

Corruption In India; Means to control and contain the goliath



Syndicate Group 13: Praveen Kumar, Salmantaj Patil, Anjali Jose, Nayonika Dutta, Ravi Verma, Praveen Saraswat and Rachna Singh

“Corruption debases democracy, undermines rule of law, distorts market, stifles economic growth and denies many, their rightful share of economic resources of life saving aid” - Kofi Anan

Causes

- Lack of effective management and organization of administrative mechanism
- Crony Capitalism
- Diminishing value systems
- Lack of strict and fast punishments
- Poor governance

Corruption Perception Index



India scores 38/ 100 (2014) in the index , with 0 as highly corrupt and 100 as very clean.

Prevention of Corruption Act, 1988



Context

- Applies to whole India except J&K
- Applicable to all Indian citizens, even those outside India
- **WHO IS LIABLE?**
 - Employees of union, state, local authority, PSU and statutory boards.
 - Election commission and its employees
 - Public service commission: its chairman, members and employees.
 - Any PSU, company, statutory body, cooperative society, educational, cultural, scientific institution funded by Union/State government.
 - Employees of SC, HC, various tribunals.
 - Govt. universities: Vice-Chancellor, registrar, Professor, reader, lecturer and office employees
- **Exception:**
 - army, navy, air force, BSF, coast guard and NSG

Case: L.K Advani vs CBI, 1997

- Justice D.A Desai : *MLA is not a public servant within the 2 (c)(i) as he is neither in the pay of the Government nor in the service of the Government nor remunerated by fees or commission for the performance of a public duty by the Government* → Beyond Scope
- This snag was removed under **Section 2(c) (viii)** which states each and every person who holds an office by virtue of which he is required to perform any public duty in the discharge of which the State, public or the community at large is interested would be deemed to be a 'public servant'

Context

- PCA Act empowers both union and state governments to appoint special judges for anti corruption
- When trying any case, the special Judge is empowered to try any offence other than an offence punishable under this act, with which the accused may be charged at the same trial
- Power to order a summary trial
- He can grant immunity/pardon/leniency to bribe-giver or the accomplice for their testimony
- Limitation of Power
 - Against a state / central employee, he cannot take cognizance without previous sanction from respective government.

Case: Essar Teleholdings Ltd vs CBI

- Harish Salve, Senior Counsel: Under the PCA , the special Judge can only try offenses under the said act and not offenses that arise under Penal Code. The only case where a SJ can do so at the “Same Trial” and on this ground he warranted a joint trial
- By an administrative order the High court held that even a Penal Code offence by itself – that is, such offence which is not to be tried with a Prevention of Corruption Act offence - would be within the Special Judge’s jurisdiction inasmuch as the administrative order of the High Court gives power to the Special Court to decide all offences pertaining to the 2G Scam.
- Conclusively ***Special Judge appointed to try Prevention of Corruption Act cases, cannot try non Prevention of Corruption Act cases unless there is a causal link between such cases.***

About

Coverage

Special Judges

Offenses & Punishments

Investigation

Criminal Misconduct*

Offering

Valuables

Middle Man

Bribes

Misappropriation

Disproportionate Assets

Habit

Time Served

6 Months

1 yr

5 Years

7 Years

Context

- Rank of Police
 - In case of Delhi, of an Inspector of Police.
 - In metropolitan areas, of an Assistant Commissioner of Police.
 - Elsewhere, of a Deputy Superintendent of Police or an officer of equivalent rank shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a magistrate of first class, or make any arrest therefore without a warrant.
- Offences under Section 13(1)(e); * shall not be investigated without the order of a police officer below the rank of SP on account of which it may be dismissed

Case: Umesh Kumar Vs State of MP, 1999

- *Case of Executive Engineer, MPEB: Objection raised that the investigation itself was unauthorized and without jurisdiction by the officers.*
- Owing to the fact that investigation was carried out without the order of the S.P., the investigation was deemed as illegal and unauthorized, therefore the investigation was quashed and a new investigation was directed to investigate in compliance with the order of the competent authority.

**CONFLICT
OF INTEREST**

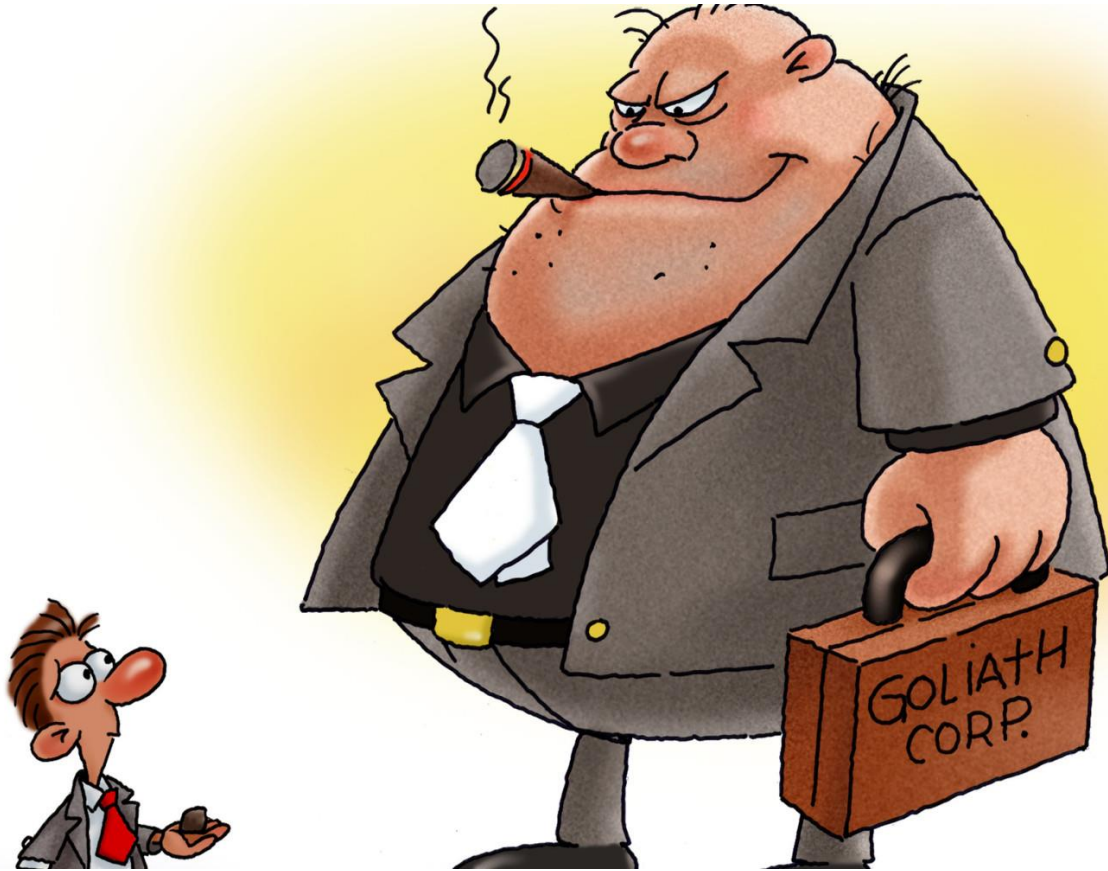
Can Administration be a judge of its own
conduct?



About

- Need:
 - To ensure compliance
 - For dynamic integration between- the Vigilance Units in various ministries and Administrative Vigilance Division in the Ministry of Home Affairs
- Statutory Body
- Superintendence over functioning of Delhi Special Police establishment & Investigations pertaining to PAC
- Have powers of inquiry on reference or on complaint received or on suo moto basis
- Power equivalent to a civil court while conducting enquiry
- Advocacy to central government & consultation when requested

But... Goliath still Lives



And has grown bigger

Lokpal and Lokyukta Act, 2013

- Establishment of Lokpal at union & Lokyuktas for states
- Selection of Chairperson and Members through a selection committee comprising of PM, Speaker of Lok Sabha, Leader of Opposition in Lok Sabha, CJI & Eminent Persons → Jan Lokpal & Independence
- PM was brought under purview with subject matter exclusions
- Covers all Group 'A', 'B', 'C' & erstwhile 'D' officers and employees of government
- Preliminary Enquiry and Time bound Enquiry

Do we need any other *astras*?

- Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2010
- Whistleblowers Protection Bill (Amendment Bill) 2015
- Judicial Accountability Bill, 2010
- Effective Implementation

Thank you

