



Single directive and investigation of bureaucratic corruption

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Abstract

The law is equally applicable to all. Just like any other individual, a public servant committing an offence must face prosecution. Public servants on account of their role in State affairs and the duties/responsibilities that ensue public servants stand on a different footing and require protection as against any attack leveled on them in discharge of their official duties. In order to ensure this concept of Single directive comes into light. It specified that as a primary condition before starting any investigation against officers of the Government above a certain level prior sanction of the designated authority is required to take action against them. Since its inception, the 'Single Directive' in its fight against corruption has been facing the wrath of judiciary primarily because of the reason that it perpetuated undesirable interference on the part of government in investigating corrupt public servants. Discourse of series of legislative, executive and judicial events, which led to the evolution of single directive from 1969 to 2018, are elaborated in this research paper.

Keywords: public servant, executive resolution, corruption, single directive, investigation, sanction, amendment

Introduction

Nowadays, corruption is considered to be the most pronounced matter both nationally and internationally due to its far-reaching and immense characteristics. It is said to have insinuated undeniably into every realm of society having involvement in the domain of public dealing. Currently, the very expression 'corruption' has a very wide manifestation embracing into its grip almost the entire world and covers roughly all the expanses of individual's regular life. Its stature has been intensified to such a podium that it has ability to reach frightening pinnacles and possess dangerous potentialities. Defining the nature of this concept in a limited sense, it indicates verdicts and undertakings of a government official persuaded not by rights or wrongs of a cause, but by the prospects of pecuniary advantages or other selfish considerations. Many intellectuals have accurately acknowledged this perspective because avarice is believed to be a usual infirmity of the mankind. Edmund Burke is the one who believed that 'among a people generally corrupt liberty cannot last long.' Whilst another renowned British Statesman and Whig politician Robert Walpole's observed that 'every man has a price, may be a little generalized, yet it cannot be gain said that it is not far from truth.'

Indian citizens in a civil society primarily stress on the demand that the administrative authorities by which they are governed must be just, fair and reasonably good. For any administration to be creditable it is vital that their governing structures and arrangements are efficient, economic, ethical and equitable which in turn is only warranted if governance is practiced in a fair-minded, unbiased and citizen friendly manner. The test of good governance lies in the effective application and evaluation of its policies and programmes for the attainment of set goals formed for the benefit of society. It has been observed that regardless of how sufficiently planned and systematized the 'political' side of the government is, howsoever wise our political philosophy and high leadership and command, these all properties would be of no effect without a competent body of officials

expert in the application of authorized use of power and the general wisdom to the case in hand and specially employed to do so.

However, when administrators or other public servants misuse or dishonestly perform these above stated officially allocated powers and duties then they are prosecuted for their fraudulent behavior under the penal laws of the respective countries. Any sort of prohibited or unlawful act performed by a functionary symbolizes political corruption only if the act is directly proportional to their official duties or is done under the garb of law. In colloquial terms, political corruption or '*Malpolitics*' is the unlawful practice of powers by government officials or their system associates for illegitimate private gains and benefits. The most adverse consequence pertaining to political corruption is that it results in a rebellious overthrow of the democratic set up of the country and good governance by subverting and flouting requisite official procedures.

What the status quo depicts is that currently all the three branches of the government i.e. legislature, executive and judiciary are affected by the menace of corruption thereby affecting accountability of the officials, consequently, corroding away the developmental roots of the country. To be precise, legislative corruption leads to distortion of representation in policymaking; judicial corruption results in compromise of the rule of law and at last, corruption in executive or public administration ends in the inefficient implementation of policies and delivery of services. It is pertinent to note that corruption by public servants in India has now reached a shocking height. For republics, it violates a basic principle of republicanism that is regarded as the centrality of civic virtue. Furthermore, its tentacles have started grappling over even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functions of the public offices, through strong legislative, executive as well as judicial operations the corrupt public servants are even capable of paralyzing the

basic functioning of such institutions and thereby hindering the democratic policy.

The Hon'ble Supreme Court in the case of *State of Madhya Pradesh v. Shambhu Dayal Nagar* has supported the above-mentioned opinion in which it held that nowadays corruption by public servants has become a massive probe. Because of its universal coverage not even a single façade of public activity has been left unaffected by the stink of corruption. It has profound and pervasive impression on the working of the system of entire country as prevalence of sweeping occurrences of corruption hinders governmental undertakings towards nation building and in turn everybody has to bear the grunt of consequences on that count.

Normally, when the institutional capacity of the government is eroded, resources are siphoned off and public offices are purchased and peddled it is believed to be a case of government officials disregarding formal procedures. What is inferred from this is that prevalence of corrupt behavior in the system undermines the rightfulness of the government and democratic values such as confidence and acceptance of citizens. Hence, to curb this it is important to take an action on every complaint in order to prosecute corrupt officials under strict procedure. But there are some genuine apprehensions about the system's ability to protect honest public servants in India against malicious and vexatious complaints. Therefore, the government introduced the directive in order to protect decision making level officers from the risk and humiliation of fake and malicious probes, so that they could perform their functions without fear of being oppressed and victimized.

Single Directive

The 'Single Directive' was issued by the government with the principal objective to safeguard public servants against the risk or discomfiture of malicious and vexatious investigations if hurled on them. Often, the public servants who are responsible for making decisions might get concerned from the probability of getting harassed by influential people for taking the right decisions. This can adversely affect the efficacy and effectiveness of these officers thus keeping them away from reaching any conclusion. As a result, in order to protect these officials from any malignant interrogation, a 'Single Directive' was issued. It is also imperative to take note of the fact that these directives were issued only for the official acts of the government functionaries and not for the non-official acts.

The Government through executive resolution first issued the 'Single Directive' in 1969. It specified that, as a preliminary requirement before initiating any investigation against officers of the Government, the public Sector Undertakings and the nationalized banks above a certain level prior sanction of the designated authority to take action against them is the foremost condition. Since, the principal investigating institution to inquire against alleged public servants is the Central Bureau of investigation (CBI) so the Single Directive was a consolidated set of instructions issued to the CBI by the various Ministers/Departments in this behalf. It contained clear and fundamental instructions to the CBI concerning modalities of initiating an inquiry or registering a case against certain categories of civil servants. The relevant directive that appeared contentious in this regard is Directive No. 4.7(3) -

"4.7(3)(i) - In regard to any person who is or has been a decision making level officer (Joint Secretary or equivalent

or above in the Central Government or such officers as are or have been on deputation to a Public Sector Undertaking; officers of the Reserve Bank of India of the level equivalent to joint Secretary or above in the Central Government, Executive Directors and above of the SEBI and Chairman & Managing Director and Executive Directors and such of the Bank officers who are one level below and the Board of Nationalized Banks), there should be prior sanction of the Secretary of the Ministry/Department concerned before SPE takes up an enquiry (PE or RC), including ordering search I respect of them. Without such sanction, no enquiry shall be identified by the SPE.

(ii) All cases referred to the administrative Ministries/Departments by CBI for obtaining necessary prior sanction as aforesaid, except those pertaining to any officer of the rank of Secretary or Principal Secretary, should be disposed of by them preferably within a period of two months of the receipt of such reference. In respect of the officers of the rank of Secretary or principal Secretary to Government, such references should be made by Director, CBI to the Cabinet Secretary for consideration of a Committee consisting of the Cabinet Secretary as its Chairman and the Law Secretary and the Secretary (Personnel) as its members. The committee should dispose of all such references preferably within two months from the date of receipt of such reference by the Cabinet Secretary.

(iii) When there is any difference of opinion between the Director, CI and the Secretary of the Administrative Ministry/Department in respect of an officer up to the rank of Additional Secretary or equivalent, the matter shall be referred by CBI to Secretary (Personnel) for placement before the Committee referred to in Clause (ii) above. Such a matter should be considered and disposed of by the Committee preferably within two months from the date of receipt of such a reference by Secretary (Personnel).

(iv) In regard to any person who is or has been Cabinet Secretary, before SPE takes any step of the kind mentioned in (i) above the case should be submitted to the Prime Minister for orders."

Accordingly, what is inferred from the above-mentioned provision is that CBI could not take up any inquiry or investigate or register a case or conduct a search or make an arrest in respect of the said decision-making level public servants without the previous consent or permission of the concerned authorities. In common parlance, CBI in order to even conduct a preliminary inquiry into allegations of corruption against officers in all civil services of the rank/grade of joint secretary and above was directed to take prior approval of the government as a mandate.

Though, 'Single Directive' appeared formally on paper in 1969 but it was subsequently amended on many occasions. However, in 1988 when a fresh set was issued following the Bofors scandal it became highly controversial because it commanded 'prior consultation' and 'government concurrence' for the CBI to probe into corruption matters. Consequently, though in the beginning the directive was enacted by the government with the affirmative and straight mindset to protect public servants from false allegations, this provision ultimately became a baton of delay in the hands of political functionaries and public servants to escape the crutches of justice delivery system by adjourning the process of prosecution. Hereafter, it followed continuous abuse and misapplication at the hands of manipulators.

Single Directive: From Executive instructions to Statutory Form

Since its inception, the 'Single Directive' in its fight against corruption has been facing the wrath of judiciary primarily because of the reason that it perpetuated undesirable interference on the part of government in investigating corrupt public servants. As mentioned above, in 1969 it formally appeared on paper and then afterwards fresh set was issued in 1988. However, taking into consideration the timeline of events the Hon'ble Supreme Court took nearly a decade to strike it down as unconstitutional in the case of *Vineet Narain & Ors. v. Union of India* (1998) popularly called Jain Diaries or Jain Hawala case, which involved enormous amount of Hawala payments to politicians cutting across political lobbies. This move of declaring it unlawful was pronounced because in spite of immense nature of the matter encompassing huge finances and malafide behavior of the politicians, the investigating authorities couldn't do anything and faced destitution due to the safeguarding nature of the directive. But due to overpowering characteristic of the 'Single Directive' the government couldn't do without it for long. Therefore, a few years later in 2003, the Government with stronger backup reinstated it again. This time, it materialized in the statutory form when the *Central Vigilance Commission (CVC) Act* of 2003 was promulgated. The provisions were formally witnessed when Section 26C was introduced in the CVC Act and Section 6A was introduced by way of amending *Delhi Special Police Establishment Act, 1946*. CBI owes its legal status and power to investigate to *Delhi Special Police Establishment Act, 1946*. It provided that the Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the *Prevention of Corruption Act, 1988* (PCA) except with the previous approval of the Central Government. As a result with this enactment, the single directive acquired a statutory form.

The Hon'ble Supreme Court in the Jain Hawala judgment pressed the trigger of amendment when court asked the government to accord statutory status to the CVC thereby, entrusting it with 'the responsibility of superintendence over the CBI's functioning' in order to insulate the latter from undue political interference. Until then, the CBI as an investigative authority was under the governmental control. Hence, amendment was considered to be the best suitable opening for the government to reinstate previously struck down single directive.

Immediately, one year after in 2004 it was straightaway challenged in the case of *Dr. Subramanian Swamy v. Director, CBI & Anr.* on the ground of its lawfulness. The Hon'ble Supreme Court again took another decade to struck it down as unconstitutional. In 2014, the apex court while reaching its conclusion in the said case used the very same contentions that appeared in the Hawala judgment. Among other things, the Hon'ble Supreme Court observed that the single directive 'neither eliminates public mischief nor achieves some positive public good however it advances public mischief and protects the crime doer. Therefore, this provision thwarts an independent, unhampered, unbiased, efficient and fearless inquiry/investigation to track down the corrupt public officials.'

In 2018, taking note of its profound importance in spite of repeated struck downs by the judiciary it resurfaced again. This time it is brought on record by way of amending

historic 30 year old anti-corruption law of the country namely *Prevention of Corruption Act, 1988* by way of inserting new provision in the form of Section 17A.

All the above-mentioned three courses of action with respect to the validity of 'Single Directive' are discussed in detail in the paragraphs below.

Vineet Narain & Ors. v. Union of India

Famously called as Hawala judgment or Jain Diaries case this is a landmark judgment delivered by the Hon'ble Supreme Court in which court primarily examined the question of validity of the clause called 'Single Directive'.

'Be you ever so high, the law is above you' is rightly considered to be the foundational principle on which the law rests. This statement signifies the notion of right to equality, which is a fundamental right enshrined in Article 14 under Part III of the Constitution of India. It guarantees that it doesn't matter how authoritative or dominant a person is in the society if in case he/she has committed any law-breaking offence, then a person has to bear the corresponding consequences in the same way like any other offender who has been punished for the same offence.

The case is recognized to be a perfect example of juxtaposition as the factual matrix of the present case represents prevalence of miserable state of inequality in our country. It explains how high profile people holding high-grade positions in the official set up misuse their authority and power to commit offences and thereby effortlessly gets away from the crutches of it. Predominantly, the Governmental institutions, which are assigned with the responsibility of safeguarding the law of the land and task of fighting against corruption, are the ones who contravene it and thus damaging the internal fabric of Indian polity. This case is known to be a comprehensive illustration demonstrating sluggish behavior of the governmental investigative agencies like Central Bureau of Investigation, Enforcement Directorate and other revenue authorities with regard to their functioning and performance.

Background facts

The facts of the case are as follows:

1. On 25th March 1991, an arrest of Ashfaq Hussain Lone, an alleged official of a terrorist organization named Hizbul Mujahideen was made in Delhi. On interrogation by the police authorities, it was exposed that Ashfaq's organization was obtaining funds via multiple transactions through Hawala channel with the help of one Surrender Kumar Jain and his family.
2. Subsequent to his questioning, the premises of Surrender Kumar Jain, his brothers, relatives, and his businesses were raided by the Central Bureau of Investigation. During the ongoing process of raid at their premises, the CBI seized two diaries and two notebooks along with stacks of Indian and Foreign currency. The diaries were suspected to contain detailed accounts of financial transactions and huge payments that were made to high profile persons recognized only by their initials in order to conceal true identity. The initials resembled the initials of various high ranked politicians comprising of both who were in power and who were out of power and various other high-grade bureaucrats.
3. Due to high-handed influence of the said offenders, it was discovered that CBI stopped probing the case.

Hence, the Jain brothers and the diaries were left uninvestigated. In fact, the officers of CBI who were involved in the investigation process of the case were deliberately transferred to other places by an order from the ruling politicians.

4. Subsequently, on 4th October 1993, several public interest petitions were filed in the Supreme Court invoking Article 32 of the Constitution of India out of anguish. The petitions contained allegations pertaining to functioning of Government agencies, CBI and revenue authorities with regard to their failure to fulfill legal obligations and duties. It was contended that investigative agencies had failed to investigate the 'Jain diaries' that were seized while investigating the matter.
5. In addition to this, accusations were made against the government agencies for their mistake of not taking into account the illicit transactions of money, which were carried through 'Hawala transactions' as discovered from Ashfaq's questioning. The strong nexus was discovered between high-ranking politicians, bureaucrats, and criminals, who were receiving the money from all unlawful sources. This prospect too was not investigated and the CBI as a result was unsuccessful in reaching a logical conclusion, thereby not able to get the ones punished who were actually guilty of committing the offence.
6. The main basis of allegation was that the investigation was stopped in order to guard the persons involved in the case because they were not only very powerful or influential but also held authoritative and dominant positions in the central democratic set up of the country. The matter involved a close correlation between crime and corruption, thereby possessing a great danger to the security and financial health of the country. In spite of this knowledge, neither CBI has fulfilled its obligation to investigate each and every case as per law of the land nor had proceeded against every involved person in the crime in the same way irrespective of the position the person holds or the political influence he/she may have.
7. Thus, the matter not only concerned with the fair and unbiased probe of 'Jain diaries', but it was also connected with an alarming issue of prejudices and biased functioning of the Government agencies. Therefore, appropriate direction was sought from the court so that if a situation like this ensues again in the future, the agencies should not adopt such partisan approach.

On perusal of the entire factual matrix of the case the court adjudicated upon the following two issues in a detailed manner. First issue, which emerged in the court, related to the substandard performance and unsatisfactory functioning of the investigative government agencies especially CBI and Enforcement Directorate of the revenue department. The paramount grievance in relation to these agencies was that they required a closed scrutiny by some supervisory authority so that it is ensured that they are obligated to perform their functions properly and is able to competently accomplish the commitments for which they have been created.

The similar outlook was also comprehended by the Central Government that in order to improvise the functioning of these agencies, it is crucial to conduct an in-depth study of the selection process of these agencies. Thus, the

government in order to achieve this objective specially constituted the Vohra Committee headed by then Home Minister, Shri N.N. Vohra. The Central Government entrusted the Vohra committee with a responsibility to examine the information about the organizations engaged in criminal activities having links with political leaders and high ranking bureaucrats who were shielding them. The report of the committee unveiled strong powerful nexus between politicians, high-ranking bureaucrats, mafia gangs, illegal organizations and the underworld. In addition to this, the committee also recommended the formation of a nodal agency under the Ministry of Home affairs to compile all the information that was received from the Intelligence Bureau, CBI, and Research and Analysis Wing so that the structure of functioning can be thoroughly scrutinized. Vohra Committee also suggested government to constitute an Independent Review Committee (IRC) in order to realize following three objectives:

- a. To examine the structure and working of CBI, Enforcement Directorate of Revenue department and other agencies so that fair and unbiased performance of these agencies is promised.
- b. To supervise the functioning of the nodal agency established under the Ministry of Home Affairs.
- c. To confirm that the investigating power accorded to them is not in anyway misused in order to protect any suspected person, especially the one holding position in corridors of power.

Second main issue which court settled related to the validity of 'Single Directive'. The Hon'ble Supreme Court held that the 'Single Directive' couldn't be endorsed as lawful as it constructs a different classification for the offenders on the basis of their post and status for the purpose of investigation and prosecution. This is accepted to be prima facie in contravention with the dictates of Article 14 of the Constitution of India, which provides for equal treatment of people. As per the law of the country, all the offenders of the similar offence are to be dealt in the same manner regardless of their power, position and authority. The backbone of contention with respect to the validity of issue of Special Directive pertained to grant of special treatment to the decision-making officers, which is apparently against the legal framework of the country. It was further decided by the Hon'ble Supreme Court that the provision of 'Single Directive' was introduced under the façade of an instrument of interference at the hands of political mafias in order to undermine the CBI's autonomy to investigate. Moreover, due to this the hands of the investigative authorities are so clenched that even in cases where a CBI official has reason to believe that an offence has been committed, he/she would still need the government's authorization to move ahead with the investigation of the case. Thus, it had put the watchdog on a short leash. In order to do away with this limitation, the Hon'ble Supreme Court declared Special Directive as unconstitutional and violative of Article 14 of the Constitution of India, which adheres to the principle of right to equality to every citizen of the country. In addition to this, it also gave a series of directions to the CBI and the CVC to warrant that their future investigations are free from any sort of political interference.

On the other hand according to the report of the Independent Review Committee (IRC) 'Single Directive' was acknowledged as a valid provision. In order to come to this

conclusion committee relied on the judgments given in the cases of *K. Veeraswami v. Union of India and others* and the *State of Bihar and others. v. J.A.C. Saldanha and others*. The submitted reports gave justification that there is a need to protect decision-making officials from any malicious investigation in view of defending their right decisions. The rationale gathered from the reasoning of the report is that in order to have effective functioning of the administrative governance of the country certain shields are to be necessarily provided to public servants by the government.

Dr. Subramanian Swamy v. Director, CBI

Before this matter, Dr. Subramanian Swamy and the Centre for Public Interest Litigation (CPIL) filed a combined appeal in the Hon'ble Supreme Court of India, using Article 32 of the Indian Constitution. It especially questioned the legislative provision that regulated the working of India's top anti-corruption investigating agency, the Central Bureau of Investigation. Apart from that, the main issue was that the current prosecution mechanism for investigating allegations of corruption against suspected government workers with the level of joint secretary or higher. The Hon'ble Supreme Court convened a five judge constitutional bench to rule on the subject, ruling that the need of obtaining the Central Vigilance Commission's (CVC) approval before beginning any investigation into allegations of corruption against senior level civil servants was unconstitutional.

Main issue

The National Democratic Alliance (NDA) government, led by Prime Minister Atal Bihari Vajpayee, decided to challenge the Hon'ble Supreme Court's 1998 three-judge bench verdict in the matter of *Vineet Narain & Ors. v. Union of India*. The 'Single Directive No. 4.7' was found to be arbitrary and in violation of Article 14 of the Constitution, which ensures equal treatment and equal protection under the law. In addition, judgment included various recommendations for improving the CBI's and Enforcement Directorate's operations. The intentional decision by the NDA administration to provide statutory stature to the Central Vigilance Commission via enacting *Central Vigilance Commission Act, 2003* changed this previously well-established stance. In addition, the clause of the *Delhi Special Police Establishment Act, 1946* was also amended. Both the CBI and CVC trace their beginnings to executive orders issued in 1963 and 1964 respectively. Despite this, there has always been a pressing need to enhance their position by providing them with their legislative powers and status, which successive administrations have failed to provide.

As a result of the ensuing vacuum, the NDA administration passed the *Central Vigilance Commission Act (CVC Act)* in 2003, which included the reintroduction of the 'Single Directive' under Section 26C. By inserting Section 6A, the *Delhi Special Police Establishment Act*, which is widely regarded to be the legislative pedestal of the CBI, was also altered.

Here, it is insightful to observe that what Supreme Court had struck down earlier in 1998 in the *Vineet Narain* ruling was just an executive direction or resolution in the form of Single Directive, but now a legal authorization is accorded to the 'Single Directive' (with the stamp of Parliamentary approval) thereby giving strong defense to senior officials. The government's principal argument in support of the

above-mentioned viewpoint was that such protection was necessary for top rank officials to act efficiently in an autonomous manner without fear of being punished in connection with their decision-making. This was seen as a way of shielding top bureaucrats from any investigation into claims of corruption if surfaced against them. As a result, the Central Government has made it mandatory for the CBI to obtain the prior consent of appropriate government authorities before even beginning a preliminary investigation into allegations of corruption against officers in all civil services with the rank/grade of Joint Secretary or higher. This viewpoint indicated that, going forward, the destiny of corrupt officials would be decided in the end by senior babus themselves, who will decide whether or not one of their own group members is qualified to be investigated for corruption allegations. The reintroduction of the 'Single Directive', which was really believed to be a clever and shrewd step under the guise of protecting the environment, had such terrible consequences.

However, this, too, does not last long. Following that, in February 2005, Dr. Subramanian Swamy and the Centre for Public Interest Litigation (CPIL), led by advocate Prashant Bhushan, challenged the constitutional validity of the Section 26C of the CVC Act and Section 6A of the DSPE Act in a series of Public Interest Litigations, claiming that they were arbitrary and violated Article 14 of the Constitution, which guarantees equal treatment under the law to all people. The Supreme Court referred the matter to a Constitution Bench, which would address the following key issues among others:

"Whether a law or any portion of a law enacted by Parliament can be struck down by the Supreme Court for being arbitrary or unreasonable or manifestly arbitrary or manifestly unreasonable just like executive resolutions and directions issued by the Government on ground of being arbitrary or unreasonable when tested against the fundamental right to equal protection or treatment guaranteed under Article 14 of the Constitution of India?"

In short, the issue was whether the impugned provisions violated the rule of law by classifying some category of individuals as belonging to the privileged class?

Decision of Hon'ble Supreme Court

During the fag end of the tenure of United Progressive Alliance (UPA) government in May 2014 five judge bench of the Hon'ble Supreme Court was constituted to decide these petitions. The court analyzing the factual matrix of the case declared that 'Single Directive' contained in the CVC Act and the DSPE Act is violative of Article 14 of the Constitution of India. Thus, this was the second time when the apex court announced it unconstitutional.

Taking into consideration the basis of the decision it was observed that Supreme Court had even previously ruled in catena of judgments that a law enacted by the Parliament could be struck down on solely two grounds, namely:

- a. If the legal provision lacks legislative competency; and
- b. One or more of the fundamental rights guaranteed by the Constitution or any of its other provisions are violated.

In the present case in hand the Court stressed its decision on the point that breach of rule of law amounts to breach of the right to equality under Article 14 of the Constitution of India and thus is found to be a valid ground for striking it down as being unconstitutional. Theoretically speaking, Article 14 is an emanation of the concept of Republicanism in which the notion of praxis of the rule of law is entrenched. Therefore, the decision indicated that from now onwards all officers of whatever grade or rank in the Central Government would be treated equally for the purpose of inquiry into allegations of corruption against them. Simply just because of rank or grade of officer he/she should not be given any sort of preferential treatment.

Rationale behind Ruling

The bench straight away rejected the contention of the government that corrupts servants could be classified and differentiated on the basis of their rank or status in the bureaucratic hierarchy. How can two public servants against whom there are allegations of corruption or graft or bribe taking or criminal misconduct under the *Prevention of Corruption Act*, 1988 can be made to be treated contrarily because one happens to be a junior officer and the other a senior decision maker. It further observed that the decision-making level officers in Government i.e., Joint Secretary and above, Executive Directors of Banks and Chairman and Managing Directors of public sector undertakings couldn't be treated as exceptional class of persons requiring special protection. The court established that the differential underlying such classification was not sound because it did not meet the test of the doctrine of reasonable classification imbibed under Article 14 of the Constitution. The probity in public life is of utmost significance due to which the office of public power couldn't be anyway contemplated as the garage of personal benefits.

While passing the decision the Court in its findings said that all corrupt public servants are 'birds of the same feather'. The classification of bureaucrats into senior and junior or high and low does not eliminate public mischief; rather, it advances public mischief and protects the wrongdoer. It asserted that the provision of 'Single Directive' applied only to Central Government employees. It did not apply to officers of the All India civil services - IAS, IPS, IFoS etc. if they were posted with the State Governments. Also for cognizable crimes other than corruption, the police may investigate a public servant without requiring prior sanction of any authority. As a result, the 'Single Directive' was found to be clearly arbitrary and offensive to the concept and practice of the rule of law.

In addition to this, it also declared that the CBI being premier investigative authority must be insulated from all kinds of extraneous political interference and influence over its functioning but the same was again reintroduced by the legislature in the form of 'Single Directive'. IN this scenario, how it is expected from the CBI to move ahead in cases of severe violations of corrupt public servants if they could not even verify the allegations contained in the complaint through a preliminary inquiry. Moreover, it would not even be able to collect information in order to move the Government to give approval for prosecuting corrupt senior officers. Hence, it observed that the CBI's power to inquire and investigate a class of persons against complaints of corruption was subverted by the 'Single Directive'. Earlier the Court in Vineet Narain's case struck

down the justification for this exception in the name of protecting bona fide actions of senior officers. So there was no justification for approving it in a statutory framework. The court said that the final authority to decide whether to initiate inquiry into complaints of corruption or launch investigation into cases of corruption should be with the CBI. Thus, such classification of officers into groups is irrational.

It is to be noted that this issue is associated only with the stage of preliminary inquiry into a complaint of corruption against senior officers. The requirement under Section 197 of the *Criminal Procedure Code* and Section 19 of the *Prevention of Corruption Act* states that no Court shall take cognizance of a case against any public servant until the sanction for prosecution accorded by the competent authority stands intact. The Court has upheld the validity of these statutory requirements in several cases.

Both Vineet Narain and Subramaniam Swamy judgment pertains to the issue of seeking prior approval of the competent authority for conducting a preliminary inquiry into a complaint of corruption before a formal investigation is launched against a senior rank officer. In a preliminary inquiry mainly records relating to the complaint are perused and some interaction is done with concerned officers. Albeit, this does not amounts to collection of evidence in the strictest sense as it is done only during a formal investigation.

Exception permitted by the Court

However the Supreme Court upheld the validity of the rule laid down in its earlier judgments with regard to inquiry/investigation of allegations of corruption against judges of the High Courts and the Supreme Court. Even registering an FIR against a serving judge of the constitutional courts would require the prior approval of the concerned Chief Justice. The Court held that such safeguards were necessary to protect the independence of the judiciary. Senior civil servants could not be equated with members of the higher judiciary. With the greatest respect to the wisdom of the Court it must be submitted that the Court did not go into the issue of public perception about corruption in courts nor did it examine whether exempting judges in this manner was based on rational differentia and was not a breach of the rule of law. Thus, a complaint of corruption against a serving judge of the High Court or the Apex Court cannot be inquired into by anybody except with the prior approval of the concerned Chief Justice.

In the light of above mentioned this is why there is an extreme need to have law on Judicial Accountability to establish a mechanism for inquiring/investigating complaints of corruption made against serving judges of High Courts and the Supreme Court. An independent and high-powered body of individuals of impeccable integrity must be created to look into such complaints otherwise the higher judiciary is in serious danger of perpetuating the anomaly that it chose to strike down in the executive sphere. Both the UPA Government and the Opposition Parties missed the opportunity to enact such a law that was pending in the Rajya Sabha before elections. Unfortunately, with the dissolution of the Lok Sabha after the election results are announced, this Bill lapsed. An opportunity had been unexploited despite the fact that public pressure was mounted by several organizations including the National Campaign for People's Right to Information to enact a

strong law to probe charges of corruption against members of the higher judiciary.

Prevention of Corruption (Amendment) Act, 2018

Following Dr. Subramanian Swamy's 2014 decision, the government introduced the third most significant change in the form of a modification to the country's 30 year old anti-graft statute *viz. Prevention of Corruption Act, 1988*. On July 26, 2018, the president signed the Prevention of Corruption (Amendment) Bill of 2013, which was adopted by both houses of parliament. This transformation though echoed a joyful shout in the corridors of bureaucracy, but it also made the task for investigating agencies much more difficult, as they would now need the government's approval as a mandate before beginning any kind of interrogation or investigation against suspected bureaucrats. As a result of this change, CBI will now have to spend the majority of its time scouring the government for confirmations.

Nonetheless, this shift is seen as a deliberate step towards establishing a mature anti-corruption framework in accordance with the United Nations Convention Against Corruption, but it also ensured on going political influence in corruption cases through the use of a 'single directive'. Even having ruled down twice by the Hon'ble Supreme Court in the form of newly added Section 17A of the *Prevention of Corruption Act, 1988*, the 'Single Directive' was restored for the third time by amendment.

As per the wording of the newly added Section 17 A of the *Prevention of Corruption (Amendment) Act, 2018* no inquiry or investigation can be undertaken without the prior consent in the case of a person who is or was employed, at the time when the alleged act was committed. This has been deemed to be significantly worse position than the previous 'Single Directive' under Section 6A, which required the CBI to obtain prior government approval before conducting investigations into personnel at the Joint Secretary level and higher. Following the proposed amendment, the new Section 17A will require such consents for all levels of bureaucrats to be investigated. Furthermore, the CBI will now require prior government permission at both the investigation and prosecution stages, thereby giving corrupt officials with the blanket shield of protection

In terms of the text of this provision, it is clear that this revision has resulted in a noteworthy transference in the idea of Single Directive. It is important recalling Dr. Subramanian Swamy's 2014 decision on the direct implication of 'previous approval'. The concept of prior permission has the unintended consequence of putting officers under investigation on notice before the investigation begins. A preliminary enquiry is used to determine whether or not there is a prima facie case for further investigation. If the CBI is unable to conduct a preliminary investigation, a fetter is imposed to allow the CBI to acquire pertinent information. How can the case proceed ahead if the CBI is not even authorized to verify complaints via preliminary inquiry? By virtue of this, in fact, the CBI is unable to collect the necessary information to move the government in order to obtain prior consent from the Central Government.

The viability of this clause, like the problems outlined above, is being challenged in a slew of petitions before several state High Courts and the Supreme Court. In this regard, the Hon'ble Supreme Court has issued a notice to

the Central Government, requesting a response in a petition challenging key parts of the Act, especially Section 17(A)(1), which requires prior approval before examining certain categories of public employees. While it may take some time before this issue is resolved, objections to the nascent law demonstrates that it is not without flaws. As a result, our anti-corruption legislative environment is still very much in flux.

Conclusion

The government has introduced the defensive clause in the form of 'Single Directive' in favour of public servants, although it has elicited numerous negative reactions from the public and legal community. Despite the public's reaction it cannot be denied that this provision is not entirely malicious, but it is obviously cognizant of the special nature of a public servant's work. The same is validated by the fact that one of the most upsetting practices of police harassment in criminal investigation is incriminating guiltless innocent persons in malicious crimes. This is why 'Single Directive' provision obligates police officers to seek prior approval from the appropriate government authority before launching any kind of inquiry into any offence committed by the incumbent and former public servants. The above-mentioned approval is required to be sought from the relevant union or state government in whose employment the accused has committed the offence. While the *Prevention of Corruption Act, 2018* requires the concerned authority's approval within three months of the investigative authority's filing of an application, which can be further extended by one month, there is no denying that it has resulted in the fading influence of the investigative authority's, preventing urgent prosecutions. However, such prior consent is not required in circumstances where public servants are caught 'red-handed' taking or attempting to take any unfair advantage for themselves or others.

Hence, this rule can be considered to have curtailed the abilities of a primary investigative authority – the CBI- from proceeding further in any case. While the CBI is free to pursue other matters without such constraints, it is unable to proceed with investigations into corruption charges under the *Prevention of Corruption Act*, for which it was created explicitly, due to the direct impact of single directive. More specifically, when it comes to the Lokpal, its whole function is confined to corruption cases punishable under the same statute, namely the *Prevention of Corruption Act, 1988* and is therefore directly governed by the Single Directive. As a result, it can be said that the single command has left an indelible and ubiquitous impression on the country's democratic structure. It is vital to eradicate this as quickly as possible before it causes havoc with the country's governance system, in order to provide the impression of legitimacy in the fight against corruption.

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