CORRUPTION IN GOVERNANCE: A STUDY OF THE INDIAN LEGAL FRAMEWORK AND THE HUMAN RIGHTS PERSPECTIVE THEREOF

Abstract of Thesis

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Abstract

The Ph.D. thesis **"**CORRUPTION IN GOVERNANCE: A STUDY OF THE INDIAN LEGAL FRAMEWORK AND THE HUMAN RIGHTS PERSPECTIVE THEREOF" is divided into seven chapters. The first chapter is the *"Introduction"* of this study. The main objectives of research study are put forth in this chapter. The objectives are evaluative of research problem. A review of literature is also put forth in this chapter. A para of hypothesis is constructed in which nine assumptions are made. On the basis of research observations all assumptions are proved. Further, the selection of research problem, statement of research problem, significance of research study, scope of research study are also briefly mentioned in this chapter.

The second chapter of research study is titled "*Corruption: A Historical Perspective"*. Under this chapter, the effort is made to explore and to analyse the historical background of corruption in India. In the beginning of this chapter, the way in which the term "corruption" had been defined in the past is discussed. The nature of corruption is also dwelled upon. The nature of corruption varies from region to region and remains largely contextual. The most recent comprehensive list of corrupt acts provided under United Nations Convention against Corruption is critically scanned. There are numerous references to the prevalence of official corruption in ancient India. But the most elaborate reference source is Kautilya's Arthashastra. Kautilya believes that despite greatest care taken in recruiting officials, there would be some who would be turn out to be corrupt. It is the duty of the king to protect the people against wicked and corrupt officers. Reference for corruption and their ramifications and also standards of punishments are prescribed in Manusmriti and Arthsasthra. During Middle Ages also, corruption of every type was prevalent and executed by those public servants who were close to the ruler. Bribe was considered to be very effective tool in the hands of conspirators. During the British period corruption was rampant in India and proceedings of British Parliament bear the testimony of impeachment of high officials and recall of governors on the charges of corruption. In explaining the past prevalence and historical aspects of official corruption, the preventive measures which were adopted into past are also pointed out. The creative talent of Hindi Satirists, who attempted very boldly to

expose the various dimensions of corruption, is briefly discussed. The public perception about corruption in independent India begins with the J.P. Narayan's movement in Bihar. According to J.P. Narayan only total revolution could reverse the corrupting influence of a small class that played at politics. Shortly before the declaration of the emergency in1975, Narayan announced that while the people wanted a clean and good administration, the country has been witnessing since 1971 only galloping corruption. Further, the evolution of anti-corruption discourse and neo-liberal concept of corruption which accompanied with liberalization of the Indian economy after 1991 is briefly analysed and discussed. A group of leading Indian industrialists was proponents of full liberalization of economy. The educated middle class also recognized very quickly and played very critical role to influence the opinion for full liberalization in the country. Exposure amongst the educated Indian elite also helped to propagate that corruption could be overcome by privatization in economy. It was seen as panacea, by increasing their power and reducing corruption. This expectation was reinforced by assurances from the top as the then Finance Minister Manmohan Singh argued that 'liberalization by very its nature worked against corruption'. Later, it did not happen. N. Vittal wrote that corruption among public officials was a 'road block to national prosperity' and claimed that corruption restricts access to government services and, thus, literally snatches food away from the mouths of the poor. Anna Hazare has claimed that development today is an illusion created by the government and at the same time people are being cheated into believing that development in a real sense is being carried out. Ashish Nandy's allegation in January, 2013 was that most corrupt people come from other backward classes, scheduled castes and scheduled tribes. In general election of India held in May, 2014, the overwhelming victory of 'Narendra Modi' led BJP had relatively little to do with aggressive Hindutva; he won a platform of clean and good governance because India was tired by corruption scandals, which marked in the government of UPA II. This chapter of research study ends with analyzing the major scandals in India.

The national and international framework of human rights is discussed in the third chapter of this research study. After analysing the national and international measures, the human rights implications of corruption are briefly discussed. Corruption and its implications for the rule of law are also analysed. After discussing the various

concept of rule of law, it is submitted that arbitrary decision making process, discrimination in administration, abuse of discretionary powers and unpredictability in the enforcement of anti-corruption law badly affects and violates rule of law. The rule of law is protected only when there is a fairly predictable legal system that responds to needs and problems in a fair, non-discriminatory and effective manner and when there is access to justice. The state and its instrumentalities which are entrusted with responsibility of distributing resources in a fair and non-discriminatory manner, often conduct their activities in an arbitrary manner. Only privatization is not an answer to removing corruption. It is important to infuse enforceable mechanisms of transparency and accountability that will promote fair, non discriminatory and reasonable exercise of discretion. After mentioning the functions and powers of National Human Rights Commission in India, the need to expand the mandate of the NHRC is indicated. The issues of corruption fall within the jurisdiction of the NHRC. In May 2006, the NHRC organized a conference on "Effects of Corruption on Good Governance and Human Rights" in New Delhi. This was the first time that the Indian NHRC examined the issue of corruption from a human rights standpoint. Like "right to information" as a tool against corruption, the fundamental right to corruption free services should also be developed. The chapter ends with a discussion on the emerging rights based judicial approach against corruption in India.

In the fourth chapter, the provisions of the Prevention of Corruption Act, 1988 have been critically examined and analysed. In analysing the different provisions of the Act, relevant judicial decisions are also dissected and evaluated. The Act does not define 'corruption' anywhere. Corruption is the generic heading for a cluster of different and specific criminal acts. There is an exhaustive strong apprehension that a close definition will provide scope for offenders to take advantage thereof. It is provided that Special Judge shall be appointed to try the offences punishable under this Act. The offences punishable under this Act shall be tried by Special Judge only. Trying any case punishable under this Act, Special Judge may also try non PC offences which are connected to PC offences. In this regard the concept of jurisdictional fact as interpreted by Supreme Court is discussed. Special Judge may take cognizance of an offence without the accused being committed to him for trial. He shall follow the procedure prescribed for

trial of warrant cases by Magistrate. Special Judge shall be deemed to be Court of Session. Thus, the Special Judge has dual powers of Session Judge and Magistrate also. During trial, Special Judge is empowered to exercise all powers of District Judge. Therefore, at investigation stage, Special Judge has nothing to say. During investigation, the application for attachment shall be filed before District Judge. This legal position is unsatisfactory. Therefore, sub-section (6) of section (5) should be amended and Special Judge should be given power to entertain the application for attachment at investigation stage also. Special Judge is also empowered to conduct summary trial but this power is very limited. Even in cases of trivial amount of bribery, he cannot proceed for summary trial. This position is also unsatisfactory. The penal provisions of the Act broadly cover the acts of acceptance of illegal gratification as motive or reward for doing or forbearing to do any official act, favoring or disfavoring any person, obtaining any valuable thing without consideration or inadequate consideration, criminal misconduct by habitually receiving any gratification, misappropriation, obtaining pecuniary advantage without any public interest, being in possession of pecuniary resources of property which are disproportionate to his known source of income, attempts and abetment to commit such offences. Indirect definition of these corrupt practices under penal provisions (section 7-15) of the Act does not cover whole range of official conducts which are detrimental to public interest for example, gross perversion of the constitution and democratic institutions amounting to willful violation of oath of office; abuse of authority for unduly favoring or harming someone; obstruction of justice; squandering public money. These four types of official acts which cause immense damage to public interest but they do not constitute any offence under PC Act or criminal law. Further, in our society, there are two types of corruption (i) coercive corruption (ii) collusive corruption. However, the PC Act, 1988 does not differentiate between them. In case of coercive corruption or bribery, the bribe giver is a victim of extortion and he is compelled to pay for simple public services. If victim does not submit to demanded money (bribe), he loses much more than the bribe. In cases of collusive corruption such as execution of substandard works, distortion of competition, robbing the public exchequer, commission in public procurement, tax evasion by collusion, the bribe-giver and bribe-taker together fleece the society. Acceptance of illegal gratification by a public servant is made an offence under

section 7 of PC Act. Giving bribe is not specifically defined as offence under the Act. The bribe-giver may be guilty of the offence of abetment. Despite this, in cases of collusive corruption getting conviction is very difficult, because both the bribe-giver and bribe-taker are beneficiaries of the transaction. The negative impact of collusive corruption is much more upon society at large than coercive corruption. Therefore, the PC Act, 1988 should be amended to provide for offence of collusive corruption.

It is provided under section 17 of the PC Act that no police officer below the rank of an Inspector of DSPE, an Assistant Commissioner in Metropolitan areas and a Deputy S.P. in other areas, shall investigate into any offence punishable under this Act. Further, an offence of criminal misconduct punishable under section 13(1) (e) (possession of pecuniary resources or property disproportionate to the known sources of income) shall not be investigated without order of a police officer equivalent to rank of S.P. It is noted here that investigation into cognizable offences may be made by in-charge of a Police Station without order of Magistrate. Under section 19 of the PC Act, it is provided that no court shall take cognizance of an offence against public servant without previous sanction of competent authority. The object of sections 17 and 19 of the PC Act is to protect the interest of public servant against irresponsible and vexatious proceedings but at the same time, corruption in governance is not bearable because it undermines our core constitutional values of justice, equality, liberty and fraternity. In cases of corruption preliminary enquiry is permissible and validated by the court. If preliminary enquiry discloses that something is not good then after registering FIR, investigation has to be done. Both the preliminary enquiry and investigation have to be done by responsible and higher rank of police officers. After completion of investigation, the charge sheet has to be placed before court to take cognizance of offence. Despite so many protective provisions for public servant the court, is barred to take cognizance without previous sanction of competent authority. Therefore, the protection of section 19 given to public servant is highly unjustified. It is clear that the Legislature does not place reliance on his own responsible police officer. After that the Prevention of Corruption (Amendment) Bill, 2013 is discussed and analysed. In the closing pages of this chapter the provisions of Whistle Blower Protection Act, 2011 are briefly mentioned. Whistleblowers play a crucial role in providing information about corruption. Public servants who work in a

department know the antecedents and activities of others in their organization. They are, however, often unwilling to share the information for fear of reprisal. There is a very close connection between the public servant's willingness to disclose corruption in his organization and the protection given to him and his identity

The fifth chapter deals with an evaluation of the functioning of the central agencies such as Central Bureau of Investigation, Central Vigilance Commission and Comptroller and Auditor General in cases of corruption. This chapter is divided into three parts. Part one relates to CBI, part two relates to CVC and part three relates to CAG. Part one of this chapter begins with police functions of CBI. There is a clear-cut and well-demarcated sphere of activities in the field of crime detection and crime punishment. It is beyond any doubt or dispute that investigation of an offence is the field exclusively reserved for the police. After briefly discussing, the legislative history of CBI, an effort is made to trace the creation and origin of CBI. The CBI came into existence by the resolution No. 4/31/-T, date 1.4.1963; issued by the Government of India, Ministry of Home Affairs. The concept of preliminary enquiry is contained in chapter IX of the Crime Manual of the CBI. However, this crime manual is not a statute and has not been enacted by legislature. It is a set of administrative orders issued for internal guidance of the CBI officer. Section 154 of the Cr. P.C. postulates the mandatory registration of FIRs on receipt of all cognizable offence but in cases of corruption, the preliminary inquiry is permissible. It is provided under DSPE Act, 1946 that Central Government may constitute Special Police Force called DSPE for Union Territory of Delhi. The DSPE is now called or popularly known as CBI. The superintendence of Delhi Special Police Establishment, except in case of corruption, shall vest in the Central Government. The power of superintendence for investigation into the cases of P.C. Act, 1988 has been shifted from government to CVC. The investigation or inquiry monitored by the court does not mean that the court supervises such investigations. To supervise would mean to observe and direct the execution of a task whereas to monitor would only mean to maintain surveillance. The concern and interest of the court in court directed or court monitored cases is to ensure the proper, free and fair investigation of the case without any external interference. CBI, being a premier investigation agency of the country, has been kept under the administrative control of the government, with only some vague and weak supervisory

jurisdiction of CVC. The present system of supervision is inadequate because, the CBI is under administrative control of government through its power of postings, transfers, promotions and takes disciplinary action. This is totally unsatisfactory. There are number of instances, where CBI is acted very poorly on the part of its integrity. In part two of this chapter, an effort has been made to explore the historical origins of CVC as an integrity institution. Historically, it is an integral part of the vigilance administration. After analyzing the CVC Act, 2003, the constitution of CVC, appointment of Central Vigilance Commissioner, terms and conditions of service of CVC, are briefly discussed. Part two of this chapter ends with the critical analysis of powers and functions of CVC. The CVC is empowered to exercise superintendence over the functioning of CBI insofar as it relates to investigation of offences alleged to have been committed under PC Act, 1988. The powers and functions discharged by CVC is the sole reason for giving the institution the administrative autonomy, independence and insulation from external influences. It is the independence and impartiality of the institution like CVC which has to be maintained and preserved in the larger interest of the rule of law. In the last part third, the role of CAG as financial and compliance auditor as well as performance auditor is discussed. The office of the CAG is mentioned from Articles 148 to 151 of the Constitution of India. The CAG has duty to conduct the performance audit in addition to financial and compliance audits. Vinod Rai, as a Head of CAG, "did a Seshan" to the institution of CAG. The CAG is not a *munim* of the government it is a constitutional authority with a significant role as the watchdog of public finance.

The sixth chapter is on the role of Lokpal and Lokayuktas against corruption. It begins with a brief introduction of the concept of the institution of Lokpal. Thereafter, an effort is made to trace the historical background and evolution of Lokpal in India. The working of Ombudsman system in other countries is also discussed. The Lokpal and Lokayuktas Act, 2013 provides for setting up a body called the Lokpal at the centre. It makes mandatory for states to set up Lokayuktas within the period of one year from the date of commencement of the Act. The Prime Minister's action relating to international security, public order, atomic energy and space are not the subject matter of inquiry by Lokpal. The inquiry relating to Prime Minister's activities on other subject matters can be initiated by Lokpal by the decision of two-third majority of the full bench of Lokpal. In

respect of the matters referred by the Lokpal for preliminary enquiry or investigation to C.B.I. the supervisory powers upon C.B.I. has been given to the Lokpal. The Lokpal has jurisdiction to constitute an inquiry and a prosecution wing separately. An effort is made in this chapter to critically analyse the Lokpal and Lokayuktas Act, 2013 (Act No. 1 of 2014). The shortcomings of the Act are briefly pointed out. After analysing the Lokpal and Lokayuktas Act, the merits of the Act are also pointed out. Under the Act the Lokpal has not given the power of administrative control over CBI including transfer, posting and promotions. It means that every officer of the CBI is looking to the government for career advancement. Under the Act, the CBI is answerable to the Lokpal only for the cases specifically referred by it. Despite this, the Central Government still controls the budget of CBI, appoints its officials and is the receiving authority for the annual confidential reports of senior CBI officials thereby making them vulnerable to pressure from the government. The Lokpal should be receiving authority for the annual confidential reports for the officers working on cases referred by it. There is no nexus between the representation mandated under the Act and the purpose of the Act. The Act does not specify what would happen in those cases, where despite the best efforts; the trial does not get completed within the prescribed period of two years. This would give an incentive for the accused to delay the proceedings. There is no provision for uniform standards for Lokayuktas in States. The State legislatures are free to determine the powers and jurisdictions of the Lokayuktas. Thus, the nature and type of Lokayuktas is to the discretion of State legislature. Further, the Lokpal will take action only on the complaint filed before it; he cannot take action *suo moto.* Period of limitation of seven years imposed upon Lokpal from the date on which the offence is alleged to have been committed is unnecessarily restrictive, especially when, the large and complicated scams are unearthed in India only when the political regime had changed.

In the last chapter, on the basis of this research study, certain conclusions are drawn and some suggestions are also placed for consideration. On the basis of findings of this research study, it is inferred that the problem of corruption needs to be addressed urgently if the efforts to improve the governance and development are to be successful. As a number of past efforts in this regard have not achieved their intended results, therefore, there is a need to seek new legislative and institutional reforms for eliminating

corruption. There should be multi-dimensional efforts in the better form to eradicate the problem of corruption. Political leaders when come into power declare their determination to eradicate corruption but soon they themselves become corrupt and start amassing huge wealth. Corruption has progressively increased and is now rampant is our society. It is a consequence of the nexus between bureaucracy, politics, business and criminals. India has now become a consideration state where everything can be had for a consideration. At one time, bribe was paid for getting wrong things done but now bribe is paid for getting right things done at right time. There is a need for building a less corrupt or corruption free system in our country with a positive attitude. Unless the investigating agencies like the CBI and the courts functioned with the due autonomy, honesty, efficiency and boldness, improvement in governance would have no chance. A number of instances of corruption have surfaced in our judicial system also. The right to corruption-free governance should be guaranteed for empowerment of the Indian citizenry. The role of the media and other members of civil society are equally very important to fight against corruption. We have a system in which the democratic values are deeply rooted but the corruption has undoubtedly affected the same. Community education and participation of the people in generating an attitude against corruption is deemed to be necessary. The challenge of enforcing the rule of law is a most important impediment to the effectiveness of anti-corruption laws. The criminal justice system in general and investigation part of it in particular has not sufficiently responded to ensure that the corrupt actually get punished. Despite the fact that the PC Act is equipped with several provisions to ensure that corrupt acts should be detected and punished, but, due to inherent weaknesses in the law enforcement machinery coupled with the lackadaisical approach of the criminal justice system, there exists a weak enforcement system against corruption. It is concluded that the Prevention of Corruption Act has turned out to be a puerile piece of legislation. It merely recognized several forms of bribes and corruption, but does not prevent their occurrence. It is concluded that it only created a new branch of evidentiary law whose objectives were neither moderate nor practical. The law enforcement machinery of the state is generally weak and the accused takes benefit from legal loopholes. There is need to adopt the recommendations of the Lord Nolan Committee on standards in public life in the United Kingdom. The seven principles of the

public life stated in the report are; selflessness, integrity, objectivity, accountability, openness, honesty and leadership. While corruption at the higher level of the judiciary may not be rampant, lower levels of the judiciary in India are notorious for their acts of corruption. Recently, the High Court judges also have come under the corruption scanner with the exposure of the Uncle Judge syndrome. The question of delays in the trial process is a larger issue that has affected the ability of the criminal justice system to effectively respond to corruption. Certain reforms in anti-corruption law are required. For instance, the protection given by colonial law makers to public servants in Criminal Procedure Code, 1898 still continues. A number of institutions entrusted with the responsibility of fighting corruption and ensuring probity in governance have not been successful. Given the complexities of the multi-layered police and other law enforcement agencies that are working in India, it is important to develop a more focused approach to combating corruption. There has to be a multi-pronged strategy to fight corruption, which will involve the legal framework, the institutional mechanism, the investigation and prosecution machinery, the public awareness and education strategies, and civil society empowerment approaches. There is needed to make efforts with genuine desire and firm determination on the part of each and every for working out above strategy. Apart from this if it cannot be eradicated totally, definitely it can be controlled and brought down to permissible limits. It can be cured if we have strong will power and unity of purpose.

The study finds that there is no effective institution or efficient mechanism to control, prevent, or check corruption in India. The lower judiciary is afflicted with corrupt practices and existing laws and whole legal system are not able to respond effectively against corruption. An effective strong public opinion against corruption is not in existence except sporadic agitations by likes of Anna Hazare. There has been a considerable increase in the liberal flow of money in recent times; consequently there are more opportunities for corruption. A large number of cases are pending before the State Lokayuktas pertaining to the misuse of public funds, power and position by the politicians who do all these acts for getting elected and to remain in power. The corruption cases pending before the Lokayuktas are pointer towards the fact that most of funds are siphoned off from the schemes meant for providing the basic needs of the people.

In the last pages of this research study, it is suggested that the National Commission against Corruption in India should be established as an institution akin to the Election Commission of India. An amendment is needed in the Constitution of India for this purpose. The powers, functions and the level of independence should be in conformity with the Election Commission of India. It is essential that NCAC should be established bearing in mind the practical problems which are being faced by CBI and CVC. The independence of the NCAC needs to be legally protected. The functioning of the NCAC should be independent from the executive. NCAC should be financially independent. The 'financial independence' of the NCAC should be in conformity with the Election Commission of India. It has been noted that the Election Commission of India has not faced any financial problem in its functioning. The composition of the NCAC should be similar to Election Commission of India. It should be given a constitutional status. A public affairs division should be created under NCAC. It will increase the visibility of the commission. Special anti-corruption benches in High Courts and a special bench in Supreme Court should also be constituted. Intelligence wing should have to provide inputs to enquiry or investigation wing about the occurrence of misdeed and corrupt behavior in the government departments. This formula should be adopted at State and District levels also. District level mechanism should be made accountable to the State level mechanism and the State level mechanism should be made accountable to the National level mechanism and the National level mechanism should be made accountable to Parliament and Supreme Court of India. The proposed adjudicatory wing would have to work as special court necessarily in supervision of concerned High Court. This mechanism should be established by a single Central Government legislation. This mechanism should be established by a single Central Government legislation. Keeping in mind various shortcomings in the Lokpal & Lokayuktas Act, 2013 and as it has not been given a constitutional status, it should be repealed. CBI would have to make investigation into offences other than of the PC Act. It would have no jurisdiction in offences of the PC Act or those offences which are connected to offences of the PC Act. There would be no need to have two parallel vigilance or supervisory bodies within proposed mechanism and therefore, the Central Vigilance Commission Act, 2003 should also be repealed.

Gross perversion of the Constitution and democratic institutions amounting to willful violation of oath of office, abuse of authority unduly favoring or harming someone, obstruction of justice, squandering public money should be made offence punishable under the PC Act. Collusive or supply side bribery & corporate bribery should also be made punishable under the Act. Sub-section (6) of section (5) of the Prevention of Corruption Act, should be amended and Special Judge should be given power to entertain the application for attachment at investigation stage. In cases of trivial amount of bribery, the Special Judge should be empowered to proceed for summary trial. Provisions for confiscation of whole ill gotten property by public servant should be inserted in the Act. Section 19 of the PC Act which provides that court shall not take cognizance against public servants without previous sanction of competent authority should be deleted.