CHAPTER II
ADMINISTRATION, LAW AND PUBLIC ACCOUNTABILITY

Administrative law is as old as the government itself, but got recognition in the 19th century when police state changed into welfare state. It all happened when Anglo-American countries got a boost in 20th century and the administrative law undertook the legal aspects of duties and powers under the administrative actions.1 Hence judicial administration was separated from the judiciary in the form of administrative law in 1970 by Roscoe Pound.2 This professionalisation in the work order, made specific persons responsible and accountable and acted as check and balance to the administrative delays.

Ganjendragadhar, former Chief Justice of India remarking about law and its significance said, "Law is a mighty weapon in the hands of democracies to resolve socio-economic conflicts. If it is shown to the common man that poverty, ignorance, disease, squaller and unemployment can be conquered, the rule of law and the democratic way of life will prevail".3

Administration and Law

The term 'law' includes the ordinance, judiciary, order, byelaw, rules and regulations or notification.4 It brings into account administrators and politicians making them responsive to the nation. As, administrators have their hand in every field of government so does have the judiciary to curb its despotism. Hence administrators and politicians are not only accountable to the parliament or Apex courts, but also to the judicial courts or tribunals.
Kenneth Culp Davis has defined Administrative Agency as, "a commission, a bureau, board, authority, office, offices, administrator, department, co-operation, administration, division or agency. Nothing of substance hinges on the choice of name and usually choices have been haphazard. When the president, or a governor, or a municipal governing body exercises powers of adjudication or rule-making, he or it is to that extent an administrative agency". 

The legal aspects in the administration or the government bodies are undertaken by the administrative law, and other administrative agencies other than courts through various rule making, investigating or other informal acting of administrative agencies.

Judicial system co-existed with administration due to the contact of legal and administrative accountability to the individuals by way of constitutional protections. Tribunals, Grievance Redressal Cells form the main objects of this partnership of legislature and administration.

Administrative law controls the powers and functions of the administration. It can be depicted by the two models: 

'Legal-Integrationist Model'; which combines the rules of public and private laws in a traditionalist way. However, this has been weakened due to the introduction of Tribunals and special administrative laws in the ordinary courts.

'Separationalist-Model'; which was set-up in the later years to counteract the lacunas of legal-integrationist model. It forms the separate courts for public and private agencies. In some
communist countries like in Eastern Europe, administrative supervision is enforced.

Administrative law determines the powers and duties of administrative authorities affected by the legal operations and its remedies affect the administrative action. Administration as well as law needs to be organized to enhance its performance by establishing rules and relating these operations with other governmental forms. These rules and conduct rules are being set up as conduct of Business Rules which in turn make the auxiliary laws to undergo changes in accordance with the policies for protecting the public interest and private undertakings. It has been said that

“Creativity and innovation are as much necessary in justificing as impartiality and independence. The judges are not expected to be mechanics and masons, but are designers and architects”.

The efficiency of the executive government can be had only if the rules and orders are being implemented in a fair and just manner, which can be done by establishing properly rules and regulations. Administrative courts decrease the burden of ordinary courts and have become an important aspect to find a permanent solution to the problems of law and order in bureaucracy ridden administration.

Court fees was increased so that there was a cut-down in the number of cases which would lead for greater access for elites of society only. Further due to the slow and costly means of justice, people preferred the private arbitration. Further the multiplicity of laws hinders in the decision making process. Special privileges are being set up under special laws to higher elites, thus
underestimating the basic fundamental principle of equality to all. Accountability can be adhered only in legal terms if there is the correct use of power at different levels of administration. Judiciary needs well-organized system to have accessibility to all sections of the people on cheap, responsive and fair basis. It needs participation by media in making strategies to solve the law and order problems. Plans like ‘Amnesty Plans’ can be setup in states on the basis of the plan setup in Punjab. This will lead to economic development along with social and cultural progress in an environment of social justice.

New techniques in legal administration need to be operated in multi-dimensional stage so that there is boost in the social action, administrative vigilance, national support and stable political will to contain and control all law and order situations. ‘Self-purification’ and ‘self-introspection’ are to be established as vital powers to purify the values of life to fit in the administrative field.

Law commission, established in 1834, dealt with the delay in the justice matters, fake cases on evidences in the court, clashes in the Hindu-Muslim laws, litigants in the process of administration in the courts and their cost of efficiency, distance of the courts from the litigants, et al.

Although Public Interest Litigations (PIL) and other Grievances Redressal Cells are to pinpoint the administrative misconduct, yet the cases of corruption are seen in the system of judiciary also. To gain popularism fake cases are being undertaken thus misleading not only the persons concerned but also the society as a whole.
Quasi-Weberian model of centralization could be implemented to acquire higher levels of efficiency. Technological innovations and behavioural approach modernized the courts giving them a specialized field of study. Also, depolitization would make the judgement fair, ensuring better accountability and responsibility.

In early stages of administration, law was not taken as a separate entity but was the basic aim of administration by maintaining law and order. After the separation of departments, law was not given much preference. But the change from the agrarian society to industrial society increased the population at a rapid rate in town and cities. Thus, giving rise to Urbanisation, resulting in disturbance in the administrative sector, due to change in population density. Administrative law needs proper guidance to solve such matters, as law forms the basic part in a society instead of private or governmental sector. It forms the framework of administration. However, neither the administrators nor the law-deciders have got cognizance for each others role.

Law and order is maintained to make management prudent and use things to their best advantage by economical sparing to result in prosperity and unity of a nation. It can be used in different ways in different states. In the state of Jammu and Kashmir, this issue of law and order needs the perspective which differs from that of the situation in Naxalite hit areas of Andhra Pradesh, Bihar and West Bengal. The Tribal areas of North-Eastern region were never administered in a way to solve their problems, the insurgencies in Nagaland, Mizoram, Manipur, Tripura and Assam; the Sikhs on the western side suffered in life and property and problems of state of Jammu and Kashmir arose.
India, was singled into a unified nation by the foreign invasions in the past. Thus, its multilingual and multi-cultural character demands that administration and law and order be setup under different circumstances.

Western colonialism of many Asian nation-states is the reason for ethnicity. To set these things right positive goals are to be made the basic criteria such as attainment of peace, stability and proper law and order with economic stability and enhanced democratic values. Efficiency can be attained if we set right the constitutional relations with rule of law. This needs the good quality and proper number of judges to establish the law and order with the deputation of non-judicial work given the least account.

**Influence of Civil Services on Administration**

Government consists of number of ministries and departments each having different strength of workers. Innumerable factors form the basis for work culture. In post-Independence scenario, the government of India had 18 ministries at the centre on 15th August 1947, which has risen to 50 ministers each varying in number of departments. Chief secretary heads the hierarchy as supervisor, making appointments, promotions, etc. It's under heads include Additional Chief Secretary, Commissioner Secretary, Additional Secretary, Director/Joint Secretary, Deputy Secretary.

In the case of Ministry of Home Affairs the department of administrative Reforms had been setup under the resolution of New Delhi, 5th January 1966. It was setup by president under the commission of inquiry called Administrative Reforms.
Commission (ARC). But with the course of time and change in its utility, it has been shifted to Ministry of Personnel, Public Grievances and Pensions, as Department of Administrative and Public Grievances.

In the ministry of Law, Justice and Company Affairs; the judiciary comprises of supreme court of India, High courts, Attorney General, Comptroller and Auditor-General, Election Commission and other local bodies and authorities. All the four departments given in this ministry have to fulfill their work criteria like the Department of Justice has to fulfill the duty of administration and processing of appointment of judges to the supreme court and high courts.

Sir Ivor Jennings while comparing Law and the Constitution in his book has written, “Each Minister is responsible to parliament for the conduct of his department. The act of every civil servant is by convention regarded as the act of his minister.”

Hence, responsibility lies on the ministries to make proper correspondence with the administrators to make proper decisions. Influence of these institutions and ministers on the administrative decision-making varies a lot. Policies are to be taken into account by such departments as; ministerial departments, divisions and sub-divisions, committees and sub-committees, political parties in power or in opposition; special interest groups like media.

Hence, the policy-making body like secretariat has to undergo the work of policy making with the addition of supervision, hierarchial scrutinizing of work, non-interference in other’s functions like overlapping of work and value oriented jobs. For this purpose secretariat field relations prove to be either
boon or bane to the functioning of line and staff personnel. Healthy relationship between the specialists and the generalists can enhance the administrative setup. Boost in the productivity with the decrease in the hierarchical setup of administration should become a part and parcel of our system. Organisation and management of these departments and ministries should be paid proper attention without neglecting their basic amenities of life. Condition of the rooms for maintaining files and papers in secretariat libraries is worth to be seen. Maintenance of records on the annual basis is not setup in a proper way. On the whole mismanagement and disorganization of administration itself is the rampant.

Utilizing the administrative principles of Henry Foyal can enhance the circumstances under which the clerical staff has to work. Large sum of money is being utilized for the developmental schemes but what if the institution itself cannot develop!!

Maintenance division has been setup to bring efficiency of decision makers and executers. Although there is very meager change after independence in the procedure of work in secretariat with the increase in the number of files it's maintenance itself needs a whole new organisation. Hence O & M\textsuperscript{13} organisation has been setup in many central government offices but it has suffered a failure because of lack of proper training to the employees.

**Public Accountability**

Accountability, as the word literally points to accounts, means rendering of accounts, statistics and reports. Hence to judge the performance of the government through responsibility is the main function of accountability. Implementation of plans
and projects to bring responsiveness and effectiveness in the administration is the main purpose of accountability in the administrative sense. Accountability of the personal, makes him aware of the responsibilities and effectiveness towards the work and prevents the misuse of public money through audit, checks and balances, thus protecting the interest of consumers. Accountability can be depicted in the chart whereby its working entrepreneur is shown.\textsuperscript{14}

![Diagram of Methods of Accountability of State Enterprises]

Chart Depicting Different Methods to Make State Enterprise Accountable to the Public
Although accounting is basically related with the financial sector, it's managerial aspect has also been undertaken into consideration. Under management accounting, decisions made by large organisations are made symmetric in their functions reducing internal problem of auditing. This has been facilitated on the grounds of using innovative techniques like computers, involving greater accountability in auditing process and in estimating the outcome of the decision made under the accounting department.

Mathematical calculations of the accountability is being done by calculating the length of time in weeks required for the acceptance and internalization of a new idea in a government bureaucracy varying as:\textsuperscript{15}

\[ T = 2 + 2 (n-3)^2 \]

Where 'n' is the number of individuals or discreet organisational elements agreeing upon the fact and form of the idea required for it's adaptation.

Dictionary of public administration defines, accountability and administrative accountability as, "extend to which one is responsible to higher authority − legal or organisational − for one's actions in society at large or within one's particular organisational position."\textsuperscript{16}

"Administrative accountability is defined as, that aspect of administrative responsibility by which officials are held answerable for general notions of democracy and morality as well as for specific legal mandates."\textsuperscript{17}

Civil servants accountability has formed the bases for the modern day administration. Civil servants are made responsible
for their acts before the court of law and parliament. Back in history administration was the body to maintain law and order and socio-economic aspect of a society. This has now turned out their own accountability before the law and parliament, when administrative accountability is given a separate execution of law. The administrator is accountable to the political executive which in turn is responsive to the legislature. Although politicians are the final authorizing power to take the decision but due to specialized training and permanency of tenure, he executes the decision. Most of the work done by the ministers and legislatures is just a rubber stamping to those files and documents forwarded by the civil servants. Hence, administrators are to say in a way, more powerful in the execution of work than the politician. Training, thus can be given not only to administrators but to politicians also to bring the accountability in both the executers of government services. To bring transparency, the system of Management Information for Ministers as ‘MINIS’ system has been introduced in Department of Environment in 1980. Through this system new techniques are being incorporated to provide information for being utilized within central government departments.

Innovative techniques should be involved in solving the problem of accountability as is done by judiciary. Administrative accountability can be said to have deep roots as a political culture in the democratic set up having the main function to make someone accountable for the actions to which accountability is sought-out. The process of economic and social justice has to be proclaimed through interaction of government with people to solve their socio-economic problem. Increase in the awareness of
Chapter II

the civil servants has led to the mal-practices in administration with the increase in the number of levels of hierarchy. Democracy has its roots embedded in accountability, transparency and responsiveness of the public officials. Administrative accountability needs proper implementation, execution and formulation of policies under the parliamentarian rules and regulations. Civil servants are being categorized into three culprit acts viz.18

i) Non-Feasance

ii) Mal-Feasance

iii) Over-Feasance

Non-Feasance: Civil servants have not done what law or custom requires them to do, owing to laziness, ignorance or want of care for their charges or corrupt influence.

Mal-Feasance: A duty is carried out with waste and damage because of ignorance, negligence and technical incompetence.

Over-Feasance: It occurs when a duty is undertaken beyond what law and custom oblige or empower... it may occur out of dictorial temper, vanity and ambition of an official or his genuine, sincere, public-spirited zeal.

Some have suggested that accountability is based on some pillars categorized as:19

➢ the executive or cabinet had the power to initiate a proposal for expenditure with the parliaments criticism only after execution.

➢ the treasury was under its responsibility to examine the expenditure and control thereafter.
it holds the minister responsible for all acts under him.

Fredrick C. Mosher, has described in a good way the administrative accountability of United States. Accountability in American administration involves "competitions in loyalty and perspective between broad goals of polity and the narrower goals of a group, bureau, clientele or unions".²⁰

Many social processes mediate in the actual day-to-day functioning of the government and accountability in the broadest sense of the term cannot be insulated from specifics of social reality. Responsiveness and answerability in government has increased to ensure better accountability by way of question hour in the parliament. To hinder anarchism to become the soul of bureaucracy, bureaucrats have to undertake goals set up by the government by proper resource utilization. Political elites are responsible to the people while the administrators are actually responsible to the authoritative decisions.

The functional philosophy for administrative accountability needs the better relationship and understanding between civil servants and the citizens. Administrators need to undertake the work of the efficiency and betterment of the society as a whole and the expectations of the public fulfilled by the public servants.

C.P.Bhambri has explained the relation of Government of India (GOI) in terms of accountability as:²¹

- government of India is an engine of growth.
- government is the chief regulator of human relations in the country.
- government of India is the sole protector of vulnerable strata of the society.
Administrators are accountable before the parliament by means of question hour. To assist them in tackling the problem of question hour, various committees have been established as public accounts committee, estimats committee, sub-ordinate committee and so on.

Various grievance redressal cells have been setup to make administrators accountable to the citizens. Citizens have power to question the accountability of the administrators before the law through institutions like Lokpal, Lok Ayuktes and Ombudsman. During 1950's and 1960's, responsiveness to people meant the participation in elections only, which has now changed in direct participation in governmental affairs. Public policies can be setup to make system work democratically.

The concept that government spends money in the manner ‘why’, ‘how’ and ‘for what’ should be taken into account for better and responsible government.

Dr. Rajendra Prasad while inaugurating the constitution of India as President of the constituent assembly adaptation has said, ‘whatever the constitution may or may not provide, the welfare of the country will depend upon... the men of character and integrity, they would be able to make the best of even a defective constitution. If they are lacking in these, the constitution cannot help the country after all, a constitution like a machine is life less thing. It acquires life because of the men who will have the interest of the country before them.’

J.C.Sinha and M.C.Mugali have enlisted the objectives of public accountability as:
1. To bring about consistency in the implementation of policies by the government.

2. To facilitate co-ordination of their activities with the related programmes.

3. To ensure that the enterprises conduct their affairs efficiently in accordance with law.

4. To make available sufficient informative data to the parliament and the public, so as to enable them to evaluate the effectiveness of their working.

5. To improve rules and sanctions on them to secure accomplishment of the objectives expected of them.

6. To prevent the misuse of public money by the management of the undertaking through audit and administrative checks.

7. To protect the interest of consumers and to assure a fair deal to the personnel.

**Accountability Committees**

Public accountability results in the effectiveness of the government.

L.D. White, considers public accountability as, ‘Sum total of the constitutional, statutory, administrative and judicial rules and precedents and the established practices by means of which public officials may be held accountable for their official action’.  

To ensure transparency and accountability in administration, parliamentary committees were formed. Various methods to control the legislative accountability in parliament are-

- Debates and discussions
Chapter II

- Resolutions or motions
- Questions
- Budgetary control
- Parliamentary committee

Through these committees, plans and projects are being discussed from the technological point of view on the basis of facts. These facts are then analysed and recommendations are made to have action-oriented schemes to undertake the goals to be achieved. Creativity is also achieved through interdepartmental exchange of ideas between various members of the committee. However in some cases it may lead to seriousness in the problem, as what a single person at the time of solving the problem could do, may have avoided the graveness of the problem.

Principal methods to determine legislative control are finances, departmental acts and policy. To structure the administrative accountability parliamentary committees have been set up under the Act 118(i) of the constitution.25

Parliamentary committees are two types:

i) Adhoc committees

ii) Standing committee

i) Adhoc committees, are temporary in nature and are based on the needs and requirements of the job. They are broadly categorized as:

- Committee on conduct of certain members on presidential orders and addresses,
Committee to inquire in the irregularities in banking transactions and securities.

Committee to select the bill to be scrutinized.

Such adhoc committees are setup to inquire and scrutinize the working of the two houses on specific subjects.

ii) *standing committees*, are permanent in nature working on the annual elections. Some main sub-committees of finance in standing committees are – Public Account committee undertaking committee and estimates committee.

To keep vigil of all the activities undertaken by such committees, various investigating agencies have been established. The CBI as Central Bureau of Investigation, CVC as Chief Vigilance Commission, et-al. Similar other committees were setup like Lokpal, Lok Ayktas, Grievance Redressal Cells to curb the corruption and such lacunae in governmental system. Efficiency and accountability can be had if the administrative functionaries worked according to their proper norms.

O.P.Sharma, has broadly described the role of commission as:

*Preventive* i.e. to stop the corruption by avoiding the circumstances which reach to such conditions.

*Punitive* i.e. dealing with actual vigilance cases.

In Berlin, an anti-corruption scale has been drawn up, to undertake the global ranking in corruption in the form of a report as 'Transparency International'. It's report is published annually and in this year's report India rank's 83rd in the globe while Norway at 1st rank is the least corrupt nation of the world.
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Central Bureau of Investigation although being independent, autonomous and free from government pressure and influence, it has to depend on government funds. Even selection, transfer and posting is also done by the government.

R.K. Raghavan, the former Director of CBI, New Delhi while showing its limitations said, "The CBI Director is just an invitee to the Central Vigilance Committee Board that selects IPS officers for senior positions in the CBI from the states."28

Lord Nolan’s recommendations on standards in Public Life include seven basic principles:29

<table>
<thead>
<tr>
<th>Selfleness</th>
<th>Integrity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectivity</td>
<td>Accountability</td>
</tr>
<tr>
<td>Openness</td>
<td>Honesty; and</td>
</tr>
<tr>
<td>Leadership</td>
<td></td>
</tr>
</tbody>
</table>

Implementing such kind of objects in the functioning of these agencies can enhance their developmental efforts and bring to book those who have done nothing in concrete way, to curb corruption. Political parties, press and Non Governmental Organisation’s (NGO’s) can play an important role in making such lacunae recessive in every field of society.
References


7. op. cit., No.4, p-1.


9. Bernald S. Cohn, "The Development and Impact of British Administration in India – A bibliographic essay", 'Indian
Institute of Public Administration', Quarterly of Indian Institute of Public Administration, New Delhi, 1961, p-35.


15. op. cit., No.5, p-308.

16. ibid, p-4.

17. ibid, p-9.


Chapter II


CHAPTER III
CORRUPTION, GRIEVANCE REDRESSAL AND REFORM

Corruption, as defined in the *English Oxford Dictionary* is "moral deterioration or decay; deprivation, the degradation of anything from its original state of purity".¹

*Corruption can be defined in the practice as:*

- Misuse of public power for private profit.
- Bribery, intimidation and fraud at elections, not as a common law but as a statutory crime.
- Tradition and culture also influence the desire of high officials to eliminate the diversion of funds by sub-ordinates.
- Natural resources of incalculable value in the possession of the federal and state governments have constituted a standing temptation to corruption.
- By overlooking the violations of those who pay and by rigorously enforcing the laws against those who do not, corrupt public servants have a weapon for extorting tribute from those engaged in such activities.

A private individual involved in bribery generally suffers less drastic penalty than the public official who accepts the bribe. The former has acted as an individual, the latter has betrayed a trust reposed in him by the public and has reflected upon the integrity of all members of the public service.
Corruption

Corruption has been in practice since decades in various forms. In 1990's, it was considered to be the most wide-spread, pervasive and serious phenomenon in the form of political corruption.²

Corruption is not so benign in under-developed countries, nor is it so rare in advanced ones. It is unrealistic to think that advances in education or in techniques of public administration, the development of a ‘public-regarding ethos’ or economic development can lead to the virtual disappearance of corruption.³

Corruption, as defined for the context of the layman, is not an ordinary offence like violation of rules or fraud but violation of the duties of office and negation of the values that should undertake the democratic, political and administrative system founded on the rule of law such as the distinction between private and public interests, equality of treatment for citizens, transparency of transactions and so forth.⁴

Chinese understand corruption⁵ as:

“getting on the bus” i.e. actively participation in corruption;

“running alongside the bus” i.e. going along with the system.

“standing in front of the bus” i.e. resisting corruption.

One of the main urges for corruption is the abuse by the monarchic executives power for their own personal accounts under the supervision of their legislative friends.

Heidenheimer⁶ opines that corruption has two forms:
White corruption:

It is a part and parcel of the culture that is not even aware of the problem. It is differently tackled by various cultures, sometimes it may be a corruption in one place and might not be corruption in another place by pointing these acts as necessities of life or common practices.

Black corruption:

Disagreement to such practices is common to all but some may consider it ill-willed while other may agree to it, resulting in uncoordinated effort and the clash between the two in the form of scandals and cases of corruption.

Hence, corruption is like 'spinning the web' in which once entangled is not easy to leave.

In 21st century India, "Ethics, social values nationalism and prosperity are on vane. School teachers are not paid salaries for months. Young doctors do not serve in government hospitals even in urban areas. The defence forces are facing a shortage of officers. Top officials are in jails because of alleged links with criminals. Little wonder then that few complain about the brazen activities of the political class."^8

This brings to the limelight the Indian class of officials in the light of a layman. Further studies show that the offer of the corruption no longer comes from the presumed 'corrupter' but from the person considered as a passive one, the 'corruptee' in other words, the politician or the civil servant.^9

In an opinion poll conducted in Italy, France and Japan, majority of the people were convinced that 'all politicians are corrupt.'^10 Corruption cases in India are more prominent than the
welfare techniques. Records are being maintained of the corruption cases which have got records of corrupt money under it’s scale. These form the cases of ‘lost files’ in the paper-keeping section of the officialdom.

Corruption in the Indians, during the British rule in 19th century led Sir John Kaye,\textsuperscript{11} to depict the Indians as:

*Educated Indians* – typically the Bengali Babus – devious, spineless, corrupt and scheming.

*Indian peasants* – particularly with a warrior tradition, such as Rajputs, Pathans and Sikhs – fine fellows”.

It was thought that the British administration brought with itself the lawlessness and corrupt practices. In 1956, one of the methods for the estimation of unreported income in India was from the national income estimates by subtracting the income assessed for income tax, a part of the Wanchoo committee by Lord Kalder.\textsuperscript{12}

Various scams and scandals have been the part of Indian history right from its origin. Some recent scams and scandals along with the money wasted through these scandals is given as:\textsuperscript{13}

<table>
<thead>
<tr>
<th>Scam</th>
<th>Unearthed</th>
<th>Approximate Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Securities Scam</td>
<td>1992</td>
<td>Rs. 5,000 crores</td>
</tr>
<tr>
<td>Sugar Scam</td>
<td>1994</td>
<td>Rs. 600 crores</td>
</tr>
<tr>
<td>Fodder scam</td>
<td>1995</td>
<td>Rs. 650 crores</td>
</tr>
<tr>
<td>Housing scam</td>
<td>1995</td>
<td>Rs. 17.4 crores</td>
</tr>
<tr>
<td>Hawala scam</td>
<td>1995</td>
<td>Rs. 65 crores</td>
</tr>
<tr>
<td>JMM Bribery</td>
<td>1995</td>
<td>Rs. 3 crores</td>
</tr>
<tr>
<td>Urea scam</td>
<td>1996</td>
<td>Rs. 133 crores</td>
</tr>
<tr>
<td>Medical equipment scam</td>
<td>1996</td>
<td>Rs. 1000 crores</td>
</tr>
<tr>
<td>Telecom Scam</td>
<td>1996</td>
<td>Rs. 1200 crores</td>
</tr>
</tbody>
</table>
The resultant of the Wanchoo Committee\textsuperscript{14} report gave, that the unrecorded income due to corruption is increasingly faster than the unrecorded income due to other reasons. The rate of increase measured from the unrecorded income will be much higher than the true rate of increase in corrupt income. Thus, creating a link between the corruption and the hidden economy of the industrial sector.

\textbf{Remedies}

The government can use such techniques to stop corruption by identifying the acts and actions taken through the country’s judicial system and take necessary steps to curb corrupt practices. The amount undertaken in this transaction, if utilized in proper place and time would have brought a great change to the Indian nation in the international field. Even the people below poverty line could have reached to some level, above the diminished line; or even the scheme could have benefited a part of the nation; or even the key word ‘Bureaumania’ would have lost it’s grip, on the common masses.

The level of corruption is so increased, that the burden of Rs. 75,000 crores\textsuperscript{15} had to be provided towards interest payments in the 1998-99 budget of the union government, leading to near bankruptcy.

Two approaches have been given by M.K. Singhania\textsuperscript{16} to end the corruption-

i. The system itself is faulty hence remedial alternate is to be provided with ‘corruption proof’ political system.

ii. Treated as a feature of the same political system in general and tackled within the frame-work of the system itself.
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It has been termed ‘Clandestine Exchange’ between two markets, political/administrative market and economic/social market, on the whole. In corruption curbing schemes, variance and efficiency are taken into account. Where there is an increase in variance, efficiency decreases and has less stability.

In India, corruption is multi-faceted as it exists in many forms. The ‘bribe taker’ as well as the ‘bribe-giver’ should be found responsible for the act of misconduct and both should be made responsible on equal grounds, on the basis of proper scrutinization.

If you accept the system, it’s problems are to be taken as challenges. If you set your goals higher, the challenges would also be greater. If the state has to become something more than a mere law and order maintaining agency, the challenge of corruption has also to be faced on the larger scale.

Since, corruption is inherent in the political system, it can be dealt with, only by erecting parallel structures of accountability along with the structures of responsibility. This would require decentralization on a large scale, greater role for the locals level authorities and people’s increased participation in the process of politics, particularly administration.

These measures are known from the past in the form of rules, regulations and amendments through various committees. Now, the main part of implementing these measures is to be done by the politicians as, political leadership plays a crucial role in the national development, and administrators whose specialized knowledge and experience gives a skillful thought to the nation building.
Chapter III

Corruption cases like Dilip Singh Judev, the Union Minister of the State Environment and Forests, in the Judev Bribery Case, brings one in the deep well which has been dug within the governmental system. Misuse of political power has become a part and parcel of the Indian political scenario.

Remedial measures to curb the corruption was initiated with renaissance and reformation. Warren Hastings was the first civil servant to become a part of corruption curbing committee for administrators and legislators.

Judiciary, acting as the power to curb corruption, now acts as a part of corruption itself or at most remains a neutral agent. Corruption at top level can lead to the malpractices at other lower levels also, privatization is not being implemented on all grounds because of the ministerial and bureaucratic malfunctioning.

Government in India has gone from a scam to scandal involving crores of money and misuse of funds. The Tehlka tapes have shown the ministers, top politicians, bureaucrats and even judiciary and law officials accepting bribes. The Judev tapes also had similar content. However, the authenticity of the tapes is under suspicion.

This brings to one’s notice that lower levels and middle levels are ready to offer bribes to officials because of the lack of sufficient facilities. But, in general, such malfunctions are seen more in higher society, as one who has surplus money to offer it easily and effectively.
Chapter III

Grievance Redressal Committees

Aristotle said, 'Against human greed no system is immune.'¹⁸ Such being the nature of man, we need to devise mechanisms to check malpractices in government. The office of ombudsman has been adopted by various countries for this purpose. ‘Ombud’ refers to a person who acts as a spokesman or representative of another person.

Professor Wade has named him, “the Citizen’s defender”; Basu calls him; “grievance man”; others call him; “a muzzled watch-dog”; “a crusador without a sword”; “guardian of law”.¹⁹

It’s main aim is that, injustice may not perpetuate and acts as a neutral agent and a catalytic agent processing the grievances of the aggrieved persons. The Ombudsman was concept developed in Sweden in 1809. It grew to become an institution to hear the grievance of the people, a work which has been done in different countries by different institutions, the names differ in different countries, as shown in the table below:

<table>
<thead>
<tr>
<th>Country</th>
<th>Name</th>
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<tbody>
<tr>
<td>Britain</td>
<td>Parliament commissioner</td>
</tr>
<tr>
<td>France</td>
<td>Mediator</td>
</tr>
<tr>
<td>Philippines</td>
<td>Ianobayan</td>
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<tr>
<td>Pakistan</td>
<td>Wakaque Mohtasad</td>
</tr>
<tr>
<td>India</td>
<td>Lok Adalat</td>
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While analysing the original Ombudsman in Sweden, New Zealand and Demark, the main features of Ombudsman include,
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‘an effective and impartial investigating machinery for public grievances; for eradicating corruption at all levels; redressing administrative wrongs and excesses securing the liberties of citizens; and foundation of parliamentary democracy as a system of government.'

In the Scandinavian countries Ombudsman have the power to make recommendations to the department concerned. In the Indian context the need of Ombudsman, arises on the similar grounds. In advanced democracies, political parties and pressure groups exert an effective check on administrative action. Court reviews the administrative action in terms of legality and not on the terms of humanitarian grounds of content, wisdom or even reasonableness. In India, Administrative Reform commission (ARC), has recommended the Indian Ombudsman with some qualities as:

- Misuse of administrative discretion
- Maladministration
- Administrative delays
- Administrative corruption

Ombudsman institutions, along with parliamentary proceedings serve a main part of the modern democratic setup to preserve the rights of the citizens. The access to information, power to investigate and opportunity to report to legislature serve the basis for the democratic setup. To curb corruption, the system of administrative reforms needs importance. It is specialized in various fields acting as a guardian of law for the higher hierarchy as well as to the lower class of the hierarchy, ensuring the equality of law for equality of treatment and proper administrative reform implementation.
Ombudsman, although of Swedish origin was present in the Indian history during the Mughal tenure of Jahangir as “the bell of justice”, to lodge a complaint against government servants. However, in 1950, Professor Karve and Bodh Raj Sharma suggested Ombudsman for India. In the world, Ombudsman conference, held in New York in 1986, a delegate from India, was told by some other Ombudsman that they, ‘do telephone or write to public officials if any wrong doing comes to their notice and their warnings nearly always prove effective to nip the mischief in the bud.’

Ombudsman like bodies cannot work in the Indian culture, because of the law of defamation, contempt, privacy and official secrecy which in a way protect ‘white collar criminals’ and the politicians from the press which is an important forum for voicing grievances.

Aggrieved persons have to face many faces of maladministration, for example, excessive delays in pleading the case in court, excessive charges without having time limitation. This leads to the redressal cells and litigation through various agencies to curb these malpractices. Although initially, these bodies may take time but if put under proper watch and ward these can be a success.

Administrative Reforms Commission (ARC), in 1966, suggested for the introduction of the lokpal bill to curb the malpractices and redressal of grievances. The proceedings and reports of the lokpal bill should be done in public as long as the national security is not at stake. To make it accountable and transparent, ministries or even prime minister should not be involved in it’s proceedings.
Chapter III

Since 1968, 4th Lok Sabha, Lok pal Bill has been put into discussion nine times, till 1998 and on 14th August 2001, it has been given acceptance in the centre under NDA government. In the state of Jammu and Kashmir, the Accountability Bill has been introduced on 20th January 2003, by the coalition government of People’s Democratic Party (PDP) – congress, under the Chief Minister, Mufti Mohammad Sayeed, as Jammu and Kashmir Accountability Commission Act, 2002.26

The Lokpal bill is undertaking the aim of punishing the offence under the Prevention of Corruption Act, 1988.27 Under this Act, the Prime Minister and Minister-in-charge of Home Affairs are made members, with the leaders of the opposition in Lok Sabha and Rajya Sabha. This has become the main source of malpractices as the politicians themselves are responsible to some extent for the grievances of the common masses. Under the purview of this functionary, some important functionaries come like:28

➢ Public functionaries
➢ Members of parliament
➢ Prime Minister and Ministers.

The delay in the administrative setup of the Lokpal and Lok Ayuktas has resulted in perseverance of corruption in the roots of the governance. Even the lokpal agency to be implemented in 60’s is still being tried to be implemented irrespective of it’s vitality and authenticity now present. Legal powers are needed for the better performance of the Lokpal scheme. The powerlessness of Lokpal still expects the aggrieved persons to have help from the litigations and other bodies like National Panel.
In the initial stages, corruption curbing committees dealt with the lower level corruption only, resulting in the enhancement in corruption of higher levels of the hierarchy. Higher ups were immune in the cases of corruption by the committees like CBI and CVC. Ombudsman is independent of the three basic organs of government i.e. legislature, judiciary and executive. Ombudsman like institutions can be adopted on the personal basis of the nation and according to the law and order of the nation, acting as a supplement to the parliamentary control. Thus, through Public Interest Litigations (PIL) these institutions act as protector against the malpractices of administration.

Corruption means illegal gratification and misuse of official power. Various enquiry commissions have been setup like Special Police Establishment, CBI, CVC, Lokpal. Shortage of goods, which is made available to the common man, is controlled by the hierarchy of administration. India is a country having limited income with mostly those living below poverty-line and this gets enhanced because of these malpractices in administration.

Politicians and Bureaucrats who form the two important aspects of running a society cannot curb corruption unless there is eradication of corruption. Leading to reforms not only in the administration, but the reforms in other fields on humanitarian grounds on the practical basis.

Administrative machinery is slow and corrupt. It is rarely found that any sort of work can be done without any illegal payment or utilizing sources. Common masses generally have little hope from civil servants. There is a downfall in the integrity and efficiency of public administrators. ‘Making money’ is replacing the concept of ‘Earning money’. The main aim of the corruption is
to collect a little pot of money which deepens with the passage of time. The ‘white collar criminal’ are given legislative competence in the so-called VIP cells, having the facility which the majority of Indian society cannot even think of, in their normal life.

Corruption in the normal life is not considered an offence by the elites. J.L.Nehru, while serving as Prime Minister, once said, “Find me honest men!” Indian civil service officers are meant to serve the nation on a large scale as they are depoliticised.

The word bureaucrat gives the image of a “stodgy, inflexible desk-bound government employee”. They have to undergo a tough examination before they are employed and further undergo training in their service also. There are almost 4800 IAS officers in India. Bureaucracy is in need as much as it is to be avoided. Bureaucracy has also been termed as a, “maze of laws, rules and regulations – in a veritable jungle, enmeshed in red-tape!”

This describes the nature of government in the eyes of a common man. In the initial stage of Indian administration, administrators had to start from the lower level. Commitment to one’s work changed to the commitment to be one of the best corrupt practitioner irrespective of the work assigned, resulting in the yesmanship. Depoliticization turned to the political bureaucracy, as has been depicted in one of the Mario’s cartoon as, an office-goer is being told by his, boss, “Godbole, when I want your opinion I shall give it to you”.

Transfer acts as a bane as well as a boon to the Indian work culture, as in the Indian administration, it is the basic point that the civil servant is to be transferred after certain intervals. Although, it can be fruitful in curbing the malpracties like corruption, kingship, hegemony, etc. On the other hand, as soon as an IAS officer is
aware of the facts and failings of the situation, the transfer order is ready.

Indian culture has the civil servants like, S.N. Bannerji, who initiated the revolt against the system of British government; A.K. Chatterji IAS officer in Patna; Madhav Godbole; Srinivasavardan and un-noticed ones, who have resigned and refused these malpractices of administration. Still in Indian government, majority of those who resisted these criminal acts were forced to fall back to it irresistibly.

Administrative competence can be understood if there is proper distribution of relief and the implementation of developmental work on proper time. For this purpose, administrative vigilance or grievance redressal cells are formed to maintain law and order at the times of emergencies. To overcome crisis in the administration, proper management in the economic and political scenario is undertaken. For good governance, police-law-politicians-Administrators should be made a part of the system and work interchangeably.

Public Interest Litigation (PIL), is formed for curbing the malpractices of the politicians and the bureaucrats, but in turn they are responsive for suppressing the agency itself and polluting it's authenticity. In the similar bid to curb corruption in the state of Jammu and Kashmir, Chandra Shekhar, the then Prime Minister in 1990, invited the probe against the judicial inquiry of all the major scams and misfallings. Grievance Redressal committees, Litigation counters and administrative re-orientation was the need of the hour. In the view of this, 'Shikayat Markaz' was initially established to listen to the grievances of the common masses.
Different clauses have been put down to overcome the grievances of the common man. In an analysis to the commissioner for public grievances during April-June 1966, results showed that 60% of the complaints related to delays; 2% to wrong decisions; 1% to rude behavior; 37% to others like corruption or malpractices of administration. Reporting that, not only delays in corruption, but also other grievances bring inconvenience. Lokpal and Lokayktas are meant for redressal of grievances and cannot substitute administrative reforms, as they have their own workload.

Reform Initiatives

Anti-corruption committees formed should be temporary in nature, as otherwise it would lead to red-tapism in its own existence. Common masses have now arisen from this fallacy of corruption, as they resist these acts by way of campaigns, strikes, and movements of the different kinds. This activism has resulted in development at social and economic levels.

Freedom of information acts as an important sign of the administrative malpractices, as bureaucrats are responsive and accountable to the common masses. The doctrine of civil services is not a dent in the administrative system but needs a proper vigilance to be put on so that there is no misgrievance in the doctrine of civil services.

Government policy works until the common masses are involved in the decisions. The grass-root level of administration is to be established in a proper way, which would later on lead to the effective and accountable growth of the policy.

Speedy trial of the cases for avoiding judicial delays, non-filling of judge’s vacancies in time, fast-track courts were
established, which itself led to the judicial delays. Judiciary itself cannot be questioned, as it leads to contempt of court, however, it may check nepotism, favoritism and intellectual dishonesty. In administrative setup, every element counts for good governance, whether it is availability of resources or of efficient personnel at center or state level. Violation of common rules may at times not seem much important, but on the average it seems that these graver infractions of the law could also similarly go unpushed. Prof. Lawrance Sharma of the University of Maryland believes that direct patrols, pro-active arrests and problem solving at spots prone to high crime, do have an impact.\textsuperscript{37}

On political corruption, Dr. Radhakrishnan, said, “Unless we destroy corruption in high places, root out every trace of nepotism, love of power, profiteering and black marketing which have spoiled the good name of this great country in recent times we will not be able to raise the standards of efficiency in administration as well as in the production and distribution of the necessary goods of life”.\textsuperscript{38}

Prevention of corruption and vigilance is the ineffective and incompetent to curb such inconvenience. True and honest people in the administration are rarely found, hence they have to work within their own purview, as otherwise their existence is being curbed. This needs the proper vigilance by the vigilance committees to curb the atrocities of such persons. Corruption has been the part and parcel of the common man’s life. Corrective measures should be initiated to effectively deal with the problems of corruption.

Action plan, with regard to preventive measures, detention and punitive vigilance have given some preventive measures.\textsuperscript{39}

\textit{Preventive vigilance:}

a. Simplification of rules and procedures;
b. Reducing the area of discretion and patronage;
c. De-regulation, where possible, to reduce the points of corruption and harassment to the public;
d. Introduction of public information and assistance counters in departments and places having public dealings;
e. Setting up of redressal of public grievances machinery in each ministry;
f. Systematic and surprise inspections by senior officers;
g. Monitoring disposal of cases with a view to checking delays;
h. Curbing outside interference in administration and personnel management; and
i. Improving wages and service conditions of public servants.

**Surveillance and detection:**

a. Greater surveillance and intelligence in corruption prone areas, particularly at public contact points by strengthening the vigilance machinery where necessary;
b. Closer watch on officials of doubtful integrity by vigilance machinery;
c. On a selective basis, moveable/immoveable assets of persons of doubtful integrity to be checked and verified periodically;
d. Raids and traps to be organized, where necessary.

**Deterrent Punitive Action:**

a) Investigation of cases to be speeded up according to a time-bound schedule;
b) Procedure for disciplinary action to be improved for speedier finalization of cases and deterrent punishment awarded;
c) Provision of summary trail by courts in cases of corruption and provision for deterrent punishment;

d) Legislative measures for confiscation of ill-gotten wealth;

e) Provision for premature retirement of persons of doubtful integrity to be enforced more rigorously to weed out corrupt elements;

f) Close monitoring of all anti-corruption measures, and
g) Wide publicity of punishment awarded to quality persons.

These reform projects if implemented within the time limits can lead Indian nation to its developmental progress. In a similar bid, the ministry of Home Affairs has set under the Department of Administrative Reforms, a commission of Inquiry, called Administrative Reforms Commission to examine the public administration of the country and make recommendations for reforms and re-organisation. The copy of this order or resolution was to be communicated to all ministries and departments of the government of India, state governments, union territories, etc. and published in the gazette of India for general information.

Establishment of administrative vigilance division to check corruption was done in 1955 under the Union Home Ministry. State Vigilance Commission is to be examined to find better options and opportunities for the removal of administrative malpractices.

Administrative Reforms Commission (ARC), appointed on 5th Jan 1965 under the chairmanship of Morarji Desai, submitted almost 20 reports till 2001, and made 537 recommendations. The 10 major areas for consideration include:

1. The machinery of government of India and its procedure of work.
2. Machinery for Planning at all levels.
3. Center-state Relationships.
5. Personnel Administration.
7. Administration at State Level.
8. District Administration.
9. Agriculture Administration.

Various committees were setup like; the Sarkaria Commission of Inquiry (1976-79), New Delhi, Government of India at the Union Level; Ayyangar Commission of Inquiry – Jammu and Kashmir (1965) at the State Level.

The Ayyangar Commission of Inquiry, was undertaken against Jammu and Kashmir Chief Minister Bakshi Ghulam Mohammad, on January 30 1965, under the chairmanship of N.Rajagopal Ayyangar. The commission submitted its report of 720 pages in 1967 which concluded that nepotism and favoritism of the civil servants, was at its peak. Citizens were led to extreme cases of vulgar treatment during this tenure, as corruption was on its peak. In the report of Ayyangar commission, we find;

'The most saddening and depressing of the materials placed before me were the affidavits of the officials who confessed to have knowingly done improper acts extending even to tempering with official records to the prejudice of the state and state property and monies in carrying out the desires or orders of the respondent to benefit himself or his relations.' (36.4 pp.711).
In another observation, R. Ayyangar has reported the malpractices of this tenure of Bakshi G.M. by adding; '

... when abuse starts from the top, demoralization sets in the permanent services, and even officers who by virtue of their status and position could normally be expected to take an objective view of matters coming up before them, succumb to the temptation of becoming subservient and willing tools for furthering the interests of those under whom they serve.'

The resultant of all such reports, committees and commissions was just paper work which the government had assigned to their respective staff members. But whether the reports of these committees are implemented on practical grounds or they remain as an exercise in window dressing is the big question which begs an answer.

Commission of inquiry against Karunandhi Mikurunandhi and others were found in the course of investigation by the Sarkaria Commission in (1976-79).46 It's report gave that the civil servants acted as a bond between the businessmen and the ministers. The three posts of civil servants - Private Secretary to Chief Minister; Secretary Agriculture Department and Director of Agriculture, co-operated in the deal to extract gratification by the minister and the chief minister.48 On similar grounds through committees and commissions, various scams and scandals came to light, like:

- Petroleum Dealership scam of 2002.
- Bofors Scam
- Bank securities scam
- Telecom scam
- Bihar fodder scam
Jharkhand Mukti Morcha (JMM) MP's bribery case, Jain Hawala case

S. Maheshwari has drawn some lines of profile through these commissions and committees. Erosion of values in the country's public life is visible in all sectors. Politicians and the civil servants privately accuse each other for moral deviations. Line separating polities and administration is becoming generally unreal. Country's contemporary politics and public administration generally show little sensitivity to the larger public interest. Politico-administrative culture is characterised more than anything else by a high level of permissiveness. Wrongdoers identified by these commissions of inquiry have rarely been punished.

In the survey report of public administration, Paul H. Appleby, has criticized the government efficiency in the words, ‘... a lack of frugality, rather the government is somewhat unwisely frugal-spending too much energy and money, in penny pinching and regarding too little the effectiveness and convenience of the conditions in which able men work’.49

Computers and e-governance has changed the administrative setup and is in the act of making government citizen-friendly. With the passage of time, there is going to be tremendous change in the governing body and the system of governing.

Factors like decentralization at the state level, the making of Jharkhand, Chattishgarh and Uttaranchal; on the similar grounds, Jammu and Ladakh also want to be separated from the state of Jammu and Kashmir resulting in proper management of the administration. Overacting of governmental forces has become the part of administration, as improper utilization of money through
corrupt practices has led to the lack of basic amenities to the employees. Over-expenditure of government finance on military purpose is resulting in the lack of proper utilization because of Bazaar -Canteen scheme.

For good governance, the best remedy is prevention rather than finding the faults. Overlooking the rules and laws of the constitution for better governance with the passage of time is needed for proper administration. In a certain way innovative technique and the use of computers may prove a boon for this red-tapism curbing committees. To undergo this, pragmatic approach can be utilized for proper welfare of governmental machinery. Plans of attaining a socialistic approach need to be viewed more realistically. Discipline needs to be maintained in different categories.

The laws undertaken in the field of Public Administration should not remain pedagogical, but it's principles should be implemented on practical grounds also. Taylor's principle of POSDCORB i.e. Planning, Organizing, Staffing, Directing, Co-coordinating, Reporting and Budgeting, shall be circulated among various departments to be the basic framework of management.

U.G. Aggarwal, Central vigilance commissioner, in an address on 10th March, 1986 New Delhi, gave the brief idea of prevention of corruption in public services as:

1. Reduce it's scope by -
   a) review of governmental activities to eliminate unnecessary work;
   b) simplification of rules, procedures and practices and general system improvements; and
c) better supervision, inspections and monitoring.

2. Reduce temptation to corruption by upgradation of pay-scales and service conditions.

3. Better policing and vigilance to:
   a) exercise greater check on corruption prone areas and individuals;
   b) identify hard-core corrupt elements; and
   c) take exemplary punitive action against corrupt elements by removal and dismissal from service.

Proper implementation of these reforms and recommendations need the proper center-state relations, as in the current scenario there is a fast change in the practical situation also. The higher officials are now one of the main accused, who work for the betterment of the nation, itself. Thus judicial activism is the result of the sensitive modern day Indian judiciary. Awareness in common masses is now giving way for political as well as administrative activism. This has resulted in the end of the era of the Abdullahs, Badals, Yadavs, and Naidus, in the political scenario.
References


3. Ibid, p-143.


5. Ibid, p-17.

6. op. cit., No. 4, p-311.

7. op. cit., No. 1, p-95.


9. op. cit., No. 4, p-311.

10. Ibid, p-310.


14. op. cit., No. 12, p-2799.


17. op. cit., No.4, p-313.


22. op. cit., No. 18, p-114.


25. op. cit., No.1, p-266.

33. Ibid, p-17.
35. Ibid, p-23.
38. op. cit., No.18, p-81.
40. op. cit., No.36, p-33.

42. N. Jayapalan, 'Indian Administration', Atlantic Publishers, and Distributors, New Delhi, 2001, p-644.

43. Ibid, p-644.


45. Ibid, p-29.


47. Ibid, p-457.


50. op. cit., No.39, p-433.