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The Lok Pal Bill Debate:

Lack of accountability, not Anna Hazare's fast, should be the focus

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1. Executive summary: Non-governmental organizations and individuals must focus on the lack of accountability

As Anna Hazare led *India Against Corruption* movement captures people's outrage against corruption, in the last few days, the focus has shifted towards the fast undertaken by Anna Hazare. Many political leaders and corporate honchos described Anna Hazare's ongoing fast as "blackmail" and "a threat to the parliamentary democracy". Prominent writers, intellectuals, film makers and Shahi Imam of Jama Masjid questioned Hazare for his alleged political association with the right wing political parties. A prominent Dalit activist wants to start "Save the Constitution" movement. Civil society activists serving in the National Advisory Council have accused Hazare of silencing dissent. While Hazare has certainly been playing the game of brinkmanship for adoption of an effective Lok Pal Bill, attacking Anna Hazare and his team has become the latest fashion in the civil society circles.

The non-governmental organizations and individuals are once again missing the woods from the trees: the successive governments whether led by the Congress, Bharatiya Janata Party or any other alliance had/have no commitment to end corruption. The statement of Prime Minister Dr Man Mohan Singh on 22 August 2011 that there is no single solution to corruption is another testimony to the lack of political will.

Contrary to the assertion of Prime Minister, accountability is the only solution to corruption. However, successive governments have provided impunity to corruption and other human rights violations through the regime of prior sanction for prosecution of the accused.

In the wake of the Bofors scandal in 1998, the government of India enacted a new Prevention of Corruption Act. However, it was doomed to fail as under Section 19 of the Act, public servants were provided immunity by making it mandatory to seek prior sanction from concerned authorities for prosecution of those accused of corruption.

That the Prevention of Corruption Act, 1988 failed to address stands exposed from the official statistics of the Government of India and its agencies.

It is a common knowledge that corruption has multiplied since liberalisation of the Indian economy in 1990s. Surprisingly, the number of cases registered by the CBI have been decreasing regularly. According to the Annual Reports of the CBI, it registered 1,116 cases in 1990 followed by 1,180 cases in 1991; 1,231 cases in

1992; 1,282 cases in 1993; 1,106 cases in 1994; 825 cases in 1995; 845 cases in 1996; 746 cases in 1997; 884 cases in 1998; 935 cases in 1999; 921 cases in 2000; 858 cases in 2001; 756 cases in 2002; 707 cases in 2003; 758 cases in 2004; 827 cases in 2005; 719 cases in 2006; 610 cases in 2007; 752 cases in 2008; 840 cases in 2009 and 731 cases in 2010.

The abysmal rate of prior sanction given for prosecution vis-à-vis number of cases against corruption registered is scandalous. The Central Vigilance Commission (CVC), country's main anti-corruption body, registered 77,925 cases during 1996-2009 i.e. 4263 cases in 1996; 4304 cases in 1997; 5076 cases in 1998; 6141 cases in 1999; 6285 cases in 2000; 6774 cases in 2001; 6465 cases in 2002; 6993 cases in 2003; 5987 cases in 2004; 5394 cases in 2005; 4798 cases in 2006; 4941 cases in 2007; 4721 cases in 2008; and 5783 cases in 2009.

Out of the 77,925 cases registered, the government has given permission to prosecute only in 1,348 cases i.e. in 1.73% of the registered cases. The annual break-up of the sanctions were as follows: 1 case in 1996; 12 case in 1997; 27 cases in 1998; 60 cases in 1999; 51 cases in 2000; 53 cases in 2001; 51 cases in 2002; 127 cases in 2003; 120 cases in 2004; 141 cases in 2005; 150 cases in 2006; 192 cases in 2007; 138 cases in 2008 and 225 cases in 2009.

As to how many of these 1.73% cases led to actual conviction is a matter of conjecture

Though the Supreme Court of India has given numerous judgements stating that previous sanction is not necessary, it had little or no impact. Prior sanction remains mandatory! The CVC in its website further states that only 52 cases were pending sanction for prosecution from various ministries of the Government of India for over four months as of 28 February 2011. Earlier, in December 2010, Attorney General Mr G E Vahanvati told the Supreme Court of India in the 2G Spectrum allocation scam case that request for sanction for prosecution were pending only in 126 cases involving 319 public servants of the Central Government.

The UPA government seeks to provide the same impunity in the Draft Lok Pal Bill 2011 by treating the public servants who exercise sovereign powers of the State as vulnerable as the Dalits and tribals, undoubtedly the most oppressed in the country. Section 50 of the Draft Lok Pal Bill dated 21 June 2011 provides that *“whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which shall not be less than two years but which may extend to five years and with fine which shall not be less than twenty five thousand rupees but which may extend to two lakh rupees”*.

Section 51 of the Draft Lok Pal Bill further *“makes every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the society or association of persons or trust, for the conduct of the business or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust”* liable for offences under the Section 50.

These provisions have been actually lifted from the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 which under Section 3 states that *whoever not being a member of a Scheduled Caste or a Scheduled Tribes “(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe” and “(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe” “shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”*

Nothing could be more ironical than the government of India providing the same protection to the public servants who exercise the sovereign powers of the State as provided to the most down-trodden and oppressed class in the society. If such provisions are allowed to be adopted, less number of cases of corruption will be filed than current ones being filed under the existing Prevention of Corruption Act, 1988. These provisions would only promote further corruption.

As the Government of India has no political will to address corruption, it introduced the flawed Lok Pal Bill which has been rejected by half of the members in the drafting committee i.e. civil society members. The least the government of India could have done was to reflect the views of both the government and the civil society members for the parliament to decide.

Consequently, the current impasse has been created as Anna Hazare resorted to fast to press for an effective Lok Pal.

While parliament remains supreme for law-making body and Asian Centre for Human Rights will submit its comments through mechanisms established by the parliament, the government of India should take the following measures to break the impasse it created:

First, the government of India should withdraw the Draft Lok Bill, 2011 and dissolve the Parliamentary Standing Committee set up to consider the Bill.

Second, the government of India thereafter should form a new Drafting Committee consisting of previous members of the drafting committee from the Government and civil society groups (Team Anna) in addition to the representatives of the political parties and wider civil society organisations. The revised draft adopted by the new Drafting Committee shall be placed before the parliament; and the parliament if it so feels necessary can refer the revised Bill to a new Parliamentary Standing Committee to include further inputs from political parties and wider civil society groups.

Third, all these must be done within a reasonable but specific time frame to address legitimate fears of dilly-dallying by the government.

Fourth, if the above conditions are met, Anna Hazare should call off the fast.

Any Lok Pal Bill that fails to establish accountability regime will not address the scourge of corruption. The prior sanction regime undermines independence of judiciary as it is the officials and not the judges who determine whether prosecution should proceed based on the evidence on record. It is an insult to the judiciary and exposes the government's lack of faith in the judiciary.

Suhas Chakma
Director

2. Impunity under the Prevention of Corruption Act, 1988: Missing the wood from the trees

The Prevention of Corruption Act was indeed the second Act to have been enacted by independent India in 1947 considering its negative impact in all aspects of India.

In 1988, the government of India enacted the Prevention of Corruption Act (PCA) in place of Prevention of Corruption Act, 1947. The 1988 Act made taking gratification other than legal remuneration in respect of an official act (Section 7); taking gratification, in order, by corrupt or illegal means, to influence public servant (Section 8); taking gratification for exercise of personal influence with public servant (Section 9); Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant (Section 11) and Criminal misconduct by a public servant (Section 13) as punishable offences. The Act further provided for appointment of Special Judges (Section 3) and empowered the Special Judges to try summarily (Section 6) in certain situations.

That the Prevention of Corruption Act, 1988 failed to address corruption stands exposed from the official statistics of the Government of India and its agencies.

I. Rising corruption but decreasing number of cases registered by the CBI

India's premier investigating agency, the Central Bureau of Investigation (CBI), registered a total of 18,629 cases during 1990 to 2010. In comparison, the Anti-Corruption Bureaus (ACB) of different states and Union Territory Administrations registered a total of 57,851 cases during 1988-2009 under the Prevention of Corruption Act, 1988.

What is disconcerting is the reduction in the number of cases registered by the CBI despite the common knowledge of increasing corruption, both in numbers and size, in the post liberalisation period. The number of registered by the CBI are decreasing is an admitted fact.

According to various reports of the CBI, it registered 1,116 cases in 1990¹; 1,180 cases in 1991²; 1,231 cases in 1992³; 1,282 cases in 1993⁴; 1,106 cases in 1994⁵; 825 cases in 1995⁶; 845 cases in 1996⁷; 746 cases in 1997⁸; 884 cases in 1998⁹;

¹ . <http://ncrb.nic.in/ciiprevious/Data/CIII1990/cii-1990/ANNEXUREs.pdf>

² . <http://ncrb.nic.in/ciiprevious/Data/CII1991/CII-1991/annexures.pdf>

³ . <http://ncrb.nic.in/ciiprevious/Data/CII1992/CII-1992/annexures.pdf>

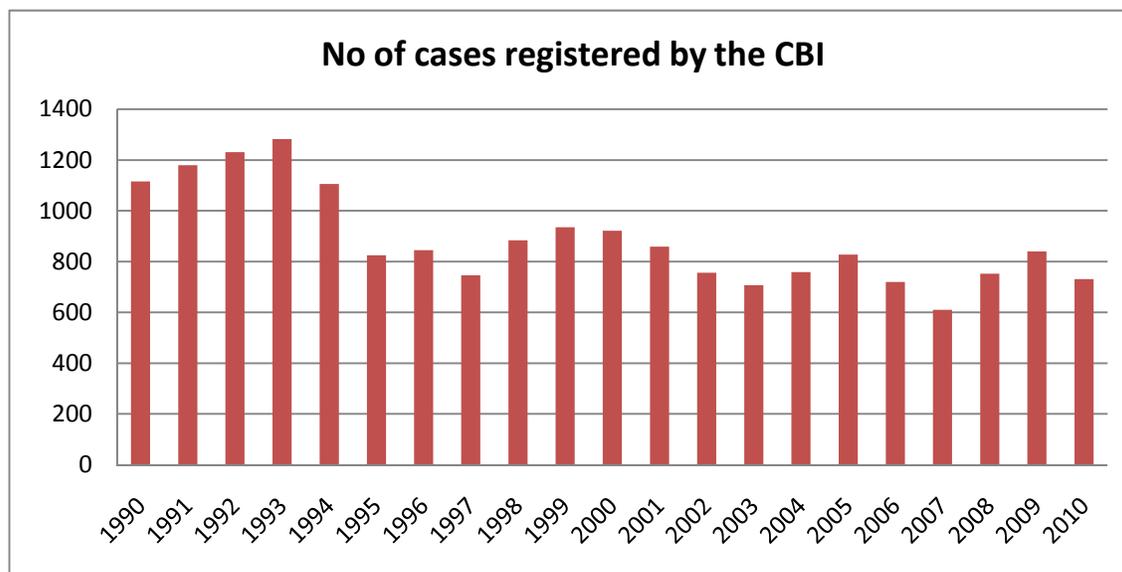
⁴ . <http://ncrb.nic.in/ciiprevious/Data/CII1993/CII-1993/annexures.pdf>

⁵ . <http://ncrb.nic.in/ciiprevious/Data/CII1994/cii-1994/ANNEXURES.pdf>

⁶ . <http://ncrb.nic.in/ciiprevious/Data/CII1995/cii-1995/ANNEXUREs.pdf>

935 cases in 1999¹⁰; 921 cases in 2000¹¹; 858 cases in 2001¹²; 756 cases in 2002¹³; 707 cases in 2003¹⁴; 758 cases in 2004¹⁵; 827 cases in 2005¹⁶; 719 cases in 2006¹⁷; 610 cases in 2007¹⁸; 752 cases in 2008¹⁹; 840 cases in 2009²⁰ and 731 cases in 2010²¹.

Table 1: Chart showing decrease in the number of cases registered by CBI



According to the National Crime Records Bureau (NCRB) under the Ministry of Home Affairs, the cases registered by the Anti-Corruption Bureaus (ACBs) of different states and Union Territories have however been increasing. The cases registered by ACBs of different States and UTs registered are: 2,876 cases in 1988²²; 1,306 cases in 1989²³; 1,831 cases in 1990²⁴; 1,708 cases in 1991²⁵; 1,772

⁷ . <http://ncrb.nic.in/ciiprevious/Data/CII1996/cii1996/cii-1996/CHAPTER-17-%20ECONOMIC%20OFFENCES.pdf>

⁸ . <http://ncrb.nic.in/ciiprevious/Data/CII1997/cii1997/cii-1997/ANNEXURE-%20I%20CENTRAL%20BUREAU%20OF%20INVESTIGATION%20POLICY%20&%20CO-ORDI.pdf>

⁹ . <http://ncrb.nic.in/ciiprevious/Data/CII1998/cii1998/cii-1998/ANNEXURE.pdf>

¹⁰ . <http://ncrb.nic.in/ciiprevious/Data/CII1999/cii1999/cii-1999/ANNEXURE-I.pdf>

¹¹ . <http://ncrb.nic.in/ciiprevious/Data/CD-CII2000/CONTENTS/CONTENTSCH.htm>

¹² . <http://ncrb.nic.in/ciiprevious/data/cd-CII2001/home.htm>

¹³ . <http://ncrb.nic.in/ciiprevious/data/cd-CII2002/cii-2002/C-CHAP9.htm>

¹⁴ . <http://ncrb.nic.in/ciiprevious/data/cd-CII2003/cii-2003/CHAP9.pdf>

¹⁵ . <http://ncrb.nic.in/ciiprevious/data/cd-CII2004/cii-2004/CHAP9.pdf>

¹⁶ . <http://ncrb.nic.in/ciiprevious/Data/CD-CII2005/cii-2005/CHAP9.pdf>

¹⁷ . <http://ncrb.nic.in/ciiprevious/Data/CD-CII2006/cii-2006/CHAP9.pdf>

¹⁸ . http://cbi.nic.in/annualreport/cbi_annual_report_2007.pdf

¹⁹ . http://cbi.nic.in/annualreport/cbi_annual_report_2008.pdf

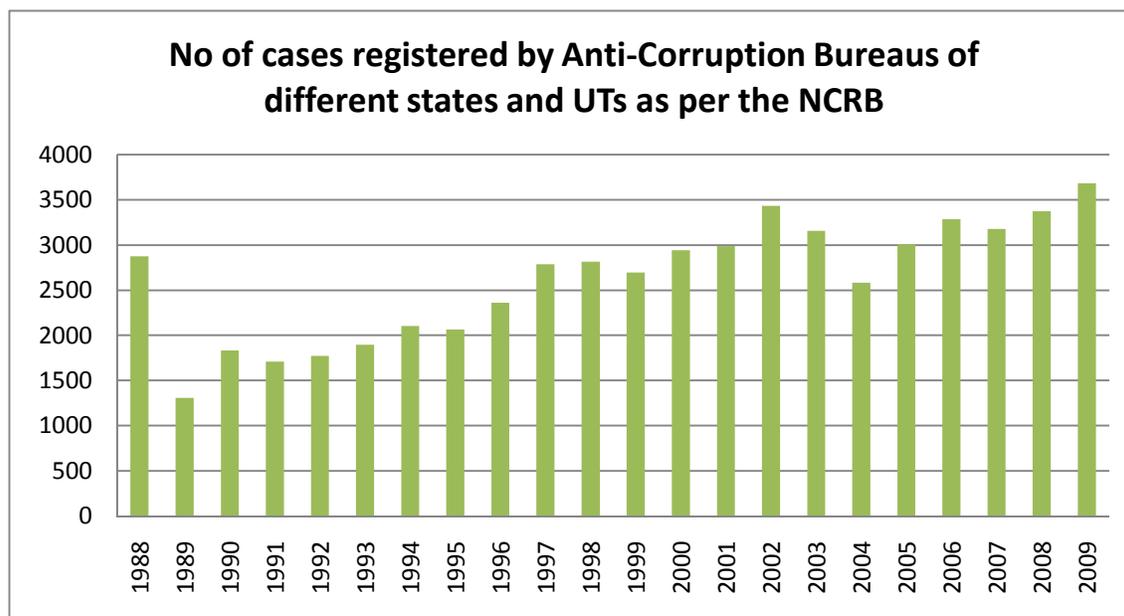
²⁰ . http://cbi.nic.in/annualreport/cbi_annual_report_2009_01.pdf

²¹ . http://cbi.nic.in/annualreport/cbi_annual_report_2010.pdf

²² . <http://ncrb.nic.in/ciiprevious/Data/CII1988/cii-1988/Table-69.pdf>

cases in 1992²⁶; 1,895 cases in 1993²⁷; 2,104 cases in 1994²⁸; 2,064 cases in 1995²⁹; 2,361 cases in 1996³⁰; 2,788 cases in 1997³¹; 2,817 cases in 1998³²; 2,696 cases in 1999³³; 2,943 cases in 2000³⁴; 2,990 cases in 2001³⁵; 3,432 cases in 2002³⁶; 3,158 cases in 2003³⁷; 2,585 cases in 2004³⁸; 3,008 cases in 2005³⁹; 3,285 cases in 2006⁴⁰; 3,178 cases in 2007⁴¹; 3,371 cases in 2008⁴²; and 3,683 cases in 2009⁴³.

Table 2: Chart showing increase in the number of cases registered by the ACBs of States and UTs



²³ . <http://ncrb.nic.in/ciiprevious/Data/CII1989/cii-1989/Table-69.pdf>
²⁴ . <http://ncrb.nic.in/ciiprevious/Data/CII1990/cii-1990/Table-69.pdf>
²⁵ . <http://ncrb.nic.in/ciiprevious/Data/CII1991/CII-1991/table-69.pdf>
²⁶ . <http://ncrb.nic.in/ciiprevious/Data/CII1992/CII-1992/table-73.pdf>
²⁷ . <http://ncrb.nic.in/ciiprevious/Data/CII1993/CII-1993/table-82.pdf>
²⁸ . <http://ncrb.nic.in/ciiprevious/Data/CII1994/cii-1994/TABLE-92.pdf>
²⁹ . <http://ncrb.nic.in/ciiprevious/Data/CII1995/cii-1995/Table-92.pdf>
³⁰ . <http://ncrb.nic.in/ciiprevious/Data/CII1996/cii1996/cii-1996/Table-92.pdf>
³¹ . <http://ncrb.nic.in/ciiprevious/Data/CII1997/cii1997/cii-1997/CHAPTER-9%20ECONOMIS%20OFFENCES.pdf>
³² . <http://ncrb.nic.in/ciiprevious/Data/CII1998/cii1998/cii-1998/CHAPTER-9.pdf>
³³ . <http://ncrb.nic.in/ciiprevious/Data/CII1999/cii1999/cii-1999/CHAPTER-9.pdf>
³⁴ . <http://ncrb.nic.in/ciiprevious/Data/CD-CII2000/CONTENTS/CONTENTSCH.htm>
³⁵ . <http://ncrb.nic.in/ciiprevious/data/cd-CII2001/home.htm>
³⁶ . <http://ncrb.nic.in/ciiprevious/data/cd-CII2002/cii-2002/C-Table%209.1.htm>
³⁷ . <http://ncrb.nic.in/ciiprevious/data/cd-CII2003/cii-2003/Table%209.1.pdf>
³⁸ . <http://ncrb.nic.in/ciiprevious/data/cd-CII2004/cii-2004/Table%209.1.pdf>
³⁹ . <http://ncrb.nic.in/ciiprevious/Data/CD-CII2005/cii-2005/Table%209.1.pdf>
⁴⁰ . <http://ncrb.nic.in/ciiprevious/Data/CD-CII2006/cii-2006/Table%209.1.pdf>
⁴¹ . <http://ncrb.nic.in/ciiprevious/Data/CD-CII2007/cii-2007/Table%209.1.pdf>
⁴² . <http://ncrb.nic.in/CII2008/cii-2008/Table%209.1.pdf>
⁴³ . <http://ncrb.nic.in/CII-2009-NEW/cii-2009/Table%209.1.pdf>

II. Sanction for prosecution given only in 1.73% cases of the CVC

As stated above, Section 19 of the Prevention of Corruption Act, 1988 provides that “*No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction*” of the concerned authorities.

This has been effectively used to provide absolute impunity to the government officials.

According to the Central Vigilance Commission, out of the 77,925 cases registered during 1996-2009, only in 1348 cases i.e. in 1.73% cases, the competent authorities in various Central Government organizations issued sanctions for prosecutions.

The CVC in its website further states that only 52 cases were pending sanction for prosecution from various ministries of the Government of India for over four months as of 28 February 2011.⁴⁴ Earlier, in December 2010, Attorney General Mr G E Vahanvati told the Supreme Court of India in the 2G Spectrum allocation scam case that request for sanction for prosecution were pending only 126 cases involving 319 public servants of the Central Government.⁴⁵

The **comparative chart** of cases registered and sanction for prosecution given to the CVC are given below:

Year	No of cases registered	No of cases sanction granted
1996	4263 ⁴⁶	1 ⁴⁷
1997	4304 ⁴⁸	12 ⁴⁹
1998	5076 ⁵⁰	27 ⁵¹
1999	6141 ⁵²	60 ⁵³
2000	6285 ⁵⁴	51 ⁵⁵

⁴⁴ . http://www.cvc.nic.in/spp_cbi_31032011.pdf

⁴⁵ . 126 graft cases awaiting sanction for prosecution, Centre tells Court, The Hindu, 4 December 2010

⁴⁶ . <http://cvc.gov.in/ar2005.pdf>

⁴⁷ . <http://cvc.gov.in/annualreport2k/ar2000.pdf>

⁴⁸ . <http://cvc.gov.in/ar2005.pdf>

⁴⁹ . <http://cvc.gov.in/annualreport2k/ar2000.pdf>

⁵⁰ . <http://cvc.gov.in/ar2005.pdf>

⁵¹ . <http://cvc.gov.in/annualreport2k/ar2000.pdf>

⁵² . <http://cvc.gov.in/ar2005.pdf>

⁵³ . <http://cvc.gov.in/annualreport2k/ar2000.pdf>

2001	6774 ⁵⁶	53 ⁵⁷
2002	6465 ⁵⁸	51 ⁵⁹
2003	6993 ⁶⁰	127 ⁶¹
2004	5987 ⁶²	120 ⁶³
2005	5394 ⁶⁴	141 ⁶⁵
2006	4798 ⁶⁶	150 ⁶⁷
2007	4941 ⁶⁸	192 ⁶⁹
2008	4721 ⁷⁰	138 ⁷¹
2009	5783 ⁷²	225 ⁷³

⁵⁴ . Chart5: Number of cases received in the CVC during 2000-2009; available at:
<http://www.cvc.nic.in/AR2009.pdf>

⁵⁵ . <http://cvc.gov.in/annualreport2k/ar2000.pdf>

⁵⁶ . Chart5: Number of cases received in the CVC during 2000-2009; available at:
<http://www.cvc.nic.in/AR2009.pdf>

⁵⁷ . <http://cvc.gov.in/ar2005.pdf>

⁵⁸ . Chart5: Number of cases received in the CVC during 2000-2009; available at:
<http://www.cvc.nic.in/AR2009.pdf>

⁵⁹ . <http://cvc.gov.in/ar2005.pdf>

⁶⁰ . Chart5: Number of cases received in the CVC during 2000-2009; available at:
<http://www.cvc.nic.in/AR2009.pdf>

⁶¹ . <http://cvc.gov.in/ar2005.pdf>

⁶² . Chart5: Number of cases received in the CVC during 2000-2009; available at:
<http://www.cvc.nic.in/AR2009.pdf>

⁶³ . <http://cvc.gov.in/ar2005.pdf>

⁶⁴ . Chart5: Number of cases received in the CVC during 2000-2009; available at:
<http://www.cvc.nic.in/AR2009.pdf>

⁶⁵ . <http://www.cvc.nic.in/AR2009.pdf>

⁶⁶ . Chart5: Number of cases received in the CVC during 2000-2009; available at:
<http://www.cvc.nic.in/AR2009.pdf>

⁶⁷ . <http://www.cvc.nic.in/AR2009.pdf>

⁶⁸ . Chart5: Number of cases received in the CVC during 2000-2009; available at:
<http://www.cvc.nic.in/AR2009.pdf>

⁶⁹ . <http://www.cvc.nic.in/AR2009.pdf>

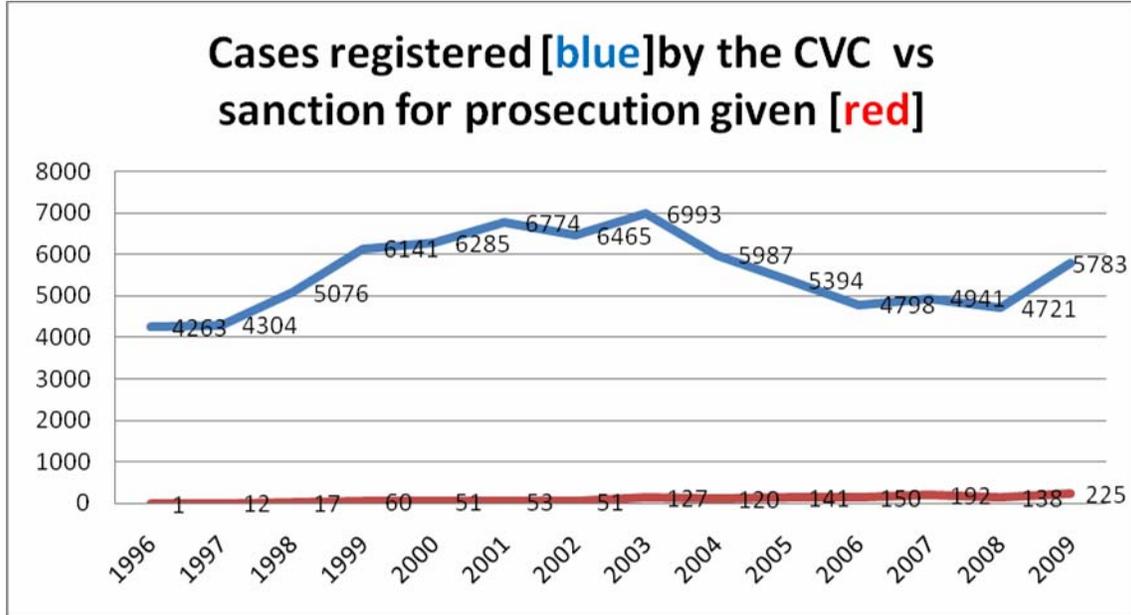
⁷⁰ . Chart5: Number of cases received in the CVC during 2000-2009; available at:
<http://www.cvc.nic.in/AR2009.pdf>

⁷¹ . <http://www.cvc.nic.in/AR2009.pdf>

⁷² . Chart5: Number of cases received in the CVC during 2000-2009; available at:
<http://www.cvc.nic.in/AR2009.pdf>

⁷³ . <http://www.cvc.nic.in/AR2009.pdf>

Table 3: Comparative chart of cases registered and sanction for prosecution given to the CVC



III. Supreme Court rulings against the requirement of prior sanctions are of little help

In a plethora of judgements the Supreme Court of India set landmark precedence on the issue of previous sanction for prosecution of public servants provided under section 19 of the Prevention of Corruption Act, 1988.

In a significant ruling on 6 December 2006, the Supreme Court held that public servants can be prosecuted without the mandatory government sanction for criminal acts, including corruption.⁷⁴ Dismissing the petitions of former Punjab Chief Minister Prakash Singh Badal, former Union Railway Minister Lalu Prasad Yadav, his wife and former Bihar Chief Minister Rabri Devi, former Kerala Chief Minister V S Achuthanandan, former Kerala Chief Minister K Karunakaran and former Punjab Deputy Chief Minister Rajinder Kaur Bhattal challenging their prosecution on the grounds of being without sanction, the Supreme Court held:

"the principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the government. The purpose for which they are performed protects these acts from criminal prosecution.

⁷⁴ . Don't need govt OK to probe Ministers, MPs for corruption, says SC, Indian Express, 7 December 2006; also available at: <http://www.indianexpress.com/news/dont-need-govt-ok-to-probe-ministers-mps-for-corruption-says-sc/18035/0>

However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant's own pleasure or benefit, such acts shall not be protected under the doctrine of state immunity."⁷⁵

On 14 September 2009, a Bench of Justice R.V. Raveendran and Justice B. Sudershan Reddy of the Supreme Court ruled that sanction by the Central or State government is not necessary to prosecute a public servant for an offence of abetment as provided under Section 12 under the Prevention of Corruption Act, 1988. The ruling came in the case of *Central Bureau of Investigation vs. Parmeshwaran Subramani & Anr* (Criminal Appeal No.1758 of 2009) against the judgement of the Goa Bench of the Bombay High Court which confirmed the order of the trial court for discharge of two public servants on the ground that prior sanction necessary for prosecution of an offence under Section 12 was not obtained. The Bench also held that "punishment of the offender in the interest of society being one of the objects behind penal statutes enacted for larger good of society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi."⁷⁶

However, in spite of such rulings, the regime of prior sanctions remains in statute book and practice.

⁷⁵ . SC opens door for the prosecution of politicians, Indlaw.com, 7 December 2006; available at: <http://www.indlaw.com/guest/DisplayNews.aspx?25193AB5-344E-44F2-9F87-9D6B25A36A82>

⁷⁶ . No sanction needed for prosecution: SC, The Hindu, 14 September 2009; also available at: <http://www.thehindu.com/news/national/article19836.ece?service=mobile>

3. Draft Lok Pal Bill, 2011: Public servants are as vulnerable as the Dalits and tribals!

In the Draft Lok Pal Bill, 2011, the government of India provides impunity to the public servants by other means.

Section 50 of the Draft Lok Pal Bill dated 21 June 2011 as introduced before parliament states,

“50.(1) Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which shall not be less than two years but which may extend to five years and with fine which shall not be less than twenty five thousand rupees but which may extend to two lakh rupees”.

Section 51 of the Draft Lok Pal Bill further makes “every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the society or association of persons or trust, for the conduct of the business or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust” liable for offences under the Section 50”.

At present only the Dalits and Tribals enjoy such protection because of their vulnerability. Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 states that *whoever not being a member of a Scheduled Caste or a Scheduled Tribes “(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe” and “(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe” shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.*”

Nothing could be more ironical than the government of India providing the same protection to the public servants who exercise the sovereign powers of the State as provided to the most down-trodden and oppressed sections of the society.

4. Recommendations for addressing Team Anna impasse and enactment of an effective Lok Pal Bill

While parliament remains supreme for law-making body and Asian Centre for Human Rights will submit its comments through mechanisms established by the parliament, the government of India should take the following measures to break the impasse it created:

Asian Centre for Human Rights provides the following recommendations to break the impasse:

First, the government of India should withdraw the Draft Lok Bill, 2011 and dissolve the Parliamentary Standing Committee set up to consider the Bill.

Second, the government of India thereafter should form a new Drafting Committee consisting of previous members of the drafting committee from the Government and civil society groups (Team Anna) in addition to the representatives of the political parties and wider civil society organisations. The revised draft adopted by the new Drafting Committee shall be placed before the parliament; and the parliament if so feels the necessity refer the Bill to a new Parliamentary Standing Committee to include further inputs from political parties and wider civil society groups.

Third, all these must be done within a reasonable but specific time frame to address legitimate fears of dilly-delaying by the government.

Fourth, if the above conditions are met, Anna Hazare should call off the fast.

Any Lok Pal Bill that fails to establish accountability regime will not address the scourge of corruption. The prior sanction regime undermines independence of judiciary as it is the officials and not the judges who determine whether prosecution should proceed based on the evidence on record. It is an insult to the judiciary and exposes the government's lack of faith in the judiciary.