Module 1

Anti-Corruption and Enforcement Mechanisms Framework in India

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Laws and Legal Frameworks

Constitution of India: Preamble and other relevant Articles

The Constitution of India was adopted on 26 November 1949 by the Constituent Assembly and came into effect from 26 January 1950, celebrated as the Republic Day of India.The Constitution is the supreme law of the land, and it helps to maintain integrity in the society and to promote unity among the citizens to build a great nation.

2. The Preamble of the Constitution of India presents the principles of the Constitution and indicates the sources of its authority. The Preamble declares that people of India resolved to secure to all its citizens, among other thing, social, economic, and political justice, and equality of opportunity. Preamble, though not legally enforceable is aspirational and speaks of political, social, and economic justice which can only be achieved by zero tolerance to corruption. Similarly, fundamental rights specially Article 15 and 16 pertaining to equal opportunity and Article 19 and 21, right to life and dignity are also important constitutional provisions for ensuring corruption free governance and administration. The Vigilance mechanism setup in government and its organisations is one amongst the many tools to achieve these objectives outlined in the Preamble of the Constitution.

3. In the Berubari Union Case, the President consulted with the Supreme Court of India regarding the implementation of Indo-Pak agreement. The Supreme Court in its decision said that 'Preamble is the key to open the mind of the makers'.

4. Further, in the cases of Kesavanand Bharati Vs. State of Kerala & others and Union Govt. Vs. LIC of India, the Supreme Court held that preamble of the Constitution is an integral part of the Constitution but is not directly enforceable in a court of justice in India. As a part of the Constitution, preamble can be

amended under Article 368 of the Constitution, but the basic structure of the preamble cannot be amended.

Prevention of Corruption Act 2018

5. The Act aimed to provide robust legal framework to deal with menace of corruption has a long evolution process beginning from the Prevention of Corruption Act of 1947 to the latest amendment carried out in the year 2018 to the Act of 1988. The Prevention of Corruption Act is a special Act. It overrides the provision of general law viz. the code of criminal procedure. It is also a special Act in the sense that it covers almost all the aspects of prevention of corruption, right from defining the specific offence and penalty for such offences, the provisions pertaining to appointment of Judges, procedural law applicable to applicability of principles of evidence, procedure for sanctions, for investigation and prosecutions and other miscellaneous provisions relevant to the matter. The present Act not only makes the commercial organisations liable for the offences, but it also makes those persons liable who are giving undue advantage.

Key provisions of Prevention of Corruption (Amendment) Act, 2018

- The term ‘ Public Servant’ is defined in the Act Section 2 (c) and covers all the government servants either paid or remunerated through fee or commission, servant of local authority, servants of a Government Companies (either central or State), Judges, Arbitrator, Chairman, Members of any service Commission or Board, Vice Chancellor, professor, reader, lecturer, office bearer or an employee of an educational/scientific/social/cultural institutions receiving financial assistance from Government, President, Secretary or office bearer of a registered society, persons involved in preparation, revision of electoral roll by virtue of office one holds etc.

- Section 2 (d) of the Act defines 'undue advantage' as any gratification other than legal remuneration.
- Section(s) 7 to 16 of the Act, define various offences and mention penalty applicable in case of each offence.
- Section 17 and 17-A puts restriction and lays down the provisions as to who all can investigate an offence under this Act.
- Section 17 A of the Act 2018 stipulates Pre-Investigation Approval of the relevant competent authority or government.
- Section 19 stipulates previous sanction of competent authority both for serving and retired government servants. The provision of section 19 aims to balance two conflicting interests viz firstly, it has long been recognised that public servants, who take bona fide decisions, should be encouraged and provided protection in the event of false anonymous or pseudonymous complaints/allegations or unsustainable inquiries initiated against them. And secondly, it is aimed that investigation into an allegation of crime is not stifled at the threshold due to the power wielded by a public servant.
- Bribe-giving as an offence: Through this act, Bribe-giving was made offence with punishment of 7 years except when people are forced to give bribe. It will empower people to refuse to give bribes. So, it is the right step in curbing corruption and making India Corruption free.
- Criminal Misconduct: Only two forms of criminal misconduct were included i.e. misappropriation of property entrusted to public servant and intentionally enriching oneself illicitly.
- Confiscation of property: Under this act, there is provision to attach and confiscate the property.

https://documents.doptcirculars.nic.in/D2/D02ser/Notification%20PC%20Amendment%20%20ActTE43j.pdf

CVC Act, 2003:

The Central Vigilance Commission was set up by the Central Government by a resolution of 1964. Meanwhile, in September 1997, Government of India set up an Independent Review Committee (IRC) comprising Shri B.G. Deshmukh, former Cabinet Secretary; Shri N.N. Vohra, Principal Secretary to the Prime Minister, and Shri S.V. Giri, Central Vigilance Commissioner to examine the functioning of anti-corruption agencies in India. The Committee in its report of December 1997 recommended that the CVC should be given a statutory status and the selection of Central Vigilance Commissioner should be made by a High-Powered Committee (HPC) comprising the Prime Minister, the Home Minister, and the Leader of Opposition in Lok Sabha. Similarly, to ensure independent and fair investigation by the CBI, it recommended that the CVC be made responsible for the efficient and independent functioning of the anti-corruption wing of the CBI.

In 1997, in the wake of the directions of the Hon'ble Supreme Court, in the Writ Petition filed in public interest by Shri Vineet Narain and others in the Hawala Case, the Government promulgated an Ordinance in 1998. This Ordinance conferred statutory status on the CVC with powers to exercise superintendence over the functioning of the Delhi Special Police Establishment. After the Bill was passed by both the Houses of Parliament and with the assent of the President, the CVC Act, 2003 came into force with effect from 11.09.2003.

The CVC Act provides for the constitution of a Central Vigilance Commission with powers to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government Companies, societies and local authorities owned or controlled by the Central Government.

With the CVC Act coming into effect, the Central Vigilance Commission became a three-member body, with the Central Vigilance Commissioner and two Vigilance Commissioners. The Commission are appointed by the President

of India on the recommendations of a High-Powered Committee (HPC) consisting of the Prime Minister, the Minister of Home Affairs and the Leader of the Opposition in the House of the People (Lok Sabha).

The CVC Act confers adequate independence and functional autonomy to the Commission in line with Article 6 and Article 36 of the United Nations Convention Against Corruption whereby ratifying countries need to ensure an independent preventive anti-corruption authority in their countries.

As per clause (d) of section 8(1) of CVC Act, 2003, the Commission's jurisdiction extends to such category of public servants as defined under section 8(2) of the Act and subsequent notifications issued by the Central Government from time to time.

Clause 8(1)(g) of the CVC Act, 2003 requires the Commission to tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, such Government companies, societies Chapter - I Vigilance Administration 6 Vigilance Manual (updated 2021) and local authorities owned or controlled by the Central Government or otherwise and for this purpose the Commission's jurisdiction is coterminous with those provided under section 8(2) of CVC Act, 2003. For further reading you may go to the following link:

https://www.cvc.gov.in/sites/default/files/cvcact_0.pdf

Lokpal And Lokayuktas Act, 2013

In the year 2013, the Parliament also passed Lokpal and Lokayuktas Act, 2013 to inquire and investigate into allegations of corruption against certain categories of public functionaries covered within the scope and ambit of the Lokpal and Lokayuktas Act. The term Lokpal was first discussed in the Indian Parliament in 1963, as a concept of constitutional ombudsman. The first Jan Lokpal Bill was introduced and passed in the 4th Loksabha in 1969 but could not

get through the Rajya Sabha. After several attempts, finally the Lokpal and Lokayuktas Act, 2013 was enacted by the Parliament in December 2013.

The Lokpal and Lokayuktas Act, 2013 provides for the establishment of a body of Lokpal for the Union Government and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matter connected therewith or incidental thereto .Lokpal of India consists of a Chairperson and a maximum of 8 members, of which 50 of shall be judicial members.

Based on the Jan Lokpal Bill of 1969, several states enacted legislations to set up the institution of Lokayuktas in their states. The State of Maharashtra became the first ever State Government in India to establish the institution of Lokayukta. After that many states followed and set up the institution of Lokayukta in their respective territories. After the enactment of Lokpal and Lokayuktas Act, 2013, now it has become mandatory on the part of each State Government to establish a body known as Lokayukta for the respective state. For further reading you may go to the following link:

https://dopt.gov.in/sites/default/files/407_06_2013-AVD-IV-09012014_0.pdf

DSPE Act:

Special Police Establishment (SPE) was set up in 1941 to investigate bribery and corruption in transactions of the War and Supply Department of India during World War II with its Headquarters in Lahore. Delhi Special Police Establishment Act was brought into force in 1946 which enlarged its scope to cover all Departments of the Government of India. Its jurisdiction extended to the Union Territories and could be further extended to the States with the consent of the State Governments involved. Central Bureau of Investigation (CBI) was set up through a Home Ministry Resolution No. 4/31/61-T dated 1.4.1963 & SPE became one of the constituents of CBI. The Central Government has been empowered under section 5 to extend to any area (including Railway area) in a State not being a Union Territory, the powers and jurisdiction of members of the

DSPE for the investigation of any offence or classes of offences specified in a notification under section 3 of the DSPE Act subject to the consent of the Government of the concerned State, under section 6 of the Act. For further reading you may go to the following link:

https://cbi.gov.in/Delhi-Special-Police-Establishment-DSPE-Act-1946

Prevention of Money Laundering Act, 2002:

It is a criminal law enacted to prevent money laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. ED has been given the responsibility to enforce the provisions of the PMLA by conducting investigation to trace the assets derived from proceeds of crime, to provisionally attach the property and to ensure prosecution of the offenders and confiscation of the property by the Special court. The PMLA was enacted in 2002 and it came into force in 2005. Salient provisions of the act include:

- In the PMLA, 2002, money laundering has been defined as “any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property”.
- Proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.
- The Act enables government authorities to confiscate property and/or assets earned from illegal sources and through money laundering.
- Under PMLA, the burden of proof lies with the accused, who has to prove that the suspect property/assets have not been obtained through proceeds of crime.

https://dea.gov.in/sites/default/files/moneylaunderingact.pdf

Benami Transaction Act, 1988:

Benami Transactions (Prohibition) Act, 1988 (name changed to Prohibition of Benami Property Transactions Act, 1988) is an Act of the Parliament of India that prohibits certain types of financial transactions. The Act defines a **'benami'** transaction as any transaction in which property is transferred to one person for consideration paid by another person. The Act bans all benami transactions and gives the government the right to recover property held benami without paying any compensation. The Act came into force on 5 September 1988.The Act was amended in 2011 and 2016 in order to enforce the prohibitions more comprehensively. For further reading you may go to the following link:

https://dea.gov.in/sites/default/files/Benami%20Transaction_Prohibition_%20Act1988.pdf

Right to Information Act, 2005:

The Supreme Court of India has succinctly described the Right to Information as a "cherished right that is intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability". The Indian Parliament enacted the Right to Information Act, 2005 ['RTI Act']. The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government.

Chapter II of the RTI Act containing Sections 3 to 11 deals with right to information and obligations of public authorities. Section 3 provides for right to information and reads thus: "Subject to the provisions of this Act, all citizens shall have the right to information". This Section makes it clear that RTI Act gives a right to a citizen to only access information, but not seek any consequential relief based on such information. Section 4 deals with obligations of public authorities to maintain the records in the manner provided and publish and disseminate the information in the manner provided. Section 6 deals with requests for obtaining information. It provides that applicant making a request for information shall not be required to give any reason for requesting the information or any personal details except those that may be necessary for

contacting him. Section 9 provides that without prejudice to the provisions of section 8, a request for information may be rejected if such a request for providing access would involve an infringement of copyright. Section 10 deals with severability of exempted information while Section 11 deals with third party information.

RTI Act gives a very liberal definition to the concept of 'information. Information under the RTI Act is any material in any form including records, documents, memos, e-mails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form.

A citizen has a right to seek such information from a public authority which is held by the public authority or which is held under its control. This right includes inspection of work, documents and records; taking notes, extracts or certified copies of documents or records; and taking certified samples of material held by the public authority or held under the control of the public authority.

Certain safeguards have been built into the Act so that the revelation of information will not conflict with other public interests which include efficient operation of the governments, optimum use of limited fiscal resources and preservation of confidential and sensitive information. The Act provides the following exclusions by way of exemptions and exceptions (under Sections 8,9 and 24) in regard to information held by public authorities.

i. Exclusion of the Act in entirety under Section 24 to intelligence and security organizations specified in the Second Schedule even though they may be "public authorities", (except in regard to information with reference to allegations of corruption and human rights violations).

ii. Exemption of the several categories of information enumerated in Section 8(1) of the Act which no public authority is under an obligation to give to any citizen, notwithstanding anything contained in the Act [however, in regard to the information exempted under clause (d) and (e), the competent authority, and in regard to the information excluded under clause (j), Central Public Information Officer/State Public Information Officer/the Appellate Authority, may direct disclosure of information, if large public interest warrants or justifies the disclosure].

iii. If any request for providing access to information involves an infringement of a copyright subsisting in a person other than the State, the Central/State Public Information Officer may reject the request under Section 9 of RTI Act.

https://rti.gov.in/rti-act.pdf

Companies Act: Vigil Mechanism

The Companies Act 2013 is an Act of the Parliament of India on Indian company law which regulates incorporation of a company, responsibilities of a company, directors, dissolution of a company. Section 177 of the Companies Act, 2013 requires every listed company and such class or classes of companies, as may be prescribed to establish a vigil mechanism for the directors and employees to report genuine concerns in such manner as may be prescribed. A Vigil mechanism provides a channel to employees and Directors of a Company to report to the management, concerns about unethical behaviour, actual or suspected fraud or violation of the Codes of Conduct or any Policy of the Company. The concept of Vigil mechanism/Whistle Blower is very nascent in Indian context. However, in the last few years, it has helped in exposing various corporate frauds. This is a welcome development. The Government and various corporate stakeholders shall continuously work towards strengthening this process- both in letter and spirit.

https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf

Indian Penal Code, 1860

Indian Penal Code, 1860 (IPC) and the Criminal Procedure Code, 1974 (CrPC) are the laws that govern criminal law in India. IPC is the principal criminal code of India that defines crimes and provides punishments for almost all kinds of criminal and actionable wrongs.

The IPC defines “public servant” as a government employee, officers in the military, navy or air force; police, judges, officers of Court of Justice, and any local authority established by a central or state Act.

Section 169 pertains to a public servant unlawfully buying or bidding for property. The public servant shall be punished with imprisonment of up to two years or with fine or both. If the property is purchased, it shall be confiscated.

Section 409 pertains to criminal breach of trust by a public servant. The public servant shall be punished with life imprisonment or with imprisonment of up to 10 years and a fine.

PIDPI Resolution

The Hon’ble Supreme Court of India, while hearing the Writ Petition (C) no. 539/2003 relating to the murder of Sh. Satyendra Dubey, directed the Government of India to set up a suitable mechanism for receipt and enactment of complaints from “Whistle-Blowers”. Accordingly, Department of Personnel and Training issued Resolution No. 89 dated 21st April,2004, commonly known as *Public Interest Disclosure and Protection of Informers Resolution, 2004,* resolving to set up a mechanism by which a complainant can lodge a complaint in the prescribed manner and also seek protection against his victimisation for doing so. (Such complainants, called Whistle Blowers, are entitled to non-disclosures of their identity publicly, unless they themselves do so). The Central Vigilance Commission has been authorised under the PIDPI Resolution, as the Designated Agency to receive complaints from whistle blowers.

https://dopt.gov.in/sites/default/files/whistleblow_0.pdf

Central Civil Services (Conduct) Rules, 1964

Based on the recommendations of the Committee on Prevention of Corruption headed by late Shri K. Santhanam, the Conduct Rules for Government servants were revised with a view to maintaining integrity in public

Services and the Central Civil Services (Conduct) Rules, 1964 were notified laying down the Code of Conduct for Central Government employees. In the meantime, several provisions of the rules have been amended and several clarifications have been issued. For further reading you may go to the following link:

https://dopt.gov.in/sites/default/files/CCS_Conduct_Rules_1964_Updated_27Feb15_0.pdf

CDA Rules of PSUs and PSBs

Conduct, Discipline and Appeal (CDA) Rules are a model set of rules for concerned administrative ministries /departments and their respective CPSEs/PSBs which formulate the guidelines to govern the conduct of an employee. Department of Public Enterprises vide OM No .15(07)/99-DPE-GM-VOL-III-FTS-2333 dated 11/12/2017 has brought out Consolidated Model Conduct, Discipline and Appeal(CDA) Rules for CPSEs -2017 for adoption by CPSEs while they frame their CDA Rules. Necessary deviations can be made by CPSEs to suit local site conditions.

These set of rules and guidelines tells how the conduct of an employee should be and also defines the procedures for taking action against the employees in case of violations of these rules. For further reading you may go to the following link:

https://dpe.gov.in/sites/default/files/R-14-merged.pdf