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CAN INDIA'S NEW LOKPAL STOP BIG CORRUPTION?

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COMMON CAUSE VISION

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MISSION

To champion vital public causes

OBJECTIVES

To defend and fight for the rights and entitlements of all groups of citizens

INDIA HAS A LOKPAL, FINALLY!

But, will the watchdog rise to the occasion?

Do you know that India has a Lokpal? Well, it got appointed on March 13, while we were busy doing other things! Coming in the middle of the elections it was almost ignored by the media and political parties alike. Honestly, the appointment of Justice Pinaki Chandra Ghose as India's first Lokpal can pass for the biggest non-event of 2019, purely in terms of visibility. Very few people know him in his new avatar and even fewer know the names of his eight fellow members on the panel.

Contrast this to the height of Anna Hazare's anti-corruption movement in 2011 when India was galvanised around the slogan of Lokpal. All conversations revolved around it and the TV channels repeated Hazare's theatrical arrest every few hours. And then came a series of rallies in Mumbai, Chennai, Kolkata and Bangalore and a wave of protests in the cities and towns across India.

It was the movement for Lokpal which uprooted the grand old Congress party and brought in the BJP led by Prime Minister Narendra Modi for two consecutive terms. But wait, what happened to the Lokpal in between? After all, the Lokpal and Lokayuktas Act was duly passed in Parliament in December 2013, months before the change of guard in 2014 and half a century after the idea was mooted (See the Lokpal timeline in the following pages).

Sadly, the party which came to power riding on the storm called Lokpal seemed in no hurry to set it up. It was particularly bizarre because it required nothing but notifying an Act and following due procedures. Even an amendment would have been easy, considering the number of Acts and amendments passed during this period. Obviously, the ruling party leaders were dawdling with a little help from a complicit opposition.

It is in this backdrop that Common Cause challenged the arbitrary nature of the Search Committee Rules in the Supreme Court in March 2014. True, the appointment of the Lokpal was a direct result of this Common Cause intervention. The government feigned helplessness as there was no Leader of the Opposition in Lok Sabha. Common Cause challenged this further but our PIL was disposed in April 2017 with the observation that the Lokpal Act was a perfectly workable piece of legislation. When the government still refused, we filed a contempt petition against willful and deliberate non-compliance. The appointment happened after many nudges from the Apex Court.

So where does Common Cause stand now? While we hail the appointment, we feel the process could have been more inclusive, impartial and transparent i.e., the leader of the largest opposition party should have been included as an equal, and not as a special invitee. We also stand for greater transparency in proposing and accepting nominees. But above all, we think it is obligatory for the Lokpal panel to silence the sceptics and show some courage and fairness in the spirit of *panch parmeshwar*, irrespective of how it got appointed.

Vipul Mudgal
Editor

LOKPAL TIMELINE

1963

- The idea of an ombudsman first came up in Parliament during a discussion on budget allocation for the Law Ministry.
- The word Lokpal was coined by former Rajya Sabha MP and eminent jurist L.M. Singhvi.

1966

- The First Administrative Reforms Commission headed by then MP Morarji Desai recommended the setting up of two independent authorities – at the central and state levels, to look into complaints against public functionaries, including MPs.

1968

- The Lokpal Bill was introduced in Parliament by former Law Minister and member of the Rajya Sabha Shanti Bhushan but it was not passed.
- Eight attempts (1968, 1971, 1977, 1985, 1989, 1996, 1998 and 2001) were made to introduce Lokpal bills but they were not passed.

1995

- Common Cause filed a PIL in Supreme Court, seeking to establish an independent Lokpal at the Centre and reinforce the Lokayukta at the state level. Although the PIL was yet to be decided, it had significant outcomes, starting with the imposition of Rs. 50 lakh penalty on former Petroleum Minister, Capt. Satish Sharma, for abuse of his discretionary powers.

1999

- Review Petition on the 1995 petition was filed by Common Cause.

2002

- The Commission to Review the Working of the Constitution headed by former Chief Justice of India M.N. Venkatachaliah recommended the appointment of the Lokpal and Lokayuktas, with the PM not in its ambit.

2005

- The Second Administrative Reforms Commission chaired by former Union Law Minister Veerappa Moily recommended the establishment of Lokpal without delay.

2008

- In the 1995 pending PIL, the Bench directed Common Cause to file an additional affidavit, delineating the essential features of the Lokpal and Lokayukta.

2011

- Social activist and anti-corruption crusader Anna Hazare went on a hunger strike for an effective anti-corruption law.

2013

- Lokpal and Lokayuktas Bill, 2013, was passed in both houses of Parliament.

2014

- Lokpal and Lokayuktas Act, 2013 (L&L Act) came into effect.
- Common Cause filed a PIL, challenging the arbitrary nature of the Search Committee Rules notified under the Act, which sought to undermine the independence of Lokpal.

2015

- Amendments to the L&L Act were proposed by the Parliamentary Standing Committee.
- In view of the enactment of the L&L Act, the SC dismissed the 1995 petition, saying it has become infructuous.

2016

- L&L Act was amended and mandated that public servants declare their assets and liabilities, as well as that of their spouses and dependent children.

2017

- The petition filed by Common Cause for appointment of Lokpal was disposed by the Supreme Court, holding that the L&L Act, was a perfectly workable piece of legislation.

2018

- Common Cause filed an application seeking the initiation of contempt proceedings against the executive for wilful and deliberate failure to fully comply with the Apex Court's 2017 judgment.

2019

- Justice Pinaki Chandra Ghose has been appointed India's first Lokpal, followed by the appointments of eight other members of the Lokpal panel.

WHAT IS LOKPAL? WHY DO WE NEED IT?

Frequently Asked Questions about the Anti-Corruption Watchdog

Susmita Saha*

What is Lokpal?

Lokpal is India's anti-corruption ombudsman representing public interest. It is meant to look into complaints against public servants defined under the Lokpal And Lokayuktas Act, 2013 (L&L Act). The Act states that the Lokpal will have a Chairperson, who is or has been a Chief Justice of India or Supreme Court judge. The ombudsman office should also have a panel of up to eight members, out of which 50 per cent shall be judicial members.

What will be the different components of the Lokpal?

According to the L&L Act, "the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988."

In addition, there's going to be a "Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act."

"The Director of Prosecution shall, after having been so directed by the Lokpal, file a case in accordance with the findings of investigation report, before the Special Court." He/she will take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988.

Currently, former Supreme Court judge Justice Pinaki Chandra Ghose, has been appointed as the first Chairperson of the Lokpal. Four of the judicial members appointed have been former Chief Justices of different High Courts while the four non-judicial members have been from All India Services/Central Services.

Who will be accountable under the new Lokpal?

Its official website states that, "the Lokpal has jurisdiction to inquire into allegations of corruption against anyone who is or has been Prime Minister,

* *Susmita Saha is a Senior Research Analyst at Common Cause*

or a Minister in the Union government, or a Member of Parliament, as well as officials of the Union Government under Groups A, B, C and D." It goes on to say that other entities or individuals covered include "chairpersons, members, officers and directors of any board, corporation, society, trust or autonomous body either established by an Act of Parliament or wholly or partly funded by the Union or State government. It also covers any society or trust or body that receives foreign contribution above ₹10 lakh (approx. US$ 14,300/- as of 2019)."[1]

What is the procedure for submitting complaints to the Lokpal?

The Lokpal officially claims that "a complaint under the Lokpal Act should be in the prescribed form and must pertain to an offence under the Prevention of Corruption Act, 1988 against a public servant. There is no restriction on who can make such a complaint."

What is the passage of inquiry in the Lokpal?

A separate section devoted to 'Procedure In Respect Of Preliminary Inquiry And Investigation' is laid down in the Act. Once the Lokpal receives a complaint, it may order a preliminary inquiry against any public servant or investigation by any agency. After it receives the preliminary inquiry report, the Lokpal can order an investigation by any agency or initiate departmental proceedings or any other appropriate action against the concerned public servants by the competent authority. It may even order the closure of the proceedings.[2]

What are the provisions for Lokayuktas in the Act?

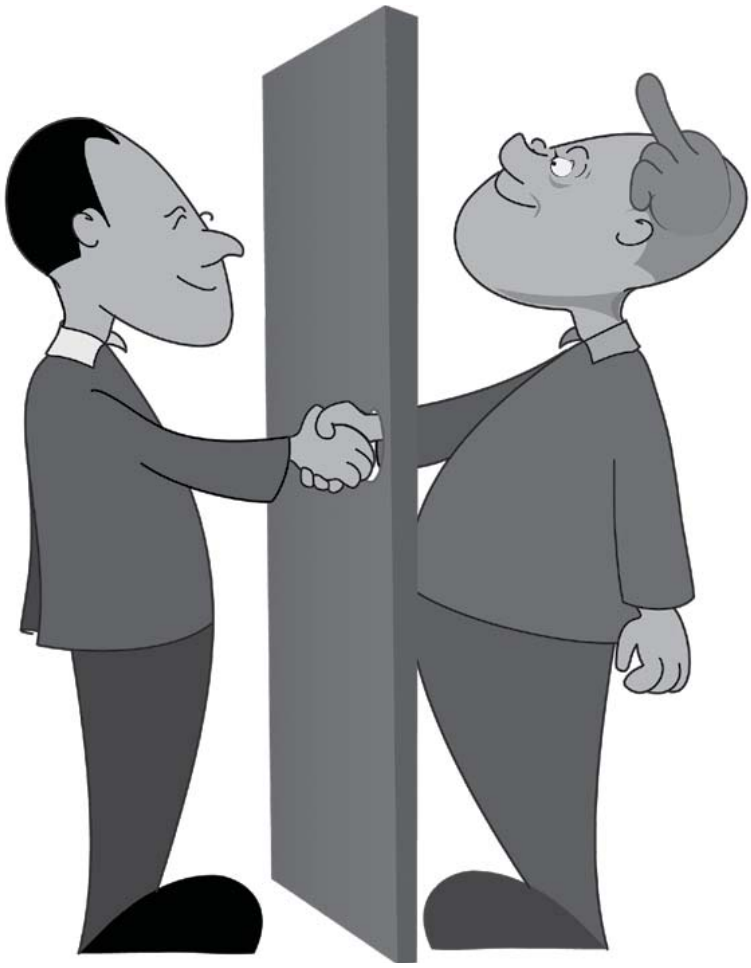
Details about the establishment of the Lokayukta, or the anti-corruption authority constructed at the state level, are laid down clearly in the Act. Under Section 63 of Part III, it states that "every State shall establish a body to be known as the Lokayukta for the State, if not so established, constituted or appointed, by a law made by the State Legislature, to deal with complaints relating to corruption against certain public functionaries." The L&L Act has also mandated that the states set up the institution of Lokayukta within one year of the commencement of the Act.

What is the history of the Lokayukta in India and what is its status in various states?

The Government of India put in place the Administrative Reforms Commission (ARC) so that it can offer recommendations to review India's public administration system. The first ARC, established on January 5, 1966 had recommended the establishment of Lokpal at the Centre and Lokayukta in the states.

Among Indian states, Maharashtra was the first to set up its Lokayukta through The Lokayukta and Upa-Lokayuktas Act in 1971. Earlier this year, the state cabinet has decided to bring the office of Maharashtra Chief Minister under the Lokayukta's ambit through a landmark initiative.[3]

The Karnataka Lokayukta too was regarded very highly for its powerful and decisive indictments, and was hailed for not shying away from pointing fingers at the government. Way back in 2011, an indictment by then Lokayukta Justice Santosh Hegde in an illegal mining case compelled BS Yeddyurappa to step down as Chief Minister.[4] However, the institution has lost its past glory in recent years. Last year, the Lokayukta and the registrar sought Karnataka High Court's intervention to put an end to governmental interference.[5]



Some states also don't seem to be in a tearing hurry to set up an independent anti-corruption ombudsman that will call out the government in the very state it is set up. It has required aggressive nudge from the Apex Court for the state governments to get into action. Newspapers had reported widely as to how a handful of states had to be expressly directed by the SC to expedite their Lokayukta appointments. In fact, a few months ago, the Supreme Court took on record efforts undertaken by six states, including Tamil Nadu, Odisha, Manipur, Mizoram, West Bengal and Nagaland to appoint Lokayukta. Even earlier, the top court had sought explanation from chief secretaries of 11 states regarding their failure in appointing Lokayukta and Uplokayukta, despite enactment of the law several years ago.

What is the long-term expectation from Lokpal and would it be enough to wipe out corruption in governance?

The Lokpal of India officially claims to be "committed to address concerns and aspirations of the citizens of India for clean governance." It also seeks to "make all efforts within its jurisdiction to serve the public interest."[6] However, given the deep rooted and endemic nature of graft in Indian society, the task of fighting corruption should be a multi-pronged one and not just vested on one singular body or institution.

It needs to be kept in mind that it is impossible to exercise full coverage of anti-corruption efforts to a dizzying range of financial malpractices. There already exists a spectrum of legislation to keep corruption in check, but there are huge gaps in their implementation. Featuring in the legislative framework around transparency and integrity are Indian Penal Code, 1860, Prevention of Corruption Act, 1988, Benami Transactions (Prohibition) Amendment Act, 2016, as well as Prevention of Money Laundering Act, 2002.

Additionally, India has ratified the United Nations Convention against Transnational Organised Crime and its three protocols and the United Nations Convention against Corruption. The Convention introduces a comprehensive set of standards, measures and rules that all countries can apply in order

> ***"Given the general ecosystem of graft, India's anti-corruption ombudsman Lokpal gains serious relevance."***

to strengthen their legal and regulatory regimes to fight corruption.[7]

However, an entire bouquet of anti-graft laws is clearly not enough when the intention to implement them is lacking. In the article *Lokpal just a step against graft*, Kaushiki Sanyal and C.V. Madhukar writes that there's need to understand certain aspects about anti-corruption laws: "Firstly, we have many laws that have been passed by Parliament and state legislatures. In many of these laws, there are loopholes that tend to provide opportunities for corruption. A major contributor to corruption is when discretion is given to the implementing officers to take certain decisions," they say. They go on to add that: "Secondly, once a law is written up, it is critical to enforce it in all seriousness. Our Parliament and state legislatures pass laws that require huge amounts of money to be spent. But then when it comes to providing the funding for implementation of all of the laws that they have passed, our governments and MPs under-fund the mandates in many cases. So, even when it comes to investing in strengthening our criminal justice system which is critical to ensuring a corruption free country, there has been systematic under-funding for many years both for the police and for the judicial system."[8]

Not surprisingly, attempts to improve governance by weeding out corruption by successive governments have been both feeble and lacking conviction over the years. A slew of bills, including the Judicial Standards and Accountability Bill, 2010, Public Procurement Bill, 2012, Electronic Delivery of Services Bill, 2011, Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011 as well as Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011, have lapsed.

It is therefore unwise to see the Lokpal as a one-stop solution to all our graft problems. It can work, only if it is aided by a battery of anti-corruption reforms, leading with the strengthening of institutions of prosecution. As R.N. Bhaskar points out in his paper *The state of corruption in India* published by the *Observer Research Foundation* (ORF), "First, the government must dispense with the protection that legislators, bureaucrats and bankers enjoy, instead allowing some of them to become approvers with immunity from prosecution. Second, judicial vacancies must be filled up soon, and appropriate premises and support staff must be provided." "The system will also need a mechanism that allows the courts to clean up corruption in their own backyard. Legislators and jurists can mutually find measures that work, without treading on each other's toes," he adds.[9]

> ***"There already exists a spectrum of legislation to keep corruption in check, but there are huge gaps in their implementation."***

What is the institutional framework for checking corruption, apart from Lokpal?

There exists an assortment of institutions that are mandated with effectively implementing anti-corruption laws. At the federal level there's the Central Bureau of Investigation (CBI), which is the government's foremost agency to investigate allegations of corruption. It was set up as the Special Police Establishment (SPE) in 1941 to look into cases of bribery and corruption in transactions with the War & Supply Deptt. of India during World War II. At that time, the SPE was part of the War Department in 1946. The Delhi Special Police Establishment (DSPE) Act was brought into force to probe cases of bribery and corruption by central government employees and the SPE was brought under the Home Department. Its functions expanded to cover all government departments. The jurisdiction of the SPE extended to all the Union Territories and could even be widened

> ***Lokpal can work, only if it is aided by a battery of anti-corruption reforms.***

to include the states with the concerned state government's consent.

The DSPE became the CBI, when the Home Ministry decided to give it a new moniker in 1963. Initially the agency investigated corruption only among central government servants but its purview later expanded to include the employees of public sector undertakings and then to public sector banks and their employees.

Another key anti-graft watchdog is the Central Vigilance Commission (CVC), set up in 1964 on the recommendations of the K. Santhanam headed Committee on Prevention of Corruption. The CVC is meant to be the apex vigilance institution, free of control from any executive authority, and is tasked with monitoring all central government vigilance activity as well as advising various central government organisations in their fight against corruption. In 2003, the Parliament enacted the Central Vigilance Commission Act, 2003, making the CVC a statutory body.

A third layer in the anti-corruption institutional framework is the Comptroller and Auditor General (CAG), whose role is to deepen democracy while also auditing public expenditure. The main job of the CAG office is to make the executive accountable for its use of public money and expose financial misdeeds. In his *Economic and Political Weekly* article *Transparency in Appointing the CAG*, Dr B.P. Mathur writes that "from the time we adopted the Constitution in 1950, the CAG has been a key player in overseeing government finances and ensuring public accountability."[10] He goes on to say that, "the CAG's responsibilities include auditing the union and state governments and public sector undertakings, as well as a large number of autonomous institutions and grants-in-aid bodies which receive public funds (both at the centre and in the states). Additionally, the CAG is responsible for compiling and consolidating state accounts."

One cannot overlook the role played by the Central Information Commission (CIC) in maintaining transparency in governance and eradicating corruption. The institution was set up in 2005 by the Union government under provisions of Right to Information (RTI) Act, 2005, while its jurisdiction is over all central public authorities. The Chief Information Commissioner heads the body, which also includes not more than 10 Information Commissioners (IC). In fact, the Supreme Court has recently said the post of a Chief Information Commissioner (Chief IC) is at a higher level than that of a Chief Election Commissioner (CEC) and that the appointment process for the Chief IC should at least be on the same terms as that of a CEC.[11]

> ***Attempts to improve governance by weeding out corruption have been both feeble and lacking conviction.***

The Chief IC's job is to receive and inquire into complaints from information-seekers who have been aggrieved by the public authority, and also contribute towards the successful implementation of the RTI Act. One of the primary responsibilities of the Chief IC is to tackle corruption through institutional channels by serving the information seeker and create an enabling environment for the disclosure of information.

In addition, cases related to money laundering by public servants are investigated and prosecuted by the Directorate of Enforcement and the Financial Intelligence Unit, outfits that come under the Ministry of Finance.[12]

Apart from the national-level anti-corruption watchdogs, there are several set-ups for fighting graft that vary across states. While a few states are armed

with State Vigilance Commissions (SVC), there are others with anti-corruption bureaus.

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

LOKPAL SELECTION: NEED FOR A BROAD-BASED APPROACH

Has the Government 'Managed' the Process?

Anjali Bhardwaj and Amrita Johri*

The Lokpal and Lokayuktas Act, 2013 (L&L Act), was passed by Parliament in December 2013 and received Presidential assent on January 1, 2014. The law was enacted to set up an independent and empowered anti-corruption ombudsman, which would work without fear or favour to tackle cases involving allegations of corruption against public servants. The law came into force on January 16, 2014 through notification in the Official Gazette.[1] However, the Chairperson and members of the Lokpal were appointed in 2019,[2] more than five years after the law was enacted. Also, the appointments were done in a manner that raised serious questions about the credibility of the selection process. In 2016, even before the Lokpal became functional, amendments were made to weaken key provisions of the legislation relating to asset disclosures by public servants.

Selection Committee with a Preponderance of Representatives from the Ruling Party

The L&L Act provides for the appointment of the Chairperson and members of the Lokpal by the President based on the recommendations of a committee consisting of the Prime Minister (Chairperson), Speaker of the House of the People, the Leader of Opposition in the House of the People, the Chief Justice of India (CJI) or a Judge of the Supreme Court nominated by him/her and an eminent jurist, as recommended by the Chairperson and other members.

After the 2014 general elections, no one was recognised as the Leader of Opposition (LoP) in the Lok Sabha. An important principle for ensuring

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independence of bodies like the Lokpal is that the selection committee responsible for making appointments to these institutions should not have a preponderance of representatives of the government and the ruling party. In order to ensure a balanced selection committee in keeping with the spirit of the legislation, the government needed to bring a single amendment to modify the composition of the selection committee by substituting the recognised LoP with the leader of the single largest opposition party in the Lok Sabha. This problem was not unique to the Lokpal law. The Delhi Special Police Establishment (DSPE) Act, which lays down the procedure for the appointment of the Director of the Central Bureau of Investigation (CBI), also included the recognised LoP as a member of the Selection Committee. The requisite amendment was promptly brought in the case of the DSPE Act for the appointment of the CBI Director.[3] In the case of the L&L Act however, the government introduced a 10-page amendment bill in December 2014, which instead of limiting itself to amending the composition of the selection committee, sought to fundamentally dilute the original law.[4] Given the controversial nature of amendments, the bill was referred to a Parliamentary Standing Committee and was never enacted.[5]

The matter of non-appointment of the Lokpal was agitated in the Supreme Court.[6] In its judgment dated April 27, 2017, the Court recorded that the Attorney General stated that an amendment to alter the composition of the selection committee was pending in Parliament. Recognising its limitation in directing the legislature to pass the amendment,[7] the Court held that in light of Sub-section (2) of Section 4 of L&L Act, which states that the appointment of Chairperson or a member of the Lokpal will not become invalid merely because of any vacancy in the Selection Committee, the L&L Act was an eminently workable piece of legislation and the appointment could be made with a truncated selection committee without the leader of opposition.

Despite the ruling of the Supreme Court, the government did not initiate the appointment process, leading to a contempt petition being filed in the apex court in January 2018.[8] Finally,

> ***"The selection committee responsible for making appointments to institutions should not have a preponderance of representatives of the government and the ruling party."***

the selection committee headed by Prime Minister Narendra Modi met for the first time in March 2018, nearly 45 months after the BJP formed the government.[9]

The PM, Speaker and the Chief Justice of India (CJI) appointed Mukul Rohatgi, who served as Attorney General during the BJP regime, as the eminent jurist on the selection panel. In the absence of the LoP, the selection of the Chairperson and members of the Lokpal came under a cloud with doubts arising about an inherent bias towards selection of candidates favoured by the government. Mallikarjun Kharge, leader of the largest opposition party in the Lok Sabha, was invited for the meetings of the selection committee as a 'special invitee.' He declined the invite on the grounds that a special invitee "would not have any rights of participation in the process of selection."[10]

The PM-led Selection Committee constituted an eight-member

> ***"Transparency in the functioning of the selection panel could have helped allay fears that the committee was merely rubber stamping the government's choice of candidates."***

search committee as per Section 4(3) of the L&L Act to short-list candidates.[11]

Sub-section 4 of Section 4 of the L&L Act mandates that the Selection Committee should regulate its own procedure in a transparent manner. The provision states, "(4) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal." Transparency in the functioning of the selection panel could have helped allay fears that the committee was merely rubber stamping the government's choice of candidates. However, the functioning of the committee was shrouded in secrecy and no details of the selection process were placed in the public domain.

Minutes of meetings of the selection panel, sought under the Right to Information Act (RTI Act), were denied. The reply stated, "as regards the minutes of the meetings it is submitted that the authorship of such documents which include 3-5 high level dignitaries does not vest in the Department of Personnel & Training and same have been shared as secret documents.[12] Thus copies of the said documents cannot be provided." The denial of information was not in keeping with the provisions of the RTI Act, as none of the clauses listed in Section 8 or 9 of the law, which can be invoked to exempt information, were relied on.

Lack of transparency, despite the statutory provision in the L&L Act, was highlighted in the contempt petition filed before the Supreme Court. However, the bench headed by the CJI in its order dated March 7, 2019 held that it was the Court's considered view that no direction should be issued in this regard and that the matter should be left for determination by the selection committee.[13]

The Supreme Court's reluctance to give any directions on the issue was at odds with the progressive stance taken by it in directing transparency in the appointment of other oversight bodies. In February 2019, the Court gave a landmark judgment to ensure transparency in the appointment of information commissioners under the RTI Act.[14] It directed the proactive disclosure of details of applicants, short-listing criteria adopted by the search committee, names of short-listed candidates and details of meetings of the search and selection committees.

The composition of the Selection Committee, and the lack of transparency in the selection process by which the Chair and members of the Lokpal were finally appointed in March 2019, have raised doubts about the independence of the Lokpal.

The 2016 Amendments

The Lokpal has been established to receive and inquire into complaints related to offences punishable under the Prevention of Corruption Act, 1988 (PCA). One of the grounds of criminal misconduct under the PCA relates to a public servant, or any person on his/her behalf, being in possession of pecuniary resources or property disproportionate to his known sources of income.[15] As illegally amassed assets are often handed over to family members, Section 44 of the L&L Act required all public servants under the jurisdiction of the Lokpal to declare their assets and liabilities and those of their spouses and dependent children. These were required to be proactively disclosed on government websites. Public disclosure of assets and liabilities of public servants was important to ensure that people could make informed complaints to the Lokpal.

The declarations were to be furnished within 30 days of the Act coming into force. However, on February 15, 2014, one day prior to the expiration of the deadline, the government,

invoking Section 62 of the Act which gives it power to remove difficulties through an order published in the Official Gazette, extended the deadline to six months of the Act coming into force.[16] Subsequently, the deadline was extended several times on the pretext that the Lokpal covered various categories of public servants and multiple rules regulating their asset disclosure norms needed to be amended to bring them in consonance with the Lokpal law.[17]

The government introduced amendments to the L&L Act in Parliament on July 27, 2016, to dilute the provisions related to asset disclosure and the amendment bill was hurriedly pushed through. The bill was brought to Parliament without any public consultation and was passed in Lok Sabha the same day it was introduced without a detailed discussion on its provisions. Subsequently, the amendments were also cleared by Rajya Sabha and assented to by the President on July 29, 2016.[18] The L&L Act was thus amended, even before the Lokpal started functioning.

The amendments severely diluted the asset disclosure provisions of the Lokpal Act. The amended Section 44 of the law allows for the form and manner of disclosure of assets and liabilities of public servants to be prescribed by the central government through rules. Following the amendments, the Department of Personnel & Training (DoPT) issued an Office Memorandum dated December 1, 2016, stating that the government was in the process of finalising a new set of rules on asset declarations.[19]

The need for a thorough asset disclosure regime for public servants is globally recognised as an important element in an anti-corruption framework.[20] Despite overwhelming public interest in comprehensive disclosure of assets, the 2016 amendments diluted the relevant provisions.

The Way Forward

In order to ensure proper functioning of the Lokpal, and to instil public trust in the institution, several urgent measures are required. The composition of the selection panel needs to be appropriately amended to provide for the inclusion of the leader of the largest opposition party in the Lok Sabha as a member of the committee, in case no one is recognised as the LoP. The Selection Committee must adopt a robust procedure to ensure transparency in the appointment process as envisaged in Section 4(4) of the L&L Act. The procedure should mandate public disclosure of particulars of applicants, shortlisting criteria, records of deliberations, including minutes of meetings of the Search and Selection Committee and material showing how the selected candidates fulfil the eligibility criteria. All records pertaining to the appointment of the Chairperson and members of the Lokpal made in 2019 must also be placed in the public domain to enable scrutiny of the appointment process.

There is an urgent need to undo the regressive amendments made to the asset disclosure provision in Section 44. The Lokpal must mandate a robust system of asset disclosures for public servants, their spouses and dependent children and these should be publicly available to enable people to participate in the fight against graft by making informed complaints.

Much of the corruption that affects common people, especially the poor and marginalised, is in state and local government agencies. Therefore, it is important to have effective Lokayuktas set up at the state level, along the same lines as the Lokpal at the Centre. In order to tackle corruption, it is important that the L&L Act be adequately amended to provide for setting up of Lokayuktas along the same lines as the Lokpal.

Finally, the L&L Act was legislated to address a major problem: the lack of an adequately independent and empowered body to look into allegations of corruption involving high ranking government functionaries who can influence cases of graft allegations. However, Section 14 of the Act, which lists the categories of public servants against whom the Lokpal would

receive complaints of corruption, extends the definition to include functionaries of entities that are wholly or partly financed by the government with an annual income above Rs 1 crore,[21] and of entities receiving donations from foreign sources in excess of Rs 10 lakh per year. Covering such a large number of persons under the Lokpal jurisdiction is wholly undesirable as it would inundate the institution with complaints and prevent proper action in cases of big-ticket corruption. Corruption involving high ranking public officials is usually of a complex and intricate nature and therefore, the Lokpal has been set up as a specialised agency with appropriate mechanisms to deal with it. Burdening the Lokpal with complaints against lakhs of persons associated with private, non-governmental bodies is not a good idea. These persons do not exercise the kind of influence and power as high ranking public functionaries. It will merely distract the agency and dilute its efficacy, thereby defeating the basic purpose for setting it up. The Act, therefore, needs to be amended to remove such functionaries from the definition of public servants under the law.

Note: This piece draws on a commentary titled, *Undermining the Lokpal*, written by the authors in the *Economic & Political Weekly* (*EPW*) journal.

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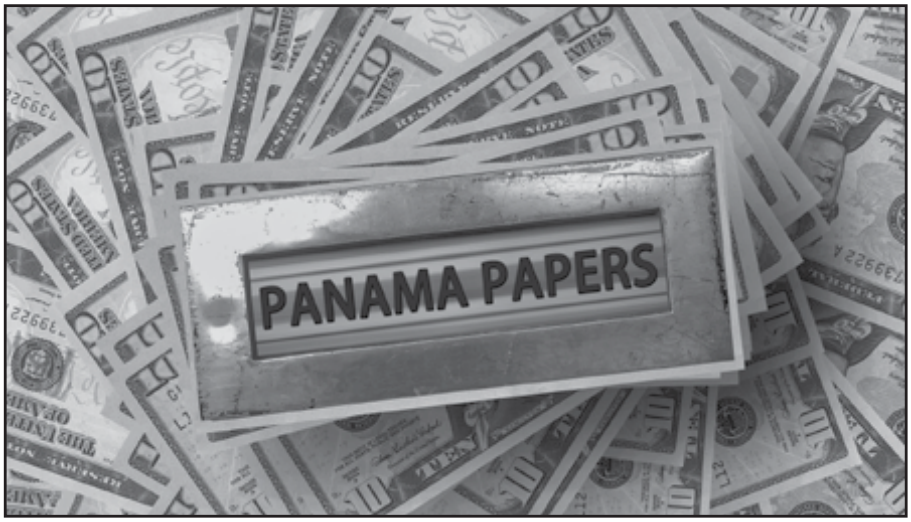
STASHING THE CASH: BOOK REVIEW

Shambhu Ghatak*



Black Money and Tax Havens

Author: Prof. R. Vaidyanathan, Publisher: westland publications ltd., First published in 2017, Price: ₹ 350, Pages: 184

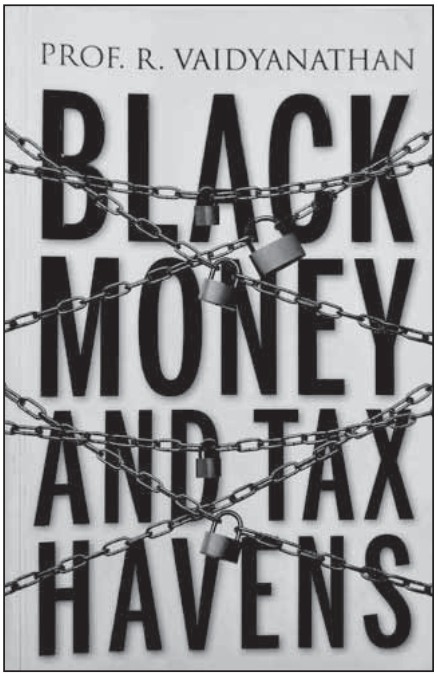
Whitney Milam in her article, *The Global 1% Is Destroying Democracy: Unraveling a web of dark money,* notes that, "Weak transparency measures in the West allow elites from corrupt authoritarian countries to construct a mask of legality and respectability so that their illicit cash can circle the globe incognito." She then goes on to explain this phenomenon and estimate the worth of this illicit cash: "After all, offshore banking and anonymous shell corporations are perfectly legal, and in a digitized world that's more interconnected than ever before, these methods have never been easier. Estimates of total offshore wealth vary, but they're in the trillions, with *Forbes* estimating last year that a full 10 percent of global GDP is kept offshore."[1]

There is no doubt that transparency of money across the world is lower than ever before and it is affecting both citizens and democracies. *Black Money and Tax Havens* offers to plug our awareness gap on hidden wealth by offering both theoretical perspective as well as evidence-based research (viz. case studies) on a variety of interlinked fields like black money, round-tripping of illicit funds and role of tax havens under modern day capitalism. Written lucidly and heavily referenced, Prof. R. Vaidyanathan's work can serve journalists, researchers and policy-makers in understanding the complex world of black money and how it travels to various tax havens and offshore financial centres like Antigua, Switzerland, Bahamas, Liechtenstein, Isle of Man, St. Kitts etc.

After consulting different definitions as provided by international experts in their studies and reports, the author defines black money as assets or resources that have neither been reported to official agencies at the time of their creation nor revealed at any point of time during their possession. People do not report black money for a variety of reasons, chief among which is high tax rates. They also shield their wealth from home governments when black money is generated from corruption and payment of bribes, on account of over-invoicing of expenditure and under-invoicing of receipts and when the rule of law (including tax laws) is ineffective in a country.

"There is no doubt that transparency of money across the world is lower than ever before and it is affecting both citizens and democracies."

* *Shambhu Ghatak is a Senior Associate Fellow with Inclusive Media for Change, www.im4change.org, Common Cause*



There are numerous processes through which illicit cash is generated. Transactions related to real estate, financial markets, bullion and jewellery, as well as cash also contribute to unreported income. The problem is exacerbated with a greater proportion of high-denomination currency notes, infusion of counterfeit currency and trade-based money laundering (in which trade misinvoicing plays a role).

The author, retired professor at IIM Bangalore and committee member of regulatory bodies such as Reserve Bank of India (RBI) and Securities and Exchange Board of India (SEBI), has expertise in domains of finance, especially in banking, insurance and capital markets. Not surprisingly, he has provided various estimates of the black money volume in India, as has been calculated by various committees and eminent economists at different time points since the early 1960s. Based on media reports about the unreleased study by the National Institute of Public Finance and Policy (NIPFP), the author has stated here that black money constituted nearly 42 percent of total GDP or about 71.5 percent of 'reported' GDP (as mentioned in the NIPFP study).

For a layperson, a country can be termed as a tax haven if it imposes little or no tax on individuals and corporations. The literature survey done by the author reflects that it is difficult to define tax havens. In short, there cannot be a universal definition for tax havens. For example, after finding it difficult to define a tax haven in its December 2008 report, the United States Government Accountability Office has regarded certain characteristics as indicative of it. The broad markers of these havens are no or low tax rates, lack of transparency in the operation of legislative, legal or administrative provisions, dearth of effective exchange of tax information with foreign official agencies, lax regulations regarding a substantive local presence and self-promotion as an offshore financial centre.

Prof. Vaidyanathan has outlined tax havens on the basis of their various functions such as scope, exemption rules, business model and secrecy. Illicit financial flows from high tax rate countries like China Mainland, Thailand, Brazil, Malaysia and India to low or no tax rate countries or tax havens such as the Cayman Islands, British Virgin Islands, Mauritius, Monaco etc. have compelled governments around the world to sign tax treaties. However, the author believes that tax treaties do not really have an impact on the complex high-risk financial structures of tax havens; instead tax treaties make offshore financial centres more sought after locations by high net worth individuals and multinational corporations (MNCs).

Once vast flows of black money are channelled out from the origin country (through methods like over-invoicing of imports and under-invoicing of exports), they are invested back by a secret company or entity located in some tax haven (preferably a country like Mauritius with whom India has Double Tax Avoidance Agreement—DTAA) in the form of portfolio investment.

Foreign portfolio investors who are registered with SEBI issue

> ***"Black money is assets or resources that have neither been reported to official agencies at the time of their creation nor revealed at any point of time during their possession."***

> ***A country can be termed as a tax haven if it imposes little or no tax on individuals and corporations.***

Participatory Notes or p-notes to overseas investors (secret companies owned by an Indian citizen or corporation, which is located in some tax haven). These investors want to purchase Indian equity apart from debt instruments (with short-term investment horizon so that funds can move in and out of the country quickly) in the stock exchange without undergoing the rigorous process of registering themselves with the regulator viz. SEBI. P-notes help in hiding the identity of its beneficial owner by facilitating the secret companies located in tax havens maintain anonymity. This process is called round tripping and is often alleged to be used for stock price manipulation.

The author alleges that although civil society organisations and public-spirited individuals have demanded bringing back black money in the country from offshore financial centres since late 2000s, the ruling UPA government at the Centre remained non-cooperative most of the time. He cites media reports and research findings to reinforce his argument that the government could have learnt a lesson or two from the efforts of other countries such as the United States or Germany to identify individuals who kept their illicit money in offshore banks and tax havens. He has also proposed to publicly reveal the names of individuals or corporations who keep their illicit money abroad.

Myriad issues related to the complicated framework around tax havens in the contemporary financial world have been explored in the book's 12 chapters. While the discussion begins with black money and corruption, it is carried forward and brought alive with details of various estimates of the extent of black money in India. To shed light on the current global conversation on capital flight, elite wealth, corruption and tax avoidance, the author provides accounts of the history and functions of tax havens, as well as funds flow, benefits and rankings of tax havens and offshore financial centres. Another highlight of the book is an analysis of 'blood money,' where the reader is enlightened about how illicit money is not just about tax evasion, but also concerns trade in drugs, arms and ammunitions as well as human trafficking.

Other allied issues that find a mention in this comprehensive narrative on shady finance, black money and tax evasion are the relationship between multinational corporations and tax havens, as well as country specific experiences in black money creation.

For a reader, any examination of corruption and tax scandal is incomplete without a mention of the recent outrage against the leak of millions of documents from tax haven law firm Mossack Fonseca. The author taps into this sentiment to analyse the Panama Papers leak and how

> ***Illicit financial flows from high tax rate countries to low or no tax rate countries have compelled governments around the world to sign tax treaties.***

> ***The broad markers of these havens are lack of transparency in the operation of legislative, legal or administrative provisions, and self-promotion as an offshore financial centre.***

that affects India. Finally, he ties up the various threads around the financial conduct of the rich and powerful with suggestions on reforms required to curb black money and ways to deal with tax havens.

The book can be criticised for making two broad assumptions – (a) that the prevalence of cash contributes to black money; and (b) cross-border movement of capital or money takes place to escape higher tax rates. A study published in *BIS Quarterly Review* – a peer-reviewed research journal from Bank for International Settlements – shows that the value of payments made in cash as a proportion of GDP was lower in India (8.8 percent) as compared to countries like Japan (20.0 percent) or Switzerland (12.3 percent) in 2016.[2] Despite demonetisation of Rs. 500 and Rs. 1000 notes to curb black money, cash in circulation during the end of May 2019 was almost 22 percent higher than the pre-demonetisation level.[3]

International flow of capital depends on various factors, such as differences in real interest rates between countries, war within a country, macroeconomic stability of an economy, etc. apart from tax rate differences across nations.

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> At his best, man is the noblest of all animals; separated from law and justice he is the worst.
>
> *Aristotle*

COMMON CAUSE EVENTS

A Presentation on the Findings of SPIR 2019: June 10, 2019

Akhilesh Patil*

During the presentation, participants discussed the findings of SPIR 2019, dedicated to the working conditions of police personnel in 22 states.

The key findings of the second Status of Policing in India Report (SPIR) 2019 was jointly presented by Common Cause and Lokniti programme of the Centre for the Study of Developing Societies (CSDS) on June 10, 2019 at the CSDS campus. The well-attended event saw the participation of many civil society and philanthropic organisations, including Tata Trusts, Commonwealth Human Rights Initiative and Vidhi Centre for Legal Policy.

It is the second comprehensive report prepared by Common Cause in association with Lokniti, dedicated to the working conditions of the police personnel in 22 states as well as their infrastructure and training. Like SPIR 2018, this study also applies mixed methodology. While a section of the survey is devoted to analysing official data regarding police infrastructure, housing conditions, budget expenditure, training facilities, etc., another focusses on the understanding and perception of police personnel about these issues. A significant portion of the official data has been gleaned from 'Data on Police Organisation', reports released by the Bureau of Police Research and Development. For the perception study, a survey of 11834 police personnel was conducted across 22 states.

During the course of the presentation, Anurag Jain of Lokniti discussed the survey findings while Radhika Jha of Common Cause presented the analysis of the official data. Presentations were followed by a discussion on the findings and possible outcome of the report. Dr Vipul Mudgal, Director, Common Cause, Professor Sanjay Kumar, Director, CSDS and Professor Suhas Palshikar, Co-Director of Lokniti Programme offered valuable inputs on the findings. In addition, the survey analysis was enhanced with feedback from participating organisations with prior experience of working in the field of police reforms.

* *Akhilesh Patil is a Research Executive at Common Cause*

Indian Extractives Transparency Charter: June 27, 2019

Akhilesh Patil*

Journalist Nitin Sethi (left) and Sreedhar Ramamurthi of Environics Trust stressing on continuous coordination to monitor illegal mining.

Common Cause hosted a meeting of civil society organisations, environmentalists and journalists concerned about developments in the extractive industry in India on June 27, 2019. Representatives from Centre for Science and Environment (CSE), Environics Trust, Goa Foundation, Mazdoor Kisan Shakti Sangathan (MKSS) and Oxfam participated in the discussion.

The meeting focused on several issues, including furthering the development of the Draft Indian Extractives Transparency Charter and practical recommendations on how access to information can help monitor illegal mining.

The Charter has been prepared with the help of Publish What You Pay (PWYP), a worldwide campaign for an open and accountable extractive industry.

Sreedhar Ramamurthi, managing trustee, Environics Trust, highlighted how inaccessibility of information has resulted in the opaque functioning of the extractive industry. Though various organisations have been contributing towards changing this situation, each one of them has been working independently so far. He stressed on the need for continuous coordination between all actors in this domain. "Together we could work effectively in bringing transparency in the extractive industry." he said.

Rahul Basu of Goa Foundation and Nikhil Dey of MKSS discussed the impact of mining on public health and environment. In states like Rajasthan, a sizeable population living around mining sites has been found to suffer from silicosis, a lung disease. Both of them voted for concentrating efforts around health and environment, along with legal interventions that strive to usher in economic transparency. According to Basu, the scale of the extractives industry in India is such that monitoring it is a Herculean responsibility. He pressed for the formation of a central outfit to keep an eye on the mining industry exclusively.

Other participants, including journalist Nitin Sethi, Sharmistha Bose from Oxfam, Chinmayi Shalya from CSE, and Rakshita Swamy from the Social Accountability Resource Unit, also gave suggestions for developing an action plan. In addition, the group discussed the importance of disseminating information locally and making the afflicted communities aware of the impact of mining.

Among other initiatives, the group agreed to connect with each other regularly and get more partners to push the agenda of transparency forward. As a first step, a large consultation of environment and right to information activists, as well as open data organisations, has been planned.

Representatives from Centre for Science and Environment, Environics Trust, Goa Foundation, Mazdoor Kisan Shakti Sangathan and Oxfam participated in a brainstorming session on the draft.

* *Akhilesh Patil is a Research Executive at Common Cause*

Crime Victimisation Survey Workshop: June 8, 2019

Radhika Jha*

Common Cause participated in the 'Crime Victimisation Survey Workshop' organised by the Centre for Constitutional and Legal System Reform, Azim Premji University, in Bengaluru on June 8, 2019. The workshop brought together civil society and academic institutions as well as government organisations engaged in research on crime victimisation and related themes. The objective of the workshop was to act as a collaborating platform for organisations, helping them engage in an exchange of ideas and learnings and explore possibilities of working together in the future.

The topic of discussion for the day-long workshop was crime victimisation surveys, a critical tool for understanding the actual prevalence of crime in India, as differentiated from the official government records of reported levels of crime. While Commonwealth Human Rights Institute, IDFC Institute and Azim Premji University presented findings from their crime victimisation surveys conducted in different states across the country, participants from Common Cause, Centre for Study of Developing Societies, Prayas and other organisations provided feedback and suggestions.

The second half of the workshop was dedicated to discussions on future activities and collaborations. Researchers from the National Institute of Public Finance and Policy provided inputs on learnings from existing studies and lessons for the future. This was followed by a discussion on strategies and methodology for a proposed study by team members of the National Council of Applied Economic Research. The organisation is conducting a nation-wide crime victimisation survey, supported by the Bureau of Police Research and Development.

The workshop concluded with stakeholders from civil society, academic institutions as well as government departments unanimously agreeing to collaborate on future initiatives. The seminar was an important step towards bringing together a credible body of research on crime victimisation in the country.

PHOTO CREDIT: Azim Premji University.

Radhika Jha of Common Cause offering feedback on crime victimisation surveys conducted in different states in a workshop organised by Azim Premji University in Bengaluru.

* *Radhika Jha is a Research Executive at Common Cause*

How Accountable is the Electoral Process in India: May 18, 2019

Susmita Saha*

(From left) Former Supreme Court judge Justice Madan Lokur, along with former Chief Election Commissioners Navin Chawla and S.Y. Quraishi, speaking on accountability in conducting elections.

Common Cause was a partner in the public hearing 'How Accountable is the Electoral Process in India,' on May 18, 2019 at the India International Centre. The hearing was an attempt to have a conversation around the giant polling machinery in India. The idea of the electoral machinery not being held hostage to technological error and manipulation was central to the gamut of topics deliberated on at the forum.

The first two sessions, 'Strengthening the independence and transparency of the Election Commission,' and 'Conducting free and fair elections: ECI and the Model Code of Conduct,' were chaired by former Supreme Court judge Justice Madan Lokur. They featured several key speakers, including Telugu Desam Party President N. Chandrababu Naidu, Anjali Bhardwaj of the National Campaign for People's Right to Information, Prof Babu Mathew of National Law School of India University, Bangalore, Wajahat Habibullah, former Central Chief Information Commissioner, former Chief Election Commissioners Navin Chawla and S.Y. Quraishi, as well as Dr Vipul Mudgal, Director, Common Cause.

Explaining why the Election Commission (EC) cannot act arbitrarily despite having wide-ranging powers during the process of elections, Justice Lokur referred to one of the directions given by the Supreme Court in the case of *Mohinder Singh Gill v. The CEC, New Delhi and Others (1977)*. In this case, the five-judge Constitution Bench had interpreted Article 324 of the Constitution, stressing on its all-powerful nature. It held that the EC is in charge of the elections, and what it says is the law. However, the former Supreme Court judge felt that this interpretation does not mean the EC can act in an arbitrary manner.

India elected a brand new Parliament in May this year and the run-up to this event has been tumultuous. It is against this backdrop that civil society organisations came together for a public hearing, to follow up on their nationwide campaign to have VVPAT slips recognised as the ballot. Propelling this initiative forward was the resolution to ensure free and fair elections and the need to build a concerted campaign towards strengthening the election process and safeguard it from multiple limitations.

Dr Vipul Mudgal, Director, Common Cause, observed why the set of guidelines meant to regulate political parties and candidates steered the electoral process in the right direction. "The ambiguity about the Model Code of Conduct (MCC) is actually a good thing. Through this, the superintendence, guidance and control is in the hands of the EC. The existing set-up is much better than defining these guidelines very narrowly and saying there is a redressal mechanism through which everybody can go to court," he said.

* *Susmita Saha is a Senior Research Analyst at Common Cause*

HOW EFFECTIVE IS THE LAW ON CORRUPTION?

A Study of Legal Disposal of Cases

Radhika Jha and Dhruv Shekhar*

Poor sentencing in the case of the federal law curbing corruption is startling, according to data provided by the National Crime Records Bureau (NCRB) for the year 2016. Sample this: At the all-India level, the conviction rate of IPC (Indian Penal Code) and SLL (Special and Local Laws) cases is nearly 65 percent, compared to 37 percent conviction rate of cases under Prevention of Corruption Act, 1988, (PCA).

The picture turns more dismal hereafter. Among the states for which data is available, there were zero convictions under PCA in four states and UTs in the year 2016.

Undoubtedly, the grim rate of conviction under PCA is an indicator of something more sinister. It inspires the perception that corruption is a static Indian reality and the response of the prosecution machinery is lax while dealing with graft cases. Although a mass movement led by Gandhian social activist Anna Hazare aspired to be a bulwark against corruption, resulting in the clarion call for a Jan Lokpal (or people's ombudsman), the sentiment around integrity remains dubious on the ground.

Obviously, the most potent tools to counter corruption are legal statutes. One such law, the Prevention of Corruption Act, 1988, came in the wake of the inability of the existing legal infrastructure to curb and control corruption, together with the growing public resentment against rampant financial mismanagement. Since then, several amendments have been made in the statute, the most recent being in July 2018. In this article, we study the working of this legislation by looking at data provided by the NCRB on the police and court disposal of Anti-Corruption, Vigilance and Lokayukta cases under the Prevention of Corruption Act, 1988 and other relevant IPC provisions.

One thing is clear from the data mined from NCRB - the disposal of cases under the PCA by the police, as measured by the pendency percentage (provided by NCRB) is much poorer for cases under the PCA and related IPC sections than for the overall IPC and SLL cases. Similarly, conviction rates are also much lower for PCA cases than the overall conviction rate.

Brief History of Legislations Around Corruption in India

The corruption regulation landscape goes back a long way. One of the earliest legal attempts is a pre-independence ordinance issued during the Second World War called the Criminal Law (Amendment) Ordinance, 1944 (Ordinance No. XXXVIII of 1944). Enacted under the

* *Radhika Jha and Dhruv Shekhar are Research Executives at Common Cause*

Government of India Act, 1935, it was promulgated to prevent concealment and/or disposal of property procured through means which come under scheduled offences.[1]

The enduring legacy of this document was such that it is one of the few permanent ordinances attaining the status of a law in the post-independence period. Its contents were later on incorporated in the Prevention of Corruption Act, 1988.[2] However, in the interim period there was a need for new legislative measures to combat a bevy of post war corrupt practices such as numerous construction schemes, termination of contracts and disposal of surplus governmental stores.

The existent ordinance and the provisions within the IPC had proven to be inadequate to control corrupt government officials and thus the Prevention of Corruption Act, 1947 was passed in an effort to strengthen the law against corruption. The 1947 Act sought to incorporate the modified version of the provisions previously included in the 1944 ordinance.

An interesting feature of this legislation was that it reversed the traditional rules on presumption of criminal liability. It presumed mens rea (the intention/ knowledge of committing the crime) on part of the public servant if the actus reus (the physical act of committing the crime itself) was proved. However, there continued to be problems with the legislation as it did not give separate definition of the public servant or make improvements with respect to certain sections.

After the Santhanam Committee recommended stringent measures to combat rampant corruption, the Act was amended in 1964. Despite the amendments, the legislation was found to be ineffective against the scourge of corruption which was being perpetrated through a nexus between elected politicians and government officials.

The 1947 Act was ultimately repealed and a new legislation was introduced in 1988. It not only sought to replace the preceding legislation but also provided a separate statutory basis for offences codified within Section 161-165A of the IPC. Some of the features of this legislation included a widened scope for the definition of a public servant, an increase in the severity of penalties imposed as well as an emphasis on speedy trials.

Effectiveness of the Law

Major criticisms of the Indian criminal justice system are its low conviction rate and failure to dispose of cases in a timely manner. While this is true for most categories of criminal cases, in cases of corruption, one can hypothesise that the phenomenon would be further exacerbated due to the justice

> ***"The Prevention of Corruption Act, 1988, came in the wake of the inability of the existing legal infrastructure to curb corruption."***

system's complicity, whether explicit or implicit, in the corrupt acts of the accused, who are often placed high up in the pecking order. To understand whether such a discrepancy exists, for reasons of complicity or otherwise, we look at the data on police and court disposal of cases registered under PCA and other related IPC Sections, provided in the Crime in India report of NCRB.

Police Disposal of Cases Registered Under PCA

Police disposal here has been measured by two variables. The first one is the chargesheeting rate, or the number of cases in which police filed chargesheets in a year as a percentage of

the total number of cases for investigation by the police in that year. The second variable is the pendency percentage of police, or the number of cases pending investigation by the police as a percentage of the total number of cases for investigation in that year.

When we look at the data provided by NCRB for 2016, we notice that the chargesheeting rate for cases under PCA and of all other IPC and SLL are not very different at the all India level. To put it in numbers, 81 percent of all cases for investigation by the police were chargesheeted, while the number of cases chargesheeted under PCA was slightly higher at 83 percent.

A look at the state-wise differences between chargesheeting rate of total IPC and SLL cases vis-à-vis chargesheeting rate of PCA cases tells us that for most states and Union Territories (19), the latter is as much or higher than the former. That is, chargesheeting for PCA cases is happening at the same rate or at a higher rate than the overall IPC and SLL cases.

> ***"Major criticisms of the Indian criminal justice system are its low conviction rate and failure to dispose of cases in a timely manner."***

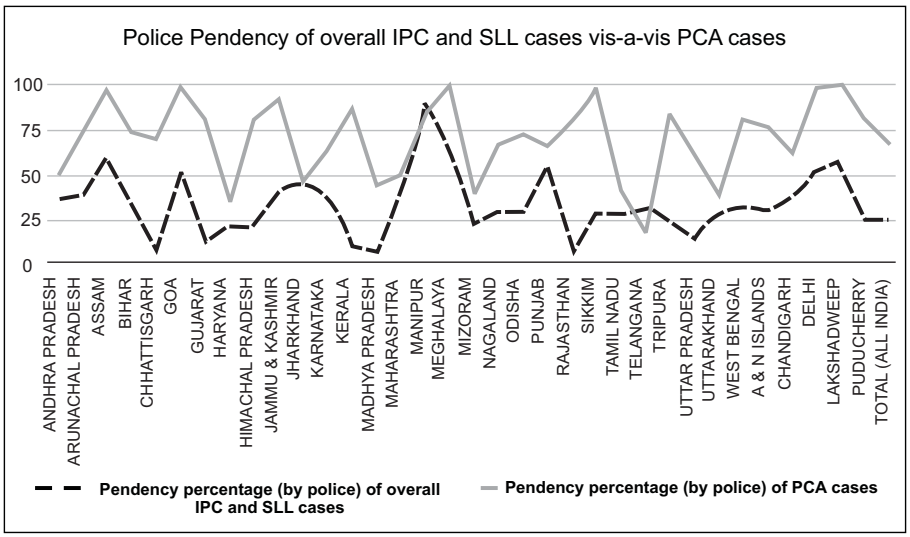
For some states, however, the difference is highly pronounced where the chargesheeting rate for PCA cases is significantly lower than that of overall cases. For instance, in Kerala, the overall chargesheeting rate is 98 percent compared to 47 percent for PCA cases. Similarly, in Arunachal Pradesh the overall chargesheeting rate is 61 percent against 20 percent for PCA cases. Other states with similar trends are Manipur, Telangana, Tamil Nadu, Puducherry, Nagaland, Tripura, Himachal Pradesh and Karnataka. The thing to note here is that this list features states such as Himachal Pradesh, Kerala and Telangana which are often ranked highly on police performance indicators.

The pendency of cases of crimes under PCA in the police, on the other hand, is uniformly more than the police pendency percentage of total cases in all states except Manipur and Telangana in 2016. The difference is as stark as 9 percent pendency for total cases against 86 percent pendency in PCA cases in Kerala and 5 percent overall pendency in Rajasthan against 79 percent pendency of cases under PCA. The below graph clearly illustrates the higher pendency rates of PCA cases in most Indian states.

Court Disposal of Cases Registered Under PCA

For assessing the court disposal of cases, both overall and those under PCA, two variables have been used. The first one is the conviction rate, or the number of cases in which convictions were made as a percentage of the total number of cases tried in the court in that year. The second variable is the pendency percentage of cases by the court, or the number of cases pending trial at the end of the year as a percentage of the total number of cases for trial during the year.

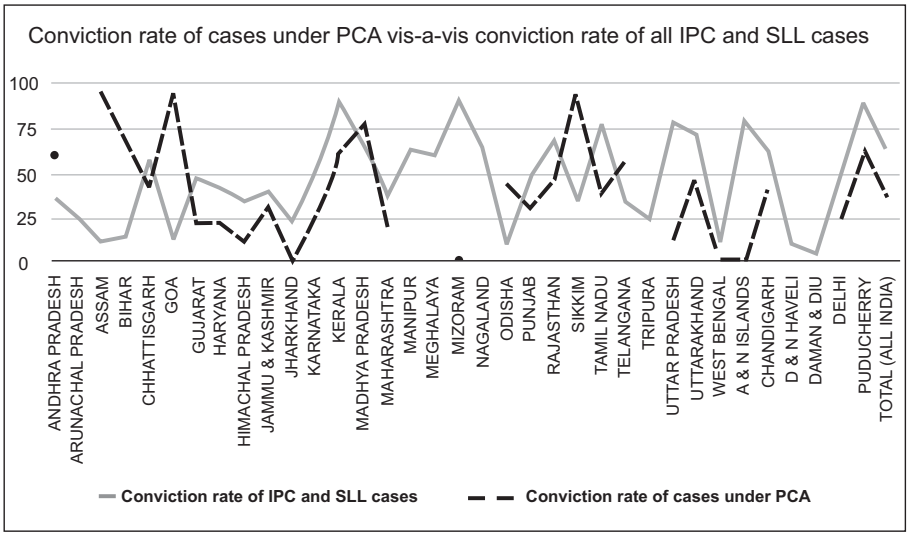
When we examine the conviction rate of overall IPC



Source: Crime in India 2016, National Crime Records Bureau

and SLL cases and those under PCA and other relevant IPC Sections, the numbers reveal that the latter is significantly lower than the former. So, the conviction rate under PCA and other related sections is much lower than that of overall IPC and SLL cases. Among the states for which data is available,[3] only eight states have conviction rate under corruption cases higher than the overall rate, while in the remaining 20 states the opposite is true. In these 20 states the conviction rates of corruption cases are lower than the overall rates. In four of these states and Union Territories (UT), in fact, there were zero convictions under PCA in 2016.[4] At the all-India level, the conviction rate of IPC and SLL cases is nearly 65 percent, compared to 37 percent in cases under PCA. Some states and UTs in which the difference is the highest are Mizoram (overall conviction rate of 94 percent and 0 convictions of cases under PCA), the Andaman and Nicobar Islands (overall conviction rate of 83 percent but 0 conviction of cases under PCA) and Uttar Pradesh (overall conviction rate of 81 percent against a conviction rate of 13 percent of cases under PCA). The graph in this page illustrates the difference in conviction rates across the states and UTs.

In terms of the differences in the pendency percentages by the court of overall cases pertaining to IPC and SLL compared to PCA, again, pendencies are much higher in cases of corruption as compared to the overall cases. However, the differences are not as substantial in the court as in the police. Ten states have an opposing trend wherein the pendency percentage of cases under PCA are lower than the overall pendency percentage, but all remaining states conform to the larger pattern of higher pendencies in corruption cases. In states like Tamil Nadu, Nagaland and Andhra Pradesh, for instance, the difference is of more than 30 points.[5] In Nagaland, in fact, no cases under PCA were disposed of by the court in the year 2016 and the pendency percentage was 100 percent.



Source: Crime in India 2016, National Crime Records Bureau

A caveat that needs to be added here, however, is that pendency percentage of cases by either the police or the courts is not indicative of delays in police investigation and court trial. Delays are rather measured by mapping the duration of investigation and trial period of a case over a number of years, whereas pendency percentage only looks at the overall case disposal ability of the police and court in that year. Therefore, the two concepts should not be confused. However, in the absence of data relating to delays in court of cases under PCA, we have referred to pendency percentages to measure the efficacy of the police and court in the disposal of cases, and not as a measure of delay.

Overall Analysis

The data presented above gives a bird's eye view of the landscape of investigation and prosecution of corruption cases, when stacked up against the disposal of other types of cases. It is evident that cases under PCA are less likely to be disposed at the same rate as other cases and convictions under PCA are lower than the overall conviction rate in the country as of 2016. Apart from chargesheeting rate

by the police, at all other levels — whether pendency by the police or court, or conviction rates of the court — cases under PCA appear to be poorly located in most states. This is true even in some of the better developed states such as Kerala and Tamil Nadu. Whether this is due to any explicit or implicit collusion between the system and the accused under the Act or for reasons completely extraneous to the players is a topic that requires further probing. However, the facts, as they stand, give genuine cause for concern and point fingers at the institutional framework for investigation and prosecution.

The above data is merely scratching the surface of institutional wherewithal and brings to light the need for a more exhaustive perusal of criminal justice system's poor performance in PCA cases. Over the last five years, from 2012 to 2016, the number of cases for trial under PCA has gone up significantly. From 19684 cases in 2012, the number has surged to 25582 in 2016, which is a 30 percent increase. The number of officers involved has kept pace with the swelling numbers. The conviction rate, on the other hand, has remained constant, but much lower than the overall rate, indicating lack of improvement in the state of affairs. All of these issues, when seen cumulatively, point towards a systemic apathy of the justice system in efficiently dealing with corruption cases.

Conclusion

It appears to be clear that some of the fundamental errors of our justice system continue to stymie prosecution of those alleged to have committed offences under the PCA. In many cases the ambiguity of the legislation has placed honest and scrupulous government officials under the scanner. At other times, a system geared to serve those running it has been hand in glove to frustrate efforts of prosecuting them.

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4. In the states of Jharkhand (number of cases for trial under PCA- 287), Mizoram (number of cases for trial under PCA- 44), West Bengal (number of cases for trial under PCA- 44) and Andaman and Nicobar Islands (number of cases for trial under PCA- 43).
5. Tamil Nadu: pendency percentage of IPC and SLL cases by court is 55, against 89 percent pendency of cases by court under PCA; Nagaland: pendency percentage of IPC and SLL cases in court is 63, and a 100 percent pendency in court of PCA cases; Andhra Pradesh: 62 percent pendency in court of overall IPC and SLL cases, compared to 93 percent pendency in court of cases under PCA.

HOW WATCHDOGS FUNCTION ACROSS THE WORLD

A Quick Look at the Global Best Practices

Anshi Beohar*

"Romania's most powerful politician, Liviu Dragnea, was ordered... to begin serving a three-and-a-half-year prison sentence for abuse of power, upending the political order in the East European country and handing a victory to those who view corruption as the chief threat to the health of the nation," goes a recent story in *The New York Times*.[1]

And in a major setback to accountability in public office, South Korea's former President Park Geun-hye was sentenced to more than two decades in prison last year after being found guilty of corruption.

Loss of integrity in the public sector is a constant refrain. According to a brief on The World Bank website, "corruption erodes trust in government and undermines the social contract. This is cause for concern across the globe, but particularly in contexts of fragility and violence, as corruption fuels and perpetuates the inequalities and discontent that lead to fragility, violent extremism, and conflict."[2]

The brief goes on to explain how the hardest hit is always the poor in this vicious cycle of corruption. It states: "empirical studies have shown that the poor pay the highest percentage of their income in bribes. For example, in Paraguay, the poor pay 12.6 percent of their income to bribes while high-income households pay 6.4 percent. The comparable numbers in Sierra Leone are 13 percent and 3.8 percent respectively. Every stolen dollar, euro, peso, yuan, rupee, or ruble robs the poor of an equal opportunity in life and prevents governments from investing in their human capital."[3]

Ombudsman: A History

There's no denying that corruption lies at the heart of global wealth inequality and is chipping away at the core of democracy like a termite. To combat weak transparency measures and promote good government values, ombudsmen have been set up since the early 19th century. They have not only acted as a link between the citizens and the state but also provided redressal to a variety of grievances while holding governments to account. The earliest ombudsman in the modern world was established in Sweden in 1809, to oversee the government administration. This is the classical public-sector ombudsman which has now proliferated across numerous countries.

The old Norse term *umboosmaor* means representative; which evolved into the Swedish word *umbuds man* and the modern English term ombudsman. It broadly refers to an official dedicated to upholding the rule of law and human rights, as well as protecting the rights of the citizens from administrative abuse. He or she is also charged

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with halting a state, usually democratic, from exercising corrupt governance, autocracy or authoritarianism. Addressing complaints in a neutral, non-partisan and independent manner is usually the job profile of an ombudsman, which resorts to a raft of procedures to rectify systemic failings and plug gaps existing in complaint-resolution mechanisms, both at the individual and collective level.

Although their roles may vary according to national mandates there are various lessons that India can learn from these institutions. Currently, the role of the ombudsman system gains serious relevance for India in the light of retired Supreme Court judge Justice Pinaki Chandra Ghose being appointed as the first Lokpal, the country's anti-corruption ombudsman.

In this article, we have tried to discuss how ombudsmen and human rights institutions work in different countries around the world and their functions. Here's a ready roster of some of the most successful models of ombudsmen from which India can take a leaf.[4]

Types of Ombudsman Models

- Reactive Ombudsman

One of the models of classical ombudsman is the reactive ombudsman, defined by the International Bar Association in 1974, as:

"An office provided for by the Constitution or by an action of the legislature or Parliament and headed by an independent, high-level public official who is responsible to the legislature or Parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action and issue reports."

The classical ombudsman model holds jurisdiction over administrative actions and supervises acts of administrative injustice and nonconformity with the law. Its major responsibility is designed around handling individual complaints and securing justice for aggrieved citizens but its role is not generally proactive.

However, in the modern setting, it may initiate *suo moto* investigations and conduct proceedings against a wrong-doer as well. Sweden had introduced the classical ombudsman in 1809, while Finland also practises the reactive ombudsman model.

- Variegated Ombudsman

The second model, referred to as variegated ombudsman, has way more responsibilities and powers, as compared to the classical variety. This model requires the ombudsman to be more conscious and to actively engage in protecting human rights, while ensuring that justice is served either directly or indirectly. It goes a long way in creating awareness among public and encourages people to contribute towards improving administrative processes. Some government entities in New Zealand operate under the scrutiny of a variegated ombudsman.

- Proactive Ombudsman

The role of a proactive ombudsman is multi-faceted. It is not just in charge of dispensing justice, but is also responsible for initiating reforms for systemic changes. It prioritises proactive standard-setting over expecting the aggrieved to come forward or merely handling the complaints. Australia has certain authorities acting in the capacity of proactive ombudsman.

The Role of an Ombudsman

The ombudsman operates as an independent monitoring body, individual, a group of individuals or an institution. Depending on the requirement of the system, various forms of ombudsman institutions may coexist in a system, dealing with corrupt practices on different fronts. Additionally, this body may also act like any of the models described above or like a hybrid, based on the need of the hour.

The role of the ombudsman in democracies is becoming increasingly significant and the scope of its jurisdiction is expanding. Simultaneously,

there are organisations tracking the status of governance, transparency and accountability in countries around the world. World Justice Project is one such organisation conducting extensive studies globally and ranking countries on numerous indices, including absence of corruption, open government and fundamental rights.

World Justice Project measures how the rule of law is experienced and perceived by the general public by conducting primary data surveys and accordingly prepares a WJP Rule of Law Index.

According to the 2019 WJP Rule of Law Index,[5] India's overall ranking is 68 out of 126 countries. Regrettably, India has gone done the rankings since 2017-18, when it was ranked 62 out of 113 countries. India falls in the Lower Middle-Income Group of the WJP Rule of Law Index and is ranked first in the Open Government parameter. Regionally, in South Asia Region of the WJP Index, among countries forming the Indian sub-continent, India was ranked first in 2017-18, but in 2019 Nepal and Sri Lanka have overtaken it. Hence, it ranks third right now. India also ranks seventh among 30 lower middle-income countries.

The 2019 Index has recorded that more countries have declined in the overall rule of law performance, suggesting that we are globally sliding towards weaker rule of law, authoritarianism and poorer governance. According to Elizabeth Andersen, the Executive Director of the World Justice Project, there's reason to be concerned.[6] "This slide in rule of law in general and checks on government powers in particular is deeply concerning. There is a crucial difference between 'rule by law' and 'rule of law.' In too many countries, laws and legal institutions are being manipulated to undermine rather than uphold the rule of law, even as governments wrap their actions in 'rule of law' rhetoric," she said.

The parameters for the rankings of the rule of law index include constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice. The top rankings, taking into consideration some of the relevant factors, are given in the table in the next page.

Interestingly, developed countries like United States, United Kingdom, Canada and Australia have not made it to the top five on any of the factors of the WJP Rule of Law Index. Thus, a quick study of ombudsman institutions from the top ranking countries will offer deep insights into their real-time functioning. However, unlike India's Lokpal they are not strictly anti-corruption watchdogs. In fact some of these ombudsmen possess powers that help boost human development and empower citizens to exercise their rights. Still, the expertise of these ombudsmen in areas such as improving the quality of governance is hugely inspiring, and can be of great import to India. For a nation currently in the process of making its Lokpal fully operational, an understanding of these mechanisms can alter the landscape of transparency.

Denmark

The *Folketingets Ombudsman*,[7] or the Danish Parliamentary Ombudsman was first established in 1955 to investigate complaints about public administration. It is elected by *Folketing*, the Danish Parliament, and its jurisdiction extends to matters concerning constitutional law, administrative law, and other aspects of public administration, such as access to information, matters of public finance and taxation. The Monitoring Division visits public institutions like prisons, psychiatric institutions and social care homes while the Children's Division visits kids' institutions in order to processes complaints from both children and adults. Apart from self-initiated investigations and inspections, the ombudsman also deals with complaints.

Norway

The *Sivilombudsmannen*,[8] the Norwegian Parliamentary Ombudsman, is appointed by the *Storting*, its Parliament, to protect the rights of individuals and to prevent torture and inhuman treatment meted

Ranking	Constraints on Government Powers	Absence of Corruption	Open Government	Fundamental Rights	Order and Security	Regulatory Enforcement	Civil Justice	Criminal Justice
1.	Denmark	Denmark	Norway	Finland	Singapore	Denmark	Denmark	Finland
2.	Norway	Norway	Finland	Denmark	Denmark	Norway	Netherlands	Denmark
3.	Finland	Singapore	Denmark	Norway	Norway	Singapore	Germany	Norway
4.	Sweden	Sweden	Sweden	Sweden	Hong Kong SAR, China	Netherlands	Norway	Sweden
5.	Netherlands	Finland	Netherlands	Austria	Japan	New Zealand	Singapore	Austria

Source: World Justice Project (2019). The WJP Rule of Law Index 2019.

out in institutions. It looks into complaints and takes up matters *suo moto* as well. Norway also has an equality and anti-discrimination ombudsman, one for children, and a parliamentary ombudsman for the Norwegian armed forces.

Finland

The principal ombudsman institution in Finland is *Eduskunnan oikeusasiamies*,[9] which has been in existence since 1920. It oversees the legality of actions taken by the authorities, primarily by investigating complaints received, without any cost to the complainant. It also investigates a complaint if there are grounds to suspect that an authority or official has acted unlawfully or when the fundamental and human rights have not been appropriately implemented. Anonymous complaints are not entertained by the *Eduskunnan oikeusasiamies* but a complaint may be made on behalf of someone else or with others.

Sweden

The *Justitieombudsmannen* (JO) or *Riksdagens* ombudsman (Swedish Parliamentary Ombudsman)[10] is the first official ombudsman in the modern world. The *Riksdag* or the Swedish Parliament appoints a JO/parliamentary ombudsman specifically to safeguard the citizens from abuse or maladministration of public administrators. The JO is responsible for examining the compliance of public authorities and officials with legal procedures and ensuring fair treatment of citizens The parliamentary ombudsman can issue critical statements and propose that public authorities improve their routines. Sweden has had an ombudsman institution since 1809 and the basic principles of its obligations in office have remained the same. Presently, there are four parliamentary ombudsmen appointed directly by the *Riksdag* for a four-year period, with the power to supervise a number of public authorities.[11]

The Netherlands

The Constitution of the Netherlands mandates the appointment of *Nationale Ombudsman* since 1981.[12] It refers, mediates or investigates the complaints received against government malpractices. An annual report of all the dealings of the *Nationale Ombudsman* is released every year, to the public and presented to the Parliament. The information is then used to improve the functioning of various departments or individual officials.

Austria

Die Volksanwaltschaft,[13] the Austrian ombudsman board, has been the 'human rights house of the Republic of Austria' since 1977. The federal Constitution empowers the three-membered board for protecting and promoting compliance with human rights. The board works in a collegial manner, while the board members are elected by the Austrian Parliament (National Council), *Nationalrat Österreichisches Parlament*. Irrespective of the age, nationality or place of residence, anyone who has been ill-treated by the Austrian public authorities, may lodge a complaint with the board. Since 2012, it has also been responsible for preventive

human rights monitoring. So, it is tasked with not just protecting and promoting human rights but also recognising and rectifying risk factors for human rights infringements at an early stage in the Republic of Austria.

Hong Kong

The Hong Kong Office of the Ombudsman was established in 1989 by The Ombudsman Ordinance, and has been serving the community by monitoring public governance in the region.[14] The office is seeking to improve the quality of public administration through independent, objective and impartial investigations into complaints received and by self-initiated studies. Primarily, grievance redressal and addressing issues arising from maladministration in the public sector are the focus of this office, regardless of the complainant's nationality. It also promotes protection of human rights, fair treatment of individuals by the public sector and efficient services.

New Zealand

Since 1962, the Office of the Ombudsman of New Zealand has acted as an independent authority, helping the community in its dealings with government agencies.[15] It engages in protecting the rights of individuals, such as the disabled community, whistle-blowers, detained individuals, etc. In addition, it guides other state agencies to improve fairness and conducts formal investigations against complaints.

Germany

The German Federal Parliament, *Bundestag*, appoints a Parliamentary Petitions Committee, *Petitionsausschuss Deutscher Bundestag*,[16] the closest contemporary of a modern-day ombudsman. The committee deals with complaints or requests received by the Bundestag and examines whether the intended goals are achieved from specific laws. It also brings up issues concerning the masses or matters related to legal vacuum in the *Bundestag* on its own. Issues pertaining to irregularity in laws are reviewed and deliberated upon by this committee as well. Authorities with similar profiles also exist in various German departments, to deal with sector-specific matters, like public transport, military, and so on. While its structure is similar to an ombudsman, the *Petitionsausschuss Deutscher Bundestag* is merely a sub-committee of the German Parliament.

The Way Ahead

The role of an ombudsman in the current day and age is both multi-pronged and dynamic. As part of an address to the 10th World Conference of the International Ombudsman Institute, Helen Clark, who was the Administrator of the United Nations Development Programme, pointed out that establishment of anti-corruption agencies is the core component of governance reforms in many countries.[17] "Capable anti-corruption agencies are those which are well-resourced, headed by strong leaders with visible integrity and commitment, and situated amongst a network of state and non-state actors who work together on anti-corruption interventions," she said.

However, there are divergent views on the efficacy of ombudsmen in improving the functioning of public administration. On one hand, countries like Singapore and Japan have been excelling in governance in the absence of an ombudsman. However, even in these cases there are cogent arguments to be made in favour of integrity offices.

For instance, in Singapore systemic faults and poor governance issues are dealt through executive and parliamentary agencies directly. Although the country boasts of an independent judiciary which can be approached to promote transparency and responsiveness from public officials, it believes that the judiciary is supposed to serve as only the "last line of defence." In such a scenario, an ombudsman can serve as another adjudicating body through which one can demand a review of a government agency's decision.[18]

Similarly, Japan already has an efficient decision-making and complaint-handling system in place. However, it struggles

to appoint an ombudsman. The reason for this is simple. The Japanese belief system upholds Wa, the Consensus of the People, and considers the establishment of an institution against it an act of disrespect. Although there is no established national or parliamentary ombudsman, the Administrative Evaluation Bureau of Japan has a network of 5000 private citizens commissioned to receive complaints.[19]

Not surprisingly, the ombudsman is increasingly being viewed as integral to monitoring and questioning authorities on behalf of ordinary citizens. Even in non-governmental settings like private companies, universities, non-profit organisations, the role of an internal ombudsperson is seen as vital in handling conflicts or carrying out inquiries into abuses. Following this trajectory, democratic nations too need to step up and introduce neutral bodies that can hold governments and service providers to account. Responding to the dire need for direct accountability, a significant number of countries around the world have already put in place an ombudsman or a similar institution to deal with issues in governance, corruption and violation of rights of the people by public officials.

In the same vein, India's new anti-corruption watchdog should be able to function as the ultimate oversight body for top public officials. A well-functioning Lokpal could boost citizen's efforts in demanding greater integrity from their elected representatives as well as service providers.

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THE BHILWARA PRINCIPLES

An Accountability Framework in Action

Rakshita Swamy*

The lack of accountability is felt most acutely by ordinary citizens, particularly the most vulnerable and marginalised, in their daily engagement with the state for accessing basic essential services that is their legal right. It takes the form of violation of rights, denial of access, discrimination, deliberate exclusion and democratic marginalisation. Therefore, the definition of accountability is one that is best defined by people suffering the acute lack of it.

From a small set of villages in central Rajasthan comes a story of just this kind of subaltern social accountability. This was the same area where 20 years ago village-based public hearings showed the way for using transparency for accountability in an indigenous manner to hold power to account.

One such group of Dalit students from Bhilwara, Rajasthan

> ***"Administration and elite power structures find multiple ways to withhold relevant information from people to prevent decentralisation of power."***

Volunteers in a Meghalaya village interacting with local people about their entitlements, legal rights and the need for accountability in governance.

articulated a definition of social accountability that this paper uses as a theoretical framework for defining the concept and its essential elements. On being asked how they conceptualise an administrative framework that is accountable to its citizens, they spoke of five ways in which their routine engagement with the state results in their disempowerment. Thereby, any administrative framework that enables and provides them with an inversion of these five elements will be one that is accountable to them.

And that is how the Bhilwara Principles of Social Accountability were first theorised. The principles have also been acknowledged by the Comptroller and Auditor General (CAG) of India, and incorporated as the "minimum principles," laying the foundation of the Auditing Standards of Social Audit,[1] formalised by the CAG. The fact that a conceptual framework was derived from the felt needs of citizens is an acknowledgement that people's lived realities should form the basis of any genuinely meaningful theoretical discourse.

The following section outlines the five essential elements of a Social Accountability Framework, as conceptualised and articulated by people facing lack of accountability:

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1. *Jaankari*: Access to relevant information

Information is power. People need information to know, act, self-govern, make informed choices and hold those who govern accountable to their mandate. Access to credible and comprehensible information is therefore an essential element of social accountability. In spite of living in an age of 'open government' and 'big data,' a huge gap persists between information disclosed in the public domain, and that which is relevant for citizens requiring public disclosure.

Administration and elite power structures find multiple ways to withhold relevant information from people to prevent decentralisation of power. The problem of unaccountable governance is compounded in other ways. People don't have a widespread understanding of their entitlements, prescribed time frames, responsible authorities, prescribed standards and rates, as well as the decision-making processes. They are also unaware of appeal possibilities, complaint or grievance redressal, as well as reasonably expected outputs and outcomes. For example, citizens are continuously exposed to TV advertisements, radio jingles, WhatsApp forwards about Swachh Bharat Mission and the importance of sanitation, but find it difficult to obtain information on a host of things. Ways to apply for funds to build a toilet at home, forms to be filled, information on whether payments need to be made, number of instalments to be received and under what norms, who to complain to when instalments are not credited in time, are queries that are left unanswered.

> ***"There must be adequate, inclusive and multiple modes for citizens to articulate grievances."***

Therefore, the first component of a social accountability framework is to have access to relevant, actionable and meaningful information in order to unpack decisions, evaluate performance and assess outcomes**.**

2. *Sunwai*: Right to be heard

Very often, even if citizens are informed about their entitlements and recognise their violations, they cannot do much about it because they have no platform or mechanism of being heard. Statements such as '*hamaari kaun sunega'* are far too common and are a reflection of widespread popular perception.

For a system to facilitate accountability, there must be adequate, inclusive and multiple modes for citizens to articulate grievances. In most cases, citizens are forced to report complaints at the very same offices and to officials, who are the cause of the complaint. For example, a citizen harassed by members of a majority caste reaches the police station to file a FIR, but the officer on duty does not register her complaint and instead asks for a bribe. If she is to make a complaint, it would have to be done in writing, in the very same police station in which she faced the problem, a gravely discouraging situation.

Grievances are often not acknowledged with a dated receipt, preventing time bound action. Currently institutional systems of grievance redress are inadequate since they are entirely under the control of implementing agencies. This gives little scope for credible enquiry into the cause of grievance or firm action.

Moreover, certain categories of people such as the elderly, children, illiterate, single women, disabled, minorities, members of the LGBTQ community and others need pro-active help in articulating and registering their grievances. They are unable to reach locations where such grievances can be addressed, owing to limitations of language, distance, cultural norms etc. For example, there may be cases where the elderly and infirm cannot walk long distances to submit their complaint. In such cases, there is a dire need for independent people and

> ***There is a lack of both uniform and minimum time periods within which grievances should ordinarily be redressed.***

platforms facilitating the most marginalised and excluded sections of the community and reaching out to them with relevant information. They can also contribute towards assisting the disenfranchised with filing and tracking of grievances.

Therefore, the second component of a social accountability framework is the presence of independent facilitation to support complainants in articulation of grievances in their own language and formulation through multiple modes.

3. *Karyawahi*: Time bound grievance redress

Even if citizens are able to identify their grievances on account of being informed and manage to have a mechanism by which they can register their complaints, there is little guarantee that there will be redressal within an assured time frame. There are time variations on complaint redressals, depending on which scheme the complaint pertains to. Some schemes don't even have fixed time frames within which grievances are to be redressed. As mentioned before, a grievance doesn't have a chance of being honestly redressed as long as it is heard and adjudicated upon by the same department against which it is filed. Citizens face an enormously uphill task in regard to their complaints being heard and action taken on complaints lodged. There is a lack of both uniform and minimum time periods within which grievances should ordinarily be redressed, and norms that mandate those investigating complaints need to follow. In addition, there is an absence of an independent authority free from administrative controls of departments that can hear and adjudicate on the quality of grievance redress. For example, if a worker makes a complaint to the Programme Officer that she was not allocated work under MGNREGA within 15 days of her demanding it, her redress would have to be sorted within seven days as per Section 23 of the Act. However, if the same worker makes a complaint that her application for availing pensions has not been responded to in more than a year, and that she has submitted repeated applications with the same motive, the Ministry has no specified time frames within which this complaint would be redressed. Some grievances such as deliberate exclusion while selecting beneficiaries, discrimination whilst allocating resources etc are not even recognised as programmatic grievances that can be redressed within stipulated time frames.

PHOTO CREDIT: Shambhu Chatak

Accountability Yatra in Kusumpur Pahari, a slum area in South Delhi

> ***Often the first person to be harassed for complaining is the complainant herself.***

Therefore, the third essential component of a social accountability framework is for citizens to have a guarantee of getting their grievances redressed. The complaints should also be responded to in writing with a "speaking order" detailing the nature of corrective action taken, within a stipulated time frame.

4. Suraksha: Protection

Often the first person to be harassed or intimidated for complaining and disturbing an established status quo is the complainant herself. Making relevant information accessible to citizens and enabling them to register their complaints are not to the liking of many. In addition, having the grievances of the poor and marginalised addressed within guaranteed time frames skews the balance of power between those who govern and those who are governed, in favour of the latter. For this reason, vested interests do not fall short of methods to suppress and intimidate those who reveal the nexus of power perpetuating injustice. Protection of citizens, particularly whistle-blowers, who enable the unearthing of social, political and financial corruption is therefore of immense significance. For instance, nearly 70 citizens who were using the Right to Information and other legal means to access information and ask questions have been murdered.[2] This grave situation has been magnified by the absence of a legal framework for shielding whistleblowers from victimisation, with the Whistleblower Protection Act 2014 still not being operationalised.[3] Citizens wanting to expose acts of corruption and discretionary use of power for private gain as of today have no guarantee of their identity being protected and safety accorded to them and their family from all kinds of threat and intimidation.

Therefore, the fourth component of a social accountability framework is protection of citizens from any adverse consequences, arising out of asking questions, registering grievances and pursuing them to their logical conclusion, in order to expose acts of injustice.

5. Bhaagidari: Participation

A citizen cannot effectively participate in processes

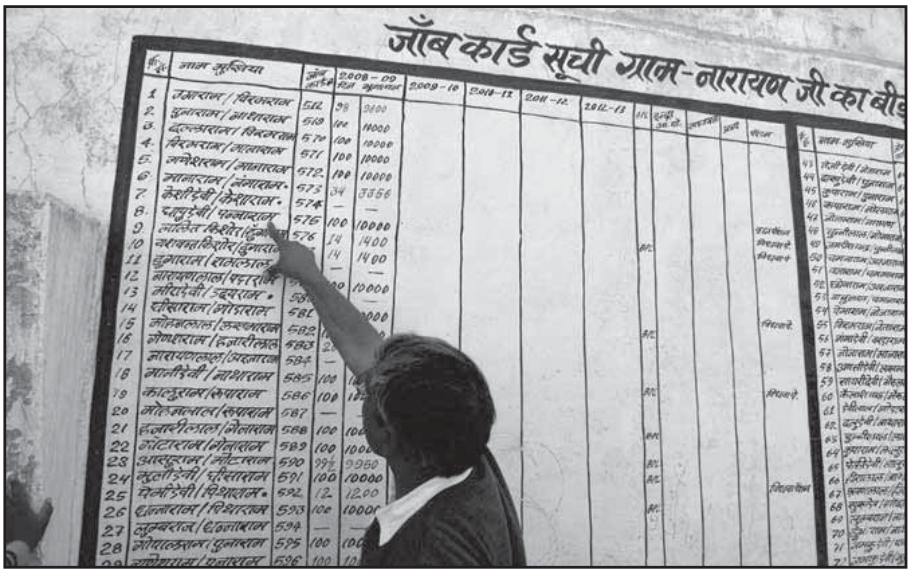
> ***"Having the grievances of the poor and marginalised addressed within guaranteed time frames skews the balance of power."***

of governance without institutionalised platforms of participation. Participation helps enable the voice of communities reach the state while accessing services, planning for use of public funds, monitoring programme delivery and registering grievances. Through participation, citizens can claim just allocation of resources, bring to light instances of fraud and misappropriation and demand retribution and restoration. It also needs to be incorporated into the process of investigation and redress so that all sides

Village Social Auditors conducting household verification.

> ***The state, its administration and multiple manifestations by design wield more power than individual citizens.***

are given an opportunity to present and give their point of view, at a location closest to them. However, participation needs to be institutionalised to reach its desired objectives. Otherwise only some sections of the community will be consulted, and their feedback will be regarded as the view of the entire community, which is not true. For example, a planning Gram Sabha, featuring only the field functionaries residing in the Gram Panchayat and their family members will result in the endorsement of a plan dramatically different from one emerging from consulting the elderly, children, SC and ST communities, migrants, functionaries, farmers, agricultural labour etc. Additionally, for participation to result in change there must be some accountability for suggestions or feedback given by the citizens. This is possible only when the state is responsible for providing space to citizens for giving suggestions, recording them as well as justifying why certain suggestions were accepted and others were dropped. People's participation is not a uni-directional mechanism, and needs to be responded to with equal responsibility. For example, if municipality meetings are conducted by a local councillor to invite suggestions for annual budget planning, he/she is responsible for recording each and every suggestion, treating each with equal attention. He/she should also share with people why certain suggestions were reflected in the forthcoming budget and why some weren't.



Display of MGNREGA information through wall paintings in Rajsamand District, Rajasthan.

Therefore, the fifth component of a social accountability framework is citizens having opportunities to participate in the planning, implementation, monitoring of public programmes and redress of grievances, through institutionalised state platforms.

A sixth element was added to the framework by a collective of civil society organisations.

6. *Janta ka Manch*: Public collective platforms

Even when citizens manage to access information, be aware of their rights and entitlements, are able to register their grievances, a major limitation in their meaningful engagement with the state is the power imbalance between the two. The state, its administration and multiple manifestations by design wield more power than individual citizens. This leads to the state's narrative always dominating the individual citizen's reality and truth. The absence of parity makes it difficult for the citizen's "truth" to stand a chance against the official record, when they are different. For example, it is unlikely that an individual complainant will have a fair chance of being heard about her

inflated electricity bills when she visits the officer concerned alone at the District office. However, the situation will change if the District Officer is made to respond to a class complaint of inflated electricity bills faced by all migrant labourers residing in the area. If the whole process takes place in the presence of the larger public and the officer's own supervisors, the likelihood of her responding will increase greatly. This imbalance can only begin to get corrected when citizens are able to engage with the state collectively and publicly, which gives the former a chance to question and dialogue on a more equal footing. Public collective platforms thus play an important role in facilitating the discussion of multiple complaints that are given a chance of being sorted out through a dialogical process.

Through public collective platforms of dialogue, the spirit and culture of questioning and enquiry are introduced, strengthened and established. It also plays a significant role in informing people of their entitlements. In addition, the platform directs their awareness towards the level of resources deployed for local development and how they are being spent. It serves as a living and breathing example of the Freirean conception of empowerment by being a democratic people's platform, where they can develop a critical awareness of social realities. In the course of engaging in such platforms, individuals and communities get empowered and politicised in a way that they experience the practical potential of participatory democracy. Once people acting in collective platforms take power into their hands, democracy moves beyond the two-dimensional aspect of electoral majorities. It goes into the complex sphere of deliberation, dialogue, and ethical decision making. Every voice counts: individually, persuasively, and collectively.

Therefore, the sixth component of a social accountability framework is citizens having a right to participate in public collective platforms. These need to be attended by both citizens and representatives of the state, wherein the former can learn, ask questions, and pursue grievances and the latter have the responsibility to respond and take actions.

The contents of a social accountability framework from the point of view of citizens need to be seen on multiple levels. Access to information, mechanism to register grievances and having complaints redressed within a time frame are key to the inclusion of the vulnerable and marginalised. In addition, securing citizens' participation in all aspects of governance, ensuring the protection of complainants and the right of citizens to engage with the administration through public collective platforms create a sense of parity and participation.

Note: This article is based on the excerpts of a discussion paper titled *Explorations in the Concept of Social Accountability: From theory to practice, and from practice to theory.*

(Endnotes)

1. 'Auditing Standards on Social Audit, 2015' prepared by a Joint Task Force of Ministry of Rural Development (MoRD), C&AG and civil society experts. They are based on the principles of Public Sector Auditing (ISSAI 100) and Operational Guidelines for coordination and cooperation between SAIs and internal auditors in the public sector (ISSAI 9150) as issued by INTOSAI
2. Dey, Nikhil; Yadav Bhupender & Julka, Bimal (2018, July 27) Has the Right to Information Act been weakened? *The Hindu*. Retrieved June 17, 2019, from https://bit.ly/2XWHFXp
3. Rishi, Rahul & Jain, Pratibha (2018, November 26) Why India needs to strengthen WBP Act. *Financial Express*. Retrieved June 17, 2019, from https://bit.ly/2KRGpBg

COMMON CAUSE UPDATES

Supreme Court:

Miscellaneous Application in Large Scale Govt advertising: A Miscellaneous Application (MA) has been filed in pursuance of an IA filed by another petitioner in WP 13/2003. The MA which was filed on July 30, 2018 and registered on August 17, 2018 supports the IA contention that government has been incurring large expenditure despite the SC judgment to the contrary. The respondent states had been given time to file their responses and the matter was taken up on April 3, 2019. The Court granted the respondents four weeks to file their response and directed the registry to process the matter for listing as per rules.

Writ for Police Reforms: The battle for police reforms has been going on for the last 22 years. The Supreme Court took 10 years to give a historic judgment in 2006, in the petition filed by Prakash Singh, Common Cause and N.K. Singh. Since then it has been a struggle to get the Court's directions implemented. On July 3, 2018, responding to an interlocutory application filed by the Ministry of Home Affairs (MHA) regarding the appointment of acting Director General of Police (DGP) in the states, the Supreme Court gave a slew of directions to ensure that there were no distortions in such appointments. It laid down that the states shall send their proposals to the UPSC three months prior to the retirement of the incumbent DGP. The UPSC shall then prepare a panel of three officers so that the state can appoint one of them as DGP. To curb the practice of appointing Acting DGPs by the states, the Court directed that the UPSC should ideally empanel officers who have at least two years of service left, giving due weightage to merit and seniority. It also held that any legislation/rule framed by the states or the central government running counter to the direction shall remain in abeyance. On March 13, 2019, a three-judge bench, headed by the CJI, passed judgment in the said IA. Clarifying its order of July 3, 2018, it stated that the recommendation for appointment to the DGP post by the UPSC and preparation of panel should be purely on the basis of merit from officers who have a minimum residual tenure of six months i.e. officers who have at least six months of service prior to retirement. The matter was taken up on April 12, 2019 where the SC dismissed a contempt petition filed against the appointment of DGP Nagaland.

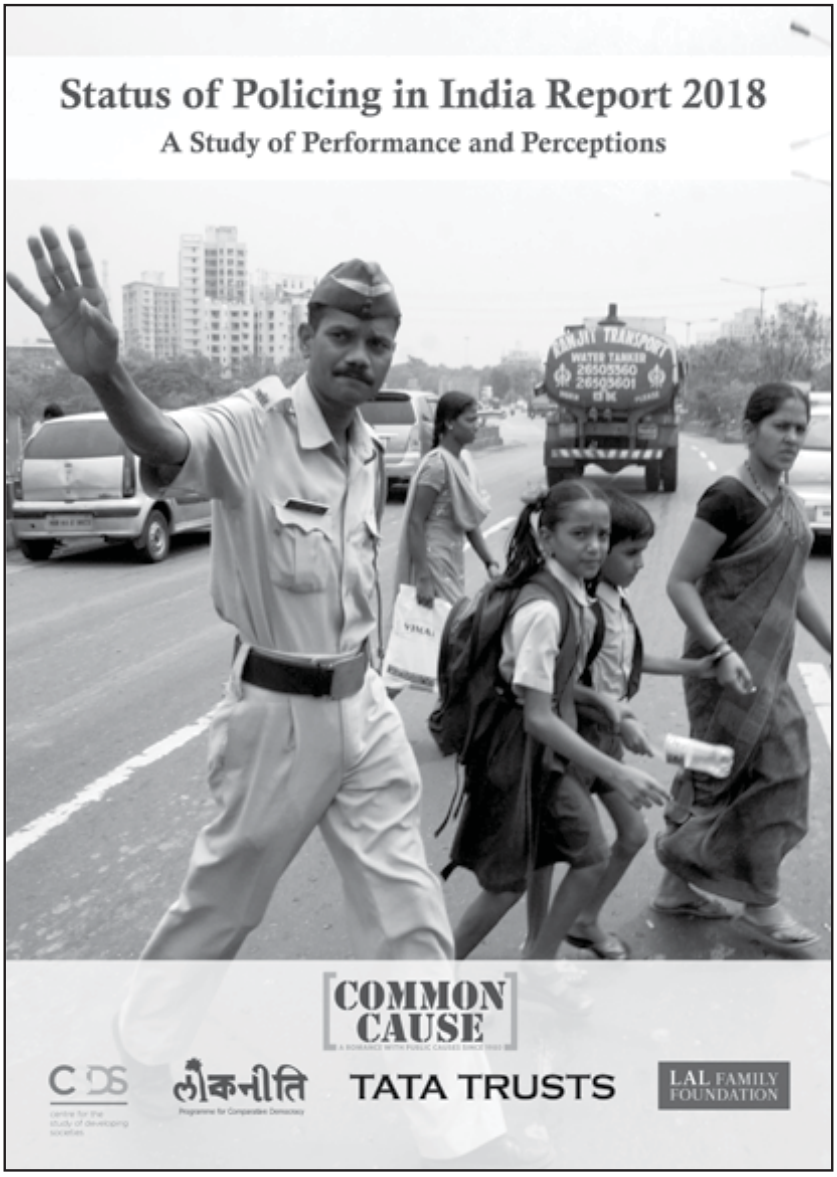
Introduction of Electoral Bonds Challenged: Common Cause and the Association for Democratic Reforms (ADR) challenged the introduction of Electoral Bonds (EB), which was introduced by amending Finance Act 2017.These bonds have not only made electoral funding of political parties more opaque, but also legitimised high-level corruption at an unprecedented scale by removing funding limits for big corporates and opening the route of electoral funding for foreign lobbyists. The PIL seeks direction from the Supreme Court to strike down the amendments brought in illegally as a "Money Bill" in order to bypass the Rajya Sabha. On October 3, 2017, notice was issued to the Union of India and other respondents and on February 2, 2018 our petition was tagged with one filed by Communist Party of India (Marxist), also challenging the electoral bond scheme. On March 14, 2019, the Centre in its affidavit filed in the SC claimed that electoral bonds would "promote transparency in funding and donation received by political parties." The matter was taken up on March 26, 2019 when the Election Commission (EC) of India again red flagged the bonds scheme, conveying that it had expressed concerns

about it even in 2017. The EC in its affidavit said that the electoral bond project and removal of caps on the extent of corporate funding would have "serious repercussions/impact on the transparency aspect of political finance/ funding of political parties." Thereafter on April 12, 2019, the SC declined to stay the EB scheme ahead of the 2019 General Elections. It further observed that the question could not be determined on the basis of a short hearing, and that any interim orders of the court must not have the effect of tilting the balance in favour of any political party.

The Bench headed by the CJI, Justice Ranjan Gogoi, directed all parties to furnish by May 30, 2019, information on the donations received by way of EBs, including the identity of donors, amounts received, details of payments, bank accounts etc. to the Election Commission in sealed covers. It also directed the Finance Ministry to modify its recent notification, which allowed the purchase of EBs for an additional five days over and above the stipulated 10 days each in January and April and the extra 30 days permitted in the election year.

Illegal Mining in Odisha:
There has been much progress since the final judgment on August 2, 2017, when the Court imposed 100 percent penalty on companies indulging in illegal mining (mining without forest and environmental clearances, mining outside lease/ permitted area and mining in excess of permissions). In September 2017, Common Cause filed an application for clarification of issues arising out of the judgment. The Central Empowered Committee (CEC) formed by the SC, and featuring Justices G.S. Singhvi and Anil R. Dave, was asked to ascertain whether there had been any violation of Section 6 of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule 37 of the Mineral Concession Rules, 1960. Subsequent to the Court's judgment on the IA/objections on November 12, 2018, which held Sarada Mines Private Ltd (SMPL) guilty of illegal mining in Odisha, the matter was taken up on January 16, 2019. On that day the time to complete the task of reviewing the National Mineral Policy, 2008 and announce a new National Mineral Policy was further extended till April 30, 2019. The UOI filed its report on April 29, 2019 and was taken on record by the SC. The SC directed its registry to serve the report to the respondent. It was pointed by our counsel that the report of the CEC was awaited. The registry was directed to find out the time period within which the aforesaid report is expected to come and apprise the Court of the same thereafter. The matter was directed to be put up after four weeks. On May 3, 2019 A.D.N. Rao, Amicus Curiae in the matter, submitted that the report of the CEC would be filed on or before May 8, 2019. The matter will now be listed in July, 2019.

Please email us at commoncauseindia@gmail.com if you want a soft copy of the report.



Jointly prepared by Common Cause and its academic partner, Centre for the Study of Developing Societies (CSDS), the report is a study of the performance and perception of the police in India. It covers about 16000 respondents in 22 states on parameters like citizens' trust and satisfaction levels, discrimination against the vulnerable, police excesses, infrastructure, diversity in forces, state of prisons and disposal of cases etc.

The study combines mixed methodologies to present a slice of life of policing in India. It also analyses official data and CAG reports along with an all India perception survey conducted by the Lokniti team of CSDS and their partners in the states.

Please email us at commoncauseindia@gmail.com if you want a soft copy of the report. It can also be downloaded from commoncause.in

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