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Q12

**Case study. Honesty and uprightness are the hallmarks of a civil servant. Civil servants possessing these qualities are considered as the backbone of any strong organization. In the line of duty, they take various decisions, at times some become bonafide mistakes. As long as such decisions are not taken intentionally and do not benefit personally, the officer cannot be said to be guilty. Though such decisions may, at times, lead to unforeseen adverse consequences in the long term. In the recent past, a few instances have surfaced wherein civil servants have been implicated for bonafide mistakes. They have often been prosecuted and even imprisoned. The instances have greatly rattled the moral fiber of the civil servants. How does this trend affect the functioning of civil services? What measures can be taken to ensure the honest civil servants are not implicated for the bonafide mistakes on their part? Justify your answer.**

UPSC Civil Services Mains 2019 · GS IV · 20 marks · Ethics Case Studies

Case Studies on above issues.

**Core demand of the question**

- Honesty and uprightness are hallmarks of a civil servant. Bonafide mistakes without personal gain have led to prosecution and even imprisonment, rattling the service
- How does this trend affect functioning of civil services? What measures can ensure honest civil servants are not implicated for bonafide mistakes? Justify

**Revision summary**

Jailing honest, no-gain mistakes causes paralysis, evasive notes, flight from hard posts and lower morale.

Zero tolerance that ignores intent, or blanket immunity, both fail.

Protect bonafide acts through mens rea, speaking orders, thoughtful prosecution sanction and departmental remedies.

**Keep the Prevention of Corruption Act, 1988** for undue advantage and bribery.

The State should also provide legal defence for genuine official acts so honesty is not a private cost.

## Introduction

A civil servant must be honest. Honesty still includes error, because a live file is not a laboratory. When bonafide mistakes without personal gain end in prosecution and jail, the service learns to hide, not to decide. The question is the damage and the lawful shield that does not become a shield for thieves.

## Body

### Stakeholders

- Honest officers who must still sign.
- Citizens who need a decision this month, not a perfect silence.
- The corrupt who will hide behind any new shield.
- Investigating agencies, courts, and the political executive.
- The public exchequer, which loses both from theft and from paralysis.

### Ethical issues

- Integrity versus courage to decide.
- Accountability for genuine graft versus terror for a forecast that failed.
- Justice for a harmed citizen when a good-faith order had a bad long-term effect.
- **Values:** honesty, fairness, courage, compassion, and responsibility.

### How the trend affects functioning

- **Decision paralysis:** officers send every file up, or wait for a committee, so that no single name is on the note.
- Delay becomes a survival skill. A bridge, a mine clearance, or a disaster purchase then happens too late, which is also a harm to life and **Article 21**.
- **The honest exit the field:** they seek "dry" postings, deputation, or resignation; the risk-loving corrupt remain, because they already price the lawyer.
- File notings become evasive. Advice that should be frank becomes a fog, which is a gift to the politicized minister.
- Innovation dies. No one pilots a new scholarship or a new health camp if a later auditor can call the pilot a conspiracy.
- **Morale and the moral fibre named in the stem:** cynicism, quietism, and the joke that integrity is stupidity.
- **Paradox:** over-criminalising error can increase corruption, because the remaining actors are those who can buy the process.
- Citizens meet either a frozen counter or a reckless officer who is politically covered - neither is the upright backbone the stem praises.

### Options

- **Option 1:** Leave the trend as "zero tolerance".
- **Merit:** fear among the actually corrupt.
- **Demerit:** fear among the honest; the stem's rattle continues.
- **Option 2:** Blanket immunity for all official acts.
- **Merit:** speed.
- **Demerit:** a licence to steal; the **Prevention of Corruption Act, 1988** would become a decoration.

- **Option 3:** Protect bonafide, no-gain decisions through sanction filters, written reasons, and a clear legal test of intent - the justified path.
- **Merit:** courage and accountability together.
- **Demerit:** requires skilled, independent sanctioning authorities, not a political veto.

### Measures, with justification

- Keep the criminal law for dishonest enrichment, bribery, and knowing abuse. The 2018 amendments to the **Prevention of Corruption Act, 1988** already moved "criminal misconduct" toward dishonest intention and undue advantage; investigators must be trained to use that line, not a failed forecast as a substitute for mens rea.
- Prior sanction for prosecution of public servants (**Section 197** of the Code of Criminal Procedure, 1973, and the corresponding idea in the new criminal procedure code) should be a real application of mind: was there personal gain, was the act in bona fide discharge of duty, was there a **speaking order**? Sanction should not be a political reward or a political revenge.
- Encourage speaking orders and collective recording of reasons so that a later court sees the information then available, not the wisdom of hindsight.
- Administrative inquiry first for error; criminal law for dishonesty. Mixing the two is what rattles the fibre.
- Civil liability and departmental penalty can still correct a costly mistake without a jail as the first tool.
- Stable tenure and civil services boards reduce the use of a First Information Report as a transfer by other means.
- A legal-assistance cell and insurance for bona fide official acts, paid by the State, so that an honest officer is not ruined by the first notice.
- Audit should distinguish procedural lapse, loss without gain, and loot. The Comptroller and Auditor General's own language of "irregular" versus "fraudulent" should guide police, not a television debate.
- **Training:** how to write a note that shows alternatives considered; how to recuse when a relative appears; how to buy in a disaster under the Finance Rules with a contemporaneous record.
- Whistle-blower and citizen remedies remain for real graft, so the shield is not a tomb for the truth.
- **Justification:** a Republic needs officers who will sign a lawful, reasoned order under uncertainty. Terror of hindsight makes cowards, not saints. A thief still has no right to that shield, because personal gain breaks the bonafide claim.

### Flow diagram

Bonafide error no gain -> Paralysis if jailed  
 Paralysis if jailed -> Citizen delay  
 Dishonest gain -> Prevention of Corruption Act  
 Bonafide error no gain -> Departmental and speaking order  
 Mindful sanction -> Error versus loot

## Conclusion

Prosecuting honest error without gain freezes the service, drives the upright out, and can even help the corrupt. The measure is not blanket immunity. It is a mens rea test, a speaking-order culture, thoughtful sanction, departmental correction of mistakes, and criminal law kept for dishonesty. That pair protects both the citizen and the backbone.

## Facts & figures

### **Prevention of Corruption Act, 1988, amendment 2018**

Narrowed criminal misconduct toward dishonest intention and undue advantage, which should guide the line between error and loot.

### **Section 197, Code of Criminal Procedure, 1973**

Requires prior government sanction to prosecute a public servant for acts in the supposed discharge of official duty; the application of mind is the ethical core.

### **Speaking order**

Recorded reasons that show what the officer knew then; the best later defence of a bonafide decision.

### **Article 311, Constitution of India**

Process protection against arbitrary dismissal; part of the same family as not treating every error as a crime.

### **Second Administrative Reforms Commission**

Warned that a climate of fear and indiscriminate vigilance harms honest decision-making; asked for a balance of accountability and courage.

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