

# Aptitude for Civil Services

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## Foundational Values for Civil Services

Integrity

Impartiality and Non Partisanship

Objectivity

Dedication to Public Service

Empathy, Tolerance and Compassion Towards Weaker Sections

## Importance of Emotional intelligence

1. They know how to motivate themselves. And motivation is often the biggest difference between success and failure. Even if they feel incredibly nervous before a big presentation, they have learnt to calm themselves and project an aura of confidence. When they are faced with obstructive people, they know when to hold their temper in check and when to lose it. They are aware of their own emotions and able to manage them.
2. It is the distinguishing factor that enables us to have wholesome, warm relationships rather than cold and distant contacts.

## Civil Service Values and Ethics in Public Administration

### Removal of Corruption / Ensuring Good Governance

#### *Factors Aggravating Corruption*

1. The colonial legacy of unchallenged authority and propensity to exercise power arbitrarily.
2. The enormous asymmetry of power in our society. It led to officers perceiving themselves as dispensing favors to citizens rather than serving them and given the abject poverty, illiteracy a culture of exaggerated deference to authority has become the norm.
3. Red tapism: The Indian state in the early decades after Independence chose a set of policies whose unintended consequence was to put the citizen at the mercy of the State. The relationship between state and citizens became that of a patron and beneficiaries. Over regulation bred corruption.
4. Over-centralization. The more remotely power is exercised from the people, the greater is the corruption.

#### *Actions Needed for Removal of Corruption*

1. Systematic review
  1. Promoting competition
    - It is generally recognized that monopoly and discretion increases corruption while competition and transparency reduces corruption.
    - As competition came in corruption decreased in many sectors such as

telephones, steel, cement, sugar, automobiles. Similarly, wherever technology and transparency have been introduced, corruption has been significantly contained. But it is not enough.

- All government organizations should undertake an exercise to identify areas where the existing monopoly of functions can be done away with.
- Similarly all CSS should be restructured so as to provide incentives to states to take steps to promote competition in service delivery.
- All national policies on subjects having large public interface should be designed so as to promote competition.

## 2. Simplifying transactions

- One problem is the multiplicity of layers in every decision making process. Apart from delays, this contributes to corruption.
- Whenever abuse of authority is noticed, another layer of administration is added in the hope that this would act as a check. More often than not, each additional layer further adds to delay and corruption without solving the original problem.
- The broad principles must be: adoption of single window, minimizing hierarchical tiers, stipulating time limits for doing work, minimization of discretionary decisions. Where it is not possible to do so, well-defined regulations should attempt to 'bound' the discretion. All procedures, laws, departmental codes that breed corruption and come in the way of efficient delivery should be eliminated.
- Decision-making on important matters should be assigned to a committee rather than individuals. Care has to be exercised, however, that this practice is not resorted to when prompt decisions are required.

## 3. Risk assessment system

- The risk of corruption in government depends on the nature of the office and its activity and the character of the person holding that office. An office having more discretion and more public interface is more vulnerable to corruption.
- Thus offices can be classified as 'high risk of corruption', 'medium risk of corruption' and 'low risk of corruption'. Similarly, government servants can be classified according to their level of integrity.
- A risk management system should seek to ensure that 'low risk personnel' should hold 'high risk jobs' and vice versa.
- Risk profiling of government officials poses a challenge as the present system of performance evaluation discourages a reporting officer from giving anything 'adverse'. Moreover, categorizing an official as 'high' risk based on an adverse rating by one reporting officer may not be fair.
- It would, therefore, be better if risk profiling of officers is done by a committee of 'eminent persons'. Inputs from the vigilance and peer feedback can be sought.

## 4. Decentralization

- The central idea of subsidiarity is that citizens as sovereigns and stakeholders are the final decision-makers.
- Subsidiarity is "the principle that a central authority should have a subsidiary function, performing only those tasks which cannot be performed at a more local level."
- Functions shall be carried out closest to citizens at the smallest unit of governance possible and delegated upwards only when the local unit cannot perform the task.

## 5. Transparency vs accountability

- RTI merely seeks information and involves one way transmission of information. It promotes transparency and to a much lesser degree accountability.
- Accountability means asking not just as to what was done but why; and therefore involves a consultative two-way flow of information with the citizens usually providing a feedback.
- Such mechanisms include citizens' charters, service delivery surveys, social audits, citizens' report card and outcome surveys.
- Civil servants must be made accountable for the outputs in a clear objective way. Their incentive system must be restructured so as to motivate them to focus on outputs only.

#### 6. Single Window System

- It should be a genuine single window system giving all approvals and enabling tracking mechanism. It shouldn't be that it gives only 'in principle approval' and the applicant has then to seek formal approvals from each agency.
- There should be online complaint tracking system.

### 2. Mix of preventive and punitive measures

#### 1. Consumer Protection

##### 1. The Consumer Protection Act

- The Act emphasized on following principles of natural justice and not following technicalities and procedures of a court of law. But the reverse has happened today.
- As a result the consumer forums have become like civil courts, making litigation long and expensive.
- Furthermore, even where orders have been passed, these are not getting executed on time.
- They are also not adequately punitive to act as deterrent and therefore, offenders do not take them seriously.

##### 2. Regulatory bodies need to keep interest of consumers in the forefront.

#### 2. Strengthening Investigation and Prosecution

1. Many times prosecutors have colluded with the accused. It is, therefore, crucial that cases of corruption are handled by efficient prosecutors whose integrity and professional competence is above board. A panel of such lawyers answerable to an independent body should be created and prosecution cases by the CBI be handled by them only.
2. Investigating agencies should be equipped and trained with latest electronic investigating capabilities.
3. In view of the complexities involved in modern-day corruption, the investigating agencies should be equipped with technical expertise in diverse domains such as forensic accounting, audit, scientific knowledge. Appropriate capabilities must be built and officers recruited from relevant government departments.
4. Inter-agency information exchange and mutual assistance should be enhanced.
5. US False Claims Act like law should be passed where the whistle-blower must get a decent percentage of recovery as reward.
6. Whistle-blower protection.

### 3. Rule of law

#### 1. Zero Tolerance Strategy

- All public agencies should adopt a zero tolerance strategy towards corruption.
- This strategy should be institutionalized in the various public agencies.
- Public example has to be made out of people convicted on corruption charge and the legal process expedited.

2. We need a sound legal system, citizen charters, grievance redressal mechanisms and re-engineering processes to make governance 'citizen centric'.

#### 4. Use of technology

- RTI and e-governance are the right steps.

#### 5. Supervision within the department

- The fact that not many cases are initiated against corrupt officials by the department itself is an indicator that the supervision function is not being given the attention it deserves.
- Controlling corruption in an office or an organization should primarily be the responsibility of the head of the office. Each level should be responsible for minimizing corruption for the levels below it.
- It has generally been observed that with the constitution of independent agencies, departmental officers feel that it is not their responsibility to curb corruption in their offices. So reporting officers in the ACR of their subordinates should clearly comment on the efforts made by the latter to check corruption and what were the outcomes of such measures.
- Reporting officers tend to play 'safe' by not commenting objectively on the integrity of a public servant even when certain unethical practices have come to his/her notice. This is mainly because there is little accountability of reporting officers about the way they evaluate their subordinates. Colorless entries such as 'nothing adverse has come to notice' are quite common.
- In case a reporting officer has given a 'clean chit' and a corrupt act comes to light under the officer, then the reporting officer should be made to give an explanation.

### 3. Values vs institutions

1. Many people lament the decline in values and the consequent rise in corruption. The implicit assumption is that until values are restored, nothing much can be done.
2. Another approach emphasizes on institutional framework that if good behavior is consistently rewarded and bad behavior consistently punished, the bulk of the people follow the straight path. However, if good behavior is not only not rewarded, but is actually fraught with difficulties and bad behavior is not only not punished, but is often extravagantly rewarded, then the bulk of the people tend to stray from the honorable path.
3. In the real world, both values and institutions matter. Values are needed to serve as guiding stars. But they need to be sustained by institutions.

### *Principles for Increasing Citizen Participation*

1. Shift in the approach from citizens being the recipients of development to one where they are active participants in the development process.

2. Maximum decentralization based on the principle of subsidiarity.
3. Systematic reforms where:
  1. Citizens can seek information.
  2. Citizens can give feedback. Systematic mechanisms should exist to capture this feedback and processes improved upon accordingly.
  3. Citizens can hold public authorities accountable. Grievance redressal is important here. Their feedback is important in performance assessment of the officials.

### *Why Grievance Redressal Bill in Itself is not Sufficient*

1. Grievances can thus be categorized into three broad groups – (i) grievances arising out of abuse of office and corruption on the part of public functionaries, (ii) grievances arising out of systemic deficiencies within an organization, and (iii) grievances arising from non-fulfillment of needs/demands.
2. While the first category is amenable to statutory intervention similar to those embodied in the RTI Act, the second and the third categories may require structural reforms, capacity building and even substantial budgetary allocations.

### *Amendments to PoCA, 1988*

The ratification by India of the United Nations Convention

Against Corruption, the international practice on treatment of the offence of bribery and corruption and judicial pronouncements have necessitated a review

The salient features of the Bill, inter alia, are as follows:—

(a) section 7 of the Act at present covers the offence of public servant taking gratification other than legal remuneration in respect of an official act. The definition of offence is proposed to be substituted by a new comprehensive definition which covers all aspects of passive bribery, including the solicitation and acceptance of bribe through intermediaries and also acts of public servants acting outside their competence;

(b) the Act at present does not contain any provisions directly dealing with active domestic bribery, that is, the offence of giving bribe. Section 12 of the Act which provides for punishment for abetment of offences defined in section 7 or section 11, covers the offence indirectly. Section 24 provides that a statement made by a bribe-giver in any proceeding against a public servant for an offence under sections 7 to 11, 13 and 15 of the Act shall not subject him to prosecution under section 12. Experience has shown that in a vast majority of cases, the bribe-giver goes scot free by taking resort to the provisions of section 24 and it becomes increasingly difficult to tackle consensual bribery. The aforesaid Convention enjoins that 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 acting in the exercise of his or her official duties, be made a criminal offence. Accordingly, it is proposed to substitute a new section 8 to meet the said obligation

(d) it is proposed to substitute section 9 to provide punishment for the offence relating to bribing a public servant by a commercial organisation. A commercial organisation will be guilty of this offence if any person associated with it offers, promises or gives a financial or other advantage to a public servant intending to obtain

or retain business or some advantage in the conduct of business for the commercial organisation. The proposed section 10 provides for punishment of persons in charge of a commercial organisation which has been guilty of the offence under the proposed section 9;

to modify

the definition of "known sources of income" as contained in Explanation, to mean income received from any lawful source, that is, by doing away with the requirement of intimation in accordance with any law, rules or orders applicable to a public servant;

(h) the Prevention of Corruption Act, at present, does not specifically provide for the confiscation of bribe and the proceeds of bribery. A Bill, namely, the Prevention of Corruption (Amendment) Bill, 2008, to amend the Prevention of Corruption Act, 1988, providing, inter alia, for insertion of a new Chapter IVA in the Prevention of Corruption Act for the attachment and forfeiture of property of corrupt public servants on the lines of the Criminal Law (Amendment) Ordinance, 1944, was introduced in the Lok Sabha on 19th December, 2008 and was passed by the Lok Sabha on 23rd December, 2008. However, the said Bill lapsed due to dissolution of the Fourteenth Lok Sabha. It is proposed to insert similar provisions on the lines of the 2008 Bill in the Prevention of Corruption Act;

(i) the Prevention of Corruption (Amendment) Bill, 2008 had proposed an amendment to section 19 of the Act on the lines of section 197 of the Code of Criminal Procedure, 1973 for extending protection of prior sanction of the Government or competent authority after retirement or demittance of office by a public servant so as to provide a safeguard to a public servant from vexatious prosecution for any bona fide omission or commission in the discharge of his official duties. The said Bill having lapsed, this protection is, at present, not available for a person who has ceased to be a public servant. Section 19 is, therefore, proposed to be amended to provide the said protection to the persons who ceased to be public servants on the lines of the said Bill.

Further, in the light of a recent judgment of the Supreme Court, the question of amending section 19 of the Act to lay down clear criteria and procedure for sanction of prosecution, including the stage at which sanction can be sought, timelines within which order has to be passed, was also examined by the Central Government and it is proposed to incorporate appropriate provisions in section 19 of the Act;

The amendment does away with the contentious Section 19 1(d) of the 1988 Act, under which CBI has booked Birla and Parakh, for 'misuse of official position to extend undue favours', even without establishing any kind of quid-quo-pro or bribe exchange. The PC Act with section 19 1(d) was enacted in 1988. Following that liberalisation happened in 1991 and the realities of globalisation mean we should have amended the law long ago. establishment of quid pro quowas essential to determine corruption, as bureaucrats may be punished for bona fide errors otherwise.

The proposed law also introduces the need for prosecution sanction from the government for proceeding with an FIR against retired bureaucrats of Joint Secretary Level and above. But in the present scheme of things, CBI can directly chargesheet Parakh as retired bureaucrats have no such protection

it criminalises domestic bribe-giving by private sector and says that a director, partner or manager of a company will be held liable if bribe was paid with “consent or connivance of, or is attributable to, any neglect on the part” of such senior official.

## Other Issues

### *Role of Media in Promoting Ethics in Public Life*

#### 1. Follow up mechanism on media allegations

1. Media makes many allegations. But it is common experience that very often there is no systematic arrangement to take note of these allegations and to follow them up.
2. This should be an integral part of redressal mechanisms in all public offices.

#### 2. Code of conduct for media

1. Many a times the media does not verify allegations and information before putting them in the public domain. Some times, such allegations are also motivated. Thus it is also necessary to evolve a code of conduct where all allegations are duly screened before publishing and the accused is given a fair chance to put forth his version.
2. The PCI was reconstituted to maintain and improve the standards of newspapers and news agencies in India. It has prescribed a Code of Conduct for the print media. However, no such code exists for the electronic media.
3. There should be a Broadcasting Regulatory Authority of India (BRAI) covering the electronic media. It should lay down a Code of Conduct for the electronic media as the PCI has done for the print.

### *Role of Social Audit in Promoting Ethics in Public Life*

1. Provisions for social audit should be made a part of the operational guidelines of all schemes.

## Ethical Concerns and Dilemmas in Government

### *Coalitions and Ethics*

1. Coalitions should be based on a broad understanding reflected in the common minimum programme. The CMP should be announced either prior to the election or before the formation of the government.
2. The ethics of coalition government is seriously strained when the coalition partners change partnerships mid-stream. The common programme, which has been explicitly mandated by the electorate becomes non-existent and the power given by the people is abused.
3. To maintain the will of the people, it is necessary to lay down that if a party leaves the coalition midstream, then members of that party shall have to seek a fresh mandate from the electorate.

### *Immunity Enjoyed by Legislators (Art 105)*

1. The immunity to the legislators for their acts in the parliament is not intended to shield their corrupt practices but only to defend their freedom of expression. Freedom of speech inside the House cannot be used by them to solicit or to accept bribes.
2. But in the Narsimha Rao case, the SC arrived at the conclusion that while bribe-givers could not claim immunity, the bribe-takers could claim such immunity. It is obvious that this interpretation runs counter to all notions of justice, fair play and good conduct expected from MPs. A constitution amendment is needed.

### *Ethical Concerns and Dilemmas In Private Institutions*

#### *Ethical Concerns and Dilemmas In International Relations*

1. Overtime the interconnectedness between nations has grow and there are greater shared responsibilities today calling for joint action. International ethics may be seen as responding to this need for international action. International ethics guides the international environmental effort to fight against ozone depletion, global warming.
2. Philosophies of international ethics
  1. Realism: It focuses solely on international power. In the international realm, realism holds that the only thing that really matters is power – what power a country has. Nothing else matters – morality, ethics – are all irrelevant. The argument appears to be that in international sphere no one can be trusted each seeks to dominate the other. Either one country will dominate the other or the other will try to dominate the first, so it is better to be the dominant country. The realist approach is simply to deny any role for common or shared ethics. Realism sentiments within nations make it rational to pursue power, create power distance and dominance over its neighbors and at the same time seek to balance power by aligning sufficient number of states for a country to counter the power influence of those nations against it. In this way realism creates and spawns a world fundamentally divided into two. There will be no unipolar world for sure, the fact that one exists after the collapse of the Soviet Union is only a temporary phase, somewhat illusionary. The world soon responds by restoring and creating balance of power.
  2. Idealism: Idealism focuses on “common interests” between nations, and not necessarily at the power. It seeks to build the international sphere on the basis of idealist values. Idealism has the potential to create more lasting hopes of peace. Idealism points to trade interests between nations as common interests and as platforms to build better, mutually beneficial international relations. The rise of international and global market place are shown to be aiding and being supported by idealism. In idealism, the international system follow rules, laws and institutions. In idealism, thus ethics, morality, laws, legal systems, international institutions all have a central place.
  3. Constructivism: The focus is on domestic politics and how it shapes foreign policy. Every nation and every state create a sense of national identity in various ways and nurture it through historical and cultural means. Thus national identity is constructed and it in turn is said to influence the way the nations interact. Constructivism shows that nations resist any threat to their identities,

nationalism, national sovereignty that are perceived. This works against attempts to change world systems or world order. All such attempts by other nations, however rational they may be, will be resisted if national identity is not respected. Constructivism focuses on national identity (rather than national interest). Its application can be seen in religion based national identities of middle east and south asia. Religious “fault lines” of conflict may open up and trigger problems not only in the international sphere but within a nation itself as a result.

4. Cosmopolitanism: Cosmopolitanism like idealism believes in doing the right thing. The right thing to be done is to behave as you would want others to behave. Where rules and laws do not exist, it would require that we come together and negotiate the rules and laws that are ethical. Some may even use it to argue for a world government.
5. Constrained choices: International ethics guides our choices in the international sphere, but evidently our choices are constrained rather than free. The choices may be constrained by the necessity of domestic politics. The choices may be constrained by the identity politics. The choices may be constrained by international power equations and balances. Many practical constraints like economic constraints and national interest constraint will also be there.

### *In International Funding*

### Accountability and Ethical Governance

### Conscience as Source of Ethical Guidance

### Strengthening Ethics and Values in Governance

### **Corporate Governance**

## COMPANIES BILL, 2012

- Rajya Sabha, ratified The Companies Bill, 2012, as passed by the Lok Sabha about eight months ago. As consented to by President, the new legislation has replace the 57-year-old Companies Act, 1956.
- The new regime would seek to usher in more transparency and governance in the corporate bodies besides creating the necessary environment for growth in the present global structure.
- Concept of One Person Company (OPC limited) introduced. The objective was also to help small one-person companies to access facilities and credit.
- Concept of Small companies have been introduced which shall be subjected to a lesser stringent regulatory framework.
- The bill also ensures one minimum woman director in certain prescribed class of companies. The effort would also be to encourage these companies to give employment to all sections of society.
- The Bill, as ratified by Parliament, prescribes an expenditure of 2 per cent of profits on CSR (corporate social responsibility) activities in their respective areas of operation. These would have to be outcome and timeline-driven with details posted on websites.
- It provides for formation of welfare trusts which could buy shares of the company and be part of the decision-making process.
- Once enacted, the law will also provide for faster liquidation, mergers and acquisitions.

### ANALYSIS

- Each time a big scam occurs, it turns out the company's board didn't know what was happening, or the minority shareholders had no way of registering their dissent, or the auditors and/or independent directors were hand in glove with the management. It is to fix this that, close to a decade ago, the government had begun the process of cleaning up the Companies Act of 1956, which is largely based on a law dating back to 1913.
- While the J.J. Irani Committee tasked with this finished its job in May 2005, the law never got enacted, for one reason or another. Now, the Companies Act promises to change the paradigm in which India Inc will operate.
- It may take a year or more to come into actual effect, since the rules that operationalise the act are being framed, but the broad thrust is positive. More so if you combine this with changes made in other laws.
- Under a Sebi ruling framed a few months ago, for instance, minority shareholders who look like they could lose out in a deal have the power to veto it. The new law, which deals with what are known as related-party transactions, calls for them to be put to vote in a company AGM, a voting in which only the preferences of non-interested parties are counted.
- Given the number of subsidiaries, and subsidiaries of these subsidiaries, that many Indian corporates have, unravelling their mysteries is an investor's nightmare. For many, such accounting vehicles serve as a convenient place to hide large amounts of debt or loss. The Companies Act puts a limit to the number of layers of "subsidiarisation" that can be allowed. More importantly, the accounts of such subsidiaries will have to be disclosed more fully.
- But a lot will depend on the subordinate rules under the different provisions that will framed by the executive. If the rules are too restrictive, or too liberal, as in the case of disclosure of accounts of subsidiaries, the purpose gets defeated. If, after all this, the governance structure is still not enough, there is the possibility of class action suits that the Companies Act now allows.
- There are companies and industry houses such as the Tatas that are known to spend liberally on CSR but on activities that are carefully chosen by them or their trusts established specifically for this purpose. What happens if the activities under the CSR rules to be framed now do not fit into the existing programmes which benefit society anyway? There is a danger here that the best will turn an enemy of the good.
- Second, there is genuine concern that companies will now be open to arm-twisting by local politicians seeking funds for activities that further their own interests. What protection do companies have in such an event?
- Third, to cut down on compliance costs, companies may well opt to mark the required contribution to the Prime Minister's National Relief Fund or similar such schemes recognised by the Act as CSR spending. Given that these contributions also offer tax-breaks, the temptation will be tremendous indeed. In such an event, the larger purpose of the provision will obviously be defeated.
- The rules governing the provision to be framed in the next few months will, therefore, be crucial to the success of this initiative. It is important that the government involves industry associations such as CII and FICCI in this matter.

# Probity in Governance

## Philosophical Basis

### Concept of Public Service

#### RTI

### Legal Framework, Laws, Rules, Regulations for Ethical Behavior

#### *Prevention of Corruption Act, 1988*

##### 1. Need for sanction

1. In order to prevent harassment to honest officers, it was mandated that no court shall take cognizance of offences without the permission of the authority competent to remove the charged public servant.
2. It has been stipulated that no court shall stay the proceedings under the Act on the grounds of any error or irregularity in the sanction granted, unless in the opinion of the court it has led to failure of justice.

2. Immunity to bribe giver: It also provided that the statement by bribe-giver would not subject the bribe giver to prosecution. It was considered necessary to grant such immunity to the bribe-giver, who might have been forced by circumstances into giving a bribe.

3. Trial by special judges: All corruption related offences could only be tried by special judges. Proceedings of the court have to be held on a day-to-day basis.

4. Possession of assets disproportionate to the known sources of income is an offence.

#### *Weaknesses in the Prevention of Corruption Act, 1988*

##### 1. Addition of more offences

1. There are four types of misconducts not explicitly covered under the Act but which are nonetheless very damaging.
2. The first is gross perversion of the Constitution and democratic institutions, including, wilful violation of the oath of office out of partisan considerations or personal gains. In most such cases, there may be no illegal consideration, nor any form of monetary gratification involved.
3. The second is abuse of authority unduly favoring or harming someone, without any monetary consideration. In such cases, often partisan interests, nepotism and personal prejudices play a role.
4. Third, obstruction or perversion of justice by unduly influencing law enforcement agencies and prosecution. Again in most such cases, partisan considerations, nepotism and prejudice, and not pecuniary gain or gratification, may be the motive.
5. Finally, squandering public money, including high flying life-styles, superfluous security has become more common.

##### 2. Collusive bribery

1. It provides immunity to a bribe-giver if he gives a statement in the court. However, the Act does not differentiate between 'coercive' and 'collusive' corruption. The negative impact of collusive corruption is much worse.
2. The conviction rates in coercive corruption are more than in collusive corruption. Getting conviction in collusive cases is extremely difficult as both, the bribe-giver

and the bribe-taker collude and are beneficiaries of the transaction.

3. So the Act should be amended to list collusive bribery as a separate offence. In all such cases if it is established that public interest has suffered, then the court shall presume that the public servant and the beneficiary of the decision committed an offence of 'collusive bribery'. The punishment for all such cases of collusive bribery should be much higher.

### 3. Sanction for Prosecution

1. It provides that previous sanction of the competent authority is necessary before a court takes cognizance of the offences. The objective is to prevent harassment to honest public servants.
2. However, no such sanction should be needed when public servants have been trapped red-handed or in cases of possessing assets disproportionate to their known sources of income.
3. In many cases, the issue of the validity of sanctions gets raised after the prosecution has advanced all evidences and this leads to inordinate delays. The law should be amended that this could only be done at the first stage, even before framing of charges by the court.
4. Currently the protection of sanction doesn't extend to a person if at the time of cognizance of the offences by the court, he/she has retired. The law should be amended so that retired public servants can also get the same level of protection, as a serving public servant.

### 4. Recouping Losses

1. When public servants cause loss to the state by their corrupt acts, they should be made to pay back. This should be put in the law. Adequate safeguards should be there so that bona fide mistakes are not penalized.

### 5. Confiscation of Properties

1. The Act provides for confiscation of assets of public servants in excess of their known sources of income. However, the provision has proved inadequate because such forfeiture is possible only on conviction.
2. Another shortcoming is that the procedure for attachment can start only after the court has taken cognizance of the offence. In actual situations, this may be too late as the accused may get enough time to hide it.
3. The third weakness is that the government has to authorize the filing of a request seeking attachment.
4. While seeing the property, the 'relatives' of the civil servant should also be seen and the burden of proof should be on them that such property was transferred for bonafide reasons only.
5. Benami transactions should be prohibited altogether and such properties confiscated. Existing Act provides for such confiscation but since 1988, Rules have not been framed by the government towards this purpose! So such confiscation is currently not possible.

### 6. Speeding up Trials

1. To ensure speedy trial of corruption cases, the existing provisions are:
  - All cases under the Act are to be tried only by a Special Judge.
  - The proceedings of the court should be held on a day-to-day basis.
  - No court shall stay the proceedings under the Act on the grounds of any

error or irregularity in the sanction granted, unless in the opinion of the court it has led to failure of justice.

1. However inordinate delay has been seen in such trials. A major cause is the tendency of the accused to obtain frequent adjournments. There is also a tendency to challenge almost every interim order passed by the trial court, in the High Court and later, in the Supreme Court and obtaining stay of the trial.
2. Such types of opportunities to the accused need to be restricted by the law. A legal provision needs to be introduced fixing a time limit for various stages of trial. Adjournments should be given only for compelling reasons.

### **PREVENTION OF CORRUPTION (AMENDMENT) BILL, 2013**

- Twenty months after the Supreme Court's suggestion, the Government has introduced The Prevention of Corruption (Amendment) Bill, 2013, in the Rajya Sabha, to amend the Prevention of Corruption Act, 1988 to fix three months as the time limit for taking a decision on sanction of prosecution.
- It has provisions for extension of the time limit by one more month after consulting Attorney General or Advocate General.
- In January 2012, the SC had set down the guidelines regarding sanction of prosecution in corruption cases.
- It also has stringent provisions for confiscation of properties belonging to convicts and enhances the scope of the definition of the word — bribe.
- The Act at present covers the offence of a public servant taking gratification other than legal remuneration in respect of an official act under a number of sections. The amendment subsumes these into one provision that covers all aspects of bribery, including definitions of the various elements of bribery.
- A separate offence has been created for bribing a public servant by a commercial organisation.
- The amendment Bill also provides safeguards to retired public servants from unnecessary prosecution for any bonafide omission or commission in the discharge of their official duties during their service period. To this effect, Bill seeks to extend the requirement of prior sanction to persons who have ceased to be public servants.
- With most of the bribe-givers going scot free, the Bill also seeks to amend Section 8 in case of "consensual bribery" by providing for a punishment of three to seven years in jail. Thus Bill makes the act of giving a bribe a criminal offence.
- One of the changes proposed will empower a special judge to exercise powers of attachment of properties if the case of bribery is established after trial.
- The ratification by India of the United Nations Convention against Corruption, the international practice on treatment of the offence of bribery and corruption, also necessitated the amendment to bring the Act in

### **The Lok Pal**

1. Relationship with the CVC: The Lok Pal should deal with corruption by ministers and MPs. Corruption of government officials is dealt by CVC. In many cases, there may be collusion between the ministers and the officers. Therefore there should be an organic link between the Lok Pal and the CVC. While the CVC should enjoy full functional autonomy, it should nevertheless work under the overall superintendence of the Lok Pal.
2. Office of PM
  1. If the PM is guilty of serious misconduct, Parliament should be the judge.
  2. It could be argued that since any minister could be removed on PM's advice, or Parliament as well, the Lok Pal need not have jurisdiction on a minister's conduct also.
  3. But Parliament does not really sit in judgment over a minister's conduct. It is the PM and the Council of Ministers as a whole whose fate is determined by Parliament's

will.

4. And the PM does not have the time to personally investigate the conduct of a minister. The government's investigative agencies are controlled or influenced by the ministers so an independent body is needed

### *Local Ombudsman*

1. It may be constituted for a group of districts. It should have powers to enquire and take action against the elected local body members.
2. It is argued that constitution of Local Ombudsman would lead to duplication of efforts since the Lokayukta is already there. The Lokayukta should investigate cases only against Ministers and legislators. Entrusting it with corruption of local bodies too would dilute its focus.
3. But the thread of corruption sometimes runs deep. So SVC and Local Ombudsman should be organically linked with the Lokayukta.

### Code of Ethics

#### *Integrity Pacts*

1. It is an agreement between the public agency involved in procurement and the bidder that the bidders shall not indulge in any corrupt practice to secure the contract in question. For its part, the public agency commits to a level playing field and fair play.
2. They are overseen and scrutinized by independent, outside observers.

#### *Code of Ethics for Civil Services*

##### 1. Issues with current Conduct Rules

1. The code of behavior as enunciated in the Conduct Rules, while containing some general norms like 'maintaining integrity and absolute devotion to duty' and not indulging in 'conduct unbecoming of a government servant', is generally directed towards cataloging specific activities deemed undesirable for government servants. These Conduct Rules do not constitute a Code of ethics. The Code of Ethics should enunciate the qualities and behavior desired in a civil servant.
2. The present codes of conduct are not direct and to the point. They are lengthy, complex and are either full of vague sermons or too specific with outdated prescriptions. A code of ethics should be to the point, small and easily understood.
3. The code of ethics should also deal with conflict of interest which the Conduct Rules do not address adequately.
4. It also contains some outdated and impractical rules such as
  1. No Class I officer shall without previous sanction of the government, permit his son, daughter or other dependent, to accept employment in any company which has dealings with the Government. Post the economic reforms, private sector has grown rapidly and now virtually all major companies have dealings with the government.
  2. Transactions over Rs. 20,000 have to be reported to the government within a month. Inflation has rendered this limit impractical.

3. All property transactions have to be reported to the government.

## 2. Desirable properties of the Code of Ethics

1. It should have a clear statutory backing and an independent, effective monitoring mechanism. The Civil Services Authority may be entrusted with this task of auditing and evaluating the measures the organizations have taken to uphold the civil service values.
2. At the apex level, there should be a clear and concise statement of the values and ethical standards which should reflect public expectations.
  - Allegiance to the ideals enshrined in the Constitution.
  - Apolitical functioning.
  - Good governance to be the primary goal.
  - Duty to act objectively and impartially.
  - Accountability and transparency in decision-making.
  - Maintenance of highest ethical standards.
  - Ensuring economy and avoidance of wastage in expenditure.
  - Provision of healthy and congenial work environment.
  - Commitment to the citizens' concerns and public good.
  - Empathy for the vulnerable and weaker sections of society.
3. At the second level, the broad principles which should govern the behavior of a civil servant may be outlined.
  1. *Integrity*: Civil servants should be guided solely by public good in discharging their duties.
  2. *Impartiality*: Civil servants in carrying out their official work, including functions like procurement, recruitment, delivery of services etc, should take decisions based on merit alone.
  3. *Commitment to public service*: Civil servants should deliver services in a fair, effective, impartial and courteous manner.
  4. *Open to accountability*: Civil servants are accountable for their decisions and actions and should be willing to subject themselves to appropriate scrutiny for this purpose.
  5. *Devotion to duty*: Civil servants maintain absolute and unstinting devotion towards their duties and responsibilities at all times.
  6. *Exemplary behaviour*: Civil servants shall treat all members of the public with respect and courtesy and, at all times, should behave in a manner that upholds the rich traditions of the civil services.
4. At the third level, there should be a specific Code of Conduct stipulating in a precise and unambiguous manner, a list of acceptable and unacceptable behavior and actions.

## Information Sharing and Transparency in Government

### Citizen Charters

#### *Desired Qualities in a Charter*

1. Decentralized activity: It needs to be specific to the organization and should be carried out at a decentralized level.
2. Simple, unambiguous and time bound
  1. It must be simple and clearly spell out the services delivered.
  2. Its design should be user friendly.

3. It is better to have a few promises which can be kept rather than a long list of lofty declarations which are impractical.
4. It must contain measurable standards of quality of service delivery including the time within which the service would be provided.
5. It should be in the local language as well.
3. Effective mechanism for its implementation
  1. Adequate capacity building must take place for the implementation of the charter.
  2. A time bound, effective grievance redressal mechanism should be put in place and highlighted prominently in the charter along with the compensation to the citizens.
  3. Officers should be held accountable for specific activities and the HoD should be made accountable for overall charter implementation.
4. Internal restructuring should precede charter formulation
  1. It should be prepared only after a thorough review of the organizational processes with a view to make them more citizen friendly. There can be a resistance to change as the new practices may demand significant changes in the working and attitude of the staff. This needs to be overcome at that time only.
  2. It must be framed not only by senior experts, but by interaction with the staff who will finally implement it and the citizens who are going to use it.
5. Periodic review and performance audit
  1. Framework should exist for a periodic performance audit and charter should be reviewed and updated.
6. Prominently publicized
  1. It must be given adequate publicity both among the staff and the citizens. Special budget must be earmarked for this purpose.
7. Needs of special sections
  1. The needs of senior citizens and the disabled should be considered when drafting Charters.

## Work Culture

### *Delegation*

1. Many government organizations have a tendency to hold back authority at higher levels and top policy makers indulge in micro-management of routine. So an exercise should be carried out to maximum possible delegation.
2. Extent of delegation should form a part of the ACR of an officer.

## QoS Delivery

### Utilization of Public Funds

### Challenges of Corruption