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Repairing Institutions for the Adoption of Anti-Corruption Strategy by Variously-Sized Firms

A Case Study of Indian Customs

Mallika Mahajan

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Supervisor: Professor Hans-Heiner Kühne

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I pledge on my honor that I have not plagiarized, used unauthorized materials, given and/or received illegitimate help on this assignment, and hold myself accountable to the academic standards binding upon students of the MACS programme.

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Glossary

Terms Used	Definition
A posteriori	Relating to or denoting reasoning or knowledge which proceeds from observations or experiences
A priori	Relating to or denoting reasoning or knowledge which proceeds from theoretical deduction rather than from observation or experience
Bootstrapping	Bootstrapping is a statistical technique that falls under the broader heading of re-sampling. This technique involves a relatively simple procedure but repeated so many times that it is heavily dependent upon computer calculations. Bootstrapping provides a method other than confidence intervals to estimate a population parameter.
Bound Rates	Maximum rate of tariff allowed by World Trade Organization (WTO) to any member state for imports from another member state
Crore	Unit of measurement in India, used here to denote Indian currency. Crore is equivalent to ten million.
De Novo Adjudication	Directions by higher judicial forum to lower adjudicating officer to decide a case afresh
Deepavali	Hindu festival of lights
Grounded Theory	Theory which emerges from observed data in the field
Gutka	Gutka is a preparation of crushed areca nut, tobacco, catechu, paraffin wax, slaked lime and sweet or savory

	flavorings. Gutka is consumed by placing a pinch of it between the gum and cheek and gently sucking and chewing. It is considered responsible for oral cancer and other severe negative health effects.
Hamara Kya	Hindi phrase meaning What is in it for me? Common phrase for bribery.
Independent Samples T-Test	Compares the means of two independent groups in order to determine whether there is statistical evidence that the associated population means are significantly different.
Non-zero Probability	The chances of getting a no as reply is not possible
Obiter Dictum	A side remark in a judgement
Omerta	A code of silence about criminal activity and a refusal to give evidence to the police
Order in Original	The first decision on a SCN by an adjudicating authority
p-Values	The probability test to evaluate the statistical significance of a hypothesis. A p-value below 0.05 is considered statistically significant for a non-null hypothesis
Paisa	Lowest denomination of Indian Money
Plutocracy	Government policies are decided by the wealthy for their benefit
Prelevement Douane	French for bribery in Customs
Quasi-Judicial	When tax administrators perform judicial functions such as deciding cases of alleged violations of law in addition to their administrative and regulatory duties

Randomized Response Questions	It allows respondents to respond to sensitive issues (such as criminal behavior or sexuality) while maintaining confidentiality. For instance, a respondent may be asked to answer with yes if he actually did the activity or if he rolled a dice with number 4 and 6
Residual Rights Theory	There are some factors which are outside the contract and whosoever controls those factors emerges with more power over the other party
Sample Selection Bias	Sample selection bias is a type of bias caused by choosing non-random data for statistical analysis
Suo Moto	Acting on one's own motion
The Revised Arusha Declaration	Made by World Customs Organization concerning integrity in Customs
Triangulation	Triangulation is a method used by qualitative researchers to check and establish validity in their studies by analyzing a research question from multiple perspectives to arrive at consistency across data sources or approaches
Tullock Paradox	It means that value of bribes paid to bribe-seeker are always less than the gain achieved by the bribe-payer. Named after the Economist who first propounded it
Vignette Methodology	When an actual or hypothetical situation is presented to respondents in an interview to encourage them to give their perceptions/ impressions

Abstract

This is a study of adoption of anti-corruption as a corporate strategy by variously sized firms and its impact on the behavior of Customs. To the best of belief of the author, no such study has been done with regard to this theme. It is seen that if institutional inefficiencies exist, the adoption of anti-corruption as a corporate strategy gets limited to large firms. These large firms are particularly those either with business in markets of US and OECD countries, or those which operate with government backing or are a part of collective action groups or of a plutocracy. The other firms, particularly in the SME sector, pay bribes to circumvent the malfunctioning institutions. In this study the focus is on dispute resolution Customs' institutions. Global organizations such as WCO and WTO recommend the dispute resolution institutions as a means of grievance/corruption redressal. This study has found the opposite. With improper monitoring these institutions can themselves become sources of corruption. The firms which do not have capacities to withstand the institutional inefficiencies pay bribes just to avoid getting caught in their labyrinthine processes. Conversely, these institutions are used by Customs officers as a method of reprisal against honest firms. The whole system gets contaminated. The conclusion drawn is that institutional repair must precede any effort at encouraging implementation of anti-corruption strategy at all firm levels. A practical solution for institutional repair is given in the fifth chapter. It seeks, with the help of IT, to temper Customs officials' discretionary powers and engender accountability.

Key words: Large Firms, SME, Anti-Corruption, Corporate Culture, Litigation, SCN, Dispute Resolution Institutions, Pre-Clearance Problems

List of Abbreviations

AC	Assistant Commissioner
ACC	Air Cargo Complex
ACP	Accredited Client Program
ADC	Assistant Drug Controller
ADC	Additional Commissioner
ADR	Alternative Dispute Resolution
AEO	Authorized Economic Operator
AO	Adjudicating Officer
BE	Bill of Entry
BG	Bank Guarantee
BIFR	Board for Industrial and Financial Reconstruction
C&AG India	Comptroller and Auditor General of India
CA 1962	Customs Act 1962
CAPEXIL	Chemicals and Allied Products Export Promotion Council of India
CBEC	Central Board of Excise & Customs
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CHA	Customs House Agent
CM	Chief Minister

CMO	Chief Minister Office
DC	Deputy Commissioner
DMO	Dispute Management Organization
DGFT	Directorate General of Foreign Trade
EDI	Electronic Data Interchange
EO	Export Obligation
EODC	Export Obligation Discharge Certificate
EOU	Export Oriented Unit
EP Copy	Export Promotion Copy of Shipping Bill
EXIM	Export and Import
FY	Financial Year
GST	Goods and Services Tax
ICD	Inland Container Depot
IT	Information Technology
IT	Income Tax
JC	Joint Commissioner
L1/ L2/ L3	Level 1/ Level 2/ Level 3
MNC	Multinational Corporation
MRP	Maximum Retail Price
NOC	No Objection Certificate
OSPCA	On Site Post Clearance Audit
RLA	Regional Licensing Authority
RMS	Risk Management System

SB	Shipping Bill
SCN	Show Cause Notice
SEBI	Securities Exchange Board of India
SME	Small and Medium Enterprises
TARC	Tax Administrative Reform Commission
TFA	Trade Facilitation Agreement
UN	United Nations
WCO	World Customs Organization
WTO	World Trade Organization

Chapter 1: Introduction

Main Research Hypotheses

Within the broad category of customs corruption, research has been conducted deductively by concentrating on the payment of bribes by firm size. Linkage has been established of bribe payment by firm size and then by the inefficiency of the Indian Customs dispute resolution institutions.

1.1. Global Attention to Customs Corruption

Customs corruption has engaged attention at the international level. WCO's revised Arusha Declaration has identified ten factors, including Automation and Transparency as the methods to combat it. The Revised Kyoto Convention, in its Chapter 7, encourages use of IT as does the WTO's TFA (Trade Facilitation Agreement) in Article 10. None of these, however, go beyond the first levels of assessment and clearances of goods. As a part of Indian Customs department, the author knows that corruption in its grander and more virulent form exists at the core Customs decision-making level. Neither the international bodies nor any of the literature has scratched the surface at this level.

1.2. Lacuna

Whereas most countries have implemented the first-generation reforms for fast-tracking international trade such as prior filing of BEs (Bills of Entry), e-payment of duty, advance rulings, special procedures for perishable goods, risk management, post-clearance audit, grievance cells, single-window clearances, publicity of procedures, documents, and fees, no attention has been focused on the implementation of high standards of integrity in the area of Customs quasi-judicial decision-making.

The 'non-speak' about this is because of the collusive nature of corruption, with both the demand and supply side of corruption being self-interested in keeping the *Omerta*. Another reason could be that quasi-judicial authorities are adjudicators and simultaneously also function as the public authorities whom the taxpayer has to face on a day-to-day basis. Lastly, this research finds that these are highly technical legal issues where 'knowledge asymmetries' between the public and adjudicator, and between the principal and the agent leads to non-discovery.

1.3. The Problem at the Dispute-Resolving Institutional Level

There is a strong need for a repair here because despite various globally driven trade facilitation measures, considerable Indian trade remains locked in disputes.[1] More than four times the revenue collected in one year was disputed. This figure is exclusive of appeals at the Appellate Commissioner, Tribunal and Courts levels.[2] The disputed amount of tax is more than four times the annual customs duty collection as recently as 2015-2016. There are 8242 SCNs (Show Cause Notices), of which 2032, or 25%, are over one year old.[3]

Corruption in this area can be presumed to exist, given the frequent interaction of officials and trade in this area by way of personal hearings as well as the complicity of law and the importance of speedy clearances. It is interesting to note that of six FCPA investigations against India, as of June 30, 2016, one is of bribery of a judge of the CESTAT.[4] .

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[1] In India for the financial year 2015-16, total collection of customs revenue was Rs 2,10,317 crores, whereas Rs 9,38,867 crores were disputed.

[2] "Indirect Tax Collections During FY 2015-16", Annual Conference of Tax Administrators-2016, New Delhi, June 16-18, 2016, 1-9.

[3] "Pendency of Adjudication/Appeals Cases", Annual Conference of Tax Administrators-2016, New Delhi, June 16-18, 2016, 75-77.

[4] U.S. v. Pride Int'l, Inc., No. 4:10-cr-766 (S. D. Tex. 2010), https://www.sec.gov/litigation/litreleases/2010/lr21726.html.

1.4. Literature Review

The author has used sources such as online academic books, JSTOR, online journals, and even 'Goggled' for literature on the broad topic of judicial corruption but could locate few sources of information. Evidently in-depth research on corruption and its linkage with dispute resolution institutional failures has not been undertaken. The limited research undertaken is based on reported cases of corruption in the media. On the solution side, the literature gives importance to enhancing judicial accountability but no models are suggested. The author gives a viable and workable remedy within the framework of existing dispute resolution institutions.

1.5. Methodology

Most research on Customs corruption has used macro-level data existing by way of perception indices. Hence it is based on cross-country comparisons. Recently research has been undertaken to study the effect of Customs corruption on firm-level decision-making.

The author has gathered primary data by actually interviewing taxpayers with Customs experiences. The reticence of some of taxpayers has been overcome by study of associated documentary evidence available in CHA invoices and Balance Sheets. The details are given in the chapter on research methodology. As a consequence, what has emerged in this research is a quintessentially Indian firm-level experience of corruption in Customs. The author has studied its causes and offered a solution which could be easily fitted in a typical developmental context. The micro data's relevance on a macro-level has been evaluated by use of various statistical methods such as *bootstrapping, p- Values, and Independent Samples t-test analysis.*

Anecdotal evidence gathered during interviews combined with data from C&AG (Comptroller and Auditor General) and TARC reports (Tax Administration Reform Commission) have been used to highlight symptoms of malfunctioning in the Customs' dispute resolution institutions.

1.6. The Main Research Findings

Firstly, the author has co-related the size of the firm importing goods through Indian Customs and the existence/non-existence of an anti-corruption corporate strategy. It has been found that anti-corruption strategy at the corporate level primarily exists in large firms, and especially those firms which either import or export to the USA, Germany and other OECD countries, are government backed, or part of plutocracy or collective action groups.

Secondly, a linkage has been shown to exist between issuance of a SCN by Indian Customs and the size of the Indian firm engaged in importing goods. This research finds that it i's primarily large firms which have an established anti-corruption corporate strategy which have received SCNs from Indian Customs.

Thirdly, using primary data, it has been found that it's mainly the Indian SME which pays bribes to Indian Customs.

Fourthly, it has been found that the percentage of SCNs decided in favour of taxpayers is paltry. The majority of SCNs are confirmed in favour of Customs. Using primary data from four TARC reports, it has been argued that the dispute resolution institutions of Indian Customs are inefficient and laggard. Only firms with deep pockets can afford to go through the rigors of these institutions. It is not at all viable for an SME to enter into disputes with Indian Customs.

The main argument of this research is that if anti-corruption corporate strategy has to be adopted by all strata of Indian firms, institutional repair at the dispute

resolution level has to be undertaken on a priority basis. Without institutional repair, insistence on the anti-corruption strategy at all strata of firms will not be workable.

The above four findings are in the fourth chapter of this thesis. In the chapter on data analysis, the aforesaid findings are elucidated through data that has been collected at micro-level and also data from secondary sources such as C&AG and TARC reports.

1.7. The Suggested Solutions

By relying on the data from C&AG and TARC reports, the causes and symptoms of the malfunctioning of the dispute resolution institutions have been identified. The causes of inefficiency are that of principal-agent knowledge/information asymmetries, knowledge inertia, complexity of law, and lack of accountability. The Klitgaard formula of Corruption = Monopoly + Discretion – Accountability, has been fitted within these institutions. AOs (Adjudicating Officers) are more likely to be corrupted if they have: (1) A monopoly over dispute resolution, (2) They have sole discretion because they are not reviewed effectively, (3) They have no accountability if they chose not to follow set judicial precedents which are in favour of taxpayer.[5] A solution has been suggested based on this formula. The solution proposes dispute resolution institutional repair through the use of IT to reduce monopoly and discretion of AOs and induce accountability.

1.8. UNODC Bangalore Principles and the Suggested Solution

The UNODC's Judicial Integrity Group has given the Bangalore Principles of Judicial Conduct which lays a code against which the conduct of judicial officers may be measured. They list six principles of judicial conduct: independence, impartiality,

[5] Dory Reiling, *Technology for Justice: How Information Technology Can Support Judicial Reform (*Amsterdam: Leiden University Press, 2009), 217-218.

integrity, propriety, equality, competence, and diligence.[6] In the solution suggested in this research, a small amount of digression has been suggested from these principles for Customs AOs. The solution tempers the independence of Customs adjudicators with the necessity of following precedence. In short, an element of accountability has been introduced in their functioning. Susan Rose-Ackermann has found that increasing judicial independence in countries with weak institutions can be counterproductive because it has the potential to create moguls or oligarchs who will start clans, empires, and patronage systems of their own.[7] In the Indian Customs context, without a corresponding level of accountability, independence has become an instrument of reprisal against honest firms. The solution gives an interventionist mechanism *a priori* rather than at *a posteriori* stage.

1.9. Relevance

This research would have a wider, global relevance as Customs' corruption is prevalent the world-over. Even OECD countries like Belgium are not immune to it.[8] Although this is deductive research but it will have an inductive impact if the proposed remedies are found applicable in similarly afflicted countries. Relevance is foreseen particularly in similarly situated economies where a globally driven reform genda has been implemented without corresponding repair of associated institutions.

[6] Reiling, *Technology for Justice,* 213.
[7] Reiling, Technology for Justice.
[8] Arne Dormaels and Gudrun Vande Walle, "Preventing Corruption: Lessons Learned From Anti-Corruption Training for Belgian Customs and Excise Officers", *World Customs Journal 5,* no. 2 (2011): 35-47.

Chapter 2: State of the Art

2.1. Limited Studies

The literature on the broad topic of judicial corruption is not copious. If the field is further narrowed to Customs corruption, and limited only to Customs administrative decision making, this thesis is a first. The reasons, briefly reiterated, are that corruption is collusive and Customs officers' dual role as adjudicators and administrators of the Customs law makes it a very opaque topic.

If one desires to study Customs corruption from the firm-level perspective, one encounters the same difficulties. Empirical investigation into the attitudes of businesses towards corruption, firms' anti-corruption strategies, and the impact engendered by these strategies are beginning to emerge but remain just a handful. The importance of businesses' role in implementing anti-corruption strategies and thus leading to development of an anti-corruption movement cannot be over-stated.

2.2. The Causes of the Limited Studies

In the article, "Corruption in International Business: Understanding the Impact of Anti-Corruption Measures on a Company"[9], Carr and Outhwaite highlight the difficulty of researching corruption in the business sector. They list factors such as the nature of contact persons, sensitivity of the subject matter and negative impacts associated with the perceived salience of the subject, as constraining. They found that many times the companies chose to engage with research into corruption only when they deem the reporting organization to be aligned with their interests. This research shows the same congruence in the chapter on research methodology. There are stark differences though. The author has extensively covered the

[9] Indira Carr and Opi Outhwaite, *"Corruption in International Business: Understanding the Impact of Anti-Corruption Measures on Company*", accessed 7 September 2017, https://www.researchgate.net/publication/237254897.

business perspective whereas the cited research is based on surveys completed by very few businesses (four complete surveys). In fact, the paper concluded that the unwillingness of companies to engage with the surveys reflected their reluctance to engage with the anti-corruption agenda. The survey in the paper is limited to evaluating anti-corruption awareness through various measures. These measures are knowledge of various international and national anti-corruption laws of the countries in which they operate. The effect is studied in relation to a business's operation abroad. This study concentrates on how the size of a company determines whether it adopts an anti-corruption strategy. The impact is studied in relation to a business' dealings with Customs dispute resolution institutions. To give an equal playing field to all segments of business, it is imperative that the Customs institutions are repaired prior to making it mandatory for businesses to adopt anti-corruption corporate strategy.

One study titled "Judicial Corruption in India: A Critical Stocktaking"[10] gives a reason for the limited academic knowledge about judicial corruption in the public domain. The fear of causing contempt of court is a prime reason for non-exposure of corruption within Indian judiciary. This author has, however, gathered anecdotal evidence as well as a survey commissioned on behalf of TI in 2005 regarding public perceptions and experiences of corruption in the lower judiciary of India, to demonstrate the existence of judicial corruption in India. This article is silent on quasi-judicial corruption.

Omar and Murrell in "Identifying Reticent Respondents: Assessing the Quality of Survey Data on Corruption and Values" demonstrated how to identify reticent respondents. According to them, methodological research aimed at improving accuracy of data on corruption and values has not kept pace with the burgeoning

[10] Shiladitya Chakraborty, "Judicial Corruption in India: A Critical Stocktaking", *Madhya Pradesh Journal of Social Sciences* 15, no. 1 (June 2010): 21-39.

interest. This is because surveys on sensitive topics suffer from the reticence of respondents. Reticent respondents are those who knowingly give false answers with a *non-zero probability*, when honest answers to a specific set of survey questions could lead to an inference that the respondents might have committed a sensitive act. Hence, it has been found that survey-derived estimates of corruption are downward-biased, to the extent of 45% on the average. Omar and Murrell used *Randomized Response Questions*. In these questions the respondents were asked to toss a coin and then say yes if either they tossed a head or they had committed a sensitive act. Despite the anonymity afforded by this methodology, they found that reticent respondents gave a no to all *non-zero probability* questions. Even asking about perception, rather than experiences does not eliminate the effect of reticence. They found that despite using *Randomized Response Question Methodology*, 35% respondents remained reticent. They advocated eliminating such respondents totally from survey results in order to remove bias.[11] In the research methodology chapter, the author has also mentioned reticent respondents. However, instead of eliminating them altogether, their interview answers are corroborated with some other primary evidence such as that of balance sheets and CHA invoices.

2.3. Recognition of Existence of Customs Corruption by Global Agencies

The Revised Arusha Declaration of the Customs Cooperation Council Concerning Good Governance and Integrity in Customs, 2003, mentions 10 factors which, it mandates, must form part of every Customs Integrity Programme. The third factor of Transparency covers the author's research topic. Under this, it is mentioned that Customs' clients are entitled to expect a high degree of certainty and predictability in their dealings with Customs. Customs laws and regulations should be made

[11] Omar Azfar and Peter Murrell, "Identifying Reticent Respondents: Assessing the Quality of Survey Data on Corruption and Values," *Economic Development and Cultural Change* 57, no. 2 (2009): 387-411.

public, be easily accessible, and applied uniformly and consistently. The appeal and administrative review mechanisms should challenge or seek review of Customs decisions. Under the factor of Reform and Modernization, the Arusha Declaration requires that slow or burdensome procedures must be eliminated as these incentivize corruption.[12] The present research examines how malfunctioning of these institutions can itself become an incentive for corruption. Firms will pay bribes to circumvent disputes at all costs as they do not have the capacity to withstand the rigors of these malfunctioning institutions. Customs global bodies should now focus on these inefficient institutions and suggest guidelines for their repair.

The Revised Integrity Development Guide of the WCO, released in December 2012, also discusses ten key factors to address corruption in Customs. Under the third factor, namely, Transparency, it mentions that any deviations from laws, regulations and discretionary power should be justified and documented for later review. There should be capacity for administrative or judicial review. Presciently, it mentions that an appropriate balance must be struck in developing appeal and review mechanisms. The processes should be made inexpensive, timely, accessible, and ensure that they are not used inappropriately for frivolous appeals. Systems must be in place to assist employees in taking uniform decisions. It gives an example of a valuations database systems. Amongst examples of possible good practices, it cites as an example client and employee surveys, publications of grounds of Customs' decisions, an audit trail to monitor the exercise of employee discretion.[13] These

[12] World Customs Organization, *The Revised Arusha Declaration of the Customs Cooperation Council Concerning Good Governance and Integrity in Customs* (Brussels: WCO, 2003), http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/legal-instruments/declarations/revised_arusha_declaration_en.pdf?la=en.

[13] World Customs Organization, *Revised Integrity Development Guide* (Brussels: WCO, 2012), http://www.wcoomd.org/en/topics/integrity/~/media/B89997B68D6A4E34AE9571979EADA39F.ashx.

guidelines are demonstrably shown, in the fifth chapter of this thesis, to be the workable solutions to make the Customs dispute resolution institutions efficient.

2.4. Study of Customs Corruption from Other Perspectives

Crotty, in his paper, gives a general over-view of the legal and administrative procedures which are necessary to detect, punish, and reduce undesirable behaviour. Most of the procedures involve the reduction of incentives and opportunities to engage in corrupt practices. One of the measures suggested is the provision of an independent appeal mechanism. According to Crotty, every tax law, no matter how well written, is capable of being interpreted differently. An independent appeal mechanism is necessary to preserve independence of officials, integrity of the system, and give the taxpayer the ability to challenge decisions and be assured of a fair and equitable hearing.[14] The present research demonstrates how the malfunctioning of the very system established for systemic integrity can become an area of rent-seeking. A malfunctioning appeal system can itself encourage corruption, instead of curbing it.

Ferreira, Engelschalk and Mayville, in their 2006 paper on the challenge of combatting corruption in customs administration, make an important point that corruption in Customs differs from other government bureaus because bribes to facilitate clearance of imports and exports are tacitly accepted as a cost of doing business and thus form a normal part of overall clearance expenses of Customs brokers. These expenses are then routinely passed on to the customer through increased service fees. In the analysis they found this uniqueness in Customs corruption because all the elements of Klitgarrd's equation of Monopoly + Discretion – Accountability are present. Low-paid Customs officials can arbitrarily

[14] John Crotty, "Practical Measures to Promote Integrity in Customs Administration," *8th International Anti-Corruption Conference* (Lima, Peru: IACC, 1997): 1-8.

accept or reject a declaration without efficient post-clearance control systems. Traders reluctant to engage in corrupt practices experience substantial delays in cargo clearance and extensive physical inspections. The authors give a complete Customs risk map of the disadvantages a taxpayer can encounter if he fails to bribe. One of their solutions is an efficient and clear judicial dispute resolution mechanism which will protect an importer from having to participate in corruption as the sole tool to ensure his rights.[15] The present research takes this forward by actually suggesting how the reform of the dispute resolution institutions can be practically implemented to induce accountability of adjudicators and reduce their discretion and monopoly. Until this institutional reform is implemented, enforcement of an anti-corruption strategy will introduce inequalities leading to the exit of small and medium firms. It has been demonstrably shown by the author through analysis of CHA invoices that service tax is paid on these bribes, and the taxpayer, the bribe-giver then takes credit of it to offset other taxes payable by him.

Tuan Minh Le's main observation in his 2006 paper, "Combating Corruption in Revenue Administration", is that corruption reduces tax collection from rich businesses that have the ability to bribe tax officials and increases tax burden on the poorer group of taxpayers.[16] This research has not analysed the effect of adopting anti-corruption strategies by taxpayers. The author has analysed this aspect and find that the upper strata of firms can afford to adopt anti-corruption as a corporate strategy but if institutions are weak, as in the present study, SMEs will

[15] Carlos Ferreira, Michael Engelschalk and William Mayville, "The Challenge of Combating Corruption in Customs Administrations," in *The Many Faces of Corruption, Tracking Vulnerabilities at the Sector Level*, eds. J. Edgardo Campos & Sanjay Pradhan (Washington, DC: The World Bank, 2006), 367-385, https://openknowledge.worldbank.org/handle/10986/6848.

[16] Tuan Minh Le, "Combating Corruption in Revenue Administration", in *The Many Faces of Corruption, Tracking Vulnerabilities at the Sector Level*, eds. Edgardo Campos & Sanjay Pradhan (Washington, DC: The World Bank, 2006), 336-366, https://openknowledge.worldbank.org/handle/10986/6848.

continue to bribe. However, the distortionary effects of corruption on the economy detailed in Le's paper, are undisputed.

Irene Hors, in her 2001 paper, "Fighting Corruption in Customs Administration: What Can We Learn from Recent Experiences", distinguishes three kinds of Customs corruption: routine, fraudulent, and criminal. In routine corruption, taxpayers pay bribes to obtain a normal and hastened completion of Customs operations. In fraudulent corruption, the taxpayer seeks a collusive Customs treatment to reduce fiscal obligations. And in criminal corruption, bribes are paid to permit totally illegal operations. By studying Customs reforms in Bolivia, Pakistan, and Philippines, she concluded that strategies based on repression and positive incentives are effective in regulating a situation of low corruption. In systemic corruption, there should be a reduction of opportunities by the re-engineering of the procedures. Another observation in her paper is that a certain level of development of a formal private sector is essential before business can be expected to press for and support anti-corruption strategy.[17] This is the author's observation also. It is found that mainly large firms can adopt anti-corruption as a corporate strategy if institutions are inefficient. However, the present research does not support the stratification of Customs corruption suggested by Irene Hors. The conclusion being that SMEs pay bribes to speed up Customs processes which can easily transition to covering up fraud and criminal activities. This would also fit into the "*Tullock paradox*"[18].

Gerard McLinden, in his 2005 paper on integrity in Customs, recognizes the systemic nature of Customs corruption and gives broad suggestions along the lines

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[17] Irene Hors, "Fighting Corruption in Customs Administration: What Can We Learn from Recent Experiences?" *OECD Development Centre Working Papers*, No. 175 (Paris: OECD Publishing, 2001), https://www.oecd-ilibrary.org/docserver/023783627741.pdf.

[18] Named after the economist who stated that the briber always gains more from the bribe than the bribed person.

of the ten factors identified in the revised Arusha Declaration.[19] The present research has focused on malfunctioning Customs institutions and has suggested a practical solution to the problem of predicting and controlling Customs corruption in this area. This has been done by addressing knowledge asymmetries at the principal-agent level.

McLinden and Durrani, in their paper on customs corruption, highlight reforms that address institutional weaknesses as a solution to address Customs corruption. Amongst institutional weaknesses they address human resource management as vital. Generally, they advocate for identifying individual and team accountabilities for performance and measuring results over time. The reforms should be targeted to vulnerabilities.[20] These are valuable suggestions and have been included in this thesis as practical solutions in respect of the Customs dispute resolution institutions.

Dutt and Traca, in their 2010 paper on "Corruption and Bilateral Trade Flows: Extortion or Evasion", look at bilateral trade-flows getting affected adversely by corruption when tariffs are low. This is because the taxpayers' reservation profit is lowered and his best alternatives become increasingly costlier, compared to paying the bribe.[21] They are silent on the impact which the malfunctioning of institutions can have on trade.

Mocan, in his 2008 paper, finds a negative correlation between quality in institutions and propensity to ask bribes. Institutional quality has a more direct

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[19] Gerard McLinden, "Integrity in Customs", in *Customs Modernization Handbook*, ed. Luc De Wulf & Jose B. Sokol (Washington, DC: The World Bank, 2005), 67-88, http://siteresources.worldbank.org/INTEXPCOMNET/Resources/Customs_Modernization_Handbook.pdf.

[20] Gerard McLinden and Amer Zafar Durrani, "Corruption in Customs", *World Customs Journal* 7, no. 2 (n.d.): 3-9.

[21] Pushan Dutt and Daniel Traca, "Corruption and Bilateral Trade Flows: Extortion or Evasion?", *Review of Economics and Statistics* 92, no. 4 (November 2010): 843-860.

impact on corruption perceptions of a country, even more than the actual corruption existing in a country.[22] Beyond this general observation, there is no study of the impact of inefficient institutions on the bribe-paying behaviour of taxpayers.

Thomas Cantens has studied Cameroon Customs. In this study, the emphasis is on various ethnicities of Customs officials which hamper their ability to reform the organization.[23] The rise to the top of various bureau heads within a Customs organization is dependent on ethnicity and is unpredictable. This leads to numerous contenders for the top posts, which in turn leads to rumour-mongering and gossip about the personal conduct of the contestants. The consequent reduction in legitimacy undermines the ability of the senior Customs officers to undertake reform measures. The present research, in contrast, dwells on the supply and demand side of corruption in Customs and attributes it to the inefficient dispute resolution institutions within Customs.

In his book, "Tax Disputes Resolution, Challenges and Opportunities for India", Mukesh Butani[24] looks at reasons behind the prolific and protracted litigation by the tax departments in India. He has identified the reasons for this as lacunae in law, retrospective amendments, poor assessment quality, inadequate administrative and judicial guidance, no timelines, extended periods of limitation, inefficient refund and valuation mechanism, frequent transfers of officers, and target driven approach. Under the reason of non-accountability of tax officers, he has relied upon findings of two task forces set up in this regard. Corruption is mentioned once

[22] Mocan, Naci, "What Determines Corruption? International Evidence from Micro Data", *Economic Inquiry* 46, no. 4 (October 2008): 493-510.

[23] Thomas Cantens, "Is It Possible to Reform a Customs Administration? The Role of Bureaucratic Elite in Cameroon", *WIDER Working Paper 2010/118* (Helsinki: UNU-WIDER, 2010): 281-06.

[24] Mukesh Butani, *Tax Disputes Resolution, Challenges and Opportunities for India* (New Delhi: Lexis Nexis, 2016).

without elaborating on how it causes litigation to proliferate and prolong for years. The present research is based on actual interviews of 63 taxpayers. It highlights, in the data analytics chapter, how bribes enable small and medium taxpayers to circumvent the time-consuming and highly arbitrary dispute resolution institutions in Indian Customs. It highlights that corruption is the principal method of circumvention and until institutions are repaired, one cannot enforce anti-corruption measures on businesses, especially SMEs. Butani has suggested alternative dispute resolution (ADR), like the TARC reports, as a solution. The author's suggestion is more grassroots and addresses the cause of institutional inefficiencies. Both Butani and TARC reports very identically suggest various ADR forms picked up from international best practices. The author has suggested a more practical and pragmatic solution to repair the dispute resolution institutions.

Javorcik and Narciso, in their 2007 paper, "Differentiated Products and Evasion of Import Tariffs", demonstrated that differentiated products may be subjected to greater tariff evasion due to difficulties associated with assessing their quality and price. They used the data of trade gaps between exports reported by Germany and the corresponding imports reported by 10 Eastern European countries to support their hypothesis. They showed this trade gap to be greater for differentiated products than for either homogeneous or referenced products. A one-percentage-point increase in tariff rate is associated with a 0.4% increase in trade gap in the case of homogeneous products and a 1.7% increase in the case of differentiated products. Their paper indicated that tariff evasion took place through misrepresentation of the import prices rather than the underreporting of quantities or product misclassification.[25] The author's findings in contrast are firm-level behaviour in the realm of Customs corruption in India. Probably, future research

[25] Beata S. Javorcik and Gaia Narciso, "Differentiated Products and Evasion of Import Tariffs", *Journal of International Economics* 76 (2008): 208-222.

could be a combination of the two. It would be interesting to research whether big firms import differentiated or homogeneous products. A guess is that even if they are not importing homogeneous goods, even then over a temporal course their goods would become homogenous. This would be because they would be importing same goods repeatedly and over a period of time Customs' officers would develop a familiarity with the assessment of their products. If that be the case, it is still more surprising that they are being saddled with more litigation than the SME sector.

In the paper titled "Displacing Corruption" (2011), Sequeira finds that a 1% reduction in average tariff rates is associated with a 90% reduction in the probability of paying bribes for the product that went from a high to low tariff. However, these reductions in tariffs induce Customs officials to move from collusive to extortive corruption.[26] There is nothing in the paper about methods for harassing honest taxpayers. A reduction in tariff in the Indian context has motivated Customs officials to harass taxpayers who are honest and law abiding. And in the absence of efficient institutions of dispute resolution, this prompts the SME to bribe the Customs just to avoid the quagmire of prolonged litigation.

Mishra, Subramanian, and Topalova, in their 2007 paper, find that more than tariff reductions, quality of enforcement has a greater negative impact on Customs evasion. They use the collection efficiency of Customs duty as a proxy for Customs evasion and computerization, and wages of Customs' staff and officers are used as a proxy to measure the quality of enforcement. They find a correlation between quality of enforcement and Customs evasion, even post the reduction of import tariffs.[27] The present research adds another perspective to this dimension. In the

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[26] Sandra Sequeira, *"Displacing Corruption: Evidence from a Trade Liberalization Program*", 2011, http://ibread.org/bread/sites/default/files/0413conf/sequeira.pdf.
[27] Prachi Mishra, Arvind Subramanian and Petia Topalova, "Policies, Enforcement and Customs Evasion: Evidence from India", *IMF Working Paper, WP/07/60* (Washington, DC:

case of the authors, they have limited the proxy to a comparison of wages of Indian Customs officers with the number of transactions handled by them and the level of computerization at various types of ports, to conclude about evasion. However, if they had taken actual figures of tax evasion detected by the department, probably that would have been a better measure of Customs evasion. However, the present research shows that even that would be a bogus measure because it is seen that majority of SCNs are issued to those firms with anti-corruption strategies in place. Most SCNs in the Indian Customs context are a reprisal for the firms' failure to bribe, hence, whatever Customs evasion detection is taking place is itself an eyewash.

2.5. Customs, Corruption and Firm-Level Study

Raymond Fisman and Jacob Svensson's paper called "Are Corruption and Taxation Really Harmful to Growth? Firm Level Evidence", is a pioneering micro level study of the impact of corruption on firm growth. They studied Ugandan firms and found a robust negative relationship between bribery rates and short run growth rates of firms. They found the negative impact to be even larger than the retarding effects of taxation.[28] The present research, in contrast, being 17 years later, takes into account the effects of the global anti-corruption conventions on firm-level behaviour. Consequently, it finds that corruption no longer takes a toll on large-sized firm behaviour in a direct way. This is because most of the big firms are including an anti-corruption agenda in their corporate governance strategy. This is to a large extent because of global inter-linkages with OECD and US firms. It is found consequently that now such firms are being subjected to reprisal measures

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International Monetary Fund, 2007): 1-42, https://piie.com/publications/papers/subramanian0207imf.pdf.

[28] Raymond Fisman and Jacob Svensson, "Are Corruption and Taxation Really Harmful to Growth? Firm Level Evidence" (Washington, DC: The World Bank, 2000), 1-17, http://openknowledge.worldbank.org/handle/10986/19766.

by Indian Customs by making frivolous demands against them. This is done by issuing SCNs on settled legal issues. As the institutional framework in Customs dispute resolution is weak, the costs of prolonged litigation on such firms certainly exist although the quantification of the same was not part of the research. On the other hand, institutional malfunction has an opposite effect on the SME who pay bribes just to be able to avoid similar harassment.

Sequeira and Djankov in “Corruption and Firm Behavior: Evidence from African Ports” (2013) discuss how firms make economic decisions when confronted with bribery. In their study they found that firms take a route which may be thrice as expensive, transport-wise, to avoid corruption. This is because of extreme uncertainty surrounding extortive bribe payments. Collusive corruption, on the other hand, significantly reduces government revenue.[29] The author has stratified firms as per their size and found that big firms are more likely to have an anti-corruption programs in place, and because of this, they are victimized with SCNs on frivolous grounds. SMEs are more likely to pay bribe money to avoid these SCNs. The present study goes beyond the clearing, assessment, and examination processes of Customs. It, for the first time, links positively firm size with its probability of having an anti-corruption program and also further correlates this with the likelihood of it getting embroiled in a vexatious litigation. The present study recommends that now global organizations should focus on second tier reforms, related to the repair of Customs’ institutions.

Jakob Svensson, in the 2003 paper, shows that the more a firm can pay, the more bribes it has to pay. Firms typically have to pay more bribes when dealing with public officials whose actions directly affect the firms’ business operations and

[29] Sandra Sequeira and Simeon Djankov, “Corruption and Firm Behavior: Evidence from African Ports”, *Journal of International Economics* (2014): 1-55, http://dx.doi.org/10.2139/ssrn.1592733.

such dealings cannot be easily avoided when firms are exporting, importing, or requiring public infrastructure services. Collective action initiatives by firms and limiting monopoly of public officials are the twin solutions offered as a counter-measure in this paper.[30] The present research is similar in two aspects. The author uses firm- level data on corruption. Secondly, the data-set also contains quantitative information on bribe payments by Indian firms. Svensson has studied bribe payments by Ugandan firms. This quantitative data set distinguishes it from the existing empirical literature which exploits data on corruption derived from perception indices. It therefore avoids the perception biases associated with perceptions constructed typically from foreign experts' assessments of overall corruption in a country. However, the present research highlights the exact opposite of Svensson's paper. In Indian context, more and more large firms are adopting anti-corruption measures in their dealings with Customs. For this, they are being penalized by being pushed in the labyrinthine, laggard dispute resolution institutions of Indian Customs. The SMEs continue bribe payments to avoid this situation which would be fatal for them. The solution offered by the author is repair of Customs institutions in India.

Chin, Yasar and Rejesus, in their 2007 paper on "Factors Influencing the Incidence of Bribe Payouts by Firms: A Cross-Country Analysis", find that amongst micro factors, those of dependence on public infrastructure and likelihood of going to alternative authority are most significant statistically. They therefore suggest improvement in the business environment. As an example, they point to the need of a well-functioning legal institution that could help temper the actions of corrupt officials. They also suggest reform of educational institutions and formation of a

[30] Svensson, Jakob. "Who Must Pay Bribes and How Much? Evidence from a Cross Section of Firms," *The Quarterly Journal of Economics* 118, no. 1 (February 2003): 207-30.

collective action group at firm-level.[31] The present thesis corroborates the same finding in respect of Indian firms' dealings with Customs. Deep-pocketed firms can choose to be honest whereas SMEs have no option but to bribe. Otherwise they would get entangled in the malfunctioning dispute resolution Customs institutions. If the dispute resolution institutions were efficient, then the likelihood of Indian SMEs being honest would increase.

2.6. Literature on the Solutions for Customs/Judicial Corruption

The literature generally gives importance to enhancing judicial accountability but no models are suggested.

In an article titled "An Analysis of the Causes of Corruption in the Judiciary", Buscaglia and Dakolias studied original adjudication of commercial cases, such as bankruptcy and breach of business contracts, in Chile and Ecuador from 1992 to 1996. The data was collected from the reported cases of corruption in the media and on the basis of a jurimetrics model. The authors found that use of computers and ADR mechanisms led to a reduction in reported cases of corruption.[32]

TI in its Global Corruption Report 2007 deals exclusively with corruption in judicial systems. This report states that judicial corruption is almost coterminous with a country's rankings in the CPI. Although judges and other court personnel need to be able to make decisions free from interference from the state and the private sectors, independence is not enough. A fair judiciary must also be subject to mechanisms that hold it accountable to the people. The challenge is to design appropriate institutional structures rendering it answerable for its decisions. A

[31] Yanjig Chin, Mahmut Yasar and Roderick Rejesus, "Factors Influencing the Incidence of Bribe Payouts by Firms: A Cross-Country Analysis", *Journal of Business Ethics* 77 (2008): 231-244.

[32] Edgardo Buscaglia and Maria Dakolias, *An Analysis of the Causes of Corruption in the Judiciary* (Washington, DC: World Bank, 1999), http://documents.worldbank.org/curated/en/322431468744322656/An-analysis-of-the-causes-of-corruption-in-the-judiciary.

separate chapter focuses on the accountability mechanisms that safeguard judicial integrity. The report talks of failure of the international community to address judicial accountability, despite international initiatives that seek to plug this gap, notably the Bangalore Principles of Judicial Conduct[33].

Susan Rose-Ackermann talks of a fundamental paradox. If courts are independent, judges may be biased toward those who make payoffs. If they are not independent, they may be biased in favour of politicians who have power over them. The task for reformers is to locate their system's particular vulnerabilities and to design a program that deals with the multiple facets of independence in a way that limits corrupt incentives and provides prompt and impartial justice. [34]

Cárdenas and Chayer address the question of judicial discipline in Latin America and ask who should sanction corrupt or incompetent judges. If the judiciary is accountable to an outside body, there is a danger that it could undermine judicial independence. If the judiciary develops internal accountability mechanisms, issues are raised as to the legitimacy of such self-regulation and its transparency.[35]

None of the above suggests a practical and workable model which balances independence with accountability.

The latest book by Dory Reiling called "Technology for Justice: How Information Technology Can Support Judicial Reform", talks about the use of IT for case

[33] Transparency International, Global Corruption Report 2007: Corruption and Judicial Systems (Cambridge: Cambridge University Press, 2007), https://www.transparency.org/whatwedo/publication/global_corruption_report_2007_corruption_and_judicial_systems.

[34] Susan Rose-Ackerman, "Judicial Independence and Corruption", https://www.researchgate.net/publication/265045845_Judicial_independence_and_corruption.

[35] Jan van Zyl Smit, "Judicial Independence in Latin America: The Implications of Tenure and Appointment Processes" (Bingham Centre for the Rule of Law, 2016), https://www.biicl.org/documents/1331_english_ji_in_la_191016.pdf.

management, publishing case decisions and processes[36]. This book is also silent on the use of IT to engender accountability and to reduce discretionary monopolistic powers.

The solution suggested by the author in the fifth chapter combines in a practical way the guidelines set by the above literature. It seeks to repair existing institutions through the use of IT by limiting monopolistic and arbitrary decisions, and by increasing the accountability of decision-makers.

[36] Reiling, *Technology for Justice.*

Chapter 3: Research Methodology

3.1. Micro Research and Country-Level Corruption Indices

Corruption, due to its opacity, is not a very accessible research field. It gets compounded when it's of a collusive character, as the author assumed would be the case if taxpayers are conniving through bribery either to avoid litigation or to get favourable orders. However, the author had presumed that bribery would be prevalent given the large number of disputes in the Indian Customs. The research premise was based firstly on the ground that litigations are so numerous and vexatious that a TARC had to be appointed by Ministry of Finance, Government of India, and this Commission talks about it in all of its four reports. Secondly, as corruption is widespread in India, based on the CPI scores of India which has ranged from lowly 36 to 40 in the last 5 years, it is highly improbable that corruption has not touched litigation with Indian Customs. However, the author's findings during this research while validating the CPI, is at divergence with the latest Global Corruption Barometer (2017). In it 65% Indians have reported to have agreed on the question of whether it was acceptable in society to report cases of corruption witnessed by them. However, when it came to reporting their own experience, only 12% of Indians agreed.[37] The author's experience during interviews was the inverse. One question in all interviews was whether the respondent knew of anyone within their circle who had paid bribes to get a favourable decision from Customs. The respondents had the option to reply in the affirmative even if they had simply heard rumours about it. It was hoped to get a few snowball samples. However, the author could not get a single positive reply on this question from any of the

[37] Transparency International, *The 2017 Global Corruption Barometer. Asia Pacific Regional Results,* https://www.transparency.org/whatwedo/publication/people_and_corruption_asia_pacific_global_corruption_barometer.

taxpayers. The only people who were forthwith on this question where the Customs Brokers but when probed further, they were reluctant to share their clients' details.

3.2. Researcher Being Part of the Organization Researched, Help or Hindrance?

Besides the collusive nature of bribery involved in Customs' decision-making, the author had another apprehension about the respondents. It was thought that most would be hesitant to talk about it to someone from within the department. This may be because the Customs decision makers are also with whom they deal with for their daily business. If word of complaint was leaked, the taxpayers could be in for a series of roadblocks in their cargo clearances. However, this apprehension proved false for two reasons. One was that the aggrieved persons got an opportunity to vent their grievances in front of a senior departmental officer. This could lead to reform in the near future. Some were certainly impressed that the senior departmental officer was doing research on the important topic for a renowned academy. In a few cases, the reactions went from distrust and disbelief to full cooperation. Some of the taxpayers who expressed reluctance to appear for the interview, during the course of it became very cooperative. Later, they not only furnished documents such as balance sheets and CHA invoices but left their mobile numbers and visiting cards, so that they could be contacted later if some more information was needed. Alongside, there were also some taxpayers who were very cautious in talking as well as reneging on their promise to provide the documents requested. The second factor which aided this research was the fact that presently the author is posted in the Central Excise and Service Tax department. Although these are sister departments of Customs, some taxpayers, especially junior level ones, were probably unaware of the author's Customs links, which may have prompted them to be frank with the author. Then there were a few who did not tell

anything but wanted the author's mobile number so that she could intercede on their behalf with senior Customs authorities and resolve their problems.

3.3. Non-Random, Cluster, Purposive Sampling

Cluster and purposive sampling was combined to get the data-points. For obvious reasons *random sampling* was not feasible as the focus population was very narrow. The only way that random interviewees could be picked was if the author went to the Customs offices. Besides time-consuming, this method could jeopardize the present study and create panic. It would antagonize Customs officers. Moreover, Customs Houses are very busy and chaotic places where taxpayers have to rush from one desk to another. The likelihood of getting the full-fledged attention of the respondents was unlikely.

A natural grouping in the population was fathomed around the author's office. The cluster which was chosen for sampling was the industrial belt of Anand-Nadiad which is an industrial area in Gujarat. It is equidistance from the capital, Ahmedabad, and another major city of Gujarat, Vadodara. It is about 400 kms from Mumbai, which has India's two major seaports and one major air cargo complex. Being at a distance from Mumbai removed the element of bias of close proximity to Customs' authorities. Also, by concentrating on a small industrial cluster, purposive sampling could be performed by concentrating only on importers without excluding anyone. This removed the *sample selection bias.* The only taxpayers who were left from this cluster-purposive sampling were those who did not appear for interview on their own volition.

Probability sampling was introduced within the purposive sampling by studying the size of taxpaying firms against litigation faced by them. It has thrown up interesting findings which are discussed in the succeeding chapter.

3.4. Office or Neutral Setting

In order to encourage taxpayers to come, the author's office setting was used as the venue for the interviews. From office records we could identify taxpayers dealing with Customs as they come to our office for factory sealing and/or take credit of duties paid as Customs' duties. This was not unethical as during this time we, as tax officers, had to meet with taxpayers to allay their fears on an impending major tax reform. Exports were a major concern for the taxpayers under the new reform. Hence, the author found that almost all importers who were invited (except 18 out of 81) came for the interviews. Generally, 3-4 taxpayers were interviewed during a day but on a few days more taxpayers were interviewed to accommodate previous cancellations and postponements. The office setting gave legitimacy to the present research and it is believed that a more enthusiastic response was obtained because of this. Although an office setting was adopted as an interview environment, all respondents were assured of confidentiality. They were assured that this was mainly a quantitative study and hence their salience to the research was in the form of a number and not as a nominal entity.

3.5. Interview Methodology

Triangulation through interviews with Customs officers was avoided primarily because of time constraint. However, as TARC reports were used to examine efficiencies of Customs dispute resolution institutions, the need to interview departmental officers was rendered superfluous. TARC reports have interviewed departmental officers.

The questionnaire was used as a guide during the interviews. It was pruned along the way. Although a few questions were close ended, yet wherever the taxpayers were communicative, they were given full opportunity to vent their experiences. It was felt that close-ended questions or going strictly by the script would not yield

useful results. Getting taxpayers to talk about corruption is a difficult task to begin with. If one does only close ended questions one could easily miss out the nuances totally. Vignettes and imaginary scenarios were used during interviews.

Brief cursory notes were taken during these interviews, which were jotted in expanded form every evening.

The author did all 63 interviews herself. This was very helpful because nuances could be picked up and probed further during interviews. The author being a part of the department established a legitimacy which had a reassuring effect on the taxpayers. As a matter of fact, many times expectations had to be lowered amongst the respondents, especially the aggrieved ones. Close ended questions could be adapted to more open-ended questions. Participant/taxpayer observation gave the author important clues about when to probe or move to the next question. An outsider could not have obtained the results that were obtained by the author. For instance, the idea to look for evidence of bribery from CHA invoices came during the course of interviewing.

The interview schedules were planned by allotting 40 minutes for each interview initially. This straitjacketing did not work as many interviewees re-scheduled dates, some were tight-lipped and suspicious, and others wanted to vent their grievances while some were just accountants who were unaware of the bribery angles given their position in the firm's hierarchy. The allocation of time was modified according to the respondent type. The reticent and tight-lipped were asked questions in a routine manner. The aggrieved vocal interviewees were allowed the time to give full leeway to tell their stories. Some of the stories are mentioned in the next chapter. The 'ignorant' interviewees were asked probing supplementary questions, given imaginary situations of their helplessness before Customs. One thing which was found common amongst all types of respondents was that no *snowball effect* could

be obtained. None could refer the author to another taxpayer whom they knew to have bribed Customs. The taxpayers were even asked about some rumour they may have heard. This vindicates the secretive nature of corruption. People are reticent about it.

3.6. Vignette Methodology with Reticent Respondents

Some taxpayers who had previously complained against Customs' authorities were very vocal in airing their grievances. Others who had suffered losses and/or delays, such as government undertakings, multinationals, and US and German subsidiaries, were also found to be very vocal and cooperative. Efforts were put in with the reticent taxpayers by giving them various imaginary scenarios. Subsequent to this, some of them admitted to bribery obliquely. A few admitted their ignorance on actual functioning of their firms as they were very junior in the hierarchy to know if bribes were being shelled out by top managers of their firms.

It is noteworthy to mention here that wherever the interviewed firm was represented by accountants, they were very defensive initially. Any admission of problems with Customs was seen as an affront to their own competence and skills. By skilfully and patiently emphasising that SCNs are not always issued because of their fault, the author tried to obtain freer discussion with them. They were prodded into thinking by throwing various scenarios at them. Sometimes, vignettes were used to prod them into re-thinking their answers. One favourite vignette was about how the complexities of rules can catch even the best-run firms off-guard. This vignette is about a famous Bombay club which denied membership to a senior government official. As a reprisal, a hundred-year-old rule was used to show the club its place. This rule required that only one bottle of liquor could be open at one time in the

bar. Obviously, the bar had several bottles open![38] This was used especially with taxpayers who sent in accountants for the interview. The scenarios and vignettes allayed the fears of the accountants. They were made to understand that sometimes SCNs are a result of archaic regulations despite their meticulous record-keeping. The vignette graphically and humorously illustrated to them that at times the fault lies in the complexity of rules themselves. After hearing this, many recalled instances of settlements of problems which had baffled them and they second-guessed that probably these were settled by their higher-ups with bribery!

3.7. Multiple Triangulations with Balance Sheets and CHA Invoices

As already stated, collusive corruption is a very difficult topic to research. Taxpayers who have benefited from it are the least likely to talk about it. Therefore, the author discovered early on during the interviews that an interdisciplinary approach would have to be developed to the research questions. Interviews will not tell the whole truth. The colluders will maintain innocence. The aggrieved taxpayers could exaggerate. Some may feel pressured to give the right answers.

As a corroborative measure, the author started looking for evidence of bribery in financial documents which the respondents carried with them. Initially, the respondents had been asked to come with their balance sheets. This was mainly to categorise the respondents as large, medium, and small firms. However, while perusing balance sheets, strange looking expense items were found. One balance sheet had expenses of Customs clearance which were more than the freight and import duties combined. These are discussed in details in further paragraphs.

After a few interviews, the author came across a CHA invoice while interviewing a taxpayer. An item categorised as *Customs Examination Fees* stood out prominently

[38] Santosh Desai, "Misruled By Rules," *Times of India Blog,* August 8, 2016, https://blogs.timesofindia.indiatimes.com/Citycitybangbang/misruled-by-rules/.

on the invoice. It is known that Indian Customs does not charge a single *paisa* for examination and for a myriad of its functions. Thereafter, taxpayers were requested to bring such invoices along with them. As will be shown further down, this document gave a lot of clues about bribery being widespread in Indian Customs.

These financial documents revealed how the Indian government was losing tax when bribery was being expensed out in balance sheets and CHA invoices. These two financial documents proved very important for *multiple triangulations*.

3.8. Balance Sheets Hide Bribery under Many Expense Heads

Balance Sheets can show bribery under various innocuous-looking heads. In June 2017, for the first time, a much-respected Indian newspaper, *The Hindu*, reported that the Income Tax department had detected payment of bribes to various agencies like Chennai[39] Police, Chennai Corporation, Health Department, Food Safety Department, and Central Excise, among others, from the balance sheet.[40] The bribes were to facilitate the sale of banned Gutka in Chennai. The amounts paid were listed under different heads such as incidental expenses, *Deepavali* bonus and Christmas bonus.

There have been other instances, in other parts of the world, where bribes have been found hidden in balance sheets. In most cases it has been charged to an expense line item such as professional consultant fees. In a publicly-traded company, these professional fees could be buried in Miscellaneous/General expenses and go completely unnoticed.[41] At other times bribes can also be hidden

[39] Chennai is a major city in South India.
[40] S. Vijay Kumar, "I-T probe unearths payment of bribes to TN Minister, officials for Gutkha sale", *The Hindu*, June 27, 2017, http://www.thehindu.com/news/national/tamil-nadu/i-t-raid-unearths-huge-bribes-paid-for-gutkha-sale-in-tn/article19151296.ece.
[41] Adam Nyham, "How do large companies account for bribes paid to third parties in their financial statements?:, Quora, April 20, 2015 , https://www.quora.com/How-do-large-companies-account-for-bribes-paid-to-third-parties-in-their-financial-statements

as arbitration fees, conference expenses.[42] Some French companies have been found to have used this line: *prelevement douane,* which translates to "Customs levy" or "Customs assessment." It turned out in a follow up investigation that this is what was happening. Company imports product X from Country A into Country B in order to sell it domestically. As product X crosses the border, the Customs staffs inspects it and takes a small portion of the product and keeps it for themselves. Then they release the remainder. If the pallet entered the country with 100 boxes of product X, it arrived at the company's offices with 98 boxes. Accounting for those "levies" was important, and since this happened routinely, the company gave it an Excel row of its own.[43] Some companies give extraordinary fees to their lawyer for his "legal consultancy" and showing it as a line item under expenses. The lawyer will then take care of any problem by bribing on behalf of the company.

During the course of this research, the author concentrated only on miscellaneous expenses and found certain ubiquitously suspicious items which were suspected to be hiding bribery.

The opaque items seen in balance sheets during this research are detailed in the following frequency tables:

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	4	19.0	19.0	19.0
	Yes	17	81.0	81.0	100.0
	Total	21	100.0	100.0	

[42] Nyham, "How Do Large Companies Account for Bribes."
[43] Nyham, "How Do Large Companies Account for Bribes."

Table 2: Professional/Consultancy Expenses in Balance Sheets

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	4	19.0	19.0	19.0
	Yes	17	81.0	81.0	100.0
	Total	21	100.0	100.0	

Table 3: Testing Charges in Balance Sheets

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	14	66.7	66.7	66.7
	Yes	7	33.3	33.3	100.0
	Total	21	100.0	100.0	

Table 4: Donations/Charity in Balance Sheets

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	7	33.3	33.3	33.3
	Yes	14	66.7	66.7	100.0
	Total	21	100.0	100.0	

Table 5: Sales Promotion Expenses in Balance Sheets

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	14	66.7	66.7	66.7
	Yes	7	33.3	33.3	100.0
	Total	21	100.0	100.0	

Table 6: Legal/Professional Fees in Balance Sheets

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	6	28.6	28.6	28.6
	Yes	15	71.4	71.4	100.0
	Total	21	100.0	100.0	

Table 7: Clearing Expenses (Excluding Freight, Import Duties)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	6	28.6	28.6	28.6
	Yes	15	71.4	71.4	100.0
	Total	21	100.0	100.0	

Table 8: Festival and Entertainment Expenses in Balance Sheets

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	17	81.0	81.0	81.0
	Yes	4	19.0	19.0	100.0
	Total	21	100.0	100.0	

Table 9: Audit-Related Expenses in Balance Sheets

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	14	66.7	66.7	66.7
	Yes	7	33.3	33.3	100.0
	Total	21	100.0	100.0	

Table 10: Gift Expenses in Balance Sheets

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	19	90.5	90.5	90.5
	Yes	2	9.5	9.5	100.0
	Total	21	100.0	100.0	

The evidence found in CHA invoices are of two kinds and tabulated in the following two frequency tables:

Table 11: Customs Examination Charges in CHA Invoices

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	1	12.5	12.5	12.5
	Yes	7	87.5	87.5	100.0
	Total	8	100.0	100.0	

Table 12: ADC NOC (Assistant Drug Controller No Objection Certificate) Charges in CHA Invoices

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	5	62.5	62.5	62.5
	Yes	3	37.5	37.5	100.0
	Total	8	100.0	100.0	

Results were triple-checked by doing the same interview with a focus group in a different geographical cluster.

3.9. Focus Group Interviews

Here some element of bias cannot be ruled out. The focus group was based in the Industrial cluster of Vadodara and was part of a collective action group which takes

up grievances of exporters and importers with various regulatory authorities. Hence, the group members were not only very vocal but could bring in their own bias in this research. However, the findings in the earlier face-to-face interview group and this focal group do not show a lot of divergence in findings.

A local EXIM Association was approached to organize this focus group. It was a *mixed focus group* of 12 members who were CHA, importers, and exporters. It resulted in a good amount of disclosure. Only two members remained reticent. They came to the author during tea-break stating they have had Customs' problems. They promised to tell about them in the author's office but never showed up. The focus group findings were identical with the initial research results. In fact, they were even more emphatic. This attested to the validity and reliability of the initial research qualitatively and quantitatively.

3.10. Statistical Testing of Research Findings

Certain statistics related tests were performed to validate the research findings. The author has done the *compared means test*, the *independent samples t-Test,* which gave the *statistics significance test* and *95% Confidence Level tests* to prove/disprove the hypotheses. Both of the latter tests were robust for two of the hypotheses. Only one hypothesis was proved to be robust for the null hypothesis. Overall, it all fitted in with the theory that bribery helps SME to prevent the pre-clearance Customs' objections from being converted into SCNs. The *statistical bootstrapping* method was used to evaluate the salience of the research findings on an inductive level.

3.11. Introduction of Probability in Non-Probability Sampling

In the beginning, those taxpayers who imported goods were called for interviews, and this thus eliminated probability sampling. But after the initial selection, a probability element was added as a sub-set by segregating taxpayers who were

given SCNs from amongst the total taxpayers. This was done during the interviews. This subset was further mapped against the size of the firms, viz., large, medium, and small.

3.12. Emergence of Grounded Theory

The data from this study led to generation of a theory that taxpayers, especially the SMEs, pay bribes to Customs to avoid being caught in the quagmire of litigation with Indian Customs.

The author took the *grounded theory* approach because, as mentioned in the chapter on state of the art, there is no theory to explain corrupt behaviour in Indian Customs' quasi-judicial decision-making.

3.13. Use of Secondary Sources

The inefficiencies of dispute resolution institutions in Indian Customs which emerged during interviews was substantiated through the use of secondary sources such as C&AG reports on the review of Indian Customs. Another very useful secondary data-set on the failure of dispute resolution institutions in Indian Customs were the four reports by TARC appointed in 2014 by the Ministry of Finance, Government of India.

These two sets of data corroborated the author's theory that the institutions of dispute resolution were inefficient and that only deep-pockets could afford to use them for redressal. These were the same firms who had an anti-corruption corporate culture at corporate level. Bribery enabled SMEs to avoid these institutions altogether. This was the only way they could survive in business. If anti-corruption measures have to be implemented at all levels of firms, the dispute resolution institutions have to be repaired first and foremost.

3.14. Inductive Effect of Grounded Theory

It is thought that this theory can have an *inductive effect* in Customs in general. The *confidence levels* tested for the data collected for this research as well as *bootstrapping* shows positive signs for its use on a macro Customs level.

Triangulation was thus achieved by interviewing in a geographical cluster and comparing results with a focus group comprising taxpayers from a different geographical area. Secondary data-sets were also used as another check. Financial documents were used as a triple check. Finally, statistical tests were used to examine if results were robust enough for application inductively on a universal level.

3.15. Some Side Remarks

Lawyers were another category which was interviewed informally but their interviews are not part of this research. One of them frankly said that they will never admit to paying bribes to get favourable orders as it will harm their professional reputation.

Whatever may be the response during interviews, all interviewees were enthused about reforms. They want corruption to stop in Indian Customs.

However, presently corruption appears as a win-win situation for all concerned. The CHA collates small sums from various taxpayers and makes a big sum for Customs officers. The taxpayer in return does not have to go through the hassle of disputes with Customs. CHA is a medium for bribery and this makes it convenient for taxpayers who assuage their conscience and do not have to undertake the process of discovery.

The bribes help taxpayers to circumvent inefficiencies of Customs dispute resolution institutions. And very interestingly, these bribes are expensed out in

balance sheets, leading to payment of lesser corporate tax to Indian government. It was also seen that CHA adds bribery in his invoice on which he pays a service tax. This service tax is subsequently taken as an input tax credit by taxpayer. The input tax credit is used to offset the tax payable on goods and/or services by the taxpayer. Thus, bribery is instrumental in reducing the tax deposited in the Indian Government exchequer in a two-fold way.

Chapter 4: Data Analysis

4.1. Segregation of Respondents According to Firm- Size

In the first phase, 51 firms dealing with Indian Customs were interviewed by the author. Amongst them, 27 were large enterprises and 22 were SMEs. In India, the categorization of firms is based on investment in plant and machinery. Small enterprises should have an investment up to Rupees five crores/US$ .75 million, Medium enterprises should have investment up to Rupees ten crores/US$ 1.5 million. Anything beyond this threshold is classified as a large firm.[44] From the 51 firms, two did not give either their firm details or their balance sheets. In total, 69 firms were invited, of them, 18 firms did not appear for an interview.

Any firm incorporated in India under the Companies Act, 2013, whether public or private, limited or not, has to file a Balance Sheet as per the format given in Schedule III of the Companies Act, 2013.[45] Therefore it was requested that all 51 taxpayers bring their balance sheets when they come for the interviews. A few taxpayers, numbering 13, however, did not give their balance sheets. The size of their firms could be determined by their own admission and/or supplementary documents such as IT (income tax) returns.

As bribery/corruption is a surreptitious act, it was decided to ask the respondents about it during interview, but it was also felt necessary to follow up by correlating their answers with the evidence available in their balance sheets and CHA Invoices. Most times when bribery was denied in the interview, the evidence available in the two documents was diametrically opposite to the denial.

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[44] Development Commissioner, Ministry of Micro, Small and Medium Enterprises, Government of India, "What Are Micro, Small & Medium Enterprises", accessed May 1, 2017, http://dcmsme.gov.in/ssiindia/defination_msme.html.

[45] Ministry of Corporate Affairs, "The Companies Act, 2013", accessed May 1, 2017, http://ebook.mca.gov.in/default.aspx.

4.2. Firms Size and Anti-Corruption Corporate Culture

Anti-corruption culture is not the *de rigueur* amongst the Indian firms. The only law which make unethical conduct illegal is section 12 of the Prevention of Corruption Act, 1988. Under this, if a private person "abets" the public servant in the latter's commission of corrupt acts, he invites upon himself imprisonment ranging from 3 to 7 years.[46] There is a proposed amendment to this act which will include bribe-giving also as a criminal offence. This amendment is not yet passed by the Parliament.[47] The SEBI (Listing Requirements and Disclosure Requirements) Regulations 2015, Regulation 27(2), asks for regular reporting on Corporate Governance. The reporting relates to things such as composition of Board of Directors, schedule of meetings of the Board and the Audit Committee, related party transactions. The only things of relevance are compliance with the code of conduct by directors and details of Vigil Mechanism/whistle-blower policy, which have to be marked in yes or no. Most of the balance sheets studied show a routine, standard language with regard to the compliance with this regulation.

From the 51 enterprises interviewed, 18 stated during the interview to have a well-defined anti-corruption corporate culture. If one desegregates the 18, it is seen that it includes two companies which are both government sector and large-sized. Another four are private sector and large-sized, three are private-sector, large-sized and part of collective-action groups, one is an MNC (multinational corporation) and large-sized, and eight are private enterprises which are subsidiaries of US/German companies. Amongst these eight, all are large-sized except two which are medium-sized. None of the other SMEs had a pronounced anti-corruption corporate culture.

[46] Law Library, Bharati Vidyapeeth, Department of Law, New Delhi, "Prevention of Corruption Act, 1988", http://www.advocatekhoj.com/library/bareacts/preventionforcorruption/index.php

[47] PRS Legislative Research, "The Prevention of Corruption (Amendment) Bill, 2013", http://www.prsindia.org/billtrack/the-prevention-of-corruption-amendment-bill-2013-2865/.

The above is summarised in the following cross-tabulation output.

Table 13: Anti-Corruption Corporate Culture * Firm- Size * Firm Character Cross-tabulation

Firm Character			Firm- Size Large	SME	Missing	Total
Government	Anti-Corruption Corporate Culture	Yes	2			2
	Total		2			2
Private	Anti-Corruption Corporate Culture	No	11	20		31
		Yes	4	0		4
	Total		15	20		35
FCPA Regulated	Anti-Corruption Corporate Culture	Yes	4	2		6
	Total		4	2		6
German MNC/US MNC	Anti-Corruption Corporate Culture	Yes	3			3
	Total		3			3
Collective Action Group Participant	Anti-Corruption Corporate Culture	Yes	3			3
	Total		3			3
Missing	Anti-Corruption Corporate Culture	Missing			2	2
	Total				2	2
Total	Anti-Corruption Corporate Culture	No	11	20	0	31
		Yes	16	2	0	18
		Missing	0	0	2	2
	Total		27	22	2	51

This feature of most Indian enterprises not having a well-defined corporate anti-corruption strategy in place is because Indian law does not mandate a firm to have an anti-corruption culture. There are also additional, more pressing reasons for this. Such reasons will be forthcoming when the functioning of these companies is examined against the background of existing Customs institutions of dispute resolution.

4.3. Firms' Anti-Corruption Corporate Culture and Litigation with Indian Customs

Plotting the companies with an anti-corruption corporate culture against the number of litigations against each of them with the Customs department, one gets the below cross tab output. The number indicated for litigations includes only where a SCN is issued. It is exclusive of ongoing investigations. It includes both past and present SCNs and is derived from respondents' admission during interview.

Table 14: Anti-Corruption Corporate Culture* Litigation Cross-tabulation

		Litigation			
		No SCN	Yes SCN	Missing	Total
Anti-Corruption Corporate Culture	No	25	6	0	31
	Yes	6	12	0	18
	Missing	0	0	2	2
Total		31	18	2	51

There is a strong likelihood that a firm with an anti-corruption corporate culture will face a larger number of litigations.

4.4. Large Firms Should Not Typically Entail Litigation in Customs Facilitation Environment Skewed in Their Favour

It could be argued that one reason for higher litigation faced by large firms is that large firms tend to have larger transactions with Customs. However, Indian Customs was running the ACP (Accredited Client Program) from 2005 until July 2016. The clients who were approved under ACP got assured facilitation. This meant that in most cases, the Indian Customs EDI System would accept the declared classification and valuation and assess duty on the basis of importers' self-declaration. The import consignments of ACP clients were not subjected to examination. There were

system- generated random checks which were a very nominal percentage of total consignments of ACP clients.[48] Amongst the many conditions to become an ACP client was the financial criterion which favoured large companies. One should have imported goods valued at Rs Ten Crores[49] [assessable value] in the previous financial year; or paid more than Rs One Crores[50] of Customs duty in the previous financial year; or, in the case of importers who are also Central Excise assessees, paid Central Excise Duties over Rs One Crores from the Personal Ledger Account in the previous financial year, or they should be recognized as Status Holders under the Foreign Trade Policy.[51] From July 2016, this has been merged in the Authorized Economic Operator (AEO) Scheme. This scheme has eliminated the financial criterion. But other conditions have been added such as tedious legal compliance, commercial and transport record-keeping, conditions for financial solvency, ensuring security of premises, cargo, procedure, conveyance, personnel, and business partners, which are cumbersome.[52] Essentially both ACP and AEO schemes facilitate the large firms. The high complexity of their operations is therefore controlled by the two schemes. Additionally, ACP clients also enjoy OSPCA (On-Site Post Clearance Audit). Apart from these two facilitation measures, which favour the large firms, pronouncedly, it can be assumed that frequent clearances from Customs can generate more familiarity by Customs with the goods imported by large firms. The possibility of these remains high as India has reduced and rationalized the duty rates according to an agreement with the WTO. Customs duty rates are generally at 13 %. This rationalization of duty rates would have a reducing

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[48] Directorate General of Systems, Central Board of Excise & Customs, "Accredited Clients Programme: Promoting Voluntary Compliance", 3-5, http://www.cbec.gov.in/resources//htdocs-cbec/acp-brochure-29apr11.pdf.

[49] Approx. US $1,500,000.

[50] Approx. US $150,000.

[51] Directorate General of Systems, "Accredited Clients Programme", 4-6.

[52] Central Board of Excise & Customs, Government of India, *Customs Circulars*, 3-39, http://www.cbec.gov.in/resources//htdocs-cbec/Customs/cs-circulars/cs-circulars-2016/circ33-2016cs-revised.pdf.

effect on valuation and classification disputes at all levels, especially at the level of large firms.

4.5. Is Litigation a Method of Reprisal Against Honest Firms?

Thus, after removal of the bias, the present research finding is that the firms with an anti-corruption corporate culture face most litigations from Indian Customs. This is substantiated both statistically and through the mode of interviews discussed later on. Based on this, it can be said that litigation in Indian Customs is used as a method of reprisal against the honest firms.

4.6. Admission of Bribe Demands during Interviews

The crosstab below illustrates which types of firms encountered bribe demands during the course of their interaction with Customs.

Table 15: Admission of Bribe Demands * Firm Character Cross-tabulation

		Firm Character						
		Government	Private	FCPA Regulated	German/US MNC	Collective Action Group Participant	Missing	Total
Admission of Bribe Demands	No	2	22	3	0	2	1	30
	Yes	0	13	3	3	1	0	20
Total		2	35	6	3	3	1	50

It is seen that bribe demands are admitted mostly by private firms, foreign subsidiaries/MNCs, none from government sector, only one from a collective action group. The above may be attempts of bribe discovery because none from

government and only one from a collective action group were asked for bribes. The table below shows that very few SMEs admitted to being asked for bribes.

Table 16: Admission of Bribe Demands * Firm- Size Cross-tabulation

		Firm- Size			Total
		Large	SME	Missing	
Admission of Bribe Demands	No	12	17	1	30
	Yes	15	5	0	20
Total		27	22	1	50

4.7. Vexatious Customs Behaviour with Honest Firms

Table 17: Firm Level Litigation * Admission of Bribe Demands Cross-tabulation

		Admission of Bribe Demands		Total
		No	Yes	
Firm Level Litigation	No SCN	24	7	31
	Yes SCN	5	13	18
	Missing	1	0	1
Total		30	20	50

A few respondents did admit that bribery enabled them to settle the issue either prior or post issue of SCN. However, in cases of large firms, admissions of bribe demands are more along the lines of harassment because of strong anti-bribery cultures at corporate levels. For instance, one respondent said that they had a case where the circular was clearly in their favour but they lost the case as the lady officer demanded a bribe which they refused to pay. She asked him, *"hamara kya,"* or colloquially speaking asked for bribes. Subsequently, on non-payment of bribes, they were issued a SCN. Another admitted that they got a judicious order only after they had paid a bribe in kind. Another respondent's refusal to bribe made Customs

apply an Environment Ministry notification about a ban on the sale of tobacco in plastic pouches in India, extra-territorially, to the respondent's export consignment to UAE. As they did not bribe, they were given an unfavourable order. One taxpayer had a refund of duty denied to them when they refused to bribe. Bribe was asked for through CHA. Another taxpayer's refund was stuck for seven years, so now they use intermediaries in the form of a CHA. Many taxpayers narrated a common woe. They are saddled with SCNs on settled issues, and these SCNs are confirmed by adjudicating authorities because they do not bribe the officials. One large ethical firm acknowledged as much when they admitted to suffer prolonged litigation frequently on settled issues as they do not pay bribes. One taxpayer who is an active member of a collective action group made an important point. As all orders which are in favour of taxpayers are reviewed because of suspicion, the officers who give favourable orders to taxpayers must cover their risk by asking for bribes. The said taxpayer is an important functionary of many trade associations and collective action groups. This position gives him access to top officials of Customs, including the Revenue Secretary. This access in turn gives him leverage with junior officers. He narrated an instance when a junior inspector asked him for a bribe for clearing a consignment which he had been delaying for days. On being threatened by the proprietor with the filing of a complaint, the inspector cleared the consignment without taking a bribe.

Non-payment of bribes results in settled legal issues being opened up time and again. One taxpayer got a favourable order from the High Court on a valuation issue in 1992. In 2002, the same issue was raked up again. They again got a favourable order from Commissioner (Appeals) which was accepted by the department. However, after a few years the same issue was again re-opened. This time also their case went up to Commissioner (Appeals) who decided the issue in their favour. The Department however, did not accept this order and filed an appeal in the CESTAT,

where it has been pending since 2007 till the date of the interview. Another US subsidiary was given a SCN for not fulfilling a condition of import. The condition required that imported machines be put to use within three months of import. They had run a trial of the machine but still it was held that machines were not used. On the date of the interview, they had reached the CESTAT where the matter was pending for the last seven years. They admitted that bribery would have helped them to avoid the SCN.

4.8. Taxpayers' Deep Pockets Enable Them to Take a Stand Against Bribery

The taxpayers are able to take a negative stand against corruption when they have deep pockets to withstand the long process of litigation with Customs. One SME respondent had a case when Customs detained their consignment because they felt their goods merited valuation on MRP (Maximum Retail Price). Initially they tried to bargain but as the amount of the bribe demanded was exorbitant, and their buyer agreed to foot the higher duty because they could take input tax credit for it, they did not yield to the demand for a bribe. Another respondent had a Customs problem because their shipper sent wrong goods to them. Customs demanded a bribe to permit return of the goods without making a case of wrong declaration against them. They did not pay the bribe as their shipper agreed to foot all the expenses including penalty.

One German MNC had a problem in getting their export containers sealed because of the expectation of bribes by the officers. The officer would always delay the sealing of containers because of which the respondent's export schedule would go haywire. When the respondent threatened to complain to the CMO (Chief Minister Office), the officer came but used a regulation to harass them. The taxpayer manufactured high-end ceramic bathtubs which were packed in thermacol and plastics and loaded in the containers. The Superintendent insisted that he could not

see the products and was adamant that all wrapping be removed. This caused a lot of time delay but the taxpayer persisted as their corporate culture prohibited payments of bribes. But after that incident, the Superintendent (who had also wasted his valuable time) showed them a circular of 2012 by which they could self-seal.

A US subsidiary mentioned that they export goods in refer[53] containers as their goods have to be maintained at minus 18 degrees centigrade throughout the supply chain. The superintendent insisted on taking out the goods for examination.

Another private firm recounted their problems because they didn't bribe Customs. On an interpretational issue they were asked to give a bank guarantee. If they had bribed the Customs officials, they would have had to just give a simple undertaking.

4.9. Customs Bribery an Existential Issue for SMEs

If large private companies, multinationals are asked for bribes, failing which they face various roadblocks, it's obvious that claims of honesty by private large and SME sector are not to be taken as the gospel truth. Wherever the taxpayer denied being subjected to bribe demands during interviews, the same was correlated with their balance sheets and CHA invoices. The picture which emerges is tabulated below.

Table 18: Evidence from CHA Invoices * Evidence from Balance Sheet Cross-tabulation

		Evidence from Balance Sheet			Total
		No	Yes	2	
Evidence from CHA Invoices	Yes	1	7	0	8
	Not Submitted	4	14	5	23
Total		5	21	5	31

[53] Refrigerated.

Table 19: Evidence from Balance Sheet * Firm-Size Cross-tabulation

		Firm size		Total
		Large	SME	
Evidence from Balance Sheet	No	1	4	5
	Yes	8	13	21
	Not Submitted	2	3	5
Total		11	20	31

Table 20: Evidence from CHA Invoices * Firm-Size Cross-tabulation

		Firm Size		Total
		Large	SME	
Evidence from CHA Invoices	Yes	1	7	8
	Not Submitted	10	13	23
Total		11	20	31

It is seen that the majority of private sector companies, especially SMEs, show anomalous behaviour between their talk and walk. It is felt that bribes are more prevalent amongst SMEs. This may be because, in contrast to SCNs issued, in the matter of raising pre-clearance objections, the SMEs remain as vulnerable as the large firms.

Table 21: Preclearance Problems * Firm-Size Cross-tabulation

		Firm- Size			Total
		Large	SME	Missing	
Preclearance Problems	None	13	14	1	28
	Yes	12	7	0	19
	Missing	2	1	1	4
Total		27	22	2	51

During interviews, this emerged as the area where collusive bribery is changed to extortive bribery. Poor quality of dispute resolution institutions in Customs makes this a lucrative area for extraction of bribes from firms.

4.10. Anecdotal Evidence of SME Vulnerability in the Absence of Efficient Customs Institutions

During interview an export pharmaceutical firm told the author that during one export shipment they had sent some t-shirts in each carton as a sales-promotion exercise.

On discovery by Customs that these t-shirts were not declared on the invoice, their consignment was detained at an ICD for almost a month. The taxpayer pointed to a solution to the problem, viz, amendment of the invoice. However, Customs threatened to make a case of mis-declaration which would then be adjudicated, prolonging the clearance process. The taxpayer who until now was dealing through his CHA, went personally to meet the Assistant Commissioner (AC). The AC refused to help him despite being a new direct recruit. What shocked him more was the condition of his consignment. Since these were pharmaceutical products, they were packed with abundant caution so that no particle of dust and/or water entered. However, each carton of the consignment was open to the vagaries of nature, including pigeons nesting above. He haggled with the officers who allowed the clearance of his consignment after amendment of documents but only after they got a hefty bribe. During the interview he told the author that he was in such a helpless position because of the nature of goods and the delay that he would have paid any sum as a bribe. This was not litigation per se which caused an exporter so much agony. On being asked as to why he didn't fight on a SCN, he said that it would have delayed the matter for years, with uncertain outcomes, which would have cost him business and he could not afford that loss.

Another respondent was a trader of chemicals who supplies them to manufacturers. They stated that they have faced queries from Customs on valuation aspects a couple of times, and other times they are asked to prove non-hazardous nature of their imports. On such occasions, their shipment gets delayed causing them penury loss because they have to pay demurrage and interest on Customs duty. On all these occasions their consignment has been released on production of papers by their CHA. Delays worry them as they have many competitors and delays can mean loss of goodwill and reliability as well as increase in transaction costs. They realize that Customs are very vital to their business. However, they handle Customs through their CHA. They avoid dealing with Customs directly. Their CHA may be paying bribes to Customs. Their balance sheet shows big amounts per year paid as Customs clearance charges; the CHA in turn bills his agency expenses apart from this. Through the CHA they are probably bribing Customs for facilitating their cargo. Bribes enable them to have uninterrupted business.

Another taxpayer admitted to providing a car and hospitality for officers who seal their export containers. When asked why they do not self-seal, they stated that they did that because they did not want containers opened for inspection at the gateway port.

One respondent mentioned that twice their consignment was stuck at a port for chemical testing of zircon powder. They admitted that this was “unusual” as their product was being cleared regularly at the same and other ports. Their balance sheet for year ending 31.3.2016 shows considerable amounts as Testing and Laboratory expenses.

Another taxpayer’s CHA invoices showed abnormal amounts as repacking charges which appear as a disguise to bribe Food Safety officers. They showed pictures where their imported olive oil is being drawn out for sampling. One carton is open

and from it, one tin was open from which oil was being drawn out. Repacking could not have cost the large amounts shown in the balance sheet. The respondent admitted to being caught between detention charges, production schedules going haywire, and liquidation damages from buyers for delays and prolonged litigation as their reasons for fearing Customs. The same taxpayer admitted that CHA was a necessary medium. They tried self-clearance once but that became so time consuming that they found the CHA cheaper.

Another taxpayer's CHA invoices showed license debit fees, for which they could not show receipts. This respondent appeared also to be paying outright bribes as they spoke of being given the option of sending their samples to private accredited labs rather than government labs. In private labs the results are delivered much faster.

From the above analysis, it appears that bribery is a ubiquitous element of Customs' clearance in India for SMEs.

4.11. Focus Group Validation

A correlation was carried out on 12 other taxpayers from another region, namely Vadodara City, which is adjacent to Anand. The results of interviews with this group are tabulated below. It may, however, be mentioned that this group consisted of members of an Association of Exporters and Importers who take up problems faced by importers and exporters with higher authorities. The members were very vocal in expressing their experiences.

Table 22: Respondent Size/Type * Admission of Bribery Cross-tabulation

		Admission of Bribery		
		No	Yes	Total
Respondent Size/Type	Large Firm	2	4	6
	Medium Firm	0	2	2
	CHA	0	4	4
Total		2	10	12

4.12. Ubiquity of Customs Corruption

Twenty respondents admitted bribe demands during the first round of interviews, constituting nearly 41% of total taxpayers. In the second round, 10 out of 12 taxpayers admitted bribery, 83% of the total. Of the 30 taxpayers who denied bribery, if one removes the intersecting set between balance sheet and CHA invoice evidence, 23 respondents showed evidence of bribery in their balance sheets and CHA invoices. Thus, in net, only in the case of 8 taxpayers one can conclude that bribery does not play any role in their transaction with Customs authorities. If one adds 12 respondents of the focus group to the first set of respondents, then out of 63 respondents only 10 respondents it can be concluded that bribery does not pay any part in their dealings with Customs.

4.13. Robustness of Data

The robustness of the above analysis was tested by various methods such as that of *compared means*, the *independent sample t-Tests* with *95% confidence levels* and *p-values* and the results are given in the following Table:

Table 23: t-Test of Group Statistics

	Firm- Size	N	Mean	Std. Deviation	Std. Error Mean
Anti-Corruption	Large	27	.59	.501	.096

Corporate Culture	SME	22	.09	.294	.063
Litigation	Large	27	.56	.506	.097
	SME	22	.14	.351	.075
Preclearance Problems	Large	27	74.44	266.486	51.285
	SME	22	45.73	212.917	45.394

Table 24: Independent Samples t-Test

		Levene's Test for Equality of Variances		t-test for Equality of Means						
		F	Sig.	T	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
									Lower	Upper
Anti-Corruption Corporate Culture	Equal variances assumed	39.883	.000	4.147	47	.000	.502	.121	.258	.745
	Equal variances not assumed			4.363	43.120	.000	.502	.115	.270	.734
Litigation	Equal variances assumed	26.165	.000	3.289	47	.002	.419	.127	.163	.676
	Equal variances not assumed			3.411	45.940	.001	.419	.123	.172	.667

Preclearance problems	Equal variances assumed	.678	.414	.410	47	.684	28.717	70.083	-112.271	169.705
	Equal variances not assumed			.419	46.989	.677	28.717	68.489	-109.066	166.501

The above analysis proves that two of the author's hypotheses are statistically significant. The first hypothesis was that anti-corruption is adopted as a corporate strategy primarily by large firms. Secondly, those large firms are more likely to be issued SCNs as they have the deep pockets to resist bribery demands. My third hypothesis has not been proved statistically significant. The author had predicted that the SME sector will be faced with more pre-clearance problems than large firms. My research proves that both SMEs and large firms face almost the same level of pre-clearance objections by Customs. The treatment of pre-clearance objections is probably different for the two kinds of firms. Large firms with pronounced anti-corruption corporate cultures are not intimidated by the malfunctioning dispute resolution institutions and hence are issued SCNs. On the other hand, the likelihood of the SME sector dealing with pre-clearance objections by bribery is very high as they are issued with fewer SCNs.

4.14. Financial Reasons for Corruption Ubiquity

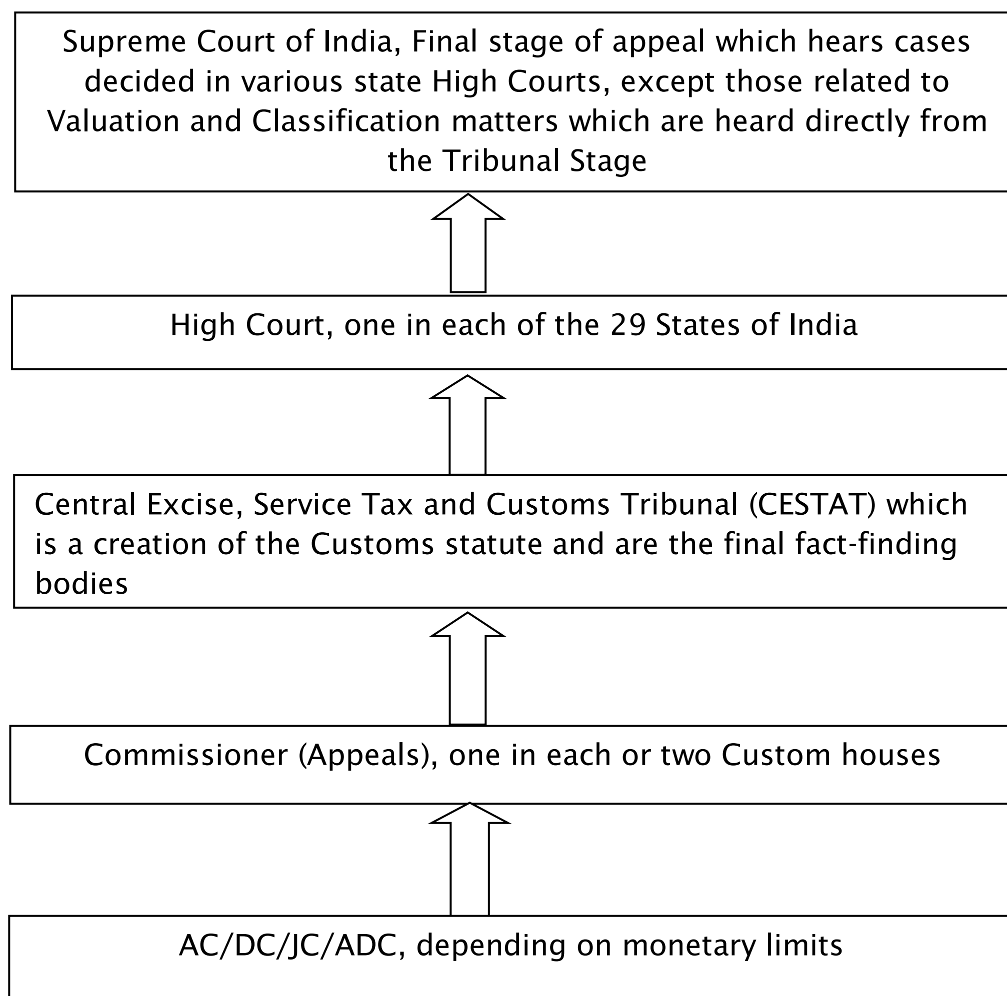
The interviews gave the reasons why a large majority of SMEs bribe Customs and are presented by way of anecdotal evidence. There is an additional financial reason for this. When a demand is raised on a taxpayer, the same has to be shown as a "contingent liability" or "provisions" have to be made for it in the balance sheet. This reduces a taxpayers' liquidity as that amount of money cannot be used for business. Furthermore, it increased their interest liability on bank loans. Most

taxpayers do not make provisions for the demand in their balance sheets on the grounds that this was a frivolous demand which will not stand in the Courts. However, all had shown the demands as “contingent liability” which reduced their negotiating power with the banks which some tried to circumvent through bribery.

4.15: Institutional Reasons for Corruption Ubiquity

Apart from pressing business and financial reasons for corruption ubiquity in Customs, there is a more pressing existential reason for it also. That is to avoid the hassles of the malfunctioning dispute resolution systems in Customs. Authorities are said to be arbitrarily unfair to the taxpayers. The dispute resolution system is stretched beyond limits, is expensive, time consuming, and judiciousness begins to creep in only at the CESTAT stage. The various stages are given below.

Diagram 1: Dispute resolution Institutions in Customs



SMEs don't have the deep pockets to withstand the long-drawn processes and hence adopt the safest and fastest method of bribery to ensure a hassle-free passage of their consignments. The litigation process would involve hiring lawyers, prolonged periods of uncertainty, loss of precious time, and entailing as a consequence liquidated damages, demurrage, and loss of clients.

4.16. Situational Differences of Large Firms and Firms with Foreign Participation

In contrast, large firms with strong anti-corruption compliance systems in place, when posited with the same situational context by the author during interview, remained committed to their corporate culture. They said that being a large firm, they can wait out/fight out the issue legally. They have in-house lawyers and big law firms on their payroll. Secondly, they are part of collective action groups which give them a platform to air their grievances. Additionally, it is easy for them to get appointments with senior officers and most times they are listened to also. In Customs, they get ACP most times. However, in the worst case scenario, they also cannot bribe officers even with small favours such as a job for his relative because they have a whistle-blower policy in place.

Government undertakings cannot bribe and for this one stated during interview that they have been issued SCNs for technicalities like missing documents, for which their bonds and undertakings were not closed time and again. Many times, this happens even when they have submitted the documents and have acknowledgement of the same. However, this is not a bother as they have capacity to wait out delays, have in-house lawyers, and work in monopoly situations.

The circumstance of a German MNC with a no bribe culture showed a novel pattern of patron-client relationship. They came to set up a factory in Gujarat at behest of the Chief Minister of Gujarat who encourages foreign investment in the state. They

had immense support of CMO because of this. Special pipelines for potable water and natural gas were specially drawn up to their plant. Most of bureaucratic hassles were sorted out on the spot by agencies, such as planning & construction and electricity. However, from the corruption point of view, this encourages particularism and not universalism. Patron-client relationships help a firm adopt an anti-bribery stance. One such private firm which had broken even recently after having come out of insolvency proceedings could afford an anti-corruption corporate strategy as it was a beneficiary of patron-client relationships. The owners' brother-in-law and maternal uncles were powerful cabinet ministers in State politics. This was also the experience for one EOU who had smooth sailing as it was a member of a collective action group Plastic Export Promotion Council.

4.17. Similarities of Collective Action Group Participants in the First and Focus Group

In the focus group, if one only concentrated on the large units, it is seen that out of 12 taxpayers, six can be categorised as large units and of these, four have been issued SCNs. One medium sized unit out of two has been issued a SCN. Of the remaining four taxpayers, all reported pre-clearance problems at Customs. Only two taxpayers, constituting 17% of total, reported neither issuance of a SCN nor pre-clearance problems with Customs. The same percentage of 17% works out for the first group comprising 51 taxpayers. Thus, being part of a collective action does not preclude issuance of SCN or pre-clearance problems for the taxpayers. If 35% of taxpayers got a SCN in the first group, then 43% got it in the collective action group. However, the latter group had pre-clearance problems with the majority of taxpayers compared to 37% in the first group. This may be because of the vocal nature of the second group.

4.18. C&AG Report as Corroborative Evidence

SCNs are issued to big companies with strong anti-corruption compliance programs. Firms, especially SMEs, pay bribes to expedite clearances and to avoid being issued a SCN. This is because dispute resolution institutions are a quagmire into which they do not want to get stuck. C&AG of India has given a summation of SCNs issued as below,

Table 25: Different Kinds of SCNs Issued Versus Total Number of Transactions

Year	SCNs Issued on the Basis of Intelligence/ Information Received from Informers	SCNs Issued on Suo Moto Basis	Total SCNs Issued	No. of Transactions (Crores)	
				Imports	Exports
2011-12	99	566	665	62,33,000	67,79,000
2012-13	85	735	820	74,60,630	65,61,921
2013-14	273	743	1016	84,11,542	69,15,958
Total	457	2044	2501	1,46,44,542	1,36,94,958

Source: Directorate General of Commercial Intelligence and Statistics, Kolkata, India.

The audit has not compared SCN to size of an enterprise but has remarked that the total number of SCNs issued is not commensurate with the total Customs transactions that had taken place during these years.[54]

4.19. Frivolous SCNs and Influence-Peddling/Corruption in Adjudication

Data gathered during interviews support the above. Of the 18 taxpayers who were issued a SCN, only one had it resolved in his favour at the departmental level, a paltry 6%. The intermediation used by this lone taxpayer was a retired former departmental officer. Out of the five disputes discussed in the second group, only one taxpayer could resolve it at the original adjudicating level and he admittedly used his high connections to resolve his dispute.

4.20. CHA View on Corruption Ubiquity

The second group included CHAs who unanimously stated that speed money was ubiquitous in Customs. They said that people are forced to pay for Customs clearance, otherwise they are harassed endlessly. Even legitimate things are denied to them. In one case Customs send their product arbitrarily for testing and despite clear cut provisions for the same, denied them provisional clearance which they could only obtain by going to appeal. The first lab which was a government lab gave a negative report because they refused to bribe. However, having got fed up, they bribed Customs to send it to a private lab which gave the chemical report in their favour. Because of the delay they had to pay 50 lakhs or almost 50,000 dollars as demurrage. People who want to play straight are forced to change their ways. This view was also reiterated by a medium firm owner who stated, “I studied abroad and came back to India to change the system but had to change myself.”

[54] Report of the Comptroller and Auditor General of India, “Compliance Audit of Department of Revenue-Customs,” 2014, 30, http://www.cag.gov.in/sites/default/files/audit_report_files/Union_Compliance_In_Direct_Tax_Customs_Revenue_Dept_8_2015.pdf.

Another CHA said that if speed money is not paid, they are harassed in various ways. They are not given NOCs, EP copies are not released, besides delays in clearances. Another CHA's client refuses to pay him anything extra. So, they generally have problems getting fast clearance. He recited an instance when an alert was put on the consignment of integrated circuits imported by this client. They waited for four days and when they approached Customs to lift the alert as they had submitted all invoices, the officer put his finger on the keyboard and asked for money. When they did not pay, he removed his finger from the keyboard. It took an additional 15 days for the alert to be lifted from the system in the normal course without payment of bribes.

4.21. Regulatory Complexity and Unpredictability of Customs Officers

The 2017 Asia Pacific Tax Complexity Survey by Deloitte reveals that taxpayers spend more time and money dealing with the most complex tax environments which exist in China, India, and Indonesia.[55] The report defines complexity as perceived difficulty in understanding tax laws and rules.[56] It finds Indian tax officials to be most inconsistent in interpreting the law and least predictable.[57] On unpredictability, India ranks first, a rank unchanged since 2014.[58] Indian respondents to the survey said that tax rulings take a long time to settle as it's a long drawn-out process.[59] Foreign investors find the dispute resolution system 'time consuming' and offering 'little certainty'.[60]

[55] Deloitte, "2017 Asia Pacific Tax Complexity Survey", 6-8, https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-deloitte-2017-asia-pacific-tax-complexity-survey.pdf,
[56] Deloitte, "2017 Asia Pacific Tax Complexity Survey", 12.
[57] Deloitte, "2017 Asia Pacific Tax Complexity Survey", 14-17.
[58] Deloitte, "2017 Asia Pacific Tax Complexity Survey", 19.
[59] Deloitte, "2017 Asia Pacific Tax Complexity Survey", 20.
[60] Deloitte, "2017 Asia Pacific Tax Complexity Survey", 29.

4.22. Ubiquity of the CHA for Customs Clearance

The complexity of Indian Customs' regulatory environment is also borne out by the following cross-tab, demonstrating the ubiquity of the CHA for almost all clearances of cargo from Customs.

Table 26: Intermediation for Clearance of Cargo * Firm- Size Cross-tabulation

		Firm- Size			
		Large	SME	Missing	Total
Intermediation for Clearance of Cargo	Self	1	1	0	2
	CHA	26	21	1	48
	Missing	0	0	1	1
Total		27	22	2	51

4.23. Malfunctioning Customs Dispute resolution Institutions

There are inherent weaknesses in the dispute resolution institutions in Customs. This is substantiated by way of secondary sources. As per Section 28AAA (3) of Customs Act, 1962, when a SCN is issued to an importer/exporter, he shall furnish reply within 30 days from the date of receipt of such notice and the case is to be adjudicated within one year from the date of notice. Scrutiny of records by the C&AG audit revealed that though SCNs were issued in 67 cases in a sample of four Commissionerates, between December 2011 and September 2013, the same were not finalized till 2017.[61] There are further delays when Commissioner (Appeals) routinely remands cases for *de novo adjudication*. Through an amendment of Section 128 A (3) of Custom Act w.e.f.[62], 11 May 2001, the Commissioner (Appeals) can no longer refer the case back to the adjudicating authority for *de novo decision*.

[61] Report of the Comptroller and Auditor General of India, "Compliance Audit of Department of Revenue-Customs", 2015, 35, http://www.cag.gov.in/sites/default/files/audit_report_files/Union_Customs_Compliance_Department_Revenue_Report_5_2016.pdf.
[62] With effect from.

Audit noticed that the Commissioner (Appeals), Mumbai had issued an order of *de novo* in 3824 cases during 2015-16 in violation of the above provision. This had delayed the adjudication in blatant disregard of the legal provisions.[63] Delays seem *de rigueur* at all stages. There are delays in even issuance of SCNs. In one Commissionerates alone, C&AG audit found that out of 75 cases selected for audit scrutiny, in 19 cases, issue of notices was delayed from 1-4 years in four cases, 4-8 years in 12 cases, and over 8 years in three cases.[64]

C&AG also highlighted instances of vexatious adjudications. Advance licence holders are required to submit export documents to the RLA (Regional Licensing Authority) to obtain an EODC (Export Obligation Discharge Certificate). An EODC issued by RLA is transmitted to Customs through post or EDI (Electronic Data Interchange) and also published on the website of DGFT. In case the EO is not fulfilled, the importer is required to deposit Customs duties with interest. Audit noticed that Customs adjudicated five cases during 2013-14 for non-fulfilment of export obligation and duty and penalty of a substantial amount was imposed. On cross-checking the EODC status of these licences from the website of DGFT, Audit noticed that these licenses had already been redeemed and an EODC have been issued before adjudication.[65]

Section 28 (9) of CA, 1962, prescribes the time limit of six months for passing an adjudication order for duty short levied or not levied, and 12 months in case of short levy or non-levy due to suppression of facts or collusion or wilful misstatement. As per CBEC circular no. 03/2007 dated 10.01.2007, the time

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[63] Report of the Comptroller and Auditor General of India, "Compliance Audit of Department of Revenue-Customs", 2016, 37, http://www.cag.gov.in/sites/default/files/audit_report_files/Union_Government_Report_1_of_2017_Revenue_Customs.pdf.

[64] Report of the Comptroller and Auditor General of India, "Compliance Audit of Department of Revenue-Customs", 2016, 38.

[65] Report of the Comptroller and Auditor General of India, "Compliance Audit of Department of Revenue-Customs", 2016, 39.

periods for adjudication of cases are as follows: (a) For cases to be adjudicated within the competence of Commissioner of Customs or an ADC/JC of Customs, one year from the date of service of the show cause notice; and (b) For cases to be adjudicated within the competence of AC/DC of Customs, six months from the date of service of the SCN. In case the prescribed time period could not be observed in a particular case, the AO has to keep his supervisory officer informed regarding the circumstances which prevented the observance of the above time frame, and the supervisory officer should fix an appropriate time frame for disposal of such cases and monitor their disposal accordingly. Audit noticed that 964 cases were pending for adjudication beyond the above prescribed time limit. From these cases, one case was pending > 22 years, 2 cases > 9 years, 1 case > 2 years, and 960 cases >1year.[66]

The poor quality of adjudication orders was observed by C&AG by evaluating the success ratio of department's appeal against adjudication orders. The ratio had decreased from 33.47% in FY13 to 26.44% in FY15. The success ratio of departmental appeals is around 50 per cent when decided by Commissioner (Appeals) but in extra-departmental higher forums, it ranges from 15 per cent to 34 per cent. Appeals filed by the assessees have better success rate in extra-departmental higher forums. Audit suggested that there is a need to analyse the reasons of low success rate and effective measures may be taken to improve the success rate as well as to reduce the pendency of appeals.[67]

4.2.4. Causes for Malfunction of Customs Dispute resolution Institutions

The help of another secondary source is taken to evaluate the reason for the poor dispute resolution institutions in Indian Customs. TARC headed by a noted

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[66] Report of the Comptroller and Auditor General of India, "Compliance Audit of Department of Revenue-Customs", 2016, 54.

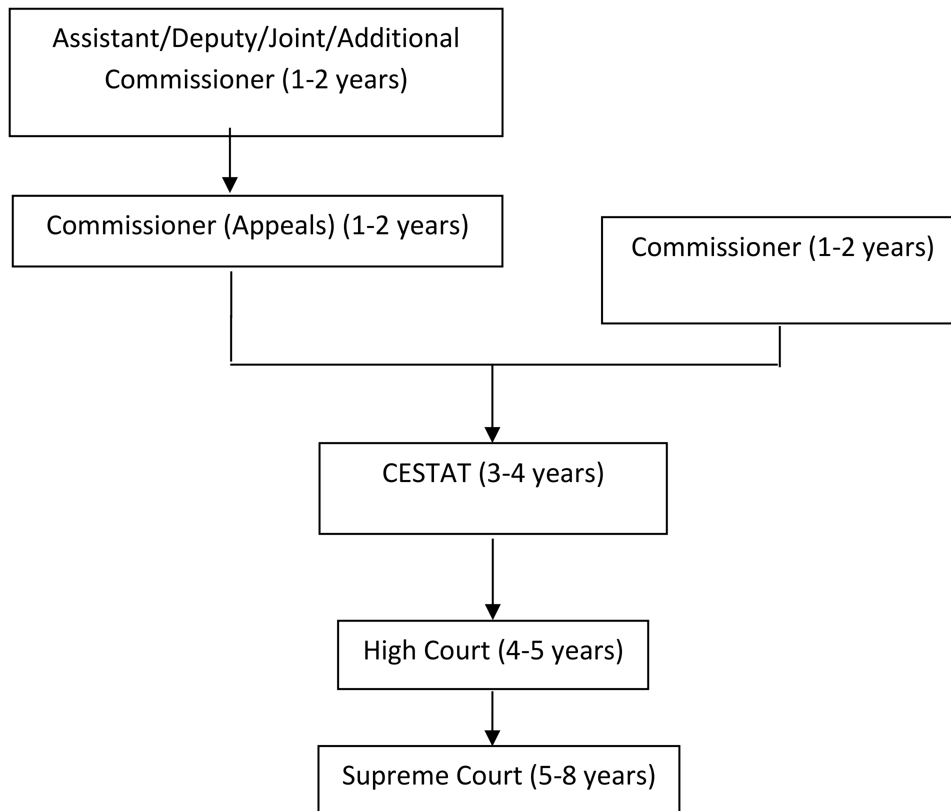
[67] Report of the Comptroller and Auditor General of India, "Compliance Audit of Department of Revenue-Customs", 2015, 29.

economist was set up by the Indian Government in 2014. TARC produced four reports which analysed the poor functioning of the dispute resolution institutions, amongst other issues, in Indirect Taxes, which includes Customs. According to its first report, the reason for poor quality of adjudication lies in the revenue bias of the AOs who are viewed with suspicion by their reviewing/supervisory officers if they decide a case in favour of the taxpayer. The report states at the outset that dispute resolution, "is an area in which there is widespread dissatisfaction among stakeholders and that the administrative machinery suffers from a crisis of confidence among taxpayers. It is widely perceived to lack in objectivity, fairness, and adherence to timelines."[68]

The TARC report gives the following mean times taken at various institutions of dispute resolution:

[68] First Report of the Tax Administration Reform Commission (TARC), Ministry of Finance, Government of India, 223, http://www.prsindia.org/administrator/uploads/general/1404204462_TARC%20First%20Report%20Summary.pdf.

Diagram 2-: Average Time Taken to Resolve Dispute in Indirect Taxes[69]



The report mentions that a recurring theme in what they have heard from both the departmental officers as well as the industry is that the mentality of AOs is affected by the process of review in CBEC. The revisionary powers are contained in Section 129D of CA,1962, which provide the power to examine orders passed by subordinate officers with a view to determining their "legality and propriety." [70] TARC has reported that the primary consideration that weighs with the reviewing/revisionary authorities is the tax effect of the order and not so much its legality or propriety. Orders are routinely reviewed and appeals filed against the original orders when they are in favour of the taxpayer. This, coupled with the perceived fear of vigilance and audit, is said to have fuelled the tendency to pass pro-revenue orders without regard to merit and concerns of legality and propriety,

[69] First Report of TARC, 26.
[70] First Report of TARC, 268.

forcing taxpayers to approach appellate authorities and courts.[71] In departmental mechanisms, a similar mentality seems to exist at the level of Commissioner (Appeals) and there is a pronounced tendency to drag matters by filing departmental appeals against the orders of the Commissioner (Appeals) when they decide in favour of taxpayers.[72] This makes the tribunal often the first level of appeal where the taxpayers expect justice.

The second TARC Report also mentions that there is a marked absence of judicial discipline and respect for precedent, which results in a plethora of avoidable disputes. There is marked risk aversion to making decisions that are in favour of the taxpayer. The approach is not very taxpayer friendly, particularly at the frontline levels. The Indian Customs border is regarded as an unpredictable element in the global supply chain.[73]

In its Third report, TARC noted that, as evidenced by the large number of disputes, the present relationship between the taxpayer and the Customs is marked by distrust. To quote from the report,

> Despite protestations to the contrary, the tendency of dispute resolution institutions to drag matters into appeals needlessly continues unabated, creating the impression of an intractably litigious administration. The upshot is that while on the whole the majority of decisions by the departmental authorities show a marked revenue bias, in many of those exceptional cases where fair and competent orders are passed, the higher authorities in the administration show a propensity to file appeals to the Tribunals, High Courts, and even the Supreme Court. Apart from costs of such litigation, such

[71] First Report of TARC, 268.
[72] First Report of TARC, 268.
[73] Second Report of the Tax Administration Reform Commission (TARC), Ministry of Finance, Government of India (September 2014), 44-46, http://pib.nic.in/newsite/PrintRelease.aspx?relid=110082.

questioning of their orders de-motivates those officers at the junior level who act fairly and objectively, reinforcing the tendency towards arbitrary anti-taxpayer orders. Courts have in many cases passed strictures on judicial indiscipline and needless appeals on the part of revenue. In many cases, they have directed their orders to be sent to the Boards and the Ministry of Finance. However, such adverse comments from judicial bodies and frequent public criticism seems to have had little impact on this tendency as, to TARC's knowledge, no one has ever been held accountable for such glaring lapses – again sharply underlining the complete absence of accountability at all levels. This is reflective of either incompetence or an attitude of disregard for judicial discipline. In either case, it vitiates the business climate – generating avoidable uncertainty and costs for the taxpayer – and shows the administration in a poor light. While such an attitude pervades it, it is hard to see how any taxpayer can feel any sense of respect or affiliation towards the administration, let alone be motivated towards voluntary compliance. It recommended that the Board should promptly take decisive steps to arrest this decline and avoid the opprobrium of strictures from judicial authorities. Mere issue of instructions will not do. CBEC authorities must own up the responsibility for the performance of their officers and enforce accountability on their officers. They can do so by first desisting filing of appeals against well-reasoned and sound orders passed by their officers simply because they are pro taxpayers and by taking notice of capricious orders, irrespective of revenue consequence and disciplining the errant officers – even by meting out punishment where required."[74]

From the above, one sees the nature of uncertainty at the dispute resolution institutions in Customs involving large time horizons. This affects entrepreneurship

[74] Second Report of TARC, 44-46.

adversely and affects the ability to contribute to economic growth and well-being of society.[75] The Customs dispute resolution institutional framework is not conducive to productive entrepreneurship. In the absence of high-quality Customs institutions at the dispute resolution level, entrepreneurship becomes corrupt in many cases, and unproductive in all other cases, thereby impairing economic performance and growth. Rajul Awasthi & Nihal Bayraktar mention that time consuming and costly dispute resolution are determinants of tax corruption and suggest a "well-oiled tax dispute resolution institution" as a measure of tax simplification to tackle it.[76] They, however, have not suggested any model solution. The author has made such an endeavour of giving the nuts and bolts of a solution in the following chapter.

4.25. Not an Endogeneity Problem

There is a direct relationship between the quality of Customs' dispute resolution institutions and corruption. Here it may appear as if there may be endogeneity involved. However, the author's research proves that it is not the case. It is unidirectional as has been shown anecdotally in this research. Many entrepreneurs would not bribe if the institutions of dispute resolution were judicious and functioned with alacrity.

4.26. Entrepreneurial Response to Institutional Uncertainty

Bylund and McCaffrey mention four types of entrepreneurial responses to institutional uncertainty: the abiding, evading, altering, and exiting kinds.[77] The author has shown that most large companies and companies with US and German participation as well as government undertakings abide by the rules and go through the institutions of Customs dispute resolution even though many of them stated

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[75] Per L. Bylund and Matthew McCaffrey, "A Theory of Entrepreneurship and Institutional Uncertainty", *Journal of Business Venturing* 32, no. 5 (2017): 461-475.
[76] Rajul Awasthi and Nihal Bayraktar, "Can Tax Simplification Help Lower Tax Corruption?", *The World Bank Policy Research Working Paper 6988* (July 2014):17, 41, http://documents.worldbank.org/curated/en/468501468178735234/pdf/WPS6988.pdf.
[77] Bylund and McCaffrey, A Theory of Entrepreneurship, 2.

during interviews that they could have avoided the prolonged litigation if they had bribed Customs. Most SMEs, on the other hand, paid bribes just so as not to be caught in the labyrinthine processes of Customs' dispute resolution institutions. They paid bribes to evade the malfunctioning institutions. There were no instances of firms exiting the system altogether although that cannot be ruled out altogether. But the guess is that the number will be small. Some companies altered the system from within by bribing or using patron-client relationships to obtain favourable orders, once they were ensnared within it. Others with economic and/or political clout also tried to alter it from within.

4.27. Institutional Uncertainty and Anti-Corruption Effort

Institutional uncertainty is detrimental to the anti-corruption effort. Institutional evaders find it profitable to pay bribes to avoid the labyrinthine maze of Customs' dispute resolution institutions. Others who are constrained abiders are tempted to bribe their way out. One recalls the case of Pride Forasol India which was a wholly-owned subsidiary of Pride International. Pride International ("Pride"), a Houston-based corporation, owned and operated numerous oil and gas drilling rigs throughout the world. From January to July 2003, the Director of Legal Affairs for Pride Forasol, the Base Manager for Pride India, the Area Manager for the Asia Pacific region (which included Pride India), an Indian Customs consultant, and others agreed to pay $500,000 to a judge with India's CESTAT to secure a favourable judicial decision for Pride India relating to a litigation matter pending before the official involving the payment of Customs duties and penalties assessed for a rig.[78] Here a US subsidiary with strong ethical culture found it uneconomical to withstand the rigors of the Customs dispute resolution institutions and succumbed to corruption. During the interviews the author also came across a taxpayer who

[78] Stanford Law School, "United States of America v. Pride Forasol S.A.S", http://fcpa.stanford.edu/enforcement-action.html?id=311.

prided himself on his resolute anti-corruption stand. He gave the author an example where he resolved pre-clearance issue by taking up the matter at the highest level of CBEC and complaining against the officer who was transferred out immediately. Officers don't stop his consignments normally but in one instance Customs found a ground on which they issued him SCN. As he doesn't pay bribes, it was routinely confirmed by the AC (Assistant Commissioner) at the original adjudicating level and also at the appellate stage. He was determined to resolve the issue as it was costing him money so he approached a CESTAT member who gave him a favourable order on the promise that he will use his connections within bureaucracy and get him a post-retirement job as a member of a high-powered committee.

A resolute anti-corruption stance becomes difficult in the face of institutional failures. In all cases, whatever the size, segment, or stand on corruption of the enterprise, the effect of institutional uncertainty was detrimental and unproductive for entrepreneurial activity by increasing uncertainty and transaction costs. The author shows that the costs are highest for SMEs because of their limited resources. This finding is also borne out by a study in Europe; this study has shown that costs of following tax rules are a hundred times higher for this sector.[79]

The Customs' dispute resolution institutional framework was designed to ensure in a judicious manner the compliance with regulations related to proper importation/exportation of goods. But we see the upturning and gaming of the institutional framework by firms who feel constrained in their profit-seeking behaviour by the Customs dispute resolution institutions' laggard behaviour.

[79] Niklas Elert and Magnus Henrekson, "Evasive Entrepreneurship", *IFN Working Paper No.1044* (2014):18-19, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2513475.

Even Adam Smith, who saw institutions as important requisites for economic development, noted that entrepreneurs would circumvent institutional constraints unfavourable to commerce, stating that

> The natural effort of every individual is to better his own condition... [Is] not only capable of carrying on the society to wealth and prosperity, but of surmounting a hundred impertinent obstructions with which the folly of human laws too often encumbers its operation.[80]

The malfunctioning of Customs' dispute resolution institutions make adoption of an anti-corruption culture at the corporate level a strangling choice for the majority. Only firms with a foreign, namely US or German, participation or with deep-pockets and/or strong patron-client relationships can adopt anti-corruption as a way of doing business, making them perforce abiders of the Customs' institutional framework. This is the same entrepreneurial lot that through its political and economic participation attempts to alter the institutional framework. In all cases, however, the resource allocation by all firms, whatever their size or orientation, is in unproductive or even destructive arenas. The institutional environment in Customs therefore has a debilitating effect on anti-corruption culture amongst most Indian firms.

4.28. Customs Corruption Harmful to State

Concurrently, the institutional weakness of Customs endangers the security of the state and its revenues. By paying bribes/speed money, firms circumvent normal scrutiny of their documents and examination of their goods. This evasion is welfare-reducing. It does not lead to technological and/or organizational innovation.[81] By speeding up processes, they induce lobbying, rent-seeking, and reduce state taxes

[80] Niklas Elert and Magnus Henrekson, Evasive Entrepreneurship, 3.
[81] Elert and Henrekson, Evasive Entrepreneurship, 7.

and security, leading sometimes to serious crimes. In 1993, serial bomb blasts took place in the financial capital of India, Mumbai. More than 200 people died and many were injured. Customs officials were instrumental in facilitating landing of RDX.[82] It is rumoured that Customs officers had a deal to clear a silver consignment but alongside RDX[83] was cleared unwittingly.[84]

4.29. Institutional Repair and Anti-Corruption Strategy, Chicken and Egg Conundrum?

Institutional alignment and anti-corruption corporate culture present a chicken and egg conundrum. Bylund and MaCaffrey in their paper present the Williamsonian institutional framework in which the vertical structure is represented by four levels of economizing. In this vertical structure, anti-corruption corporate culture would be Level 1 and Customs' quasi-judicial institutional framework would be Level 2. Institutions at L2 can be altered by entrepreneurial action in a time span ranging from 10 to 100 years. However, alterations of cultural and traditional norms at L1 level involves generations.[85] Horizontal alteration of L2 would lead to its alignment with L1.

However, Bylund and McCaffrey recommend that alteration at L1 will lead to the rest of the levels aligning with it. They do not find the bottom up approach to be cost effective.[86] The author, however, advocates that without institutional repair, imposition of an anti-corruption corporate culture uniformly would not be workable for most segments of entrepreneurs. The feedback for alteration would come from

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[82] "The 1993 Mumbai Blasts: What Exactly Happened on March 12 That Year", *News 18.com,* June 16, 2017, https://www.news18.com/news/india/the-1993-mumbai-blasts-what-exactly-happened-on-march-12-that-year-598045.html.

[83] A research department explosive, also called cyclonite, hexogen, or T4, a powerful explosive.

[84] Rahul Pathak, "Bombay Blasts: Investigators confirm key part played by Dawood Ibrahim", *India Today,* June 30, 1993, http://indiatoday.intoday.in/story/bombay-blasts-investigators-confirm-key-part-played-by-dawood-ibrahim/1/302477.html.

[85] Bylund and McCaffrey, A Theory of Entrepreneurship, 9-14.

[86] Bylund and McCaffrey, A Theory of Entrepreneurship, 14-17.

entrepreneurs who find the Customs institutional framework constricting but have no option but to abide by it. Bylund and McCaffrey think evaders of institutional constraints may also provide indirect feedback. This could be a result of the "void" these evaders create or a response to complaint by their competitors.[87] CAG audit has pointed out low rates of SCNs compared to transactions; however, apart from this *obiter dictum* of C&AG, it appears that the void is undetected by Customs' authorities. Since whole segments adopt the evasion route, alteration will have to come from the abiders.

[87] Bylund and McCaffrey, A Theory of Entrepreneurship, 17.

Chapter 5: Suggested Solutions

5.1. Salience of Causality for Solutions

It was mentioned in the previous chapter that inefficient dispute resolution institutions are a major determinant of Customs' corruption in India. A "well-oiled tax dispute resolution institution" has been suggested as a measure of tax simplification to tackle it.[88] However, as was seen in the chapter on literature review, none of the studies have gone into the details of how to 'oil' the institution. The TARC set up by the Ministry of Finance, Government of India, has given some stand-alone suggestions rather than a single all-encompassing repair mechanism for the dispute resolution institutions of Indian Customs.

The inefficiencies of the dispute resolution institutions in Customs prompt SMEs to avoid getting into disputes by paying bribes. On the other hand, the honest firms are saddled with unnecessary litigation, often on settled issues.

This chapter examines how Customs has sought to rectify the situation themselves and whether that seems to be working. This chapter will also examine the suggestions made by the TARC and how they might be helpful or not to the arbitrary litigations prevalent presently in the Customs' department. It will be seen that the measures suggested will not work. This is because the TARC reports premise their suggestions on the ground only of the revenue bias of Customs officers. In contrast, the present paper has brought out clearly that corruption is a major determinant of which categories of firms get a SCN. Corruption/bribery is also a determinant of whether a firm can get justice at the first stage of adjudication or will be embroiled in litigation until they get justice at higher judicial fora after many years.

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[88] Rajul Awasthi and Nihal Bayraktar, "Can Tax Simplification Help Lower Tax Corruption?" *The World Bank Policy Research Working Paper 6988* (July 2014): 17, 41.

The senior officers of the Customs department may not be totally unaware that corruption has a role to play in getting favourable orders. There have been disciplinary proceedings against officers who have given adjudication orders in favour of taxpayers. One major reason for supervisory officers to review all adjudication orders, which are anti-revenue and pro-taxpayers, is precisely this trust misalignment between supervisory and subordinate officers. However, this has escaped the notice of TARC reports completely. TARC has ascribed this simply to revenue bias of Customs officials. Obviously, this can be an area of further research provided statistics are forthcoming and revenue officials were forthright about it.

5.2. Solutions Implemented by CBEC

The solution which has been implemented by CBEC to address dispute resolution institutional malfunction is faulty in itself. Instead of addressing corruption which lies at its root, the solution has rather ingrained rent-seeking behaviour further, both on the demand and the supply sides. In 2010, the CBEC issued a circular to its departmental officers expressing concern on rising litigations. Interestingly, it stated in paragraph two of this circular "that appeals shall not be filed if the matter is covered by a series of judgments of the Tribunal and the High Courts which have held the field and have not been challenged in the Supreme Court. No appeal shall be filed where the assessee has acted in accordance with the longstanding practice and also merely because of change of opinion on the part of the jurisdictional officers."[89] After iteration of necessity for Customs officials to be judicially disciplined, it went further and fixed the revenue threshold within which all adjudicating orders, appeal orders, and court orders had to be accepted by reviewing officials. Thus, Commissioner (Appeals) orders involving up to one lakhs

[89] CBEC Instruction for Departmental officers, “Reduction of Government Litigations - Providing Monetary Limits for Filing Appeals by the Department before CESTAT and High Courts – Regarding”, October 20, 2010, http://www.cbec.gov.in/htdocs-cbec/excise/cx-circulars/cx-circulars-2010/reductn-govt-litigatn.

of rupees[90] as duty were to be accepted without filing any appeal at a higher forum. For CESTAT orders the limit was fixed at two lakhs duty[91], for High Court orders the threshold was five lakhs[92] duty. In 2011, the thresholds were raised to five lakhs rupees, ten lakhs rupees[93] and 25 lakhs[94] rupees of duty respectively.[95] Firstly, the solution of not filing appeals if disputes are within certain monetary thresholds is a bad practice as it leaves out the solution at the original adjudicating level. Secondly, many issues within the thresholds will have important and recurring points of law. If the department did not abrogate its right to appeal unilaterally, judicial precedents could be set which, when followed in a disciplined manner, could reduce frivolous litigation on settled issues. Thirdly, it creates additional rent seeking opportunities for cases within these thresholds. Finally, it does not address the main issue plaguing institutional malfunction of Customs dispute-resolution. As the threshold limits for appeal are only applicable to the Customs departmental officers, taxpayers can still appeal against unfair orders. Thus, the impact on litigation numbers will not be very significant. The solution is aimed only at reducing the numbers of litigations. This solution does not address institutional malaise of trust deficit and knowledge asymmetries between the principal and agent.

5.3. Solution Proposed by TARC

The First TARC Report, in its recommendations, has suggested that evaluation of dispute resolution officers should include an evaluation of the quality of their orders in terms of fairness, completeness, and reasonableness and observance of judicial discipline. While performing the review function, supervisors should be

[90] Approx. US$1,500.
[91] Approx. US$3,000.
[92] Approx. US$7,500.
[93] Approx. US$15,000.
[94] Approx. US$37,500.
[95] CBEC Instructions for Departmental Officers, "Reduction of Government Litigation - Providing Monetary Limits for Filing Appeals by the Department before CESTAT/High Courts and Supreme Court – Regarding", August 17, 2011, http://www.cbec.gov.in/htdocs-cbec/customs/cs-instructions/cs-instructions-2011/cscx-instrc1-2k11.

required to look into this aspect and not simply go by the tax revenue consequence and the number of disposals of adjudications. It has strongly recommended that "indiscriminate questioning of original orders solely on the criterion of tax revenue should stop."[96] However, even the present system of appraisal has evaluations of officers on their knowledge of law as well sense of fair play. This recommendation by TARC is not expected to have a radical impact. This is also because it is not suggested by the Commission as to how or on what basis will supervisory/reviewing officers themselves impartially judge judiciousness of orders passed by the AOs. The Commission does not give concrete suggestions to address the problems of knowledge asymmetries between reviewing and adjudicating officers. There should be an institutional innovation to align trust deficit and knowledge asymmetries between the two sets of officers. Most importantly, if disputes reach finality after prolonged stages and years of litigation, TARC does not suggest ways to create a dispute resolution trail with concomitant linkages to the AOs.

The TARC report ascribes the poor quality of Customs officials' decisions to passing non-speaking orders, failure to follow judicial discipline, and misinterpretation of judicial precedents. The solution proposed by it is to shift appraisal of officers from achievement of pre-set revenue targets to evaluation of orders passed by the officers. It is suggested that this could be judged by the quantum upheld at higher judicial fora. Additionally, a system of peer review should be introduced through panels of selected officers known for their expertise, competence, and fairness. A sample of orders passed by the AOs should be sent to them for evaluation from a quality perspective. In order to remove bias, the particulars of the taxpayer, the name of the officers, and the amounts involved may be blanked out. Proper templates should be developed to maintain consistency in reviews. [97] However, it

[96] First Report of TARC, 268.
[97] First Report of TARC, 239-241.

does not spell out the modalities. The proposal of peer review builds in a system of bias. It does not take away the subjectivity nor make allowances for the work load of the peers. TARC's proposal is for all orders passed by all AOs to be reviewed by a small subset of supposedly fair and judicious officers. The proposal appears appealing but unworkable in a real office-work environment. The idea of appraisal based on fair and judicious orders passed by the AOs will be retained in the solution suggested in this thesis but its monitoring will be through a dynamic IT mechanism.

Another suggestion by TARC concerns lack of adherence to timelines in decision-making and the habitual filing of appeals against all decisions in favour of taxpayers by tax authorities. As regards timelines, the report mentions that "in places where such a time limit is prescribed, it is not adhered to...."[98] At another place, the same report states, "Even though tax law lays down the time limits within which a dispute should be resolved, the existing data … clearly shows that in a large number of cases this is not followed." [99] If the TARC finds judicial indiscipline and non-adherence to instructions on timelines by the Customs officials, it is unclear as to how does TARC propose to implement its suggestions. On the contrary, the solution proposed by the author in the later paragraphs is workable and more practically doable.

From global best practices, the Commission has identified four practices worthy of adoption. One is the setting up of a dedicated organization for dispute management. Such an organization would work independently in order to engender taxpayer confidence in Customs department's sense of fair play and justice. Such an organization would engage in proactive measures to ensure that avoidable disputes are nipped in the bud and only a few matters escalate to litigation. However, if the

[98] First Report of TARC, 243.
[99] First Report of TARC, 249.

review mechanism is not strengthened by way of overcoming knowledge asymmetries between principal and agent, it is feared that such a proposal may create an additional organization without the commensurate achievement of desired goals. The solution which has been suggested towards the end of this chapter assigns a specific task to such an organization which would address the associated problems of trust deficit and knowledge asymmetries between adjudicating and reviewing officers.

Another best global practice which has been mentioned by the Commission is the establishment of an "enhanced relationship" arrangement between the taxpayers and the tax administration. The Commission cites the instances where such a practice is prevalent, such as in the Netherlands, Australia, and France. In these countries tax officers and taxpayers, prior to starting the assessment, disclose full facts of the case and come to an agreement on the interpretation and tax positions adopted. The commission recommends such an enhanced relationship especially in the Large Business Service. There are a few problems with this recommendation. Firstly, this study has found that it's the SMEs who try to circumvent the dispute resolution institutions in Customs by paying bribes. Secondly, such a solution may not work in a situation where quick turnaround of goods is of essential importance. Thirdly, complexity of Indian Customs may increase the cost for the taxpayers indiscriminately as they will have to engage consultants, accountants, and lawyers for this exercise.[100] The author's suggested solution will have such a relationship of an enhanced nature but selectively. Secondly, the enhanced relationship will be after the dispute resolution process is over at the original adjudicating level. This enhanced relationship will be *a posteriori.* Repair of dispute resolution institutions would be the priority in the triage of solutions.

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[100] First Report of TARC, 247.

The third suggestion taken by the TARC from a global best practice is that tax administrations should issue technical guidance notes which should be binding on the officers. These notes will ensure consistent application of the law and the rules, and simultaneously enhance the taxpayer's understanding of the law. Such a measure would obviously mitigate the litigation in the tax department also. These guidance notes are variously called *interpretative statements* or *practice statements* and used effectively in the advanced tax administrations of New Zealand, Australia, and Canada.[101] Section 151 A of the CA, 1962, empowers the CBEC to issue orders, instructions to its officers, and provides the legal basis for the issuance of such guidance notes. The Commission suggests that CBEC should proactively issue these instructions/orders to its tax officials on contentious matters as well as on emerging new areas. Domain experts, along with taxpayers and tax officials, should be involved in the issuance of these guidance notes, especially where the issues are complex.[102] The sole problem with this suggestion is how the department monitors the adherence of these technical guidance by Customs' officials. Judgement of higher judicial fora is of a more binding nature on tax officers. But the Commission itself has pointed out that there is tremendous judicial indiscipline and for petty reasons judicial precedence is given a go-by the tax officers. This fact is admitted by the Commission when it says that, "Even though the instructions issued under … Section 151 A of the Customs Act, 1962, are binding on officers…, it is often found that they are not strictly followed."[103] TARC suggests that the CBEC should put in place an effective monitoring system to ensure compliance. No modalities are, however, given about the specifics of such a monitoring system by TARC.

[101] First Report of TARC, 255-6.
[102] First Report of TARC, 255.
[103] First Report of TARC, 255.

The Commission has suggested the formation of a forum where taxpayers can request interpretative statements, industry-wise clarifications of various provisions of tax law, etc. These issues would form a bank of issues on which the CBEC can issue guidance notes.[104]

In the author's solution articulated subsequently in this chapter, this suggestion has been combined with the suggestion of the Dispute Management Organization. Also, the method of effective monitoring of adherence to timelines and judicial precedents/CBEC guidance notes by Customs officials has been suggested.

The last suggestion which the Commission would like to adopt from "evolved" tax administrations would be ADR (Alternate Dispute Resolution) techniques to resolve tax disputes out of the court. They have suggested two such methods, that of conciliation followed by arbitration, in a sequential manner.[105] In conciliation, the taxpayer and the tax department would attempt to come to a settlement. If they fail in reaching a settlement, then they would go for arbitration. In arbitration, the process would be like an adjudicatory process. The only difference being that the decision is reached by a neutral third party. If the process of arbitration fails, then the taxpayer and tax department will have the option to approach the Courts.[106] The Commission is silent about why they think these two solutions will work when normal adjudication has failed in Customs. Conciliation will involve departmental officers and if their perception of risk is not mitigated, they will continue to err on the side of revenue. When the matter goes to arbitration, if review mechanisms are not rid of their revenue bias, the likelihood of Customs going to court is very high. Additionally, the CA, 1962, would have to be amended to include these two ADR techniques. My suggestion would be to devise a system where risk aversion of

[104] First Report of TARC, 259.
[105] First Report of TARC, 263-5.
[106] First Report of TARC, 263-5.

original adjudicating authorities, and trust deficit and knowledge asymmetries between the AOs and their reviewing supervisors are bridged. Once the principal twin problems are addressed, it is felt, ADR techniques may not be needed.

By strengthening the institutional system of dispute resolution in Customs, one can be optimistic that an anti-corruption culture can be implemented at all firm levels.

5.4. Solutions by WTO

The WTO has addressed the common problems faced during the course of cross-border trade. It has, however, not addressed the problems with dispute resolution institutions in Customs. The Agreement on Trade Facilitation, informally known as TFA, 2014, gives procedures for appeal or review under Article 4.[107] The article provides that an appeal decision should be given within "set periods" or "without undue delay". The remedy suggested is "further appeal" or "further review". In article 7 (3) the TFA suggests a separation of the release of goods from final determination of Customs duties, taxes.[108] However, the safeguard measures suggested will aggravate liquidity problems for the SMEs. The TFA desires that final determination of Customs duties should be done prior to the arrival of goods, or upon arrival, or as rapidly as possible after arrival. Failing this, the disputed amount of Customs duties can be secured by a surety, deposit, etc. In malfunctioning institutions, this may make the situation worse for SMEs. With the present institutions in Indian Customs, where justice is generated primarily at the tribunal/court levels, where it takes years to reach, money will be stuck for years. The enterprise will not only lose the time value of money over the years but getting refunds of these funds would have to be obtained from the same inefficient dispute resolution institutions.

[107] WTO, Annex to the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization, Agreement on Trade Facilitation, WT/L/940, November 28, 2014, 7.
[108] WTO, Agreement on Trade Facilitation, 9-10.

This is not to say that Customs' corruption has not engaged attention at the international level. WCO's Arusha Declaration has identified automation and transparency as the two methods to combat it. The Revised Kyoto Convention, in Chapter 7, also encourages the use of IT as does WTO's TFA in Article 10. None of these, however, goes beyond the first levels of the assessment and the clearances of goods. The present research has gone beyond this first level, and it shows that corruption in its grander and more virulent form exists because of the malfunctioning of core Customs dispute resolution institutions. Neither of the international bodies have detailed how automation and transparency can be used in this area.

5.5. Indian Customs' Facilitation Environment Biased against SMEs

The CBEC has introduced a RMS based solution for the cargo clearance process.[109] The ACP is a major element of the RMS strategy of the department. Under this programme, clients who are assessed as highly compliant are given assured facilitation by the RMS.[110] Clients who are approved under ACP are getting assured facilitation. This means that in most cases, excepting a small number of occasions when their consignments are randomly selected for checks by Customs officers, the Indian Customs EDI System accepts the declared classification and valuation, and appraises duty on the basis of the importers' self-declaration. The import consignments of ACP clients are also not subjected to examination. In short, the ACP clients enjoy an assured self-assessment in respect of imports. These are only subjected to system generated random checks which are a very nominal percentage

[109] Circular No 42/2005 Customs, dated 24/11/2005, as amended by Circular No. 29/2010-Customs, dt.20/08/2010.
[110] Directorate General of Systems, "Accredited Clients Programme, 2-4.

of the total consignments.[111] One is eligible to apply for ACP if one meets the criteria specified below.

(a) One should have imported goods valued at Rs Ten Crores[112] [assessable value] in the previous financial year; or paid more than Rs One Crores[113] of customs duty in the previous financial year; or, in the case of importers who are also Central Excise assessees, paid Central Excise Duties over Rs. One Crores[114] from the Personal Ledger Account in the previous financial year, or they should be recognized as status holders under the Foreign Trade Policy.

(b) One should have filed at least 25 Bills of Entry in the previous financial year in one or more Indian Customs stations.

(c) One should have no cases of Customs, Central Excise or Service Tax booked against them in the previous three financial years.

(d) Taxpayer should not have any cases booked under any of the Allied Acts being implemented by Customs.

(e) The quality of the submissions made to Customs should be good as measured by the number of amendments made in the BE submitted by an importer in relation to classification of goods, valuation, and claim for exemption benefits. The number of such amendments should not have exceeded 20% of the total BEs filed during the previous financial year.

(f) One should have no duty demands pending on account of non-fulfilment of EO.

(g) One should have reliable systems of record keeping and internal controls and the accounting systems should conform to recognized standards

[111] Directorate General of Systems, "Accredited Clients Programme, 3.
[112] Approx. US $1,500,000.
[113] Approx. US $150,000.
[114] Approx. US $150,000.

of accounting. Importers are required to provide the necessary certificate from their Chartered Accountants in this regard as per format given in the Application form. For qualifying for the ACP, the importer will have to satisfy any one of the criteria set out at serial number (a) and all the other criteria set out above.[115]

5.6. Implementation of Residual Rights Theory

The TFA suggestion listed above and detailing the present system of facilitation run by Indian Customs is tilted in favour of the large firms. No program or suggestion exists to ensure smooth and expeditious cargo clearance for SMEs. The inefficiently functioning dispute resolution institutions are ruinous and hence they buy their way around it. And since corruption corrupts the Customs officials, they pin injudicious cases on the firms that do not pay them bribes as a way of penalizing them. This can also be understood in the context of the *residual control theory*. As per this theory, residual rights are "the rights to determine the uses of assets under circumstances that are not covered by contractual terms." In this example, it is felt that Customs officials wield their residual rights by foisting disputes on those taxpayers who do not pay them bribes.[116]

This will also explain why litigation continues at a high rate in Indian Customs, despite a series of trade facilitation measures aimed at large firms. This assumes alarm when we consider the background of international agreements all of which have aimed to simplify and rationalize the Customs duty structure and procedures. Briefly, the WCO in 1988 has laid down the Harmonized Commodity Description and Coding System. It comprises about 5,000 commodity groups. Each is identified by a six-digit code, arranged in a legal and logical structure, and is supported by well-

[115] Directorate General of Systems, "Accredited Clients Programme", 4-5.
[116] Seung-Hyun Lee, Kyeungrae Oh and Lorraine Eden, "Why Do Firms Bribe? Insights from Residual Control Theory into Firms' Exposure and Vulnerability to Corruption", *MIR: Management International Review* 50, no. 6 (2010): 776.

defined rules to achieve uniform classification. Over 98% of the merchandise in international trade is classified in terms of it.[117] India adheres to it. This should have reduced disputes on classification. Further, the WCO Council adopted the revised Kyoto Convention in June 1999 as the blueprint for modern and efficient customs procedures in the 21st century. Implemented in 2006, it provides international commerce with predictability and efficiency. The revised Kyoto Convention introduced transparency and predictability of Customs actions by way of standardization and simplification of the goods declaration and supporting documents. Most fundamentally, it introduced the use of RMS and audit-based controls.[118] This reduction in taxpayer interface with Customs department should have reduced litigation. Additionally, the WTO has the legally bound commitments on customs duty rates, which act as ceilings on the tariffs that member governments can set and are known as the "bound rate."[119] India has, therefore, reduced and rationalized rates which are generally bound at 13 %. India has also ratified the TFA of WTO in 2016. This brief history of customs liberalization should have led to much less disputes with large firms. This has not happened.

5.7. New National Tax Laws Will Aggravate the Situation for SMEs

The matter of reform of dispute resolution institutions of Indian Customs assumes more urgency after August 6, 2014. The Finance Act (No.2), 2014, has instituted a new Section 129E of the CA, 1962, to prescribe mandatory pre-deposit of 7.5% or

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[117] WCO, "What Is the Harmonized System (HS)?", http://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx.

[118] WCO, "The Revised Kyoto Convention", http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx.

[119] WTO, "Tariffs: Comprehensive Tariff Data", https://www.wto.org/english/tratop_e/tariffs_e/tariff_data_e.htm.

10% of disputed duty before filing a first stage or second stage appeal.[120] Thus despite the vexatious nature of SCNs and arbitrariness of AOs being known to Indian Customs, CBEC requires that all taxpayers will have to pre-deposit 7.5% of customs duty if a taxpayer wishes to appeal before Commissioner (Appeals). The deposit is raised to 10% if a taxpayer goes in appeal to CESTAT. Although it remains an area for further research, it is obvious that the SMEs will bribe to any extent to avoid getting embroiled in the malfunctioning institutions.

The latest Goods and Services Tax, or GST, in force from July 1, 2017, has introduced for the first time compliance ratings for taxpayers. These ratings will be visible on the GST network and it is thought that it will impact buying decisions in the future.[121] SMEs, which generally do not operate in monopoly situations, will be affected adversely by such ratings if they are issued with a SCN. This was actually an apprehension expressed by a respondent during the interview. One can only imagine the desperate lengths to which such taxpayers will go to avoid getting a SCN.

5.8. Design for Repair of Dispute resolution Institutions

Any stringency of the above kinds should be preceded by institutional repair or else corruption will increase by leaps and bounds. This research therefore proposes a reform design along the following lines.

5.8.1. Disaggregation of the Problem

The problem in the dispute resolution institutions of Indian Customs will first be disaggregated by identifying dissonances. For this, a study will be undertaken by the DMO (Dispute Management Organization). DMO will study dissonances such as

[120] A2ZTaxCorp LLP, “Clarifications on Mandatory Pre-deposit for Filing Appeals under Service Tax, Excise and Customs”, http://www.a2ztaxcorp.com/articles-2/clarifications-on-mandatory-pre-deposit-for-filing-appeals-under-service-tax-excise-and-Customs/.

[121] GST India Guide, “GST to Rate Taxpayers, Businesses on Payment Record, Make Ratings Public”, 2015, https://gstindiaguide.com/tag/gst-taxpayer-rate/.

the following, within each Commissionerate which will then be collated on an all-India level.

The crux of dissonance study will be as follows:

Diagram 3: Methodology for Disaggregation of the Institutional Malaise

• Reasons when adjudication is delayed for 3 months and more. Details to include the name of the taxpayer and the main question(s) of law in dispute.
• Simultaneously, same details will be sought about past adjudications.
• Overlap of questions of law will be studied to ascertain favouritism, if any.
• The above data will be studied for each officer and across all officers within a Commissionerate. The exercise will be expanded to all-India level, across all Customs formations.
• This will throw up anomalies clearly pointing to favouritism.
• Having done this exercise for individual officers, the next step would divide the study by legal issues and ascertain anomalies in dispute resolution decisions within a Commissionerate.
• Thereafter the same study will be escalated to an all-India Customs' level.
• The law of the land will be studied and thereafter the deviances from it will be matched to the concerned officers.
• Officers will be identified who do not show consistency in application of the law. Those officers will also be identified who have shown deviances in their adjudication orders from the national law. Officers who intentionally

or for unknown reasons delay issue of orders on questions of law where they have themselves and/or Apex court/ tribunals have given findings will similarly be identified.

The above would bring out dissonance about certain issues, certain taxpayers and certain officers. The remedy will be fashioned accordingly.

5.8.2. Repair Design

It is foreseen that emerging dissonances will be reflective of discretion unencumbered by either impartiality or judicial discipline. In-built in the repair design will also be an effective revenue-neutral reviewing mechanism by supervisory authorities. The proposed remedy would be designed around:

1. Monitoring whether precedent judicial decisions of higher fora are being adhered to,
2. Same decisions are being taken on the same questions of law, irrespective of the taxpayer, and
3. There is no delaying of decisions when the same questions of law stand decided by officer himself and/or higher judicial fora.

Once repair is designed along the above lines, the discretionary element will be automatically circumscribed and oversight will become easy. This repair design will be based on a digital platform.

The DMO will be tasked to ensure this by automatic seeding of judicial precedents/case law accepted by the CBEC or CBEC guidance notes, on the digital platform. All communication between the officer and the taxpayer will be through a computerized network operated by the DMO. The taxpayer, while giving his reply

to the SCN, will do so on each question of law identified by him. Similarly, before final adjudication, the AO will identify the main issues for decision. Once the main issues are identified, the system will drop down relevant judicial precedents/case law and CBEC circulars. It is expected that AOs will be bound by them unless they can justify the deviance. Justification will have to be done online. Each deviance will be collated by the DMO and studied. Any frivolous deviance will be red-flagged to the personal file of the officer as well as to his supervisor.

5.8.3. Synchronization of Incentives

The next step will be to identify the repeatedly recalcitrant officers who follow the principle of "show me the taxpayer and I will show you the rule", whose performance will be tracked under Special Watch and after two cautions adverse entries will be made in their appraisal reports.

The system will be dependent on DMO pro-activity. For the system to be successful it is expected that new issues faced by taxpayers should be noticed and clarified by the CBEC through the DMO promptly.

To handle the eventuality of automation missing the latest precedent case law, another measure would be that the taxpayers and their lawyers who have gotten adverse adjudication orders and those whose adjudications have been delayed for over three months will be constituted in a collective action group. This collective action group will be dynamic. Its composition will change each month, according to taxpayers with adverse/delayed adjudication orders. Every month a closed-door meeting will be organized with them and the Principal to identify rogue issues and rogue officers. There will still be the danger of leakages and victimization of the vocal taxpayers but it is felt that the association of lawyers would overcome this problem initially. And with time, it is felt that the group will become fearless and

the follow-up meetings will have a positive impact on the dispute resolution institutions.

5.8.4. Monitoring of the Repaired Institutions

The benchmarking exercise undertaken initially will be repeated at frequent intervals of about six months to gauge the success of the measures and to identify new problem areas for which the same cycle of disaggregation, seeding, and monitoring would have to be undertaken. It is felt that a regular system of monitoring would eventually reduce the contentious/rogue issues to a minimum and enable the shifting of the cycle of monitoring to the *a priori* from the *a posteriori* stage.

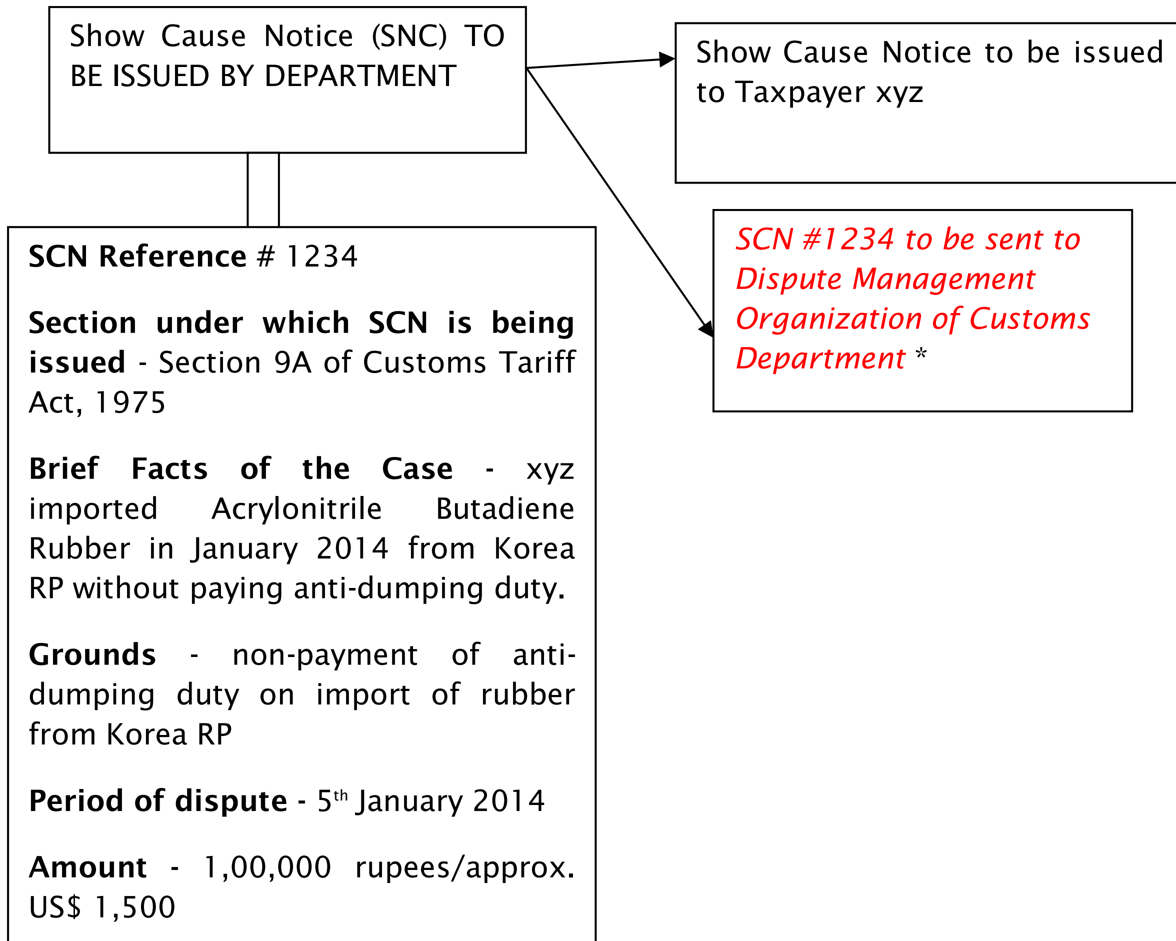
5.8.5. Limitations

It is felt that even though this system premises on the honesty principle, the possibility of both the agent (AO) and the principal (supervisor) being in cahoots with each other is a real possibility. However, even in this very real and foreseeable eventuality, automation of precedent case law and their linkage to questions of law decided in quasi-judicial orders will ensure transparency. Only monitoring by the collective action group may be compromised for the initial period. Here again, if such meetings are mandatory and monitored at the next higher supervisory level, viz., DMO level, institutional dispute resolution mechanism will work effectively. Institutional repair will enable containment of corruption at all firm-size levels.

For another demonstration, the author has shown the institutional repair mechanism through flowcharts appended below as Diagrams 4A, 4B, 4C, and 4D.

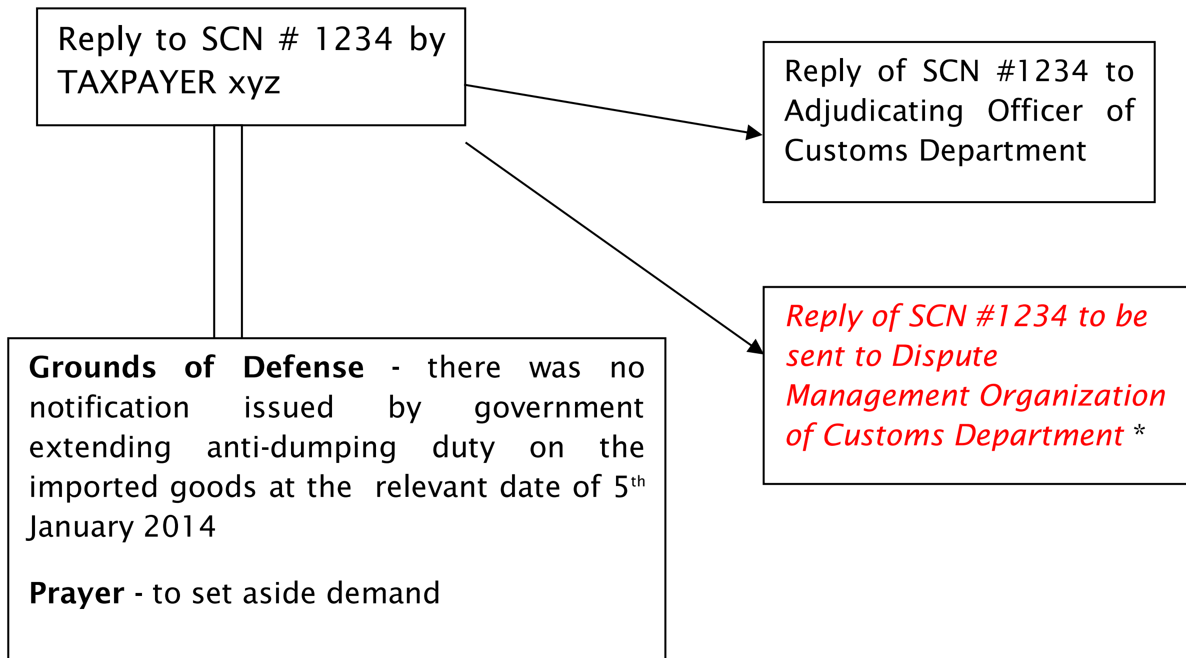
Diagrams 4A - 4D: Flowchart of Author's Proposed Solution to Problem of Inefficiencies of Customs Dispute resolution Institutions

Diagram 4A: Issue of SCN



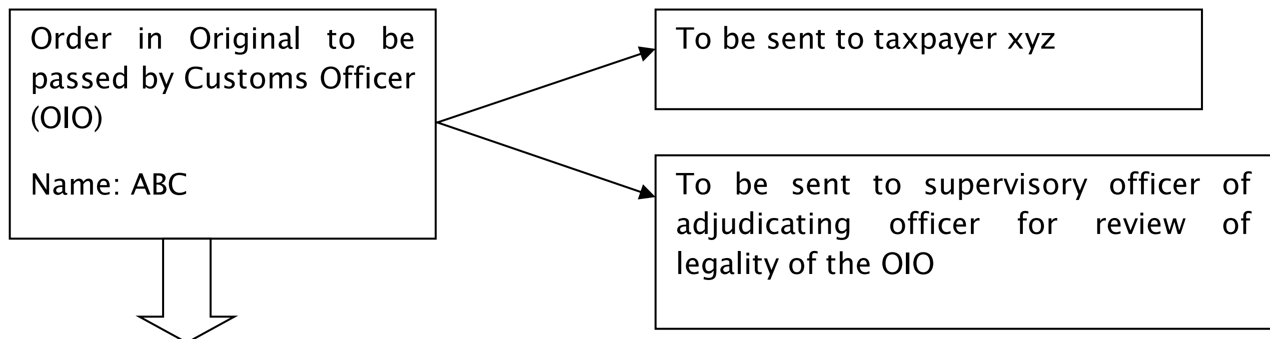
* Red/Italic denotes author's original suggestion.

Diagram 4B: Reply to SCN by Taxpayer



* *Red/Italic denotes* author's original suggestion

Diagram 4C: Order in Original Passed by Customs AO



SCN # 1234

Taxpayer name: xyz

Issues Involved - <<drop down>>classification, valuation, tax rate, anti-dumping duty, smuggling, mis-declaration, place of origin

Issue Chosen: Anti-dumping duty

Brief Facts of Case

Point of Law to Be Decided - whether anti-dumping duty can be imposed in absence of notification but when review for imposition has been undertaken prior to lapse of previous notification

Relevant Period: 5th January 2014*

Dispute Management Organization Intervention

1. *No anti-dumping notification exists on the relevant date*
2. *Refer case law of Union of India versus --- Petrochemicals Company Limited reported in 2017 (351) ELT 65 (S.C.)* **

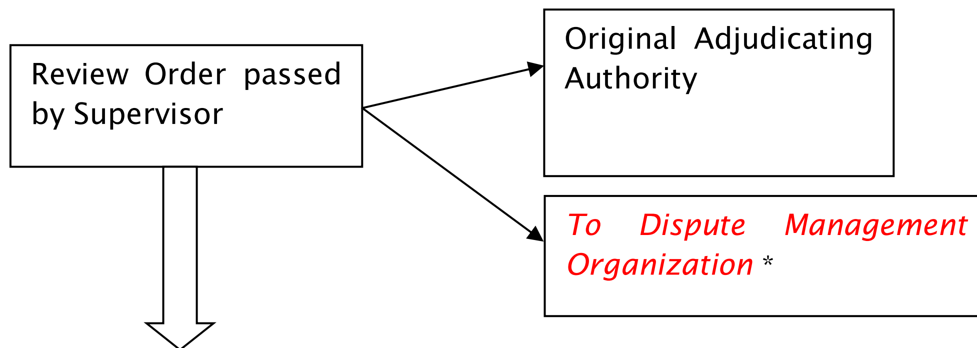
Discussion & Findings - Disagrees with DMO intervention. Relies on case law of Rishiroop Polymers v. Designated Authority and Additional Secretary reported in 2006 (196) ELT 385 (SC)

Order - Confirms SCN and orders taxpayer to pay the demand

* Blue denotes that this is proposed to be implemented in the new GST system.

* * Red/Italic denotes author's original suggestion.

Diagram 4D: Review by Supervisory Officer



Name of Adjudicating Officer: ABC

Point of Law in Dispute: Whether anti-dumping duty can be imposed in absence of notification but when review for imposition has been undertaken prior to lapse of previous notification

Relevant Period: 5th January 2014

Has Officer agreed with DMO intervention?

If No, are reasons for disagreement acceptable?

If no, give reasons:

1. *Both are Apex Court decisions, but one cited by DMO is latest and hence in terms of judicial precedence had to be accepted*
2. *The case law of Rishiroop does not deal with the issue on hand. It only deals with the purpose of review by government when imposing anti-dumping duty*
3. *The case law given by DMO is relevant to factual matrix*

Decision: 1) Appeal needs to be filed against the decision.

2) Immediate relief to be given to taxpayer by dropping SCN and demand of duty

* Red/Italic denotes author's original suggestion.

6. Conclusion

After having analysed the reasons for the propensity of Indian Customs to saddle honest large firms with SCNs, admittedly certain lacunae remain which could be ideas for further research. One thought which came while writing this thesis was about how many large firms would have lost their ACP status because of the issue

of a SCN which was subsequently held to be baseless at higher judicial fora. This is a possibility given the higher compliance demanded by the ACP scheme. This would then lead to the thought of whether this strategy may be a ploy to reduce the numbers of clients getting ACP facilitation. Once ACP facilitation is removed, these clients come to Customs in the normal course of clearance and thus increase opportunities for bribery. In other words, besides being a reprisal methodology as this research has proved, the strategy of issuing SCNs vexatiously may be reducing the facilitation environment offered by Indian Customs. This perspective needs to be studied, especially given the context of India's consistent low rankings in the *Ease of Doing Business Index*. Associated with this topic of ACP would be another research area of whether the scheme itself creates rent-seeking opportunities for Customs officers. In fact, it was seen that many of the latest changes in law and procedures introduced many such opportunities for rent-seeking. On the one hand, for instance the CBEC in order to reduce the litigation numbers has directed its officers not to file appeals with Commissioner (Appeals), CESTAT, High Courts, and Apex Courts, if duty involved in an adjudication order was within certain monetary thresholds. On the other hand, it has directed that all taxpayers, irrespective of their size, will have to pre-deposit certain percentages of duty as a necessary prior condition for filing appeals with either Commissioner (Appeals), or CESTAT, or other Courts. Both these measures will militate against an anti-corruption strategy at the firm level. Firms may try at any cost to settle disputes at the original AO level if they know that adjudication orders below a certain monetary threshold will be accepted by reviewing authorities solely on the low monetary threshold basis, without evaluating them on merits. Simultaneously, the cost of appealing to higher dispute resolution fora has also been raised making it uneconomical for SMEs and some large firms to appeal. In fact, this could also motivate firms to bribe Customs

officials to keep SCNs below the monetary threshold. It may be interesting to study legal and procedural changes from an anti-corruption perspective.

Bribery in Indian Customs is prompted by the vulnerabilities of SMEs and those large firms who do not have the capacities to withstand the long processes of inefficient dispute-resolving institutions. A further area of research could be the number of SMEs/firms in general who exited the system because of their inability to survive the poorly functioning dispute resolution institutions of Indian Customs.

The solution suggested by the author is along the lines of repair of the existing institutions. This would certainly be a proxy for detection of extortive corruption. This is not to say that the suggested repair of dispute resolution mechanism in Indian Customs would take care of all kinds of bribery. Collusive bribery at the level of these institutions would persist and that should ideally be the subject matter of separate research. It is already mentioned in the chapter on Research Methodology that lawyers/advocates are not forthcoming in their admission of bribery. Apart from the secrecy, this admission would take away from their achievements. Neither will departmental officers ever admit to taking bribes for passing orders in favour of taxpayers. Admittedly, it is a very difficult field of research. The only way the author sees a way ahead in this research arena is if the researcher could somehow obtain data from CBEC about the number of its officers implicated in departmental and other criminal proceedings for having passed biased orders in favour of taxpayers. Whether such research will be undertaken, lies in the future. However, until then, it is felt that the solution suggested by the author will work in cases of collusive corruption also. This is because it is essentially a tool to detect a blatantly illegal order. In the present context of Indian Customs, dispute resolution has become an instrument of harassment of the taxpayer. However, should it involve undue

favouritism to taxpayers by overlooking case law and CBEC circulars, that would also be within the capacity of this toolkit.

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APPENDIX 1: Questionnaire

(Introduction by the interviewer):

Hello. I am from the International Anti-Corruption Academy. I am carrying out a survey of the taxpayer experience while dealing with Customs department in India. This study will interview taxpayers who have got consignments cleared by Customs department. From records of a local office I have come to know that you get your consignments cleared through Customs regularly. I'd like to ask about your experiences of dealing with Customs. Your input will be treated strictly confidential. Your name will not figure anywhere in the final study unless you yourself want it. I request you to answer each question with as much clarity as possible. Your answers will help us understand how easy or not it is to get goods cleared through Customs. This survey may also help us suggest some improvements in processes.

QUESTIONS

1. What is the name of your company?
2. Is it a proprietorship, partnership or private Limited firm?
3. What is the size of your company (obtain Balance Sheet, if possible)?
   i. Less than 5 crores
   ii. 5-10 crores
   iii. Over 10 crores
4. Do you clear your goods through Customs?
   i. Self
   ii. Through a CHA
   iii. Through a relative of an officer of Customs
   iv. Mixed

5. If someone had a case for quasi-judicial decision-making before Indian Customs, what would you suggest to that person?
    i. I would advise the person to look for an intermediary who knows the officer
    ii. I would advise to bribe the officer
    iii. Both of the above
    iv. I would suggest to rely on law, circular and case law
6. If you suggested use of intermediaries, these would be:
    i. Big law firm
    ii. Custom House Agents
    iii. Lawyers/advocates
    iv. Former departmental officers practicing law now
7. Why do you think that intermediaries are important to represent a lay person before Customs' quasi-judicial authorities?
    i. Lack of knowledge of latest case law, procedures amongst Customs authorities themselves
    ii. Lack of knowledge of latest case law, procedures amongst lay persons themselves
    iii. Customs authorities tend to disregard precedent case law, CBEC circulars in their decision making unless they have an interest in following them
    iv. I cannot say

MARK ALL RELEVANT

(If Respondent answered in affirmative to 7(iii) only)

8. Why do you think that Customs quasi-judicial authorities disregard precedent case law, CBEC circulars in their decision making?

i. Lack of knowledge
ii. Reputational fear
iii. Too much independence
iv. All of the above

(If Respondent answers in affirmative to question 8 (ii) only)

9. By reputational fear you mean:
    I. The Customs authorities fear their seniors will think that the pro-taxpayer order is because of bribery
    II. Senior officers only review the order which is in favor of the taxpayer because of which the adjudicating authority's reputation will be tarnished amongst his senior, colleagues
    III. Review orders take a long time to come and even if they uphold original order of the adjudicating authority, the officer is most likely already rotated
    IV. All of the above

MARK ALL RELEVANT

(If Respondent answers question 8(iii) in affirmative only)

10. What do you understand by too much independence of Customs quasi-judicial authorities?
    I. The senior officers never give guidance to Customs quasi-judicial authorities on correct law before passage of orders
    II. The senior officers only review orders of quasi-judicial Customs authorities which are in favor of taxpayers
    III. The senior officers accept all orders of quasi-judicial Customs authorities which are in favor of revenue

IV. All of the above

MARK ALL RELEVANT

11. If you faced any dispute with Customs, the time taken for the dispute to be resolved was:

i. Less than 1 month

ii. Between 1 to 3 months

iii. Between 3 to 6 months

iv. 6 months to 1 year

v. More than I year

12. Were the disputes resolved?

i. Entirely in your favor

ii. Entirely not in your favor

iii. Mostly in your favor

iv. Mostly not in your favor

13. Intermediaries were used by me to represent me before the Customs authorities. These were:

i. Big law firm

ii. Custom House Agents

iii. Lawyers/advocates

iv. Former departmental officers practicing law now

v. No intermediaries were used

14. Were you asked by the quasi-judicial Customs authority?

i. Buy something in kind for the official

ii. Hire someone known to the official

iii. Pay money to the official

iv. None of the above

15. In your experience how many times have you had to face dispute resolution through quasi-judicial decisions in Customs?
    i. Once
    ii. Twice
    iii. Thrice
    iv. More than 3 times
    v. None
16. In all these times you felt the decision making was:
    i. Fair, judicious and guided by judicial precedence
    ii. Was influenced by bribes of various kinds
    iii. Was influenced by lack of bribes of various kinds although the dispute was clearly in my favor
    iv. Was influenced by intermediary such as CHA, CA, former departmental officer representing me
    v. Was influenced by big law firm representing me

MARK ALL RELEVANT

17. How do you come to know you are being asked for a bribe by a quasi-judicial Customs authority?
    i. The authority asks for bribes/favors directly during personal hearing
    ii. The authority speaks in private to my CHA/Lawyer
    iii. The authority has never given me any hint for a bribe
    iv. The authority gives me a hint for a bribe, SPECIFY
    v. We learnt about bribe-seeking behavior of Customs authorities from fellow importers/exporters

MARK ALL RELEVANT

18. How has quasi-judicial decision making in Customs impacted your business?

i. It has not impacted it at all
ii. It has helped me sell goods at cheaper rates than my competitors
iii. It has helped my competitors sell goods at cheaper rates than me
iv. I had to pay a large sum as demurrage which increased my transaction cost
v. I had to pay a bribe which increased my transaction costs
vi. Litigation increased my transaction cost
vii. Other, SPECIFY

MARK ALL CONSIDERED RELEVANT

19. If quasi-judicial decision making has to improve in Customs,

i. It must be monitored strictly
ii. The quasi-judicial authority should be held accountable for bad decisions
iii. The supervisory authorities should be held accountable for accepting bad decisions of their subordinates
iv. There should be a way to standardize decisions on common law points
v. Any other, SPECIFY

MARK ALL RELEVANT

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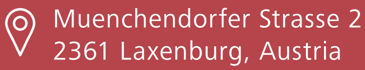

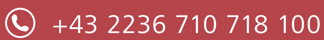

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