

STRENGTHENING OF ETHICAL AND MORAL VALUES IN GOVERNANCE

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PREFACE

The notion of “Good Governance” has become the buzzword these days in wake of globalization. Good governance is commonly described as a style of governance that is efficient, effective, responsive, corruption free and citizen friendly for ensuring people’s trust in government and promoting social harmony, political stability and economic development. Good governance is strictly connected with institutionalized values such as democracy, observance of human rights and rule of law and greater efficiency within the public sector. The current concern for good governance and building public trust in administration has generated the need for following ethical and moral principles, which emphasize on “justice,” “equity,” “conscience,” and “moral unambiguity” and give a prominent place to the idea that public servants are ultimately responsible to the people. In seeking to maintain high standards of ethical behaviour by public administrators, agencies rely on a wide variety of enforcement mechanisms like codes of ethics, legal regulations, professional rules, and ombudsmen to oversee ethical standards. Though all have proved useful in some respects, none can be considered fully satisfactory, at least not in the sense that it alone can be expected to ensure organizational morality. Codes of ethics need to work hand in hand with proactive managerial strategies, which in turn need to be bolstered by external checks on behaviour.

The present paper on “**Strengthening of Ethical and Moral Values in Governance**” elaborates the concept and contents of ethical and moral values; their need, importance and applicability in public service; and highlights some of the issues which are hindrances in achieving the objectives of good and ethical governance. It also puts forth some of the suggestions for strengthening ethical and moral governance.

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STRENGTHENING OF ETHICAL AND MORAL VALUES IN GOVERNANCE

*“You are what your deep, driving desire is,
As your desire is, so is your will,
As your will is, so is your deed,
As your deed is, so is your destiny”.*

— Brihadaranyka Upnishad

1. INTRODUCTION

Human Values and Society

One of the serious challenges facing mankind in organized social life is ethics—the problem of choice between good and bad, do’s and don’ts. All of nature’s creations follow certain fixed laws of nature but the same is not true of human behaviour. Human behaviour cannot be predicted as man has been endowed with the freedom to decide, which other creations do not possess.¹ Man is like an infinite spring, coiled up in a small box; and that spring is trying to unfold itself; and all the social phenomena that we see are a result of this trying to unfold.² In this situation it is the values and ethics imbibed in all of us since childhood which guide our conduct. Values are, thus, prime drivers of personal, social, and professional choices.³ Values influence how individuals live their lives both professionally and personally. They impact their attitudes, their approach to life situations, their relationships, their interactions with people and within settings, and the meaning they assign to situations and the behaviours of others.⁴

The identification of values starts from the participation of the activities of the Self in the form of definite conduct of the human being based on realization and understanding. The values are nothing but the participation of the human being in different dimensions of living. The universal human values are the parameters which designate innate harmony and orderliness in existence at various levels and highlight the universal purpose in terms of understanding this harmony. Thus, universal human values are nothing but manifestation of the truth of existence (harmony, coexistence) in various dimensions of human interaction in terms of the participation in the universal order. These are naturally acceptable to all human beings and conducive to

human happiness.⁵ All codes of ethics are based upon renunciation: destruction, not construction, for the individual, on the material plane. The ideal of all ethics is destruction, and not the building up, of the individual.⁶ *Nivrtti* (going away from desire of materialization) is the fundamental basis of all morality and all religion. All morality can be divided into the positive and the negative elements. When it says 'Do not', it is a check to a certain desire which would make man a slave. When it says 'Do', its scope is to show the way to freedom and to the breaking down of a certain degradation which has already seized human heart.⁷ There is need to evaluate our conduct at various stages of life, in line with moral principles. Continuous self-exploration with perseverance is the process for bridging the gap between our present conduct and ethical human conduct. The life and profession cannot be seen in a segregated manner. Profession is only a subset of life.⁸

The culture of an organization is made up of the values, morals, integrity, and personal culture of its employees. The issue of ethics in public service is as old as government itself. Ethical considerations are of fundamental importance to the quality of democracy and its administration. These can hardly be overlooked in a time of popular reforms that attempt to transform the public service ethos in the name of productivity.⁹ Ethical claims refer to standards of right conduct which the public has legitimate warrant to demand of public servants and organizations. Right conduct refers not only to the honest management of public resources but also to respect for the rights and dignity of persons within and outside of public organizations. Moreover, right conduct in government translates into a well-founded respect for and trust of government on the part of the citizenry. Public service ethics is concerned with much more than simple financial accountability. The ethical claims upon government are special and higher as it assumes a duty to work in the best interests of the people as a whole with special obligations to vulnerable populations. Most of the services from the government are provided regardless of ability to pay, social standing or personal qualities or beliefs. No private institutions assume a similar ethical duty. Thus the ethical bar is placed higher for government than for the private sector.¹⁰

Ethics in public life is all pervading and to be understood in all its manifestations and dimensions. The unity and stability of society demands that ethical restraints must operate not only in respect of individuals but also organized groups—be they industrial, business and trade associations, labour unions, political parties, military and civil services, judiciary, non-governmental organisations, academic or professional associations, agriculturists' organizations, apart from government itself. How influential

and powerful people conduct themselves in private life and the public domain set a precedent for others to follow or to seek justification for their own self-seeking or even scandalous conduct.¹¹ Values and ethics are gaining importance in the discourse about governance today. There is a general perception amongst the people that standards in public life are declining. Questions are being raised regarding misconduct and mismanagement on the part of those who have been entrusted with guarding public interest and resources.

Growing Trust Deficit

Trust is one of the most significant elements upon which the legitimacy and sustainability of government and governance systems are built. But it seems to be declining around the world and citizens are losing their confidence in governments. It is because the reliance, confidence, optimism of a good will, or confident expectations, which people had viz -a-viz government, are not being met.¹² Considerations of practicality necessitate that there be devolution of public power to institutions and officials who will exercise it for the people. But the trust so given is not without its corresponding burden: accountability to the public is the obligation of all who hold office or employment in our governmental system. That obligation is, in part, a direct product of our commitment to representative democracy in part, the precondition of our devolution of public power to institutions and officials.¹³ However, there have been incidences of dramatic failure of accountability in governmental systems in our country leaving people vulnerable and resulting in mistrust among the citizenry.

The roots of mistrust can be found in various areas: citizens feel that politicians and public officials often abuse their powers in the interest of self-aggrandizement; citizens feel disconnected from government; government service delivery is perceived as inadequate or improper; government systems are poor or malfunctioning; a weakened global or national economy; the effects of globalization and informatization, such as ICT development; resentment over political scandals and crises; the incompetence of bureaucrats and politicians; rule violation, honour violation and many others. Thus the pertinent question which arises in the present scenario is: How is trust in government built up? Public trust is not something which can be built in isolation. It is only by targeting issues like legality, integrity, efficiency, effectiveness, involvement, dependability, transparency and fairness, which are all part of good governance, improved public trust will eventually result. In other words, public trust is the pinnacle byproduct of foothill goals such as good governance agendas.¹⁴

Bureaucracy may formally speak about the merits of transparency but show difficulty in actually carrying measures to promote transparency, since secrecy is more compatible with authority. Civil servants tend to believe that they alone have the correct idea of what society needs and how those needs can be met. They increasingly speak of serving citizens but are unable to build institutions which make them accountable to citizens. This is because civil servants have been traditionally taught to respond to their superiors, not to the citizenry. They may say that they serve the citizens, since it is fashionable to say that modern civil servants are customer-oriented. But in many cases, this is still a slogan rather than an effective practice. Civil servants face a permanent contradiction between their corporate and public interests. In case they are clear that they are not just agents of the elected politicians but also of the people or the nation, they will be able to resolve this contradiction. A public administrator is principally an agent or steward of the citizen. Hence, the ethics for civil servants, besides being the ethics of power and efficiency, are the republican ethics of the public interest as a goal which must be actively pursued.¹⁵ The bureaucracy must add value to society, advance certain objective standards of public welfare and public well-being. The costs and efforts involved must be judged by people to be worthwhile.¹⁶

India has a massive bureaucracy maintained at a huge cost to the country's taxpayer. There is a general feeling of mistrust among the citizens. The public perception about the members of the civil services is that they are "burdensome low-performers". The highly bloated bureaucracy is often perceived to be corrupt and inefficient in governing the country. Indian bureaucratic system suffers from several ailments such as a lack of professionalism, poor capacity-building, inefficient incentive systems that do not appreciate upright and outstanding civil servants which reward the corrupt and the incompetent, outmoded rules and procedures that restrict the civil servants from performing effectively, systemic inconsistencies in promotion and empanelment, and a lack of adequate transparency and accountability procedures. There is also no safety for whistle-blowers, and there are arbitrary and whimsical transfers. The insecurity in tenure impedes institutionalization and causes political interference, administrative acquiescence, and gradual erosion in values and ethics.¹⁷

Outside of small, simple, isolated governing systems, of which there are increasingly few, the administration of government is influenced (and influences) the general society and culture in which it operates. As a result, civil service ethics throughout time illustrates a diversity of forms and directives. This diversity itself presents numerous challenges to public

administrators not only at the international level but also within states themselves. Through the dynamics of globalization, civil servants come into increasing contact with their counterparts across national boundaries as necessitated by increased interdependence between states. These interactions involve a multiplicity of policy areas: finance, telecommunications, environmental protection, counter-terrorism, capital flows, public health, and others. It would be a mistake, however, to assume that these substantive policy and administrative issues can be dealt with on a purely technical basis: norms will still play a major role in shaping the alternatives and methods used by civil servants in pursuance of moral goals. As a result, public administrators will increasingly encounter norms from other cultures that appear opaque, incomprehensible, and (at extremes) even irrational.¹⁸

In a rapidly changing environment, the public servants have to carry out their tasks with limited resources, increased demands from citizens and greater public scrutiny. These reforms have an impact on the prevailing traditional public service values and standards. Thus, the ethical values need to be adjusted to ensure accountability and excellence in public service delivery. Ethics is gaining importance today because though most of the laws are grounded on ethical principles, for most organizations, following ethical practices is simply good for their effective functioning. A demonstrated public service culture that supports and provides appropriate norms and initiatives for professional and responsible behaviour is essential for good governance.

In 2014, the Prime Minister's Office had indicated Prime Minister Modi's guiding principles in making his new team. For the first time the Prime Minister adopted the guiding principle of "Minimum Government and Maximum Governance"—the latter going beyond the structure of government and providing some space to the civil society and market institutions consistent with constitutional principles of legitimacy and accountability. He also emphasized on rationalization with a commitment to bring about a change in work culture and style of governance. Prime Minister's Office went on to declare that Prime Minister is eventually aiming at smart governance where the top layers of government will be downsized. During the decade a large number of scams and instances of maladministration have only increased the trust deficit. Minimum government and maximum governance has to ensure that the systems are accountable, transparent, fair, equitable and above all ethical, which brings ethics and moral values to the centre stage of governance today.

2. ETHICS AND MORAL VALUES

Ethics: Concept and Definition

“...we know that as knowledge comes, person grows, morality is evolved, and idea of non-separateness begins. Whether men understand it or not, they are impelled by that power behind to become unselfish. That is the foundation of morality. It is the quintessence of all ethics, preached in any language, or any religion, or by any prophet in the world...”

— Swami Vivekananda

The Oxford English Dictionary defines ethics as the science of morals or moral principles. It is very often used as a synonym or even an interchangeable expression for terms like values, norms, standards, morality, etc. Even the phrase ‘social responsibility’ has been used. Ethics is something like electricity, not apparent to the naked eye, but felt instantaneously in specific conditions and visible when power is switched on.¹⁹ “Ethics” and “Ethical” are often used synonymously with morals (or morality) and moral, as reference is made differently to the ethics or to the morality of a person or a group, to the ethical or moral virtues or qualities. The study of ethics is concerned with the moral principles that determine what is right or wrong conduct. However, determining what is right or wrong behaviour is not an easy task as the criterion for the same are neither absolute nor universal, but variable, depending on the person, place, and time.²⁰

Encyclopedia of Social Sciences defines ethics as “the organisation or criticism of conduct in terms of notions like good, right or welfare.... Ethics is the secular and critical manner of taking account of the rationalising process in conduct. Its temper is non-mystical, and its orientation is social rather than theological.”²¹ The New Encyclopedia of Britannica defines ethics as “the branch of philosophy that is concerned with what is morally good and bad, right and wrong; a synonym for its moral philosophy. Traditionally, ethics has undertaken to analyse, evaluate, and develop normative moral criteria for dealing with moral problems.”²²

The word moral(s) is derived from the Latin root *moralis*, which implies custom. In other words, it refers to a behaviour that is accepted or rejected due to an accepted social custom. The word ethics stems from the Greek word *ethike*, which attributes to a social environment, referred to as *ethos* or social milieu.²³ This latter meaning embraces much more than mere custom. It refers to everything that is part and parcel of society and not just what is allowed or forbidden. Though the terms morality and ethics sound

different but intrinsically both of them refer to the same reality of human actions. Both refer to the same social reality wherein a certain body of accepted norms forms a code of conduct in society.²⁴

Morality is the realm of individual appreciation of the fundamental or first-principle definitions of “good” or “bad”. Morality is the public expression of one’s comprehensive doctrine, such as religion.²⁵ Morality is concerned with the norms, values and beliefs embedded in social processes which define right and wrong for an individual or a community. Ethics is concerned with the study of morality and the application of reason to elucidate specific rules and principles that determine right and wrong for a given situation. Morality precedes ethics. All individuals and communities have morality, a basic sense of right or wrong in relation to particular activities. Ethics represents an attempt to systematize and rationalize morality, typically into generalized normative rules that is supposedly a solution to situations of moral uncertainty.²⁶

The ethics that any individual or organization espouses, are deeply intertwined with the moral views held by the individual or the consortium of individuals that found and manage the organization. Ethics, or the prudential, public expression of morality, are standards of good or bad behaviour and action.²⁷ Ethics is the character or ethos of an individual or a group, the hierarchy of values and norms which he/she or they identify for him/herself or themselves against a prevailing moral code. Ethics, as a set of principles, give a rational justification for behaviour. They define individual and group priorities, and in the end, they may arrive at a systematic body of moral norms, as individual and group practices get interwoven.²⁸ Ethics may be commensurate with legal pronouncements or statements on the actions that political powers may reasonably enforce under an agreed constitutional framework. Or, ethical standards may be supererogatory when compared to legal standards. Yet, at the roots of laws and codes of ethics lie morality, and standing in defense of morality is a history of dialogues and narratives that help individuals make sense of “good” and “bad” when seeking to comprehend or act upon those morals (Be ethical).²⁹

Ethics has several attributes, some of which are universalistic in nature and some change with time and place. It may be specific to a particular task situation, profession or area of responsibility, *e.g.* ethics of a doctor or a chartered accountant. Certain things are expected from everyone while there may be a few specific things expected according to the nature of groups or responsibilities. Ethics is something related to a state of mind, a way of looking at things which may develop into a pattern of behaviour or way of life and social conduct.³⁰

Social conduct has evolved along with the evolution of society over a period of hundreds of years. The codes of conduct have been passed down from generation to generation, and there is a pattern to the evolution of such codes. Acceptable behaviour is promoted and elevated as a social value, and unacceptable behaviour is rejected and condemned. The object of the social codes of conduct is to maintain, promote, and elevate harmonious relationships.³¹ Thus ethics cannot be shaped and sustained in isolation. The heuristic process requires a supportive environment in which public opinion plays a significant part. Its application and operation in specific situations become evident so that the generality of people recognise it. It is maintained and sustained by a sense of responsibility—not merely accountability to some external agency but also to something within.³²

The unwritten rules of the code of ethical conduct are the historical product of social mores, i.e., customs, conventions, and standards generally regarded as essential to the well-being of a particular community. Although perceptions of the nature of ethics may vary between cultural and ethnic groups, there tends to be broad agreement within national communities on what is right and what is wrong. Thus, ethical issues are probably best understood in the context of what is considered to be morally correct by the standards prevailing in particular societies.³³

Philosophers today usually divide ethical theories into three general subject areas: meta-ethics, normative ethics, and applied ethics.³⁴

- **Meta-ethics:** Meta-ethics focuses on the meaning of ethical terms themselves rather than on mere applied question of ‘what should be done in a particular situation?’. Meta-ethical answers to these questions focus on the issues of universal truths, the will of God, the role of reason in ethical judgments, and the meaning of ethical terms themselves. It is, therefore concerned with the nature of ethical properties, statements, attitudes and judgments. Meta-ethics examines such themes as what moral questions mean, and on what basis people can know what is ‘true’ or ‘false’.
- **Normative ethics:** Normative ethics takes on a more practical task, which is to arrive at moral standards that regulate right and wrong conduct. It is the study of ethical acts. It, therefore, focuses explicitly on questions of ‘what is the right thing to do?’ in general. Normative ethics is concerned with questions of what people ought to do, and on how people can decide what the ‘correct’ moral actions are. This may involve articulating the good habits that we should acquire, the duties that we should follow, or the consequences of our behaviour on others.

- **Applied ethics:** Applied ethics, is concerned with how people can achieve moral outcomes in specific situations. Therefore, it is concerned with the philosophical examination of particular – and often complex – issues that involve moral judgments. It involves examining specific controversial issues, such as abortion, infanticide, animal rights, environmental concerns, homosexuality, capital punishment, or nuclear war. By using the conceptual tools of meta-ethics and normative ethics, discussions in applied ethics try to resolve these controversial issues.

Ethics: Normative or Relative

Ethics is generally looked upon as a “normative” science, the object of which is to find and formulate moral principles and rules possessing objective validity. That implies that they have a real existence apart from any reference to a human mind. What is said to be good or bad, right or wrong, cannot be reduced merely to what people think to be good or bad, right or wrong. It makes morality a matter of truth and falsity. The objectivity of moral judgments does not presuppose the infallibility of the individual who pronounces such a judgment, nor even the accuracy of a general consensus of opinion; but if a certain course of conduct is objectively right, it must be thought to be right by all rational beings who judge truly of the matter and cannot, without error, be judged to be wrong.³⁵

None of the theories of normative science has proved that moral judgments possess objective validity, that there is anything good or bad, right or wrong, that moral principles express anything more than the opinions of those who believe in them. Basically, normative ethics has adopted the common sense idea that there is something right and wrong independently of what is thought to be right or wrong. People are not willing to admit that their moral convictions are a mere matter of opinion, and took upon convictions differing from their own as errors.³⁶ In theory it may be admitted that every man ought to act in accordance with his conscience. But this phrase is easily forgotten when, in any matter of importance, the individual’s conscience comes into conflict with the common sense of his community; or doubt may be thrown upon the sincerity of his professed convictions, or he may be blamed for having such a conscience as he has.³⁷ However, moral judgments spring from person’s moral consciousness. Each of us judge the conduct of other men not from their point of view but from ours, not in accordance with their feelings and opinions about right and wrong but according to our own. And these are not arbitrary; our moral consciousness belongs to our mental constitution, which we cannot change as we please. Thus all moral judgments, all moral concepts, are ultimately

based on emotions, and that, as is very commonly admitted, no objectivity can come from an emotion. Hence a theory which leads to an examination of the psychological and historical origin of people's moral opinions should be more useful than a theory which postulates moral truths enunciated by self-evident intuitions that are unchangeable. In every society the traditional notions as to what is good or bad, obligatory or indifferent, are commonly accepted by the majority of people without further reflection.³⁸ There have been extraordinary differences between different races of mankind, and in different stages of society, in respect of actions which have been regarded as right and wrong. Such differences of feeling are found not only in men in different stages of society, but do quite often exist even among contemporaries, when they are members of very different societies; so that one and the same action may be quite often be *at the* same time both right and wrong. Sometimes two members of the *same* society may really have opposite feelings towards one and the same action it is even possible that even one and the same individual may experience such a change of feeling towards one and the same action.³⁹ It is undeniable that some actions which are generally approved in one society may be disapproved in other societies.⁴⁰

Ethics and Values: Western Debates

Ethics is basically that branch of philosophy which deals with questions concerning the nature of value in matters of human conduct. There have been different philosophers during different time phases who have given different theories on ethics and values which explain the nature of such judgments in general, provide criteria for determining what is ethically right or wrong, and analyze the grounds or reasons we have for holding them to be correct.

Socrates who observed that “the unexamined life is not worth living,” must be regarded as one of the greatest teachers of ethics.⁴¹ Socrates customarily regarded as the father of Western ethics, asserted that people will naturally do what is good provided they know what is right, and that evil or bad actions are purely the result of ignorance: “There is only one good, knowledge, and one evil, ignorance”. He equated knowledge and wisdom with self-awareness (meaning to be aware of every fact relevant to a person's existence) and virtue and happiness. So, in essence, he considered self-knowledge and self-awareness to be the essential good, because the truly wise (i.e. self-aware) person will know what is right, do what is good, and therefore be happy.⁴²

Socrates taught his pupils a method of inquiry which threatened

conventional beliefs and the destruction of beliefs that could not stand up to criticism as a necessary preliminary to the search for true knowledge. He thought that virtue is something that can be known and that the virtuous person is the one who knows what virtue is. He also thought that anyone who knows what virtue is will necessarily act virtuously. Those who act badly, therefore, do so only because they are ignorant of, or mistaken about, the real nature of virtue.⁴³

Socrates' greatest disciple, Plato, maintained that true knowledge consists not in knowing particular things but in knowing something general that is common to all the particular cases. The implication is that one does not know what goodness is unless one can give such a general account. But the question then arises, what is it that one knows when one knows this general idea of goodness? Plato's answer is that one knows the Form of the Good, a perfect, eternal, and changeless entity existing outside space and time, in which particular good things share, or "participate," insofar as they are good. According to Plato, justice exists in the individual when the three elements of the soul—intellect, emotion, and desire—act in harmony with each other. The unjust person lives in an unsatisfactory state of internal discord, trying always to overcome the discomfort of unsatisfied desire but never achieving anything better than the mere absence of want. The soul of the just person, on the other hand, is harmoniously ordered under the governance of reason, and the just person derives truly satisfying enjoyment from the pursuit of knowledge.⁴⁴

Plato in his philosophy has given a prominent place to the idea of justice. Plato was highly dissatisfied with the prevailing degenerating conditions in Athens and democracy was on the verge of collapse. Plato believed justice to be the remedy for curing these evils. He used the Greek word "Dikaisyne" for justice which comes very near to the work 'morality' or 'righteousness', it properly includes within it the whole duty of man. It also covers the whole field of the individual's conduct in so far as it affects others. Plato contended that justice is the quality of soul, in virtue of which men set aside the irrational desire to taste every pleasure and to get a selfish satisfaction out of every object and accommodated themselves to the discharge of a single function for the general benefit.⁴⁵

Greek Philosopher Aristotle holds with Plato that the life of virtue is rewarding for the virtuous as well as beneficial for the community. Aristotle also agrees that the highest and most satisfying form of human existence involves the exercise of one's rational faculties to the fullest extent. One major point of disagreement concerns Plato's doctrine of Forms, which Aristotle rejected. Thus, Aristotle does not agree that in order to be good

one must have knowledge of the Form of the Good.⁴⁶ The concept of ethics and ethical behaviour is very much influenced by Aristotle's distinction between virtues and vices. According to Aristotle, virtues and vices are contrary forms of human attitudes. Virtues are positive and vices are negative aspects of human behaviour. A virtue is a behaviour showing a high moral standard, and is a pattern of thought and behaviour based on high moral standards. In the *Nicomachean Ethics*, Aristotle defined a virtue as a balance point between a deficiency and an excess of a trait.⁴⁷

According to Aristotle, "Nature does nothing in vain". It is only when a person acts in accordance with their nature and thereby realizes their full potential, that they will do good and therefore, be content in life. He held that self-realization, the awareness of one's nature and the development of one's talents, is the surest path to happiness, which is the ultimate goal, all other things (such as civic life or wealth) being merely means to an end. He encouraged moderation in all things, the extremes being degraded and immoral, (e.g. courage is the moderate virtue between the extremes of cowardice and recklessness), and held that Man should not simply live, but live well with conduct governed by moderate virtue. Virtue, according to him denotes doing the right thing to the right person at the right time to the proper extent in the correct fashion and for the right reason—something of a tall order.⁴⁸

Bentham's ethics began with the proposition that nature has placed human beings under two masters: pleasure and pain. Anything that seems good must be either directly pleasurable or thought to be a means to pleasure or to the avoidance of pain. Conversely, anything that seems bad must be either directly painful or thought to be a means to pain or to the deprivation of pleasure. From this Bentham argued that the words *right* and *wrong* can be meaningful only if they are used in accordance with the utilitarian principle, so that whatever increases the net surplus of pleasure over pain is right and whatever decreases it is wrong. One must take account of the pleasures and pains of everyone affected by the action, and this is to be done on an equal basis. John Stuart Mill, Bentham's successor in his essay "Utilitarianism" introduced several modifications, all aimed at a broader view. Although his position was based on the maximization of happiness (and this is said to consist of pleasure and the absence of pain), he distinguished between pleasures that are higher and those that are lower in quality. Mill sought to show that utilitarianism is compatible with moral rules and principles relating to justice, honesty, and truthfulness.⁴⁹

Rousseau called for rule by the "general will." For Rousseau, the general will is not the sum of all the individual wills in the community but the true

common will of all the citizens. Even if a person dislikes and opposes a decision carried by the majority, that decision represents the general will, the common will in which he shares.⁵⁰

Philosopher Kant doubted whether simple distinctions between good virtues and bad vices make sense. According to Kant, most virtues, as well as vices, are highly ambivalent and should always be judged in a specific context and whether (or not) they would serve a moral principle.⁵¹ Kant insisted that actions resulting from desires cannot be free. Freedom is to be found only in rational action. Rational action cannot be based on an individual's personal desires but must be action in accordance with something that he can prove to be a universal law. Kant's most distinctive contribution to ethics was his insistence that one's actions possess moral worth only when one does his duty for its own sake.⁵²

The philosopher Friedrich Hegel's idea of the civil servant and the state as such was conceptualized as a Leviathan which stood above the society and citizens. Its main role was to protect the society by enforcing regulations to achieve fairness and to balance the diverging egoistic interests. According to Max Weber, the essence of administrative behaviour is to follow legally given orders. Following this, at a minimal level, administration was considered to be good and ethical if it achieved the implementation and enforcement of the existing laws and policy goals of the Government of the day. Moreover, ethically good or acceptable behaviour was also defined in terms of law obedience, impartiality and standardization. The purpose of rule-orientation was also to achieve fairness and equity, to implement the merit principle, to allocate rights to citizens and to protect public employees against arbitrary administrative decisions. Weber suggested that civil servants should administer without fight, passion and emotion. Communication should be "dehumanised" by eliminating feelings like hate and other irrational and emotional elements.⁵³

In the modern times the underlying forces that shape ethics have undergone many changes. Between what Max Weber called the protestant ethics to what Wayne A.R. Leys calls the social ethics, there is a wide gap. The protestant ethics emphasized the quest for individual salvation through individual effects, thrift and competitive forces. The social ethics emphasized that morally good is determined by pressures of society against the individual.⁵⁴

Ethics and Values: Indian Context

In the Indian context we have a rich heritage of religious influences on ethics and moral values. Indian society being religious has valued the principles of ethics. The ancient texts have emphasized the importance of

ethics and moral values in governance. In ancient India there are two broad sources of ethical exhortations in the Indian tradition –the primary and secondary Veda texts and the epic texts. There are two great epic texts that characterize the Indian tradition – the Ramayana and the Mahabharata. These two epic texts continue to be definite sources of ethical and philosophical knowledge today. Many recognize the Mahabharata only as that work encompassing the well-known Bhagwad Gita. But Mahabharata as a whole is a fascinating and dynamic tale that captures, nearly in full, the narratives of a time and people. Both the Ramayana and the Mahabharata contain explicit instances elaborating on right conduct for civil servants, referred to as ministers. In the Ramayana one can find a compelling and artful discussion of the conduct of great ministers.⁵⁵

From a brief excerpt from the lengthy Ramayana, we can distill a few maxims of civil service ethics that reappear constantly throughout the epic texts. Chiefly ministers ought to be honest, faithful, intelligent and well versed in secular and sacred law, willing to offer advice, bold, free of jealousies towards each other and allied to their political masters (i.e. King). The Bhagwad Gita includes a number of exhortations on the power of action as well as expositions challenging the idea of renunciation (of self-interest broadly constructed) as the idea that one ought not to work at all. A summary of the ethics of action in the Bhagwad Gita includes the following: performance of all actions requires right intention, without prejudice to the good consequences (fame, wealth) that come from those actions. Actions in short are the product of work motivated by duty. The preference for actions independent of desires for “worldly” benefits has important implications for the concepts of efficiency and effectiveness.⁵⁶

In Ramayana, Maharishi Valmiki has underscored a very basic principle of governance in simple words, *Yatha Raja Tatha Praja*. The general erosion in values, ethics, morality or integrity that is seen in a society only mirrors the character of those who run the affairs of that society.⁵⁷

On the other hand, Kautilya’s *Arthashastra* is an elementary reading for any analysis of Indian political ethics. In this extensive text, written as a guide book for the new Mauryan Kings around 300 BC discussion of state administration goes to great lengths. Kautilya re-emphasizes the importance of politics, its conduct and study for the full human life. Kautilya works to synthesize the knowledge of the *Arthashastra* texts of his time into a coherent guidebook for the king. As a guidebook, this *Arthashastra* is a comprehensive one reviewing the ideal policies and practices for governing the market place, taxation, economic and political development, the internal court, war and even political composition.⁵⁸

Through *Arthashastra* we get a clear picture of the complexity of court life and troubled times of the Magadha empire.⁵⁹ We also find a description of the political and administrative complexity as well as ethics of the time⁶⁰ (Evidence of the modern administrative character of the *Arthashastra* comes most through Kautilyas' expressions of efficiency), described in a unique imagery of corrupt officials improperly eating the wealth of the state.⁶¹ Kautilyas' concept of efficiency depends on an extensive elaboration of efficiency-guaranteeing techniques. Kautilya makes quite clear the link between civil service malfeasance and the reduction in wealth. Contravening the standards of efficiency was among the highest ills that a civil servant could commit in Kautilyas' state.⁶²

Kautilya believed that "men are naturally fickle minded" and are comparable to "horses at work [who] exhibit constant change in their temper". This means that honesty is not a virtue that would remain consistent life long and the temptation to make easy gains through corrupt means can override the trait of honesty any time. Similarly, he compared the process of generation and collection of revenue (by officials) with honey or poison on the tip of the tongue, which becomes impossible not to taste. He prescribed a strict vigil even over the superintendents of government departments in relation to the place, time, nature, output and *modus operandi* of work. Kautilya reflected serious concerns about opacity in the operations of the world of the corrupt. Illegal transactions were so shrouded in mist that he compared embezzlers to fish moving under water and the virtual impossibility of detecting when exactly the fish is drinking water. He also noted that while it is possible to ascertain the movements of bird flying in the sky, it is difficult to gauge the corrupt activities of government officials.⁶³

Kautilya provides a comprehensive list of 40 kinds of embezzlement. In all these cases, the concerned functionaries such as the treasurer (*nidhayaka*), the prescriber (*nibandhaka*), the receiver (*pratigrahaka*), the payer (*dayak*), the person who caused the payment (*dapaka*) and the ministerial servants (*mantri-vaiyavriyakara*) were to be separately interrogated. In case any of these officials were to lie, their punishment was to be enhanced to the level meted out to the chief officer (*yukta*) mainly responsible for the crime. After the enquiry, a public proclamation (*prachara*) was to be made asking the common people to claim compensation in case they were aggrieved and suffered from the embezzlement.⁶⁴

Kautilya also recognized corruption in the judicial administration. He prescribed the imposition of varying degrees of fines on judges trying to proceed with a trial without evidence, or unjustly maintaining silence, or

threatening, defaming or abusing the complainants, arbitrarily dismissing responses provided to questions raised by the judge himself, unnecessarily delaying the trial or giving unjust punishments. Kautilya also dealt with the concept of whistleblowers. Any informant (*suchaka*) who provided details about financial wrong-doing was entitled to an award of one-sixth of the amount in question. If the informant happened to be a government servant (*bhritaka*), he was to be given only one twelfth of the total amount as it was considered to be the duty of the government servant to strive towards corruption free society.⁶⁵

Gandhian View on Ethics in Administration

Ethics in Gandhian paradigm has no religious, sectarian or creedal implications. For Mahatma Gandhi there is no water tight compartment between personal/ private/ social ethics. For him, *Dharma* is everything. Gandhiji used the concept of *dharma* in three senses; as duty, religion and ethics. The whole discourse of ethics and ethical conducts evolve around *purushartha*. His ethics is guided by what Lord Krishna enunciated several thousand years ago and recorded in Bhagwad Gita.⁶⁶ Gandhiji set an example of self-sacrifice, demonstrated the highest standards of personal integrity, honesty, pristine purity, transparent public and private life, fairness and justice, which are the basic ingredients of Gandhiji's ethics and ethical conduct. *Dharma*, in the Indian tradition, commands morality in the sense of righteous conduct. Mahatma Gandhi has raised *dharma* to a higher pedestal, signifying a quality through which we know "our duty in human life and our religion with other selves".⁶⁷

The salient features of Gandhian ethics are: Truth, *ahimsa*, celibacy, control of palate, non-stealing and non-possession. Gandhiji considered religion and morality coterminous. Navajivan published a small booklet entitled *Ethical Religion* which describes ethics as morality and morality as a religion. Further, there is no difference between social ideal and personal morality or religious morality or moral religion.⁶⁸ Gandhiji presents a balanced view of life wherein, wealth, power, pleasure, aesthetics, beauty, ethical integrity and freedom of the spirit are sought at the same time. He explains how and why that seeking should be the basis of modern India's public philosophy.⁶⁹

Gandhiji's ethical principles are ethics of non-violence, humanity, truth, responsibility for self and principled rejection of the distracting ills of modernity.⁷⁰ He later explained *ahimsa* (non-violence) politically through submission to a virtuous life led by the pursuit of truth. He reminds that non-violence was not about fomenting revolution directly, but was about

obeying rule of law, through virtue-led practical action that is expressed a principled disagreement with its implementation or certain content. As a doctrine of peaceful resistance, the practice of *ahimsa* meant politely accepting responsibility for transgressing the law while also stating cogently one's reason for disagreement.⁷¹ For Gandhiji as an ethical principle applied to public life, non-violence means avoiding all thoughts or actions that do violence, even mental, against any other living thing. For him maintaining *ahimsa* position requires constant supervision of one's thoughts and actions. Supervision of one's thoughts and actions requires virtues related to *ahimsa* namely pursuit of truth, humility, and responsibility, or *satyagraha*.⁷²

Gandhiji's philosophy was one of direct, virtuous, political engagement with the state and economy, or *purusartha*.⁷³ Engagement with the economy was engagement with a "right" economy or one in which moral progress kept pace with material progress and in which technology did not replace human beings, but instead made their labour and sufferings less.⁷⁴ Gandhiji captured this notion in the concept of *Swadeshi*. One could own private property but one could not steal. One could pursue wealth (*artha*) as part of the four aims of life but could not do so with selfish intentions. As pertains to nation, selfish behaviour, particularly corruption and economizing without regard to the material and moral needs of people, was immoral in eyes of Gandhiji.⁷⁵ If one was to be good person, and certainly a good public servant, one had to embody virtue constantly in one's private and public life. Virtue without a community in which to practice it, was insufficient for the good life. The sum of Gandhi's system of ethics as applied to public service is devotion to non-violence, thorough-going public service to the nation and world, humility, engagement, and taking responsibility for one's actions.⁷⁶

"Ministership", Gandhi stressed were not prizes but "avenues to service" and had to be held lightly and tightly. Gandhi expected the Congress rule not through the police backed by the military but through its moral authority based upon the greatest goodwill of the people 'won through' the service of the people whom it seeks to represent in every one of its actions⁷⁷. Building a nation free of past problems and shortcomings was the dream of Father of the Nation, Mahatma Gandhi. He emphasized the fundamental aspect by saying that you must "be the change you wish to see in this world," which speaks volumes of the kind of system to which India wanted to adhere.⁷⁸ The Seven Social Sins, as quoted by Mahatma Gandhi were:⁷⁹

- (1) Politics without principles; (2) Wealth without work; (3) Leisure without conscience (4) Knowledge without character; (5) Commerce without morality; (6) Science without humanity and (7) Worship without sacrifice.

Public Service ethics throughout time illustrates a diversity of forms and directives. This diversity itself presents numerous challenges to public administrators. The contemporary government ethics movement appears to have essentially the same purpose as the reform movement of a century ago—to reduce government corruption and enhance efficiency, accountability and transparency. The present ethics debate has, however, considerable different emphasis structures and programmes such as whistleblowing, ethics boards and commissions, ethics education programmes, professional codes of ethics typify the modern approach to guarantee against or reducing public corruption.

Chinese Ethical Thoughts

The tradition of Chinese ethical thought is centrally concerned with question about how one ought to live; what goes into a worthwhile of life, how to weigh duties towards family versus duties toward strangers, whether human nature is predisposed to be morally good or bad, how one ought to relate to the non-human world, the extent to which one ought to become involved in reforming the larger social and political structures of one's society and how one ought to conduct oneself in a position of influence or power.⁸⁰

Confucian ethics is focused around ideals of character and the constituting traits or virtues. Confucianism can be traced even before the birth of Confucius, to the general culture of the Zhou dynasty, which emphasized politeness and consideration, though generally with more of a spiritual bent. Confucius was born in 551 BC and reportedly grew up in a time of instability in the region, present day China and failed in his ambition to become a high minister of the national governments. He is known for his attempts to analyse and codify rules of society and behaviour. The system of 'virtue' he proposed was one of respect for others, including for their position in society, focusing on this as a system of principles, not mysticism.

Confucianism is a system of 'philosophical' and ethical – socio-political teachings sometimes described as a religion. Confucianism developed in response to Buddhism and Taoism and was reformulated as Neo-Confucianism. With particular emphasis on the importance of the family and social harmony the core of Confucianism is humanistic.⁸¹ Confucianism regards the ordinary activities of human life and especially in human relationships as a manifestation of the sacred because they are the expression of our moral values which has a transcendent anchorage in Heaven.

This worldly concern of Confucianism rests on the belief that human beings are fundamentally good and teachable, improvable and perfectible through personal and communal endeavour especially self-cultivation and

self-creation. Confucian thought focuses on the cultivation of virtue and maintenance of ethics.⁸²

A key Confucian concept is that in order to govern others one must first govern oneself according to the universal order. People must be guided by clear edicts and strong punishments. Furthermore, rulers must be wary of their ambitious ministers and take care not to reveal their own likes and dislikes so as not to be manipulated by their scheming subordinates. As to rulers themselves, it is a mistake to found government on the presumption that they are or can become virtuous. While exceptionally good rulers have existed, the vast majority of rulers have been mediocre. Governments must be structured so that these can run satisfactorily because that is what rulers will be like almost always.⁸³

Middle East: Arab Spring—Dilemma between Ethics and Self Interest

The Arab Spring which commenced in 2010 was a revolutionary wave of demonstrations and protests in the Arab world and spread throughout the countries of Arab League and its surroundings.⁸⁴ The Arab Spring is widely believed to have been instigated by dissatisfaction with the role of local government by youth and unions, though some have speculated that wide gaps in income levels may have had a hand as well.⁸⁵ Numerous factors led to the protests, including issues such as dictatorship or absolute monarchy, human rights violations, political corruption, economic decline, unemployment, extreme poverty and a number of demographic structural factors.⁸⁶ Catalysts for the revolts included the concentration of wealth in the hands of autocrats in power for decades, insufficient transparency of its redistribution, corruption and especially the refusal of the youth to accept the *status quo*.

The Arab Spring is widely viewed today as one of the greatest historical moments of political transformation. The longstanding dictators who seemed impervious to political change, in a region known for persistent authoritarianism, were suddenly toppled by largely non-violent protests invoking the universal themes of political freedom, dignity and social justice. The Arab Spring was not a single event but rather a long-term process of political change.⁸⁷ The dramatic set of events in the Middle East created a tremendous bias for hope of the future of open and pluralistic political systems in a region, which has often been identified as being one of the major exceptional strong holds of authoritarianism. The upheavals in the Arab world, therefore, created a dilemma between ethics and self-interest amid the flux of geopolitical shifts in one of the world's unstable regions.⁸⁸

In the aftermath of the Arab Spring in various countries, there was a wave of violence and instability commonly known as the ‘Arab Winter’ or ‘Islamist Winter’. The Arab Winter was characterized by extensive civil war, general regional instability, economic and demographic decline of the Arab League and overall religious war between Sunni and Shia Muslims.⁸⁹ The effects of Arab Spring varied greatly across the Middle East and North Africa. A variety of factors of which hinge on the relationship between the strength of the state and the strength of civil society. Countries with strong civil society networks in various forms underwent more successful reforms during the Arab Spring.⁹⁰ One of the primary influences that have been highlighted in the analysis of the Arab Spring is the relative strength or weakness of a society’s formal and informal institutions prior to the revolts.⁹¹

Ethics in Public Life

The role of ethics in public life has many dimensions—at one end is the expression of high moral values and at the other, the specifics of action for which a public functionary can be held legally accountable. A system of laws and rules, however, elaborate, cannot provide for all situations. It is, no doubt, desirable, and perhaps possible, to govern the conduct of those who occupy positions in the lower echelons and exercise limited or no discretion. But the higher the echelon in public service, the greater is the ambit of discretion. And it is difficult to provide for a system of laws and rules that can comprehensively cover and regulate the exercise of discretion in high places.⁹²

We tend to take the core principles and values that underpin our public service for granted but ethics are a rare and fragile phenomena. All organizations benefit from a strong set of values and standards and from solid ethical leadership. This is particularly so of public service organisations because of the influence and power exerted over decisions affecting citizens. It is, therefore, imperative for a public service organization to conduct itself in ways that preserve and enhance public trust and confidence in the integrity of government and its institutions.

Although all citizens are subject to the laws of the land, in the case of public servants there must be standards of behaviour more stringent than those for an ordinary citizen. It is at the interface of public action and private interest that the need arises for establishing not just a code of ethics but a code of conduct. A code of ethics would cover broad guiding principles of good behaviour and governance while a more specific code of conduct should, in a precise and unambiguous manner, stipulate a list of acceptable and unacceptable behaviour and action.⁹³

Any framework of ethical behaviour must include the following elements:

- a. Codifying ethical norms and practices.
- b. Disclosing personal interest to avoid conflict between public interest and personal gain.
- c. Creating a mechanism for enforcing the relevant codes.
- d. Providing norms for qualifying and disqualifying a public functionary from office.⁹⁴

The Committee on Standards in Public Life in the United Kingdom, popularly known as the Nolan Committee, has outlined the following seven principles of public life:

1. *Selflessness*: Holders of public office should take decisions solely in terms of public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.
2. *Integrity*: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.
3. *Objectivity*: In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
4. *Accountability*: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
5. *Openness*: Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
6. *Honesty*: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
7. *Leadership*: Holders of public office should promote and support these principles by leadership.⁹⁵

Ethics Infrastructure

The Public Management Committee (PUMA) of the Organisation for Economic Cooperation and Development (OECD) conducted a survey in

1996⁹⁶ to determine how public servants can be given support in observing the highest standards of integrity and ethics in a rapidly changing public sector environment, without undermining the main thrust of public management reforms which aim to enhance efficiency and effectiveness. In its analysis, PUMA invented the notion of the ethics infrastructure, as a cornerstone for a comprehensive strategy. The term Ethics Infrastructure defined by OECD employs a range of tools and processes to regulate against undesirable behaviour and to provide incentives for good conduct. The eight key elements of the Ethics Infrastructure as identified by OECD are as follows:⁹⁷

1. Political commitment; 2. Workable codes of conduct;
3. Professional socialisation mechanisms; 4. Ethics co-ordinating body;
5. Supportive public service conditions; 6. Effective legal framework;
7. Efficient accountability mechanisms; and 8. Active civil society

3. GOOD GOVERNANCE: ETHICS AND MORAL VALUES

Good Governance: Conceptual Framework

As per the well-known formulation of government by Easton⁹⁸ (1953-1957) the government is the authoritative allocation of values. Individual citizens, an economic firm, or an interest group or an organization asking for government intervention—are each requesting an authoritative resolution of a value conflict. This apparatus, the collection of offices and officers responsible for authoritatively allocating values, is what we know under the names “the administrative state,” “the bureaucracy,” “the civil service,” “public administration,” or public management.” Lack of moral specificity – the dearth of accepted pronouncements on the standards of justice, rightness, and truth – is comforting as it leaves the horizon of interpretation open to newness. Specificity, some fear, is too prescriptive to cope with a changing objective world of technological innovation and too polemical to cope with the inevitability of pluralism in the inter-subjective world. Yet, ambiguity in the authorization of morality leaves open room for chicanery; without a fixed morality of universal proportions, ethics becomes relative to the person, the moment, or, worse, the technology at hand. Moral ambiguity, a scholar like Arendt might charge, is even the wellspring of the banality of evil in administrative affairs.⁹⁹ Lacking a moral compass and an attendant body of ethical norms, evil can seep in through the cracks of law and policy, unnoticed by those enforcing it, until an abyss of evil swallows them and countless others whole.¹⁰⁰

Governance is a dynamic connotation which according to the Oxford Advanced Learner's Dictionary means, the way in which a country is governed.¹⁰¹ Governance is not about government; it is partly about how governments and other social organizations interact, how they relate to citizens, and how decisions are taken in a complex world. Thus, governance is a process whereby societies or organizations make their important decisions, determine whom they involve in the process and how they render account.¹⁰² Since a process is hard to observe, governance (as opposed to "good" governance) can be defined as the rule of the rulers, typically within a given set of rules. Governance is the process by which authority is conferred on rulers, by which they make the rules, and by which those rules are enforced and modified. Thus, understanding governance requires an identification of both the rulers and the rules, as well as the various processes by which they are selected, defined, and linked together and with the society generally.¹⁰³ World Bank has defined Governance as the manner in which power is exercised in the management of a country's economic and social resources. The World Bank has identified three distinct aspects of governance: (i) the form of political regime; (ii) the process by which authority is exercised in the management of a country's economic and social resources for development; and (iii) the capacity of governments to design, formulate, and implement policies and discharge functions.¹⁰⁴ Governance consists of the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them.¹⁰⁵ The United Nations Development Programme's (UNDP) definition of good governance is set out in a 1997 UNDP policy document entitled "Governance for Sustainable Human Development". The document states that governance can be seen as the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.¹⁰⁶ As per OECD the concept of governance denotes the use of political authority and exercise of control in a society in relation to the management of its resources for social and economic development. This broad definition encompasses the role of public authorities in establishing the environment in which economic operators function and in determining the distribution of benefits as well as the nature of the relationship between the ruler and the ruled.¹⁰⁷ Governance encompasses the nature of functioning of states, institutional and structural

arrangements, decision-making processes, policy formulation, implementation capacity, information flow, effectiveness of leadership, and the nature of the relationship between ruler and the ruled. Governance, therefore, concerns not just the integrity, efficiency and economy of government but also the effectiveness in terms of the needs to which government organisation and activity is directed.¹⁰⁸

When the term governance is preceded with the connotation “good”, some value-assumptions and attributes such as efficiency, accountability, transparency, participation, rule of law, justice and control of corruption are added to it. There are many competing views on what the term ‘good governance’ should mean, but most donors argue that it should include some (if not all) of these: increased public accountability and transparency; respect for and strengthening of the rule of law and anti-corruption measures; democratization, decentralization and local government reform; increased civil-society participation in development; and respect for human rights and the environment.¹⁰⁹ “Good Governance” is an umbrella concept embracing within a system of governance that is able to unequivocally discover the basic values of the society where standards concern economic, political and socio-cultural issues including those involving human rights, and one that follows the same through an accountable and upright administration. Good governance is not a mirage or a utopian concept. It only signifies the way an administration ameliorates the standard of living of the members of its society by creating, and making available, the basic amenities of life; providing its people security and the opportunity to better their lot; instills hope in their hearts for a promising future; providing, on an equal and equitable basis, access to opportunities for personal growth; affording participation and capacity to influence, in the decision-making in public affairs; sustaining a responsive judicial system which dispenses justice on merits in a fair, unbiased and meaningful manner; and maintaining accountability and honesty in each wing or functionary of the Government.¹¹⁰ Ethics is an integral element of good governance. Both concepts share a number of common features. Generally speaking, good governance policies should aim at more citizen orientation, transparency, accountability, anti-discrimination, fight against corruption, and participation.¹¹¹

Good governance implies service to the people. Government’s task is to govern in a way that optimises the security and welfare of citizens. The measure of good governance is how far the government is able to improve the quality of life of people tangibly as well as intangibly. Even if there is good democracy and good constitution but people are hungry, good democracy and good constitution would mean little. Democracy,

accountability, honesty, commitment to service are only processes by which good governance is delivered. Good governance must have its own measures based on the overall performance of the state as measured by the improvement in the quality of life of the people. There is an inherent danger in measuring good governance on the basis of process alone.’ In brief, good governance is defined as the use of political authority and the exercise of control over society and the management of its resources for societal and economic development. Good government provides a responsive governmental and state administrative framework, facilitating good governance and, while good governance and economic development must be longer-term goals than good government, the former will not be achievable without attaining the latter. Good government in practice would mean: political legitimacy for the government through democratic elections and transfer of power, political opposition and representative government; accountability through the provision of information, separation of powers, effective internal and external audit, low levels of corruption and nepotism; official competency such as having trained public servants, realistic policies and human rights as indicated by freedom of religion and movement, impartial and accessible criminal justice systems and the absence of arbitrary government power’. ¹¹²

In the UNDP policy document entitled *Governance for Sustainable Human Development* it is explained that governance has three dimensions: economic, political and administrative. Economic governance includes the decision-making processes that affect a country’s economic activities and its relationships with other economies. Political governance is the process of decision-making to formulate policy. Administrative governance is the system of policy implementation. Encompassing all three, good governance defines the processes and structures that guide political and socio-economic relationships. Governance includes the state but transcends it by taking in the private sector and civil society, all of which are critical in sustaining human development. The institutions of governance in the state, civil society and the private sector must be designed to contribute to this sustainable human development by establishing the political, legal, economic and social circumstances for poverty reduction, job creation, environmental protection and the advancement of women. Good governance comprises the existence of effective mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences. Its essential characteristics are:

- (a) **Participation:** All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions

that represent their interests. Such broad participation is built on freedom of association and speech, as well as on the capacity to participate constructively.

- (b) **Rule of law:** Legal frameworks should be fair and enforced impartially, particularly the laws on human rights.
- (c) **Transparency:** This concept is built on the free flow of information. Processes, institutions and information should be directly accessible to those concerned, and enough information should be provided to render them understandable and monitorable.
- (d) **Responsiveness:** Institutions and processes should serve all stakeholders.
- (e) **Consensus Orientation:** Good governance should mediate differing interests in order to reach broad consensus on the best interests of the group and, where possible, on policies and procedures.
- (f) **Equity:** All men and women should have equal opportunity to maintain or improve their well-being.
- (g) **Effectiveness and Efficiency:** Processes and institutions should produce results that meet needs while making the best use of resources.
- (h) **Accountability:** Decision-makers in government, the private sector and civil society organizations should be accountable to the public as well as to institutional stakeholders. This accountability differs depending on the organization and whether the decision is internal or external to an organization.
- (i) **Strategic Vision:** Leaders and the public should have a broad and long-term perspective on good governance and human development, together with a sense of what is needed for such development. There should also be an understanding of the historical, cultural and social complexities in which that perspective is grounded.¹¹³

Accountability, transparency, rule of law and citizens' participation in the process of governance are basic postulates of good and open governance. It would be useful to briefly discuss each one of these:

Accountability

Accountability has numerous meanings which vary from country to country. In socialist and many developing countries, accountability refers to compliance to rules, laws and regulations. Once this is well established, the accountability that people can expect at the next level is relying on an honest and ethical character of public servants by the citizens, and from

there move to satisfying the needs and demands of citizens in relation to contract and reporting requirements, as well as the financial and ethical policies and procedures.¹¹⁴

There are three fundamental principles of public accountability of the government. First and foremost is that 'sovereign power resides in the people'. The second which derives from the first is that: 'Where the public's power is entrusted to institutions and officials for the purposes of government, they hold that power of the people to be exercised for the people. They are the public's trustees.' The third, which links the second back to the first, is that: 'Those entrusted with public power are accountable to the public for the exercise of their trust.'¹¹⁵ The avenues of public accountability can take three forms: (1) to members of the public directly, either as individuals (e.g. through the administrative law system), or as a community (e.g. in elections); (2) to agencies such as the Auditor-General, the Ombudsman and the Parliament which act, or should act, for and on behalf of the public; and (3) to official superiors and peers.¹¹⁶

More recently, in line with the worldwide trend to restructure or reinvent the state, in line with the ideological and policy shifts, the role of the state and its public sector has changed from direct to indirect activities and from the leading to facilitating tasks related to the delivery of services. This has resulted in gradually shifting the functioning which was in government domain to private sector through measures like privatization and outsourcing. The impact of this policy shift can also be seen in the increasing emphasis on downsizing the public sector. Since the early 1980s, the criteria of accountability have considerably changed under the reinvented state. Now there is greater emphasis on performance, efficiency, value-for-money, and customer satisfaction. Performance, measured in terms of outputs or results, has become one of the central benchmarks for public accountability. Thus there has been a shift in the criteria of accountability from 'equity and fairness' to 'efficiency and economy', 'citizen's entitlement and public opinion' to 'value-for-money and customer satisfaction'. This shift in focus may result in marginalizing government's accountability for ensuring citizens' rights, representation, and welfare, and thus, weaken the democratic principles of accountability.¹¹⁷

Transparency

Transparency in governance basically means people should be able to access public information when they want it. They should be able to know what public officials are doing and how the policies are being implemented. Citizens demand greater transparency from governments and require information on who, why and how of decision making. Other aspects of

transparency in the public service require clarity, that there is integration with other decisions, that it is logical and rational, accountable, truthful and accurate, and open. If citizens have a problem with getting information, in public service delivery, then they may expect presence of an effective and efficient complaint redressal channel. Greater transparency is also key to upholding integrity in the public sector by reducing the risk of fraud, corruption and mismanagement of public funds. All the departments and public bodies should have computerised information counters so that information and assistance is available to the public on various essential services and approvals.

Rule of Law

The rule of law primarily means that everything must be done according to law. Applied to the powers of government, this requires that every government authority which does some act which would otherwise be a wrong or which infringes a man's liberty, must be able to justify its action as authorised by Law and in nearly every case this will mean authorised directly or indirectly by legal provisions. However, the rule of law demands something more, since otherwise it would be satisfied by giving the government unrestricted discretionary powers, so that everything that they did was within the law. The secondary meaning of the rule of law, therefore, is that government should be conducted within a framework of recognised rules and principles which restrict discretionary power. An essential part of the rule of law, accordingly, is a system of rules for preventing the abuse of discretionary power. A third requirement of the rule of law, is that disputes as to the legality of acts of government are to be decided by judges who are independent of the executive. The rule of law remains nonetheless a vital necessity to fair and proper government. The enormous growth in the powers of the state makes it all the more necessary to preserve it.¹¹⁸

The governance and administration of any social enterprise must be realized within the framework provided by the rule of law. This precept establishes the obligation of individual and collective obedience to the system of public rules that define the legal limits of what can and cannot be done. Disobedience to the law leads to corrupt and criminal behaviour.¹¹⁹

Citizen's Participation

Citizen's Participation in governance is fundamental to democracy as ultimate power vests with the people. Interaction is one important aspect in governance. There are complex ways in which public, private and social organizations interact and learn from one another. It is also the manner in

which citizens contribute to the governance system, directly and indirectly through their collective participation in civil, public and corporate institution.¹²⁰ Greater participation is crucial for good governance in two ways: greater participation by citizens in the decision-making process allows greater transparency and can help ensure that political decisions are adapted to the needs of the people affected by them. Second, greater participation is important for democratic legitimacy, which depends on the investment people have as citizens in their own governing.¹²¹

Good Governance and Ethics: Global Initiatives

Good governance can be regarded as a moral stance: a supreme value that maximizes the common good and therefore, be perused both in public and private spheres. As a result, the credibility of the public organizations depends much on the perception that they hold the values they claim to represent, such as democracy, social justice, equity, transparency, accountability, effectiveness and the rule of law. All of these values are key components of the wider good governance institutional agenda.¹²² Therefore, world over there has been an increased emphasis on ethics and morality to promote good governance there. A number of countries have taken steps to ensure their public servants discharge their services in an ethical manner. Ethics in public administration traditionally has been divided into two schools, the normative and the structural. The normative perspective, often drawing upon organizational development, examines how ethical values are inculcated and put into operation in organizations. The structural approach probes formal-legal arrangements, primarily regulatory and legal prescriptions and prohibitions through which governments seek to channel and control administrators' behaviour.¹²³

OECD Recommendation on Improving Ethical Conduct in the Public Service

In an OECD Recommendation adopted in April 1998¹²⁴, Member countries expressed their commitment to regularly review policies, procedures, practices and institutions which encourage high standards of conduct and prevent misconduct as well as counter corruption. In order to provide a strategic tool, a reference checklist – a set of twelve principles for managing ethics in the public service – was developed and agreed by representatives of OECD Member countries to support governments in their review of ethics management systems. Through this instrument, the OECD Council recommended that Member countries take action to ensure well-functioning institutions and systems for promoting ethical conduct in the public service by:¹²⁵

- Developing and regularly reviewing policies, procedures, practices and institutions influencing ethical conduct in the public service.
- Promoting government action to maintain high standards of conduct and counter corruption in the public sector.
- Incorporating the ethical dimension into management frameworks to ensure that management practices are consistent with the values and principles of public service.
- Combining judiciously ideal-based aspects of ethics management systems with rule-based ones.
- Assessing the effects of public management reforms on public service ethical conduct.
- Using as a reference the Principles for Managing Ethics in the Public Service to ensure high standards of ethical conduct.

The recommendation also recognized 12 Principles for Managing Ethics in the Public Service which are as under:¹²⁶

1. Ethical standards for public service should be clear;
2. Ethical standards should be reflected in the legal framework;
3. Ethical guidance should be available to public servants;
4. Public servants should know their rights and obligations when exposing wrongdoing;
5. Political commitment to ethics should reinforce the ethical conduct of public servants;
6. The decision-making process should be transparent and open to scrutiny;
7. There should be clear guidelines for interaction between the public and private sectors;
8. Managers should demonstrate and promote ethical conduct;
9. Management policies, procedures and practices should promote ethical conduct;
10. Public service conditions and management of human resources should promote ethical conduct;
11. Adequate accountability mechanisms should be in place within the public service; and
12. Appropriate procedures and sanctions should exist to deal with misconduct;

All OECD countries have a set of stated core values for the public

service. There are eight most frequently stated core public service values in OECD countries which are: impartiality, legality, integrity, transparency, efficiency, equality, responsibility, and justice. Besides this, the countries have also defined a wide variety of values which reflect their respective national, social, political and administrative environments. The countries hold a combination of “traditional” and “new” public service values. Traditional values reflect the fundamental mission of the public service, while new values articulate the requirements of a new ethos.¹²⁷

The public service values are available in various forms. In most cases, statutes and general laws comprise the core values. In OECD core public service values are declared through the Constitutions, basic laws and the special civil service or public service regulations to declare. Australian Public Service (APS) Values have been incorporated in Public Service Regulations.¹²⁸ The form of legal documents ranges from Constitutions (Turkey), general acts on civil service (Denmark, France, Hungary) or public service (Japan), administrative procedures law (Greece, Portugal), labour law (Czech Republic), to dedicated codes on Standards of Conduct (the United States), disciplinary act (Portugal) and the conflict of interest and post-employment code for public service (Canada). Codes of conduct and codes of ethics (France, Italy) or a civil service code (the United Kingdom) are also a commonly used source in over one-third of the Member countries. In Canada, while the Conflict of Interest and Post-Employment Code for Public Service has been adopted as regulation, the Conflict of Interest and Post-Employment Code for Public Office Holders is a code of conduct.¹²⁹

In 1999, the Government of Australia enacted the Australian Public Service Act, which prescribes a set of Public Service Values. These are not merely aspirational statements of intent, but all employees are expected to uphold these values and comply with the Code, even as senior executives are expected to promote these values. The Public Service Commissioner is authorized to evaluate the extent to which agencies incorporate and uphold the values, and the adequacy of the systems and procedures required to ensure compliance with the Code. He has both statutory powers and policy responsibilities.¹³⁰

Besides this there are vision statements either for the whole public service (New Zealand) or for individual organisations (Norway), guidelines (Denmark, Finland), charters (Ethical Charter in Korea and Portugal) and codes for professional groups (New Zealand), reports (Canada, Norway), discussion paper on values (Australia), or textbooks and commentaries on public service law (Germany), other books and promotional publications (booklets in Canada, posters and pamphlets in the United States). The values have also been stated in public service or administrative codes or even in

constitutions in the continental European countries.¹³¹ Various countries have prescribed a Code of Conduct/Ethics for its Ministers, legislators and civil servants.

Specific guidelines and code of conduct are also specified for the political leaders and ministers. In Canada, the 'Guide for Ministers (2006)' sets out core principles regarding the role and responsibilities of Ministers. This includes the central tenet of ministerial responsibility, both individual and collective, as well as Ministers' relations with the Prime Minister and Cabinet, their portfolios, and Parliament. It outlines standards of conduct expected of Ministers as well as addressing a range of administrative, procedural and institutional matters. In UK, the Ministerial Code provides guidance to Ministers on how they should act and arrange their affairs in order to uphold these standards. It lists the principles which may apply in particular situations drawing on past precedent. In the US there is a Senate Code of Conduct. In Belize, the Code of Conduct for public functionaries is prescribed in the Constitution itself. Section 121(1) of the Constitution of Belize provides the Code of Conduct:

The persons to whom this section applies shall conduct themselves in such a way as not—

- (a) to place themselves in positions in which they have or could have a conflict of interest;
- (b) to compromise the fair exercise of their public or official functions and duties;
- (c) to use their office for private gain;
- (d) to demean their office or position;
- (e) to allow their integrity to be called into question; or
- (f) to endanger or diminish respect for, or confidence in the integrity of the Government.¹³²

The US Constitution, in Article I, Section 5, grants broad authority to Congress to discipline its Members. In 1968, the Senate adopted its first official code of conduct which was revised and amended substantially in 1977. The Committee which was earlier known as Senate Select Committee on Standards and Conduct's name was changed to the Select Committee on Ethics. The Senate Code of Conduct regulates financial disclosures, gifts, travel reimbursements, conflicting interests, post-employment restrictions, employment practices, etc.¹³³ Disclosure of one's interest is one of the ways of avoiding conflict between public and private interest. The rules of the US Congress and the Australian and Canadian Parliaments do not allow a legislator to vote if they have a direct pecuniary interest.¹³⁴

The UK House of Commons adopted the Code of Conduct for its Members in 1995. The purpose of this Code of Conduct is to assist Members in the discharge of their obligations to the House, their constituents and the public at large by providing guidance on the standards of conduct expected of Members in discharging their parliamentary and public duties. It is also stated that the obligations set out in this Code are complementary to those which apply to all Members by virtue of the procedural and other rules of the House and the rulings of the Chair.¹³⁵

Legal Regulations

The OECD countries have legal framework which provides the expected standards of behaviour for every public servant and also for investigation and prosecution. Through legal instruments standards are also specified for certain situations that might lead to conflict of interest, like receiving gifts or benefits (such as fees, payments, entertainment) and use of official information, issues relate to ancillary work such as work outside the public service and post-employment. Half of the OECD countries require special conditions and/or permission for public servants to move from the public service to the for-profit sector. In addition, countries have given special attention to specific issues such as whistleblowing (Australia), forbidding lobbying for a year after leaving the public service (Mexico), or generally require behaviour which improves respect and trust (Germany) and does not cause discredit to the public service (Japan).¹³⁶

Structural Arrangements

To be effective and binding codes of conduct and ethics need to be backed by an effective monitoring and enforcement regime. Legislatures the world over have adopted different models for this purpose. A number of countries have adopted structural arrangements such as ombudsman, inspector general, and special prosecutor designed to combat corruption and support the incorruptible public administrator. World over there are number and variety of offices in operation: Egypt's Administrative Control Authority, Canada's Office of the Ethics Counselor, Nigeria's Code of Conduct Tribunal, New Guinea's Ombudsman Commission, Nepal's Commission for the Investigation of Abuse of Authority, Latvia's Ministry of State Reform, Uganda's Inspectorate of Government Office, Costa Rica's Office for the Defense of Citizens, and the Office of Overcoming Professional Unhealthy Tendencies of the People's Republic of China.¹³⁷

In Canada the Ethics Commissioner, an Officer of Parliament appointed under the Parliament of Canada Act to oversee the Canadian Conflict of Interest and Post-Employment Code for public office holders (2006) and to

provide advice. The Commissioner reports on the inquiries he conducts pursuant to the Members' Code and makes annual reports to the House of Commons on his activities in relation to its Members. In UK, based on the recommendations of the Nolan Committee, the House of Commons has established the office of Parliamentary Commissioner for Standards. The Constitution of the Office of Parliamentary Commissioner for Standards has helped the House by bringing greater transparency in matters relating to ethical standards. It has also helped the Members by providing them timely advice in matters relating to the Code of Conduct.¹³⁸ There is the Public Offices Commission in Ireland, the Government Personnel Appeals Commission in Korea, the Ministry of Controllorship and Administrative Development in Mexico, the State Personnel Presidency in Turkey, the secretariat of the ethics committees in France, to which public servants could turn for information concerning such matters as moving to the private sector.¹³⁹

4. MISFEASANCE AND CORRUPTION

Corruption: Major Challenges

Corruption is one of the hardest issues states have to face in the governance process. Corrupt practices rob governments of the means to ensure the best life for their people, while many in government may feel that exposure of corruption erodes their legitimacy.¹⁴⁰ Corruption is the outcome of decline in ethical and moral values in governance. Maladministration breeds corruption. The instruments of the state are used for promoting self-interest and not for public good. Corruption is not a recent phenomenon. Corruption is a universal problem and a complex phenomenon. All countries rich, poor, developed or developing experience it in varying degree, mainly due to the imperfect fulfillment of absolute ideals. The 2015 Corruption Perceptions Index clearly shows that corruption remains a blight around the world. Not one single country, anywhere in the world, is corruption free.¹⁴¹ It is *the abuse of public office for private gain*¹⁴². Transparency International defines corruption as "the abuse of entrusted power for private gain". Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs. Grand corruption consists of acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good. Petty corruption refers to everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police

departments and other agencies. Political corruption is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.¹⁴³

World over corruption has been recognized as the single greatest obstacle to economic and social development. The hypercorruption that prevails in many countries is a clear indicator of the profound moral crisis that civilization is experiencing.¹⁴⁴ A value system in which public servants generally regard public office as their private property frequently results in an abuse of power and the attitude that the state is superior to the people. Public sector corruption is not simply about misappropriation of taxpayers' money but it results in inequality and exploitation by concentration of wealth in the hands of an elite few and trapping many more in poverty. Corruption has been commonly recognized as a 'social disease' as it destroys the moral fabric of society and erodes the faith of the common man in the legitimacy of the politico-administrative set up. The organizational causes for corruption may be traced to a number of factors; inadequate and unrealistic compensation levels of public servants, lack of leadership in the bureaucratic system, mismanagement or maladministration of the system, excessive red tapism in administrative procedures, poor recruitment and selection procedures.

Due to increasing maladministration leading to corruption and unethical actions of Public Services, in 2003 the United Nations General Assembly adopted a Resolution against corruption. This was the United Nations Convention against Corruption¹⁴⁵ Article 8 which states:

“Codes of conduct for public officials:

1. In order to fight corruption, each State Party shall promote, *inter alia*, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.
2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functionaries.
3. For the purposes of implementing the provisions of this Article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, inter-regional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the General Assembly Resolution 51/59 of 12 December, 1996.

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.
5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, *inter alia*, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.
6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this Article.”¹⁴⁶

Corruption in India

India is the 76th least corrupt nation out of 175 countries, according to the 2015 Corruption Perception Index reported by Transparency International. Corruption Rank in India averaged 75.14 from 1995 until 2015, reaching an all-time high of 95 in 2011 and a record low of 35 in 1995.¹⁴⁷

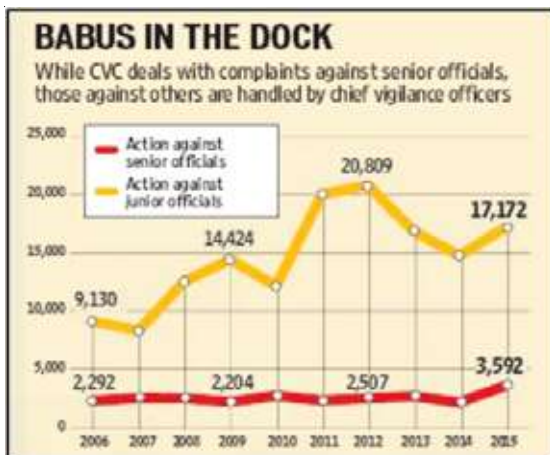
According to a Central Vigilance Commission (CVC) Annual Report for 2015 tabled in the Parliament, during 2015 as many as 928 government and public sector unit employees were sacked and 5,461 employees handed out major penalties, while 11,711 received minor penalties in 2015 for corruption and misconduct. Punitive action was taken in 17,172 cases (for all categories of officers). In seven cases, deterrent action was taken against senior officers, including three IAS, one IPS and three IRS officers, and sanction of prosecution was granted. As per the CVC Report, the competent authorities in various organisations have issued sanction for prosecution against 132 public servants, major penalties have been imposed on 1,832 public servants and minor penalties on 1,346 during 2015. In 2015, the highest number of punishments, including administrative action against public servants, was in the Railways (602 officers), State Bank of India (217 officers), Punjab National Bank (169 officers) and Department of Telecom (134 officers). The Railways issued sanction for prosecution in 16 cases, Central Board of Excise and Customs in 15 cases and Punjab National Bank in 10 cases. During 2015, a total of 4,355 cases were received and

1,751 brought forward from the previous year. The Commission disposed of 4,604 cases—leaving a pendency of 1,502 cases at the end of the year. It has been observed in the report there was a delay in corruption cases. It takes about eight years to finalise a major vigilance case from the date of occurrence of irregularity. The Commission noted that detection of irregularity and its investigation takes on an average more than two years each—total period of more than 4 years, which is a significant portion of the entire delay period.¹⁴⁸

In 2015, ‘Corruption, Bribery and Corporate Frauds’ continued to be ranked as the topmost risk.¹⁴⁹ According to reported corruption cases in the media from October 2011 to September 2012, the potential losses suffered by the Indian economy stood at INR 364 billion. This excludes some large scams such as 2G, the Commonwealth Games and mining.¹⁵⁰ Many factors have been attributed to corruption in India, the most prominent ones highlighted by a number of scholars are: regulations and authorizations; providing public services and public goods below market prices; low public sector wages; unstable political institutions and unchecked election costs; a lack of government accountability and laws that protect whistleblowers; leadership deficits, specifically lack of political will for reform; and opaque rules, laws, and procedures.¹⁵¹ Looking at the state of corruption in India scholars argue that “curbing corruption in India remains an impossible dream in the foreseeable future”.¹⁵² The erosion of values at the personal, professional, and societal levels is a matter of serious concern in India. The Service Conduct Rules, the Code of Conduct, and various other legislations that are enacted and amended from time to time have helped civil servants to maintain moral conduct of the highest order and combat corruption.

A survey conducted in 2013¹⁵³ on “Bribery and Corruption: Ground Reality in India”, suggests that corruption invariably increases: transaction costs, uncertainty in the economy, lowers efficiency, inhibits the development of a healthy marketplace, distorts economic and social development. High levels of corruption are associated with lower levels of investment.

The findings of the survey suggests that Infrastructure and Real Estate (85%); Metals and Mining (76%); Aerospace and Defense (64%); Power and Utilities sectors (51%) are the sectors received to be most vulnerable to corruption. Alarming, a large number of respondents appeared to be comfortable with (or were aware of) unethical business conduct. These include irregular accounting to hide bribery and corruption, gifts being given to seek favours. More than half of the respondents agreed that it is the lack of will to obtain licenses and approvals the “right way,” which leads to bribery and corruption. Around 83% of the respondents felt that cases of bribery and corruption can negatively impact FDI inflows. Around 89% of



SOURCE: Alope Tikku, 900 government employees sacked for corruption in 2015, *Hindustan Times*, August 04, 2016.

the respondents felt that there should be greater enforcement of laws to curb the proliferation of bribery and corruption.

Impact of Bribery and Corruption on India's Economy

The survey respondents believed that increasing corruption can act as a speed-breaker in the India growth story. Around 83% of respondents felt that the recent spate of scams can negatively impact FDI inflows into the country. Seventy three percent of investors are expected to bargain hard and factor in the cost of corruption at the time of entering transactions. Around 77% of the respondents think that it is the responsibility of the Managing Directors to handle the bribery and corruption-related issues in the organizations. Nearly 50% of the respondents said their companies have lost business to their competitors because of the latter's unethical conduct. According to 73% of the respondents from PE firms, a company operating in a sector that is perceived as highly corrupt, may lose ground when it comes to a fair valuation of its business.¹⁵⁴

Global Corruption Barometer 2013 — a survey of 1.14 lakh people in 107, indicates that corruption in India has reached an all-time high with rates being exactly double of the global prevalence. In India the number of people who say they paid bribe when accessing public services were 54%, i.e. over one in two citizens. Whereas globally, 27% people say they paid bribe when accessing public services and institutions. Political parties have been found to be the most corrupt institution in India with a corruption rate as high as 4.4 on a scale of 5. The highest amount of bribe, however, was collected by the police — 62% followed by those involved in registry and

permit (61%), educational institutions (48%), land services (38%). India's judiciary has also been found guilty — 36% involved in bribes. Cynicism about a corruption free future is widespread among the Indian public with 45% people saying they don't think common man can make a difference. On the other hand, around 34% people (1 in 3) said they wouldn't report corruption while facing it. The Barometer shows a crisis of trust in politics and real concern about the capacity of those institutions responsible for bringing criminals to justice.¹⁵⁵

India Corruption and Bribery Report, 2009¹⁵⁶ suggests that Bribery in India has reached till grassroots level which is difficult to contain. Around 86% demands were done for \$5000 or less (2,50,000 rupees or less, out of which more than half were for \$26 (Rs. 1300) or less. Because, corruption takes place at such a grassroots level, it is extremely difficult to contain it. Fourteen people out of 100 taking bribes are for amount more than \$5000 (Rs. 2,50,000). Actually, if you look at the top officials are even more corrupt. The number of big bosses is merely one -two per cent of all officials, yet according to the report 14% of bribes are of huge amounts, showing that big bosses are involved even more compared to low level officials who are taking bribes.

It is also interesting that more than half of all the bribes were paid to get the work in time. 77% of all reported bribe demands in India are related to the avoidance of harm, including securing the timely delivery of a service – which is actually a right of a person (such as clearing customs or having a telephone line installed) and receiving payment for services already rendered. Only 12% of the bribe demands were for gaining a personal or business advantage (including exercising influence with or over another government official, receiving inappropriate favorable treatment or winning new business). So if you want your work to be done, bribe the public servant. The report indicated that people in India are now used to this corrupt system and take it in their stride as part and parcel. They do not want to go extra lengths and take the easy way out. But this easy way out is actually the root of corruption in India.¹⁵⁷

An embarrassing 91% of reported bribe demands originate from government officials in India. The greatest sources of bribe demands, were from national level Government officials (33%), the police (30%), state/provincial officials and employees (16%), and city officials (10%) respectively. The two Indian ministries which ask for bribe more than others are Customs office (13%) and Taxation and Water (9%). Nearly 90% indicated being solicited for a bribe between two and 20 times. Overall 60% people reported bribe demands of 5 times or lower from the same

individual. However, 9% asked for bribes more than 100 times. Compared to China, it differs significantly with 73% people indicating that they had received multiple bribe requests. 92% of all bribes are preferred to be “cash or cash equivalent”. The next best thing is a “gift,” (5%) including requests for company products, jewellery and similar items. Less common still, at approximately one per cent each, were requests for hospitality or entertainment items; travel for other than business purposes; and other assistance, such as help with a visa, medical care, or scholarships. Surprisingly, there were no reports in India of demands for “additional business” or “sexual favours”.¹⁵⁸

5. INDIAN INITIATIVES TO STRENGTHEN ETHICAL FRAMEWORK

Accountability to Parliament

India has adopted Parliamentary democracy wherein the government is responsible to the Parliament which represents the people. The people through Parliament are sovereign as enshrined in our Constitution. Both the minister and the civil servant are servants of the people. The administrators are responsible to the political executives, who in turn are answerable to the Parliament. Besides administrative accountability there is also accountability in regard to ‘finance’. The legislature must authorise the executive before the latter can spend any money from the Consolidated Fund of India or the state.

Judicial Accountability

Because of increase in the State activities, the executive exercises wide powers. As was rightly observed by Lord Denning: “Properly exercised the new powers of the executive lead to the Welfare State; but abused they lead to the Totalitarian State”.¹⁵⁹ The vast discretionary powers conferred on administrative authorities are required to be properly checked and controlled. If a citizen is aggrieved with any action or inaction of the administration, he may seek redress through a court of law. So the presence of independent judicial processes is also important for making administration accountable. Intensive administration will be more tolerable to the citizens, and the government’s path will be smoother, where the law can enforce high standards of legality, reasonableness and fairness. Though the courts have for centuries exercised a limited supervisory jurisdiction by means of the writs, however the power of judicial review is a wider remedy to check abuse of discretionary powers and administrative inaction.

Wade rightly points out: “Subject as it is to the vast empires of executive power that have been created, the public must be able to rely on the law to

ensure that all this power may be used in a way conformable to its ideas of fair dealing and good administration. As liberty is subtracted, justice must be added. The more power the government wields, the more sensitive is public opinion to any kind of abuse or unfairness. Taken together, the work of judiciary and legislature amounts to an extensive system of protection. It has its weaknesses, but it also has great strengths”.¹⁶⁰

The power of judicial review under the Articles 32, 226, 227, 136 of the Constitution is the basic or essential feature of Indian Constitution. It is the most potent weapon in the hands of the judiciary for maintenance of democracy and rule of law.

Code of Conduct for Ministers

The Government of India has prescribed a Code of Conduct which is applicable to Ministers of both the Union and State Governments. The authority for ensuring the observance of the present Code of Conduct is the Prime Minister in the case of Union Ministers, the Prime Minister and the Union Home Minister in the case of Chief Ministers, and the Chief Minister concerned in the case of Ministers of the State Government. However, it is not comprehensive in its coverage and is more in the nature of a list of prohibitions. So in strict sense it does not amount to a Code of Ethics. It is, therefore, necessary that in addition to the Code of Conduct, there should be a Code of Ethics to provide guidance on how Ministers should uphold the highest standards of constitutional and ethical conduct in the performance of their duties. The Code should be based on the overarching duty of Ministers to comply with the law, to uphold the administration of justice and to protect the integrity of public life. It should also lay down the principles of minister-civil servant relationship. The Code of Ethics should also reflect the seven principles of public life enumerated by Nolan Committee.¹⁶¹

Both Houses of Parliament have provided for Codes of Conduct and also norms for disclosure of interest and declaration of assets and liabilities of their Members. The Committees on Ethics of both the Lok Sabha and the Rajya Sabha have been mandated to oversee the moral and ethical conduct of members.

The Committee on Ethics of the Rajya Sabha and Lok Sabha

Chapter XXIV of the Rules of Procedure and Conduct of Business in the Council of States provides for constitution of the Committee on Ethics to oversee the moral and ethical conduct of Members. The Committee on Ethics was first constituted by the Chairman of the House on 4th March,

1997. There is a Committee on Ethics of the Lok Sabha to oversee the moral and ethical conduct of Members of that House. A few State Legislatures such as Andhra Pradesh, Odisha, etc. have adopted Codes of Conduct for their Legislators.¹⁶²

Disclosure of Interest

In India, disclosure of interest is provided in both Houses of Parliament, in different ways. It has been ruled by the Chairman of the Rajya Sabha that a Member having a personal pecuniary or direct interest on a matter before the House is required, while taking part in the proceedings in that matter, to declare the nature of interest. The Rule 371 of the Rules of Procedure and Conduct of Business in the Lok Sabha prescribe that if the vote of a Member in a division in the House is challenged on grounds of personal, pecuniary or direct interest in the matter to be decided, the Speaker may examine the issue and decide whether the vote of the Member should be disallowed or not and his decision shall be final. Furthermore, the Handbook for Members provides that a Member having personal, pecuniary or direct interest in a matter to be decided by the House is expected, while taking part in the proceedings on that matter, to declare his interest.¹⁶³

A specific mechanism for disclosure of private interests is maintenance of a 'Register of Interests'. Legislators are expected to record in the register all their interests periodically. Rule 293 (Rules of Procedure and Conduct of Business in the Council of States) stipulates that a 'Register of Members' Interests' has to be maintained by the Committee on Ethics. The Committee on Ethics of the Rajya Sabha, in its Fourth Report, recommended that to start with the following interests of Members should be entered in the Register: (i) Remunerative Directorship; (ii) Regular Remunerated Activity; (iii) Shareholding of Controlling Nature; (iv) Paid Consultancy; and (v) Professional Engagement.¹⁶⁴

The Representation of the People Act, 1951, has been amended by the Representation of the People (Third Amendment) Act, 2002. A new Section, 75A, has been inserted which stipulates that every elected candidate for a House of Parliament or the Legislature of the State, shall, within ninety days from the date on which he/she makes and subscribes an oath or affirmation, files the details of his/her assets/liabilities to the Chairman of the Council of State or the Legislative Council, or the Speaker of Lok Sabha or the Legislative Assemblies as the case may be. Accordingly, the Members of the Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, and the Members of the Rajya Sabha (Declaration of Assets and Liabilities) Rules have been formulated.¹⁶⁵

Code of Conduct / Ethics for Civil Servants

Code of conduct is supposed to increase confidence in government by reassuring citizens that private power and interest do not subvert government decisions. This code is now on the verge of becoming a panacea for problems that they cannot solve. Despite its existence for a long period very little is known about how this code of conduct is implemented or how it functions.

A well-crafted ethics code can accomplish a number of vital public purposes. The code can help restore and support public trust and the legitimacy of the government. It accomplishes this purpose by limiting the ability of private power and interest to subvert fair access to government or the independent judgments of public officials. The codes must affect the daily lives of public officials. A good code can buttress and support the independence of government officials and provide direction and advice on complicated issues. A code succeeds best if it affects the agency culture and its standards become imbedded in bureaucratic practices codes help professionalize inter personal relationships and eliminate many incentives for informal inducements.¹⁶⁶ A well designed code must be supported by ethics education and employee orientation.

The All India Service Act, 1951 empowers the Government of India to formulate rules for laying down the conditions of services for the persons appointed to the civil services after consultation with state governments. The current set of ‘enforceable norms’ are ‘Conduct Rules’, typified by the Central Civil Services (Conduct) Rules, 1964 and analogous rules applicable to members of the All India Services or employees of various State Governments. The All India Service Conduct Rules, 1968 and the Central Civil Services (Conduct) Rules, 1964, which emphasize focusing on “service content” as their core functional domain, laid down the rules for civil services. A clear mention has been made about using authority not other than for public welfare. The code of behaviour as enunciated in the Conduct Rules, while containing some general norms like ‘maintaining integrity and absolute devotion to duty’ and not indulging in ‘conduct unbecoming of a government servant’, is generally directed towards cataloguing specific activities deemed undesirable for government servants. There is no Code of Ethics prescribed for civil servants in India although such codes exist in other countries. What we have in India are several Conduct Rules, which prohibit a set of common activities. These Conduct Rules do serve a purpose, but they do not constitute a Code of Ethics.¹⁶⁷

The Conference of the Chief Ministers, which was held in 1996, emphasized the initiation of change in policy stressing the Charters of Citizen’s Rights, accountability of public servants, and transparency in administration.

This was followed by a “workshop” held on November 20, 1996, in which all Chief Secretaries of States participated to prepare a roadmap to ensure the implementation of decisions taken during this workshop. The major outcomes had been translated through promulgation of the Charter of Ethics and the Civil Service Code on the basis of equality, secularism, impartiality, social justice, and the rule of law. The main conclusions are that loyalty should be only to serve the public in accordance with the rule of law, working with a focus on citizen-centered administration that stresses transparency in administration and the Citizen’s Charter for all service institutions.¹⁶⁸

According to the Service Conduct Rules established in 2000, it is mandatory for the members of Central and All India Services to be responsive to the common man. The following reform areas are included: (1) developing effective and transparent systems of governance; (2) ensuring integrity in civil services; (3) promoting a code of conduct that is in line with the existing relevant international standards; (4) regular training of officials to ensure proper understanding of their responsibilities and ethical roles governing their activities; and (5) making civil services more professional and competent.¹⁶⁹

Institutional Mechanism to Check Corruption

The first law broadly dealing with corruption and the attachment of property was a pre-independence, war time ordinance called the Criminal Law (Amendment) Ordinance, 1944, enacted under the Government of India Act, 1935 to prevent the disposal or concealment of property procured by means of certain scheduled offences, including offences under the Indian Penal Code of 1860 (hereinafter “IPC”).¹⁷⁰ In the pre-independence period, the Indian Penal Code (IPC) was the main tool to combat corruption in public life. The Code had a chapter on ‘Offences by Public Servants’, (Sections 161 to 165) which provided the legal framework to prosecute corrupt public servants.¹⁷¹

The first direct and consolidated law on the subject of corruption was the Prevention of Corruption Act, 1947, which was enacted in independent India to supplement the provisions of the IPC. The existing provisions under the IPC and other laws had proved inadequate to deal with cases of bribery and corruption of public servants, which had increased greatly during the war years, due to scarcity and controls. Therefore, a new law was required to deal with various post-war scenarios, which provided multiple opportunities for corruption – these included post-war reconstruction schemes, termination of contracts, and disposal of a large number of government surplus stores. The 1947 Act sought to incorporate (with

modifications) the attachment provisions from the 1944 Ordinance; introduced the offence of criminal misconduct, similar to Section 13 of the present 1988 Act; and criminalised attempts to commit certain offences under the Act.

However, the scope of the 1947 Act was considered too narrow. So the Prevention of Corruption Act was enacted in 1988 to replace the 1947 Act and certain provisions in the IPC dealing with corruption. It sought to, *inter alia*, widen the scope of the definition of public servants; incorporate the offences under Sections 161-165A of the IPC; increase the penalties provided; and provide for day-to-day trial of cases. Presently the Prevention of Corruption Act, 1988 is the substantive law to deal with corruption in India. This applies to all categories of “public duty” which has been defined as a “duty in the discharge of which the State, the citizens at large have an interest.” The legal view of corruption in India thus encompasses a combination of notions of “public offices” and “public interest”. Besides Prevention of Corruption Act, 1988, there are number of other enactments to check corruption: the Benami Transactions (Prohibition) Act, 1988 to prohibit benami transactions; the Prevention of Money Laundering Act, 2002; the Foreign Exchange Management Act, 1999.

Adding teeth to the government’s crackdown on black money, Lok Sabha on July 27, 2016 passed the Benami Transactions (Prohibition) Amendment Bill 2015. This is predominantly an anti-black money measure. A lot of people who have unaccounted money buy immovable property in the name of a fictitious person or a “benami” person, need to be discouraged. The bill marks a continuation of the government’s efforts to curb black money and provides for confiscation of assets held in the name of another person or under a fictitious name to avoid taxation and to conceal illegally obtained wealth. The bill provides for a fine of up to 25% of the fair value of the asset and imprisonment of up to seven years. Among the key changes incorporated in the new Bill include a case for exemption for “genuine religious trusts” outside the purview of the legislation. Under the bill, the term “property” will cover movable, immovable, tangible and intangible properties. In case of joint ownership of property, the tax payer will have to show financing sources. Accommodating the concerns raised by certain members about religious properties or those owned by deities or religious institutions will exempt such bona fide entities. The amendments aim to strengthen the Bill in terms of legal and administrative procedure so as to overcome the practical difficulties which may arise in the implementation of its provisions when it becomes an Act. The legislation is also intended to effectively prohibit benami transactions and consequently prevent circumvention of law through unfair practices.¹⁷²

India is also a signatory to the United Nations Convention against Corruption since 2005 which was ratified in 2011. The Convention covers a wide range of acts of corruption and also proposes certain preventive policies. The Lokpal and Lokayuktas Act, 2013 which came into force from 16 January 2014, seeks to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries in India. Whistleblowers Protection Act, 2011, which provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrongdoing in government bodies, projects and offices, has received the assent of the President of India on 9 May 2014, and is pending for notification by the Central Government.¹⁷³

Towards Transparent Governance: Right to Information Act, 2005

Information is the basis of democracy. Effective accountability rests on the peoples' acquaintance with the information and circumstances for the decisions taken. The government which pursues secret aims or operates in secrecy tends to lose the faith of the people and thereby its own legitimacy and credibility. Openness and full access to information are two pillars of any democratic state. Access to information not only promotes openness, transparency and accountability in administration, but also facilitates active participation of people in the democratic governance process. A democratic government must be sensitive to the public opinion, for which information must be made available to the people. Information and knowledge are instruments of transformation. Not only the government but also the corporate houses and industries, which operate for profit and pollute must also be made to disclose all the facts, which are of public interest. Importance of the right to information has now been well recognized as one of the essential requirements of the good governance. In India, the Right to Information Act came into being in 2005; a landmark event that made the governance processes of the country accessible to its citizens. The Act is based on the principle that all government information is the property of people. It takes democracy to the grassroots level and is also a step towards ensuring participatory governance in the country.¹⁷⁴

The RTI Act, 2005 provides for setting up a practical regime of the right to information for citizens to secure access to information under the control of public authorities. It mandates timely response to the requests made by citizens for government information. Until 2005, the Official Secret Act, 1923 generally debarred disclosure of any official information to the public. The Right to Information Act, 2005 on the other hand wants and directs public authorities to periodically publish un-exempted category of

information of general interest *suo motu*. Any public authority, which delays or withholds information required by an individual, has been made answerable, accountable and punishable where necessary. Thus, the emphasis has now shifted from secrecy or darkness to openness in government work. It is really tantamount to scrapping of the old Official Secret Act, 1923 and turning government to be a government of the people in the real sense.¹⁷⁵

According to a study the general perception of people is that access to information has actually helped. 77% of the individuals think that the ability to access government held information could be helpful in one way or another. Fifty eight per cent felt that access to information held by the government was helpful as it could help in solving individual problems like to find out about their rights vis-à-vis government, to get official document / certificates and solving grievances. It could help in prevention of corruption, minimize bad governance and improve government efficiency (24%). While 26% thought it would contribute to solving community and national problems. The RTI Act has promoted transparency at all levels.¹⁷⁶

Lokpal and Lokayuktas

Another important milestone in strengthening governance is the enactment of the Lokpal and Lokayuktas Act, 2014 which was passed by Parliament in December 2013, and got Presidential assent on January 1, 2014. The Act was a product of people's movement against corruption led by Anna Hazare. It aims to prevent and control corruption through the setting up of an independent and empowered body at the central level, called the Lokpal that would receive complaints relating to corruption against most categories of public servants and ensure that these are properly investigated and, where warranted, effectively prosecuted. All this is envisaged in a time-bound manner, with the help of special courts set up for the purpose. The Act also makes it incumbent for each state to pass, within a year, a law setting up a body of Lokayuktas at the state level, but leaves it to the states to work out the details. The Lokpal would receive complaints of corruption against the Prime Minister, Ministers, Members of Parliament (MPs), officers of the Central Government (all levels), and against functionaries of any entity that is wholly or partly financed by the government with an annual income above a specified limit, and also, all entities receiving donations from foreign sources in excess of 10 lakh per year.¹⁷⁷ It is a welcome move that NGOs and Industrialists have also been brought under the ambit of the Act. The Lok Sabha on July 27, 2016 approved an amendment to the Section 44 of the Lokpal and Lokayukta Act, 2013, to allow extension of the time given to public servants and trustees and board

members of Non-Governmental Organisations (NGOs) receiving government funds of more than Rs. 1 crore or foreign funding of more than Rs 10 lakh to declare their assets and those of their spouses.¹⁷⁸

Whistleblowers Protection Act, 2011

The enactment of RTI Act saw the rise in the number of whistleblowers but many were also attacked and murdered. The need was felt to protect the whistleblowers. A large number of cases of corruption and unethical acts don't see the light of the day because of fear being harmed. Whistleblowing typically involves conflict between two parties with unequal power. It involves attempts to change a bureaucracy by those who work within the organization but who do not have authority. It is also seen that whistleblowing usually occurs in the absence of well developed, neutral dispute resolution mechanism. Cases of whistleblowing have been few so far, but there has been pressure from the public for laws to protect legitimate whistleblowers who release information in the public interest. If whistleblower's protection law is enacted, it will place an onus on public servants to think more about their responsibilities and to re-evaluate the ethic of neutrality. The ethic of neutrality holds that one does only what one is told to do. There is little or no room for individual choice or discretion. Good information, performance based incentives, accountability for results and clarity of roles and responsibilities are all consistent with the maintenance and development of ethical government, promoting organizational values such as efficiency, effectiveness, excellence, quality, leadership and team work.

Whistleblowing has been recognized as one of the important means of reducing corruption by improving the disclosure of information about illegal, dangerous or unethical activities by government and private organizations. As "part of society's alarm and self-repair system", whistleblowers are valuable for organizations and the society because they call attention to problems before they become more damaging. They are "lone voices of reason, morality, and truth who speak out to protect the public from harm".¹⁷⁹ Around 50 countries in the world have adopted national laws on whistleblowing in one form or the other. Countries like Australia, Canada, France, South Africa, United Kingdom and USA have passed comprehensive legislations to protect whistleblowers in the public sector and sometimes in the private sector.¹⁸⁰

In India, a sincere whistleblower in the National Highways Authority of India, Satyendra Dubey had to pay a heavy price in term of his life for drawing attention of the Prime Minister's Office to corruption in Golden

Quadrilateral Project. Manjunath Shanmugam, a young manager with Indian Oil Corporation was shot dead for drawing attention to irregularities in the quality of fuel being marketed in some petrol pumps. Prof. Rajiv Kumar of IIT, Kharagpur has been suspended for exposing irregularities in the IIT-JEE Entrance Test for admissions. Many such whistleblowers and RTI activists have been facing problems and there have been situations where it became difficult for them even to get police protection. Therefore, there is dire need for some kind of legal protection. Since the killing of Satyendra Dubey there have been constant demands for the legislation to protect whistleblowers.¹⁸¹ With suspicious attacks on whistleblowers, the Vyapam scam has highlighted the vulnerability of those who show truth to power. The string of corruption scandals that have surfaced in the last few months, have established what many believe — in a country the size and diversity of India, it is impossible for a centralised mechanism to control corruption to succeed.¹⁸²

The Whistleblowers' Protection Bill, 2011 passed by Parliament, received the assent of the President in May 2014 and has been enacted as Whistleblowers Protection Act, 2011. The Act aims to encourage whistleblowing by providing mechanisms to protect whistleblowers and safeguard them from victimisation. Under the law, if a whistleblower is victimised, he can file a complaint to the competent authority (CA), who has powers to take necessary action to prevent victimisation and issue binding orders. Similarly, the law could have provided protection to those rendering assistance in the investigation when they faced threats and attacks.¹⁸³

The Act thus provides for a system to encourage people to disclose information about corruption or the wilful misuse of power by public servants, including ministers. As per the law, a person can make a public interest disclosure on corruption before a competent authority — which is at present the Central Vigilance Commission (CVC). The government, by notification, can appoint any other body also for receiving such complaints about corruption, the Act says. The Act, however, lays down punishment of up to two years in prison and a fine of up to Rs 30,000 for false or frivolous complaints.¹⁸⁴

Instead of promulgating effective rules to operationalise the Act, the government has moved an amendment in Parliament that seeks to remove the safeguards available to whistleblowers from prosecution under the Official Secrets Act (OSA) if they make a disclosure under the WBP Act. The amendment also forbids disclosure of many categories of information in a whistleblower complaint, like information related to the integrity, security,

strategic, scientific or economic interests of the state or information that relates to commercial confidence, unless information has been obtained under the RTI. If the CA receives a disclosure containing information on any of the subjects mentioned in the bill, then the disclosure will not be looked into and the person making such a disclosure will also not be protected under the Act. The threat of stringent penalties for the violation of the OSA would deter bonafide whistleblowers from coming forward. Further, these amendments completely ignore the predicament of government servants, who come across evidence of wrongdoing in the normal course of their work and have access to information without using the RTI.¹⁸⁵

Vigilance and Investigative Mechanisms

Central Vigilance Commission

Central Vigilance Commission (CVC) is the apex vigilance institution, free of control from any executive authority, monitoring all vigilance activity under the Central Government. The Central Vigilance Commission was set up by the Government in February 1964 on the recommendations of the Santhanam Committee to advise and guide Central Government agencies in the field of vigilance. The CVC Act passed by Parliament in 2003 gives “statutory status” to CVC. Vide GOI Resolution on “Public Interest Disclosure and Protection of Informer” dated April 2004, the Government of India has authorized the Central Vigilance Commission as the “Designated Agency” to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action.¹⁸⁶ The Commission has been empowered through the Lokpal and Lokayuktas Act, 2013 to conduct preliminary inquiry into complaints referred by the Lokpal to it. The Act also has a provision for a Directorate of Inquiry to be set up in Commission.¹⁸⁷

Central Bureau of Investigation

The Central Bureau of Investigation (CBI), functioning under Department of Personnel, Ministry of Personnel, Pension & Public Grievances, Government of India, is the premier investigating police agency in India. It is an elite force playing a major role in preservation of values in public life and in ensuring the health of the national economy. It is also the nodal police agency in India which coordinates investigation on behalf of Interpol Member countries. The services of its investigating officers are sought for all major investigations in the country. The CBI has to investigate major crimes in the country having inter-state and international ramifications. It is also involved in collection of criminal intelligence pertaining to three of

its main areas of operation, viz., anti-corruption, economic crimes and special crimes. The broad categories of criminal cases handled by the CBI relate to: cases of corruption and fraud committed by public servants of all Central Government Departments, Central Public Sector Undertakings and Central Financial Institutions; economic crimes, including bank frauds, financial frauds, import export and foreign exchange violations, large-scale smuggling of narcotics, antiques, cultural property and smuggling of other contraband items etc.; special crimes, such as cases of terrorism, bomb blasts, sensational homicides, kidnapping for ransom and crimes committed by the mafia/the underworld. The superintendence over CBI so far as it relates to investigation of the offences alleged to have been committed under the Prevention of Corruption Act 1988, shall vest in Central Vigilance Commission.¹⁸⁸

CBI has registered 3,296 corruption cases in the last five years, with over 169 people convicted. Out of the total 3,296 cases registered by the CBI under the Prevention of Corruption Act (PCA), the CBI has filed charge sheets in 2,187 cases. One hundred sixty Central Government employees were convicted in corruption cases between 2010 and 2012. There was steep fall in convictions in 2013-2015 when 1,883 cases were registered by the CBI, out of which only nine Central Government employees were convicted for corruption. In 2014, only one Central Government employee was convicted. Till May 2015 no Central Government employee was convicted. The Central Vigilance Commission (CVC) had received a total of 27,343 corruption cases and disposed of 27,251 of them during 2010-2014.¹⁸⁹

National Investigative Agency

The Mumbai terror attack in November 2008 highlighted the need for a strong investigative mechanism and as a result, the Government of India came up with a proposal for an Agency that would be empowered to deal with terror related crimes across states without special permission from the states.¹⁹⁰ The NIA was created by an Act of the Parliament of India on December 31, 2008. According to the NIA Act, the Agency is an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto for investigation and prosecution of offences affecting sovereignty, security and integrity of India. The NIA was established in a concurrent jurisdiction framework, with provisions for

taking up specific cases under eight specific Acts for investigation and prosecution.¹⁹¹

At present NIA is functioning as the Central Counter Terrorism Law Enforcement Agency in India. NIA has registered and investigated 93 cases till date. After submission of chargesheets, 13 cases have been finally or partially decided in trial. Of these, 11 cases have ended in conviction giving NIA an enviable conviction percentage of 85%.¹⁹²

Citizen's Charter and Quality of Delivery of Services

A major theme associated with improving performance is the development of a customer or a client focus or service quality initiative in the public sector. Citizens' charter is a step in this direction. It improves access to public services and promotes quality. It does this by helping people understand what an organisation does and how to contact it, what to expect by way of service and how to seek a remedy if something goes wrong. It does not in itself create legal rights. But it helps users to claim existing rights, and may create new rights that are enforceable through non-legal means (for example through a complaint procedure or independent adjudicator). The charter should clearly set out the standards of service that users can expect to receive. Good standards are vital for an effective charter, and should be expressed in a way that is meaningful to all users. Above all, the standards set out should be relevant, meaningful, challenging, simple, measurable, monitored, published and reviewed. These initiatives aim to improve performance of service delivery as well as to provide service which meets people's needs. Commitments to provide a certain type, volume and quality of services may be made and performance measured against their commitments. A number of Central Government departments and undertakings have framed citizen's charter. Some of the state governments have also taken initiative in this regard but the results are not very encouraging. Perhaps the current prevailing work culture/ environment does not translate these initiatives into action. The real issue, however, is the need to bring about a total change in the attitude of public servants towards redressal of public grievances at all levels and to pin-point responsibility for action on grievances of the people.¹⁹³

Right to Public Service Delivery Legislations

One of the basic requirements of accountability and transparency is efficient and effective service delivery. Every Citizen is entitled to hassle-free public services and redressal of his grievances. Standard and quality services should be available to the citizens within stipulated time frame and in case of failure there should be a grievance redressal mechanism in place.

The service seekers should be able to avail the services of the government departments with minimum inconvenience and maximum speed. For this, there should be clear, precise and enforceable statements of people's entitlements to public services, in the form of Public Service Guarantees. The guarantees should specify the minimum standard of service provision that service users can expect, and set out the arrangements for redress that apply should service providers fail to meet the standard promised." Hence, Right to Service legislation ensures delivery of time bound services to the public. If the concerned officer fails to provide the service in time, he will have to pay a fine. Thus, it is aimed to reduce corruption among the government officials and to increase transparency and public accountability.¹⁹⁴

A number of states have enacted Public Services Guarantee Act or Right to Service Act. The common framework of the state legislations includes, granting of "right to public services", which are to be provided to the public by the designated official within the stipulated time frame. The public services which are granted as a right are generally notified through Gazette notification. Some of the commonly provided public services, including issuing caste, birth, marriage and domicile certificates, electric connections, voter's card, ration cards, copies of land records, etc., within the fixed time frame. In case of failure there is provision for appeal and imposition of penalty on the erring official. The applicant may be compensated out of the penalty imposed on the officer.¹⁹⁵

The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011 or Citizens Charter Bill was proposed in Lok Sabha in December 2011. The bill lapsed due to dissolution of the 15th Lok Sabha.¹⁹⁶ The Bill seeks to create a mechanism to ensure timely delivery of goods and services to citizens. Every public authority is required to publish a citizens charter within six months of the commencement of the Act. The Charter will detail the goods and services to be provided and their timelines for delivery. A citizen may file a complaint regarding any grievance related to: (a) citizens charter; (b) functioning of a public authority; or (c) violation of a law, policy or scheme. The Bill requires all public authorities to appoint officers to redress grievances. Grievances are to be redressed within 30 working days. The Bill also provides for the appointment of Central and State Public Grievance Redressal Commissions. A penalty of up to Rs 50,000 may be levied upon the responsible officer or the Grievance Redressal Officer for failure to render services.¹⁹⁷

There is, no doubt, that we have strong and well defined institutional mechanisms apart from CBI and CVC to deal with corruption and

governance. But why these institutions have failed the test of times? The Supreme Court has also played a major role in tackling corruption. But lot more needs to be done.

Media and Governance

The role of the press as Fourth Estate and as a forum for public discussion and debate has long been recognized. Today, despite the mass media's propensity for sleaze, sensationalism and superficiality, the notion of the media as watchdog, as guardian of the public interest, and as a conduit between governors and the governed remains deeply ingrained. A good rapport with the members of the press and the media is essential for assimilating and disseminating information. How public interest is served—will constantly have to be highlighted and made clear through whatever forum is available. In this media plays an important role.

The role of the media in promoting good governance is clear. All aspects of good governance are facilitated by a strong and independent mediascape within a society. Only when journalists are free to monitor, investigate and criticize the public administration's policies and actions, can good governance take hold. Independent media are like a beacon that should be welcomed when there is nothing to hide and much to improve. Indeed, this is the concrete link between the functioning of the media and good governance—the media allow for on-going checks and assessments by the population of the activities of government and assist in bringing public concerns and voices into the open by providing a platform for discussion. Instead, all too often governments devise laws and informal means of keeping their activities hidden from public view or only available to media favourable to their viewpoint. In recent years, many governments have tried to co-opt journalists by paying part of their salaries or by giving them certain kinds of access on condition that they will not report from other perspectives. If the media are to function in the public interest, governments have to protect the independent functioning of the media and allow various viewpoints to flourish in society.¹⁹⁸

The media has a crucial function as the sector of society most able to promote vigilance towards the rule of law, especially through fostering investigative journalism, promoting the openness of court, legislative and administrative proceedings, access to officials and to public documents. The government has a key role here in protecting the independence and pluralism of the media, especially during critical moments of these processes.

In India, the media has enjoyed freedom and has been able to highlight a number of instances of corruption and maladministration. Media has been able to raise issues of public concern and help make the system more

accountable. However, in a democratic framework the media's credibility as a democratic institution is enhanced if they are accountable to the public, acknowledge their mistakes and ensure that ethical and professional standards are upheld. A sensational and trigger-happy press does not contribute to intelligent discussion and debate and soon loses public support. In a large number of cases of maladministration and corruption media trail takes place and one is declared guilty even before a charge sheet is filed in the court. The media should also be equally responsible in a democracy.

Civil Society Organisations: Partners in Good Governance

No discussion will be complete without analysing the role of civil society organisations in promoting good governance. The concepts of Civil Society, Governance and Democracy are intimately linked, as one is part of the structure of the other. Democracy is of the people, by the people and for the people and therefore, peoples' participation in the process of governance is essential. As part of the "social basis for democracy", civil society represents a fundamental part of the democratic system and highlights issues of importance. Civil society has been widely recognized as an essential 'third' sector. Its strength can have a positive influence on the state and the market and as important agent for promoting good governance.¹⁹⁹

Civil society can further enhance good governance by: policy analysis and advocacy; regulation and monitoring of state performance and the action and behaviour of public officials; building social capital and enabling citizens to identify and articulate their values, beliefs, civic norms and democratic practices; mobilizing particular constituencies, particularly the vulnerable and marginalized sections of masses, to participate more fully in politics and public affairs; and development work to improve the well-being of their own and other communities.²⁰⁰ It has the ability to express controversial views; represent those without a voice; mobilize citizens into movements; build support across stakeholders; and bring credibility to the political system by promoting transparency and accountability. In terms of policy formulation, civil society is a valuable partner in providing deep subject-matter expertise based on first-hand experience, trailing and scaling up innovations in social services and facilitating citizen engagement. Civil society representatives often act in the public interest as whistleblowers, holding institutions and individuals to account.²⁰¹

Civil society is thus 'watchdog' against violation of human rights and governing deficiencies. They are 'advocates' for the interests of weaker sections of the society. They are 'agitators' on behalf of aggrieved citizens. They act as 'educators' of citizens on their rights, entitlements and

responsibilities and the government about the pulse of the people. They also provide services to areas and people not reached by official efforts or as government's agents; are thus 'service-providers' as well. These act as 'mobilisers' of public opinion for or against a programme or policy. Civil society acts through 'social capital'—the capacity of people to act together willingly in their common long-term interest.²⁰²

There has been a dramatic expansion in the size, scope, and capacity of civil society around the globe over the past decade, aided by the process of globalization and the expansion of democratic governance, telecommunications, and economic integration. The World Bank has adopted a definition of civil society developed by a number of leading research centres: "the term civil society to refer to the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs) therefore refer to a wide array of organizations: community groups, non-governmental organizations (NGOs), labour unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations".²⁰³

Civil Society Organisations in India have been greatly active in arenas fighting for a vast variety of issues which has resulted in preserving democracy and enhancing transparency, accountability and open governance. The civil society of today focuses on issues ranging from social, economic, environmental, law and policy making. Enactment of RTI Act was the result of the movement initiated at grassroots level by civil society of India. The civil society has recently mobilized to fight corruption in India with the Lokpal Bill under Anna Hazare. After the rape of the 23-year-old student in India, it was the civil society which mobilized large masses consisting of all strata of society, to speak up for the security of women in India.²⁰⁴ In India though the civil society movement has a long history and has been strong in certain sectors but it made a significant contribution in governance when civil society organisations led by Aruna Roy campaigned for Right to Information Act and Anna Hazare led the campaign against corruption and setting up the Lokpal and Lokayukta. Medha Patkar another activist has campaigned for a very long time against development and displacement and large dams. Large number of civil society organisations have been working in social sector doing a commendable work. Many such organisations working at the local level ensure human rights protection, provision of basic services like health, sanitation, education and environmental management.

The Anna Hazare led movement against corruption was perhaps the largest mobilisation of civil society in recent past against maladministration and the need to strengthen the institutional mechanism to check corruption and make the system transparent and accountable. During a discussion on anti-corruption movement of Anna Hazare, the then Leader of the opposition of Bharatiya Janata Party, Shri Arun Jaitley, told the Parliament that people's voices will have to be heard while framing legislation. "In any developing society and any mature society, there will be a role for civil society," he said. "They are a hard reality, they will exist. Some of them may take positions which seem a little excessive, they may not be implementable, but we must realize that their role is one of a campaigner, a flag bearer, a crusader on several issues."

Parliamentary democracy becomes participative democracy only with civil society's active role. The Government of India's National Policy on the Voluntary Sector, 2006 envisages encouraging an independent, creative and effective voluntary sector. Support for NGOs, however, cannot be blindly sentimental. The government has to assess their suitability, capability and experience, and evaluate their performance continually.²⁰⁵ The recent move of the government to streamline the activities of the civil society organisations should not weaken the civil society as they are essential prerequisite in a democracy. It is high time the approach and methodologies of civil society organizations are improved to ensure that an effective impact is made without any adverse effects. The modes of engagement of the civil society with the authorities also need to be strengthened to improve the articulation of public dissent with the government.

6. EMERGING ETHICAL DIMENSIONS OF PUBLIC SERVICE DELIVERY IN 21ST CENTURY

With globalization, privatization and transformation of the world into a global village there is change in the role of the state. The state which was formerly an interventionist, producer, regulator, and seller, is now called upon to be a facilitator, promoter, and partner. There is now increasing expectations from governments to "perform". The Indian Public Administration system has entered an altogether different phase. Even in the liberalized era most of the basic goods and services are provided by the public agencies such as drinking water, electricity, education, health, and so on. However, the quality of such services is questionable because the bureaucratic behemoth has not been able to effectively and efficiently deliver those services. The poor state of public health, the declining standards of education, and so on, have raised questions of accountability. The individuals who are spending on behalf of the government do not

own the money but act as guardians of society. Therefore, the money spent and the services rendered by the civil servants come within the ambit of accountability to the citizens. The citizens as the customers are paying for the services being provided by the government agencies; therefore, all such agencies are accountable to the citizens in their acts of omission and commission.²⁰⁶

In the 21st Century we are confronted with new reality of “reinventing government”. The emphasis is on business like operation of government with adoption of management practices which can apply equally to both business and government. In the name of reform, public organizations at all levels are urged to streamline, decentralize, and deregulate their operations; reduce red tapism and bureaucratic control. Public managers and officials are urged to “empower” both employees and local levels of government to perform to their potential. Citizens are also redefined as customers, free to choose among private and public providers of services; market mechanisms are seen as relevant to government. Citizen-customers are demanding higher levels of “quality” from government. The stress is on making the Public organizations more efficient, effective, entrepreneurial and “customer-friendly”. In such a scenario the governments are reviewing their structure and downsizing, rightsizing, outplating, etc. are being followed as ways of reducing “bloated” agencies.²⁰⁷

Through the dynamics of globalization, civil servants come into increasing contact with their counterparts across national boundaries as necessitated by increased inter-dependence between states. These interactions involve a multiplicity of policy areas, finance, telecommunication, environmental protection, counter terrorism, capital flows, public health and others. It would be a mistake, however, to assume that these substantive policy and administrative issues can be dealt with a purely technical basis; norms will still play a large role in shaping the alternatives and methods used by civil servants in pursuance of moral goals. As a result public administration will increasingly encounter norms from other cultures that appear opaque, incomprehensible and even irrational.²⁰⁸

Globalization requires us to rethink afresh how we manage our joint activities and fulfill our obligations as public administrators. There are many challenges and constraints that are being faced by those in public administration in the wake of globalization process. World over the countries have pursued significant state reforms based on greater emphasis on market competition, non-intervention, debureaucratization, and corporatization, which has critical impacts on public accountability . Correspondingly there has been policy orientation of the reinvented state;

a significant transition from nationalization, regulation, and protectionism to privatization, deregulation, and liberalization in most countries in the developing world.²⁰⁹ Earlier the states created the nations of citizens by monitoring and regulating their activities. However, now they are required to adjust their domestic policies to serve the global, economic and political scenario.

Beside these business like operations, the Government assumes responsibility for non-market functions. In relation to most governmental activities the citizen's choice is much more constrained. The public sector has special functional responsibilities which include: the care of the indigent and vulnerable members of society; the regulation and policing of private interests in the pursuit of collective public safety, welfare, and prosperity; the provision of common public services necessary to the functioning of society (e.g., education, sanitation, public health, etc.); the building of the national infrastructure and the pursuit of national competitiveness; and national security. These functions neither have an private-sector substitute nor any private organizations will be willing to assume responsibility for them. Therefore, these functions are not replaceable and the government is duty bound to ensure that these functions are safe for civil existence in a large and complex society. Because the public sector assumes these special functional responsibilities, we can assert that they also entail special ethical responsibilities which are at once different and higher than those faced by private firms.²¹⁰

Globalization has become one of the most prominent buzzwords of recent times. One effect of globalization has been that the risks of all kinds – not just fiscal, but also physical have increased for governments. Information travels far and fast; confidentiality is difficult to maintain, markets are interdependent and events in remote areas can have immense impact virtually anywhere in the world. Globalization is also viewed as some form of westernization since it seemingly results in the export of western culture to other culturally different world regions. Globalization makes regional differences less important and encourages a more uniform 'global culture'. This kind of culture has also raised a number of cultural issues. Moral values that were taken for granted in the home market may get questioned as soon as corporations enter freight market. New business practices have raised a number of ethical questions and problems. The nexus between politicians and the business resulted in large number of scams and siphoning of vital rational resources. It became difficult to rely on the legal framework when deciding on the right or work of certain business practices.

However, little attention has been given as to how this new reality conforms to the ethical values that are deeply embedded in our democratic system of public service. The public management reforms have raised complex questions about values and ethics; whether there is clash of values between public ethics and the forces of reinventing government? The government reforms have created a situation in which governments are finding that the systems that have traditionally guided the behaviour of public servants are insufficient and sometimes in conflict with the new entrepreneurial managerial roles they are expected to play. The pertinent question here is whether public ethics and the forces of reinventing government are fundamentally at odds — representing a clash of values — or are better considered as opposing elements of a balancing process of contending desiderata. Today in the public interest, public management reforms raise complex questions about values and ethics. In the present result-oriented public management environment, there are an increasing number of “gray areas” where there are relatively few guidelines to inform the actions of public servants and there is need to provide clearer ethical frameworks.²¹¹ Several scholars now speak in terms of the “New Ethics” for public administration.²¹²

Far-reaching changes in the global economy have made it imperative for governments all over the world to improve the quality of their governance structures. The Government of India has also introduced the new public management concepts in public administration, with an emphasis on “results” or “performance” to improve the efficiency and effectiveness of public services. The Government of India has developed monitoring and evaluation systems for its development programmes, supported by a well-planned institutional framework. It also has a performance appraisal mechanism for its civil servants. To make the performance management system effective, technology is being used in a big way, leading to the development of a comprehensive performance information system that can be audited and related to financial management and policy cycles. As we look at issues relating to governance in the 21st Century, the roles of the citizen and the government are undergoing an important revolution. Government is seen more as one of the stakeholders than as a regulator, funder, or service-provider. The new vision of the government is to evolve public policy through the joint effort of the public authorities and the citizens working in harmony. Today, the reinvention of the citizen is of crucial importance to public administrative practice. In this governance model, the citizen’s role is seen as a customer, owner or shareholder, issue-framer, co-producer, service quality evaluator, and independent outcome tracker.²¹³

7. THE WAY FORWARD: ISSUES AND SUGGESTIONS

The legal framework to address ethical problems in the public service is already quite vast from the Constitution to the Code of Ethics although its actual implementation is insignificant. The Supreme Court and the High Courts have also emphasised the importance of ethics and moral values in governance. Therefore, it is necessary to define a methodology to make governance accountable and transparent. Anti –corruption movements in the country have focussed attention on the decline of ethical and moral values of public services. We need to initiate a debate and look for alternatives to promote good governance. A few suggestions can be thought of:

Political Commitment to Ethics and Moral Values

The last few years have exposed the level of corruption that exists at the highest level. The standards of propriety of political leaders in the country has degenerated to such an extent that every politician is a suspect. Across political parties a large number of Members of Parliament and State legislatures have serious criminal cases against them. Some Chief Ministers and Ministers are facing criminal and corruption charges. Political leaders are responsible for maintaining high standards of propriety in the discharge of their official duties. Their commitment is demonstrated by example and by taking action that is only available at the political level. The culture and values of the public services to a large extent depends on the political leadership and its commitment to high ethical standards. It is time that the political leadership should focus on probity, integrity and a value-based governance. They have to set examples and reinforce the ethical conduct of public services. A message of zero tolerance to corruption, unethical action and behaviour will send a strong message and help promote ethical governance. Foremost importance is the commitment of the political leadership to promote ethical and moral governance and strengthen institutions and decision making processes so that they are transparent and open to scrutiny. Political will to hold public services accountable and weed out non-performers is what is required today. In the recent times there is some movement towards this direction but time will tell to what extent it can be sustained.

Evidence shows that many Indians do not have a positive image of the public service. Public image of the public service has declined significantly during the past decade. Some of the new ways of improving the public's perception of the public service include new styles of governance, new forms of service delivery, enhanced fiscal prudence and increased accountability. It is here that the political leadership must intervene to build

the image of the public services to restore the public trust in the institutions of governance.

Directive Principles of State Policy

The Directive Principles of State Policy are the guidelines or principles given to the Central and state governments of India, to be kept in mind while framing laws and policies. Article 37 specifically mentions that Directive Principles of State Policy, though not enforceable through any court of law are “fundamental” to the governance of the country.

Directive Principles of State Policy aim to create social and economic conditions under which the citizens can lead a good life. They also aim to establish social and economic democracy through a welfare state. They act as a check on the government, theorised as a yardstick in the hands of the people to measure the performance of the government. Directive Principles are non-justiciable rights of the people. Article 31-C, inserted by the 25th Amendment Act of 1971 seeks to upgrade the Directive Principles. If laws are made to give effect to the Directive Principles over Fundamental Rights, they shall not be invalid on the grounds that they take away the Fundamental Rights. In case of a conflict between Fundamental Rights and Directive Principles of State Policy, if the Directive Principles of State Policy aims at promoting larger interest of the society, the courts shall have to uphold the case in favour of the Directive Principles of State Policy. The august Constituent Assembly recognised the distinction between government and politics, and principles of good governance, even as far back as the 1940s while drafting the Constitution.

The Directive Principles of the State Policy are nothing but principles of *Raja Dharma*. Fundamental principles of governance means *Dharma* or the path of duty of the government. Therefore, it is the moral responsibility of the state to guarantee the quality of life of each citizen so that he can live in dignity which is a basic human right. The Millennium Declaration adopted at the Millennium Summit, New York, September 2000 and the Sustainable Development Goals adopted in Paris in 2015 aim to reduce poverty and enhance the quality of life of the people. The eradication of poverty is, indeed, today a vital condition for global stability, democracy and peace. As long as the poor are excluded from participation in global growth, sustainable peace and development will remain out of reach.

Therefore, it is time to examine the possibility of making Directive Principles of the State Policy a justiciable right.

National Commission on Integrity and Transparency in Governance

Perhaps it is time to set up a National Commission on Integrity and Transparency in Governance. The code of conduct has merely remained a code; it has not helped promote ethical and moral values in governance. To what extent this code of conduct has been taken seriously by the public servants is an interesting study to be undertaken. The Commission should assess the effectiveness of code of conduct and take steps to promote ethical values among public servants. Our ethics system must not only establish minimal standards of conduct but they must also set forth high goals for public servants. Governments must tell the employees what not to do but they must also be told what they should do and how they should do.

The Commission could on a regular basis develop and review policies, procedures, practices and institutions influencing ethical conduct in the public service. It could also incorporate ethical dimensions into management frameworks to ensure that management practices are consistent with the values and principles of public service apart from promoting government action to maintain high standards of conduct and counter corruption in public sector.

Transparency in Delivery of Public Services

Efficiently delivering public services is a major area of concern. The poor people depend on government services. Today citizens do not have faith in the delivery mechanism. There is need for reconstruction of the image of the public service. For this the public trust in public services need to be re-established. For that the citizen-consumers must be heard and their complaints redressed. An orientation of services to the public, where complaints may be submitted by service users and their time bound disposal need to be assured. New institutional channels of communication of society with the government should be created, in order to allow the public to present their complaints with respect to ethical violations in the public sector. It is not only the legal duty of the state but also ethical and moral obligation of the state to provide effective public services to all its citizens. In our country corruption is rampant in delivery of services. Some states have enacted public services delivery legislation but not much has been achieved. New forms of delivery of public services have challenged the traditional values in the public services. The service must reach the intended beneficiary. Clear standards of governance and service delivery can contribute to enhance coherence between a stated mission, values and goals; and the process followed and outputs achieved, all of which contribute to ensuring public trust.

Service providers should converge their activities so that all services are delivered at a common point. A single window front office for provision of information and services to the citizens with a file tracking system needs to be set up. Public service delivery mechanism needs to be manned by people having moral integrity and highest ethical values. Lack of transparency, accountability and responsiveness has led to large scale corruption in the delivery of public services. The Prime Minister's appeal to citizens to give up gas subsidy must be seen as a moral and ethical appeal to citizens to give up services so that the poor can benefit.

Use of Innovative Technological Tools to Reduce Human Interface

Twenty first century is the age of digital technology. The lesser the human interface on platforms of governance, the lesser the corruption. Technological tools can help in promoting ethical and moral governance. It reduces discretion and is all inclusive. New innovation technology needs to be adopted in governance which makes the system much more transparent, accountable and inclusive. The recent initiatives of DoPT to move towards a paperless office is to be welcomed. However, care has to be taken that digitalization process itself is not unethical.

Abuse of Discretionary Powers

The problem of administrative discretion is complex. It is true that in any intensive form of government, the government cannot function without the exercise of some discretion by the officials. It is necessary not only for the individualization of the administrative power but also because it is humanly impossible to lay down a rule for every conceivable eventuality in the complex art of modern government. But it is equally true that absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions. Therefore, there has been a constant conflict between the claims of the administration to an absolute discretion and the claims of subjects to a reasonable exercise of it. Discretionary power by itself is not pure evil but gives much room for misuse. Therefore, remedy lies in tightening the procedure and not in abolishing the power itself.

Much of the misused discretionary power vested with public office bearers emanate from complicated business rules that govern the provision of public services. Without simplifying the administrative rules there is a limit to which reform of public services can be attained. One of the important recommendations of the second ARC was that all government offices having public interface should undertake a review of their activities and list out those which involve use of discretion. Where it is not possible to do so well defined regulations should attempt to 'bound' the discretion. Decision making

on important matters should be assigned to a Committee rather than individuals. Care has to be exercised however, that this practice is not to be restored to when prompt decisions are required.

Protection and Incentives to Honest Public Servants

In the quest for eradicating corruption and making systems and structures of governance ethical, moral, accountable, fair and just, care must be taken to provide protection to honest civil servants. Indian civil service still by and large upholds the highest standards of integrity and fair play but would have to accept that there are serious problems of unethical conduct by public servants. Transfers and postings should not be an industry but based on merit and performance. Governance and the citizens suffer a serious setback when corrupt and incompetent public servants are rewarded on considerations other than merit. Such postings, when based on political cronyism and/or nepotism, are a form of corruption that tends to lead to other forms of corruption related to mismanagement of public resources and abuse of authority. The disciplined and systematic application of the principle of merit in selecting public employees can have a significant effect in preventing corruption in this area, and can assist significantly in improving the efficiency, effectiveness and quality of public services. There is also a need to restructure State Public Service Commissions so that men of integrity and calibre are appointed as members and the selection process is purely based on merit and competency.

Given the scarcity of rewards for excellence and the presence of punishment for mistakes, it is not surprising that many public servants stifle their innovative and risk taking propensities. Developing a culture of innovation will enhance the quality of public services.

Permanent Civil Service and Re-employment

Corruption in government is a phenomenon that normally involves private interests, thus there is a need to regulate the relationship of public officials with the private sector in a globalised market economy. Ethical standards in the public sector cannot be ensured without a corresponding effort in the private sector. There is also a need to regulate gifts, other favours, and courtesies. Looking at various scams and scandals that have recently taken place in which senior public servants have been jailed, it is time to put restrictions upon former public servants with respect to re-employment and the rendering of services to private organizations. It is generally seen that the *quid pro quo* begins even before retirement.

It is equally important that people holding high constitutional posts should be barred from both public and private re-employment. It is also time to

examine the need for a permanent civil service and protection under Article 311 of the Constitution. Under the garb of protection, a large number of civil servants continue to bleed the system. It's time to evaluate as to what extent a permanent civil service has benefited governance. Deadwoods who have become a burden on public exchequer should be weeded out. The All India Service provides the leadership. We need ethical leaders to lead the change that the country is looking for. Why should every officer of All India Service superannuate at the highest grade even though many have faced charges of misuse of public offices. There should be a mechanism to filter those with doubtful integrity. Times have changed but the mechanism of managing bureaucracy in the country remains same and archaic.

In the OECD countries there are legal frameworks which create the foundation by outlining the expected standards of behaviour for every public servant. The laws also provide the framework for investigation and prosecution. Through legal instruments the standards are provided for situations that might lead to conflict of interest, like receiving gifts or benefits (such as fees, payments, entertainment) and use of official information, issues relate to ancillary work – such as work outside the public service – and post-employment. Half of the OECD countries require special conditions and/or permission for public servants to move from the public service to the for-profit sector.²¹⁴

HRD Training in Ethics and Moral Values

Integrity in the public administration is an important condition for the effective functioning of the state, for ensuring public trust in the government, and for creating conditions for sustainable social and economic development. Ethics training for public officials is one of the instruments for building integrity in state institutions and ensuring good quality public governance. The UN Convention against Corruption (UNCAC) requires that the States “promote education and training programmes to enable them [public officials] to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions”.²¹⁵ Training on integrity, ethics and anti-corruption is provided in many countries around the world, including countries with relatively high levels of integrity in public administration as well as countries where corruption is widespread.

Ethics training is different than ethics education. Normative ethics theories, such as utilitarianism, principle or duty-based ethics, and virtue theory are unlikely to be touched upon in ethics training. Instead, typical ethics training must consist of awareness raising for rules, codes and

principles, dilemma-training, leadership training, conflicts of interest, etc. Ethical programme must be an umbrella to provide an ethical framework to assist personnel to lead and manage ethically. Ethics must be reflected in everyday behaviour and actions. Training facilitates ethics awareness and can develop essential skills for ethical analysis and moral reasoning.

It is important that there is at least one public agency responsible for the overall framework for ethics training, for central planning, coordination and evaluation of results. Institutions like Indian Institute of Public Administration should play a leading role in designing modules for ethics training. The state ATIs should be mandated to organise training programmes, workshops and seminars. All induction programmes must have a capsule on ethics and values. The Department of Personnel and Training should explore the feasibility of setting up a Centre for Excellence in Ethics and Values for a continuous assessment, evaluation and research in this area. In addition, ethics should be integrated in the everyday management of public institutions and managers of public institutions should be required to promote ethics in their institutions.²¹⁶

The above analysis reveals the state of ethics in governance. In spite of all laws, rules, regulations and codes unethical behaviors and practices have only been on the rise. Corruption has become a part of governance process. Its high time that we eschew complacency. We may continue to pass new enactments and build new structures and systems of governance but they are all worthless without a human commitment, character and good will to make them work.

Our ethics systems must not only establish minimal standards of conduct but they must also set forth high aspirational goals for public employees. A key part of an implementation strategy must be to create ethics systems which go beyond mere obedience to rules. We must be ever vigilant against the threat of corruption. There will never be a day when all temptations will be removed. Nor will there ever come a time when there will be no corrupt acts by public officials. Corruption is like a cancer on the body politic. Prevention is better, therefore it is feasible to implement sound preventive ethics programmes in order to minimize the need for more drastic forms of treatment such as criminal prosecution and administrative discipline apart from further strengthening the various institutions that have been set up to promote good governance. These institutions need to be free from political interference and enjoy functional autonomy in the real sense. This is the right time when strengthening ethical and moral values in governance must occupy the centre stage in our quest for reforms in our public administration to make it just and fair to the common man.

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