

## A balancing Act

It is unfortunate that India has not been able to shed the image of a highly corrupt nation even after seven decades of Independence. The average Indian believes that he cannot get even the basic services to which he is entitled under the law without greasing the palms of one or more officials at the ground level. In the recent past, things have undoubtedly changed for the better — even if only marginally — when people try to obtain a passport, a driving licence, or a birth/death certificate. This is thanks to digitisation and the sensible pruning of prescribed procedures. The Centre and a few States deserve praise for taking some initiatives to reduce corruption. But this is small comfort. A lot more needs to be done before we can relax the fight against corruption among public servants.

It is against this backdrop that Parliament has passed the Prevention of Corruption (Amendment) Bill. At least one of the amendments, which mandates prior government approval of the Central or State government to initiate investigation into corruption charges, is bound to evoke negative reactions from large sections of the public.

Protection to government servants from arbitrary and unilateral action by anti-corruption agencies without prior permission from the government was earlier available only to the higher echelons, from the rank of Joint Secretary and above, before the Supreme Court struck down the so-called 'Single Directive'. The latest tweak extends this protection to all public servants.

This is welcome but ambitious. The new directive that requires prior approval at the preliminary inquiry stage as well as before the registration of a regular case carries many imponderables, especially the risks involved in delegating authority to order commencement of investigations under the Act.

Details of the expanded new procedure are not yet known. The Central Vigilance Commissioner may have to step in with some practical guidelines. The exercise involved here is enormous, given the size of India's bureaucracy and the entrenched sophistication of dishonest practices. If the sanctioning authority is itself dishonest, can you expect an objective application of mind?

We cannot fault anti-corruption agencies if they believe that this change in procedure would embolden dishonest government personnel. But this is debatable. Only the speed and honesty of administrative ministries while acting on requests for permission from the Central Bureau of Investigation (CBI), in particular, for initiating action against an erring official would give us an idea of the practical difficulties involved.

Another major change is the deletion of the whole of clause (d) of sub-section (1) of Section 13, which defines 'criminal misconduct' as the acquisition of a 'valuable thing' or 'pecuniary advantage' in a dishonest manner. The deleted clause was the sole effective weapon against a misbehaving senior official. This deletion (without substituting it with any other clause) is disappointing because corruption in high places is sophisticated and takes place in a highly clandestine manner.

A few experts believe that there is also a certain dilution of the definition of 'known sources of income' through the incorporation of the statement that this would include income received from any 'lawful source', an expression that has been left undefined. This is critical because of the misconception that as long as tax has been paid on income received from an undisclosed and illegitimate source, such income becomes lawful.

One reasonable apprehension is that where a public servant causes performance of a public duty which is improper and against prescribed rules and procedures, and there is no proof of a

transaction of bribery, he will go scot free. What if such improper performance is in lieu of future bribes or post-retirement jobs? There is a misgiving here that the latest amendments to Section 13(1) could be in conflict with the spirit of Article 19 of the United Nations Convention Against Corruption.

One of the welcome amendments widens the definition of criminal misconduct to include the bribe giver too. In the past, the bribe giver had enjoyed immunity and that helped perpetuate corruption. There is, of course, the proviso that a person who had been coerced into giving a bribe cannot be proceeded against. It is incumbent on his part to report such coercion to the authorities within a week of the incident.

The amendments include a stipulation for a day-to-day trial and completion of court proceedings within two years. Where this is not possible, the judge concerned will have to record reasons for prolongation of the trial and give himself an initial extension of six months. Given the overburdening of the judiciary, even fast-track courts may be unable to stick to this deadline.

It must be remembered that in handling misdemeanours of government officials, we are prone to committing excesses and ignoring human rights considerations. This is deleterious to the morale of public servants. The amendments are meant to balance overzealousness and apathy. As in the case of a common crime, we must consider whether conferring greater autonomy on investigating outfits, shortening trial procedures through mechanisms such as fast-track courts, and making penalties more stringent will introduce the much-needed deterrence to prospective offenders. It is an accepted criminal justice axiom that deterrence works only up to an extent; beyond the threshold, the incidence of crime only escalates. This is why there is support to the balanced stand that giving arbitrary and excessive authority to enforcement agencies could only lead to miscarriage of justice, without bringing about a corresponding reduction in criminal misconduct.

In sum, a totally negative perception of the Act may not be warranted. The primary objective of these amendments is to tone down law enforcement excesses without diluting the authority of agencies like the CBI; or, in other words, to strike a balance between enforcement overzealousness and the need for stringent action against corrupt public servants. With some civil servants complaining that they had been wronged for discharging their lawful duties, such a balance is the need of the hour.

However, all this does not answer the fundamental question of how to cleanse our public administration. Is there a flaw in the psyche of the average Indian which pushes him to pay a price for securing a service without having to wait for it? If yes, we are fighting a never-ending battle which has earned us painful ignominy in world forums.

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