
- 3) Suppression in the form of ostracism by colleagues, assignment to trivial posts, passing snide remarks, spreading rumours, formal reprimands, transfer to positions of no work or too much work, demotion, referral to psychiatrists, invoking regulations not generally enforced, dismissal and blacklisting are resorted to. Isolated resistance is ruthlessly crushed in most organizations.

Unless the whistle blowers **believe** that there are **good chances** of the complaint being heard, their own interests being protected and corrective action taken by the

appropriate authorities, internal whistle blowing will not be resorted to by any employee.

The failure of people to speak up about irregularities and illegalities as soon as they are noticed in an organization would result in damaging the organization in the long run as the wrongs graduate into **scams, scandals** and **financial disasters**.

When a scandal breaks out, public confidence in the organization too is shaken and implications of **losing credibility** are more serious than financial losses for the organization and the Government.

The primary **aim** of whistle blowing culture is that concerns about corruption and wrong doings should be **properly raised** and addressed in the work place. A Whistle blower should be seen as a **witness** and not as a **complainant**

Organizations, the world over are beginning to realize the importance of providing safe **alternatives** to employees who wish to complain of irregularities and corruption in the organizations. The self interest of the organization in whistle blowing is being recognized. This approach sees whistle blowing as a means to **deter wrong doing**, promote transparency and good governance, promote organizational accountability, underpin self regulation and maintain public confidence.

It is recognized that Whistle blowing to the media while bringing down the credibility of the organization in the eyes of the public, causes often irreparable damage to its reputation and standing besides robbing public support

The U.K. committee on standards in public life while encouraging establishment of internal mechanisms of complaint redressal in order to prevent disclosure to media commented thus.. “Placing staff in a position where they feel driven to approach the media to ventilate concerns is unsatisfactory both for the staff member and the organization..... it was far better for systems to be put in place which encouraged staff to raise worries within the organization”... Describing the desirable philosophy and mechanism of internal redressal system it said..... “An effective internal system for the raising of concerns should include

1. A clear statement by the management that malpractice is taken seriously in the organization and an indication of matters regarded as malpractice
2. Respect for confidentiality of staff raising concerns
3. Access to independent advice
4. Penalties for making false and malicious allegations

5. An indication of the proper way in which concerns may be raised outside the organization if necessary.”

From the management point of view, managing whistle blowing becomes an important **aspect of administration**. Responding at the right time in the right way to issues and encouraging people to bring out problems concerning the functioning and governance of the organization would help keeping the issue from going out of control, avoiding criticism from public and preventing image loss.

Considering whistle blowing as an **anti corruption tool** many countries have gone in for legislations in this regard .Though all legislations are rooted in two vital rights-public right to be informed and whistle blowers right to be protected for acting justly,the Whistle blowers laws in different countries are rooted in different principles.

Such laws in the USA are rooted in the concepts of **freedom of expression** ; those in Australia and New Zealand are concerned with **ethics in public sector** while those in UK and South Africa address the issue of **accountability across all institutions**. In all these legislations the delicate **balance** between **public interest** and **interest of employers** is sought to be achieved.

United State of America

In the USA, the concept of whistle blowing was recognized in 1863 itself .The False Claim Act 1863, was enacted to combat fraud by suppliers to the federal Government during the civil war. This Act provided for the whistle blowers to receive a percentage of money recovered or damages suffered by the Government in fraud cases they exposed.

The civil services Reform act of 1978 sought to protect the whistle blowers from reprisals in the form of transfers to “bureaucratic Siberia”, elimination of duties, career paralysis, reprimand etc.

In some of the states, protection is extended to employees in the private sector also while in others ‘right to disobey’ illegal orders of superiors is protected..!

Federal Whistle Blower Protection Act 1989 covers not only protection against reprisals, but also against removal of duties, failure to provide training or reprimand.

The Act makes protection **mandatory** whenever justified by the evidence in a disclosure. Under the Act of 1989... “If the disclosure was reasonable and significant to public policies, then time, manner, place, further motives, audience and anything else will be irrelevant”.

The employee who succeeds can also be awarded costs besides being given interim relief.

This act gives the Whistle blower control of his own case

It provides for corrective action for violation of freedom of information Act, or violation of civil schemes, laws, rules and regulations.

Witnesses are also protected from harassment during proceedings.

Even threats by employers are actionable.

This Act puts the **burden of proof on the employer** to prove through clean and convincing evidence that the action taken against an employee is not related to his disclosure as a whistle blower. It also provides that an employee could opt to leave the job even if reinstated.

The act prohibits the special counsel of the Whistle blower from disclosing the informant’s identity without his consent unless such exposure is felt necessary.. because of imminent danger to public health or safety or imminent violation of any common law by the whistle blower.

In 1994, twenty new amendments were added to strengthen protection given to the whistle blower. According to the latest amendments, employer cannot resort to any other significant change in duties, responsibilities or working conditions’ of the employee, even by quoting security reasons.

1994 amendments enable consequential damages, medical expenses also to be paid with a view

to restore the employee to the status quo ante as if no reprisal had occurred.

Since 1994, the results in favour of employees have substantially increased.

The provisions of the US Federal Act of 1994 are of far reaching importance and are wider than the corresponding laws in the UK, Australia and New Zealand.

United Kingdom

Various rules as well as codes existed prior to the enactment of the “public Interest Disclosure Protection Act 1998 which came into force for the protection of a whistle blower. The UK Public Interest Disclosure Act 1998 is based on Nolan committee recommendations.

Various existing codes goaded the management to create the climate and opportunities for people to voice their concerns on matters which they perceived to be unprofessional or inappropriate. They encouraged the employees to be prepared to challenge unethical behaviour of others **“Do not tolerate any form of retribution against those who do speak up. Protect individual’s career and anonymity if necessary”**.. said the British Airways Code.

The civil service management code stated that “if the civil servant considers that he or she is being asked to act in a manner which

appears to him or her to be improper, unethical or in breach of constitutional conventions, or to involve in possible mal-administration, or to be otherwise inconsistent with prescribed standards, the matter should be reported to a senior officer or permanent head of the department.”

Numerous other rules and guidelines for various departments sought to protect whistle blowers like the UK Sex Discrimination Act 1975 and UK Race Relations

Act 1976 which provided provisions supporting whistle blowing. They even make it an offence to divulge information which has been disclosed by an informer when investigation is on. If an employee takes action under the Employees Protection (consolidation) Act 1978, alleging unfair dismissal, burden of proof will be on the employer.

The UK Public Interest Disclosure Act 1998 aims at protecting Whistle blowers from victimization and dismissal when they have raised genuine concerns about a range of misconduct and malpractice. It covers all employees in the public, private and voluntary sector as well as trainees, contractors, home workers and all professionals in the health sectors except Police and Army.

The whistle blowers will be protected if the disclosure is made in good faith and is about

1. Criminal act
2. Failure to comply with legal obligation,
3. Miscarriage of justice,
4. Danger to health and safety,
5. Damage to environment and
6. Any attempt to cover up any of the above.

The Act speaks of three types of disclosures.

- a) **Internal disclosure** – disclosure to the employer
- b) **Regulatory disclosure**- where disclosure is made to a prescribed person
- c) **Wider disclosure**-where disclosure is made to police, media or Members of parliament or to non – prescribed regulators. The conditions are that
 - 1) **The whistle blowers** reasonably believed that they would be **victimized** if the matter was raised internally,
 - 2) Reasonably believed a **cover up** was likely and there was no regulator,
 - 3) Had already raised the matter internally or with a **prescribed regulator**.

When the employment tribunal is **satisfied** that the disclosure is reasonable, the whistle blower will be protected in all these cases of disclosure.

Protection includes interim orders to keep their jobs, monetary

compensations etc in case of unfair dismissal

Australia, New Zealand and South Africa

The Public Interest Disclosure Act 1994 of Australia and The Protected Disclosure Act 2000 of New Zealand and Protected Disclosures Act 2000 of South Africa also contain similar provisions.

The most important features of these acts are the ones which **require the identity of the informant to be kept secret** unless the informant concerned consents or unless it is required to reveal his identity for effective investigation, or for purpose of observing natural justice.

Indian Scenario

In the year 2001, the Law Commission of India drafted a bill titled “**The Public Interest Disclosure** (Protection of Informers) bill. The stated objective of the bill was to encourage disclosure of corrupt practices on part of public functionaries and protect honest persons from likely reprisals of such disclosures. The Law commission stated that it considered it necessary to recommend some measures to check corrupt practices as corrupt practices violate human rights and basic freedom and affect development of a Nation.

This bill was intended to grant protection to persons who make

disclosures from being victimized.

Victimization was to include,

Suspension pending enquiry,

Transfer

Dilution or withdrawal of duties, powers and responsibilities

Recording adverse entries in the service records

Issue of memos

Verbal abuse

All classes of major or minor punishment

and such other type of harassment. provided the disclosure is done in good faith and the person making the disclosure believes that the information disclosed and any allegation contained therein is substantially true.

The Bill required that the inquiry on the disclosure not to be open to public and that the names of persons making the disclosure and that of the public servant named shall not be disclosed to public (sub section 2).

The competent authority to which disclosures were to be made was to be the inquiry agency and was given powers to inquire, dismiss applications, direct relief to the victim of victimization as well as take suitable action against the officer who indulges in victimization.

This bill heavily borrowed from the legislations of Australia, New Zealand, USA and UK to compile all its provisions such as protection

of witnesses, powers to issue interim orders, burden of proof, punishment for false complaints etc

The Public Interest Disclosure (protection of Informers) Bill 2001 however has not been translated into an Act as yet.

Perhaps one would tend to agree with Mr. M.Devine when he says ‘whistle blower protection is a policy that all government leaders’ support in public but few in power will tolerate in private.’”

Coming back to the question of whether Satyendra Dubey’s life could have been save had this act been in place, one can only say that the availability of such an Act would have

- 1) given Satyendra Dubey a prescribed forum to raise his concerns about corruption in the organization in a proper way.
- 2) given him legal protection for his disclosure.
- 3) kept his identity a secret
- 4) paved way for proper inquiry into the veracity of his complaint by an appropriate authority who could have taken appropriate action on the allegations raised.
- 5) prevented losses to the Government if any.

The existence of such a law would have deterred officials indulging in mal-practices to do so blatantly.. It would

Whistle blowing

have made complaint handling more methodical and a serious business. The leak of Satyendra Dubey's name would not have taken place as routinely as it is reported to have happened and if it is true that his murder is linked to the alleged leak of his letter even remotely, it could have been definitely prevented

CONCLUSION :

Unless people are **enabled and encouraged** to blow the whistle, the fight against corruption will not succeed. Unless culture, practice and the law indicate that it is **safe** and accepted for them to raise a genuine concern about corruption or illegality, workers will assume that they risk

victimization, losing their job or damaging their career.

A whistle blowing scheme will **help** an organization **deter corruption** and wrong doing when it is seen as a viable, safe and accepted option by the employees.

Whistle blowers mostly oppose corruption, bad policies in the organization like unethical pay offs, protection of criminal behaviour, cheating public, indulging in activities that cause hazards to workers, public or environment and the aim of a whistle blower is to stop improper action, penalize wrong doers and compensate victims. It is therefore in the **interest of the organization** that whistle blowing is **recognized**

and accepted as a **tool to fight corruption** and **provide good governance**.

The new approach to whistle blowing sees it as a means to deliver good management, to maintain public confidence and promote organizational accountability.

A country which encourages good governance will definitely provide **good quality services to its citizens** and ensure the overall prosperity of the economy through just and fair means.

It is in the interest of the organization that Whistle Blowing is recognized and accepted as a tool to fight the epidemic of corruption and provide good governance.



*Cowardice asks the question – is it safe?
Expediency asks the question – is it politic?
Vanity asks the question – is it popular?
But conscience asks the question – is it right?
And there comes a time when one must take a
position
that is neither safe, nor politic, nor popular;
but one must take it because it is right.*

Dr. Martin Luther King, Jr.





Tr. Krishnamoorthy,
Dy. Superintendent of Police,
CBI, Chennai.

CASE OF DISPROPORTIONATE ASSETS

The under mentioned case is a typical case U/s 13(1) (e) of PC Act 1988) for possession of disproportionate assets, by a high ranking public servant, in which the CBI could prove the case, in spite of a spate of hurdles caused by the accused public servant in the conduct of the trial .

2)An offence u/s 13 (1) (e) is complete if the public servant :-
-either by himself or on his behalf
-is or has, at any time during the period of his office, been
-in possession of pecuniary resources or property,
-the property or pecuniary resources should be disproportionate
-to his known sources of income
-(Known sources of income means the income from lawful sources and which has been intimated to the Department) and
-He can not satisfactorily account for such pecuniary resources.

3)The case of the CBI was that as on 1.1.1985, the only source of

income of the accused was his salary. He had not inherited any ancestral property. He had assets worth about Rs.1.63 lakhs, as on 1.1.1985. As on the date of the end of the check period, i.e., as on 15.2.1989, he had assets worth Rs.63.95 lakhs, in the name of self, wife, daughters and mother-in-law, including bank balances, other deposits, shares/debentures , cash in hand, etc. He had about 95 fixed deposits amounting to Rs.17.5 lakhs in about 20 branches belonging to several banks at UP, Karnataka and Delhi . During the searches conducted by CBI, an amount of Rs.12 lakhs was seized in cash from his Bank locker. 4)Based on the above information, investigation was conducted and on finalisation, the investigation revealed that the said public servant had acquired wealth worth Rs.61.88 lakhs, disproportionate to his known sources of income. Accordingly, in the year 1996, a Final Report was filed before the CBI Special Court, Madurai, against the accused, charging him of commission of offences under Section 13 (1) (e) of Prevention of Corruption Act, 1988 punishable u/s 13 (2) of PC Act, 1988. As the averments in the charge sheet disclosed a prima facie

case against the accused, charge was framed u/s 13 (1) (e) of PC Act, punishable u/s 13 (2) of the said Act. 5)During the trial, the accused official resorted to different kinds of dilatory tactics to delay the trial proceedings by filing various petitions before the CBI Court and High Court, by himself and through his wife.

6)He first challenged through a petition, the Sanction Order issued by the Under Secretary of the Finance Department.

7)The petition filed by the accused was dismissed by the CBI Special Court, by acceding to the arguments of CBI. He filed a Criminal Revision petition against the said Order, before the High Court. The High Court also dismissed the plea of the accused.

8)The wife of the accused then pleaded before the Court by filing another petition that the properties in her name purchased during the years 1985 and thereafter, were acquired by her through inheritance from her father, as he belonged to a family of big zamindars. She pleaded that she had acquired 1/6th share of the sales of the properties belonging to her father. She also pleaded that keeping liquid cash made sense because major part of the investment of their family was in the form of private

lending, which was a traditional family business operation. She was a political worker and it was natural that the political workers have a host of avenues to acquire wealth from perfectly legitimate sources.

9)The accused pleaded that he had nothing to do with the property, acquired by his wife from her own sources.

10)CBI argued that, there is no evidence to support the submission that the cash holdings of her father were preserved in liquid cash form, retained from 1964 to 1985 and then suddenly it was used from 1985 onwards for purchase of disputed assets. Therefore, this request of the wife of the accused was also dismissed by the Hon'ble Court.

11)The accused then pleaded that he was singled out during the course of investigation with unfavourable treatment.

12)The court rejected the contention of the accused that Investigating Officer he had been prejudiced or that bias was shown to him, in view of the explanation that the source which he wanted to disclose was the premium amounts received during the sale by his wife and mother-in-law and that there was a parallel economy running and that it was only natural that investments were made and unaccounted cash was kept.

13)The accused then filed a writ petition in the High Court by pleading that the FIR in the case was registered

under P.C.Act, 1947 whereas charge sheet was filed under PC Act, 1988, and this had seriously prejudiced his case. This writ petition was dismissed by the High Court against which he filed a Writ Appeal. The Writ Appeal was also dismissed by the Division Bench, by observing that "Section 30 of the P.C. Act, 1988, while repealing the P.C.Act, 1947, provides that "anything done or any action taken in pursuance of the Acts so repealed shall be deemed to have been done under the P.C.Act, 1988".

14)After disposing of such a fleet of petitions, the trial of the above case was continued and completed. During the trial also, the accused had taken the same defence as mentioned above.

15)The CBI placed on record the assets accumulated by the accused since the year 1985. There was a steady increase in the accumulation of assets from 1985 to 1989. It was also pointed out by the CBI, that after his joining at a particular place in the year 1986, there was a continuous and steady inflow of investments. Particularly, in the year 1988, every month, there was an investment ranging from Rs.50000/- to Rs.3 lakhs . It was also pointed out that it was totally unbelievable that an estate which was unyielding till then, had suddenly yielded cash reserves to such a huge extent after 30 years.

Further, an official of a Nationalised Bank, who facilitated the purchase of

a number of investments/deposits in the name of the family members of the accused, had given a confessional statement u/s 164 Cr.PC during investigation and his evidence played a pivotal role during trial, in establishing the asset transactions of the accused. The CBI could also prove a nexus between the accused and a smuggler in a property transaction, through the evidence of the said official.

16)The accused placed a defence before the Court that the jewels of about 2000 gms. seized from the bank lockers, were brought into his family during his marriage, by his wife who hails from a Zamindari family. The CBI could convince the Court that the said plea is unacceptable as the accused did not declare the same to the Department at the time of his marriage or acquisition.

17)By placing the above mentioned points, the CBI could convince the Court that the accused had committed the offence of possessing assets disproportionate to his known sources of income which he could not satisfactorily account for.

18)Being convinced with the solid arguments placed by the CBI, the Hon'ble Court, decided the case in favour of prosecution, convicted the accused and sentenced him to undergo rigorous imprisonment for a period of three years and imposed a fine of Rs.5 lakhs .



Tr. Sathyamoorthy,
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*CASE OF WRONGFUL LOSS AND
CORRESPONDING WRONGFUL GAIN*

The following case explains the new avenues of fraud discovered by a public servant in the banking system and elucidates as to how he had caused wrongful loss to the Government and corresponding wrongful gain to himself.

2) Section 13 (1) (d) speaks about the criminal misconduct on the part of public servant . The ingredients are

- a public servant,
- by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage
- by abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage
- while holding office as a public servant obtains for any person any valuable thing or pecuniary advantage without public interest

If any one of the above acts is complete, then the public servant is said to have committed the offence

of criminal misconduct and he is said to have caused wrongful loss to one party while causing wrongful gain to other party.

The accused was a Manager of a Bank.

3) During the year 1997, he fraudulently and dishonestly opened a current account in the fictitious name of K.Raju and issued a cheque for Rs.10 lakhs in the said fictitious name without consideration. He personally approached his counter part at the other branch of the Bank and induced him to purchase the said fraudulent cheque by making him believe that the cheque was genuine. The proceeds of the purchase were deposited in the Term Deposit Receipt, in the fictitious name of Raju for a period of 91 days at the said branch. When the cheque was sent for collection, to the branch of the accused official, the accused acknowledged receipt of the said cheque and fraudulently issued a payment advice without debiting the fictitious account of K.Raju. Thereafter the accused official destroyed or caused disappearance of the cheque for Rs.10 lakhs from his branch.

Again, during the year 1998, the accused fraudulently and dishonestly

forged a cheque for 10 lakhs in May 1998 in the fictitious name of K.Raju without any consideration and he personally approached the other branch Manager of the Nationalized Bank and induced him to purchase the said fraudulent cheque by making him believe that the cheque was genuine. The Branch Manager of the other Branch, purchased the said cheque without observing the formalities and here again the purchased proceeds were deposited in two TDRs at the said branch, in the two fictitious names of D.Raman and K.Rajendran , at the instance of the accused official. These two TDRs were handed over to the accused official by the other branch Manager even without insisting the presence of the said D.Raman or K. Rajendran. The signatures on the Depositors column in all these TDRs were made by the accused official himself.

The cheque so purchased was sent by the said Manager for payment at the branch of the accused official. This time also, the accused had purchased the two TDRs and with the proceeds, he created another TDR in the fictitious name of K.Raju . On maturity, the proceeds of this TDR was credited to the fictitious account of K.Raju, at the branch of the

accused and subsequently withdrawn by the accused by forging the signature of K.Raju.

At the branch of the accused official, all the acts of creation of new TDR, purchase of the TDR of the other branch, transferring the proceeds to the current account of the fictitious K.Raju and withdrawal of the funds from the said account etc., were done by the accused himself directly. The officials of the said branch also never met the said K.Raju at any point of time.

After the transfer of the accused official, his successor, noticed the irregularities and the outstanding in the reconciliation. The successor to the accused official, further tried to contact the said K.Raju, D. Raman and K. Rajendran but he found that all the addresses are fake and there were no such persons existing. Then the matter was informed to their internal vigilance, enquired into and reported to CBI for investigation.

During investigation, all the relevant documents were collected from the branches and concerned officials were examined by the investigating officer. However, the cheques in question could not be collected from the bank, as the said documents were already made to disappear by the accused. However, the available records such as the signatures on the TDRs as Raju, Raman and Rajendran and the other cheques/vouchers/pay

in slips signed by the accused official as Raju, Raman and Rajendran, etc., were marked as the questioned documents and sent to the Senior Scientific Officer, CFSL, Chennai, along with the specimen writings/signatures of the accused official, for examination. The SSO/CFSL, expressed a positive opinion that the writings/signatures on the specimen and the questioned documents were made by the one and the same person. During the investigation, the investigating officer also tried to find out the said K.Raju, Raman and Rajendran but found that there were no such persons existing. Ultimately, the other branch which issued TDRs worth Rs.20 lakhs had to bear the loss as there was no corresponding debit in the account of K.Raju at the other end.

The investigation revealed that by committing the above mentioned fraudulent acts, the accused official abused/misused his official position, fraudulently and dishonestly issued forged cheques and made his counterpart believe that the said documents were genuine, by using such forged document as genuine one, he induced the other branch manager to deliver to him the TDRs in fictitious names for Rs.20 lakhs, later transferred the proceeds of these TDRs in the fictitious amount in the name of K.Raju, and withdrew the proceeds by himself. Thus, the

accused official abused his official position to obtain pecuniary advantage. The above mentioned acts of the accused official, caused a wrongful loss of Rs.20 lakhs to one branch of Bank and corresponding wrongful gain to the accused official. There were sufficient documentary/oral evidences to prove the role of the accused in the fraudulent transactions and the destruction of the cheques by the accused.

Therefore, the CBI laid charge sheet against the accused official, u/s 420, 467, 468, 471 and 201 IPC and Section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988, before the Special Judge for CBI Cases, Madurai. Since there was prima-facie material in the case, charges were framed by the Special Court against the accused on the above counts.

During trial, the CBI could prove the fraudulent transactions made by the accused official, with the documentary/oral evidences collected during investigation.

The accused, while placing his defence, tried to twist the entire episode, by pleading that it was his counterpart branch Manager at the other branch and the other bank officials who had implicated him in the case and it was they who obtained wrongful gain. To support his plea, he pointed out the violations in the procedure/norms, committed by the

other branch manager in issuing the TDRs in the names of Raju, Raman and Rajendran. He further pleaded that the entire episode was the framework of the said K.Raju with the assistance of the other Branch Manager. He strengthened this argument by stating that the said K.Raju or the other persons could not be produced by the prosecution for examination. The accused

further placed a defence that as a Branch Manager, on a routine basis, he used to initial/sign a number of instruments and in the same manner he signed the cheques of Raju also. The accused also pointed out some minor lapses such as omissions in collection of some evidences, non examination of witnesses, etc. The Hon'ble Court, while delivering the judgment, was convinced with

the fact that the CBI established the charges beyond reasonable doubt. Convicted the accused on all the counts of charges of causing wrongful loss to the Government and corresponding wrongful gain to himself and sentenced him to undergo rigorous imprisonment for a period of five years for each count of charges and slapped a fine of Rs.20,40,000/-



**Tr. Krishnamoorthy
&
Tr. Sathyamoorthy
CBI, Chennai**

TRAPPING A PUBLIC SERVANT

Section 7 of P.C.Act, 1988 deals with the offences connected to demand and acceptance of illegal gratification by the public servants. The trap cases, in which public servants are caught red-handed while demanding and accepting illegal gratification, are prosecuted under this section.

The following case is a classic example of in-house vigilance mechanism existing in CBI.

The accused was a Sub-Inspector of Police in Tamil Nadu Special Police and joined CBI on deputation in 1993. He was posted to CBI Anti corruption Branch, Chennai and was assigned with the investigation of cases.

During the year 1994, a case was registered by another investigating Officer of the CBI-ACB-Chennai, against certain officials of a public sector undertaking and searches were conducted. During the course of investigation, the role of a retired General Manager of the said Undertaking in the said case came to light and it was proposed to conduct searches at the residential premises of the said retired official. As the investigating officer was busy with the

searches to be conducted at other places, he requested the other CBI Inspector (the accused official), to conduct searches at the residential premises of the said retired official. The Investigating Officer endorsed the search warrant to the accused official.

The accused official along with a constable, conducted searches at the residential premises of the retired official as a part of investigation of a case on the fixed date and time and seized 11 items of documents. Apart from the above, he took a number of documents related to the investments after getting the signatures of the witnesses on the same, but without reflecting them in the search list. He had convinced the witnesses and the retired official that the said documents would be shown in a separate list. He also prepared an inventory of the articles found at the residence of the said official including some gold ornaments. He took two bank locker keys from the residence of the said official for opening and verifying the lockers later. The copies of the search list and the inventory were provided to the said official. The next day, he got the lockers of the official opened and prepared proceedings accordingly. After

completion of the proceedings, the accused, approached the said retired official, and asked him to sign some blank search lists and stated that there are some corrections to be made in the search list. Thereafter, he again visited the residence of the said official and asked him to produce the gold ornaments mentioned in the inventory. When the retired official produced the said ornaments, the accused official took out two gold chains and two gold dollars from the said jewels and stated that he may have to seize them and arrest the said official for possession of disproportionate assets. He further threatened the official that his house and locker have to be sealed. By holding out such threats, he demanded an illegal gratification of Rs.2.5 lakhs from him as a motive or reward for forbearing him from arresting him, sealing the lockers, seizing the bank accounts etc. He further offered to help the official in the case and read out the FIR, so as to enable him in copying down the same for obtaining anticipatory bail. He also offered to help by engaging an advocate for him. He took the gold items weighing about 60 sovereigns and obtained the signature of the official in a blank search list with

an endorsement “copy received” thereon, without giving a copy. He collected the copies of search lists and inventory provided to the official the previous day and tore off. Thereafter, he collected from the official his son’s address at Chennai and asked him to meet at the said address. When the retired official met the accused official at the said address also, the accused reiterated his demand of bribe. The accused also suggested to the official to pledge the jewels which was taken by him and pay the demanded bribe. During the said meeting, the accused returned the documents taken by him after erasing the initials of the witnesses on these papers. He also asked the official to erase the initials on all such documents. He repeated his demand and threatened that his house at Madras also would be searched. Again, on the next day, he visited the residence of the official’s son and reiterated his demand. He asked him to arrange Rs.50000/- in addition to the jewels taken. After two days, he again visited and persuaded him to pay the demanded bribe or at least Rs.20000/- The accused further told that he would meet him on the next day to receive the demanded bribe. This time, the retired official cautiously recorded the conversation between himself and the accused. Unable to bear the persistent demand of bribe by the CBI officer the retired

official/accused in the other CBI Case, lodged a written complaint with the DIG CBI, ACR, Chennai. Based on the complaint, a case was registered against the said CBI officer, by another Inspector of CBI, under Section 7 of the Prevention of Corruption Act, 1988.

A trap team was formed and the pre-trap proceeding was conducted, at a place far off from the CBI office, with the intention not to arouse any suspicion on the part of the accused CBI official. During the pre-trap proceeding, the recordings, made by the complainant was played and overheard by witnesses. The cassette containing the said conversation was sealed during the proceedings. Sodium carbonate-phenolphthalein test was conducted by the Trap Laying Officer (TLO). The currency of Rs.20000/- which was to be paid as bribe to the CBI official, was smeared with phenolphthalein powder and entrusted to the complainant with the instruction to touch the same only when demanded by the accused official. A blank audio cassette was also given to the complainant for recording the conversation between himself and the accused CBI official. The trap team proceeded to the residence of the official’s son and took vantage positions. The independent witness was present along with the complainant under the

guise of a friend of the official. The accused official visited the residence and after some conversation he demanded and accepted the bribe amount of Rs.20000/-. After getting the pre-arranged signal, the trap team swung into action and caught the CBI official (accused) red handed. Thereafter, his hand washes were taken and bribe amount received by him was recovered from his possession. During the course of investigation, the gold ornaments unauthorisedly taken by the accused CBI official were seized from his personal bank locker. During the course of investigation, the hand washes were sent for chemical examination and it was found that the hand washes had phenolphthalein contents.

On completion of the investigation, the Investigating Officer, filed charge sheet in the CBI Special Court under sections 7, 11 and 13 (2) r/w 13 (1) (d) of P.C.Act, 1988. After preliminary hearing, the charges were framed against the accused official under these sections. Since the accused CBI officer, with consideration, obtained jewels from the retired official who was connected to the other CBI case, the charges included Section 11 of the P.C.Act, also.

The oral/documentary/material evidences produced by the prosecution were sufficient to prove the

offence committed by the accused. More particularly, the positive opinion given by the Chemical examiner regarding the presence of Phenolphthalein in the hand washes, the recovery of bribe amount from the accused official, the seizure of the jewels pertaining to the complainant from the personal locker of the accused, the oral evidences given by the complainant, the accompanying witness and the trap laying officer and the fact that the accused did not claim ownership over the recovered jewels, strengthened the case of the prosecution.

The accused, in his defence, stated that he had been falsely implicated in the case. He further argued that inspection of his locker was done in violation of Section 18 of PC Act, which specifies that only an officer in the rank of Superintendent of Police is empowered to inspect the Bank accounts. The accused placed another argument that the complainant himself is an accomplice in another CBI case and his evidence can not be relied upon. He further argued that the investigating Officer himself registered the case, laid trap, investigated the case and submitted final report, which is against the principles of law. In support of his

case, he quoted some judgments of the Madras High Court, in which the procedure of investigation of a case by the trap laying officer himself, was discouraged. The accused further argued that the evidence of the accompanying witness was false and he did not watch any act of the accused official receiving amount and in the absence of any independent witness, the charges can not sustain. He further defended his case by stating that he himself was a vigilance Inspector and therefore there was no possibility for him to receive the bribe amount as alleged.

While placing arguments, the CBI pleaded that, once the Superintendent of Police authorizes an Inspector to investigate the case, then the act of the inspector in inspecting the locker during such investigation, can not be treated as violation of law. The plea of the accused that the complainant himself is an accomplice was also countered by stating that other than the complainant, there was an independent witness present during the proceedings. Moreover, the prosecution relied upon the judgment of the Madras High Court in *K.S.C.Sundarrajan Vs State DVAC*, 1999, *Madras Law Journal (Criminal)* 113, in which the Hon'ble

Court held that there is no bar in, the same officer registering a case, investing and submitting final report to the Court, unless bias on the part of investigating officer is brought out. The prosecution further relied upon the fact that though the accompanying witness did not watch exactly the acceptance of bribe by the accused, the other circumstantial evidences such as positive chemical report and recovery of money corroborated by the evidence of the independent witness, prove the offence on the part of the accused. Two more judgments of the Supreme Court were quoted by the prosecution to prove that the evidence of the TLO can be accepted, if found reliable and corroboration is not necessary and that if at all the investigation is defective, unless it is established that the defective investigation has caused prejudice to the accused, the accused is not entitled to acquittal.

The Hon'ble Court, appreciated the arguments placed by the prosecution and held the accused guilty of the charges. The accused was convicted and was sentenced to rigorous imprisonment for two years and was also slapped fine on each count.



by Swathi Chopra

*CORRUPTION—YOU CAN
SAY NO TO IT!*

In India, corruption is something we all learn to live with. But wait! We need not be resigned to it or cynical. Instead of breast-beating over the sorry state of affairs, let's explore the solutions. Maybe there are no satisfactory answers to our questions. Let's ask them anyway.

Let me begin with a confession. It is precisely to avoid writing about issues like corruption that I did not join mainstream journalism. And the going has been good. A bit of [tai chi](#), a dash of [yoga](#) with walking [meditation](#) thrown in, and I was well on my way to nirvana. Or so I thought.

The universe, with characteristic irreverence, moved on its well-oiled joints to burst my self-righteous, 'Oh-I-am-so-spiritual-and-therefore-so-perfect' bubble. Seeing a babu in a government office counting soiled fifty rupee notes in full view of all and sundry did for me what all the grainy Tehelka tapes could not. It brought home the sordid reality that is corruption. Corruption that is all around us, omnipresent, almost like a distorted, antithetical version of God for the New Millennium.

Says Aresh Shirali, the thirty-something executive editor of A&M magazine: "Like most people of my age group, I am nauseated by the

epidemic proportions corruption has acquired in India. It is literally under every stone you turn." It is also in every alley you turn into, every nook and cranny you might care to peep into. It happens as much in broad daylight as it does behind closed doors. It is as much a part of my life as it is of yours.

It may be as much because of you as it is because of me.

Television personality Priya Tendulkar—who became a household name in the 1980s with her portrayal of a middle class woman up in arms against corruption in the popular teleserial *Rajni*—says: "If there is corruption in society, each one of us is responsible. It is wrong to blame the system. Why do we separate ourselves from the system? Don't we vote the corrupt to power? Don't we endlessly suffer from all deprivations and refuse to raise our voice? And then when it becomes too much, we crib."

However, G.R. Khairnar—who as the deputy municipal commissioner of the Brihanmumbai Municipal Corporation earned for himself the epithet 'demolition man' due to his penchant for razing unauthorized constructions—begs to differ: "I don't think the common man is responsible. I don't blame the man

who shells out money so that he doesn't have to spend half his day in a queue at the municipal office. Is it not more pertinent to ask how these serpentine queues are created? Are we short of staff in an overpopulated country with a large section educated but unemployed? This theory that people feed the monster of corruption is eyewash."

The fact remains that the individual can certainly not shirk responsibility. For the individual is the smallest unit in this complex web of interrelationships we call 'society'. If we are all interconnected, how can a minority (or a majority, as the case might be) only be responsible for a phenomenon as widespread as corruption?

While culpability might be a debatable issue, what causes corruption to spread its tentacles in society is not. S.K. Sharma, managing trustee of People First, the advocacy wing of the NGO Development Alternatives, categorically states: "Corruption is the symptom of a disease that has as its progenitors over-centralization of power, non-transparency in all government functions and lack of accountability."

Lack of transparency gets majority votes for being the single largest factor that provides an ideal breeding ground for corruption. Crores from

development projects are siphoned off annually to Swiss bank accounts before anybody notices anything amiss.

Says Aresh Shirali: "Corruption thrives on opacity. To give an example, people marketing computer networking software found that 'corporate transparency' is not the sales pitch that works with the top bosses. But the same people are more than willing to invest in networking if told that it would help them manipulate information. This sort of a mindset is ingrained in us in the form of a belief in an 'information pyramid' that causes information to move according to hierarchy. In my view, the information revolution is all about flattening this pyramid and providing access to information for as many people as possible."

Flattening the information pyramid is something H.D. Shourie, founder of Delhi-based Common Cause, has been trying to do. Shourie is a man with a mission that refuses to let him retire in peace even at the ripe old age of 90. Among other things, he has been campaigning incessantly to bring a semblance of transparency in the dealings of political parties. "I think political funding is at the root of all corruption. I have been campaigning for transparency in this. According to Section 13 (A) of the Income Tax Act, every political party is expected to maintain accounts of their income

and expenditure and get them audited regularly. Some time back, I wrote to all the parties questioning them about this. So far, I have received only four replies—two from hill parties, an acknowledgment from the Congress and an affirmative reply from the Samata Party, which has since become meaningless in the light of the Tehelka expose."

Shourie has given the call to all Indians to join hands with him in demanding clean politics: "The voice of the common man must rise. Hit out at political corruption because the largest quantum of money is transacted there. You can write letters to the Prime Minister and also to your MPs and MLAs. Strike at them directly and let them know how you feel. Fight to effect changes in the funding system, for example. I feel that a person should be able to make an income tax exempted donation to a political party, just as you can donate money to the Prime Minister's relief fund. That will discourage bribery in the name of 'party fund'."

Corrupt politicians often found themselves at the receiving end in the late Behram Contractor's popular 'Busybee' column. In one of his columns, he wrote with characteristic wit: "Good harvest, bad harvest, they are the cause. If an ambitious project for public welfare fails, what did you expect with such politicians in charge. If money for a project disappears, it

is because they have lined their pockets with the money. If the flyovers are not coming up at an appropriate pace, blame the politicians. If they are coming up too fast and there are too many, suspect the politicians. Sometimes it seems they cannot do anything right."

While our politics may be the dirtiest, the very structure of our polity is top heavy, thereby concentrating too much power in too few hands. This increases the chances of power being misused and manipulated for vested interests, totally bypassing the greater common good. One practical alternative, according to S.K. Sharma, is to: "Decentralize. In urban areas, implement the much talked about Bhagidari system. Enact a law to make the neighborhood committee the first municipality. Give them the power to collect dues and empower them to be the first authority to sanction any building alterations. Empowering the people and putting them in charge of their own neighborhood will reduce corruption as well as make administration effective because that is where the administrators themselves live."

Giving an example, Sharma says: "In Kolkata's Salt Lake City, if any building work begins, all the women of the area collect and do not let the work proceed until they are shown all the building permits. As a result, no unauthorized building work can

take place there. That is the power of collective action. If the electricity and water system is also given over to the neighborhood committees, it will significantly reduce kickbacks and thefts and also make everything so much more efficient. But the politicians and bureaucrats will not allow this. Can you guess why? Because it is bread and butter for them. They would become useless if the Bhagidari system were to work!" Interestingly, the system of effective governance through least interference is advocated in the Tao Te Ching, the Bible of Taoism, which says: 'Ruling a large kingdom is indeed like cooking small fish' (the less one handles them the better).

The following paragraph, quoted in *The Way and its Power* by Arthur Waley, elucidates this further:

The adherence of all under heaven can only be won by letting alone.

How do I know that it is so?

By this

.The more prohibitions there are, the more ritual avoidance,

The poorer the people will be.

The more sharp weapons there are,

The more benighted will the whole land grow.

The more cunning craftsmen there are,

The more pernicious contrivances will be invented.

The more laws are promulgated, The more thieves and bandits there will be.

Therefore, a sage has said:

So long as I 'do nothing' the people will of themselves be transformed

So long as I love quietude, the people will of themselves go straight.

So long as I act only by inactivity the people will of themselves become prosperous.

So long as I have no wants the people will of themselves return to the 'state of the Uncarved Block.'

The less governance model of the third century BC Taoists seems to be what 21st century India needs to move towards. According to Ashok Khosla, the other managing trustee of People First, the exploitative nature of contemporary Indian polity is alien to us. India has a healthy 4,000-year-old tradition of egalitarian democracy where governance did not mean some top boss lording it over you from Delhi but a series of 'concentric governments' that had the village at its center. Rejecting it and adopting a socialist-capitalist mishmash only gave us a slothful government where getting anything done for the common man without 'speed money' has become next to impossible.

Says Khosla: "Overawed by 'modernity', we rejected our egalitarian ethos when our salvation lay in reconnecting with our heritage." The great spiritual master, Sri Aurobindo has interpreted egalitarianism to mean dharma. Says he: "Both rights and duties are European ideas. Dharma is the Indian concept in which rights and duties regain their deep and eternal unity. Dharma is the basis of democracy." Perhaps it is the loss of this sense of dharma that has rendered values in public life redundant. Nothing is sacred anymore. We have polluted our land, air and sea, and we did not stop at that. The external pollution seems to be spreading inwards. We have lost respect for life, and somewhere, for ourselves too. In the noisy global marketplace, our conscience is up for grabs, stacked in neat rows somewhere between the aisles stocking genetically modified food and cloned Hollywood stars. Priya Tendulkar believes corruption has only increased with economic privatization that has engendered a materialistic lifestyle: "You have so many satellite channels bombarding millions of Indian households with pictures of goodies they cannot buy. Today, the reality is that there is mass unemployment and voluntary retirement schemes. The Americans are sending our professionals back. It is a situation eminently conducive

to corruption. Moreover, the speed with which we are distancing ourselves from our culture and values makes us more vulnerable to these temptations.”

One finds individual attitudes becoming increasingly opportunistic. D.R. Karthikeyan, former director of the CBI and director-general of the National Human Rights Commission, who is now actively engaged in spreading awareness of spiritual values, says: “Because of the erosion of religious and moral values, somehow corruption has become acceptable. Let’s face it, there are no role models any more in public life. The fear of God is gone, and so is the fear of law. Few are caught and fewer convicted—of every 100 corruption related crimes, only about six are finally convicted. All this has made corruption a ‘high-profit low-risk business’”.

Priya Tendulkar

Even in these bleak times, there are some who have refused to take the easy way out. Priya Tendulkar did it by resisting pressure to pay ‘speed money’. Recounting her experience, she says: “Some years ago, I was producing a serial for Doordarshan, the Indian national television channel. Regulations required separate approval for each episode. This was post-Rajni, so people knew me. I would go to the director at Mandi House (Doordarshan headquarters in

Delhi, India) and collect my approvals. Some officials who actually signed the documents tried to delay my work. They were unhappy that they could not extract anything from me for their labor. So they tried every trick to make me shell out. I remained firm on my resolve not to bribe. Then they sent a middleman to me who volunteered to solve my problems. I complained to the director who instructed that the man not be entertained any more. This middleman then took to making threatening calls from public phones in my locality, hurling the choicest of abuses.

“So you see, it is possible. We can contribute our bit by not being cowed down by the mean ways of small men.” Another person who stuck by his ideals even when the going got tough was Khairnar. Of his lifelong crusade against corruption, he says: “It is possible to be honest in a world rampant with corruption. Possible, but very, very difficult. Colleagues deprived of their share of ill-earned booty, make life difficult in the office. The honest officer also earns the ire of superiors who are themselves under tremendous pressure from political bosses. Memos may be sent. Inquiry committees bent on vindication may be ordered against the erring official and transfers may be affected. The officer may also find himself framed in a legal trap. Life

becomes difficult. Thus hated, isolated, and beaten, an honest man feels lonely and confused. What makes it a hard battle and an unfair one is the honest man’s inability to pay his legal bills. His scrupulous honesty pits him against powerful vested interests. He has to fight on his own.” He sums up his life in one sentence: “Today one does not have to be a revolutionary to create a storm. Being honest is enough.”

What makes these people virtually incorruptible? What gives them the conviction that we lack to swim against the tide? On being asked about what motivated him to set up Common Cause, H.D. Shourie says: “It had to be done and I did it. It is as simple as that.” There are others like Aresh Shirali for whom a corrupt choice is never the option: “I don’t even consider the possibility. If ever confronted with a proposition of unethical gains—and being an editor one does come across these—something akin to a ‘moral reflex’ comes into play. I also know that sticking with my morals has some constraints, for example, that I may never be very rich. But that is fine by me. I believe in the MAD logic, which stands for a Mutually Assured Destiny that we are all a part of. Everyone is connected with everyone else. Being corrupt and self-serving can only be termed as a shortsighted and irrational act.”

Hear 'corruption' and we either become extremely moral, lambasting all those who indulge in it, or we are resigned to it being a part of life. Just this once, let's make an effort to actually care, and more than that, to explore the avenues of action available to us.

Transparency International is a global organization that seeks to empower civil society to participate in efforts to fight corruption. Here are some ways advocated (and implemented) by this nonprofit organization with which we can make a difference:

PUBLIC DEBATE

Many of us may feel inhibited discussing corruption issues. To overcome this, we can generate a debate within our community, whether at home or at work, regarding the corrupt practices we come in contact with. Ask yourself and your friends why things seem to be going wrong, and how they might be corrected. Have brainstorming sessions to come up with ideas as to how systems can be made more transparent and accountable. Write letters to newspapers, but try to suggest improvements, not just complain about the way things are at present. It is small steps like these that snowball into movements that change society.

You can also join organizations like Common Cause and the Indian chapter of Transparency

International, which are committed to combating corruption.

DEMAND TRANSPARENCY

Groups are campaigning for access to official information. Once legalized, get information of, for example, small-scale development projects at the village level, take it into the villages, and inform the people there. They are the ones who know who has really been paid, and how much. At village meetings, officials may be asked to explain why the money has not gone where it should have, and can be shamed into changing their behavior in future.

BE A WHISTLEBLOWER

The most effective thing that individuals can do is to complain when they see corrupt acts occurring. This can be difficult when your superiors are the ones who are misbehaving! Make sure there is no innocent explanation of the activities you see happening because what less senior people see is not necessarily the whole story. You don't want to confront an honest boss with a complaint that they are corrupt! Yet unless people have the confidence to raise their concerns with people they trust and are in a position to do something about it, nothing is ever going to get better.

Initiate discussion, within your own organization and with your friends about how existing complaint mechanisms are working (or not),

and see whether there is room for any of you to take an initiative to improve them.

FORM AN 'INTEGRITY CIRCLE'

If you are working in a department with a reputation for corruption, form an 'integrity circle' with like-minded colleagues. Each member makes a pact with all the others that he/she will not be involved in corrupt activities and will support each other if anyone has any problems over this refusal. Declare your office a 'Corruption-free zone'. You may also put up signs saying 'Please do not offer bribes as we do not accept them' or 'Bribes are unnecessary-we are paid by the state to serve you'. Encourage friends in other departments to do the same. Inject a seed of integrity into the administrative body and see how effective it is. Get your managers' support for your endeavor in writing.

REMOVE TEMPTATION

When you see opportunities to remove unnecessary blockages in systems that serve no useful purpose but which create opportunities for bribes to be extorted from the public, write to ministers, MPs, MLAs, newspapers, drawing attention to the reforms needed.

BUILD NATIONAL INTEGRITY SYSTEMS

The National Chapters of Transparency International are building coalitions to strengthen

integrity systems in their countries. The framework for strengthening integrity systems is set out in TI's National Integrity Source Book. This describes practical reforms that can be taken in each sector of society.

This project also includes creating an international framework against corruption that will ensure that the agendas of international organizations give high priority to curbing corruption. Intergovernmental agreements are being developed to fight corruption in an internationally coordinated manner. Both the TI Secretariat and TI National Chapters around the world actively monitor the implementation of such agreements by the signatory countries. This includes monitoring international conventions concluded within the framework of the Council of Europe, the European Union and the Organization of American States.

Most anti-corruption drives or remedial measures taken are geared towards taking stringent steps to punish those who are corrupt or to instill fear in them. As Indian Election Commissioner T.S. Krishnamoorthy says: "I think the fear of detection is the most effective weapon we have against corruption. Singapore has ruthlessly enforced anti-corruption laws and that is what we too need to do. Doing this requires giving precedence to strength of character over everything else."

However, unless the decision comes from within the depths of one's being, true transformation is impossible. This is borne out by Kohlberg's theory of moral development, according to which moral conduct is based on the choice that we make when faced with a dilemma. This theory classifies conduct based on avoidance of punishment and deference to power at the lowest rung of moral development, called the 'pre-conventional level'. The highest rung is called the 'universal and ethical principle orientation' where 'right is defined by the decision of conscience in accord with self-chosen ethical principles appealing to logical comprehensiveness, universality and consistency'. These principles are abstract and ethical and are not concrete moral rules like the Ten Commandments. Essentially, these are universal principles of justice, of the equality of human rights, and of respect for the dignity of human beings as individual persons." This level of making choices may be achieved only after one does some serious and honest soul-searching. Let's do just that.

First of all, you and I need to get off our moral high horses and shake off the complacency that comes with 'dispassionate discussion' or, in other words, pointing fingers at others. Let's face it, that's what we have been doing for the past 3,500 odd words since

this article began. We have examined society and people, but what about our own selves? For every finger that we have pointed at politicians or bureaucrats or the government (or the babu in a certain daftar [office] counting soiled fifty rupee notes), four fingers have pointed right back at us. It is time to turn the light, and the microscope, inwards.

We might begin by asking ourselves: Am I incorruptible? If an opportunity comes my way, would I desist? It is easy to be a person of steadfast integrity until a temptation presents itself. What if... will I... may be... only if nobody got to know... only if I needed the money for something urgent... only if it were a life-and-death matter... Carry on.

Some of the answers might surprise you for you may not really be who you think you are. I, for one, discovered that although I might be impervious to the lure of lucre, I would not be averse to bribing my way through for a driving license. And this, when I believe both the giver and taker of the bribe to be equally guilty of corruption. Another young person who claimed a absolutely impeccable moral standards admitted to giving up a 'tip' to a clerk at a land records office. Getting rid of the kind of hypocrisy that keeps us from judging ourselves of what we believe to be incorrect in others may perhaps change the mindsets that let corruption fester.

SPIRITUAL GUIDE TO PROSPERITY

Do you think you never have enough, no matter how hard you work? You may have unconsciously fostered ‘poverty mentality’ in your life that will forever keep you imprisoned within a sense of lack, no matter how much you earn or how many material possessions you acquire. It may also be the point where the possibility of corruption first enters one’s life.

Roy Eugene Davis, a direct disciple of Paramahansa Yogananda, says in *Seven Lessons in Conscious Living*: “Every devotee of God should be prosperous.” He goes on to give some attitudinal changes following which one can live truly fulfilling lives:

✧ **When working or providing a service for which you will receive money, give value for value received. Ideally, the work you do or the service you perform should be enjoyable, in**

accordance with your skills and abilities and should have constructive effects.

✧ **Don’t spend money. To spend (Latin *expendere*, use up or consume) is to waste. Exchange the value that money represents for what you consider to be of value to you. Avoid buying nonessentials.**

✧ **Save a specific amount of what you have or earn. Invest it to earn more money for future use.**

✧ **On a regular schedule, freely yet thoughtfully give a portion of what you have or earn to responsible, well-managed endeavors which serve the public good and assist individuals in need.**

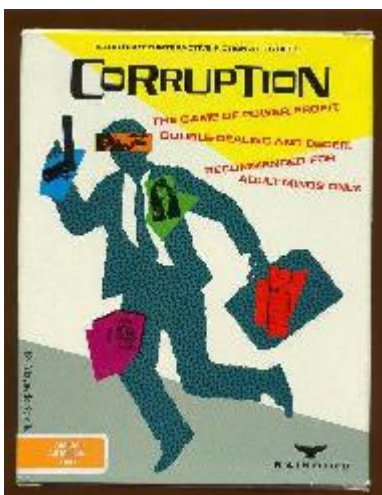
✧ **Give generously from your awareness of being**

prosperous and thankfully accept the abundance that life provides for you.

✧ **Avoid the beggarly attitude of thinking that you can, or need to bargain with God—that when you make a financial contribution to a worthy cause or volunteer your services you will receive in proportion to your giving or even an excess.**

✧ **Learn to be affluent-to always be in a continuous flow of resources and supportive events, circumstances and wholesome relationships for the highest good of yourself, others, the planet, and the universe.**

✧ **Transcend the idea of duality, which is the erroneous opinion that god is separate from you or anyone else in the world.**



Corruption is worse than prostitution . The latter might endanger morals of an individual former invariably endangers morals of the entire country
- **KARL KRAUS**



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**A MODEL OF CORRUPT BEHAVIOR
BY A PUBLIC OFFICIAL**

Let us assume :

- i) All individuals have identical utility functions.
- ii) All individuals have equal capabilities but skills and training may be unequal.
- iii) The public official maximizes his utility (function) which depends on his money and psychic incomes.
- iv) The official derives psychic income by practicing nepotism, and additional money income by practicing corruption.
- v) We assume people belonging to two groups: g and h. The official in this model belongs to group g.

The official's utility function is given by:
 $U = U \{Y_m, Y_s\}$
 Where : Y_m is money income, and Y_s is psychic income.

For a corrupt official : $Y_m = Y_e + Y_b^r - Y_b^p$

Where : Y_e is earned income/his salary Y_b^r is income received through bribes Y_b^p is income lost through paying bribes

And assuming Y_e is constant, and

$$Y_b^r = P_g W_g + P_h W_h$$

Where : P_g is illegal price charged to members of group g per unit of "favor",

P_h is illegal price charged to members of group h per unit of "favor",

and : W_g is total units of "favor" done to members of group g; and,

W_h is total units of "favor" done to members of group h.

And assuming :

$$Y_b^p = k Y_b^r \text{ Where } 0 \leq k \leq 1$$

$$Y_m = Y_e + Y_b^r - k Y_b^r = Y_e + (1-k) (P_g W_g + P_h W_h)$$

Further assume : $Y_s = \phi (W_g, W_h)$

Now the official maximize:

$$U = U \{ Y_e + (1-k)(P_g W_g + P_h W_h), W_g, W_h \}$$

$$\delta_u / \delta W_g = (1-k) P_g + U'_{wg} = 0$$

$$\delta_u / \delta W_h = (1-k) P_h + U'_{wh} = 0$$

Equating the marginal utilities derived from doing an extra unit of "favor" to the members of the groups g and h, i.e.,

$$\delta_u / \delta W_g = \delta_u / \delta W_h$$

$$\text{We get : } P_h = 1 / (1-k) (U'_{wg} - U'_{wh}) + P_g$$

Here U'_{wg} is marginal utility from psychic income the official derives by doing an additional unit of "favor" to members of group g; and since he belongs to this group we assume:

$$U'_{wg} \geq 0$$

Similarly U'_{wh} is marginal utility from psychic income associated with an

additional unit of “favor” to members of group h; and since the official does not belong to this group, we assume:

$$U'_{wh} \leq 0$$

Thus:

$$P_h > P_g$$

So he is likely to charge a higher price to members of group “h” as compared to group “g”. i.e., nepotism.

If $P_h = P_g > 0$, he is not discriminating between groups g and h, i.e., he is not practicing nepotism. But as long as P_h and/or P_g is greater than zero he is practicing corruption.



we will have to repent in this generation not merely for the hateful words and actions of bad people but also for the appalling silence of good people

Dr. Martin luther king



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MONEY LAUNDERING

“ Workshop on money laundering”, held by Criminology department, Madras University Chennai, on 19th November 2006, organized by Indian Society of Victimology.

Money Laundering is a silent menace which has acquired alarming dimensions not only in India but all over the world.

Though money laundering as an expression is one of fairly recent origin and started attracting attention only since the 80s and essentially in the context of drug trafficking, it has in fact been around for centuries. Criminals through out history have had to hide the source of newly acquired wealth in order to escape prosecution for the predicate crime. However, with increasing globalization, the scale of the problem has escalated out of all proportions with estimated more than 500 Billion dollars laundered annually worldwide. While, on the one hand this crime has acquired an alarming dimension, on the other, the general awareness about it remains very poor. If you were to conduct a survey in the streets asking the above question, the general response from most people would be that they had no idea. This typical response is one of the

problems the Government has in combating this type of crime. It seems to be a victimless crime. It has none of the drama associated with a robbery or any of the fear that violent crime imprints upon people's psyche and yet, money laundering can only take place after a predicate crime (such as robbery or housebreaking or drug dealing) has taken place. It is the lack of information about money laundering among the people, which make it an invisible problem and hence difficult to tackle. Hence the urgency to increase the awareness not only among the enforcement agencies but also among various stake holders including financial institutions and the public at large, who wittingly or unwittingly, become a party to this crime.

Money laundering is truly today a global phenomenon, helped by the international financial transactions, which is a 24 hrs a day business. When one financial center close business for the day another is

opening or open for business thus providing immense flexibility and adaptability to such operations. Besides, today's technology has provided a very sophisticated and circuitous means to convert ill gotten proceeds into legal tender and assets. The largely unchecked growth of internet presents what has been described as the “Armageddon scenario of banking on the Net-criminals could have money transferred without any audit trail”. The increasing integration of the world's financial system, as technology has improved and barriers to the free movement of capital have been reduced, has meant that money launderers can make use of this system to hide their ill-gotten gains. They are able to quickly move their criminally derived cash proceeds between national jurisdiction, complicating the task of tracing and confiscating these assets. There is a total absence of regulation of the Internet and hence unless there is a concerted effort world wide with

counter mechanisms keeping abreast of technology in order to understand and check on any new techniques that professional money launderers may come up with, any effort to control this menace would be in vain. All the characteristics of organized crime are evident in money laundering: These Characteristics define a very particular kind of serious criminal activity which, at its most developed, is highly sophisticated and complex. The degree of organization that is displayed in money laundering is therefore of particular concern because of its scale, its capacity to exploit and influence the legitimate business world and its capacity for internationalization. These concerns have led to concerted international action for a solution to combat this growing menace called Money Laundering. Governments all over

the world have come to recognize that if this menace is not checked in its track then criminal organizations, through the huge profits they earn from drugs, arms and human trafficking could contaminate and corrupt the structures of the state at all levels. Further, because of its very nature, it calls for close international co-operation and a number of agreements have been reached internationally in order to counter this problem. The G-7 Summit in Paris in 1989 constituted the Financial Action Task Force on Money Laundering (FATF), which after extensive study provided a comprehensive plan of action needed to fight against money laundering and issued a report containing a set of 40 Recommendations, which provide the basics for Anti money laundering structure for all the

member countries. However, integrating these universal guidelines into diverse legal systems and various political and economic structures is a difficult task. It calls for constant debate and adaptations.

In India the fight against this menace has just begun with the notification of PMLA in July 2005. There is long way to go for the enforcement and financial agencies before an effective check is put on it. It calls for a concerted and coordinated action on the part of all concerned. Investigation skills have to be developed and properly oriented to detect and bring the culprits to book. Proper mechanism for collecting and dissemination information to all concerned including the general public has to be evolved. And above all a general awareness about the danger it poses to the society has to be build.





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Ever since the human mind conceived the concept of money as a medium of exchange in trade as a replacement to the system of barter, money became essential to man to substitute necessities by luxuries as much as his greed replaced need and as a result man desired to accumulate wealth. Money laundering perhaps has its genesis in this desire. If creation of wealth is magnum opus, then spinning money must be de jure, the means.

Money vital for living is also, believed to provide social standing, pleasure, security and most importantly the materialistic comfort, so dear to man. Money is something generally accepted by people in exchange for the things they sell or the work they do. Gold and Silver were once the most common forms of money. Whereas, today money consists mainly of notes, credit cards, debentures, equity shares etc.

Wealth is a comprehensive term, whereas money is part and parcel

Vicious Cycle Of Money Laundering

among many forms of wealth such as gold, bonds, shares and many other immovable properties.

Money manifestly serves three important purposes. They are

1. *It is a medium of exchange.*
2. *It serves as a unit of account .*



3. *A store of wealth*

Whereas, discreet, swift and wise decision-making are the necessary conditions to generate money and thus wealth, lack of these qualities may invite disaster. Therefore, striking a balance between the legal



obligation while making money and circumvention of established law and procedure in order to gain wealth in

an unfair manner, money laundering seems to have been invented by the ingenious human mind.

Laundering generally mean a positive process of cleaning clothes, whereas money laundering is a negative process to subvert the legal objectives by moving the illegally acquired cash through financial system, so that it appears to be legally acquired.

Thus money laundering can safely be defined as the “dirty money” generated by criminal activities that are converted through legitimate business into assets that cannot be easily traced back to their illegal origins.

Some of the methods that are common in money laundering are,

1. Agency Commission: Quiet often corporate and businesses that engage in exports and imports are used to cleanup dirty money. Companies are allowed to pay commissions to market their products abroad. Previously the commission could not



exceed 12.5 percent of the value of exports. The RBI's permission was required to pay anything beyond that. The ceiling was opened after the foreign exchange regulation was changed to less stringent Foreign Exchange Management Act. The ceiling matters only while calculating the export incentives to be paid to the exporter.

It is said that some exporters now declare as much as 60 percent of the value of the exports as commission. Though it does not appear to make any business sense, exporters claim that they need to pay huge commissions to capture market, thus making an attempt to park funds abroad.

2. Diamond export and import: It is claimed to be one of the favourite methods of underworld. Even some of the established diamonds trading companies do it. The method is simple. Rough diamonds are imported free of duty on the condition that polished diamonds are exported. But some of the exports are faked. They also export semi-finished jewellery to their own firms' abroad and import them back at inflated value. The value of imports is parked abroad and legally none can find fault with it, a neat transfer of funds abroad indeed.

3. Foreign exchange Smuggling: The simplest method is physical smuggling of cash abroad. If one

brings in foreign currency more than 10,000 it has to be declared at the airport in a currency declaration form (CDF). Sometimes, no money comes in but a huge sum is declared in the currency declaration form (Thanks to those in authority for looking the other way!). This amount can be taken out of the country whenever, the person goes abroad, if questioned the currency declaration form is proof of the source of money.

4. Inflating Project Costs:

Several companies import duty-free machinery for projects at inflated value. The real cost of the machinery



is paid and the balance parked abroad, only to be laundered later.

5. Undervaluing imports and inflating exports:

Imports are brought in declaring less than they are worth, to pay less duty on them. To compensate for the difference, exports are inflated and money sent abroad to pay the supplier of imports. The rest is parked abroad.

6. Foreign Documents: Two sets of documents are prepared for

export of goods, one with less value and the other with inflated value. The one with inflated value is submitted locally to claim more export incentives and the other one is submitted at the port of destination to reduce import duty.

Earlier 'money laundering' was applied to financial transactions related to otherwise criminal activity. Today money laundering includes any financial transaction, which is not transparent and in conformity with law. Though the subject of money laundering is relatively obscure to most people, nevertheless it has a major impact on their lives-in the form of crime.

There are two reasons why criminals, whether drug traffickers, corporate embezzlers or corrupt public officials have to launder money. First, the money trail is evidence of their crime and the second; the money itself is vulnerable to seizure and has to be protected.

Money laundering is a dynamic three-stage process that requires,

- 1 Placement-moving the funds from direct association with the crime;
- 2 Layering-masking the trail to thwart the pursuit and,
- 3 Integration-making the money available to the criminal back again with its origins buried deep.

These three stages are generally referred to as placement, layering and integration.

The placement stage represents the initial entry of the funds into the financial system. Next to placement comes layering that usually consists of a series of transactions designed to conceal the origin of funds. This perhaps, is the most complex phase of the process and the most global in nature. The money launderer might begin by sending funds electronically from one country to another, then break them up into investments in advanced financial options or in overseas markets, moving them constantly to evade detection, each time hoping to exploit loopholes or discrepancies in legislation and delays in judicial or Police cooperation.

economy. Having been placed initially as cash and layered through a number of financial operations, the criminal proceeds are fully integrated into the financial system and can be used for any purpose.

The objective of any criminal act is to generate a profit for the individual or group that carries out the act. Thus money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of significant importance, as it enables the criminal to enjoy these profits without jeopardizing their source. Generally, money launderers tend to seek out countries or sectors in which there is low risk of detection due to weak or ineffective anti money laundering program, though

drug trafficking and prostitution rings are generating capacious amounts of money. Embezzlement, insider trading, bribery and computer fraud schemes also produce massive profits and induces the perpetrators to “legitimize” the ill-gotten gains through money laundering. Though the eradication of money laundering is a distant possibility, a loud thinking of its prevention and detection would go a long way in deterring the fast spreading crime.

Therefore, the possible social and political cost of money laundering, if left unchecked or dealt with ineffectively, will result in organized crime. It can infiltrate financial institutions, acquire large sectors of the economy through investment, or offer bribes to public and indeed governments, promoting large-scale corruption leading to the point of no return. The economic and political influence of criminal organizations can weaken the social fabric, collective ethical standards, and ultimately damage the democratic institution of the society.

In order to combat the growing menace of money laundering, measures to contain money laundering have been evolved by various countries. The anti-money laundering



The last stage of money laundering is termed the integration stage because it is at this point that the funds return fully assimilated into the legal

launderers may prefer to move funds through stable financial system.

Illegal arms sales, smuggling and the activities of organized crime, including

guidelines are far more stringent in countries such as USA while in India they are still in an infant stage.

India has passed “The Prevention of Money Laundering Act 2002” and subsequently, the act was

amended and the “The Prevention of Money Laundering (Amendment) Act, 2005” was enacted.



A Poem about Money

*Money can buy a House
But not a Home*

*It can buy a Bed
But not Sleep*

*It can buy a Clock
But not Time*

*It can buy you a Book
But not Knowledge*

*It can buy you a Position
But not Respect*

*It can buy you Medicine
But not Health*

*Money is essential for living
but peace and joy are hidden in sharing*

*let us endeavour to earn to live
and not waste our life by living to earn*



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**BRIEF PROFILE OF THE RIGHT TO
INFORMATION ACT 2005**

The Freedom of information Act 2002 (5 of 2003) has been repealed and “The right to information Act 2005” enacted by Parliament to provide for setting out the practical regime of right to information for citizen to secure access to information under the control of Public authorities in order to promote transparency and accountability in the working of every public authority and for such purpose central and state information commissions have been constituted. The bill passed in Lok Sabha on 11th May 2005 and received the assent of the President on 15.06.2005 and published in Gazette of India Extraordinary dated: 21.06.2005.

The provisions of such Section (1) of Section 4, Sub Section (1) and (2) of Section 5 Sections 12, 12, 15, 16, 24, 27, 28 shall come into force at once and the remaining provisions of this Act shall into force from 12.10.2005.

In accordance with Section 12 and

15 of this act, the Chief information Commissioner and other Central information Commissioners and the state chief information commissioner and other state information commissioners have been appointed by Central and state Government.

The State Chief Information Commissioner and two State Information Commissioners have been appointed by the Government of Tamil Nadu in G.O. Ms.No. 988 Public (Estt.1 & by) 7th October 2005 to exercise the powers conferred on and perform the functions assigned to under the Right to Information Act 2005.

These Central Public Information Officers or the State Public Information Officers appointed to provide information to person requesting for the information under this Act.

Every public authority attached to the office established under constitution, made by Parliament or by the State Legislature and Government and non-Government organization should maintain all its records on different systems so that access to such records is facilitated.

As per Section 6 of the said Act any person who wants to get any information from anyone of the referred

office, an application in writing has to be given to the Central public Information or State public Information Officer as the case may be of the concerned public authority for getting such information with a prescribed fee Rs. 50/- by cash or by demand draft or bankers cheque.

Such Fee is prescribed under the Tamil Nadu Right to Information (Fees) Rules 2005 published vide G.O. Ms.No. 989 public (Estt.1 & leg) with effect from 7th October 2005.

Further for providing information under Sub Section (1) of Section 7 of the Act, a fee shall be charged by way of cash against proper receipt or D.D. or Cheque as specified by Public Authority, at the rate of rupees two for each page created or copied to be furnished. Free copy of such information will be supplied to a person who are of below poverty line and determined by the appropriate government.

The Central or the State Public Information Officer as the case may be on receipt of a request by way of an application accompanying Rs. 50/- shall furnish the information required by the applicant within a period of

thirty days and where the information sought for concerns the life or liberty of a person the same shall be provided within Forty Eight hours of the receipt of the such request.

It is to be noted that the applicant making such request for information shall not be required to give any reason for requesting such information or any other personal details except those that they may be necessary for contacting him.

The concerned officer who received such application for furnishing information fails to give such information within 30 days, it shall be deemed to have refused the request.

The public authority need not furnish any information which would prejudicially affect the sovereignty and integrity of India etc. and other following matters.

For bidden to be published by any court of law etc.

Which would cause breach of privilege of Parliament or Assembly of the State.

Information received in confidence from foreign country.

Information which would endanger the life of any person.

Information which would humped the process of investigation or apprehension, or prosecution of offenders.

Cabinet papers, decision of counsel of Ministers etc. and other matters

specified by the Central or State Government as noted down in S.8 of the Act. And there shall not be any obligation for the public authority to give such information to the public.

The request made by the individual to the public authority for furnishing certain information has been rejected the reasons and the appeal time will be communicated to the applicant.

Any person who does not receive any reply from the public authority, regarding the information sought etc. within a specified period of 30 days he can prefer an appeal with in a period of 30 days to senior information officer.

In accordance with the provision of law under the Right to Information Act 2005, the Central and State Government shall by notification constitute the Central and State Information Commission to receive and enquire into a complaint from the aggrieved person.

Accordingly, the notification by the Government of Tamil Nadu vide G. O. Ms. No. 998 Public (Estt.1 and Leg) 7th October 2005 constituted the Tamil Nadu information commissioner to exercise the power conferred on and to perform the functions assigned to it and the said

commission shall consist of the State Chief Information Commissioner and two State Information Commissioners.

The Central or the State Information Commission as the case may be at the time of deciding any complaint an appeal is of the opinion, that the Central or the State Public Information Officer, who has refused the application for information and who has not furnished information within the specified period, the commission shall impose a penalty of Rs. 250/- on non furnishing of information for each day till the information is furnished to a maximum of Rs. 25, 000/- after affording reasonable opportunity to such public information officer who did the fault and such commission shall have and vested with the powers of civil court in conducting enquiry in this regard.

The Central and State Government may exempt certain departments from furnishing such information an individual as per Section 24. According Central Government has exempted the following departments such as I.B. RAW, DRI, NCB, BSF, NSG and other certain departments as mentioned in the second schedule of this from furnishing information to the public.

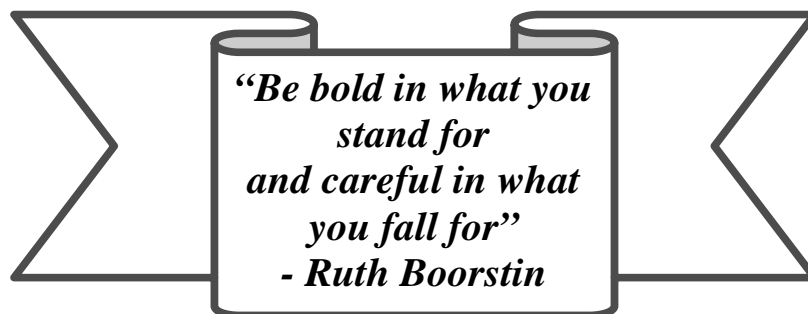
Similarly State Government can also certain department to furnish such in-

formation to a public accordingly u/s 24(4) of this Act exempted 29 departments from furnishing information vide G.O. Ms.No. 1042 public (Estt. 1 & Leg) 14th October 2005 such as SB CID, CB CID, SIT, VPC, NIB, CCIW-CID, CS-CID, and other department disclosed therein. Similarly

Home (Public. VII) Department and Home SC Department of Tamil Nadu have also been exempted from furnishing any details to the public. As per the existing Rules a person who wishes to inspect the records in State Government office, shall be allowed on free of cost for the first hour

and a fee of rupees five for each fifteen minutes thereafter.

The term of office and conditions of service of Chief Information Commissioner of Central and State, Removal of them from their service, the details functions of them have also been included in the Act.





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BACKGROUND

The right to information Act, 2005 is an Act which provides for setting out a practical regime of RTI for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority which includes the police. Democracy requires an informed citizenry and transparency of information which are vital to its functioning as also to contain corruption and to hold governments and their instruments accountable to the governed. Needless to say that police functioning in a democracy, especially in a multicultural, multiethnic, multilingual and multifaceted democracy such as ours, needs to be impartial, unbiased and sensitive towards all sections of the society in an accountable manner. The Right to Information Act, 2005, is a landmark legislation which has,

Right to Information Act and the Preparedness of Indian Police:

for the first time since independence, empowered the citizens and cast obligations upon those who govern and not those who are governed. However, revelation of information in such a free and easy manner is in actual practice likely to conflict with other public interests including efficient police investigations, intelligence operations and other such operations which so far have the privilege of confidentiality of information. It will therefore, be necessary to harmonize these conflicting interests.

It is in this context that “the preparedness of police to fulfill responsibilities under the right to information Act, 2005” is to be viewed and discussed. We shall have to be prepared for its proper implementation, namely by keeping in mind the following objectives:

Objectives of the Right to Information Act, 2005

1. To uphold the supremacy of democratic ideals.
2. To secure to the citizens access to information available with public authorities.
3. To promote transparency in public offices.

4. To contain corruption in public life.
5. To make working of public authorities accountable to the citizens.
6. To protect the vital interests of the state with regard to sovereignty & integrity of country.
7. To facilitate that the governance is carried out as per laws, rules, regulations & norms to serve public interests optimally.
8. To monitor optimum use of fiscal resources.
9. To constitute statutory Central Information Commission and State Information Commissions for proper enforcement of the Act.

PREPAREDNESS of the Police to implement the provisions of the Right to Information Act:

At present the pioneering efforts are in the offing in all the state police organizations and the intentions are to be as transparent as possible but the past liabilities of feudal system are still continuing with us and are stalling the progress to translate the Right to

Information Act as a ground reality. However to usher in a real democratic an accountable system in police the preparedness is to proceed on the following lines.

a) Police efforts to implement RTI Act.

1. Create proper awareness and evolve the right mindset for attitudinal changes of all policemen.
2. Preparation of training material, audio-visual materials, etc.
3. Pamphlets in regional language in question – answer format.
4. Inclusion of RTI Act in basic and professional courses in RTCs/PTCs/District and training courses at NPA.

b) Implementation of training programs

1. Workshop at district level.
2. Imparting knowledge at Police lines/PS levels.
3. Sensitizing Community Liaison Groups and Peace Committees.
4. Creating resource personnel for training.

C) Organizational changes

1. Carry our organizational changes in view of the Act.
2. Reviews of existing documents/ circulars to remove any inconsistency.

3. Review of departmental manuals, rules, regulations & systems in view of this Act;
4. Review of registers, documents maintained at various levels. To set up information cum implementation units at District/Sub-divisional/ P.S.levels.
5. Creation of Information-Hubs to disseminate required information.
6. Induction of information officers from organization's strength, fresh recruits or deputationists.
7. Monitoring of progress during inspection.

D) Accountability of the Police Officers/ Redefining of functional goals of Police:

- ★ Formulate meaningful and pragmatic Mission statement for the Department.
- ★ Frame well defined job chart for each and every official along with modalities of delegation of power to lower level functionaries.
- ★ Ensure that delegated powers are exercised prudently and on the principles of Justice and Fairplay.
- ★ Reduce levels in the hierarchy, make

administration officer-oriented with indication of accountability for each officer so that responsibility can be fixed on an individual.

★ Functional audit must be conducted for every level in the department.

★ Instead of post-audit, concurrent audit must be introduced to appraise performance continuously.

★ Audit should focus more on the output of a scheme, rather than on processes.

★ Citizens, charters must be introduced for critical items for all police functionaries in a time bound manner and head of the office must be made accountable for proper implementation of citizen's charters.

★ The police service must shift focus from being a provider and regulator to that of a facilitator.

★ Organizational should immediately outsource certain police activities.

★ All staff in the department must be trained on priority so that they know the purpose of their jobs in meeting their departments' goals and objectives.

★ Merger of schemes/ operations/practices that are similar in nature for efficient discharge of the official objectives.

★ Abolition of schemes/ operations/practices that have outlived their utility.

Redressal of Grievances:

★ Fix responsibility for each task, which is possible if the hierarchical levels are reduced.

★ Appoint grievance redressal officers at various levels and accordingly give publicity.

★ Change the language of various application/input forms to make them citizen friendly.

★ Train officials in grievance redressal, courtesy in talking to petitioners.

★ All grievances must be computerized.

Transparency and Right to Information:

Secrecy and lack of openness in official transactions generate scope for corruption besides being contrary to the spirit of accountable government. There is a need to ensure easy and widespread access of people to government operations and government decisions and performance of government except to the extent of specifically excluded

by law, as envisaged in the Central and State laws for right to information. Electronic governance is seen as not only contributing to greater efficiency of government but also the transparency of its operation and people’s empowerment. Three specific measures envisaged in this area are:

★ Early operationalization of the state legislation on Right to Information by department - level instructions on suo-motto release of information and response to requests for information, effective record management, amendment to laws and rules contrary to the information law and training of information officers;

★ Strengthening the functioning of Information and Facilitation Counters and Community Information Centers through process re-engineering, computer facilities, connectivity by LAN and WAN and empowerment of counter staff, and

★ Piloting process engineering and electronic governance in areas critical for police working and major areas of service delivery at cutting –

edge – level, decision making, prevention and detection of crime, Police records and citizen interface with Police including redressal of citizen’s grievances.

Suggestions

- Comprehensive study of RTI Acts enacted by states;
- Scanning court judgments in cases related to RTI
- Notification for inclusion in Schedule-II

- ⊙ State Special Branch
- ⊙ CID (Criminal Intelligence)
- ⊙ Armed Units
- ⊙ State Bureau of Economic Offences
- ⊙ Facilitate NGOs for accessing information.
- Promoting portals and Information-Hubs.
- Notifying agencies to assist citizens, like oath commissioners or stamp vendors, involvement of NGOs (CLGs) for their self-governance.

Conclusion:

Consensus was reached that if we proceed in these ways, we shall be prepared enough to usher in a period of transparent and accountable Police Administration sensitive to the aspirations to the aspirations of the common people of our changing society.



YOUR FEED BACK

Which article(s) in this issue impressed you most and why?

What issues/topics do you suggest to be included in the Review?

General Suggestions (If Any)

Send your feed back to : SRILAKSHMI PRASAAD, IPS,
Inspector General of Police/
Director, SCRB, Chennai-28.
E-mail : cidreview_tn@yahoo.co.in

Name :

Designation :

Place :