INDIAN JOURNAL OF LAW, POLITY AND ADMINISTRATION

GOOD GOVERNANCE, CORRUPTION FREE ADMINISTRATION AND TRANSPARENCY: AN APPRAISAL

***Saurabh Sinha**

The proper function of a government is to make it easy for the people to do good and difficult for them to do evil: Gladstone

An essential requisite of a progressive society is the quality of life the subjects enjoy. This would,

inter-alia, depend upon the relationship between the ruling elite and the citizens, the services which they can avail of, the extent to which they can participate in the decision making and policy formulation process and the level to which they can make the elected representatives accountable and transparent. All these in a nutshell would be circumscribed within the precincts of governance.

Governance and administration as a holistic and multi-faceted term would, besides the above mentioned attributes includes the rectitude with which decisions are taken, the swiftness and fairness with which administrative actions are performed and the transparency and accountability which is reflected in the legal and regulatory framework and policy formulation.

It would also include the relations between the three wings of governance viz. the political executive, the administration and the judicial system, the ease with which they can harmonize and co-ordinate with each other without in any way undermining or unduly trespassing each other's legitimate authority. A good governing system would also include the extent to which it can inspire the confidence of the people.

Good Governance signifies the way an administration improves the standard of living of the members of its society by creating and making available the basic amenities of life; providing its people security and the opportunity to better their lot; instill hope in their heart for a promising future; providing, on an equitable basis, access to opportunities for personal growth; affording participation and capacity to influence, in the decision making in public affairs; sustaining a responsive judicial system which dispenses justice on merits in a fair,

unbiased and meaningful manner; and maintaining accountability and honesty in each wing or functionary of the Government. [1]

Good Governance has major characteristics like participation, rule of law, transparency, responsiveness, equity and inclusiveness, effectiveness, efficiency, accountability and strategic vision and consensus orientation. It assures that corruption is minimized; the voices of the most vulnerable in the society are heard in decision making and implementation. It is also responsible to the present and future needs of the society, balancing between growth and distribution, present and future resource use. [2]

A good, agile and efficient system would thus only be possible when there is smooth functioning/sailing of the attributes which make it efficacious. Each aspect would have to be dealt with separately to improve the governing system of a nation.

Various government forms have been pervasive across the lengths and breadths of the globe which determine the class, character, composition, quality of life of the subjects, their relationship with the government as well as the progress and development of the society, it would to a larger extent depend upon the form and class of governing system which is being followed to run the state and the purpose of the ruling elite in running it.

Every government runs on some basic premise of performing the legislative, administrative and judicial functions. The manner in which they are furthered depends upon the form of government and determines the character of the state. The archaic and traditional forms are those where the aim is to govern for self interests by the ruling elite and the rules, laws and regulations made are thus for maximizing profits. This form of government is mainly authoritarian in character and mainly of four type's viz. Aristocracy, ideocracy, monarchy and theocracy.

The character and nature of governance and the laws and rules framed there-under are thus for maximizing profits, restricting human activity, curbing freedom, pursuing religious and ideological beliefs and maintain political power. Self interests thus override larger public

---

* Independent Research Scholar in Delhi/NCR. Worked with Dr. Arun Mohan, Senior Advocate, Supreme Court as a research scholar for his book 'Justice, Courts and Delays' (2012-2017)

[1] In Role of Judiciary in Good Governance: Justice Y.K. Sabbharwal, Chief Justice of India pg 3.

[2] In Ushering in Transparency for Good Governance- V.K.Parigi, Workstream Leader (Accountable Workstream), Centre for Good Governance, Hyderabad, pg 2

welfare. Governance in these systems thus lacks innovation and the development is restricted and overshadowed by ideologies, personal interests and profligatic tendencies. It is not desirable to have aristocratic government with the above mentioned attributes.

Neither it is wise to imagine a state of pantisocracy. An essential quality of good governance is participative governance i.e. participation of the citizens in the governing process. A balanced approach to developmental governance would require fairness, transparency and accountability. All these attributes to a larger extent is reflected in democracy.

A nation can only prosper and develop when the basic attributes on which it hinges is based on openness, efficiency, fairness and accountability. The citizens have a sense of belonging to the state and a feeling of duty and service towards the society and correspondingly the government has a moral and legal responsibility of fulfilling the aspirations and ambitions of the citizenry, an essential requirement of good governance.

This would only be possible when the legislative, administrative and judicial functions are done most efficiently and honestly, there is better co-ordination between the three wings of governance without in any way compromising with the indispensable independence hampering in any way the functioning of any wing. This should be complemented by an activist role by the citizenry/civil society who should have a say in the governance as it is they who have selected the elected representatives and in a democracy people are supreme.

As observed by Montesquieu in The Spirit of The Laws *"When the body of the people is possessed of the Supreme Power, it is called democracy"*. Kant in the science of right has said *"It is in the people that the Supreme Power originally resides, and it is accordingly from this power that all the rights of individual citizens as mere subjects, and especially as officials of the state, must be derived.*

When these foundations become weak, there is undermining of the rule of law and social development becomes a fallacy. Since democracy reflects the will of the people who have chosen their representatives, it is their will that is representative of a true democracy. Legislators make laws; laws reflect the will of the people and should serve their best interests. Problems crop up in society and are to a considerable extent mitigated by legislation.

Laws provide people with their rights, give them the freedoms and also impose sanctions to maintain orderly conduct in society. Law making is a meticulous task which requires special skill and expertise. Since laws are made for people, it is they who in a real sense are in a position to understand the nature of their problems. When the laws fail to fulfill the aspirations of people and mitigate their sufferings, the legislators in turn enact more laws equally flawed which end up in chaos.

Law making should thus fulfill the following requirements:-

1. Competency of persons making the laws.
2. People's participation in law making
3. Laws serving best interests and not a hogwash.
4. Enactment by understanding the nature of problem (not creating multiple laws)

Social problems that crop up in a society are of a diverse nature and hence there are different laws to effectively deal with different types of problems. In order to ensure least ambiguity and maximum perfection in law making, it should reflect the voice of those who have to extract the benefit from the legislation.

No law can fulfill all requirements at one go as the structure and societal conditions keep changing with the progress and development of society and hence the need for amendment arises. Amendment process becomes necessary because of the following reasons:

1. When habits preferences and way of thinking (outlook/perception) of people towards society changes and becomes more progressive which gives rise to legal complexities which were not in existence when framing/enacting laws on the subject e.g. laws relating to family, marriage, inheritance and adoption are personal and religion specific. Every marriage solemnized under personal laws is done under a set of legal and codified rules. In India for example The Hindus are governed by the Hindu Marriage Act, 1955, Christians by the Indian Christian Marriage Act, 1872 and Parsis by the Parsi Marriage and Divorce Act, 1936. But with the progress of society when people of different communities started living together without solemnization under personal laws, the problem of divorce and inheritance cropped up. In the Indian context of governance it was done by judicial legislation by filling the vacuum created by the legislature with the Supreme Court of India broadening the definition

of marriage to include live-in partners within the purview of marriage. Chanmuniya Vs. Virendra Kumar Kushwaha [3] The Parliament also enacted The Protection of Women from Domestic Violence Act in 2005 which also covers relationship in the nature of marriage under the definition of Domestic Relationship.

2. When laws need amendment because of technological developments and advancements. Forgery and stealing money was earlier only possible only physically but technological advancements and the advent of computers and technology gave altogether a new dimension to fraud with cyber fraud including financial transaction, identity theft, hacking and online defamation taking centre stage. Laws were amended and also new legislations were enacted to fill the void.

The laws in the former cases were enacted/amended out of exigency. But when laws fail to fulfill their purpose it may be because of a host of reasons:

1. When legislation is done to pamper mob anger over certain situation which has arisen as a knee jerk reaction and the need for legislation was not carefully analyzed.
2. When laws are made only for pursuing the policy of appeasement and the provisions thereof are so vaguely worded and loosely made for extraneous considerations and vested interests that if fails to fulfill the purpose.
3. When legislators legislate only as hogwash and the contents of the statute are such as to insulate themselves from the clutches of laws or when multiple laws are created on a single subject wherein only one could have served the purpose just to create a false and illusory impression of enactment for the benefit of society.

The following four situations though per se may seem independent are finely interlinked. In respect of governance in India these circumstances assume all the more importance. India with a multi-cultural, multi-ethnic composition representing the diverse one billion plus population has multiple laws to cater to the needs and the problems of the subjects. Since democracy represents the will of the people which otherwise means getting rights and justice reflected through the prism of legislation, it should be able to channelise their voice and ameliorate their sufferings rather than multiplying them.

[3] 2011 1 SCC 141

Article 38 of the Constitution of India contains the directive principles. These are the directive to the government which shall be followed for the welfare of the people. It says:

Art 38: **State to secure a social order for the promotion of the welfare of the people-**

1. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economical and political shall inform all the institutions of the national life.
2. The State shall, in particular, strive to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also among groups of people residing in different areas or engaged different vocations.

For pursuing the avowed objectives through the means of legislations, there have been followed policies and programs which have widened the chasm between communities.

When legislation is loosely worded or when the provisions of a statute or the Constitution are blatantly misread or misinterpreted for extraneous considerations, that open the doors for judicial legislation or interpretation not otherwise warranted. The role of the judiciary in governance should be confined to strict construction of laws and constitutional ethos and not setting right the deliberate follies and legislative void and vacuum created by the legislature in law making.

For fulfilling the objectives of social justice as given in Article 38 of the Constitution of India there have been followed since the inception of the Constitution policies which have given rise to spate of litigation before the Supreme Court of India. For promoting the interests of the weaker sections, the poor, the marginalized and the downtrodden, the State has been following the policies of reservation in their favor in higher educational institutions and also in public employment including promotions. The state has reserved seats for them by lowering the qualifying marks for admission to educational institutions and also in public service for employment for their upliftment.

Article 15 of the Constitution of India provides for prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. However, clause (4) of the said article inserted by the Constitution (First Amendment) Act, 1951 w.e.f. 18-06-1971 carved an exception and gave the state the power to make special provisions for the advancement of any socially or educationally backward classes of citizens or for the Schedule Castes or Schedule Tribes. Clause (5) gave the State the power to make special provisions relating to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30 [Right of Minorities to establish and administer educational institutions].

Similarly Article 16 of the Constitution of India provides for **Equality of opportunity in matters of public employment.** However, clause 4 and 4A (inserted by the Constitution seventy-seventh Act, 1995) w.e.f. 17-06-1995 gives the State the power to make provisions for the reservation or appointments in favor of any backward class of citizens including provision for reservation in promotion for any backward class or Schedule Caste or Schedule Tribe.

The Parliament of India also enacted The Central Educational Institutions (Reservation in Admission) Act, 2006 pursuant to Constitution 93rd Amendment Act, 2005 insert clause (5) in article 15 mandating the state to make special provision by law, for the advancement of any socially and educationally backward classes of citizens or the Schedule castes or the schedule tribes which aims to provide for reservation in admission of the students belonging to the Scheduled Castes, the Scheduled Tribes and other backward classes of citizens, to certain Central Educational Institutions established, maintained or aided by the Central Government.

The amendment of the constitution and the enactment was challenged in Ashok Kumar Thakur vs. Union of India[4]. However, The Supreme Court upheld the validity as the Act covered only central educational institutions.

The carved out exceptions to the above mentioned articles have been used as a tool not for ameliorating the lot of the backward classes but adding more and more castes and sub-castes within the purview of backward classes to retain power. This has placed the governance in

[4] 2008 4 SCR 1

direct confrontation with a majority of the section of the population giving rise to a spate of litigation before the Supreme Court of India for the protection of their fundamental rights under Article 14 [Equality before Law] and Article 32 [Remedies for enforcement of rights conferred by Part III (Fundamental Rights) of the Constitution of India]- Right to Constitutional Remedies which goes against the tenets of the Constitution as well as the doctrine of equality.

The Constitution 103rd Amendment Act by which Articles 15 and 16 were amended to provide reservation benefits to the economically weaker sections in educational institutions and employment recently is only a step further in this direction.

Engineering equality in an unequal society through instrumentalities of law and justice is a delicate task which has lead to differences between the legislature and the judiciary, a series of constitutional amendments and occasional social conflicts. There is a need for political parties to understand the limits and dynamics of affirmative action if they were to act as agents of social change. The legislative treatment of equality has been a consistent policy of expanding the eligible categories for reservation and enhancing the percentage of reservation inviting judicial interventions.[5]

Intentional enactment of a loosely worded/made statute is an offshoot of the policy of appeasement of different sections of the society and is compounded by different pressure groups/lobbyists who also serve as potential vote-banks for power retention by the governance and making them behave against the larger national interests.

Justice O. Chinappa Reddy in K.C. Vasanth Kumar vs State of Karnataka[6] has rightly observed: "Over three decades have passed since we promised ourselves justice, social, economic and political and equality of status and opportunity. Yet, even today, we find members of castes, communities, classes or by whatever you may describe them, jockeying for position, trying to elbow each other out, and, vying with one another to be named and recognized as socially and educationally backward classes, to qualify for the 'privilege' of the special provision for advancement and the provision for reservation that may be made under Articles 15 (4) and 16 (4) of the Constitution. The paradox of the system of reservation is that

[5] Equality beyond reservation: The Case for an Equal Opportunity Commission- Prof N.R.Madhava Menon In Jindal Global Law Review Volume 1, September 2009

[6] AIR 1985 SC 1495

it has engendered a spirit of self-denigration among the people. Nowhere else in the world do castes, classes or communities queue up for gaining the backward status? Nowhere else in the world is there competition to assert backwardness and to claim we are more backward than you."

A more pragmatic approach for mitigating the lot of the have-nots would have been to provide them equal opportunities by giving them facilities of books, infrastructure, and educational facilities not only at the elementary level (The Parliament of India has enacted The Right of Children to Free and Compulsory Education Act, 2009) which seeks to provide free and compulsory education to all children in the age group of six to fourteen years.

The statute has been enacted pursuant to insertion of Article 21-A (Right to Education) in Part III (Fundamental Rights) of the Constitution of India vide. the Constitution 86th Amendment Act, 2002. w.e.f. 1-04-2010, but also at the higher educational level and public employment by giving them an opportunity to compete on merit with other candidates and not by hampering their efficiency by lowering the qualifying marks for matters connected with education or employment.

In Dr. Jagdish Saran and Others vs. Union of India [7] in paragraph 21,22 and 23 Justice V.R. Krishna Iyer of the Supreme Court of India spoke about reservation as *wholesale banishment of proven ability to open up, hopefully, some dalit talent, total sacrifice of excellence at the altar of equalization-when the Constitution mandates for everyone equality before and equal protection of the law- may be fatal folly, self defeating educational technology and anti national if made a routine rule of State policy. The Supreme Court of India also observed that if equality of opportunity for every other person in the country is the constitutional guarantee, merit must be the test when choosing the best.*

When fundamentally flawed legislative policies override genuine concerns like these, the larger national interests are held hostage by narrow and parochial considerations which becomes the very antithesis of democracy.

[7] 1980 2 SCC 768

Multiple legislations are created because of a number of reasons:

1. As mentioned earlier, the first reason is pursuing the policy of appeasement where for vested interests of assuaging the voice of the few, the larger national interests are compromised.
2. When certain provisions of an existing law are sufficient to tackle a situation/problem, but a special a statute is created on that subject without being aware of the existing provisions or overlooking the provision as a result of which the statute becomes redundant with the passage of time. The Indian Penal Code [IPC] was enacted in the year 1860; section 294 of the code prohibits recitation of obscene songs and acts in public.

Section 294: Obscene Acts and songs- Whoever, to the annoyance of others-

(a) does any obscene act in public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

Shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Another statute, The Dramatic Performances Act was enacted in the year 1876, which empowered the government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene. Section 9 of the Act says- No conviction under this Act shall bar a prosecution under section 124A [Sedition] or section 294 of the Indian Penal Code, 1860.

The provisions of the Dramatic Performances Act, 1876 were sufficiently covered by section 294 IPC. However, this special statute was created in 1876, the provisions of which are rarely used and all convictions are done under section 294 of the Indian Penal Code only. The statute has become defunct. Many states have disbanded the Act and the Government of India is also considering for its repeal.

There is a need to create a central repository of all laws with the same subject matter are compiled in a separate title. This would be akin to the United States Code (USCo) and Code of Federal Regulations (CFR).

3. When laws are made as knee jerk reaction to some event or to cool down inflated emotions, sparked from the event the purpose otherwise of which is to avert the imminent danger or to subside the event. The provisions of legislation in this case are framed in such a way as to insulate or protect the very people for whom it is made in other words the legislation though per se may seem effective is in real sense illusory.

When a law designer creates a bill that delivers a benefit to a special interest but imposes a net burden on the citizens as a whole, that designer must take special pains to conceal both the true intent of the bill and the burdens it imposes on the public.[8]

Corruption is a global phenomenon which hampers the development and the foundations of a successful state.

Fighting corruption requires a clear, complete and coherent strategy, and the strategy must include three elements;

1. Effective enforcement of the laws
2. Prevention of corruption by eliminating from systems, large and small, the opportunities for corruption;
3. Educating the public about corruption and persuading people to help fight it.

There must be strong laws comprising clear offences that reflect the values of the community, effective powers of investigation and rules of evidence that assist the proper prosecution of those charged with corruption offences. [9]

India has witnessed a wave of anti-corruption movements which stemmed from the frustration of the citizens owing to rampant corruption in governance, especially among the high and mighty and those occupying powerful positions including the legislators or parliamentarians who had amassed huge wealth through corrupt means and against whom criminal cases were pending.

There is no dearth of anti-corruption legislations in India or of investigating agencies which can investigate offences against corruption. The only things lacking are an implementation strategy and a lack of willingness on the part of the governance to improve the scenario. This

[8] The End of Chaos- Quality Laws and the Ascendancy of Democracy: David G. Schrunk. Edition 2005, Pg. 33
[9] In Overcoming Corruption: The Essentials- Bertrand de Speville pg 17

again has been made complex by multiple number of legislations whenever a wave of anti-corruption swept the country.

The Central Bureau of Investigation [CBI] is India's Premier Investigation Agency to conduct the entire investigation of charges and potential violations of the law against members of the executive and the Prosecution is handled by CBI's Directorate of Prosecution.

The Central Bureau of Investigation (CBI) was established vide Resolution No. 4/31/61-T dated 1st April, 1963 of the Ministry of Home Affairs, Government of India, which reads as follows:

"The Government of India have had under consideration the establishment of a Central Bureau of Investigation for the Investigation of Crimes at present handled by the Delhi Special Police Establishment, including specially important cases under the Defence of India Act and Rules particularly of hoarding, black-marketing and profiteering in essential commodities, which may have repercussions and ramifications, in several states: the collection of intelligence relating to Several types of crimes participation in the role of the National Central Bureau connected with the International Criminal Police Organization; the maintenance of Crime Statistics and dissemination of information relating to crime and criminals; the study of specialized crime of particular interest to the Government of India or crimes having all India or interstate ramifications or of particular importance from the social point of view; the conduct of police research; and the co-ordination of laws relating to crime".

Under the resolution that created CBI in 1963, CBI is a successor organization of Delhi Special Police Establishment (DSPE) with an enlarged charter of functions.[10] With the establishment of CBI, the Delhi Special Police Establishment was made one of its divisions. CBI, therefore, conducts investigation of crimes hitherto by the Delhi Special Police Establishment and other crimes and offences notified by the Central Government (section 3, Delhi Special Police Establishment Act). However, the legal powers of CBI continue to be derived from the Delhi Special Police Establishment Act, 1946 and CBI statutory status. Thus

[10] In Strengthening the Nation's Prosecutorial Abilities: Kartikeya Tanna 2011 6 SCC

CBI continues to be under the Central Government, Ministry of Home Affairs as per section 4 of the Delhi Special Police Establishment Act.

It comprises the following divisions:

1. Anti-corruption division
2. Special Crimes Division
3. Economic Offences Division
4. Directorate of Prosecution (Legal Division)
5. Policy and Co-ordination Division
6. Administration and Training Division
7. Central Forensic Science Laboratory

The problem cropped up when the uncanny control of CBI by the Central Government was highlighted in a landmark judgment of the Supreme Court of India in Vineet Narain vs. Union of India[11] which highlighted an unholy nexus between politicians, bureaucrats and criminals in fuelling terrorist activities and financial irregularities and dealing in illegal money through hawala channels. The failure on the part of the CBI to investigate high ranking officials and politicians compelled the citizenry to file a writ petition under Article 32 of the Constitution of India for appropriate directions.

The Court noted that the general superintendence of the functioning of the Department and specification of the offences which are to be investigated by the agency is not the same and would not include within it the control of the initiation and the actual process of investigation i.e. direction.

Once the jurisdiction was conferred on CBI to investigate an offence via notification under section 3 of the Delhi Special Police Establishment Act, 1946 the powers of investigation could not be curtailed by any executive action.[12] Pursuant to the directions of the Supreme Court of India in Vineet Narain case the Central Government created the Central Vigilance Commission Act, 2003 and accorded it statutory status.

[11] 1998 1 SCC 226
[12] In Assessing the Nation's Prosecutorial Abilities: Kartikeya Tanna 2011 6 SCC

The judgment transferred the superintendence over the CBI from the Government to the Central Vigilance Commission (CVC). It said that the selection for the post of CBI Director should be made by a committee headed by the Central Vigilance Commissioner with the Union Home Secretary and Secretary (Personnel) as members, the CBI Director should have a minimum tenure of two years irrespective of the date of superannuation and the CBI Director would no longer be required to obtain permission from the government before investigating allegations against the rank of joint secretary.

The investigation of the offences under the Prevention of Corruption Act which was enacted in the year 1988 also vested in the Central Vigilance Commission. None of these directives were implemented honestly. Control over the CBI was not fully transferred. The CVC Act resulted in a system of dual control over the CBI one exercised by the CVC in respect of corruption cases and the other and the other by the Central Government in respect of other cases.

The Control of CBI remained with the Central Government as per section 4 of the Delhi establishment Act, 1946. The government always succeeded in selecting its own man to head the organization as all the three officers who constitute the committee to select CBI Director are bureaucrats who are generally willing to toe the line of political executive to avert a clash with them and also to protect their own interests.

A proviso to section 8 of the Central Vigilance Commission Act, 2003 expressly spelled out that CVC shall not exercise its power of superintendence in a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner.

These multiple numbers of legislations enacted in India during different times to tackle corruption for different classes of officers seemed more of eyewash which seemed to insulate the higher echelons rather than punish them. Moreover, the legislations and the provisions thereof nowhere dealt with the politicians involved in corruption and with criminal antecedents.

It is because of these loosely worded and half baked statues for various reasons that the Constitutional validity of section 6-A of the Delhi Special Police Establishment Act, 1946

[DSPE] was again challenged in Dr. Subramanian Swamy vs. Director Central Bureau of Investigation and Others Writ Petition (Civil) No 38 of 1997.

Section 6-A of the DSPE required the approval of central government to conduct inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988.

The Supreme Court in its judgment pronounced on May 06,2014 held: *"We hold that section 6-A(1), which requires approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed under the PC Act, 1988 where such allegations relates to (a) the employees of the Central Government of the level of joint secretary or above and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, government companies, societies, or local authorities owned or controlled by the Government, is invalid and violative of Article 14 of the Constitution. As a necessary corollary, the provisions contained in section 26 (c) of the Act 45 of 2003 to that extent is also declared invalid.*

The problem of corruption thus could not be rooted out and in a sense exacerbated. India witnessed a massive anti-corruption movement in 2012 led by anti-corruption crusader Anna Hazare who pressed for the enactment of a Lokpal (Ombudsman) Bill the demand for which had been going on since 1963.

The Parliament of India enacted the Lokpal and Lokayuktas Act, 2013 which came into effect from 01-01-2014 and aims to establish an institution of Lokpal headed by a former Chief Justice of India and eight other members' fifty percent of whom shall be judicial members. The Lokpal shall have its own prosecution wing (section 12) and shall investigate cases of corruption against Ministers, members of Parliament and all Group A, B, C, D level officials and equivalent as defined in the Prevention of Corruption Act, 1988.

The problem of corruption cannot be solved with enacting legislation every time a demand for eliminating corruption crops up. No matter how many anti-corruption legislations are enacted, the malaise of corruption cannot be rooted out unless there is a strong willingness on the part of the governance to eliminate the same.

Instead of creating legislation every time a problem crops up, there is an imperative requirement to strengthen the already available institutional mechanisms giving them more teeth?

The enactment of Lokpal and many other anti-corruption legislations would not have been required had the CBI been made truly and earnestly independent and would have been given powers to investigate cases of corruption against all officers serving under the Union and States and also the Ministers and Members of Parliament and State Legislative Assemblies.

The irony is that the politicians when in opposition decry the political misuse of the agency but once in office cheerfully Lord over CBI.

Institutional independence is a sine-qua-non for the proper functioning of democracy. Ironically, presently all constitutional and statutory institutions/bodies and persons manning them become pliable and feel compelled to obey the commands of their appointees to the extent which might hamper their independent functioning and may amount to interference.

Creating multiple agencies wherein one could have served the purpose may be termed as a skin saving exercise and to avert any potential danger that might result from a strictly worded statute.

These supposed toothless provisions of the Act or with sufficient loopholes paved the way for unwarranted judicial legislation.

In the democratic system of India the provisions regarding elections and of elected representatives are governed by the Representation of People's Act, 1951. Section 8 of the said act prescribes certain disqualifications for the elected representatives for being members of Parliament of India or the legislative assemblies of states.

Those convicted of certain offences under the Indian Penal Code, 1860 and various other laws in India including terrorism relate laws and the Prevention of Corruption Act, 1988 and sentenced to imprisonment of not less than six months faced disqualification upon such conviction and continued to be disqualified for a further period of six years since their release. Sub section 4 carved out an exception to the above mentioned section 8 and put a cap of three months from disqualification even on conviction. It even gave the members of Parliament and legislative assemblies of states to retain their membership if within the period

of three months they appealed against their conviction and shall continue to be members till the appeal is finally disposed off.

This otherwise vaguely framed section seemed to shield the elected representatives and provided immunity and enjoyment to legislators even with criminal background to retain their membership as all the convicted legislators appealed within the stipulated period of three months to retain their membership.

This legislative lacuna which could otherwise have been averted at the time of framing of the statute forced the judicial arm to step into the legislative realm when the Supreme Court of India in Lily Thomas vs. Union of India[13] struck down section 8 (4) of the Representation of People's Act as being unconstitutional and ultra vires the Constitution of India. The effect of the section was that while the legislators still retained the right to appeal they immediately ceased to be members of Parliament.

Laws having been properly framed, the next step is of their implementation which is chiefly the task of the administrative wing of the government viz. the bureaucracy or the civil servants. Since the work of the government is multi-farious and multi-faceted, delegation becomes a necessity.

The concept of a welfare state will lose its true meaning if there is no proper implementation of the policies and programs framed by the governance. When there is delegation of powers it has to be complemented by independence. Independence is a holistic term which means freedom to do work, to have a say in decision making and to have fairness in distribution of goods and services.

Independence in other words means a balance between fairness and transparency and procedure and the absence of arbitrariness. There should be a limited control on the independence in the realm of delegation of powers. Control should be exercised only in matters of overall general superintendence where arbitrariness is reflected per se and not in the day to day working, functioning and decision making.

Independence is curtailed in two ways:

1. By arbitrary and mala-fide actions for extraneous considerations.

[13] 2013 INSC 674

2. For gaining political mileage and holding power.

When arbitrariness becomes an unjustifiable roadblock en-route indispensable independence, an uncalled for burden is imposed on the governance and superfluous litigation ensues as for every wrong interference the court has to be moved for working with independence and enforcing the rights.

Police has the gargantuan task of maintenance of law and order as well as the investigation of crimes. This burden places enormous responsibility on the police to discharge the functions effectively. To tackle the problem of crime control and maintain law and order in general there should be independence in the working of the police.

If the monitoring of every crime is done by the political executive, it hampers efficiency and undermines good governance. In India, police comes under the overall supervision of ministry of home affairs. If for every action that the police takes, there is a fear looming large of suspension, termination or immediate transfer, it will disturb the overall efficacy of administration.

Also the decisions by the political masters in the overall working of the executive and administrative agencies are susceptible and vulnerable to political considerations, vote-bank politics and crave for power.

The control by the political executive over the administration also makes the administrative officers corrupt as owing tremendous pressure and in order to protect their own interests, they succumb to the unjustified decisions which would otherwise not have been taken.

In the federal character of India, the administrative and police officers are selected through competitive examinations for the Central Government and State Governments conducted by the Union and State Public Service Commissions mentioned in Articles 315[14] and section 320[15] of the Constitution of India.

It is overall imperative that the overall working and functioning of these officers, including transfers, promotions, postings and suspensions be monitored by Central and State Civil

[14] Public Service Commission for the Union and the States
[15] Functions of the Public Service Commissions

services boards to be manned by officers from these services without political interference. Only in case of gross administrative malfunctioning which results in miscarriage of justice and warrants no other action other than removal, should political executive be brought into the domain.

In January, 2019 the Supreme Court came to the rescue of these officers when it rejected the plea of Punjab, Kerala, Bihar, West Bengal and Haryana regarding modification of rules for appointment of Director General of Police (DGP's) which the Supreme Court had framed. In 2018, the SC had directed the states to send names of probable DGP's to the UPSC three months prior to the retirement of the incumbent DGP. The UPSC will prepare a panel of three names and send it back, taking into consideration merit and seniority.

This will not only improve overall efficiency but also lessen the burden on courts as the administration will not have to move the Court for every action taken to vindicate their stand. If the removal is malicious then the court can be moved.

Paragraph 15.1.3 of the Second Administrative Commission set by the Government of India in 2008 reads as follows:

"A healthy working relationship between Ministers and Civil Servants is critical for good governance. While the principles governing the roles and responsibilities of Ministers and civil servants are well defined in political theory, in the actual working of this relationship this division of responsibility becomes blurred with both sides often encroaching upon the others sphere of responsibility.

In any democracy, Ministers are responsible to people through parliament and therefore the civil servants have to be accountable to the minister. However, an impartial civil service is responsible not only to the government of the day but to the Constitution of the land to which they have taken an oath of loyalty. At the same time, implementing the policies of the duly elected government is a core function of civil servants. That is why the division of responsibility between the civil servants and ministers need to be more clearly defined. A framework in which responsibility and accountability is well defined would be useful.

Maintenance of law and order itself being a humongous task, the investigation wing of the police should be given to a separate investigative agency with specialized training in dealing with investigation of all types of crimes and scientific analysis of forensic evidence.

Another aspect/facet of good governance is the transparency in the working of the governance and administration. Transparency again is interlinked and interwoven with corruption, inefficiency and maladroitness. Transparency in general terms means fairness and rectitude in decision making, promptness in disposal of grievances and accountability for administrative actions.

A governing system/governance will be marred by opaqueness if it acts contrary to the above mentioned essential attributes. When corrupt practices eclipse fairness, rectitude and accountability, ineptness rules the roost and transparency is put on the backburner. The more transparent and accountable a governing system becomes, the less are the chances of confrontation with the subjects and lesser the number of grievances. When governance becomes accountable and fair, administration becomes smooth which in turn leads to development.

Accessing information through means of legislation when the governance has been suffering from the malaise of corruption, biasness, nepotism and inefficiency can play a key role in improving administration. To improve the scenario of governance in India plaguing from the above symptoms, the Parliament of India enacted The Right to Information Act, 2005. The Preamble of the Act mentions:

"An Act to provide for setting out the practical regime of right to information 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, the Constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto".

The Act has to a certain extent been able to usher in an arena of transparency and accountability and making the government accountable for its actions. The Act designates every public authority Central or State Public Information Officers (CPIO and SPIO) respectively who shall provide information to persons requesting for the same under the Act. Section 20 of the Act prescribes penalties in case the CPIO or SPIO refuses or gives incorrect

or misleading information and imposes a fine of two hundred rupees per day which shall not exceed twenty five thousand rupees. However, during the past two years there have been a few instances where persons who have exposed corruption in governance using Right to Information as a potent tool, have been brutally murdered for vested interests and oblique considerations.

To encounter this problem the Parliament of India enacted the Whistle Blower Protection Act, 2011 but despite its enactment, the threat to whistle blowers still looms large.

This again has been a case of legislative lacuna as the provision for protection of whistleblowers could have been incorporated in the Right to Information Act, 2005 itself by foreseeing a threat to their life and created the problem of multiplicity of legislations.

E-governance is also an important tool for promoting better governance. The second administrative reforms commission set up by the government set up by the government of India in 2008 in its 11th Report on E-governance quoting from the World Bank Report of 2008 has defined E-governance as follows:

"E-government refers to the use by the government agencies of information technologies (such as wide area networks, the internet and mobile computing) that have the ability to transform relations with citizens, business and other arms of government. These technologies can serve a variety of ends: better delivery of government services to the citizens, improved interactions with business and industry, citizen empowerment through access to information, or more efficient government management. The resulting benefits can be less corruption, increased transparency, greater convenience, revenue growth, and/or cost reductions".

E-governance also cuts red tapism, and ensures speedy delivery of services. Hence e-governance has become a potent tool for efficient service delivery.

Governance is a holistic concept which inter-alia includes combating corruption, redressing grievances, removing ineptness, enhancing administrative efficiency and overall improving the quality of life of citizens. It requires a strong willingness on the part of the governance to implement these measures. If they are implemented in true earnest, it will herald in a new era of good governance.

INDIAN JOURNAL OF LAW, POLITY AND ADMINISTRATION