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

Thesis

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2016

Dedicated to

My Beloved Parents

Declaration

I, **Prem Chandra**, hereby declare that this research work for the award of Ph. D. thesis in Law entitled **"Corruption in Governance: A Study of the Indian Legal Framework and the Human Rights Perspective Thereof"** has been done by me on the basis of original research material and information taken from other research works has been duly acknowledged.

I further declare that this is an original work and has not been previously submitted in part or full for any other degree or diploma in this or any other university.

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Place:

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Certificate

This is to certify that the thesis titled **"Corruption in Governance: A Study of the Indian Legal Framework and the Human Rights Perspective Thereof"** submitted by **Mr. Prem Chandra** is an original research work and has not been previously submitted in full or part for award of any other degree or diploma to this or any other university.

This thesis submitted to Babasaheb Bhimrao Ambedkar University, Lucknow satisfies all the requirements as stipulated in the Doctor of Philosophy (Ph.D.) regulations, 1999 as amended in 2008 and it is fit for submission and evaluation for the award of degree of Doctor of Philosophy of the University.

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Dated: **(Prem Chandra)**

Preface

Corruption is a major issue for the system of governance in India. The fundamental question before the Central as well as the State governments is to secure good governance, less corrupt administration and rule of law society in India. Corruption is the major impediment in this regard. The government means a body which has been established according to the provisions of the Constitution and governance means management of public resources by the government. Concept of good governance means skilful management of public resources. The primary function of government is to provide good governance and to protect the basic human rights of the citizens of the country. In this regard it becomes necessary that anti-corruption law should be framed as well as implemented properly. Corruption violates the basic human rights and undermines the rule of law and thereby distorts and works against the concept of good governance.

In recent times, the corruption has become most complicated issue in the country. The main feature of this research study is to critically evaluate and elucidate the anti-corruption law and mechanism in India. The latest case law and legislative provisions have been cited at appropriate places. The study has been divided into seven chapters. The first chapter of this research study is 'Introduction'. In this chapter the subject matter of the research work has been introduced. The second chapter is about historical perspective of the subject matter. Corruption and its impact upon human rights and rule of law are discussed in third chapter of this research study. The fourth chapter analyses the Prevention of Corruption Act, 1988. The fifth chapter deals with the functioning of CBI, CVC and CAG. The six chapter of this research study evaluates the role of Lokpal and Lokayuktas against corruption. In the last chapter some useful suggestions along with the conclusion of the study have also been given to improve the anti-corruption law and mechanism in India.

It is an occasion for me to feel proud in presenting this research study. I hope and trust that this research study would be more useful for future. Although, I have put in my best efforts to avoid all the mistakes but despite this if any mistake has been left out ignorantly, for that I personally tender my apologies.

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State v. Panduranga Baburao

Subramanian Swami v. Manmohan Singh

Sucha Singh v. State of Punjab

Sunil Kumar v. State of West Bengal

Surain Singh v. State of Punjab

Swatantar Singh v. State of Haryana

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Vineet Narain v. Union of India

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Vineet Narain v. Union of India and Another

Vivek Gupta v.CBI and another

AAPAM: African Association for Public Administration and Management

ACHR: American Convention on Human Rights

ADB: Asian Development Bank

AIC: All India Cases

AIDS: Acquired Immune Deficiency Syndrome

AIR: All India Reporters

All ER: All England Reporters

APIIC: Andhra Pradesh Industrial Infrastructure Corporation

ASSOCHAM: Associated Chamber of Commerce and Industry

B.C: Before Christ

BDO: Block Development Officer

Bom: Bombay

BSE: Bombay Stock Exchange

CAG: Comptroller & Auditor General of India

Cal: Calcutta

CBI: Central Bureau of Investigation

CEA: Central Electricity Authority

CHRAJ: Commission on Human Rights and Administrative Justice of Ghana

CIC: Central Information Commission

CID: Crime Investigation Department

CPI: Corruption Perception Index

Cr.L.J: Criminal Law Journal

CRC: Convention on the Rights of Child

CVC: Central Vigilance Commission

Del: Delhi

DRDO: Defence Research Development Organisation

DSPE: Delhi Special Police Establishment

ECHR: European Commission on Human Rights

ED: Enforcement Directorate

EDC: Export Development Canada

EOW: Economic offences Wing

EPW: Economic & Political Weekly

FB: Full Bench

FIR: First Information Report

GAU; HC: Gauhati High Court

HC: High Court

HPC: High Powered Committee

HT: Hindustan Times

Hyd: Hyderabad

IAI: Israel Aircraft Industries

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICHRP: International Council on Human Rights Policy

IMF: International Monetary Fund

IRC: Independent Review Committee

Jhar: Jharkhand

JILI: Journal of the Indian Law Institute

KB: Kings Bench

Ker: Karnataka

KNCHR: Kenya National Commission on Human Rights

KSEB: Kerala State Electricity Board

LIC: Life Insurance Corporation of India

M.P; H.C.: Madhya Pradesh High Court

Mad: Madras

MDGs: Millennium Development Goals

MKSS: Mazdoor Kisan Shakti Sangthan

MLA: Member of Legislative Assembly

MLJ: Madras Law Journal

MNCs: Multi-National Corporations

MoU: Memorandum of Understanding

MP: Member of Parliament

NDA: National Democratic Alliance

NGOs: Non-Governmental Organisations

NHRC: National Human Rights Commission

NHRIs: National Human Rights Institutions

P&H: Punjab & Haryana

Pat: Patna

PC: Privy Council

PE: Preliminary Enquiry

PIL: Public Interest Litigation

PUCL: People's Union for Civil Liberties

RBI: Reserve Bank of India

SC: Supreme Court

SCC: Supreme Court Cases

SCR: Supreme Court Reports

SEBI: Security and Exchange Board of India

SIT: Special Investigation Team

TI: Transparency International

UDHR: Universal Declaration of Human Rights

UNCAC: United Nation Convention against Corruption

UNCAC: United Nations Convention against Corruption

UNDP: United Nations Development Programme

UNESCAP: UN Economic and Social Commission for Asia and the Pacific

UNESCO: United Nations Educational Scientific and Cultural Organization

UN-OHCHR: UN Office of the High Commissioner for Human Rights

UPA: United Progressive Alliance

USA: United States of America

Introduction

Corruption in India has grown to threatening proportions because of the practices and policies that have created enormous incentive for its proliferation, coupled with the lack of effective institutions in place that can investigate and prosecute the corrupt. Under the garb of liberalization, privatization and globalization, India has initiated policies by which natural resources and public assets, mineral resources, oil and gas, land, spectrum and so-on have been allotted to be privatized. This has been done without transparency or a process of public auctioning. These acts allow the corporations to virtually loot and sell the resources by paying the government a pittance as a royalty, which may be less than one percent of the value of resources. Karnataka Lokayukta Justice Santosh Hegde has pointed out in a report on mining in Karnataka that the profit margins in such venture are often more than 90 percent. Apart from creating huge incentives for corruption, such practices have resulted in the forced displacement of lakhs of the poorest people depriving them of their livelihoods and forcing many of them to join the illegal activities. The availability of large scale development funds in emerging democracies offers unprecedented opportunity to both corrupt politicians and civil servants to garner ill-gotten money at the cost of economic growth and social development. The people are deprived of economic development, rule of law, protection of fundamental human rights and social equality thereby negating noble goals of democracy.

Corruption has seeped into every walk of the Indian life. It emerges in astonishing forms and impacts the quality of life of not only the parties indulging into it but also the common man in numerous ways. The narrative of corruption is found in almost all countries whether developed or developing. It had its presence in almost all phases ever since trade and commerce began to take place. The harmful and abrasive implications of corruption have no limitations especially in developing economies. Thus, corruption inflicts heavy economic cost by distorting the operation of free markets, obstructing economic growth and spoiling political and administrative institutions meant for delivering public services. It impedes peoples' access to the basic goods which are now counted as their human rights. The corruption compromises values in the lives of people. The distorted values become part of the transmittory value system.

The agencies to tackle the corruption in India are not above the board. The Central Bureau of Investigation remains to work under the administrative control of the government which is seen as the spring of corruption. C.B.I. is frequently seen behaving in a corrupt manner and no action is usually taken by the C.B.I. to effectively investigate high level corruption. It moves only if the court compels it to do its task properly. The Central Vigilance Commission which is meant to supervise the C.B.I. does not seem to be successful in doing its job. The C.V.C and C.B.I. cannot act without seeking the government's prior sanction under section 19 of the Prevention of Corruption Act, 1988 to investigate and prosecute the culprits; such sanction falls in the discretion of the government.

Democratic elections have become breeding ground for corruption. Electoral corruption in India has become the starting point for all political corruption. The candidates who incurred the high election expenditure, as a bargain expect to make more incomes by abusing their offices after they join as legislators. Consequently, the credibility and the responsiveness of the government get affected. Rule of law is put on hold. The scandals abound in the functioning of the governments and India is no exception to the phenomenon.

William Pit, the British Prime Minister said, "unlimited power is apt to corrupt the minds of those who possess it". Power and corruption seem to have a complex and bidirectional relationship. Lord Acton said, "power tends to corrupt and absolute power corrupt absolutely". India's situation is appropriately expressed by an ancient proverb, "A fish rots from the head down''. When the head is putid the body politic can not be healthy. When those who enjoy power indulge into a large grand scale corruption, clerks or constables cannot be marked out for taking the petty bribe. It is an endless cycle of corruption at all government levels. The corrupt executive itself consists of the corrupt bureaucracy, the police and the judiciary. The managers of power should uphold the rule of law but it is systematically subverted by them. The police is perceived to have become robber, extortionist, collecting hafta. They reportedly extort money on a weekly or monthly basis from those involved in legal or illegal activities that is traders, rickshaw

pullers and so on. Under these circumstances, law and order becomes the greatest casualty and criminals enjoy the field day. The World Bank and other multilateral institutions have defined corruption as the abuse of public office for private gain. The definition of corruption according to Prevention of Corruption Act, 1988 refers to the receipt of gratification by a public servant in excess of his or her legitimate remuneration.

The system nurtures corruption. The system allows the accumulation of the illegal capital. The property of non-capital segment is being systematically taken away through primitive accumulation of the property of pity producers, peasants and the people at large by the capitalists or proto-capitalists. The primitive accumulation entails a theft of the people's property. It thrives whenever a change in property regime is being attempted. In India, the process of privatization has given ample opportunities for the massive process of primitive accumulation of capital. This process is strengthening the syndicates of corruption.

The neo-liberal regime has led to corruption being institutionalized. Much of this corruption originates into the corporate houses, ruling politicians, bureaucrats having nexus among them. Proponents of liberalization have advocated that the diminishing state intervention and enhancing transparency with speedy economic reform would check corruption but the allegations of large scale corruption suggest that this may not be true. There is only a change in the form of state intervention. The state has also become a partner with the private enterprises.

Need for present study

According to the recent estimate by the Global Financial Integrity Programme of the Centre for International Policy, the money that had illicitly flown out of India to accounts abroad over its post independence history stretching from 1948 through 2008 was around $213 billion, the value of which equaled 36 percent of India's G.D.P. in 2008. According to the report, 68 percent of India's aggregate illicit capital loss occurred after India's economic reforms in 1991, indicating that deregulation, privatization, globalization and trade liberalization actually contributed to accelerate the transfer of illicit money abroad. Thus, India is losing nearly Rs. 240 crore every 24 hours, on average in illegal financial flows out of country. Illegal flight of capital worsens income

distribution, reduces the effectiveness of external aid, poverty alleviation and hampers economic development. According to the National Commission for Enterprises, in unrecognized sectors, 836 million human beings have spending only Rs. 20 or less for a day. At the time of prices rising or when great food crisis happens, the government has not money for universal PDS or due to corruption, even an enhanced cut any way meager food subsidies from the largest hungry population in the planet.

There is a need to put in place some electoral reforms to curb money power from politics, and there has to be distinct mechanism to curb corruption in the higher judiciary through separate legislation. The need of the hour is to have an effective cop who can investigate and prosecute the high and might without any interdiction from the people who need to be prosecuted.

Our electoral system suffers mainly from three "Ms" viz; money power, muscle power and ministerial power. It is also called as three "Cs" viz; cash, criminals and corruption. Perhaps we are not a very corrupt society by tradition. The quote from Lord McCauley, the author of the *British Education in India* who submitted his report in the British Parliament on the 2nd February, 1835[1] will clarify a lot:

> *"*I have traveled across the length and breadth of India and I have not seen one person who is a beggar, who is thief. Such wealth I have seen in this country, such high moral values, people of such high caliber, that I do not think we would ever conquer this country, unless we break the very backbone of this nation, which is her spiritual and cultural heritage, and therefore, I propose that we replace her old and ancient education system, her culture, for if the Indian think that all that is foreign and English is good and greater than their own, they will lose their self-esteem, their self-culture and they will become what we want them, a truly dominated nation."

It is the proof of India's high morality and value in the past days. "India is an oasis of democracy, a fact of contemporary history if we look around at the neighboring

[1] R.K. Gupta & H.D. Bist (eds), *Corruption in India, Origin, Causes, and Solutions* 1st edn.116 (Anamika Publishers and Distributors Pvt. Ltd., New Delhi, 2007).

countries that got freedom more or less during the same period as India did. But can we claim that ours is the ideal democracy, free from all ills? Perhaps not[2]" Corruption in governance is a big threat to both rule of law and human rights. Corruption is rooted in the whole system of governance in India. Corruption has touched every democratic institution of governance of India. It has undermined workability and efficiency of all institutions of governance. Since independence, number of legislative and institutional measures has been taken to check and control the problem of corruption in India but due to lack of strong political will and sincerity against corruption most of these measures have been made to fail. In India, the present system of governance is not able to win the trust and confidence of the people against corruption. Corruption in India has become most crucial problem which has badly affected the social as well as political, bureaucratic, constitutional and democratic structure of the country.

It is said that monarch, whose subjects are cried from his kingdom by ruffians, while they call aloud for protection, and he barely looks on them with his ministers, is a dead, and not a living king[3]. It may not be relevant to the present century, but as human nature more or less remains same and states either in monarch or democracy is governed by the same human beings, it is still relevant. License to govern does not mean license to be corrupt.

Review of literature

Though there are not enough significant books and articles written directly on the theme of thesis, but some good work related to the topic was reviewed. An article, "Combating Corruption: On The Interplay Between Institutional Quality and Social Trust" 54 (1) *Journal of Law and Economics*, Feb., 2011, written by Cristian Bjornskow makes commendable ideas for the culture of integrity institutions and notion of trusteeship in governance but it does not dwell on legal framework that could be prove effective for combating corruption. An article, "Political Cleaner: Women as the New

[2] *Laxmi Charan Sen and others v. A.K.M. Hassan Uzzaman and others* AIR 1985 SC 1233.

[3] Manusmariti VII/143 as Quoted in, M.A. Shewan & Udai Veer: "*Corruption on Money Laundering and Law" 161 (New Delhi: Mittal Pubalications, 2011).*

Anti-Corruption Force?" 38 (1) *Development and Change* , Jan, 2007 written by Anne Marie Goetz asserts strong relationship between relatively high levels of female involvement in public life and low levels of government corruption, but, at same, it does not dwell on disintegrity of human beings in modern age. An article, "Corruptions in Governance" 12 (3) *Dialogue*, Jan-March, 2011 written by Dhirendra Nath Bezboruah focus on innumerable scams and swindles in government department but it fails to makes in depth study of the steps that is necessary for good governance.

A book, *Corruption and Human Rights in India: Comparative Perspective and Transparency and Good Governance* by C. Raj Kumar (Oxford: University Press, New Delhi, 2011) hold very extensive work in the light of changing human rights culture and good governance. But there is no angle for tool of enforceability. A book, *Just Know Corruption, No Corruption* by John Samuel & K.N. Panikkar (Books for Changing International Publishing House, Bangalore, 2011) makes core focus on the corrupt ability and rule without accountability in governance but it fails to make in depth study of the steps that are necessary for accountability and good governance. There is no angle to the violation of human rights. Along with the scholarly material, the researcher reviewed the popular articles and write ups which got published in the newspapers and magazines.

Significance of study

The proposed study can prove to be of great significance to develop a frame work that may prove instrumental in bringing out the changes for good governance and the health of democracy. If the study succeeds in its goal then it could be proved to improve the whole system of governance and the quality of life of the people.

Statement of problem

The state or government is not functioning as the notion of trusteeship from the perspective of rights in modern democracy. There is no culture of integrity in governance. The menace of corrupt and malafides activities are permitted to be hidden under the carpet of legal technicalities. Apart from this the high- level misutilisation of funds delivers poor quality of governance and programme delivery is rotten everywhere in India .We have such anti-corruption laws and agencies which can work on paper only

itself not in the field. The imminent problem is that right to corruption free governance has still not been satisfactorily elevated to the status of a enforceable human right.

At the center, we have a C.V.C., which though independent, is an advisory body. CBI is completely under the control of the government due to political considerations. So, the CBI and CVC were set up as integrity institutions for vigilance of administration but these institutions are not effective in tackling corruption. There is a need to enquire into the issues of corruption as violation of the basic human rights of the people by affecting the quality of governance. Corruption is big menace to rule of law, and without the rule of law there can be no realization of human rights. There is also a need to enquire, as to whether the anti-corruption law and agencies are adequate and whether they require substantial amendments or there is a problem in implementation of these laws.

Objectives of study

The specific objectives of study are as follows:

1. To trace the historical background of phenomenon of corruption.
2. To critically examine and evaluate the statutory provisions for prevention of corruption.
3. To critically examine and evaluate the effect of corruption on the economic development of country and on the poor people in particular.
4. To examine and evaluate the various incentives and causes of corruption.
5. To critically examine and evaluate the existing whole legal system for prevention of corruption and loopholes existing therein.
6. To put forth certain suggestions and recommendations to rectify the erroneous system.
7. To critically appraise the concerned judicial decisions.
8. To critically examine and evaluate the phenomenon of the corruption as a violation of basic human rights of community.

Hypothesis

1. There is no effective institution to check the corruption, investigate and prosecute the corrupt and bring them to justice.

2. The judiciary has also become dysfunctional and is afflicted with corruption.
3. The existing laws and our whole legal system are not effective to fight against corruption.
4. The process of transition to a more liberal regime is fraught with potential instances of corruption.
5. The use of public funds for private gains is common. The misuse of power, position and privilege is widespread.
6. The electoral corruption is to be seen starting point for all political corruption.
7. There is no proper mechanism for the prevention of corruption.
8. Strong public opinion against corruption can be proof of a good instrument for prevention of corruption.
9. Corruption is the cause of violation of the basic human rights of the people.

Research methodology

It is a doctrinal research. The analytical method is used in relation to judicial decisions. The same analytical process is utilized for dissecting the legislative provisions. For the purpose of historical accounts and introduction of the international documents/agreements the description has been used as a technique for conducting this research study. The information has been gathered using secondary sources of data. The researcher has extracted descriptive and narrative information using secondary sources data.

Scheme of the work

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 research work. At the initial stage, the selected area of research work has been identified. After identification of research problem, a synopsis of research work and its basic structure were developed. The main objectives of research study are put forth in this chapter. 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, utilizing analytical and descriptive techniques of research methodology, 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. However, in the beginning of this chapter, how the term 'corruption' had been defined in the past is also discussed. There are numerous references to the prevalence of official corruption in ancient India. But the most elaborate reference source seems to be Kautilya's Arthashastra. Kautilya believes that despite greatest care taken in recruiting officials, there would be some who would 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 of Kautilya. 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. Further, the evolution of anti-corruption discourse and neo-liberal concepts of corruption which accompanied with liberalization of the Indian economy after 1991 are briefly analyzed and discussed. 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 briefly discussing the national and international measures, the human rights implication of corruption, and its relationship with human rights, corruption and its implications for the rule of law are analyzed. After discussing the various concepts 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.

In the fourth chapter, the provisions of the Prevention of Corruption Act, 1988 have been critically evaluated and analyzed. In analysing the different provisions of the Act, relevant judicial decisions are also discussed and evaluated. It is noticed that the word "corruption" is not defined anywhere in the Act. Corruption is the generic heading for a cluster of different and specific criminal acts. There is a strong apprehension that a close definition will provide scope for offenders to take advantage thereof. The offences punishable under the Act have to 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 considered by Supreme Court is discussed. Special Judge may take cognizance of an offence without the accused being committed to him for trial. The Special Judge has dual powers of Session Judge and Magistrate 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. It is found that 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 of the Act does not cover whole range of official conducts which are detrimental to public interest. Further, in our society, there are two types of corruption; first coercive corruption and second collusive corruption. However, the PC Act does not make any difference between them. The bribe-giver may be guilty of the offence of abetment. 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. Under the Act there are number of protective provisions for public servant. After analysing the main provisions of the Act, an effort has been made to evaluate the Prevention of Corruption (Amendment) Bill, 2013. In the closing pages of this chapter, the provisions of the Whistle Blower Protection Act, 2011 are briefly discussed.

The fifth chapter of this research study deals with an evaluation of the functioning of the central agencies against corruption 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 a discussion on police functions of CBI. After briefly discussing, the legislative history of CBI, an effort is made to trace the circumstances leading to the creation and origin of CBI. 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 has 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. 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. 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. 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 subject matter of the sixth chapter is about the role of Lokpal and Lokayuktas against corruption. It begins with a brief introduction and 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. The Prime Minister's action relating to international security, public order, atomic energy and space are not to the subject matter of inquiry by 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. The shortcomings of the Lokpal and Lokayuktas Act are briefly pointed out. The merits of the Act are also pointed out. Under the Act the Lokpal has not been given the power of administrative control over CBI. 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. 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.

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.

The study finds that there is no effective institution or efficient mechanism to control, prevent, or check corruption in India and hence, the related hypotheses are proved. The lower judiciary is afflicted with corrupt practices. The existing laws and whole legal system are not able to respond effectively against corruption and, therefore, hypothesis related to them got proved. An effective strong public opinion against corruption is not in existence except sporadic agitations by likes of Anna Hazare, hence the hypothesis is proved. 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 regarding 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 related hypotheses are proved. 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 and hence the hypothesis that corruption causes violation of basic human rights is correct. 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.

Introduction

The term 'corruption' comes from the Latin word corruptio which means moral decay, wicked behavior, putridity or rottenness[1]. The nature of corruption varies from region to region and remains largely contextual[2]. It is very difficult to formulate a single comprehensive definition of corruption which can cover all manifestations of corruption. Therefore, to describe the concept of corruption, it is easy to enumerate the various act of corruption. Oxford Dictionary defines to corruption as the perversion or distraction of integrity or fidelity in the discharge of public duties by bribery or favour. Leslie Palmier defines corruption as the acquisitions of forbidden benefits by the officials or employees and thereby bringing into question their loyalty to their employers or it may be regarded as the use of public power for private advantage in the way which transgresses some formal rules or laws[3]. Oxford Advanced Learners Dictionary defines corruption as dishonest or illegal behavior of people, especially who are in authority and it include the act or effect for making somebody change from moral to immoral standard of behavior[4].

Corruption as defined above, lays emphasis on dishonest, illegal, perverted or deviant behavior of an employee or official for private advantage. The private advantage may be in the form of bribe, price, reward, gift or favour bestowed or promised or it may be gratification i.e. satisfaction of desire or appetite of body or

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[1] M. Milic, "Endogenous Corruption in Privatized Companies" Collegium, Budapest, 2001. Available at https://iwed.cerge-ei.cz/pdf/gdn/RRC1-17_paper_01.pdf.

[2] D.Gould, "Administrative Corruption: Incidence, Causes, and Remedial Strategies." in A. Farazmand (ed.), *Hand Book of Comparative Development and Public Administration*, 1991 at 467.

[3] R.K. Gupta & H.D. Bist (eds.), *Corruption in India, Origin, Causes and Solution* (Anamika Publishers and Distributors Pvt. Ltd., New Delhi, 1st edn, 2007) at 47, para 2.

[4] *Id*., para 1.

mind[5]. By these definitions it is emphasized that such deviant behavior ought to be illegal, forbidden by law or in transgression of law. Thus, it is clear that those corrupt acts which do not transgress any law or rule are not included within the purview of corruption by these definitions. The corruption violating ethical values or moral code is not illegal and therefore is not actionable by law enforcement agencies but it seriously undermines the public perception about corruption[6]. Though, by agreed definitions of corruption, various attempts have been made to formulate a comprehensive definition of corruption. In general terms the corruption has been defined as an illegal act that involves the abuse of public trust or office for private benefit or the misuse of public office for private gain[7]. In the current understanding of corruption, this definition has two limitations. *First*, it only deals with corruption in public sector. It does not cover the corruption of private sector. *Second*, this definition only covers to the recipients of the proceeds of corruption and leaves out the act of bribe giving[8]. Transparency International defines corruption as abuse of entrusted power for private gain[9]. This definition is similar to the usual definition except that it includes private sector corruption within its scope. The World Bank defines corruption as an abuse of public authority for the purpose of acquiring personal gain[10]. McMullan holds that a public official is corrupt if he accepts money or money's worth for doing something that he is under a duty to do anyway, he is under a duty not to do or to

[5] Webster's, "Third New International Dictionary".

[6] R.K. Gupta & H.D. Bist, *supra* note 3.

[7] D. Fantaye, "Fighting Corruption and Embezzlement in Third World Countries" 68 *Journal of Criminal Law*, 2004 at 171.

[8] *Ibid.*

[9] Available at: http://www.transparency.de/fileadmin/pdfs/themen/wirtschaft/Ti-plain_Language-guide-280709.pdf.

[10] D. Kaufmann, "Corruption, Governance and Security: Challenges for Rich Countries and the World" World Bank Global Competitiveness Report, 2004-05, 32.

exercise a legitimate discretion for improper reasons.[11] In the legal field, the term corruption is usually used for certain criminal acts which correspond to the general notion of abuse of entrusted power. The United Nations Convention against Corruption (UNCAC) does not define the term 'corruption' anywhere. It only enumerates various criminal acts that amount to corruption. Thus, within the legal context, corruption is a general heading for the cluster of different and specific criminal acts. Therefore, the appropriate legal definition of corruption must be that corruption is a list of acts which have been criminalized by law under the general heading of corruption. It becomes essential to indentify the different acts that fall under the general heading of corruption. The United Nations Convention against Corruption[12] provides the most recent and comprehensive list of such acts. It is important to note that this is not an exhaustive list. Progressive development can enlarge this list and may include other act of corruption in the future.[13] The core corrupt act of the list may be described as under:

Bribery

The most representative act of corruption is bribery. Bribery may be defined as the promise or offering or giving to a public official, or solicitation or acceptance by a public official, directly or indirectly of an undue advantage for himself or for another person or entity in order to do his official act or refrain from doing his official duty. There are however several forms of bribery. The act of offering bribe is commonly referred as active bribery and the act of accepting the bribe is referred as passive bribery. The definition of bribery has been changed when it takes place exclusively within the private sector or involves a foreign

[11] M. Mc Mullan, "A Theory of Corruption: Based on a Consideration of Corruption in the Public Services and Governments of British Colonies and Ex Colonies in West Africa" 9(2) *Sociological Review* 1961, 181-201.

[12] The UN Convention against Corruption has adopted by the General Assembly by Resolution 58/4 of 31 October 2003.

[13] Transparency International, "Corruption and Human Rights: Making the Connection" 2009.

public official. If the act of bribery is committed in economic, financial or commercial activities of private sector, it is referred as bribery of private sector. In the context of international business, the bribery of foreign public officials and officials of public international organizations that gives undue advantage to such public official is called transnational bribery.

Embezzlement

The embezzlement of public property by public authorities is a very common corrupt practice in governance. It may be defined as misappropriation or diversion of public assets or property by a public official for unrelated purposes for his benefit or for the benefit of other person and that public property or private fund or security or any other things of value were entrusted to the public official by virtue of his position. The embezzlement of property can also occur in economic, financial or commercial activities of private sector[14].

Abuse of position or function by public servant

The abuse of function or position is referred as to perform or failure to perform an act in violation of laws by a public official in discharge of his duties for the purpose of obtaining an undue advantage for himself or for another person or entity.[15]

Illicit enrichment

The corrupt act of illicit enrichment may be defined as a significant increase in the assets of public official that he cannot reasonably justify in relation to his lawful income. Illicit enrichment is a controversial act of corruption because criminalization of such an act goes against the principle of presumption of

[14] Dr. J.J. Mozika, "Corruption and Human Rights: The Right Based Approach towards Corruption" (2013) 4(2) *Indian Human Rights Law Review* at 187, para 2.

[15] *Ibid.*

innocence and reverses the concept of the burden of proof under criminal justice system[16].

Corruption: a conceptual analysis

Corruption has different meanings in different societies. It is due to difficulties in establishing a clear border between legal and illegal in different societies.[17] Various approaches to define corruption can be placed into five groups. These are public interest centered, market centered, public office centered, and public opinion centered and legalistic. Proponents of the public interest centered approach believe that corruption is injurious or destructive for public interest[18]. Market centered enthusiasts suggest that norms governing public office have been shifted from mandatory pricing model to free market model and thereby it is considerably changing the nature of corruption[19]. Public office centered protagonist's stress upon the fact that misuse of public office by the public officials for private gain is corruption[20]. Those who believe in public opinion centered emphasize for defining corruption in the perspective of public opinion about the conduct, probity, integrity of politicians and public servants[21]. Legalistic view of corruption focuses purely upon the problem for determining rules and norms which govern public interest and public behavior of public authorities.[22] Among various definitions, the general definition of corruption can be traced with

[16] *Ibid.*

[17] S.Rose-Ackerman, "*Corruption and Government Causes, Consequences and Reforem"* (Combridge University Press, New York, 2005) at 5.

[18] A. A. Rogow and H D Laswell, "The Definition of Corruption" in A.J. Heidenheimer (ed.), *Political Corruption: Readings in Comparative Analysis*, (Holt Rinehart and Winston, New York, 1970) at 54.

[19] R.O.Tilman, "Black Market Bureaucracy" in A.J.Heidenheimer (ed.), *Political Corruption: Reading in C omparative Analysis*, (Holt, Rinehart and Winston, New York, 1970) at 64.

[20] R.Theobald, *Corruption Development and Underdevelopment*, (Macmillan, Landon, 1990) at 2.

[21] C. Leys, "What is Problem about Corruption" *supra* note 18 at 31.

[22] J.C. Scott, *Comparative Political Corruption, Englewood Cliffs*, (Princeton Hall Inc., New Jersey, 1972).

the definition of African Association for Public Administration and Management (AAPAM). According to it, a boarder definition of corruption refers to use of one's official position for personal and group gain and that includes unethical actions like bribery, nepotism, patronage, conflict of interest, divided loyalty, influence peddling, misuse or stealing of government property, selling of favours, receiving kickbacks, embezzlement, fraud, extortion, misappropriation, under-or-over invoicing, court tempering, and use of regulation as bureaucratic capital.[23] Corruption is generally understood as anti social, illegal or dishonest behavior by an individual or social group who are in authority. It confers unjust or fraudulent benefits on its perpetrators. It is inconsistent with the established legal norms and prescribed moral values of the land and is likely to subvert or diminish the capacity of the legitimate authorities for providing full material and spiritual well being to all members of society in a just and equitable manner.[24]

Corruption in ancient India

Manu Smriti is regarded as the oldest codification of rules of Dharma. Dharma regulates the rights and duties of every individual in order to ensure peace and happiness for all by harmonizing the interests of the individuals and the society. It is commonly acknowledged that Manu Smriti or Code of Manu is regarded as the oldest and the largest and Manu is regarded as the first law giver. The Manu Smriti is divided into twelve chapters and consists of 2,694 verses. The subject matter of its seventh chapter is about Rajadharma.

In the seventh chapter of Manu Smriti, the importance of king or ruler had explained and it is declared that the king is a God in human form he gives full

[23] AAPAM, Ethics and Accountability in African Public Services, Report of the 13th Round Table of African Public Services Association for Public Administration and Management held at Mbabane, Swaziland, on 2-6 December, 1991.

[24] D. Rangaswamy & Dr. Ramesh, "Problem of Corruption: Human Rights Perspective" 3 *Indian Law Revi ew,* 2011 at 73.

protection to the people against external enemies and internal wrongdoers and looks after their welfare. The 123rd verse of seventh chapter reads as under:

राज्ञो हि रक्षाधिकृताः परमस्वादायिनः शठाः।`

भृत्या भवन्ति प्रामेण तेम्यों रक्षेदिमाः प्रजाः।।123।।

Protection of people against wicked and corrupt officers

Sometime it happens that the officers appointed by the king to protect the people themselves become knaves and seize the property of the citizens and give them all sorts of trouble. Therefore, it is the duty of the king to protect the subjects against such acts of his officers. Again the verse 124th of the seventh chapter reads as under:

ये कार्यिकेभ्यों ऽर्थमेव गृहणीयुः पापचेतसः।

तेषां सर्वस्वमादाय राजा कुर्यात्प्रवासनम्।।124

Property of corrupt officers should be confiscated

The king should expel corrupt officials from the country who receive illegal gratification from the citizens and also confiscate their property. There are numerous references to the prevalence of official corruption in ancient India. But the most elaborate reference sources are found in 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. Just as it is impossible not to taste honey that finds itself at the tip of tongue, so it is impossible for a government officials not to eat up at least a bit of the king's revenue. Just as fish under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out taking money. Hence, strict discipline is a pre requisite for curbing corruption and, consequently, severest punishment must be meted out to corrupt officials. Kautilya observes that an effective spying system could help to locate corrupt officials.

Cases of corruption should be examined by the investigation committees appointed by the king. Those proven to be corrupt should be removed from service and their properties confiscated. Asoka, who tried to apply Kautilya's principles of governance in his administration, emphasized speedy dispatch of business. This must have minimized corruption in his regime.

References of corruption, its ramifications and standard of punishments are prescribed in Manusmriti and Arthsasthra of Kautilya. Buddhish Monk, Sage Nagarjuna had addressed an advisory letter to Raja Narendra administering him mode of "clean administration" according to Dharma[25]. The letter was titled "SUNRULEKHA[26]". Roman law was also vocal about the punishment for corruption. Sree Rama's Dharma Ghanta could be used even by an aggrieved dog. Asoka had said that where ever and whenever I am, I must for common weal[27]. Harsh used to tour in congnite to assess the pulse of his subjects. Asthadiggaja of the Krishna Devaraya's court were the mouth piece of the people's grievances. Diogenes, a Greek philosopher known as cynic was exiled with his father from Cinope. He settled in Athens and founded the Cynic School of Philosophy for promoting self control, acceptance for suffering, the avoidance of physical pleasure and for returning to the nature. He had rejected all luxury and made his home in a large earthenware barrel. His way of life earned the name, Kumos. Kumos is the Greek name of dog. It is said that Diogenes had been moving in the streets of Athens in broad day light with a 'lantern'. When asked why he was acting so cynically. Diogenes replied. I am not able to find an honest man through sunrays. I am searching for him through the added 'lantern' light[28].

[25] Dr. A. Ranga Reddy (ed.), *Dimension Of Crime And Corruption In India* (Serial Publication, New Delhi, 2005).

[26] *Ibid.*

[27] *Ibid.*

[28] *Ibid.*

The Code of Hammurabi was very severe with 'tooth for tooth and an eye for an eye' principle. Hammurabi code is the earliest known codified law. Hammurabi was greatest ruler of the Babylon. He ruled over Mesopotamia in 2100 B.C. A notable achievement of his reign was codification of laws. It is said that he received those laws from the Sun God. The Hammurabi Code was written in the Sumerian language and engraved on stones. The code contains 285 sections pertaining to civil and criminal laws. It deals with various subjects like marriage, property, wages, theft, public morality and murder. The code prescribed harsh punishment and unequal justice e.g., if a house fell down and caused to the death of the house holder's son, the son of the house builder should be put to death. Hammurabi was a good administrator. He addressed 65 letters to the provincial governors asking them to collect taxes, to look after the people welfare and punish the corrupt officers[29].

In India people were aware of public official's susceptibility to corruption as early as Mauryan period of history. Kautilya in is his famous classical treatise on state craft the Arthashastra has mentioned that it is as difficult to resist the temptation of utilizing state funds for personal use honey or poison kept on one's tongue. He further elaborates how difficult it is to detect corruption of public officials. He had mentioned administrative and punitive measures to deal with corrupt officials and discussed in detail the procedure of their recruitment and character verification. Not only Kautilya but other Acharyas while elaborating duties of King had clearly mentioned that king had to protect public from enemies, thieves or criminals, wicked officials of the state, kinsmen of the king and also from the greed of the king himself[30]. Some of the enlightened groups even led the movement against the Kings who transgressed their limits.

[29] *Ibid.*

[30] *Ibid.*

Corruption in medieval India

During Middle Ages also, corruption of every type was prevalent and all places intrigues were financed 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 time of Jahangir a magistrate was punished by the emperor himself and was ordered to be bitten by a cobra[31]. Emperor took pains to see the execution of the punishment and remained seated till the magistrate died[32]. 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.

Corruption in Hindi satirical short stories

In Hindi corruption is known and described as bhrstachar, riswath, ghoose etc. Corruption has so many ways and means. It has extended its roots as Bhrmha Rakshas. Government offices are the main sources of corruption. People are dependent upon offices for getting services, licenses and permissions. This dependency syndrome leads them for bribing. They are compelled to pay bribe for getting small services from government offices. At the same time people are also responsible for corruption. Without having patience to tolerate or wait to get things done in right way, they reward to the clerks and officers to get things done at rapid speed[33].

Corruption has similarities with contemporary other social evils, namely dowry. The main similarity is that all Indians are against corruption and also against dowry. But all Indians are used to fell in the way of corruption and dowry.

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[31] S. Mookherjee, *Commentaries on the Prevention of Corruption Act, 1988,* (Hind Publishing House, Allahabad, 2013)

[32] *Ibid.*

[33] Dr. A. Ranga Reddy, *supra* note 25.

Some time all are affected by these two evils. Even, all are criticize these evils. But directly or indirectly all are supporting these evils. Generally bribe takers and bribe givers keep silent about their dealings. Both the dowry takers and givers do the same things. The great similarity in these two evils is that both create big problem for innocent and poor people[34]. In our society dowry has even become social prestige. Bribe has also become symbol of social efficiency.

Satire has great significance in literature. Satire has good skill to make an indirect expression. Satire attacks the weakness, irrelevances, deformities and incongruous of individuals and society. Satire attacks on the negativity of individuals as well as of society in such a way that we feel happiness in our outside but pricking to our inside. Satire has great communicative skill to deliver the good. It has curved nature to enter into the minds of people. It often co-exists with humor. Due to sugar coated layer of humor, bitterness of satire is subsidized. There would not any unhealthy reaction against satire openly, because it covered by humor. The humor protects the satire and its bitterness. Among all Indian languages only Hindi has independent satirical writers who wrote hundreds of satirical short stories. Corruption is one of the most important subjects among all of them.

In Hindi, Hari Shankar Parsai is known as 'Bhisma Pitamah' of Hindi satire. Corruption is well depicted in his short stories. Sudama Ka Chaval, Bholaram Ka Jeev, Sadachar Ka Taveej are very popular among them.

Sudama Ka Chaval

"Sudama Ka Chaval" is based on the popular mythological story of Sudama. The story of Sudama and his broken rice are very popular among Indians. The story of Sudama depicts the ideology of friendship. Sri Krishna and Sudama were friends from their school days. Parsai has taken the main story as it is. But he

[34] *Ibid.*

twisted the story according to his plan. He wrote a note at the beginning of the story stating that some of the pages of Sudama's dairy have been found[35]. In those pages a great secret was noted down by Sudama. According to that secret story is as follows.

As per traditional and popular story Sudama went to see Sri Krishna for asking help. He took broken rice from his wife to present them to Sri Krishna. He reached the Rajmahal. He had to face so many officers before getting appointment to meet Srikrishna. All officers were demanding for "khurchan' as bribe. Without khurchan he was not permitted to meet Sri Krishna. Losing patience innocent Sudama offers broken rice to them as khurchan. The officers taken away all his broken rice thinking that they have divine power of Mantra in them. Then they permitted to Sudama. They also took promise from Sudama that he will not reveal the same to Sri Krishna. Sudama met Sri Krishna without broken rice. With repeated requests from Sri Krishna Sudama attributed the whole story, what he faced to enter the Rajmahal. Sri Krishna felt shame and feared that if Sudama broke this secret to everyone of his kingdom, he will dethrone or became unpopular among the people. Due to this, he gifted a lot of wealth to Sudama with wealth and not for the reason of friendship or broken rice as depicted in popular mythological story. Like Sudama innocent people are unable to get done their works without offering bribe. Thus Parsai attacked on the corruption which appears everywhere in our government offices.

Bholaram Ka Jeev

Parsai has tendency to say that there should be under current of "karuna" in good satire.[36] According to this philosophy he wrote "Bholaram Ka Jeev". Without shedding the tears this story cannot be read. This is a satirical story of a

[35] *Ibid.*

[36] Harishankar Parsai, "Meri Shresta Vyangya Rachanahen" Bhoomika at 1, as cited in Dr. A. Ranga Reddy, *supra* note 25.

school teacher, Bholaram. Bholaram died without getting the pension order which was pending in pension office for quite a long time. His "jeeva" has not reached to "Yama Loka". Yama was feared and sad for it. Narada promised to Yama that he will enquire about Bholaram. Narada reached to the house of Bholaram in 'Bhoo Loka'. He asked for Bholaram. His wife replied that Bholaram died long ago. She also told to Narada that they are suffering for everything without getting pension for several years. She also requested to Narada to do needful for getting sanction the pension of Bholaram. So kind hearted Narada took responsibility to get sanctioned the pension of Bholaram. He visited the pension office. Innocent Narada was unable to understand the language of the office. He met the officer with great difficulty. He was told by the officer that the pension papers of Bholaram were flying in the air. They required some 'vajan' (a weight) to keep them on the table. Innocent Narada advised the officer to keep paper weight on the papers. After getting explanation from officer, Narada offered his divine "Veena" as vajan (corruption). The officer accepted the Veena as vajan and ordered to bring the file of Bholaram.[37] Thus the Jeeva of Bholaram was liberated from the clutches of pension file and of corrupted officers. This story reveals that due to corruption innocent teachers, who unable to pay the bribe, are suffering without pension. They even cannot get peace of mind even after dying because of rampant corruption in India.

Sadachar Ke Taveej

Through Sadachar Ke Taveej, Parsai has given a solution to get rid of the corruption. This short story starts with a meeting called by the king to discuss about the corruption in his kingdom. The whole kingdom was suffering from corruption. The king wants to eliminate corruption from his kingdom. He discussed the matter with his ministers and other court yards. One clever minister advised the king that a Taveej must be tied in hand of every employee. So that by

[37] Harishankar Parsai, "Tirchi Rekhayen" at 46, *supra* note 25.

the influence of Taveej no one will take bribe. The king accepted the advice and ordered to tie Taveej in the hand of each public servant. After some time the king wanted to test the influence of the Taveej. So he planned for making surprised visits to the offices. He changed his dress and make up. He found that in the middle of month no one was taking bribe. The king was satisfied with the arrangements. The king visited the employees in the last week of the month. In one office he offered bribe to get some favour from an employee. Suddenly, the employee accepted the bribe. The king was astonished. He checked the hand of the employee. Taveej was there. Some words were coming from the Taveej that this is the last day of the month. You can take bribe.[38] The king understood that without knowing the reasons for corruption and without taking remedial steps we cannot expect to eliminate the corruption. Thus, satirist expressed his view that if you want to get rid of corruption you must know the reasons of it. Then you have to analyze the reasons scientifically and try to hit upon main causes of corruption. Then only one can eradicate the corruption from the society and the nation.

In the short stories written by Latif Ghonghi namely Lajja Tahasildar Ka Aabhoosan, Savdhan Ho BDO Sahab, Sadachari Pidhi ka Sankalp the problem of corruption is depicted very well. In Lajja Tahasildar Ka Aabhoosan, a Tehasildar takes bribe and pays the bribe to political leader for not getting arrested in hands of police.[39] In Savadhan Ho BDO Sahab, Ghonghi sarcastically supported for taking bribe. He expressed that taking bribe is a birth rights of Indians.[40] He also suggested that one must take bribe according to his position and designation.

Another satirist Narendra Kohli in his short story "Bhagvan Ki Aukath" painted a caricature of police department. According to Kohli police has no other way to live without bribe because they get very thin salary. Salary is not enough to get on in inflation. Kohli supported that being corrupt is a most important

[38] Harishankar Parsai, "Sadachar Ka Taveej" at 6, *supra* note 25.

[39] Latif Ghonghi, "Meri Shresta Vyangay Rachanahen" at 74, *supra* note 25.

[40] Latif Ghonghi, "Teesre Bandar Ki Katha" at 74, *supra* note 25.

qualification to become police personnel. If one is unable to take bribe he cannot fit into police department.[41] In this short story Kohli expressed through the minister of home affairs that bribe is a Prasadam of God. One must not hesitate to have it.

Many times people are compelled to take licenses and permissions from Government offices. This is the important area of bribing. Now days, without bribing anyone cannot get any license or permission from any office. In Jab Bholaram Ne Pump Lagvaya, Eshwar Sharma has described that Bholaram wanted electrical connection for his new bore well.[42] He applied and visited several times from revenue office to irrigation office but he was unable to get the connection. After paying a bribe to line man he got the connection very easily. Thus he gained knowledge and preaches the same to others that how to tackle the situation.

It may be concluded that the Hindi satirist attempted boldly to expose the various dimensions of corruption. By their creative talent they ridicule every situation of corruption. At the same time without any hesitation they attacked and wounded them through satirical expressions. They wisely describe the corruption as vajan (weight), khurchan etc. With all these skilled applications they communicated their creative views very easily. It is certainly true that satirical short stories have great potential to deliver the goods and make the people to think about this social evil.

Corruption in post-independent India

When on August 15, 1947 we awake to freedom everybody thought that at least corruption will be controlled as the followers of Gandhi will not indulge in corruption. All these hopes were shattered within very short time and scandal after scandal rocked our national life. Even before the dawn of freedom the symptoms

[41] Narendra Kohli, "Meri Shresta Vyangya Rachanayan" at 128, *supra* note 25.

[42] Giriraj Saran Agarwal (ed.,) "Karyalayeen Vyavasta Par Vyangya" at 78, *supra* note 25.

of this dreadful disease started on the body of politics. Rajaji has mentioned that elections and their corruption, injustice and power, tyranny of wealth and inefficiency of administration will make hell of life as soon as freedom is given to us, men will look regretfully back to the old regime of comparative justice and efficient, peaceful more or less honest administration[43]. The scandals, like Jeep scandal 1948, Haridas Mundhra scam 1957, Kairon scam 1964, Kuo Oil Deal 1980, Thal Vaishet Fertiliser case 1980, Antulay case 1981, Bofors scandal 1987, Securities scam 1992, Polmolein Oil Import scam 1992, Lavalin scandal 1995, Suhkram Telecom Equipment scandal 1996, Fodder scam 1996, Hawals scandal 1997, Barak Missile scandal 2000, Securities scam 2001, Tehelka Expose 2001, Ketan Parekh scandal 2001, Taj Corridor scandal 2003, Gegong Apong scandal 2004, Abdul Karim Telgi scam 2006, Cash for Vote scandal 2008, Satyam scandal 2009, Madhu Koda scam 2009, A.P. Industrial Infrastructure Corporation scam 2010, U.P. Food Grain scam 2010, Lavasa scam 2010, Belekari Port scam 2010, Housing Loan scam 2010, Indian Premier League scam 2010, Commonwealth Games scam 2010, Hasan Ali Khan scam 2011, Adarsh Housing Society scam 2011, ISRO-Devas S. Band scam 2011, 2G Spectrum scam 2011, Float Pump and JMM case through enough light on standards of our national life. The sensation created by Shivani Bhatnagar's murder case followed by murder of Madhumita Shukla in Lucknow and other which is a very long list and gives an idea about our social and moral values. Arrest of judges, administrative officers, police, officers, ministers, M.Ps and MLAs have become almost a routine event and do not evoke any public reaction[44]. Nani J. Palkiwala reacted to the situations in the way that the equality of our public life has reached the Nadir. Politics is tainted with crime. The moral standards of our politicians, policemen and criminals are not distinguishable from one to another. Today, India is a living example of the fact that cynicism corrupts and absolute cynicism corrupts absolutely. In our country

[43] R.R. Gupta & H.D. Bist, *supra* note 3 at 51.

[44] *Ibid.*

we are facing a situation wherein people have accepted corruption as part of their lives. A man commands respect and status on the basis of his acquisition and not by merit.[45] The respectability acquired by wealthy people through corrupt means vitiates the social environment and corrupts the social institutions[46]. The public perception about corruption in public life is very high. A 2005 study conducted by transparency international in India found that more than 45% of Indians had firsthand experience of paying bribes or influence peddling to get jobs done in public offices successfully. Transparency International estimates that truckers pay US $ 5 billion bribe annually. In 2010 India was ranked 87 out of 178 countries in Transparency International Corruption Perception Index. Former Prime Minister Indira Gandhi has said that corruption is a misuse of power. She publicly stated that corruption is a global phenomenon and her government has no different[47]. Successive Central Governments and members of India's famous Nehru-Gandhi political dynasty have often been accused for corruption and amassing illegal wealth. The year 2011 has proved to be a watershed in the public tolerance of political corruption in India, with widespread public protests and movements by social activists against corruption and for the return of illegal wealth stashed by politicians and businessmen in foreign banks over the six decades since Independence[48]. Criminalization of politics is also a serious problem in contemporary India. In July, 2008 the Washington Post reported that nearly a fourth of the total Indian Parliamentarian faced criminal charges including human trafficking, embezzlement, immigration rackets, rape and even murder. According to the data provided by the Swiss Banking Association Report, 2006, India has

[45] *Ibid.*

[46] *Ibid.*

[47] Dr. Prabhas Chandra Sinha, *Encyclopaedia of Laws Against Corruption* (Anmol Publications Pvt. Ltd., New Delhi,1st edn., 2012) at 1, para 1.

[48] *Ibid.*

more black money than the rest of the world combined[49]. Indian owned Swiss Bank account assets are worth 13 times more to the country's national debt. Independent reports published through 1991 to 2011 calculated the financial net worth of India's most powerful and traditionally ruling families, the Nehru Gandhi political dynasty, to be anywhere between $ 9.41 billion to $ 18.66 billion, most of it in the form of illegal money. Harvard scholar Yevgenia Albats cited KGB correspondence about payments to Rajiv Gandhi and his family, which had been arranged by Viktor Chebrikov, which shows that KGB chief Viktor Chebrikov sought in writing an authorization to make payments in US dollars to the family members of Rajiv Gandhi, namely Sonia Gandhi, Rahul Gandhi and Paola Maino, mother of Sonia Gandhi in December, 1985[50]. The recent scams involving very big amounts of money, such the 2G Spectrum scam are well known. It is estimated that more than trillion dollars are stashed away in foreign havens, while 80% of Indians earn less than 2 $ per day and every second child is malnourished. It seems as if only the honest people are poor in India and want to get rid of their poverty by education, emigration to cities, and immigration, whereas all the corrupt ones, like Hassan Ali Khan are getting rich through scams and crime.

The economy of India was under socialist inspired policies for an entire generation from 1950s until the late 1980s. The economy was subject to extensive regulation, protectionism and public ownership, leading to pervasive corruption and slow growth. License Raj was often at the core of corruption. The Vohra Report,[51] submitted by the former Indian Union Home Secretary, N.N. Vohra in October, 1993 observed the problem of the criminalization of politics and of the nexus among the criminals, politicians and bureaucrats in India. The report contained several observations made by official agencies on the criminal network

[49] *Ibid.*

[50] *Ibid.*

[51] R. Upadhyay, "Political Corruption in India: An Analysis" South Asia Analysis Group, Working Paper No. 219, 30 March, 2010.

which was virtually running a parallel government. It also discussed criminal gangs who enjoyed the patronage of politicians of all political parties and the protection of government functionaries[52]. It revealed that political leaders had becomes the leaders of gangs. They were connected to the military. Over the years criminals had been elected to local bodies, State Assemblies and even to the Parliament[53].

The evaluation of anti-corruption discourse and neo-liberal concepts of corruption in India

The public perception about corruption in independent India starts with the J.P. Narayan's movement in Bihar. Initially, it was a student agitation or movement against alleged misrule and corruption in the state of Bihar. Soon it was developed into a movement under J.P. Narayan's leadership against then Indira Gandhi's government at the centre. In the 1950's J.P.Narayan was much impressed and attracted with the teachings of Vinoba Bhave's Sarvodaysa Movement. Vinoba Bhave has advocated the Gandhian vision of rural-based small society, self-sufficient, village republics where political power was to be decentralized[54]. J P Narayan termed it a 'total revolution' in the economic, social and political spheres of the country and ultimately it will lead for withering away of the state mechanism[55]. Pertinent to corruption, J.P. Narayan viewed it as an abhorrent moral evil which with all its greed and selfishness, only sustains the unjust and unequal social order and necessarily works as denial of humanity[56]. Further, corruption in governance is a major cause for promoting injustice, exploitation and inequality in the society. Therefore, a moral battle is required against corruption for the meaningful revival and regeneration of Indian society

[52] *Ibid*; see also *supra* note 47.

[53] *Ibid*; see also *supra* note 47.

[54] J.P. Narayan "Crusader for Clean Politics" The Times of India, 9 Oct., 1979 at 4.

[55] Vasant Nargolkar, *J P's Crusade for Revolution* (S.Chand Publishers, New Delhi, 1975) at 59.

[56] J.P.Narayan, *A Picture of Sarvodaya Social Order* (Sarvodaya Prachuralaya, Tanjore, 1957) at 31.

from this abhorrent social evil[57]. Indeed, he viewed the capitalist system itself as corrupt and argued that wealth cannot be amassed except by exploitation[58]. By the 1970's he was convinced that capitalist mechanisms has already infected to those who are at the top lair of bureaucracy and politics of the country and the roots of corruption have gripped to post independent Indian society like hydra[59]. He viewed that the inevitable consequence of motives of profit and personal success was that relief funds and foods are misused, controls fails, black market flourishes, black money economy prospers without any check, legislators defect and change their parties for a price[60]. He expressed the view that if village committees would have assumed the power, the evil of corruption amongst the traders, merchants, government officers and the rest could have been tackled effectively. Hoarding, profiteering and smuggling would have become almost impossible for anyone in India[61].

Thus, he advanced a view for an incorruptible and pure Gandhian order among the Indian elite. According to him only total revolution can reverse the corrupting influence of a small class that played at politics[62]. As early as 1956 at a public rally in Puri, Narayan called on every listener to leave every other activity and function and jump into this great task of bringing about a non-violent revolution in the society. We have to cause everyone for realizing that an economic revolution is going to take place[63]. Despites his great efforts in this regard, his failure to muster the requisite number of Sarvodayans, he had turned his hand to other tasks such as peace missions in Nagaland, drought relief work and touring foreign countries but he never gave up his hope for his total revolution. In 1974, when an opportunity come itself before J P Narayan in the

[57] Vasant Nargolkar, *supra* note 55 at 118.

[58] J.P. Narayan, *supra* note 56 at 2.

[59] Vasant Nargolkar, *supra* note 55 at 183-84.

[60] *Id.*, at 188-89.

[61] *Id*., at 183.

[62] J.P. Narayan, *supra* note 54 at 4.

[63] J.P. Narayan, *supra* note 56 at 24.

form of mass anti-corruption movement and agitation from the state of Gujarat and Bihar, he taken the chance without any hesitation and leapt into agitation without any hiccup. He told supporters that the people had waited for radical social transformation for 27 long years. This agitation from Bihar and Gujrat against corruption and misrule was a beginning only[64]. As early as September 1973, Narayan had begun to ignite the restless student for testing their readiness for radical political change and action[65]. In April 1974, it resulted for getting fruits when students asked Narayan to lead their movement[66]. Now, he had gotten a cadre of devoted followers to implement his concept of total revolution[67]. In anticipation of broader political action, students were required to do Sarvodayans work and educate the wider public about Narayan's aims and objects[68]. His anti-corruption credentials nevertheless remained the most successful means for persuading people to join his movement and recognizing it, he was careful to stress that his movement was a peaceful struggle for ending corruption in high places[69]. In depicting capitalists as hoarder and the state as corrupt, Narayan had found a populist vocabulary which suited well for his purpose[70]. On 21 March, 1974, in a speech, he demanded that the government remove corrupt ministers and officers, improve the administration, deal firmly with the black marketers, hoarders and profiteers and take immediate steps to give relief to the hungry[71]. The support that Narayan was able to mobilize in the 1970's was probably more to do

[64] "Indira Rule Paradise for Capitalists: J P" Times of India, 28 Jan., 1975 at 9.

[65] John R wood, "Extra- Parliamentary Opposition in India: An Analysis of Populist Agitation in Gujarat and Bihar" 48 (3) *Pacific Affairs* 1975.

[66] Matthew Jenkins, "Anna Hazare, Liberalization and the Careers of Corrupting in Modern Indian: 1974-2011" XLIX (30) *Economic & Political Weekly,* 2014 at 43.

[67] *Ibid.*

[68] *Ibid.*

[69] "J.P. for Honest Probe" The Times of India, 17 April, 1974 at 01

[70] Matthew Jenkins, *supra* note 66 at 44.

[71] Vasant Nargolkar, *supra* note 55 at 96.

with the political and economic concept than Narayan demagoguery[72]. By the 1970's, some of the failings of Nehruvian development model, which still was continued by his daughter in the guise for removing poverty campaign was apparent[73]. On top of the costly war with Pakistan and succession of droughts and shortage of goods, the government failed to reduce the impact of rising prices and unemployment[74]. By 1974, the situation in Bihar was explosive. Social and economic underdevelopment, population pressures and underemployment in the state led for growing hostility towards politicians generally for their self-serving and mismanagement[75]. A typical contemporary view was that the inefficient, inept and corrupt Bihar administration failed to give any relief to the poverty stricken mass or unable to control the rein of unscrupulous industrialists, traders and merchants for profiteering[76]. At time of scarcity, due to enlarged public perception and suspicion about corruption in high places, Narayan was able to garner the huge mass of supporters for his own agenda[77]. Shortly before the declaration of the emergency, Narayan announced that people wanted a clean and good administration while since 1971, our country has been witnessing only for galloping corruption[78]. The primary aim of the movement was to usher a total change in the cultural, political, educational, economic and ethical spheres of life[79]. Narayan's allegation of rampant corruption at the top was viewed in the light of his desire to win support for his project of total revolution[80].

Rajiv Gandhi and beginning the liberalization era

[72] Matthew Jenkins, *supra* note 66 at 44.

[73] *Ibid.*

[74] John R.Wood, *supra* note 65 at 315.

[75] *Id*., at 319.

[76] Vasant Nargolkar, *supra* note 55 at 4.

[77] Matthew Jenkins, *supra* note 66 at 44.

[78] *Ibid.*

[79] "Chang of Urs Govt Inevitable: J P" The Times of India, 15 May, 1975 at 7.

[80] Matthew Jenkins, *supra* note 66.

Former Prime Minister Rajiv Gandhi recognized the discursive power of corruption. He himself embodied the liberal school of thought which was to pinch into the problem of corruption and to make India strong against corruption[81]. He was pro-western in manner and technocratic in style[82]. In 1985, he openly declared his intention to introduce new liberalized economic policies for getting and strengthening the role of private sector and by liberalization of economy he wanted to reduce the import quotas, tariffs and corporate taxes[83]. Thus, under his prime minister ship he began to circulate the arguments for launching market friendly policies and scheme in mainstream of the country, but soon it caught up stiff opposition[84]. Both, J.P. Narayan and Mr. Rajiv Gandhi had used a particular narrative about corruption to advance their political objectives. J.P. Narayan had tried to use allegations of corruption to derecognize both the existence of state and capitalism, while Mr. Gandhi was trying to justify his agenda for liberalizing Indian economy[85]. In order to gain credibility for himself and his liberalization programme, he had tried to overcome the problem of corruption which was perceived as pervasive at the highest levels of government[86]. He, therefore, worked hard in the first few months of his prime minister ship to construct an image of himself as a model of probity and tried for sidelining former minister like Antulay who was widely suspected to be involved in corrupt practices[87]. Thus, he was able to use his initial reputation as Mr. Clean to great effect, depicting himself as a new leader who was uncorrupted by the system and would able to bring a new

[81] *Ibid.*

[82] David B.H. Denoon, "Cycles in Indian Economic Liberalization, 1966- 1996" (1998) 31(1) *Comparative Politics*, 1998.

[83] Chanchal Kumar Sharma, "A Discursive Dominance theory of Economic Reform Sustainability: The case of India" 10(2) *India Review*, 2011.

[84] Sudipta Kaviraj, *the Trajectories of the Indian State: Politics and Ideas* (Permanent Black, New Delhi, 2010).

[85] Matthew Jenkins, *supra* note 66.

[86] *Ibid.*

[87] "Rajiv Ridicules Antulay Claim" The Times of India, 26 Dec., 1984 at 1.

era of prosperity in India. He also made an attempt to shift the blame of corruption away from politician to other groups of system. To win support for deregulation, Mr. Rajeev Gandhi pointed out the finger for the problem of corruption squarely at the bureaucracy of India and argued that the massive corruption at bottom is the real problem of India[88]. It was argued that corruption in permit-license–quota raj was an inevitable consequence of over regulated economy of India. It was not due to individual's lack of morality and greed. This was also represented by a growing consensus of elites by which it was concluded that the state-centered development paradigm is highly responsible for inefficiency, waste and corruption. The elites of India were increasingly looking toward the fast developing countries and they were comparing to them favorably with the slow growth of India[89]. As a nation India was being critised for its dull and slower Hindu growth rate. Mr. Rajeev Gandhi had begun to make efforts for winning the support of small scale businessmen, who complained most bitterly for leading extortionate practices and corruption within the country[90]. Once in power, he was quick to assure the business community that he would help them grow faster by scrapping what he called for irritating inspector raj and annoying the small-scale sector[91]. After that within two years, Mr. Gandhi's liberalization programme was hit very badly by political allegation of corruption which damaged his personal credibility and his programme and policies for liberalizing Indian economy also. In 1987 it was came into light that Congress party officials, including Mr. Gandhi himself had received kick backs for awarding arms contracts to the Swedish firm bofors[92]. This was hitting very badly upon positive public image of Mr. Gandhi. By 1998 three out of five Indians were convinced that Gandhi was personally corrupt[93]. The delighted

[88] "Corruption Main Problem: PM", The Times of India, 20 July 1985 at 1.

[89] Arvind Panagariya, *India: The Emerging Gaint* (Oxford University Press, New York, 2008).

[90] Sudipta Kaviraj, *supra* note 84.

[91] "Government Will Spur Small Units" The Times of India, 18 Sept., 1986 at14.

[92] Matthew Jenkins, *supra* note 66 at 45.

[93] S.Nihal Singh, "Rajiv and Government Battered" The Times of India, 10 May 1988 at 8.

Bharatiya Janata Party claimed Gandhi's assiduous attempt to construct a clean image had been shattered. The scandals have shaken the confidence of the people in Mr. Gandhi's integrity and his government[94]. As one journalist noted, the liberalization project had gone into a coma ever since Mr. Rajiv Gandhi got into political troubles[95]. It made the situations very worse because these allegations of corruption at the highest level coincided with a period of high inflation which was affecting the poor very badly[96]. Gandhi's liberalization programme came to be seen as placing profits above social obligations and neglecting traditional emphasis on alleviating poverty[97]. The media noted that disillusionment is growing as it became apparent that the new policy has reinforced dualism in the industry, promoting goods of elite consumption at the expense of mass consumption products[98]. During the 1989 general elections, the new coalition of National Front and main political opposition of the Congress party was able to represent before people of India that the Congress government under the leader ship of Mr. Rajeev Gandhi had been acted as self-serving, corrupt and neglectful toward poorest people of the country[99]. Even V. P. Singh was agreeing with deregulation but as the convener of the National Front coalition government, he stepped down from liberalization of economy[100]. The election of 1989 proved that support for socialism and the accompanying distrust of crony capitalism has not yet been discursively defeated[101].

Post 1991: full liberalization of economy

[94] "Rajiv Must Go, Repeats BJP" The Time of India, 9 May, 1987 at 14.

[95] "The Decline and fall of Liberalization" The Times of India, 7 March, 1991.

[96] Chanchal Kumar Sharma, *supra* note 83.

[97] Rajani Kothari, "Masses, Classes and the State" 21(5) *Economic and Political Weekly*, 1986.

[98] Praful Bidwai, "Limits of Liberalization: Why World Bank Prescriptions Would not Do" The Times of India, 15 Feb., 1988 at 8.

[99] Akhil Gupta, *Red Tape: Bureaucracy, Structural Violence, and Poverty in India* (Duke University Press, London, 2012) at 94.

[100] David B.H. Denoon, *supra* note 82 at 52.

[101] Chanchal Kumar Sharma, *supra* note 83 at 152.

In spite of temporary hiccups, the full blooded liberalization began in India within the space of two years. Though, it was the results of external global events such as the end of cold war and the financial crisis in India[102]. Some scholar had argued that these events alone were not sufficient to create the political support for continued the liberalization. They contend that the new middle classes were instrumental in creating a vocal lobby in favour of market oriented economic reforms[103]. A group of leading Indian industrialists was proponents of full liberalization of economy[104]. The educated middle class also recognized very quickly and played very critical role to influence the opinion of full liberalization in the country[105]. Under Gandhi's limited programme of liberalization these groups had started to demand access the luxurious international goods which only deregulation could have provide[106]. Moreover, in 1989 the Mandal Commission Report was implemented which provided reservation in public office for the lower castes and thereby increased competition for the higher caste and urban middle classes who were traditionally dominating the bureaucracy[107]. Consequently, middle classes became more amenable to liberalization as they expected new opportunities for wealth creation in an enlarged private sector[108]. Exposure amongst the educated Indians helped to propagate that corruption can be overcome by privatization in economy[109]. Thus, the middle classes had higher expectations from liberalization. It was seen as a panacea for increasing their income and reducing corruption. These expectations were reinforced by assurance given from

[102] Matthew Jenkins, *supra* note 66 at 45.

[103] Chanchal Kumar Sharma, supra note 83 at 155.

[104] "Economic Liberalization Should Go Full Length: ASSOCHAM", The Times of India, 20 June 1991 at 13.

[105] Hannan Ezekiel, "Merits of Liberalization: How to Convince the People" The Times of India, 23 Dec., 1994 at 14.

[106] Prabhat Patnaik, "On the Political Economy of Economic Liberalization" 13 (7/8) *Social Scientist*, 1985.

[107] Matthew Jenkins, *supra* note 66.

[108] *Ibid.*

[109] *Ibid.*

top. Then Finance Minister Manmohan Singh argued that liberalization by its nature works against corruption[110]. He assured that liberalization will boost the moral revival of Indian society. Deregulation and liberalization, if pursued diligently and honestly, will remove all distortions and corrupt activities from society[111]. The World Bank's World Development Report, 1997 asserted, that the policies that lower controls on foreign trade, remove entry barriers to private industry, and privatize state firms in a way that ensures competition will all support the fight against corruption. If the state has no authority to restrict exports or to license businesses, there will be no opportunities to pay bribes in those areas. If price controls are lifted, market prices will reflect scarcity values, not the payment of bribes[112]. If subsidy program is eliminated any bribes that accompanied it will disappear.

Since 1991, corruption and development policy in India

It was argued that liberalization would finally fulfill the Nehruvian vision of eradicating poverty. Industrialists were of the view that the removal of the restrictions and controls, reduction of the role of the public sector and the opening of the economy will eliminate poverty. All of these will produce a rapid growth of employment and income. Subsidies and subsidized employment will not be necessary to eliminate poverty[113]. Academicians began to write about citizens as customers and the state as merely one of the service provider[114]. They were arguing that laissez-faire, liberalism and privatization meant that the government is not needed for focusing for the welfare of poor. Thus, the traditional

[110] Narendar Pani, "Focus on Corruption: Economic Liberalization and the Polity" The Times of India, 19 March, 1996 at 16.

[111] Sanjaya Baru, "Crony Capitalism: Corruption and Liberalization" The Times of India, 8 Feb., 1995 at 14.

[112] World Bank, *World Development Report, 1997: The State in a Changing World* (World Bank Publications, New York, 1997), at 105.

[113] Hannan Ezekiel, *supra* note 105.

[114] Samuel Paul & Manubhai Shah, "Corruption in Public Service Delivery" in Sanjivi Guhan and Samuel Paul (eds.), *Corruption in India: Agenda for Action* (Public Affairs Centre, New Delhi, 1997) 144-63.

developmental duties of the government were hit by those arguing for the sanctity of the markets. It created an environment which sidelined to the concerns of poor. In 1995, a scholar had commented that despite of skyrocketing prices of essential commodities the successive government has turned a blinded eye to public welfare[115]. It is undisputed that in the democratic systems of India, the poor have a very significant proportion of voters and their concerns cannot be completely ignored. Growing out of a concern about why western development efforts had failed? Corruption provides a clear answer to understand the complex problem of the developments failings[116]. It was started to explain by someone that why the development policies in the free market era were going to be failed. N. Vittal, head of the Central Vigilance Commission in the late 1990 had argued that corruption among lower public officials was the road block to national prosperity. He claimed that corruption restricts access to government services and thus literally snatches food away from the mouths of the poor[117]. In 1997, then Prime Minister I. K. Gujral himself claimed that corruption was the primary obstacle to development[118]. These arguments were largely accepted by the educated elite. An intellectual Mohit Sen agreed with the reasoning that if funds allocated for poverty alleviation do not reach the poor as intended, the fault lies not in the strategy of poverty alleviation but the shortcomings have to be traced back to corruption[119]. The main essence of that reasoning was that the basic policies of the state were correct, but literally corrupted at the stage of implementation. The endorsement of

[115] R.C. Gupta, "whose Liberalization?" The Times of India, 1 January, 1995 at 14.

[116] James C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition have Failed* (Yale University Press, New York, 1988).

[117] N.Vittal, *Corruption in India: The Road Block to National Prosperity* (Academic Foundation, New Delhi, 2003).

[118] "Corruption Is the Main Setback to Infrastructure Development: P M" The Times of India, 13 July, 1997 at 21.

[119] Mohit Sen, "Nehru's Unrealized Vision: Revisiting the Avadi Congress Programme" The Times of India, 9 January 1999 at 12.

this thinking negated the need for a fundamental interrogation of the appropriateness of neo- liberal policies[120].

Corrupt and faithless elite of India

The neo-liberal narrative of corruption provided a strategic discourse in India. The failure of neo-liberal developmental policies as result of corruption has been used to delegitimize the whole developmental enterprise. N. Vittal wrote that corruption makes implementation of the so called pro-poor or pro-tribal programmes totally meaning-less if not counter -productive[121]. The urban middle classes, as the primary speakers against corruption were increasingly irritated against what they were witnessing as the greedy politicians were trying to win support from poor and lower caste voters through wasteful and corrupt populist expenditure on development[122]. The educated Indian elite have also started to criticize the appeasement regime and alleged that it produces inefficiencies in the long run and eventually depletes whatever financial resources are at the disposal of the Central Government[123]. Politicians were held responsible for betrayal to the middle classes as they had been promised that liberalization would end the corruption and license raj[124]. The market economy had failed to get rid of government corruption. This failure was perceived as having little to do with the market and a lot to do with the government. A Times of India survey found that a staggering 98% of people were convinced that all politicians were corrupt, but two-third believed that further economic liberalization will ultimately reduce corruption[125]. The Indian politicians have distorted liberalization to form a plunder

[120] Matthew Jenkins, *supra* note 66 at 46.

[121] N. Vittal, *supra* note 117 at 99.

[122] Partha Chatterjee,"Democracy and Economic Transformation in India" in Sanjay Ruparelia, Sanjay Reddy, John Harriss and Stuart Corbridge (eds.), *Understanding India's New Political Economy: A Great Transformation?* (Routledge, Padstow, 2011) at 17-34.

[123] Chanchal Kumar Sharma: *supra* note 83 at 156.

[124] Krishna Kumar, "Clearing the State" 46 (48) *Economic & Political Weekly*, 2011 at 14-17.

[125] K. Balakrishnan and Gouri Chatterjee, "Corruption All-Pervasive: Survey" The Times of India, 14 January, 1995 at 1, 15

raj[126]. It became a means to express a inchoate rage by the public at the political class, who are believed to have cheated the common man out of full benefits of liberalization.

Anna Hazare phenomenon, 2011

In April, 2011 Anna Hazare launched a fast into death movement against political corruption. It gained more popularity at national and international level too. It was very surprising. Hazare himself had not expected such well ground level support which was emerged in New Delhi. Form a handful of people, the crowd of campaigners became a few thousand within two days of the fast and just a couple of days it became a movement which had been developed in urban centers across the country[127]. Suddenly this obscure civil society leader previously considered as inconsequential by the media and political elite was being widely proclaimed as messiah in the making[128]. A highly successful media campaign carefully constructed the image of Anna Hazare as the 21st century Mahatma Gandhi of India[129]. Hazare claimed that development today is an illusion created by the government and the people are being cheated for believing that development in a real sense is being carried out[130]. More ever, by his anger at the political class, Hazare was also taping the middle class perception that the corrupt political elite had cheated them and plundered the nation by liberalization of Indian economy[131]. Since era of liberalization, the narrative of corruption in India has fundamentally changed. J.P Narayan used the anti-corruption discourse to

[126] C. Rammanohar Reddy, "Plunder Raj" The Hindu, 17 March, 2011.

[127] V. Krishna Ananth, "Lokpal Bill Compaign: Democratic and Constitutional" 46 (16) *Economic & Political Weekly*, 2011 at 20-22.

[128] James Lamont, "Inviting a Million Mutinies" The Financial Times, 18 August, 2011.

[129] Jaimon Joseph, "How Anna Hazare became a Media Phenomenon" CNN-IBN, 22 August, 2011. Available at: http://ibnlive.in.com/news/how-anna-hazare-became-a-media-phenomenon/177680-3.html.

[130] Anna Hazare, "Am I Against Congress?" 12 October, 2011.
Available at:http://annahahazare.says.blogspot.co.uk/2011/10/am-i-Against congress.html

[131] Anna Hazare, "Journey of Revolution!" 14 October, 2011.Available at:http://annahazaresays.congress.com/2011/10/14/journey-of-a revolution/

justify Gandhian socialist vision and called for total revolution. This movement was based around the belief that corruption stemmed from personal greed and it is the root cause of all conflict in the world[132]. Western academicians and policy makers had been arguing for years that corruption in India is an agenda for searching of a movement[133]. In January, 2013 Ashish Nandy made allegations that the most corrupt people come from other backward classes, scheduled caste and scheduled tribes[134]. Another narrative of corruption is that subsidies and reservation are main causes to roadblock the national prosperity of India. Thus, the anti-corruption discourse in India inextricably has been mired in the murky world of political struggle.

Modi magic, 2014

Three are, broadly speaking two views on overwhelming victory of Narendra Modi led BJP in general elections of India held in My, 2014. *Firstly,* It was the view of some BJP and Sangh Parivar members[135]. According to this view, Mr. Modi led BJP won in general because Hindu majority of India decided and wanted a leader who is proudly and aggressively a Hindu. His victory was the victory of the Hindutva agenda and a manifestation of the desire of India's Hindus to reclaim their country. The second view was that his victory had relatively little to do with aggressive Hindutva[136]. He won a platform of clean and good governance and because he was able to point out and circulate his vision of development and his development record of Gujarat also. India had tired from the corruption scandals and indecisions marked in the government of UPA II[137]. After having watched to weak-kneed Manmohan Singh throughout in the last three years

[132] J.P. Narayan, *supra* note 56.

[133] Barbara Harriss-White, "An Agenda in Search of a Movement" 15 (7) *Frontline,* 1998. Available at: http://www.forntline.in/statc/html/fl1507/15070790.html.

[134] BBC "India Police to Question Ashish Nandy Over Caste Stur" 29 January, 2013. Available at: http://www.bbc.co.uk/news.world-asia-inda-21241289.

[135] Vir Singhvi, "Not the Best Place to be In" The Hindustan Times, 06 January, 2015 at 06.

[136] *Ibid.*

[137] *Ibid.*

of his prime minister ship, the electorates of India were shocked and wanted a strong leader, a man who did not fear any one, who did not take orders from party high command and whose words are final[138].

Since independence from Britain in 1947, India has a comparatively greater degree of state regulation of industrial activities than the western norm. This has involved a combination of direct state ownership of key or strategic industries and legal powers to control and regulates those areas coded to private entrepreneurship. This tightly regulated system inevitably gave rise to a phenomenon known as the *licence permit raj*. This resulted in a triadic relationship of politicians, bureaucrats and big business houses. For decades, the prospects of Indian big business have depended on their degree of cosines with the politicians and bureaucrats. This nexus between public governance and corporate governance started in major scandals in India.

Jeep scandal, 1948

The history of corruption in post independence India starts with the Jeep scandal in 1948, when a transaction concerning purchase of jeeps for army needed for Kashmir operation was done by V.K. Krishna Menon with a foreign firm without observing normal procedure. Contrary to the demand of the opposition for judicial inquiry as suggested by an inquiry committee chaired by Avanthasayanam Ayyangar, the then government announced on September 30, 1955 that the Jeep scandal case has closed[139]. In 1950, A.D. Gorwala, an eminent civil servant was asked by government of India to recommend improvements in the system of governance. In 1951, in his report submitted to the government of India, he made two observations. *Firstly*, quite a few of Nehru's ministers were corrupt and this was common knowledge. *Secondly,* as early as 1951, a highly responsible civil

[138] *Ibid.*

[139] R.K. Gupta & H.D. Bist, *supra* note 3 at 357.

servant in an official report maintained that the government went out to its way to shield its ministers[140].

Haridas Mundhra scam, 1957

Haridas Mundhra was a Calcutta-based industrialist and stock speculator who were found guilty and imprisoned in the first big financial scandal of independent India[141]. Born in a trading family, Mundhra started life as a light bulb salesman and pyramided his holdings by fast deals and stock juggling into a Rs. 4 crore (USD 10 million) empire. In 1956, he was indicted by Bombay Stock Exchange for selling forged shares. In 1957, Mundhra had got the government owned Life Insurance Corporation to invest Rs. 1.24 crores in the shares of six troubled companies belonging to Mundhra. The investment was done under governmental pressure and bypassed the LIC's investment committee which was informed of this decision only after the deal had taken place. LIC lost most of the money[142]. The irregularity was highlighted by Feroze Gandhi, then Member of Parliament from Rae Bareli. That time Feroze Gandhi was the primary force behind anti-corruption movement in India. Hence, he looked upon the LIC as a *child of Parliament*. He would have not soft pedaling on the matter and took the case directly to the Parliament. Parliament must exercise vigilance and control over the biggest financial institution of India. The Parliament has created the Life Insurance Corruption of India, whose misapplication of public funds we shall scrutinize today.[143] Standing from the treasury benches, he asked the government whether the newly formed Life Insurance Corporation had used premiums from 5.5 million life insurance policy holders to buy up shares at above market prices in

[140] *Ibid.*

[141] M.A. Shewan & Udai Veer (eds.,) *Corruption, Money Laundering and Law* (Mittal Publication, New Delhi, 2011) at 299.

[142] *Ibid.*

[143] Feroze Gandhi, "Speech in Parliament" 16 December, 1957.

companies controlled by the notorious stock speculator named Haridas Mundhra.[144]

Commission of enquiry

Given the public spotlight, the government was forced to appoint a committee to examine the matter. The retired Bombay High Court Justice M.C. Chagla was appointed as one man committee[145]. Justice Chagla held that a transparent and public enquiry was a very important safeguard for ensuring that the decision will be fair and impartial. The public is entitled to know on what evidence the decision is based. Consequently, large crowd had attended the hearing which was concluded in just 24 days. HT Parekh, then deputy General Manager of Industrial Credit & Investment Corporation of India and he was a member of LIC's Investment Committee also had given evidence before Justice Chagla Committee. Justice Chagla determined that the Finance Secretary, Haribhai M. Patel along with two LIC officials may have been colluded on the payment and should be tried. The Finance Minister T.T. Krishnamachari, in his testimony tried to distance himself from the LIC decision, implying that it may have been taken by the Finance Secretary but Justice Chagla held the minister is constitutionally responsible for the action taken by his secretary. Eventually, Krishanamachari had to resign. The Nehru government suffered considerable loss of prestige in the incident. Haridas Mundhra was arrested from the Claridge's Hotel in Delhi and sent to jail. Further, it was noticed that manipulations made by Mundhra were not restricted to LIC. It was a very big scandal. The income tax department had curiously withdrawn certain notices pending against him having entered into some understanding about the payments of arrears.[146]

[144] M.A. Shewan & Udai Veer, *supra* note 141 at 300.

[145] *Ibid.*

[146] *Id*., at 301.

Kairon scam, 1964

Pratap Singh Kairon was the Chief Minister of the Punjab Province then comprising Punjab, Haryana and Himachal Pradesh. He is widely acknowledged to be the architect of post independence Punjab Province. He was a leader of independence movement of India. His political influence and views are still considered to dominate Punjab politics and he was popularly known as the father of modern Punjabi politics. He was born on October 01, 1901 into a Sikh family in the village of Kairon, Amritsar district, Province of Punjab during British Raj. His father, Nihal Singh Kairon was a pioneer in initiating women's education in the Punjab Province. He studied at the Khalsa College, Amritsar and then went to the USA, where the supported himself with work on farms and factories. He completed his Masters Degree in Political Science from the University of Michigan. Before going to Michigan, he had completed his Masters Degree in Economics from the University of California at Berkeley. He was influenced by farming methods practiced in the USA and hoped to replicate some in India later.

In 1929, he returned to India. On April 13, 1932 he started an English weekly paper *The New Era* from Amritsar. Later, he joined politics and newspaper eventually shut down. He was jailed in 1932 for five years for participating in the civil disobedience against British rule. In 1937, he was nominated for Punjab Legislative Assembly as an Akali. From 1941 to 1946, he was general secretary of the Punjab Provincial Congress Committee. In 1946, he was elected for the Constituent Assembly. In 1947, after getting independence, Kairon held various offices under the elected government of Punjab Province and in 1952 he became Chief Minister of Punjab. Pratap Singh Kairon was a man of vision. He laid the base on which Punjab prospered. He implemented many land reforms in Punjab and established the Punjab Agricultural University, which played a key role for green revolution in India. He also placed Punjab on industrial map of the country. He was behind the creation of the city of Chandigarh and the industrial township

of Faridabad. Kairon made primary and middle school education free of cost and compulsory.

Charges of corruption

He and his family members were indicted for charges of corruption. A case was filed by a Punjab Civil Surgeon against Kairon and indicted him for charges of corruption[147]. A judicial inquiry was set up. It was the first judicial inquiry into the charges of corruption setup against a Chief Minister in office by the government of India. In judicial inquiry it was concluded that there is no getting away from the fact that Pratap Singh Kairon knew or had ample reason to suspect that his sons and relatives were allegedly exploiting his influence and powers. In the face of circumstances and his inaction, he must have connived at the doings of his sons and relatives, his colleagues and officers. Despite of the adverse verdict against Kairon his initial reaction was remained stuck with his office. But when Lal Bahadur Shastri got the report published, Kairon had no option but to quit his office[148]. So, Pratap Singh Kairon resigned from his office as Chief Minister of the Punjab. On February 6, 1965, he was assassinated by Sucha Singh, in his car on the main highway from Delhi to Amritsar. Sucha Singh was later hanged.

Antulay case, 1981

Abdul Rehman Antulay was born on February 9, 1929 to father Hafic Abdul Ghafoor and mother Zohrabi in the village Ambet, District Raigad, Maharashtra. He was married to Nargis Antulay and the couple had one son and three daughters. After appearing for B.A. examination at Bombay University, he studied Barrister At-Law in London. He started his career as active social worker in 1945. He had a keen interest in social causes like service of the weaker section

[147] *Ibid.*

[148] *Ibid.*

of the society and upliftment of the unfortunates. Antulay was a member of the Maharashtra Legislative Assembly from 1962 to 1976 during that time he served as minister of state in different portfolio of the Maharashtra government. He was a member of Rajya Sabha from 1976 to 1980. He was again elected to the Maharashtra Legislative Assembly and served as Chief Minister of Maharashtra from June 1980 to January 1982. He was forced to resign as Chief Minister of Maharashtra after the Bombay High Court convicted him for extortion on January 13, 1982. The court ruled that Antulay had illegally required Bombay area builders to make donations to Indira Gandhi Pratisthan Trust, one of several trusts he had established and controlled, in exchange for receiving more cement than the quota allotted to them by the Government.[149] In 1985, he again got elected to the Maharashtra Legislative Assembly and remained until 1989, when he was elected to the 9th Lok Sabha. He was re-elected to the 10th Lok Sabha in 1991. From June 1995 to May 1996, he was Union Minister of Health and Family Welfare. In 1996 and 2004, he was re-elected to the 11th and 14th Lok Sabha respectively.

Bofors scandal, 1987

In 1984 a tender was floated for Howitzer guns for the Indian Army. On evaluation, French Sofma gun was found to be the best in terms of price and features. Army Chief Krishnaswamy Sundarji favored the Sofma because in field trials its range was found 29.2 km. against 21.5 km. for Bofors. Bofors was illegally permitted to alter its bid without any retendering. Despite the objections of the army and others the order went to Bofors. The Bofors scandal erupted after a 1987 report on Swedish radio claiming that Bofors had paid bribes to secure contract. A firm called A E Services was also named in Bofors scandal. The Hindu reporter Chitra Subramaniam obtained the private diary of Bofors M D Martin Ardbo, which revealed some objectionable comments such as "Q"s involvement may be a problem because of closeness to “R". The identity of "Q" become clear

[149] *Id*., at 295.

when Chitra Subramaniam indentified the Swiss bank accounts where the A E Services money was went to and it was operated by Ottavio Quattrocchi[150]. Subsequently, this was reinforced by the documents obtained by CBI from Switzerland but these documents were eventually ruled out in court because they were photocopies and not original. Once the scandal broke out, the ruling Congress Party came under severe fire by opposition, and subsequently defeated in general election held in 1989. CBI attempted to question Quattrocchi and permission was sought to impound his passport. However, just before Quattrocchi could be detained on the night of July 29-30, 1993 he left Delhi for Kualalumpur. It was alleged that he had been let off as part of a deal between Sonia Gandhi and then Prime Minister PV Narasimha Rao. In March, 1999 Quattrocchi gave an interview claiming that he never received any payment from Bofors and he did not have any connection with A.E. Services. On October 22, 1999, when BJP led NDA government came in to power, the CBI filed a charge sheet against Quattrocchi, naming AE Services as a front company run by Quattrocchi and his wife Maria. Based on 500 documents released by Swiss banks after protracted legal delays, the CBI court framed charges against Quattrocchi and his wife Maria, Win Chadha and his wife Kanta. Among the conspirators named in the case were Rajiv Gandhi and some other party functionaries. It was showed that Quattrocchi had been paid 3 per cent commission of the sale about US $ 7 million through A E Services. On February 5, 2004 the Delhi High Court quashed the charges of bribery against Rajiv Gandhi and others, citing inadequate evidence as any of the commission were actually paid to them[151]. On May 31, 2005 the Delhi High Court dismissed the Bofors case allegations against the British business brothers Shrichand, Gopichand and Prakash Hinduja, on a technical ground that the CBI had failed to provide certified copies of the vital documents from the Swedish authorities to the court.

[150] *Id*., at 284.

[151] *Id*., at 285.

The Bofors scandal was a major corruption scandal of 1980 of India. Prime Minister Rajiv Gandhi and others were accused of receiving kickbacks from Bofors for wining a bid. The large scale of corruption was worse than India had seen before and it led directly to the defeat of the ruling Congress Party in November 1989 general elections. It has been speculated that the scale of the scandal was to the tune of Rs. 400 million[152]. The case came to light during V P Singh's tenure as defence ministers, and was revealed through investigative journalism by Chitra Subramaniam and N. Ram.

De-freezing of accounts

In June 2003, it was detected by Interpol that Quattrocchi and his wife Maria have two accounts containing Euros 3 million and $ 1 million in a London branch of the Swiss Bank BSI AG[153]. Later, upon the request of the CBI these accounts were frozen. On the basis of evidences produced by CBI, several appeals by the Quattrocchi to de-freeze these accounts were turned down by British Court. However, on December 22, 2005 the Indian government changed his position, suddenly and then Law Minister Hansraj Bhardwaj deputed the Additional Solicitor General of India, Mr. B. Dutta to London, specifically for making request to release of these accounts. However, it appeared that the Law Ministry had never consulted to the investigative agency, CBI in this matter[154]. According to an e-mail form the British authorities cited in India Today that Mr. Dutta converged his instructions on behalf of the Government of India, the Ministry of Law and Justice and the Central Bureau of Investigation and argued that no any useful purpose will be served by maintaining the order of freezing accounts dated July 25, 2003 as there is no longer any reasonable prospect of the case against Mr. Quattrocchi in

[152] *Ibid.*

[153] *Id*., at 290.

[154] *Ibid.*

the trial proceedings[155]. On January 16, 2006 a Public Interest Litigation was filed in the Supreme Court of India and the CBI was ordered to ensure that the money was not withdrawn until the reasons for the government decision were clarified[156]. The CBI on January 23, 2006 admitted that roughly Rs. 21 crore about US 4.6 million in the two accounts has already been withdrawn. The British government released the fund on a request has been made by the Indian government. The deals cost government of India on extra 160 crore rupees[157].

Quattrochi influence with Rajiv Gandhi and his family

Quattrocchi, born in Mascali, Province of Catania, Sicily arrived in India in the mid 1960, as the representative of Italian oil and gas firm Emi and its engineering arm Snamprogetti. His family became closed to the Gandhi family based on their connection with Rajiv Gandhi's Italian wife Sonia Gandhi. The special judge Prem Kumar in his order dated November 14, 2002 has observed that around 1974, Quattrocchi was introduced to Rajiv Gandhi and Sonia Gandhi by an Italian named Mr. Molinari. Then Mrs. and Mr. Quattrocchi started visiting Rajiv Gandhi and Sonia Gandhi. Children of both sides were frequent visitors to each other. At that time Rajiv Gandhi was a pilot in Indian Airlines. Italian food and other gifts were also being exchanged between them. Quattrocchi thus became very close to Rajiv Gandhi and his wife. Their children grew up together and based on this friendship Quattrocchi had become so influential at the office of the Prime Minister that bureaucrats used to stand up when Quattrocchi visited them. Ashok Malik has noted in the Pioneer that from 1980 to 1987, Indira Gandhi's final years and Rajiv Gandhi's honeymoon years, Quattrocchi had the Midas touch. No deal was refused to him. It was understood that that every fertilizer contract was meant for Snamprogetti, an engineering arm of Italian oil and gas

[155] *Ibid.*

[156] *Ibid.*

[157] *Ibid.*

firm Emi[158]. His influence extended to ministers was noted by VP Singh, who initially pursued the Bofors scandal and his testimony is summarized in a court judgment that V.P. Singh, Finance Minister in Rajiv Gandhi Cabinet has stated that Quattrocchi had sought appointment with him on a number of occasions but he did not give him any appointment. Rajiv Gandhi then asked him to meet Mr. Quattrocchi. The link between the public servants politicians and Quattrocchi looms large in these deals. It also became clear that for contracts with India, Quattrocchi was the man of approach.

Interpol, removal of the red corner notice

In April, 2009 the Interpol removed the red corner notice issued against Ottavio Quattrocchi after a request from Central Bureau of Investigation. In sharp contrast to a nearly two decade long investigation by the CBI, an income tax tribunal bench has ruled that Rs. 41 crore was paid in bribes to Quattrocchi, once considered a friend of the Gandhi family and Win Chadha, the Bofors agent in India[159]. A major chapter in 25 year old Bofors saga was closed while discharging Quattrocchi from the case and allowing the CBI to withdraw prosecution against him. Chief Metropolitan Magistrate Vinod Yadav, in his 73 page order, noted[160] that the CBI despite of spending through the nose for about 21 years has not been able to put forward legally sustainable evidence with regard to conspiracy in the matter. Further, in the case of Mr. Quattrocchi, as against the alleged kickback of Rs. 64 crore he received, the CBI had by 2005 already spent around Rs. 250 crore on the investigation, which is sheer wastage of public money[161].

Security scam, 1992

[158] *Id*., at 289.

[159] *Id*., at 294.

[160] *Ibid.*

[161] *Ibid.*

Harshad Mehta was an employee of the New India Assurance Company employee and soon he turned as stock broker of share market. He was living in a 15,000 sq. ft. plush apartment with a swimming pool in up market Worli. Dalal Street worshipped him as the Big Bull. He had paid an advanced tax of Rs. 28 crore for the financial year 1991-92. This extravagant lifestyle of Harshad Mehta caught the attention of tax authorities. When the security scam broke out, it emerged that Mehta was using bank receipts of public sector banks to buy stocks. Mehta deployed well over Rs. 1,000 crore and triggered the biggest Bull Run in the Indian stock market. The BSE SENSEX rose from 2,000 points in January 1992 to 4,467 points in April that year. The SENSEX tanked to 2,529 points in August, wiping out over Rs. 100,000 crore in market capitalization[162]. The scam rocked Parliament and Mehta was jailed. A decade later, Mehta died in a hospital with 27 cases still were pending against him. The SEBI Act was enacted but it could not prevented the occurrence of market manipulations like the MS shoes scam 1994, CRB scam 1997, Vanishing Companies scam 1998, Plantation Companies scam 1999, and Ketan Parekh scam 2001 etc. In April 1992, press reports indicated that there was a shortfall in the government securities held by the State Bank of India. Investigations uncovered the tip of an iceberg. Later it was called the Security scam, involving misappropriation of funds to the tune of over Rs. 3500 crores. The scam engulfed top executives of large nationalized banks, foreign banks and financial institutions, brokers, bureaucrats and politicians. The functioning of the stock market was thrown in disarray. The tainted shares were worthless as they could not be sold. This created a panic among investors and brokers and led to a prolonged closure of the stock exchanges along with a precipitous drop in the price of shares. Soon after the discovery of the scam, the stock prices dropped by over 40 percent, wiping out market value to the tune of Rs. 100,000 crores[163]. The normal settlement process in government securities was

[162] *Id*., at 280.

[163] *Id*., at 281.

that the transacting banks made payments and delivered the securities directly to each other. The broker's function was only to bring the buyer and seller together. During the scam, however, the banks adopted an alternative settlement process similar to settlement of stock market transactions.

Palmolein oil import scam, 1992

The Palmolein Oil Import scam occurred during the year 1991-92 in the state of Kerala and K. Karunakaran was the Chief Minister of state. This was his fourth term as Chief Minister of state. Kerala government decided to import palm oil from a Malaysian company in Singapore named "Power and Energy Ltd" above the international price which was approved by the Cabinet. The price of import was fixed to $405.0 per ton which was higher than the international price of $392.25 per ton. The import order was signed by Secretary of Food & Civil Supplies, Shri P.J. Thomas of state of Kerala. It was decided to import 15,000 tons of palm oil. During investigation it was revealed that this order was caused loss of more than 2.32 crore to the exchequer. The opposition raised voices against this import order. A vigilance case was filed against K. Karunakaran and seven others including P.J. Thomas. The court closed the proceedings against K. Karunakaran after his death in December 2010. On 4th September, 2010 the name of Shri P.J. Thomas was approved by the President of India for the appointment to the post of Central Vigilance Commissioner. Consequently, Thomas was appointed as Central Vigilance Commissioner and took oath of his office[164]. Thomas was shunted down from the CVC post by the Supreme Court of India because the court found that Mr. Thomas was accused in the Kerala Palmolein case pending in the court of Special Judge, Thiruvananthapuram for offences under section 12 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 and under section 120 (b) of

[164] *Centre for PIL & Anr v. Union of India & Anr.* AIR 2011 SC 1267.

Indian Penal Code[165]. On February 3, 2011 he was finally asked to quit by the Supreme Court from his office.

Lavalin scandal, 1995

The SNC Lavalin scandal is of financial scam of Kerala. It was related to the contracting of the government with a Canadian Company, SNC Lavalin which resulted in an alleged net loss to the exchequer of 374.50 crore.[166] Several politicians were involved and eventually charged, including former minister Pinarayi Vijayan. The Kerala State Electricity Board (KSEB) signed a memorandum of understanding with SNC-Lavalin in August 1995. This time G. Karthikeyan of the Congress Party was the Minister of Electricity. According to the provisions of the MoU, the funds for the renovation were to be arranged by SNC Lavalin from the Export Development of Canada (EDC), and the Canadian International Development Agency (CIDA). The KSEB done it, ignoring recommendations of the Central Electricity Authority (CEA) that immediate replacement of the generating units at the Pollivasal Power Station was not required because the plant was in good condition. The KSEB undertook a feasibility study on the proposal made by a retired Chief Engineer of the KSEB later who became a consultant to Lavalin. The KSEB signed contracts with SNC-Lavalin to provide technical services for engineering, management, and procurement and construction supervision. The project had to be completed within three years. The CAG found that Lavalin was only a consultant intermediary and not the original equipment manufacturer and that the supply of goods and services was made by other firms at much higher cost leading to excess expenditure[167]. The absence of due professional care in negotiating the foreign loan proved to be detrimental to the financial interest of the KSEB.

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[165] *Ibid.*

[166] M.A. Shewan & Udai Veer, *supra* note 141 at 275.

[167] *Id.*, at 276.

Sukh Ram telecom equipment scandal, 1996

Sukh Ram was Union Communications Minister of the government of India. He was a member of Lok Sabha from Mandi constituency of Himachal Pradesh. In 1996, the Central Bureau of Investigation seized Rs. 3.6 crore in cash concealed in bags and suitcases from his official residence[168]. The cash was allegedly collected by him committing irregularities in awarding telecom contract. Later, he was convicted and sentenced to three years rigorous imprisonment by the court[169].

Fodder scam, 1996

The Fodder scam was corruption scandal that involved the alleged embezzlement of about Rs. 950 crore from the government treasury of the Eastern Indian State of Bihar. It was the fabrication of vast herds of fictitious livestock for which fodder, medicines and animal husbandry equipment was supposedly procured. Although the scandal broke out only in 1996 while the theft was increasing in size for two decades. The fodder scam is a finest example of the nexus between politicians and bureaucrats for embezzling the public fund. In no other frauds officials were so dismissive of rules as in this scam. Confident that they would never be caught, the bureaucracy submitted accounts that are breath taking. For instance the account books submitted to the CBI has shown that a sum of Rs. 253 crores were spent on the purchase of fodder for 959 sheep, 5,664 pigs, 40,504 hens and 1,577 goats in one year against the allocated sum of Rs. 105 crores[170]. Yet, another monumental falsehood in the case was that the administration has shown that two buffaloes were transported from Haryana to

[168] *Id.*, at 275.

[169] *Ibid.*

[170] Chandan Mitra, *The Corrupt Society: The Criminalization of India from Independence to the 1990s* (Viking, New Delhi, 1998) at 24.

Bihar, a distance of about 1000 km. by a two-wheeler scooter[171]. The reason for the falsehood, given at a later stage, was that the officials got panicky while filing the accounts in the animal husbandry department because they had to explain the vast amounts pilfered from the public exchequer. Apparently, while making fictitious entries they spotted a scooter through the window and entered its registration number in the file, as they had to furnish the registration number of a vehicle by which the buffaloes was transported[172]. While committing such a mistake the concerned officials could not anticipate that the CBI would cross check it. The fodder scam is only one among many such thousands scam of India. It could have seen the light of the day because of peculiar circumstances and judicial intervention at the highest level and its constant monitoring. Thus, the BBC correspondent in India, Mark Tully in his seminal work "India in slow Motion" has observed that the political system, which is rotten, is being used by not only politicians but also by bureaucrats in order to behave in a rotten way themselves. He further commented on the necessity of radical reforms in administrative structures, a radical limitation on the powers of bureaucracy and a radical reform in the police service for good governance in India[173].

It was said that the fodder scam had its origins in small-scale embezzlement by same government employees submitting false expenditure reports. Slowly it grew in magnitude and additional elements such as politicians, businessmen and criminals had involved in full fledged. Jagannath Mishra as the first Chief Minister of Bihar was allegedly involved for knowing about the scam. In February 1985, then Comptroller and Auditor General of India, T.N. Chaturvedi, took notice of delay in monthly account submissions by the Bihar state treasury and departments and wrote for warning to the then Bihar Chief Minister, Chandra Shekhar Singh,

[171] *Ibid.*

[172] *Ibid.*

[173] The Hindu, December 15, 2002.

that this would be indicative of embezzlement[174]. This initiated a continuous chain of closer scrutiny and warnings by Principal Accountant Generals and CAGs to the Bihar government across the tenures of multiple Chief Ministers, but the warnings were ignored in a manner that it was treated as suggestive by extremely senior political leader and officers of the Bihar government. In 1992, Bidhu Bhushan Dvivedi, a police inspector of the state anti-corruption vigilance unit submitted a report outlining the fodder scam and likely involvement to the Director General of the same vigilance unit, G. Narayan[175]. Suddenly, Bidhu Bhushan Dvivedi was transferred from vigilance unit to another branch of the administration and then he suspended from his position. Later he was prosecuted for charges of corruption related to the scam and was only reinstated by an order of the Jharkhand High court[176].

Exposure and investigation of fodder scam

On January 27, 1996 the Deputy Commissioner of West Singhbhum district, Amit Khare, acted upon information and conducted a raid on the office of the animal husbandry department situated in Chaibasa district. The documents seized by his team were indicating that the large scale embezzlement has been done by officials, business people and organized criminals. Then Chief Minister Laloo Prasad Yadav set up an enquiry committee to probe the irregularities. There was fear that state police who is accountable to the state administration would not investigate the case properly. Therefore, it was demanded that the case should be transferred to CBI. Public Interest Litigation was filed before Patna High Court. On March 1996, Patna High Court ordered that the case be handed over to the CBI[177]. The CBI began enquiry but within few days, CBI filed a submission before High Court that the senior officers and legislators of Bihar are blocking to

[174] M.A. Shewan & Udai Veer, *supra* note 141 at 269.

[175] *Id*., at 269.

[176] *Ibid.*

[177] *Id.*, at 270.

access the documents that may reveal the existence of nexus between political leaders, officials, businessmen and criminals. As the investigation proceeded, the CBI unearthed linkages of the serving Chief Minister of Bihar Laloo Prasad Yadav. On May10, 1997 a formal request was made by the CBI to the federally appointed Governor of Bihar to prosecute Laloo. On the same day, a businessman, Harish Khandewal, one of the accused of the case, was found dead on the track of the train with a note that he was being coerced by the CBI to turn witness for the prosecution[178]. The Governor, A.R. Kidwai had stated that he would need to be satisfied that strong evidence against Laloo is existed before he permit a formal indictment to proceed against Laloo[179]. The coalition of Central Government, led by Prime Minister Inder Kumar Gujral was depending on support from federal legislators affiliated with Laloo for its survival. It was also unclear why the CBI had sought the governor's consent at the initial stage of prosecution[180]. When the High Court sought a clarification, CBI stated that it was a precautionary measure. The High Court questioned the tactic of CBI and warned that it would force prosecution on its own authority. Ultimately on June 17, 1997 the Governor had granted his permission for prosecution. Many senior officers of the Bihar government including four IAS officers were taken into judicial custody on the same day. On June 21, 1997 fearing that evidence and documentation that might prove essential in further exposing the scam were destroyed. On June23, 1997 the CBI filed charge sheets against Laloo Prasad Yadav and 55 other co-accused including Jagannath Mishra, former Chief Minister of Bihar[181]. Jagannath Mishra was granted anticipatory bail by the Patna High Court. Anticipatory bail application filed on behalf of Laloo Yadav was rejected by same court and he appealed to the Supreme Court which resulted in final denial of bail on July 29, 1997. The next day, he was sent to jail. As it become clear that Laloo would be

[178] *Id.,* at 271.

[179] *Id.,* at 271.

[180] *Ibid*

[181] *Id.,* at 272.

engulfed in the scandal and therefore the demand for his removal from the Chief Minister ship had gained momentum both from other parties as well as within his own party, Janata Dal. Laloo formally parted ways with the Janata Dal and formed his own party, the Rashtriya Janata Dal (RJD), taking with him about all the Janata Dal legislators and win a vote of confidence in the state assembly[182]. The RJD continued to support the coalition of Central Government. With the demand for his resignation to continue, he resigned from his position, but was able to install his wife Rabri Devi as the new Chief Minister of Bihar. Laloo claimed that he had helped to HD Deve Gowda for becoming the Prime Minster of India. However, there was media speculation that Gowda had a grudge against Laloo. At one occasion, Laloo had insisted to step down of HD Deve Gowda when his government was fledgling at the centre and ran into internal coalition squabbles and this motivated to Gowda to push CBI Director Joginder Singh for pursuing prosecution against Laloo[183]. Much later, in 2008, Laloo claimed that HD Deve Gowda confessed, wept and fainted when Laloo confronted with him on inciting the CBI for pursuing the prosecution against Laloo[184]. Looking retrospectively, Laloo has said to that the scam had a lasting negative impact on his political career and may have ended his prospects to one day be prime minister of India. Later, HD Deve Gowda had stepped down from the Prime Minister ship due to internal differences in his coalition government and I K Gujral became new Prime Minister of India. The new coalition government at the centre was also depending on the support of Laloo Yadav in Parliament and that time CBI Director Joginder Singh alleged that Prime Minister Inder Kumar Gujral had attempted to block investigation proceedings[185]. Later I.K. Gujral led Central Government issued an order of transfer of Joginder Singh from CBI to the Home Ministry as a Special Secretary. Technically, he was given promotion but in actual it had done for

[182] *Ibid.*

[183] *Id*., at 273.

[184] *Ibid.*

[185] *Ibid.*

removing him from the investigation of fodder scam[186]. It was clear interfere of Central Government in fair investigation of the case. There was also an alleged follow on move to transfer of UN Biswas, the regional CBI Director, which led to the High Court warning that it would act to disallow any such transfer[187].

Since it broke out into public it became clear that the fodder scam was symbolic of bureaucratic corruption and the criminalization of politics in generally in India and particularly in Bihar. It was called a symptom of the deep and chronic melody afflicting the Bihar government and few other state governments as well. It was cited as an important indicator of the deep inroads made by mafia raj in politics and economics of the country. Reference has also been made to the anarchic nature of governance that occurred in Bihar because criminals developed their roots in a state controlled sector of economy[188].

Hawala scandal, 1997

Hawala Scam was an Indian political scandal involving payments allegedly received by politicians through Hawala brokers, as popularly known Jain brothers also. It was a US $18 million bribery scandal that implicated some of the country's leading politicians. The politician including L.K. Advani, V.C. Shukla, P. Shiv Shankar, Sharad Yadav, Balram Jakhar, and Madam Lal Khurana were allegedly involved in this scandal. Many of them did not get convicted because the records did not get proved as the main evidence in court.

Barak missile scandal, 2000

The Barak Missile scandal is a case of alleged defence corruption relating to the purchase of Barak Missile systems by India from Israel. The Barak Missile system was jointly developed by Israel Aircraft Industries (IAI) and RAFAEL.

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[186] *Ibid.*

[187] *Ibid.*

[188] *Id.*, at 275

The contract had signed with Israel by the Indian government to procure seven Barak systems at a total cost $ 199.50 million. This was done despite objections raised by several groups including members of the team that has originally visited Israel to observe the missile performance and A P J Abdul Kalam, then head of the Defence Research Development Organization.

Securities scam, 2001

In spite of recommendations made by the Jankiraman Committee report in 1992 to prevent security scams from happening in future another security market took place in 2001. This involved the actions of one major player by the name of Ketan Parekh. He manipulated a large amount of funds in the capital market though a number of his own companies which is probably why the scam remained a mystery for quite some time the RBI, SEBI and Department of Company Affairs (DCA) have gone stock in their regulatory operations. During 1999 and 2000 the SENSEX reached a high and after that the stock market crashed in 2001.

Tehelka expose, 2001

In a sting operation conducted by Tehelka.com it was alleged that some type of kickback is involved in the deferent defence deals made by the government and the Barak missile deal was one of them. Transcripts of conversations had indicated that Jain accepted an amount of one crore as bribe from Suresh Nanda. Tehelka is a weekly political magazine and it is known for undercover expose style of journalism. In 2000, it started being published as a news website, Tehelka.com. In 2001, Tehelka.com exposed the alleged culture of bribery in the Ministry of Defence. It had set up a bogus London-based company, and contracted to the officials of Defence Ministry for selling thermal binoculars to the Government of India. Tehelka claimed that Bangaru Laxman, then secretary of the ruling BJP party has taken a bribe for helping the bogus company in procuring government contracts. During the process, Tehelka also met Jaya Jaitly, then head

of Samata Party and a close aide of the defence minister George Fernandes. Jaya Jaitly responded against Tehelka story, and made allegations that Tehelka journalists are Pakistani agent and raised doubts over the authenticity of the tapes.

A commission was set up by NDA government to investigate the matter. After some time, UPA government came into power and rejected investigation report of the commission and whole matter referred to Central Bureau of Investigation. After lodging FIR, CBI made investigation into case and claimed that George Fernandes then Defence Minister and the former chief of the Indian Navy, Admiral Sushil Kumar were involved into the case. R.K. Jain admitted to Tehelka that 3 per cent of the total cost went to Fernandes and Jaya Jaitly as commission and he himself was given 0.5 per cent. The commissions were paid to them by Suresh Nanda, middleman of the deal. The DRDO had sought to block the import of the Barak system because the DRDO project Trishul was eventually declared technologically better. Suresh Nanda along with his son, Sanjeev Nanda were charged under section 120-B, 201 of IPC and were arrested.

Taj corridor scandal, 2003

The Taj Heritage Corridor case is an alleged scam wherein, then Chief Minister of Uttar Pradesh Mayawati and a cabinet minister in her government, Nasimuddin Siddiqui were charged with corruption. The Taj Corridor project was intended to upgrade tourist facilities near the Taj Mahal in Agra. Then BJP government at the centre gave the environmental clearance required for the project. However, later the central government claimed that the project was not cleared by the Environment Ministry. The total estimated cost of the project was Rs. 175 crore. It has been alleged that Mayawati embezzled the money dedicated for this project. Initially, the case saw some rapid progress, when CBI conducted extensive searches on her various addresses, and claimed that though she had claimed income of only Rs. 1.1 crores during her tenure as CM, her bank balance in a single bank went up to 2.5 crore and total assets held by her were estimated at

Rs. 15 crore. At one point a warrant was out for her arrest, but she was granted a stay. However, after sometime, CBI developed cold feet and it appeared that investigation has slowed down. There were speculations in the media about political interference in case. Then governor of UP T.V. Rajeshwar did not grant sanction for prosecution against alleged accused in court. This decision of governor was challenged in court but failed. Thus the case ended without going for trial in court.

The Public Interest Litigation was filed by Lucknow residents Kamlesh Verma, Anupama Singh and Qateel Ahmed. The PIL had questioned then Governor T.V. Rajeshwar's 2007 refusal to grant the Central Bureau of Investigation (CBI) sanction to prosecute Mayawati and her Cabinet colleague for their alleged role in the corruption case. The High Court's division bench of Justice Pradeep Kant and Justice Shabibul Hasan issued the notice to Mayawati and Nasimuddin Siddique and sought their replies. The three have also questioned a designated CBI Lucknow court's decision against not taking cognizance of the CBI charge sheet against Mayawati and others, indicting them for their acts of omission and commission in the corruption case. They have also questioned the trial court's 2007 order to the probe agency to seek the governor's sanction to prosecute Mayawati at a time when she was not the Chief Minister. Mayawati approached the apex court questioning the *locus standi* of the three petitioners, as well as the authority of the High Court to entertain the IPL contesting the decisions of the governor and the CBI court in a criminal matter. She contended that only the CBI was entitled to question the decisions of the governor or the CBI court, and the agency chose not to do so. And since the deadline to question the governor's order had passed after the lapse of 30 days from June 3, 2007, no plea for revival of the corruption case could be made against her at any forum, she contended. She told the apex court that even its three-judge bench, headed by erstwhile Justice S.B. Sinha, had refused to interfere with the governor's denial of sanction to prosecute her. The three-judge bench of the apex court, which ordered the CBI in September

2003 to probe the Taj corridor scam, had ruled that it was not entitled to examine the legality of Governor Rajeshwar's denial of sanction to prosecute Mayawati. The bench said that the legal issue was to be decided by a magisterial court and not by the apex court.

Special Judge to decide on charge sheet

In a major setback to BSP supremo in Taj Heritage Corridor scam, the Supreme Court rejected the CBI Director's report for closing the case and directed the agency to submit the entire material to the Special Judge, Lucknow, to decide independently whether prosecution should be launched against her and other accused persons or not. The court rejected the CBI Director's report based on Attorney General Milon Banerjee's opinion for closing the case, saying that the matter should have not been referred to the latter by the agency's chief without first giving his own opinion, especially when the entire investigating team, headed by an officer of the rank of SP unanimously had opined that a case was made for filling of the charge sheet against the accused person. A three-judge Bench of Mr. Justice S.B. Sinha, Mr. Justice S.H. Kapadia and Mr. Justice D.K. Jain said in investigation of criminal cases, the law is clear that the opinion of the investigating officer in charge was final for filing of the charge sheet. He is not required even to seek the opinion of the Public Prosecutor as his role comes in the picture only for conduction the trial after the charge sheet is filed.

In this case, the court pointed out that the then CBI Director without giving his opinion had not only overruled the investigating officer and the SP in charge of the probe but five other senior officers, including the Additional Director, Joint Director, DIG Additional Legal Adviser and Deputy Legal Adviser also, who had given clearance for filing the charge sheet against Mayawati, her cabinet colleague Nasimuddin Siddiqui and others. It came down heavily on the CBI Director, who in his status report submitted on December 31, 2004 had sought the closure of the case based on the AG's opinion. The court had then sought the opinion of the

Central Vigilance Commission (CVC), which said that its role is only advisory in nature. Taking all these aspects into consideration, the court said neither the AG's opinion, nor the CVC advisory, would be sent to the Special Judge as they would form his opinion entirely on the basis of the report of the investigating officer and the evidence gathered by the investigation team. The court expressed anguish over the manner the CBI had dealt with the case and the growing tendency of approaching the apex court in all criminal cases involving some important persons. The bench said that the premier investigating agency like CBI was expected to do its duty honestly, otherwise the criminal investigation and justice delivery system would collapse like a heap of sand.

Gegong Apang scandal, 2004

Gegong Apang, an Indian politician was born on 8 July 1949 in Arunachal Pradesh. He served as Chief Minister of Arunachal Pradesh from 18 January, 1980 to 19 January, 1999 and again from August 2003 to April 2007. Apang was first elected as Chief Minister in 1980. He held the position until 1999, when he resigned following a no-confidence vote caused by a split in the ruling Congress Party. In 2003, he was elected the leader of United Democratic Front, a coalition of his own political party, the Arunachal Congress, BJP and others. A few months later, Apang and his supporting MLAs merged with the Bharatiya Janata Party and the BJP had got first chance to rule a north-eastern state in India. A few months later, 2004 general election of India had taken place and BJP-ruled National Democratic Alliance lost power at the centre. Apang returned to the Indian National Congress and Congress won a majority in state assembly elections, with Apang as obtaining the Chief Minister position. He remained Chief Minister until 9 April, 2007 when due to pressure of other Congress Party MLAs, he resigned and Dorjee Khandu was elected Congress Party leader and became the Chief Minister of State.

In August 2010, Apang was arrested for alleged charges of corruption relating to a 1000 crore public distribution system scam. Apang denied the charges and claimed they are politically motivated, though the government stated that the investigation was conducted independently and without political interference. The scam allegedly involved fraudulent hill transport subsidy bills that were passed while Apang was Chief Minister.

Abdul Karim Telgi scam, 2006

Abdul Karim Telgi was born 1961. He earned money by printing counterfeit stamp paper in India. Telgi's mother was Shariefabee Ladsaab Telgi, and his father was an employee of Indian Railways. His father died while he was still young. Telgi paid for his own education at Sarvodaysa Vidyalaya, an English medium school, by selling fruit and vegetables on trains. Eventually, he moved to Saudi Arabia. Seven years later, he returned to India and started his career in counterfeiting, originally focusing on fake passports. For printing fake stamp paper, he appointed 300 people as agents who sold the fake items to bulk purchasers, including banks, insurance companies, and share-broking firms. The size of the scam was estimated to be more than 20,000 crore. One aspect of the scandal was that it required the involvement of many police officers and other government employees. In January 2006, Telgi and his other associates were sentenced. He was sentenced to rigorous imprisonment for 13 years and fined Rs. 100 crore also. The CBI requested that Telgi's property be confiscated to pay the fine. In 2008, a movie "Mudrank" based on the stamp scandal was ready to release but Telgi filed a petition in court on the ground that the details covered in the film would damage his legal appeals and the film has not yet been released.

Cash-for-vote scandal, 2008

Notes-for-vote or cash-for-vote scandal had taken place in Indian politics because, the then Prime Minister Manmohan Singh led UPA government had

positively and successfully approached to IAEF for Indo-US nuclear deal and by this reason the Communist Party of India led Left Front had withdrawn support from the government. It was alleged that the member of ruling parties has openly bribed to Indian MPs for winning the first confidence vote in the Lok Sabha on 22 July, 2008. Tehelka, an Indian news magazine, alleged that the BJP had willfully set out this trap for making a successful sting operation and discrediting the government. The magazine also claimed it is appears that this sting operation has been set out with mutual consent and collusion of respected BJP leaders like Sudheendra Kulkarni, Arun Jaitley and even LK Advani.

The historic win was marred when three BJP leaders waved bundles of 30 million rupees and made allegation for buying votes in Parliament. Then Speaker of Lok Sabha, Somnath Chatterjee asked New Delhi's police chief to make investigation into the case. BJP demanded the resignation of Prime Minister Manmohan Singh over the allegations that government was bribing MPs to survive a vote of confidence in Parliament. The BJP also offered fresh "documentary evidence" or video-tapes to back up its charges that three of its MPs were bribed to save the Manmohan Singh government during the trust of vote. BJP also criticized the TV channel CNN-IBN for not telecasting the sting operation.

Satyam scandal, 2009

The Satyam Computer Services scandal was publicly announced on 7 January 2009, when Chairman Ramalinga Raju confessed that Satyam's accounts had been falsified. The Company Law Board decided to bar the current board of Satyam from functioning and appointed new directors. The Corporate Affairs Minister Prem Chand Gupta said that the current board has failed to do what they are supposed to do and the credibility of the IT industry will not be allowed to suffer at any cast. Chartered accountants regulator ICAI issued show cause on the accounts fudging. On the same day, the Crime Investigation Department (CID)

team picked up then CFO Vadlamani Srinivas for questioning. He was arrested later and kept in judicial custody. Immediately, after breaking out the news, Merrill Lynch a part of the Bank of America and State Farm Insurance terminated its engagement with the company. Satyam's auditing firm Pricewaterhouse Coopers was also suspected for being involved in this scandal. SEBI, the stock market regulator, also said that, if found guilty, its license to work in India may be revoked. Satyam was the 2008 winner of the coveted Golden Peacock award for corporate governance under Risk Management and Compliance Issues and it was also stripped by the scandal. The New York Stock Exchange has halted trading in Satyam stock. India's National Stock Exchange has announced that it will remove Satyam from its S&P CNX Nifty 50 share index on 12 January. The Founder of Satyam was arrested two days after he admitted to falsifying the firm's accounts. Ramalinga Raju was charged with several offences, including criminal conspiracy, breach of trust, and forgery. CID told in court that the actual number of employees were only 40,000 not 53,000 as reported earlier and Mr. Raju had been withdrawing 20 crore rupees every month for paying these 13,000 non-existent employees.

Madhu Koda scam, 2009

Madhu Koda was born on 6 January, 1971 in Patratu, West Singhbhum of Jharkhand. His father, a tribal farmer wanted that Koda has a normal life and remain a farmer or iron worker, but after experiencing corruption in the iron industry, he eventually began his career in politics. In 2006, he became Chief Minister of Jharkhand and remained in office until he resigned on 23 August 2008 when he was succeeded by Shibu Soren. He had eight ministers in his Cabinet. In the history of Indian politics Madhu Koda is the third independent legislator who has assumed the office of Chief Minister as an independent legislator. Before it, in 1971, Bishwanananth Das in Orissa and in 2002, S.F. Khonglam in Meghalaya have become Chief Minister as independent legislator.

In 2009, he was charged with corruption and money laundering. The Enforcement Directorate uncovered over 4000 crore illegal assets owned by Koda. Among others, these assets were reported to include hotels and three companies in Mumbai, property in Kolkata, a hotel in Thailand, and a coal mine in Liberia. In the probe, it was found that Maoists were receiving the 30 per cent share of the Madhu Koda plunder. Koda was criticized by the media and other sections of society for his plunders raj. The Gujarat Chief Minister, Mr. Narendra Modi stated that Koda was part of a corrupt network of Congress Party who has stolen money from Jharkhand.

U.P. food grain scam, 2010

In 2003, during the Chief Minister ship of Mulayam Singh Yadav, this scam came into light from Gonda District of Uttar Pradesh. Uttar Pradesh food grain scam took place between years 2002 to 2010. It was alleged that food grain worth 35,000 crore meant to be distributed amongst the poor, through Public Distribution System (PDS) for welfare schemes like Antyodaya Anna Yojana, Jawahar Rozgar Yojana and Mid-day-Meal Yojana was diverted to the open market. Some of it was traced at the border of Nepal and Bangladesh and security forces seized and confiscated worth Rs. 1.17 crore food grains at the Indo-Bangladesh border. Initially the government ordered for making an enquiry into scam then withdrew it. In 2006, the Special Investigation Team (SIT) was set up by the Mulayam Singh government and it lodged over 5,000 FIRs. Subsequently, the next UP Chief Minister Mayawati assumed office and ordered for making CBI probe into the scam. Media dubbed it as mother of all scams and estimated to be at over 200,000 crore. Uttar Pradesh allocated a monthly quantity of food grains i.e. rice and wheat at subsidized rates by the Central Government for distribution amongst AAY, BPL and APL families, under PDS managed by the state government. For the period from April 2010 to March 2011, this quantity for state of U.P. was 528395 tons.

Instead of using the Food Corporation of India and the Shipping Corporation the government cleared a private company to send the rice and earn the profits. Rice had sent to Sierra Leone and Nigeria which had a bumper crop and refused to accept the rice. Then the rice was diverted to South Africa, but it did not reach the desired African countries. It went somewhere else and resulted in an escalation of the international prices. The Regional Food Controller's office in the state is responsible for procuring the food grains, while the District Rural Development Agency is in charge of its distribution. An embezzlement by a section of officers from the controller's office made news in March 2004, after 70 truckloads of rice meant for distribution was lifted from the Food Corporation of India and when FCI demanded its payment, a project director refused to verify the stock register, gradually it was revealed that they had been selling the grains in the black market and a probe was ordered. As per initial estimates at the time, food grain worth Rs. 15,000 crore could have been diverted from the Antyodaya Yojana over the last five years. By December 2004, Chief Minister Mulayam Singh Yadav had suspended a District Magistrate of Lakhimpur Kheri and several officials of the food department and political parties including the CPI, Congress and BJP were increasing pressure on the government to order a CBI probe.

In April 2007, Union Minister, Kapil Sibbal demanded a probe by the Central Bureau of Investigation (CBI) into the illegal sale by private traders who procured the food grains from the warehouses of the Food Corporation of India and then diverted into open market. First it was investigated by the Economic Offences Wing of the Uttar Pradesh Police followed by a Special Investigation Team (SIT) set up by the Mulayam Singh government. After making inquiry into three districts, Sitapur Lakhimpur Kheri and Gonda, SIT lodged over 5,000 FIRs into case. SIT investigation had revealed the scam to be larger in scale and multi-dimensional, covering many welfare schemes like Antyodaya, Sampurnan Grameen Swarojgary Yojana. Thus, a CBI enquiry was ordered by government.

On 03 December, 2010 the Lucknow Bench of the Allahabad High Court, responding to public interest litigation filed by advocate Vishwanath Chaturvedi, directed the Central Bureau of Investigation to conduct a complete enquiry within six months, into the food grain scam in Gonda, Lucknow, Ballia, Varanasi, Lakhimpur and Sitapur districts. It was argued before court that it is not necessary for the CBI to obtain sanction under the statutory provisions with regard to present controversy where *prima facie* it is clear that the food grain has lifted intentionally, deliberately and in a planned manner from go downs for selling either in the open market or smuggling outside UP or other countries. The bench asked to the Centre and Uttar Pradesh government to consider appropriate amendments in the Prevention of corruption Act, 1988. The court also directed to the CBI and state agencies to proceed with investigation with regard to all aspect of the scam.

A.P. industrial infrastructure corporation scam (APIIC scam), 2010

Andhra Pradesh Industrial Infrastructure Corporation Ltd. also known as APIIC was part of the Andhra Pradesh Government initiatives with the objective for providing industrial infrastructure through development of industrial areas. Andhra Pradesh Industrial Infrastructure Corporation Limited was established in the year 1973 for identifying and developing potential growth centre's in the state fully equipped with developed plots/sheds, roads, drainage, water, power and other infrastructural facilities; providing social infrastructure, like housing for workers near industrial zonal, co-coordinating with the agencies concerned for providing communication, transport and other facilities. A 100 storied trading tower with corporate houses, star hotels and entertainment theatres was to be built in Hyderabad. The Andhra Pradesh government had allotted 97 acre land to the Andhra Pradesh Industrial Infrastructure Corporation (APIIC) for the proposed trade tower. The government wanted to complete it very soon. A three member team was went to Kuala Lumpur, Malaysia to study the famous 'PETRONAS' towers and worked out the modalities of the project.

EMAAR-MGF controversy

APIIC has gained controversy over land acquisition for the Boulder Hills Projects, a joint venture with EMAAR-MGF in Hyderabad. News reports suggest that the APIIC agreed to dilute the public stake by undervaluing the land. Near about 500 acres of land was acquired by APIIC in 2002-2003 for setting up a golf course and residential properties. APIIC sold 285 acres land at 27 lacks per acre against the prevailing price of 1 crore per acre in 2003. The remaining 235 acres land and an additional 15 acres unusable land were allotted as a 66 year lease with a 2 per cent share of the Golf course revenues. EMAAR sold this project to EMAAR-MGF and diluted the value of APIIC's stake from 26 per cent to 4 per cent, by not considering the prevailing market rate for the land in 2009. There also allegations that government officials were allocated parcel of the property at deeply discounted prices compared to the prevailing market price. Officials, who previously ran APIIC and seem to have conflicts of interest with developers, have refuted many of these allegations and defended earlier land allotment decisions.

Belekeri port scam, 2010

The Belekeri port scam is related to 35 lacks metric tons of iron ore. It had to be exported illegally from Belekeri port near Karwar in Karnataka. A Forest Conservator Officer seized iron ore and the High Court refused to permit it to be exported from the port. After persistent protests and public pressure, then Karnataka Chief Minister B.S.Yeddyurappa admitted that an illegal iron-ore export racket was involved at Belekeri port. It is said that the scam was worth an estimated 60,000 crore rupees. This iron ore from the Bellary region was allegedly mined illegally after paying small royalty to the government.

Justice N. Santosh Hegde resigned from the Lokayuktas post of Karnataka on 23 June, 2010 because an honest Forests Conservator Officer was suspended by government and he felt powerless to help him. Due to a non-cooperative attitude

of government of Karnataka he expressed inability to be effective in his anti-corruption mandate. There was a strong speculation in media that the government had suspended to Forests Conservator Officer on behalf of some politicians having business interests. By giving resignation from the Lokayuktas post of Karnataka, Justice N. Santosh Hegde underlined the helplessness of the advisory post of the Lokayuktas in state of Karnataka. The resignation has brought considerable public attention to the scam. The government has also been forced to admit the existence of scandal.

Housing loan scam, 2010

This fake housing loan scam was uncovered by the Central Bureau of Investigation. CBI arrested eight top-ranking officials of public sector banks and financial institutions, including the LIC Housing Finance CEO Ramachandran Nair, in connection with the scam. CBI alleged that the officers of various public sector banks and financial institutions received bribes from the private company Money Matters, which acted as a mediator for corporate loans and other facilities from company. The bank officials sanctioned large-scale corporate loans to realty developers, overriding mandatory conditions for such approvals along with other irregularities.

The Central Bureau of Investigation arrested number of high level officers in connection of housing scam. It was very shocking because many top officers of the public sectors banks and other financial institutions including LIC, Bank of India, Central Bank of India and Punjab National Bank were involved in the scam. Since the matter was inter connected to the misuse of funds from the LIC Housing and Finance Limited so it was named as the LIC Housing and Finance Scandal also. The top officers of the several banks including the secretary of LIC investment, general managers, directors and deputy manages of banks were involved in taking out the funds from LIC through inappropriate and unethical means. These officials were acting as the middleman for providing fund to main

parties and in return they were taking hefty amount of fund from the real investors, insurers and other consumers. It distorted the system of corporate governance. The business ethics were neglected and corrupt business activities were sustained in the functioning of public sector banks. The officials were charged for exploiting fund, looting public money, manipulating corporate loan process and overriding with the regulations of the LIC Housing and Finance Limited. Economic Offences Wing of CBI raided offices of the public sector banks and LIC Housing and Finance Limited in six cities viz; Mumbai, Delhi, Chennai, Jaipur, Kolkata and Jalandhar and recovered incriminating documents. Most, firms, including BGR Energy and Oberoi Realty denied any role in the scam. The investors were rattled as news of the arrests broke in Mumbai. The share of the LIC Housing and Finance Ltd., Central Bank of India, Punjab National Bank, Bank of India and Money Matters Financial Services Ltd. as well as other banking and financial institutions and real estate stocks were declined.

The Union Finance Ministry initially claimed it as a bribery incident. The CBI officials had indicated that the size of the scandal must be worth over Rs. 1, 000 crore. After receiving primary reports from CBI, the income-tax department decided to investigate the books of those officials who were involved in the scam. However, many political analysts was of the view that innocent bankers were implicated in this falsely created scam to diverse the attention of common man from the more larger and serious scams like Commonwealth game scam, Adarsh Housing society scam etc which was done by the ruling Government of India.

Indian premier league scam, 2010

The Board of Control for Cricket in India (BCCI) has found itself in the middle of many conflicts with various cricket boards around the world as a result of the Indian Premier League (IPL). The main point of contention was that signed players should always be available to their country for international tours, even if it overlaps with the IPL season. To address this, the BCCI officially requested that

the International Cricket Council (ICC) to institute a time period in the International Future Tours Programme, solely for the IPL season. This request was not granted at a subsequent meeting held by the ICC.

Commonwealth games scam, 2010

A number of disputes and controversies were surfaced before the 2010 Commonwealth Games in New Delhi. The Commonwealth Games were criticized by several prominent Indian political leaders and social activists because billions of dollars have been spent on the sporting event despite the fact that India has largest concentration of poor people. Several other problems related to the Commonwealth Games have also been highlighted by the investigative agencies and media such as serious act of corruption by officials of the Games Organizing Committee, delays in the construction of main games venues, poor quality of infrastructure, possibility of the terrorist attack and low sale of tickets before the event.

Vigilance-related irregularities and over-invoicing

On 28 July, 2010 the Central Vigilance Commission released a report showing irregularities caused in 14 CWG projects. In detailed preliminary enquiry of CVC, it was found that the contracts were awarded to ineligible agencies at higher prices and the quality of management was very poor.There were many allegations of corruption in organizing Commonwealth games. Due to adverse report of the three-member panel, which was probing the financial irregularities related to the Queen's Baton Relay, a joint director and a deputy director were suspended by Games Organizing Committee. Treasurer of Organizing Committee was resigned from his post in the wake of allegations that his son's firm had secured a contract for laying synthetic courts at the tennis stadium. The Global Post news agency reported that scandal came to light by shadowy off-shore firms, forged e-mails, expensive payments to bogus companies and inflated bills for

every purchase from toilet paper to treadmills. Among the alleged corruption and defrauding of the games budget, toilet paper rolls valued at $2 were casted at $8, $2 soap dispensers at $60, $98 mirrors at $220, $11,830 altitude training simulators at $250,190.

Infrastructural compromise

On 21 September 2010 a footbridge under construction for the games near the Jawaharlal Nehru Stadium was collapsed and at least 23 people, mainly workers were injured. Commenting on the incident, then Chief Minister of Delhi Sheila Dikshit controversially remarked that the footbridge was only meant for spectators and not for athletes. Following the collapse, Fennell expressed concern that conditions at the Games Village, which had "shocked the majority", would seriously compromise the entire. The company, P&R Infraproject which was made the foot bridge, was subsequently blacklisted by the Delhi Government and was not allowed to get government contracts. The progress of construction work was very slow. Four or five accommodation towers built by Emaar at the games village were found unfinished. There were no facilities of wireless, internet, fitted toilets and plumbing etc. In addition, rubble, unused masonry and discarded bricks littered the unfinished gardens. Sport historian Boria Majumdar had commented that India may have to pull a miracle. A builder in Australia, Grahame McCulloch and the father of Australian track cyclist Karle McCulloch visited his daughter at the game village criticized the structural soundness of the villages and he commented that those buildings are the dodgiest thins I have never seen so substandard. He told his daughter not to use the balcony, fearing that it was collapsible. Amid allegations of blatant corruption, poor quality construction work at the games venues and security concerns for participating athletes, the 2010 Commonwealth Games has faced numerous boycott calls from individuals in India and abroad. Bishan Singh Bedi, Chetan Bhagat and others celebrities of India called for boycott. Bedi said that, CWG organizers have taken the country for a ride and urged international athletes to boycott the embarrassing Delhi games.

Chetan Bhagat called the Commonwealth games as the biggest and most blatant exercise in mass corruption since the country won independence six decades ago. Chetan Bhagat, who has sold more than 4 million his books in India, also urged his readers to boycott the games event and not to watch them on TV thereby using the golden chance to put the corrupt and insensitive government to shame.

While concluding the games, the Government of India announced that a probe committee led by VK Shungloo, former Comptroller and Auditor General of India will be set up to probe the allegations of corruption and mismanagement against the Organizing Committee. Then Prime Minster of India, Dr. Manmohan Singh promised that corrupt officials will be given severe and exemplary punishment after the games. The committee has been given three months time to submit its report.

Adarsh housing society scam, 2010

The Adarsh Housing Society is a cooperative society in the city of Mumbai. It was reserved for the war widows and veterans of the Kargil war. The Indian media brought to public the alleged violations of rules at various phases of construction in Adarsh society. Questions were raised on the manner in which apartments in the building were allocated to bureaucrats, politicians and army personnel who had nothing to do with Kargil war and the way in which clearances were obtained for the construction of the building of the Adarsh Society. The Adarsh society was constructed in the Colba locality of Mumbai, which is considered a sensitive coastal area by the Defense Establishment of India.

Hassan Ali Khan scam, 2011

Syed Mohammed Hassan Ali Khan popularly known as Hasan Ali Khan was born in 1953 and brought up in Hyderabad. He is son of late Gayasuddin Ali Khan. He is notorious for money laundering activities in India. It was alleged that he had 8 to 9 billion dollars in the UBS and other banks of Switzerland and was

responsible for money laundering of Rs. 35,000 crore or USD 7 billion which is known as hawala transaction also, through Swiss banks. It was also alleged that he was connected to underworld don Dawood Ibrahim and channeled very large amount from unknown sources into stock market. First time, he opened an account with UGS Singapore in 1982 with just 1.5 million dollar. After some time he received 300 million dollar in this account from Chase Manhattan Bank of New York. Why this bank-transfer was made is unknown and how Khan got the initial amount of $1.5 million in the year 1982 is also unknown. In the year 1982, he was only about 28 years old and he was financially struggling as a small tuition teacher. There was no any idea how he got so much money. In other words, how Hasan made his first million is still unknown, especially considering the fact that he was a small tuitions teacher at that time. Till the late 90s, Hasan Ali was living along with his wife Mehbooba Khan and two sons in Banjara Hills, a most expensive area of Hyderabad. Here, he was charged for six cheating cases that earned him the title of '*chor'* Hassan. He divorced his wife Mehbooba Khan and sifted to Pune. Here, mostly in racing circles he was famous as Hyderabad ka Ghodawala, a middle rung horse breeder. He got re married with Raheema, sister of horse-trainers, Faisal Abbas. His second wife Raheema belongs to the famous 'Poonavala' family. He came in touch with Mr. S.A. Alam, Manager, Charminar Branch of State Bank of India, Hyderabad and with the help of his joint accomplices P.R. Khan and Azad Khan; cheated the bank out of millions of rupees. Mr. Alam lost his job.

On 16 February 2011, UBS AG denied the reports published in the Indian media alleging that UBS AG maintained a business relationship with Hasan Ali Khan and assisted him in money laundering activities. On the basis of an investigation, the Swiss Department of Justice and Swiss Federal Banking Commission were fully satisfied that there was no basis for the allegations and documents purported for corroborating the allegations were found forged. Thus, the UBS has not acknowledged any of the alleged transactions referred in media

reports. UBS insisted that continuous publication of such allegations by Indian media are misleading to the Indian public and it will take the appropriate steps to ensure that reputation of USB is no longer damaged by these inaccurate reports. Some sources claimed that he might be the fourth richest person in India and amongst the world's dollar billionaires. However, he was not officially recognized as billionaires by any publication because most of his money was in the form of unaccounted wealth or black money. Hasan Ali Khan's name has not figured in any UBS accounts because in Swiss bank accounts, the account holder is not required to give his or her name and therefore the name of account holder does not appear in any official documents of bank. According to the data provided by the Swiss Banking Association Report (2006), India has more black money than the rest of the world combined. Indian Swiss bank account assets are worth 13 times more of the country's national debt.

The Enforcement Directorate, Income tax Department, Economic offences Wings of Maharashtra and CBI probed illegal investments and charges of money laundering against Khan. No any serious efforts have been made to trace his sources of black money. The Supreme Court questioned the inertia of Central Government and commented that what the hell is going on in this country? There are instances when minor offenders are shot down for violating section 144 of Cr.P.C. but you do not take any action against these people. We are very sorry. All these people are now free. What is the way of taking actions against Hassan? Despite this, the Central Government could not prosecute to Hassan Ali Khan under India's money laundering law because it had not gone into effect at the time the alleged crimes were committed.

On 04 August, 2009 disclosing the list of defaulters in the Rajya Sabha, the Minister of State of Finance S Palanimanickam said in a written reply that Hassan Ali Khan tops the list of tax defaulters in India with an outstanding tax arrears of more than Rs. 50,000 crore or USD 10 billion. When it was asked that Hassan Ali Khan is likely to be arrested? India Today editor Prabhu Chawala replied that he

does not have much hope citing that getting Swiss banks to disclose details is not easy as India has not signed a treaty with the Swiss government and also due to Indian government's attitudes. In January, 2011 it was reported that Swiss Banks was holding information on a technical ground that the offence allegedly committed in India in the case of not filing tax returns is not an offence under Swiss Law. Folco Galli, Information Chief of the Swiss Department of Justice and Police claimed that the Indian government had submitted forged documents to seek assistance in the Hasan Ali Khan case. Finance Minister Pranab Mookherjee said that investigators had information of three Swiss bank accounts being allegedly held by Hasan Khan, but no money was left in them. Telugu Desam Party President N. Chandrababu Naidu tried to vie himself a clean chit on his nexus with Hasan Ali Khan by pointing out the even congress president Sonia Gandhi and her political secretary Ahmed Patel had dealings with Ali. An investigative scoop by Tehelka magazine of about 10,000 documents indicated that Hassan Ali basically exaggerated his wealth to con other business partners even though he never had that sort of money. This also explained the reasons why his wealth was not showed up in any UBS accounts and that the UBS account papers were forged by Hassan Ali to con other business partners. His involvement with Adnan Khashoggi is also believed to be a con to impress other business partners of his links with influential people.

Times of India had reported that he allegedly was a trickster, bank scamster, hawala operator and international money laundering racketeer. But the Hyderabad city police, reportedly due to his highly placed connections, have never been tough on him. His wife Raheema and her brother Faisal Abbas have allegedly helped him hide since 2007. On 17 August, 2008, Hassan Ali Khan's lawyer Majid Memon claimed that his client was not in touch with him. The government was told the Bombay High Court that the Hassan Ali Khans are virtually absconding and if he is allowed to leave India the investigations must be collapse. Hassan Ali Khan's Counsel Milind Sathe told that his client regularly

appeared before the Enforcement Directorate. When it was inquired that where Khan was his main Lawyer Mugdha Jadhav replied, cannot tell you sorry.

On 03 March, 2011 Supreme Court of India had questioned the tactic of the Government of India and sought to know that why custodial interrogation of Hasan Ali and other alleged black money launderers has not taken place yet. What is in the way of taking action against Hassan Ali Khan? How many years will investigations continue against Ali? The apex court also ordered for reinstatement of three key ED officials allegedly transferred midway from the probe against Hasan Ali Khan. While obeying Special Court directives, Hassan Ali Khan presented himself before the Enforcement Directorate for questioning. However, officers claimed that Khan has not cooperated and refused to answer their questions properly. He merely comes and spends most of the time silently on the sofa outside our office. The interrogations that were supposed to be undertaken secretly have become public due to the act of a police officer who leaked the record.

ISRO-Devas S. band scam, 2011

Antrix Corporation Limited is a public sector undertaking and a commercial arm of Department of Space, Government of India and Devas Multimedia Private Limited is a private company having few ex-ISRO officers as its employees. After a long negotiation, they entered into an agreement on January, 2005. As per this agreement, Antrix leases 90 per cent capacity of S band spectrum for 12 years. For this purpose ISRO had to launch two satellites GSAT-6 and GSAT-6A. The amount payable by Devas was $300 million over a period of 12 years. In case of late delivery of satellite or performance failures or service interruptions the penalty charges were to be paid by Antrix. According to agreement, Devas provides an upfront capacity reservation fee of US$20 million per satellite and annual lease charges starting at US$9 million per satellite and going up to US$11.25 mllion. The amount payable by Devas is US$300 million over a period

of 12 years. Devas so far, made a payment of Rs. 58.37 crore as upfront reservation fee for the two satellites. It was alleged that if this deal is implemented, it will lead a loss of Rs. 2 lakh crore to the Indian government. However, the Comptroller and Auditor General of India has clarified that, it can by no stretch of imagination, be concluded that information as given in the media reports are findings of this department.

BN Suresh committee

On receipt of complaints, in December 2009, ISRO set up a committee chaired by Dr. B.N. Suresh to review and examine the legal, commercial, procedural and technical aspects of agreement. The exact recommendations of this committee have not been made public. On 2 July, 2010 the Space Commission directed Antrix Corporation to annul this agreement citing the need of S band for strategic requirements, including societal ones which have come up very recently and which were not contemplated at the time of signing the agreement. On 17 Feb, 2011 citing strategic requirements, the cabinet committee on security headed by Dr. Manmohan Singh, then Prime Minister of India, annulled this agreement.

High power review committee

In parallel to the decision to annul the agreement, the Government of India constituted HPRC to review technical, commercial, procedural and financial aspects of this agreement consisting of Shri, B.K. Chaturvedi, Member of Planning Commission and former Cabinet Secretary and Prof. Roddam Narshimha, member Space Commission.

2G spectrum scam, 2011

The 2G spectrum scam involved the issue of 122 licenses which was granted to 85 Telecom Companies and many of them having little or no experience in the telecom sector. It was alleged that the under pricing of the 2G

spectrum by the Department of Telecommunications resulted in a heavy loss to the exchequer and the illegal manipulation of the spectrum allocation process benefited to selected companies. The issue came to light after the auction of airwaves for 3G services which amounted to 67,719 crore to the exchequer. While in a report submitted by the Comptroller and Auditor General, the money collection from 3G licenses spectrum was estimated 176,379 crore.

Loss to exchequer

The Controller and Auditor General of India used three different methods to assess the presumptive loss to the exchequer resulting from not auctioning 2G spectrum. The first method was based on the fact that S Tel, one of the licensees, explicitly offered to pay significantly higher license fees for the spectrum. Based on the fees offered by S Tel, the CAG estimated the loss to the exchequer at 67,364 crore. The second method was based on the price discovered by the 3G auction in 2010. The CAG reasoned that since 2G is really 2.75G (EDGE), its price should be comparable to that of 3G licenses. Based on this method, the CAG estimated the loss to the exchequer to be 176,000 crore. The third method was based on the fact that some of the licensees received FDI in the form of equity, shortly after the spectrum allocation. The CAG reasoned that it can be construed as resale of the spectrum by the licensee, and hence was a valid basis for assessing loss to the exchequer. Based on this method, the CAG estimated the loss of exchequer between 57,666 to 69,626 crore. Then Congress-party led government publicly defended itself and Kapil Sibal who replaced A. Raja as the Communication Minister refuted the CAG reasoning. He justified his government's decision not to auction 2G spectrum as being in line with the policy guidelines laid down by the 10^{th} Five-year plan.

Then Telecom Minister A Raja resigned from government. The Comptroller Vinod Rai issued show-cause notices to Unitech, S. Tel Loop Mobile, Datacom and Etisalat to respond to his assertion that all of the 85 licenses granted

to these companies did not have the up-front capital required at the time of the application and were in other ways illegal. Some media sources have speculated that these companies will receive large fines but not have their licenses revoked, as they are currently providing services to consumers. Mr. Sibal contended that the notional losses quoted are a result of erroneous calculations and insists that the actual losses are nil. The CBI conducted raids on Raja and four other telecom officials viz; Siddharth Behura, R K Chandolia, K Sridhar and A K Srivastava. Considering the magnitude of the crime, Kanimozhi, MDK MP and Karunanidhi's daughter, was arrested and sent to Tihar Jail because there was a possibility to influence the witnesses.

Arrests and charge sheet

First time, on February 2, 2011, the Central Bureau of Investigation arrested former Telecommunications Union Minister Andimuthu Raja, Raja's personal aide R.K. Chandolia, and former Telecom Secretary Siddhartha Behura. They were heard in conversation with Nira Radia tape. After that Shahid Usman Balwa was arrested. Shahid Usman Balwa was very close to Raja and it was considered that he was instrumental in channeling the kickbacks allegedly received by then telecom minister A Raja. Asif Balwa, brother of Shahid Usman Balwa and Rajeeve Agarwal was also arrested for their involvement in money transfer to Kalaingnar TV Channel. DMK Member of Parliament Kanimozhi and Kalaingar TV Managing Director Sharad Kumar were also arrested by CBI on order of Special Judge. After investigation, CBI filed an 80,000 pages charge sheet before Special Court in Delhi.

Public accounts committees

A 21 member's Public Accounts Committee, was set up to make proper inquiry of the case. The committee has taken a decision to call for questioning top officials of the PMO, Cabinet Secretary, Attorney General, and CBI Director. The

committee submitted its report on 2G scam to Lok Sabha Speaker and insisted that it be tabled in the Parliament. UPA member's termed it unconstitutional but then chairman of the committee, Murli Mnohar Joshi pointed out that such a possibility does not exist till the report is read by members and discussed para by para in Parliament. Defending the decision of calling witness from various fields, M M Joshi said that it was the duty of PAC to trace and examine the way the money of the common is spent. He alleged that during last meeting of the committee, ministers passed a chit and called up PAC members to speak and behave in a particular manner. It was commented by a minister that the PAC report should be thrown in dustbin.

Concluding remarks

Over the period of time, especially after 1990, the corruption has become more dangerous in India. The most significant factor for promoting corruption is discerning erosion of morals and ethical values in public life. In wake of westernization, industrialization and urbanization the materialism and consumerism has grown at the highest level in India. Obviously, the forces of morality including the Gandhian principles of ethical life have become more superficial. These principles are not able to penetrate into the psyche of Indian and influence their conduct in personal and occupational life. Lust for wealth and power has become instrumental in corrupting public life.

Introduction

The human rights have usually been understood to be rights relating to life, liberty, equality and dignity. Human rights are universal legal guarantees protecting human beings against actions and omissions that interfere with human dignity and fundamental freedoms of individuals[1]. Human rights in India have been given a strong constitutional underpinning and have developed through revolutionary judicial involvement. Under section 2(d) of the Protection of Human Rights Act, 1993, the human rights have defined as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India. However, corruption attacks the fundamental values of human dignity and political equality of the people. There is an imperative call for devising a new fundamental human right to corruption free service. The development of a fundamental human right to a corruption free society will be observed initially from an international perspective so as to elevate the violation of this right to the status of an international crime. This would provide a comparative basis to elevate the right to corruption free service to the status of a fundamental right within the frame work of the Indian constitution[2]. Mr. P.C. Alexander believes that paying bribes is the negation of the right of the citizen. Hence citizen needs to be more aware of his right. Lack of transparency in public dealings also opens the door to corruption.

Corruption spreads favoritism, imbalance and foregone conclusions. Corruption prevents the full realization of economic, social and cultural rights. Corruption pilots the breach of several civil and political rights. Corruption has for many, became a matter of habit, ranging from grand corruption involving persons

[1] M.K. Sinha, *Implementation of Basic Human Rights* (Manak Publications, New Delhi, 1999).

[2] "Corruption and Human Rights: The Right to Corruption Free Service-Some Constitutional and International Perspectives'' available at http://www.cscsaarchive.org:8081/Media archive/liberty.nsf/%28docid%29/FE3EDO5FCA7AD418E5256C510026A313 accessed on 24 /5/2012.

in high places to retail corruption touching the everyday life of common people[3]. Whatever may be the out ward appearance of corruption one blotch is sure that it ensures the defiance of human rights for development. The state also fails to fulfill its duties toward the public at large, because a corrupt state loses its authority and ability to govern for the common good. Corruption concerns poor intolerably. As the corruption generates essential unfairness in the poor's access to justice and to other development services the required result of good governance cannot be visualized. Corruption strikes at the roots of good governance. It is an obstruction to quicker development. It dilutes, if not negates, the efforts of social inclusion. It is a dent on the international image of a country and degrades the government before its own countrymen. In the words of Kofi Annan, "Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the equality of life, and allows organized crime, terrorism and other threats to human security to flourish"[4].

Corruption can be put in plain words as an act done with intent to gain some advantage inconsistent with official duty and the rights of others. It includes bribery but, an act may be corruptly done, though the advantage to be derived from it is not offered by another.[5] It is the misuse of public power, office or authority for private gain through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement[6]. Corruption is identified with any person or institutions who misuse the power and discretion conferred on the same. Ordinary citizens face unnecessary problems in their routine interactions with governmental

[3] Available at http://www.loksatta.org/cms/documents/advocacy/corruption.pdf accessed on 25/7/2012.

[4] "Corruption is a Violation of Human Right"-Justice K.G.Balakrishnan, Chief Justice of India, delivered this keynote address at the National Summit organized by the Foundation for Restoration of National Values on November 18, 2008 at the India Habitat Centre, New Delhi.

[5] Lectric Law Library Lexicon available at: www. lectlaw.com/def/c314.htm.

[6] UNDP policy paper, July, 1998 United Nations Development Programme Oslo Governance Centre. The Democratic Governance Fellowship Programme "The Impact of Corruption on the Human Rights based Approached to Development'' September, 2004.

agencies. Practices such as the acceptance of favors or misappropriation of public funds have actually come to be described as perks of holding public office and employment[7]. U.N. Secretary General, Ban-Ki-Moon said on the occasion of International Anti-Corruption Day on 9 December, 2009 that it is the world's vulnerable who suffer "first and worst" by corruption such as the theft of public money or foreign aid for private gain. The result, he says, is fewer resources to fund the building of infrastructure such as schools, hospitals and roads. Mr. Ban notes, however, that corruption "is not some impersonal force" but the result of personal decisions, most often motivated by greed.[8] The anti-social activity conferring improper benefits country to legal and moral norms is a global phenomenon.

The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have acquired larger authority as more and more nations have appreciated the significance of these human rights as instruments for good governance. Honesty in governance is a sine qua non for an efficient system of governance and for socio- economic development. A significant prerequisite for the guarantee of goodness in governance is the absence of corruption and enjoyment of fundamental human rights[9]. On the linkages between corruption and respect for human rights Kofi- Annan mentioned in his 'In larger freedom' report, "we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without the respect for human rights".[10]

[7] "Corruption is a Violation of Human Rights"–Justice K.G.Balakrishnan, *supra* note, 4.

[8] Available at http:// www.unode.org/unode/en/corruption/index.html

[9] Gurdip Singh & V.K. Ahuja, *Human Rights in 21ST Century Changing Dimensions* (Universal Publishing Co. Pvt. Ltd., New Delhi, 2012) 794 at 796.

[10] "Corruption, Poverty and Development" by Patrick Keuleers regional advisor, democratic governance group, UNDP Regional Centre for Asia and the Pacific, Bangkok available at: Http: //oecd.org/dataceed/62/54/35593188.path.

Corruption rebuffs citizens the fundamental economic and social rights guaranteed to them by the Universal Declaration of Human Rights (UDHR). With the existence of a wide ranging international legal command on human rights, states are under the responsibility to promote, protect and respect the human rights of their people. It is a well-timed twist of fate that International Anti-Corruption Day,[11] is observed a day before the International Human Rights day[12] , because corruption is a human rights concern. In the discourse of international law, the prevalence of corruption is now considered to be a violation of basic human rights[13]. The concern of corruption as a violator of human rights is one of the important factors having deportation from the development. Good governance is not possible unless it is free from corruption. Corruption is seen to be one of the major drains on the resources of a country. No country can afford to close its eyes to this malaise.

In the context of the human rights implications of corruption, there is a need to examine the right to access to justice and its linkages with corruption. At the core of the notion of access to justice lies the right of an individual to have access, and the obligations of the government to provide it[14]. A society that fails to recognize and effectively implement access to justice cannot establish the rule of law. Access to justice, like the rule of law is not merely a matter of form without substance. Just as the enactment of any law does not by itself satisfy the requirement of the rule of law the more existence of any means for seeking justice does not actively ensure access to justice. Access to justice depends on, among other things, the availability suitability, efficiency, and convenience of the forum, and the capacity- economic, social physical or otherwise-of the person seeking

[11] The first International Anti-Corruption Day was observed on 9th December, 2004.
[12] 10th December, the Day of Universal Declaration of Human Rights, 1948.
[13] *Supra* note 4.
[14] C. Raj Kumar, *Corruption and Human Rights in India: Comparative Perspectives on Transparency and Good Governance*, (Oxford University Press, New Delhi, 2011) at 7, para 2.

access to justice[15]. What needs to be recognized is that the fundamental problem of empowering the citizenry in the fight against corruption which has been largely neglected in India. Understanding the linkage between corruption and access to justice involves recognizing that certain acts of corruption are human rights violations[16]. Thus, what is significant about the recognition of corruption as a human rights violation needs to be examined closely. One may ask that as numerous human rights violations, take place in India every day, even if corruption were recognized as a human rights violation, how it would help in the larger fight against corruption[17]. Thus, the central question becomes, to what extent does the recognition of corruption as a violation of human rights helps in the fight against corruption? Human rights violations have assumed great significance and receive attention in societies around the world. With reference to the enforcement of economic and social rights, Audrey Chapman has argued that "a violation approach" is more feasible precisely because it does not depend on the availability and pubic release of extensive and appropriate statistical data or on major improvements in states statistical system. The monitoring of human rights is not an academic exercise it is intended to ameliorate human suffering resulting from violations international human rights standards[18]. The mere recognition of human rights violations followed by actions that will help in the enforcement of human rights could itself be an effective tool in the fight against corruption. Corruption needs to be recognized not only as a violation of specific human rights, but also as an issue that undermines the ability of the governments to create conditions for the fulfillment of all human rights. Under this paradigm, the focus of efforts to eliminate corruption would be on the people who are affected by the acts of corruption[19]. In a background note for the UN Conference on Anti-

[15] *Ibid.*
[16] *Ibid.*
[17] *Id.*, at 8.
[18].Audrey R. Chapman, "A Violation Approach to Monitoring the International Covenant on Economic, Social and Cultural Rights" 1 (10) *Human Rights Dialogue*, 1997.
[19] C. Raj Kumar, *supra* note 14, at 8.

Corruption Measures, Good Governance and Human Rights held in Warsaw during 8-9 November, 2006 it was observed:

The corrupt management of public resources compromises the government ability to deliver an array of services, including health, educational and welfare services, which are essential for the realization of economic, social and cultural rights. Also the prevalence of corruption creates discrimination in access to public services in favor of those able to influence the authorities to act in their personal interest, including by offering bribes. Importantly, corruption in the rule of law system weakens the very accountability structures which are responsible for protecting human rights and contributes to a culture of impunity since illegal actions are not punished and laws are not consistently upheld.[20]

India's major menace in public life is corruption. When our nation became free from British imperialism we made a tryst with destiny to wipe every tear from every eye by the elimination of poverty and eradication of corruption. But during the last several years of independence corruption in our public life has mounted. Long ago, Britain, an imperial power and India, as one of its largest colonies, are of the victims of corrupt administration. When the British trampled over India and every British ruler amassed wealth by corruption, it provoked independence by statutory enactment. The notoriously exploitative Warren Hastings who was impeached for corruption demonstrated how public power not accountable to even the great office of Viceroy led to impeachment and produced eloquent speeches by men like Edmund Burke who in his address of the impeachment of Warren Hastings orated[21]:

"I impeach him in the name of the people of India, whose rights he has trodden under foot, and whose country he has turned into a desert. Lastly, in the

[20] UN Office of the High Commissioner for H R (OHCHR), Background note for UN Conference on Anti-Corruption Measures, Good Governance and Human Rights. Warsaw, November, 2006.
[21] C. Raj Kumar, *supra* note 14 at. xxi.

name of human nature itself, in the name of both sexes, in the name of every age, in the name of every rank, I impeach the common enemy and oppressor of all"!

So when India became free, Jawaharlal Nehru in his historic tryst with destiny speech stated[22]:

"Long years ago we made a tryst with destiny and now the time comes when we shall redeem our pledge not wholly or in full measure but very substantially. The service of India means the service of the millions who suffer, it means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye".

The millions of poverty stricken people of India were condemned to suffering because their imperial masters robbed India of its wealth. Despite this disastrous experience of corruption by the British rulers in India, free India did not have a clean administration Indians, instead, were in the words of Winston Churchill, rogues, rascals and freebooters. During the last several years of swaraj, corruption has been ubiquitous and universal. One of the inevitable consequences of corruption is terrorism, communalism, and the suppression of human rights[23].

The greatest menace to the human rights of the Indian people is not the lack of constitutional grandeur with dignity and divinity enshrined in the paramount parchment. In the abandonment of integrity, fraternity, unity and humanity, the greatest challenge of the statesmen of India is to make its politics straight and beyond pollution. If, we the people of India are to be true to its cultural heritage, we must struggle to win swaraj and jettison corruption[24]. Our contribution is great

[22] Available at: http://en.wikipedia.org/wiki/Tryst_with_Destiny. Last visited: 22/08/1014.
[23] C. Raj Kumar, *supra* note 14 at, xxi.
[24] *Id.*, at xxii.

but our administrators have betrayed our supreme cultural past. What was the sublime value-system in the words of Max Mueller[25]?

"If we were to look over the whole world to find out the country most richly endowed with all the wealth, power, and beauty that nature can bestow in some parts a very paradise on earth, I should point to India. If I were asked under what sky the human mind has most fully developed some of its choicest gifts, has most deeply pondered over the greatest problems of life and has found solutions of some of them, which will deserve the attention even of those who have studied Plato and Kant, I should point to India. And If I were to ask myself from what literature we here in Europe, we who have been nurtured almost exclusively on the thoughts of Greeks and Romans and of one Semitic race the Jewish, may draw the corrective which is most wanted in order to make our inner life more perfect, more comprehensive, more universal, in fact more truly human a life not for this life only, but a transfigured and eternal life, again I should point to India".

Corruption and its relationship with human rights

Human rights are fundamental rights relating to life, liberty, dignity, and equality. Over the years, human rights law has undergone a dramatic expansion, constantly evolving the legal and institutional mechanisms to enforce the rule of law, ensuring transparency in governance, promoting accountability and most of all fostering a sense of human dignity.[26] Both the domestic and international human rights frame works are under challenge due to the social expectations generated by the language of human rights documents and their unfulfilled promises, and gap between the rhetoric of human rights and the reality of their enforcement. It is in this context that there is a need to examine the relationship

[25] *Id*., para 2.

[26] International Council on Human Rights Policy (ICHRP) and Transparency International (TI) , Corruption and Human Rights : Making the Connection (2009).

between corruption and human rights[27]. Corruption has a pervasive impact on all institutions that are working towards the protection and promotion of human rights. In fact, it can be argued that the elimination of corruption in a number of sectors of governance can significantly strengthen the enforcement of human rights. For example, the police, in most countries, are known to have power relating to arrest and other forms of law enforcement power.[28] We also know that the human rights frame work places a lot of emphasis on the law enforcement machinery being held accountable and making certain that no human rights violations are committed in the course of enforcing the law. A case in point is the evolution of freedom from torture and other related rights that have emerged out of the human rights movement to make the police and other law enforcement machinery accountable.[29] Now, if the police department or related departments in a country are corrupt, then the basic frame work for human rights and law enforcement, including the principle of equality and non- discrimination is violated.[30]

Torture is a tool that is regularly adopted by the police and law enforcement officials in many developing countries including India for the purposes of investigation of crimes, and in extreme cases with a view to fulfilling an illegal order by certain powerful interests. The relationship between torture and corruption is interesting. The ability of people to pay bribes and engage in acts of corruption can facilitate the torture of individuals who are accused of crimes. Paying of bribes by the accused may actually prevent them from being tortured by the police and other law enforcement officials. Similarly, if the accused persons are not in a position to pay bribes, then the chance of torture being committed

[27] *Ibid.*

[28] Naved Ahmad and Oscar T. Brookins, "On Corruption and Countervailing Actions in Three South Asian Nations" 7 (21) *Policy Reform,* 2004.

[29] Sunil Sondhi, *Combating Corruption in India: The Role of Civil Society*" paper for xviii World Conference of the Int'l Pol. Sc. Assoc (2000).

[30] International Council on Human Rights Policy (ICHRP), Integrating Human Rights into the Anti-Corruption Agenda: Challenges Possibilities and Opportunities (2009).

against them is indeed higher. More ever, the law enforcement machinery as a pervasive system of corruption among law enforcement officials would make the potential victims of crimes and abuse of power feel threatened conversely, the perpetrators of crimes would feel emboldened they know that since the police are corrupt, they can always escape the clutches of the law and the justice system by paying bribes or other forms of illegal gratification. The victims would feel threatened, as they know that since the system is corrupt, they have little or no recourse to law and that the justice system will not be able to respond to their victimization. In fact, the plight of poor victims is much worse as they do not have the capacity to pay bribes.[31]

Thus, the cycle of a corrupt system of governance would have little incentive to protect the human rights of the people. The focus of this system would then be to enforce the law in a discriminatory manner where the people who give bribes are given favored treatment.[32] This linkage between the existence of corruption and the lack of enforcement of human rights can be examined with regards to all human rights, civil, political, economic, social and cultural.

Corruption and its implications for the rule of law

Protecting the rule of law is essential for progress and development in all societies. Most countries, including countries in Asia, have laws against corruption. However, there is a threshold problem that the countries in Asia face, concerning the protection of rule of law. The laws relating to corruption are violated like many other laws, and the enforcement machinery is too weak to pursue action against the violators. The relationship of the rule of law to corruption can be understood in three stages[33].

[31] UN Development Programme , "The Impact of Corruption on the Human Rights Based Approach to Development" (2004)

[32] Sunil Sondhi, *supra* note 29.

[33] C. Raj Kumar, *supra* note 14 at 31.

Firstly**,** there is wide disregard for the law and its instrumentalities, and consequently, a lack of respect for law. This includes a lack of respect for laws relating to corruption.

Secondly, corruption is used as a method to violate laws, break rules and regulations, abuse powers, and also exercise discretion in a wrongful manner. In all these aspects the regulatory framework of the state apparatus is made dysfunctional due to institutionalized corruption across all departments of the government.

Thirdly, laws, legal institutions and enforcement mechanisms are manipulated by way of corruption in a manner by which corruption became a tool for promoting lack of respect for the rule of law. In this context, many violations and violators overcome legal scrutiny of law enforcement by paying bribes and engaging in other forms of corrupt behavior. This has created a situation where the rule of law is replaced by the rule of powerful people, be it politicians bureaucrats, business persons, or other powerful interest groups who are able to manipulate the law enforcement machinery through corruption. Even when anti- corruption cases came before the courts, there is a strong element of non legal and political factors in play that undermine the neutrality of the criminal justice system and all the legal and judicial processes related to fighting corruption. 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[34]. The problem of law enforcement, including anti-corruption law, attacks at the very basis of democracy and the time has came to tackle it in a systematic manner in countries in the Asia–Pacific region[35]. While there is no single solution, it is important to recognize that initiatives should

[34] C. Raj Kumar, National Human Rights Institutions and Economic, Social and Cultural Rights: Towards the Institutionalization and Developmentalization of Human Rights, 28 Human Rights Quarterly (2003).
[35] Press Release, General Assembly, "Secretary- General Lauds Adoption by General Assembly of United Nations Convention against Corruption" 3 November, 2003.

primarily be intended to inculcate a respect for law among the citizenry.[36] This means that all legal, institutional, judicial and constitutional measures to ensure the rule of law should be oriented towards imparting a respect for law on the basis of the belief that it will be enforced equally and fairly. In India, corruption has huge implications for the protection of rule of law. As corrupt acts are primarily violations of law, they have serious implications for the protection of the rule of law. The rule of law is based upon the belief that a society should be built around people conducting their activities in a lawful and predictable manner, the government acting on the basis of law, and rules and regulations being made and their enforcement being performed in a non-discriminatory fair and reasonable manner. Corruption of the kind that prevails in countries in the Asia-Pacific region threatens the rule of law fabric prevailing in society. Laws are constantly violated creating a vicious cycle of bribery and influence peddling that has resulted in a cynical public attitude towards law enforcement. It is useful to understand the jurisprudential foundations of the rule of law in order to be able to relate them to the issue of corruption. The International Commission of Jurists defines the rule of law as the principles, institutions and procedures, not always identical but broadly similar, which the experience and traditions of lawyers in different countries of the world often themselves having varying political structure and economic backgrounds, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of man.[37]

Summarizing the various conceptions of the rule of law given by the modern theorists, a scholar, Hernandez Truyol has observed that there are three characteristics central to a cogent notion of the rule of law[38]:

1. The absence of arbitrary power on the part of the government.

[36] C. Ray Kumar, Rule of Law and Legal Education, The Hindu, 4 July, 2006
[37] International Commission of Jurists, "The Dynamic Aspects of Rule of Law in the Modern Age" (1965)
[38] C.Raj Kumar, *supra* note 14 at 34.

2. The administration of ordinary law by ordinary tribunals and.

3. The existence of a general rule of constitutional equality resulting from the ordinary law of the land.

With these characteristics, the rule of law serves three purposes:

i) It protects against anarchy.

ii) It allows persons to rely on laws and plan their lives in a way by which they can predict what consequences will flow from their actions and

iii) It protects against arbitrary and capricious actions of the government. It is useful to see how corruption affects the fulfillment of the rule of law and thereby undermines law and justice.

The following are the specific circumstances generated due to bribery and other forms of corruption, thereby negatively impacting the rule of law:

a. Arbitrary decision-making process violates the rule of law

The state and its instrumentalities which are entrusted with responsibility of distributing resources in a fair and non–discriminatory manner, often conduct their activities is an arbitrary manner[39]. This arbitrariness is further promoted by irrelevant criteria infused into the decision- making process on account of corruption. This violates the rule of law and leads to the Indian citizenry losing

[39] Harsh Mander & Abha Joshi, "Movement for Right to Information in India: People's Power for Control of Corruption" available at http: www.humanrightsinitiativeorg/progams/ai/rti/india/ articles/the%20movement%20for%20RTI%20in%India.pdf. Last visited: on 08/08/2014.

faith in the administrative system. Thus arbitrariness on account of corruption has become institutionalized in India[40].

This means that decisions are taken in a fair manner only as an exception. The impact of it on citizenry is profound, as people do not have faith in the criminal justice, or the civil justice systems. An example of an area of governance where arbitrariness in decision- making leads to corruption is government procurement.[41] A number of countries in Asia have taken steps to address this. In recent years, South Korea has taken on a number of initiatives to reform the government procurement process. It may be noted that government procurement in Korea is worth USD 83 billion a year. The regulatory frame work includes the Act on Contracts, to which the state is a party, the Enforcement Decree of the Act on Contracts to which the state is a party, and the Government Procurement Act.

b. Discrimination in administration undermines the rule of law

One of the important consequences of corruption is widespread discrimination. Power holders exercise their discretion to discriminate against people with bribe-givers receiving favorable treatment and the people who do not give bribes being unfairly victimized[42]. Discrimination in administration due to bribery and other forms of corruption promotes a sense of frustration and helplessness among the victimized as there are no effective mechanisms for redress. Inevitably, the victims of this discrimination tend to be the poor, whose capacity to give bribes is far less than that of the middle or upper classes[43].

c. Abuse of discretionary powers violates the rule of law

[40] *Ibid.*
[41] OECD, "Fighting Corruption and Promoting Integrity in Public Procurement" as cited in C Raj Kumar, *supr*a note 14.
[42] Kumar, Corruption and Human Rights, as quoted in C. Raj Kumar, *supra* note 14 at 36.
[43] *Ibid.*

Corruptions takes place on account of abuse of the discretionary power vested with the government in decision making. Notwithstanding the fact that economic reforms have removed some of the traditional rules relating to the exercise of the discretion by government officials, there are still a number of areas in which the government remains the sole authority for exercising discretion. While privatization is not only answer to removing corruption, it is important to infuse enforceable mechanisms of transparency and account -ability that will promote fair, non discriminatory and reasonable exercise of discretion[44].

Discretionary power for government officials becomes a fertile ground for abuse and thus, corruption becomes a norm.[45] In many countries in Asia, where a significant section of the populace is ignorant of its rights and is also impoverished it is important to ensure that abuses of discretion do not take place. Even if corrective mechanisms in the form of institutions and anti-corruption agencies are in place and are effective, it is important to create accountable structures for the administrators, particularly when they have discretionary power. Further, as far as possible, these discretionary powers should be limited and in due course made on the basis of objective and determinable criteria so that opportunities for bribery and other forms of corruption are reduced if not altogether eliminated[46].

d. Unpredictability in law enforcement affects the rule of law

Institutionalized corruption in many countries in Asia has created a lot of uncertainly and unpredictability in the enforcement of anti- corruption laws. Further, due to the lack of independence of anti-corruption institutions, the level of uncertainty when it comes to cases relating to investigation, prosecution and

[44] Anne Marie Goetz and Rob Jekins, "Hybrid Form of Accountability: Citizen Engagement in Institution of Public-Sector Oversight in India" 3 *Public Management Review* (2001).

[45] Fidel V. Ramos, "Good Governance against Corruption" 25 *Fletcher for World aff (*2001) available at http:// fletcher tufts edu) forum/ archives/42.

[46] Yukiko Mike, "Revealing Corruption through Japan's Information Disclosure Law" in Global Corruption Report 2003 (Transparency International, 2003).

conviction of people who are charged on grounds relating to corruption, is high[47]. This has affected the rule of law as the basis for criminal justice, as it has been replaced by other extraneous factors like the political importance of the particular anti-corruption case to the government in power and the availability of manpower, expertise and experience of the investigating authority in investigating the particular case. Inefficiency and ineffectiveness of the criminal justice system has infused unpredictability in corruption cases, which ought to be investigated with a sense of professionalism, integrity, and fairness. Much of this has been due to the lack of institutional autonomy and the haphazard manner in which different agencies deal with corruption cases. Jan Quah has observed that the low risk of detection and punishment of acts of corruption in Asia is one of the major causes for rampant corruption.[48] To substantiate this point, he has compared the prosecution rates in Hong Kong and the Philippines. Thus, a civil servant committing a corrupt offence in Hong Kong was 35 times more likely to detected and punished than his counterpart in the Philippines[49].

Establishing a rule of law society became essential for ensuring low level of corruption in governance. The need for a political will in the form of commitment of the leaders of a particular state or government becomes essential for the eradication of corruption. In this regard, Jon Quah has further observed that success occurs where three conditions are met. First, comprehensive anti-corruption legislation is enacted; secondly, an independent anti-corruption agency is provided with sufficient personnel and resources; and thirdly, the independent agency fairly enforces the anti-corruption laws.[50] The success of Singapore and Hong Kong in substantially eliminating corruption is a useful case in point for

[47] UNDP/UNODC, "Report of the Regional Forum on Anti-Corruption Institutions" (2005) available at. http:// europeandcies undp.org/files/uploads/Lotta/AC%20Forum%20Report.pdf

[48] Jon S.T. Quah, "Curbing Asian Corruption: An Impossible Dream? 105 *Current History"* 176 (2006) available at http:// iis-db.standford.edu/ pubs/211128/Corruption_article_in_CH.pdf (Last visited 11 July, 2012).

[49] *Ibid.*

[50] *Ibid*

many countries in Asia to examine the need for ensuring independent institutions that fight corruption[51].

Corruption and its impact on human rights

Corruption is a crime which attracts criminal law sanctions under domestic statutes is undisputed.[52] Efforts to fight corruption should, therefore, necessarily include the strengthening of criminal law mechanisms, including the law enforcement machinery and, in general, the effectiveness of the criminal justice system[53]. But experiences in developing countries have demonstrated that corruption, besides being a crime, which needs to be punished through principle of criminal law. Have other consequences for governance as well. One of the most serious consequences of corruption for governance is its impact on the promotion and protection of human rights[54].

The first step in developing a theoretical framework for recognizing corruption as a human rights issue is to examine the different types of human rights that are affected through corruption[55]. The right to equality is one of the fundamental rights that is protected both within domestic and international legal frame work. Articles 26 of the ICCPR states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.[56] The Constitution of India[57], Sri Lanka[58], Bangladesh[59], and Pakistan[60] have

[51] C. Raj Kumar, "Human Rights Approaches of Corruption Control Mechanisms: Enhancing the Hong Kong Experience of Corruption Prevention Strategies" 5 *San Diego International Law Journal* (2004) at 323.
[52] C. Raj Kumar, "Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia" 16(49) *Michigan, Stanford Journal of International Law* (2008) at 475.
[53] *Ibid*
[54] *Ibid.*
[55] C. Raj Kumar, *supra* note 14 at 42.
[56] International Covenant on Civil and Political Rights, 1966, Article 26.
[57] The Constitution of India, Article 14 reads: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".
[58] Sri Lanka Constitution, Article 12(1) reads: "All persons are equal before the law and are entitled to the equal protection of the law".

similar provisions that protect the right to equality of their people. Corruption violates the right to equality as the people who pay bribes are given favored treatment. Furthermore, people who are unable or unwilling to give bribes are discriminated against. Thus, there is violation of the right to equality, both substantive and procedural. In fact the problem of corruption is so pervasive that it affects both civil and political rights as well as economic, social and cultural rights in a significant manner, be it the right to freedom from torture, right to a fair trial, right to food, or right to health. Corruption in government departments violates the human rights of people who are entitled to these services[61]. While it is important to recognize that the mere recognition of corruption as a human rights violation will not necessarily immediately reduce the incidents of corruption[62]. But using the human rights approach has certain benefits that would lead to the eventual elimination of corruption. Human rights approaches help in exposing violation and empower victims and others to resist future human rights violations and to seek redress for those that have taken place in the past. This notion of empowerment is deeply embedded in the human rights approach to combating corruption. The form of corruption that is prevalent in developing countries has affected every governance mechanism and institutions in place, making mockery of democracy and the rule of law. In this social and political context, there is an urgent need to examine the problem of corruption from prospective not strictly limited to the criminal law approach, which pursues corruption as just another serious crime[63]. There are numerous advantages of recognizing corruption as a human rights violation in India[64].

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[59] Bangladesh Constitution, Article 27 reads: "All citizens are equal before law and are entitled to equal protection of law"

[60] Pakistan Constitution Article 25 (1) reads: "All citizens are equal before law and are entitled to equal protection of law".

[61] Kumar, "Corruption, Development and Good Governance" at 519 as cited in C. Raj Kumar, *supra* note 14 at 43.

[62] *Ibid.*

[63] *Ibid.*

[64] *Ibid.*

1. The moment when the crime of corruption is recognized as the human rights violation, it creates a type of social political and moral response that is not generated by crime notwithstanding seriousness of act.
2. The human rights of the people are typically protected under the constitution or other domestic legislations and would invite serious constitutional scrutiny by courts and other institutions.
3. The recognition of corruption as a human rights violation, besides inviting international attention, would also possibly bring into focus the violations of provisions of the international human rights treaties that have been ratified by many countries.
4. Finally, the response to human rights violations is based upon efforts to empower individuals and institutions so that there is proper redress for victims of the violations and that there is resistance to any such future occurrence[65].

Corruption and its effect upon international human rights framework

The global human rights movement has attempted to evolve new meanings and understanding to what constitutes human rights and how they can be promoted and protected. The gamut of civil, political, economic, social, and cultural rights under the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) have only reinforced the international community's desire to provide a normative framework for the protection of rights of the people[66]. The human rights frameworks in the ICCPR and the ICESCR are very useful for developing corruption prevention strategies particularly with regard to the protection of the rule of law and the right to equality and non- discrimination. These corruption prevention strategies would rest on the

[65] *Ibid.*
[66] C.Raj Kumar, *Supra* note 14 at 47.

premise that the human rights framework should provide a right to corruption free service based on the principle of freedom from corruption[67].

Article 1 of the ICCPR emphatically observes: "All people have the right of self determination and to freely pursue their economic, social and cultural development"[68]. Corruption clearly interferes in people's efforts to fulfill their economic self-determination. It also stifles the pursuit of economic, social and cultural development[69]. The fact the corruption interferes in the free progress of people to realize their rights as mentioned in the ICCPR is a good starting point for the integration of the human rights framework in the development of corruption prevention and elimination strategies. Article 26 of the ICCPR guarantees equality before the law and equal protection of laws, thus prohibiting any form of discrimination. The nature of official corruption is such that it clearly discriminates against people and favors bribe givers over those who do not give bribes. These bribe–givers receive undue favored status and are able to sue against the resources of the state, which they may not otherwise be entitled to. Corruption also does not allow for the development of equality before the law as it is fundamentally at odds with the principle of equal treatment[70]. Corruption clearly divides society on the basis of unfair and illegal considerations, culminating in gross disrespect for law and moral degradation. In anti- corruption initiatives that have examined the problem from a public policy standpoint, there is very little emphasis on the discriminatory aspects of corruption. But in practical terms, it is natural outcome of most corrupt transactions. Individual corruption in day to day government functioning has reached such alarming proportions in developing

[67] *Ibid.*
[68] International Covenant on Civil and Political Rights, 1966 Article1.
[69] Kumar, *supra* note 61 at 46.
[70] *Ibid.*

countries like India that corruption is institutionalized within the governance system[71].

The International Covenant on Economic, Social and Cultural Rights (ICESCR), like the ICCPR, refers to the principle of equality and non discrimination in the exercise of economic, social and cultural rights. The committee on economic, social and cultural rights, in one of its General Comments,[72] has referred to the legal obligation undertaken by state parties to the ICESR. The non discrimination aspect in Article 2 of the ICESR requires that states undertake to guarantee that the relevant rights will be exercised without discrimination.[73] It may be argued that states ought to take steps to ensure that there is no discrimination practiced against citizens in their efforts to exercise their rights to work, food, health, education, and other rights mentioned in the ICESR. Corruption in exercise of the above–mentioned rights emerges as a clear violation of this obligation. It is apparent that numerous development- oriented activities of states have been affected by corruption. Economic and social rights are eroded due to the corrupt transfer of public wealth to a few power holders. This creates a situation of further deprivation and impoverishment.[74] Article 2(1) of the ICESCR obligates states parties to take steps for the realization of the rights.[75] It is obvious that the steps taken should include too the removal of impediments in the realization of economic and social rights. As the corruption is one of the biggest obstacles, the states have a core obligation to take efforts against it. The ICESR has also pointed that all appropriate means, including the adoption of legislative measures must be taken to fulfill the legal obligations of member states under this covenant. The need for promoting transparency and accountability has been noted

[71] *Ibid.*

[72] Committee on Economic, Social and Cultural Rights "General Comment 3: The Nature of the State Parties Obligations" (Article 2, para1 of the Covenant), UN Document, E/199/23 (14 December, 1999) (ICESCR General Comment 3) as cited in C. Raj Kumar, *supra* note 14.

[73] International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Article 2 (2).

[74] Amartya Sen, *Development as Freedom* (Oxford University Press, Oxford, 1999).

[75] International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Article 2 (1).

as an important requirement for corruption free- governance. The Indian experience has demonstrated that the recognition of the right to information in India is an important step in ensuring this. Numerous factors played a part in the passage of the Right to Information Act, 2005, that recognized this right, such as the existing sound international human rights framework that provided for the right to information. India is a party to the ICCPR and Article 19 of the ICCPR protects the freedom to seek, receive and impart information. It is notable that during the first session of the UN General Assembly in 1946, it adopted Resolution 59(1), which stated that freedom of information is a fundamental right and the touchstone of all the freedoms to which the UN is consecrated[76]. The consequences of corruption on development are immense as the national and international funds that are allocated for development may be siphoned off due to corruption. Developing countries like India are provided with loans by other nations and multilateral lending institutions for various development related activities. This has resulted in social expectation generated with the countries for development related work. Yet this pursuit of development work is constantly disrupted as the funds are misused due to corruption thereby delaying, and on numerous occasions deterring the development process[77].

Corruption and its relationship with specific human rights

Corruption creates major obstacles to access to justice. To understand this relationship, it is necessary to know the determinants of access to justices which are as follows:[78]

a. Availability of the legal and institutional framework

[76] Article 19, Global Compaign for Free Expression, "What You Don't Know Can Hurt You" *India Together*, January 2001 as cited in C.Raj Kumar, *supra* note 14 at 48.
[77] Cheryl W. Gray and Daniel Kaufmann, Corruption and Development, 35 *Finance & Development*.7 (1998).
[78] C.Raj Kumar, *supra* note 14 at 49.

It is necessary to establish the legal and institutional framework for ensuring access to justice. In India, the judiciary is one of the most important institutions directly involved in ensuring access to justice[79]. There are also quasi-judicial institutions that perform certain judicial functions. If these institutions are themselves corrupt or not in a position to adequately respond to corruption, then the fundamental fabric of access to justice is undermined[80]. The existence of that are free from corruption is necessary for ensuring access to justice. Government ought to take steps to create such legal and institutional mechanisms[81]. The efficiency of the government and its functioning will depend upon its ability to translate sound policies into well executed ones[82]. It is also important that the legal and institutional mechanisms that are established work effectively and not result in duplication. The biggest challenge that needs to be addressed is the ability to develop internal mechanisms oversight and superintendence within the institutions of government so that transparency and accountability are maintained[83].

b. Awareness of institutions and processes

The availability of institutions that work to ensure access to justice needs to be supplemented by awareness of these institutions and process[84]. In India, and other developing countries, due to illiteracy, lack of awareness and poverty, the few people know of the existence of institutions and processes designed to ensure access to justice. If corruption prevails in these institutions, there is very little incentive for the officials to reach out to the people who may be in need of access

[79] Ramaswamy Sudarshan, "Rule of Law and Access to Justice: Perspectives from UNDP Experience" paper presented to the European Commission Expert Seminal on Rule of Law and the Administration of Justice as part of Good Governance, Brussels (2003) cited in C.Raj Kumar, *supra* note 14 at 49.

[80] C. Raj Kumar, *supra* note 14 at 50.

[81] *Ibid.*

[82] Sunil Sondhi, *supra* note 29.

[83] Deepa Mehta, "Tackling Corruption: An Indian Perspective" 126th International Senior Seminar Visiting Expert's paper Resource Material Series No. 66, available at: www.unafei.or.jp/english/pdf_/PDF_rms/no66/C_p85-90.pdf

[84] ADB/OECD "Anti-Corruption Initiative for Asia and the Pacific, Anti-Corruption policies in Asia and the Pacific: Progress in Legal and Institutional Reform in 25 Countries" (2006) at 79-81.

to justice. Furthermore, the people themselves may not have the confidence and the trust that is necessary to approach the institutions, especially if the institutions have acquired notoriety for corruption. Instilling among the people of a country faith and trust in the institutions and process that work to ensure access to justice is as important as the task of stabling these institutions[85]. Corruption undermines confidence in the integrity and impartiality of the process of gaining access to justice[86]. In the countries like India where corruption is deep and pervasive and people have little faith in the criminal justice system or in the anti-corruption institutions, a lot of effort needs to be put into empowering the citizenry to fight against corruption. Notwithstanding the best of intentions to fight corruption, it will not be effective if the people of the society do not come forward with necessary information and are not sufficiently discouraged to pay bribes to get their work done. This is indeed a complex problem and can be addressed only by a multi-pronged response. Civil society empowerment and education of the people is the central to this approach to fighting corruption.

c. Access to institutions and processes

Awareness of the existence of institutions and processes that ensure access to justice may not be sufficient if the people do not have the ability financial or otherwise, to seek access to these institutions. It is in this context that the state and its instrumentalities have an important role to play in empowering victims and providing them with mechanisms to seek access to justice through the institutions and processes that have been established for this purpose. However, corruption inhibits this accessibility as well[87]. Special interests and extraneous factors may come in to play in a corrupt legal system, rendering the people most deserving of

[85] Moshe Maor, "Feeling the Heat? Anti-corruption Mechanisms in Comparative Perspective" 12(1) *Governance* (2004).

[86] Kumar, "Corruption in Japan" as quoted in C. Raj Kumar, *supra* note, 14 at 51.

[87] International Council on Human Rights Policy (ICHRP) & Transparency International, "Integrating Human Rights into the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities" (2009).

legal aid and other programmers, unable to receive their benefits[88]. Even if the institutions and processes for ensuring the access to justice are established and functioning effectively, corruption undermines the integrity of the process. If corruption prevails in the decision making process, those who will receive legal aid or legal support from the state will be adversely affected, as will the poor, who are not able to pay bribes. Thus the effectiveness of the institutions and processes for ensuring access to justice should not only be seen from the standpoint of those dispensing justice, but also from the standpoint of the actual beneficiaries of these processes.

Corruption and its relationship to development

Human rights and human development are inextricably connected.[89] It may be argued that an integral approach to human rights and human development is essential for all progress. Fighting corruption is indeed central to achieving both human rights and human development[90]. But this integration needs to be supplemented with policy changes at all levels of decision making in the government in order for it to be effective. The integration of human rights and human development policies rests upon an examination of the similarities and differences between these two conceptions[91]. They are ideologically close enough to derive motivation and concern for each other, thus promoting compatibility and mutual understanding[92]. From an enforcement strategy standpoint they are different enough to be able to supplement each other[93]. Thus, an integrated

[88] "Corrupt Legal System Blocks Justice for All" Jakarta Post, 11 July, 1999.

[89] Human Rights and Development, available at: http://nzaidtools.nzaid.govt.nz/mainstreaming-human-rights-development.

[90] Manabí Majumdar, "Human Development and Human Rights through the Prism of Gender" 4 *International Development Ethics Association Newsletters* (200).

[91] UNDP, Chapter 1, Human Rights and Human Development, Human Development Report 2000, 19 (2000), available at: http://hdr.undp.org/en/media/hdr_2000_en.pdf.

[92] Human Development Report 2000, at19-26.

[93] *Ibid.*

approach of these two conceptions can result in significant improvements to human society, thereby facilitating in numerous ways the advancement of dignity, well being, and freedom of individuals in general[94]. The UNDP's Human development Report 2000 has correctly observed that any useful conception of human development cannot ignore the importance of political liberties and democratic freedoms[95]

If development is human right, all matters that affect the fulfillment of this right constitute inhibiting factors that affect the achievement of development.[96] Corruption is a strong inhibiting factor for development. Countries like India take steps to achieve human development by making provisions in the form of financial resources to fulfill the rights to education, food and health, by taking concrete steps to establish schools and other educational institutions, by creating job opportunities and other avenues that will ensure the accessibility of food to people, and by establishing hospitals and other health care facilities that will provide access to health care to the people. All these steps are intended to contribute to better standards of living and realizing a higher degree of development. But corruption undermines these efforts.[97] It is important to recognize that all acts of human rights violations are not necessarily due to corruption and that corruption is rights violation. To understand what acts of corruption constitute human rights violations, there is a need to understand the impact of corruption on development. It is not possible to understand the relationship between corruption and development without recognizing that access to justice is the central link between policies that promote governance on the one hand and policies that ensure development on the other. It is in this context that we need to develop our

[94] *Ibid.*

[95] *Ibid.*

[96] C. Raj Kumar, "The Human Rights to Corruption- Free Service: Some Constitutional and International Perspective, *Frontline*, 14 September, 2002.

[97] Sunil Sondhi, *supra* note 29.

understanding of the meaning of corruption and its consequences for access to justice and development.

The effect of impediments to development

Corruption impedes development significantly in India. The development objectives of a country are inextricably linked to resources and the efficient and effective use thereof. It the resources that are supposed to be used for fulfilling development objectives are transferred and wasted due to corruption, it will inevitably impede development and delay progress. Empirical studies have also demonstrated the links between corruption and development. It has been observed, that a country can derive a very large development dividend from better governance. We estimate that a country that improves its governance from a relatively low level to an average level could almost triple the income per capita of its population in the long term, and similarly reduce infant mortality and illiteracy.[98] The eight millennium development goals have a direct relationship with the need to ensure less corrupt governance. Corruption undermines the state's capacity to achieve the MDGs. The 2006 Corruption Perception Index prepared by Transparency International reinforces the strong linkages between prevalent of corruption and the problem of poverty in poor countries. Despite a decade of progress in establishing anti-corruption laws and regulations, today's results indicate that much remains to be done before we see meaningful improvements in the lives of the world's poorest citizens[99]. It was noted, 'a strong correlation between corruption and poverty is evident in the results of the CPI 2006. Almost three-quarters of the countries in the CPI score below five indicating that most countries in the world face serious perceived levels of domestic corruption[100].

[98] Daniel Kaufmann, "Back to Basic: 10 Myths about Governance and Corruption" 42 *Finance and Development* (2005) at 41.

[99] Transparency International, "2006 Corruption Perception Index Reinforces Link between Poverty and Corruption" Press Release on 6 November 2006 as cited in C.Raj Kumar, *supra* note 14.

[100] *Ibid.*

The right to development

Corruption has substantial negative consequences for development[101]. The development of a country of a large measure depends upon the economic policies and social consequences of these policies. Corruption affects both these aspects in a number of ways[102]. It affects economic growth, discourages foreign investment, and diverts resources meant for infrastructure, development, health and other public services such as education and anti-poverty programmes[103]. In essence, corruption poses serious challenges for governances and a country cannot achieve the goals of development without taking steps to curb corrupt acts. The development process ought to be based upon principles of transparency in governance and accountability of the administration[104]. Due to corruption, however, there is inefficiency and inequity is resource allocation. Our country is not able to sufficiently fulfill their MDGs and in that process is struggling to achieve social and economic development. In this context, there is a need to formulate integrated governance policies based on human rights and human development. This notion for developing to the rights is extremely relevant for our country and should be understood by evaluating the effectiveness of rights based approaches to development and how the right to development can be implemented[105].

Corruption, sovereignty and human rights

Corruption exists in most countries of the developing world including India. The human rights based approaches to understanding the problem of corruption recognize that corruption affects national sovereignty in way that

[101] Kumar, "Corruption in Japan" *supra* note, 86.
[102] *Ibid.*
[103] *Ibid.*
[104] *Ibid.*
[105] C. Raj Kumar, "Corruption, Human Rights and Development: Sovereignty and State Capacity to Promote Good Governance" 99 Am. Soc'y Int'l L. Proc. 416 (2005) as cited in C. Raj Kumar, *supra* note 14.

threaten human security, undermine human development and impinge on the fundamental rights and freedoms of the people[106]. Globalization has resulted in states coming to grips with reality of opening up their countries to trade, investment, and other forms of social, economic, cultural and political influences. This has resulted in the emergence of powerful global actors in the form of multinational corporations and business enterprises that are at times economically more powerful than the nation states themselves.[107] Thus the role of the state in assuming a leadership role in economic activities has diminished. If sovereignty is about states exercising power on the institutions of governance then the globalization has altered the parameters of this power. The intrusion of now domestic and international actors into the economic activities of nation states has added a new demotion to governance. Human rights have always based a formidable challenge to sovereignty. Contemporary international law recognizes that human rights violations committed by one state cannot be justified, even though the state commits such violations within its own borders.[108] The development of international law and international human rights law has only strengthened the understanding that states cannot hide under the veil of sovereignty when they commit human rights violations[109] Even states that commit violations of human rights never argue that it is their sovereign right to commit such violations against their people, rather they rely on the denial of such violations having taken place at all[110]. Corruption in the institution of the state, including the acts of corruption committed by politicians and bureaucrats, does not allow the state to exercise its sovereign powers properly or responsibly. In fact, corruption in the state and its institutions means that the state is not functioning to

[106] Kumar, "Corruption, Development and Good Governance, *supra* note 61 at 529.

[107] *Ibid.*

[108] *Ibid.*

[109] *Ibid.*

capacity and that the law enforcement machinery is weak[111]. There are five dimensions to how sovereignty is impacted by corruption.[112]

a. Security

The goal of every sovereign state is to ensure national security for its people so that peace and stability prevail in society. Corruption has the potential to threaten this achievement of national security. Human security is put another dimension of sovereignty. It seeks to ensure that the people of a state are empowered to face a wide array of threats, including terrorism, weapons of deadly diseases such as AIDs and SARs, and other environmental disasters due to global warming and climate change[113]. It is important to recognize the connections between corruption and sovereignty from both national and human security stand points so that all issues of public policy and governance a state is engaged in by way of its sovereign functions are pursued on the basis of transparency[114].

b. Law Enforcement

A sovereign state ought to ensure that laws are enforced in a non-discriminatory manner. Corruption does not allow this to happen. Hence, the criminalization of politics and politicization of crimes has become a common practice in India. Through such practices, the sovereign state becomes too weak to enforce the law and all institutions of governance suffer from a crisis of legitimacy as well as of autonomy and independence which are required to enforce the law, including that against corruption[115].

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[110] *Ibid.*
[111] *Ibid.*

[112] C. Raj Kumar, Corruption Undermining Democratic Governance, The Hindu, 23 December, 2005 available at: http://www.thehindu.com/2005/12/23 /stories/200512230202100htm.

[113] Kumar, "Corruption, Development and Good Governance" *supra* note 52 at 530.
[114] *Ibid.*
[115] *Ibid.*

c. Good Governance

A sovereign state ought to ensure the best practice of good governance. A corrupt state cannot ensure that its legal and political existence is duly supported by the governance process. The National Human Rights Commission can play an important role in ensuring such good governance. Thus, it is imperative that issues relating to corruption become an integral part of the mandates of the NHRC in India[116].

d. Development

The goal of any sovereign state is to ensure the social and economic development of its people. Contemporary international initiatives in the form of the MDGs underline this need effectively[117]. The UN Declaration on the Right to Development also emphasizes this point. It is the responsibility of a number of players, the most important being the state itself, to ensure that the MDGs are achieved[118]. The fulfillment of the MDGs is inextricably related to the state exercising its sovereign functions. However, it is seldom recognized that corruption plays a very important role in the state not fulfilling its functions[119]. Often, the resources allocated from domestic sources and development aids from international sources are diverted in the form of corrupt transfer of wealth to a few persons who are governing the country[120]. Thus, development aid becomes a source of huge internal conflict and improper use of resources, thereby undermining the sovereignty of the state. These actions delay and undercut the development process[121].

e. Human Rights

[116] *Ibid.*
[117] C. Raj Kumar, *supra* note, 14.
[118] *Ibid.*
[119] *Ibid.*
[120] *Ibid.*
[121] Kumar, "Corruption, Development and Good Governance" *supra* note 52.

The recognition of corruption as a serious human rights issue is based on the realization that the corruption of the state and its institutions hinders the full realization of civil, political, economic, and social rights, which are all related to the exercise of the right to development. Sovereignty as a fact of state responsibility demands that the state exercises its powers in a manner that ensures corruption free governance. This will ensure better protection and promotion of human rights. Further, the recognition of corruption as a factor that undermines the sovereign exercise of power means that our efforts to prevent and fight corruption lead to empowerment of the people[122]. Empowered people will have a greater commitment to ensuring good governance and development[123]. In a contemporary attempt to acknowledge this reality, the Right to Information Act, 2005 in India has the potential to empower the Indian populace.

Linkages between corruption and violations of human rights in India

It is necessary to the empowerment of the citizenry for combating corruption effectively in India. The human rights based approach of empowerment to citizenry recognizes the linkages between corruption, access to justice and development and also recognizes that corruption is a human rights violation. A lot of efforts have been made in India to combat corruption by promoting transparency in governance and the right to information but corruption continues to be a major obstacle preventing access to justice in our country, as it tends to negatively impact the poor more than those who can afford to pay bribe[124]. The problem of corruption is inextricably connected to poverty and unemployment. It has been observed that systematized illegal mining primarily uses poor migrants for its workforce. The migrants get startup funds from local businessmen who then receive half. To ensure there are no governmental raids on illegal mines, the

[122] *Ibid.*
[123] *Ibid.*

[124] Kumar, "Corruption Development and Good Governance" *supra* note 52, at 487.

businessman then must pay off local police and government officials. The impact of corruption on poor underscores the development and access to justice. Its consequences clearly reflect in the people's lack of faith in the legal system of a country. If institutionalized corruption is rampant across all departments of the government including the police, law enforcement machinery, judiciary and other bodies that are supposed to ensure access to justice there is a crisis in governance.[125] The linkage among corruption, access to justice and human development as they in turn affect human rights may outline in the following heads, particularly in India.

Governance paradigm

The governance framework of a country is shaped by number of policies. Development is about creating and expanding opportunities for people[126]. The development policies of countries are increasingly shaped by an understanding of the impact of these policies on the lives of the people. In fact, the very concept of human development brings the people to the centre of discussions relating to development. If the development needs of people are to be met, there is a need for the efficient and effective use of resources[127]. Corruption of any kind undermines and negatively affects the efficient and effective use of resources. It creates bottlenecks for development and misplaces development priorities. Corruption is antithetical to development as it is based on factors that are personally favourable to the beneficiaries of the corrupt transactions, rather than the people who should actually be benefitted by development policies[128]. Corruption manipulates development goals and distances the gap between the expectations of people from development and the actual consequences of development policies. Distressingly, when the effects of this phenomenon can be so broadly felt across the governance

[125] *Ibid* at 488.

[126] C. Raj Kumar, *supra* note, 14 at 82.

[127] *Ibid.*

[128] *Ibid.*

spectrum, it is overtly indicative of much larger issues in governance as a whole[129].

Institutional framework

Governance policies of countries are formulated and implemented by various domestic institutions. It is important that these institutions duly recognize the linkages between corruption, human development and access to justice[130]. Every institution functions on the basis of self assigned priorities for achieving certain goals and objectives. Unfortunately, the development goals of a society cannot be achieved if the institutions involved in implementing development policies do not sufficiently understand the need for implementing measures aimed at corruption free governance and access to justice[131]. The existing institutional frameworks have created fairly independent structures for dealing with corruption, human development and access to justice. Corruption for example is dealt with in a reactionary manner and the criminal law and law enforcement model is the most commonly used approach for responding to corruption[132]. Thus, it is primarily the police and law enforcement agencies that are involved in the fight against corruption. Development tasks are handled by various departments and ministries of governments that deal with policy formulation and implementation. Most of the time there is very little dialogue and coordination between institutions that deal with responding to corruption on the one hand and those institutions that are involved in implementing development policies on the other[133]. The third leg of triangle, access to justice, is unfortunately kept outside this framework. Since the judiciary is the institution entrusted with the task of adjudication and providing justice the policies relating to access to justice are typically kept outside the

[129] *Id.*, at 83.
[130] *Ibid.*
[131] *Ibid.*
[132] *Ibid.*
[133] *Id.*, at 84.

institutions dealing with development[134]. The problem gets even more complicated due to the fact that access to justice has been recognized to be a nebulous concept with varying interpretations. Further it is important to understand the notion of access to justice from the point of view of its direct implications for corruption and development[135]. This understanding is possible only if the existing institutional paradigm is challenged to provide a more inclusive framework that will take into account the linkages between corruption human development and access to justice[136].

Effect of cultural values and corruption

In the context of the cultural values debate, it is useful to examine whether the linkages between corruption, human development and access to justice in the Indian context have any cultural influences[137]. In India, human rights have proceeded as a domestic discourse informed by the international ideas. The basic argument has been put forwarded by a few authoritarian political leaders that the human rights approaches of the west are unsuited to the Indian cultural and political conditions[138]. In fact, the linking of corruption to cultural values needs an effective response that will recognize the importance of achieving access to justice for protecting human rights and ensuring human development[139]. The Bangkok Declaration of 1993, a formal declaration by the Asian Regional Meeting of the World Conference on Human Rights, observed that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm, bearing in mind the significance of national and regional particularities and various historical, cultural and religious

[134] *Ibid.*
[135] *Ibid.*
[136] *Ibid.*
[137] C. Raj Kumar, *supra* note, 14 at 85.
[138] *Ibid.*
[139] *Ibid.*

backgrounds.[140] The human rights framework does recognize the importance of national and regional peculiarities. The process of institutionalization of human rights in various countries and regions is expected to develop a local approach that would bear in mind the social, economic and political factors of the nation. But it is not acceptable for the human rights movement or the anti-corruption initiative to condone on the ground of culture. It is important to recognize that cultural values have become central to the discourse on corruption. The "cultural values" argument as challenge to the implementation of the constitutional democracy is exaggerated and fails to account for the richness of the cultural values discourse.

Thus, the cultural values argument is at best a weak critique of efforts at the international level to develop universal human rights mechanisms that are aimed at ensuring that constitutionalism and the rule of law are strengthened[141]. The lack of human rights mechanism due to these misguided arguments has an the flip side, resulted in government having difficulties in responding to other social problems, including the need for fighting corruption, promoting transparency and accountability and more importantly fulfilling the aspirations of the people to actively participate in democratic governance[142]. Thus in order to effectively combat corruption, the discussions relating to human rights and anti-corruption should move beyond the critique of the cultural values discourse. The experiences of successful models of institutionalization of human rights in other countries and regions of the world should dictate greater acceptability of such practices[143]. There is no evidence to suggest that culture has anything to do with tolerance or intolerance of corruption. While cultural values may help in shaping the ethics of a

[140] Declaration of the Ministers and Representative of Asian States, 29th March to 2nd April, 1993.

[141] Michael C. Devis, "East Asia after the Crisis: Human Rights, Constitutionalism, and State Reform" 26 *Human Rights Quarterly* (2004) at 126.

[142] C. Raj Kumar, *supra* note, 14 at 87.

[143] *Ibid.*

society, which themselves evolve over many years. It is difficult to argue that culture alter the framework for determining the prevalence of corruption[144].

Challenges to promoting human rights in India

The potential obstacles to promoting human rights can be indentified such as the antipathy towards civil and political rights, which leads to an emphasis on the economic aspects of the rights to development. The paramount importance accorded to collective interests who have been used to justify broad derogation of human rights in the interest of public order and the general treatment of human rights.

The discourse on human rights should embrace the need for integrating development and governance perspectives so that human rights issues are recognized as essential factors for achieving development[145]. This is true in the context of fighting corruption as it has a direct relationship with the strengthening of democratic institutions. The contemporary thinking on the relationship of civil and political rights with economic, social and cultural rights is based on the understanding that these rights are closely related and need to be protected and promoted together if their aims are to be fully achieved[146]. There cannot be any compromise or derogation of any set of rights for achieving another set of rights. Arjun Sengupta, the UN Independent Expert on Right to Development has observed that, there is no more room for promoting for one set of rights as against another or putting of forward some rights, such as economic and social to be fulfilled prior to or in violation of civil and political right vice versa. All rights

[144] *Ibid.*

[145] Michael C. Devis, "The Price of Rights: Constitutionalism and East Asian Economic Development" 20 Human Rights Quarterly (1998) at 303.

[146] C. Raj Kumar, *supra* note14 at 89.

have to be fulfilled together and the violations of one would be as offensive as that of another.[147]

Human rights activism has to take seriously the role of non state actors whose work will have a significant impact on the institutionalization of human rights[148]. Non State actors have come to attain an important place in societies all over the world. The functions of these non state actors have had a profound effect on human rights both positively and negatively. There a number of non-state actors like the media, national and International non-government organizations (NGOs), multinational corporation (MNCs), multilateral institutions like the World Bank and IMF, and international development institutions like the UNDP[149]. While this list is by no means comprehensive, it provides idea of what we understand by the term-non state actors. It is the time that the non state actors recognized this role and began to understand that the developmentalization of human rights cannot take place effectively if not state actors are not involved[150]. Simultaneously, it is need to recognize the role played by MNCs in the development process[151]. Often, in the name of free trade, there is a trend to ignore the accountability of MNCs with regard to human rights[152]. International institutions like the World Bank and IMF should themselves be committed to human rights. The integration of rights and development for good governance needs to be supplemented by actions that provide support to such efforts[153]. The institutionalization of human rights can be developed by promoting the development of National Human Rights Institutions (NHRIs).

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[147] Arjun Sengupta, "On the Theory and Practice of the Right to Development" 24 *Human Rights Quarterly* (2002) at 837-841.

[148] Kumar, "Corruption, Development and Good Governance" *supra* note 52, at 512.

[149] *Ibid.*

[150] *Ibid.*

[151] *Ibid.*

[152] C.Raj Kumar, "Human Rights Accountability of Transnational Corporations and Business Enterprises: Governance Perspectives" 6 *Corp. Governance Int'l* 15 (2003).

[153] Balakrishnan Rajgopal, From Resistance to Renewal: The Third World Social Movements, and the Expansion of International Institutions, 41 *Harvard International Law Journals* (200) at 529.

The role of good governance

There is an unfounded misconception that good governance concerns only issues related to anti-corruption. While anti-corruption is a very important component of any strategy to achieve good governance. To empower the citizenry, there is a need to formulate human rights based approaches to anti-corruption initiatives[154]. The UN Economic and Social Commission for Asia and the Pacific (UNESCAP) has observed that good governance has eight major characteristics, that are participation, rule of Law, transparency, responsiveness, consensus orientation, equity and inclusiveness, effectiveness and efficiency and accountability.[155]

Mainstreaming human rights means enhancing the effectiveness of human rights programmes and integrating them with a broad range of activities including development governance and the administration of states[156]. National institutions need to be established and governance policies formulated for the promotion of the right to good governance inevitably, the national institutions that already existed need to be reformed and re-oriented so that the governance imperative is fully appreciated[157]. Courts will inevitably play an important role in this process. There has to be a concerted effort to recognize that the right to good governance is an important component of developmental zing rights[158]. It is important for good governance to become an effective strategy for national growth and progress in a broader sense that anti-corruption efforts do not violate human rights. Moreover, the right to good governance needs to be institutionalized and for this purpose effective institutions like NHRIs and anti-corruption institutions have to be created

[154] C. Raj Kumar, *supra* note 14, at 91.

[155] UN Economic and Social Commission for Asia and the Pacific, "What is good governance?" available a t: http://umescap.org/pdd/prs/projectachtiviutia /ongoing/gg/governance.pdf.

[156] UN Office of the High Commissioner for Human Rights, "Human Rights in Development" available at: http://www.unchr.ch/development/mainstreaming/html.

[157] C. Raj Kumar, *supra* note 52.

[158] *Ibid.*

with necessary checks and balances to provide for institutional accountability and oversight[159]. The basic idea behind the right to good governance and the rights based approaches to development is to bring what was hitherto venue of political discussions into the day to day development activities[160]. The impact it can have on creating a humane society based on the protection and promotion of civil, political, economic, social and cultural rights for all people without discrimination all with due regard to participation of the populace in decision making that affect their lives is truly profound[161]. The rights based approach to development, which integrates human rights and human development to promote good governance, help forge deep social and economic partnerships between the government and the people based upon a shared sense of resources. The right to good governance as part of the right to development ensures that there is equal opportunity for all people to social progress and welfare[162].

Need to formulate a fundamental right to corruption free-services in India

There is no doubt that corruption affects the exercise of rights to each and every people in India. Rights are important political tools that are meant to empower people. The constitution of India has provided the fundamental rights and directive principles of state policy to ensure that the people are given the necessary legal and constitutional protections for the enforcement of their rights[163]. Corruption undermines the implementation of constitutional rights in India. Therefore, it requires a response that is based on the principle of human rights accountability. This principle provides for not only recognizing the violation but also remedial measures to seek redress for violation.[164] The constituent

[159] C. Raj Kumar, *supra* note, 14 at 92.
[160] *Ibid.*
[161] *Ibid.*
[162] *Ibid.*
[163] *Id.,* at 103.

[164] C. Raj Kumar, Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental Rights to Corruption free service in India, 17 Colum. J. Asian pp. 31 65 (2006)

assembly debates in India have rich source from which we can understand the hopes and expectations of the political leaders of that time in creating a constitution that would pave way for a social revolution. The framers of the Indian Constitution[165] provided for a comprehensive set of fundamental rights that could be enforced against the state.[166] There were also certain rights that could be enforced against private individuals.[167] It should be noted that the framers of the Indian constitution were themselves victims of gross human rights violations through the state instrumentalities of British rule, during which the law was used to justify various actions in violation of human dignity. The constitution provided a robust framework to ensure that fundamental rights were duly protected and that the government could withdraw individual freedoms only under specific circumstances.[168] Even these circumstances were subject to judicial review and needed to be fair, just and reasonable in order to be upheld.[169] In India, rights have been given the progressive and liberal interpretation to ensure that they provide a meaningful basis for good governance and freedom from exploitation. Experience has demonstrated that the concept of rights has been used by civil and political society to negotiate their claims within the scheme of democratic governance.[170] These struggles and negotiations have not always been successful from the standpoint of a constitutional system that bases itself on liberty, equality, and dignity. Nevertheless, they have survived for more than half a century to ensure that India remains a constitutional democracy.[171]

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[165] Mahendra P. Singh, *Constitution of India*, in V.N. Shukla (ed.), (Eastern Book company, Lucknow, 2003)

[166] *Ibid.*

[167] *Ibid.*

[168] Kumar, "Corruption and Human Rights" at 65 cited in C.Raj Kumar, *supra* note 14.

[169] Mahendra P. Singh, *Constitution of India*, *supra* note 165.

[170] Kumar, "Corruption and Human Rights" *supra* note 168.

[171] *Ibid.*

The question of corruption as a violation of human rights demands a constitutional response. In India, the system of constitutional governance and the processes of administration are tainted by corruption. Therefore, it is need to provide a constitutionally guaranteed fundamental right to corruption free service in India to its people. The Indian experience in recognizing constitutional rights, judicially enforcing those rights and empowering the citizenry has not been always encouraging.[172] The public interest litigation[173] movement in India has given same favourable signals to upholding rights through the constitution by means of an independent judiciary that is socially sensitive and activist.[174] But all these developments have their limitations and have fallen short of the social expectations they generated when the process began.[175] The fact that democracy itself is a tireless pursuit to ensure that the right and freedoms of individuals are duly protected and that individuals are offered legitimate channels to allow the free expression of frustration and disappointments gives hope that the governance system in India will improve.[176] However, these hopes have been shattered numerous times in the recent past due to the widespread prevalence of institutionalized corruption as political morality and character are becoming pipedreams and watchdogs are ineffective due to lack of operational independence and institutional autonomy.[177] The Indian judiciary has responded more than once to ensure that the independence of investigative agencies is protected and that they are free from extraneous influences when handling investigations of corruption

[172] Baxi, "The State and the Human Rights Movements in India" as quoted in C. Raj Kumar, *supra* note 14 at 105.

[173] Anand, Public Interest Litigation as Aid to Protection of Human Rights as quoted in *supra* note 14 at 105.

[174] *Ibid.*

[175] C. Raj Kumar, *supra* note, 14 at 105.

[176] *Ibid.*

[177] Kumar, "Corruption and Human Rights" *supra* note 168.

allegations and other grass abuses of power.[178] But the interference of the court has drawn very swift and determined response from the executive because the power of supervision and control of the investigative agencies rest with the political executive. Thus, in terms of corruption in governance and integrity in administration, India is in a quagmire.[179] There is no single solution to the problem of corruption in India. The constitutional response in the form of formulating a fundamental right to corruption free service would be an important starting point in taking the problem of corruption from the realm of public policy and criminal law enforcement to the central level of political discourse in India.[180] The fundamental right to corruption free service in India would be a part of Chapter III of the Constitution of India. Former chief Vigilance Commissioner, N. Vittal has supported the evolution of such a right. He has observed that corruption totally distorts the machinery of government namely, the executive and makes a mockery of the human rights for good governance.[181] This right is expected to empower the Indian citizenry and the people of India would be in position to rightfully claim that the governmental conduct to be free from corruption. If it is not happen; it will be a violation of their constitutionally recognized rights. In India the constitutional sanctity has acquired legitimacy in much deeply because the India has been functioning as a constitutional democracy since its independence. But corruption in all its forms such as political, administrative, bureaucratic and corporate is rampant and has steadily increased since the last several years. Despite it, the political system of India has by and large been stable. It is not good sign for Indian democracy. It is conceivable that shattered social expectations mal-administration and poor governance policies over a period of time would endanger

[178] *Ibid.*

[179] *Ibid.*

[180] C. Raj Kumar, *supra* note 14 at 106.

[181] N. Vittal, *Corruption in India: The Road block to National Prosperity* (Academic Foundation, New Delhi, 2003).

the rule of law and the social fabric of the nation.[182] Corruption in India has affected development policies and the Indian citizenry has been deprived of their economic and social rights. The right to corruption free service would demand good governance, integrity and probity in administration from those in the power.[183] To recognize the fundamental right to corruption free service in India, the following argument can be given[184]:

1. It would be a landmark development from the standpoint of constitutional governance as it would be recognized by the lawmakers as an issue of foremost importance for ensuring good governance.
2. It would provide for obligations on the part of the political executive to ensure that they take positive steps for realizing this fundamental right.
3. Indian courts are well positioned to develop progressive jurisprudence relating to corruption free rights given the fact that there are numerous cases in the past particularly with reference to other fundamental rights in the constitution of India where courts have interpreted and developed rights.
4. The non-enforcement of the fundamental rights to a corruption free service has the potential to invite judicial scrutiny and the courts may recommend legal, administrative and institutional measures and reforms to ensure that freedom from corruption as provided in the Constitution of India is meaningfully realized. Lastly, it gives a powerful tool to national and international civil society movements to ensure that corruption at every level of governance in India is duly addressed and measures are taken to curb this menace.[185]

[182] Baxi, "The State and the Human Rights in India" *supra* note 172.

[183] *Ibid.*

[184] C. Raj Kumar, *supra* note 14 at 107.

[185] Kumar, "Corruption and Human Rights" *supra* note 168 at 68.

Role of National Human Rights Commission in India

National Human Rights Commission has been setup as a statutory body under the Protection of Human Rights Act, 1993. The purpose of setting up to the commission is to strengthen the machinery for more effective enforcement of fundamental rights of the people. The statement of objects and reasons appended to the Bill made clear the purposes underlying the proposed enactment. Noting that India was a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights both of which were adopted by the United Nations General Assembly on 16th December 1966, and that the rights embodied in those covenants stood substantially protected by the Constitution of India. There had been growing concern in the country and abroad about issues relating to human rights. Having regards to this and to the changing social realities and emerging trends in the nature of crime and violence it has been considered essential to review the existing laws and procedures and the system of administration with a view to bringing about greater efficiency and transparency. The Act provides a mechanism for the better protection of human rights and for matters connected therewith or incidental thereto. Thus the National Human Rights Commission was established in order to provide an institutional framework for protecting human rights so as to create an independent body whose task is legislatively mandated to protect and promote human rights.[186] But there are huge institutional challenges that the NHRC needs to confront. Human rights are a powerful discourse that immediately creates unparalleled social expectation and invites equally powerful civil society scrutiny from national and international actors. It is important that Human Rights Commission succeed in their efforts to promote and protect human rights. The legitimacy and credibility of Human Rights Commission rest on their ability to address the human rights problems in a society.

[186] South Asia Human Rights Documentation Centre, Judgment Reserved: The case of the National Human Rights Commission of India (2001) cited in C.Raj Kumar *supra* note 14 at 141.

National Human Rights Commission is relatively new and innovative institution, which is the product of initiatives started by United Nations.[187] The international human rights laws have moved towards constitutionalization of human rights and shaped the development of Human Rights Commissions in various countries. The Human Rights Commissions performs a variety of functions. One of the important aspects to be noted in connection with HRCs and their attempts to secure human rights accountability is that they are not the panacea for all human rights problems that affect to the society.[188] HRCs tend to be effective only under a given set of circumstances. It depends upon the level of funding functional in dependence and institutional autonomy etc.

Need to expand the mandate of the NHRC

The challenge of protecting a number of human rights in India is connected to ensuring corruption free governance. In this regard, it is proposed that the NHRC should play a definitive role in fighting corruption, particularly when acts of corruption are responsible for human rights violations.[189] It is useful to mention the legal framework outlined in the protection of Human Rights Act, 1993 for determining the extent to which the NHRC can be evolved in the fight against corruption so as to protect human rights.[190] The functions to be discharged by the commission are listed under section 12 of the Act. The following provisions need to be examined carefully. The commission shall perform all or any of the following function namely:

[187] UN Secretary-General Report on National Institutions, note 56, at 2 cited in C.Raj Kumar, *supra* note 14 at 142.

[188] C.Raj Kumar, "Developing a Human Rights Culture in Hong Kong: Creating a Framework for Establishing an Independent Human Rights Commission" 11 *Tulsa J. Comp. & Int'l L*. (2004) at 407-426.

[189] C. Raj Kumar, *supra* note 14 at 147.

[190] *Ibid*

a) To inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of;
   i. violation of human rights or abetment thereof or;
   ii. negligence in the prevention of such violation, by a public servant.

b) To review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.

Thus, section 12 of the Act gives enough flexibility for the NHRC to determine what steps it ought to take for protection and promotion of human rights.[191] Section 2(1) (d) of the Act defines human rights. The word "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenant and enforceable by the counts in India. Section 12 of the Act has provided for the NHRC to take cognizance of a complaint relating to human right if it is satisfied that there was negligence in the prevention of a human rights violation by a public servant. The negligence could have been due to corruption or other forms of illegal actions by public servants. Thus, the issues of corruption can legally come within the jurisdiction of the NHRC.[192] In May 2006, the NHRC organized a conference on "Effects of Corruption on Good Governance and Human Rights" in New Delhi.[193] This was the first time the Indian NHRC examined the issue of corruption from a human rights standpoint.[194] The gravity of human rights violation resulting from corrupt practices is no less than that of custodial violence or any form of violations of civil, political, economic, social and cultural rights. Therefore, the most important question is that; how can the

[191] *Ibid*

[192] *Ibid.*

[193] C. Raj Kumar, "Corruption as a Human Rights Violation" The Hindu, 30 May, 2006.

[194] *Ibid.*

NHRC operationalize the right to corruption free governance with a view to protecting and promoting human rights in India?[195] Human rights have traditionally been understood to be rights relating to life, liberty, equality and dignity which have been recognized in the definition of human rights in the Protection of Human Rights Act.[196] The preamble to the Right to Information Act, 2005 notes the specific issue of corruption, that the democracy requires an informed citizen and transparency of information which are vital to its functioning and also to contain corruption and to held governments and their instrumentalities accountable to the governed.[197] Further, the human rights in India have also been given a strong constitutional foundation and have developed through innovative judicial interventions. The good governance agenda includes protection and promotion of human rights and rule of law.

It is important that institutions like the NHRC provide a framework to the cases of corrupt acts of individuals and institutions that result in human rights violation.[198] The NHRC should attempt to understand the implications of corruption for human rights not only from a theoretical perspective but also from a practical stand point.[199] It is useful to examine how many of the various cases that come before the NHRC are due to some act of bribery or other forms of corruptions.[200] Further, the research division of NHRC may consider supporting studies on the human rights consequences of corruption as well as how far the human rights approach can help in ensuring corruption free governance.[201] The importance of the institutionalization of human rights in India through the setting

[195] *Ibid.*

[196] Protection of Human Rights Act, 1993 section 2(a).

[197] Preamble, The Rights to Information Act, 2005.

[198] C. Raj Kumar, supra note 14 at 149.

[199] *Ibid.*

[200] *Ibid.*

[201] *Ibid.*

up of the National Human Rights Commission and states human rights commissions is that they have come to occupy a certain democratic space within the domestic political spectrum.[202] However, the existence of democratic institution does not necessarily mean that human rights violations do not occur or that their incidence is reduced.[203] What it means is that there are institutional mechanisms available for victims to seek justice. The effectiveness of these institutions in India is still a matter of opinion but the NHRC has come to acquire a certain reputation because of its impartiality and independence. Of course, its powers are limited and its opinions on human rights issues are only recommendations, though they carry a lot of legitimacy and persuasiveness because of the composition of the commission.[204]

The recognition of corruption as a human rights issue does not warrant any amendment to the Protection of Human Rights Act, 1993. The definition of human rights given in section 2 and the function of the NHRC given in section 12 are wide enough to include corruption as a violation of human rights.[205] The NHRC can also engage with the leading anti-corruption agencies. The anti-corruption agencies such as the Central Vigilance Commission (CVC), the Central Bureau of Investigation (CBI), and the Enforcement Directorate (ED) etc. would be truly empowered if institutions like the NHRC take cognizance of cases relating to corruption when it involves a human rights issue. This will bring the problem of corruption to the centre of the governance paradigm in India. This institutional engagement must be a facet of good governance in India. Further, if the NHRC has to take a proactive role in promoting good governance policies it has to

[202] *Ibid.*

[203] *Ibid.*

[204] *Ibid.*

[205] *Ibid.*

understand the problem of corruption from a criminal law enforcement perspective.[206]

Need to develop rights based approach against corruption

Having recognized that corruption affects human rights and the rule of law, it is important for the NHRC to develop the right to corruption free governance through a number of rights based strategies in India. The rights based strategies are those strategies that rest on the conceptual foundation that social and economic goals do not remain mere policy objectives, but get transformed into rights that are vested in the citizenry thereby increasing incentives for public vigilance. It is useful to note that there are other national human rights institutions which have embarked successfully upon the responsibility of dealing with corruption.[207] The Fiji Human Rights Commission has recognized good governance to be an integral part of human rights protection.[208] It has defined good governance to be the process through which public institutions conduct public affairs, manage public resources and guarantee the realization of human rights.[209] To demonstrate the linkages between human rights and corruption, the Kenya National Commission on Human Rights has developed a framework by which its citizens are able to appreciate the impact of corruption on the ordinary lives of people.[210] It has published a two volume report on the topic titled "Living Large: Counting the Cost of Official Extravagance in Kenya"[211]. The report has stated the wasteful use of public resources by public officers. The aim of it is to stir reform in the public

[206] *Ibid.*

[207] *Ibid.*

[208] Maina Kiai, "The Role of National Human Rights Institutions in Combating Corruption" 2 International Council on Human Rights Policy Review Meeting, Geneva, 28 July, 2007.

[209] *Ibid.*

[210] *Ibid.*

[211] Kenya National Commission on Human Rights, "Living Large: Counting the Cost of Official Extravagance in Kenya" (2006).

sector by discouraging such waste and to empower citizens to demand value for their money.[212] Ghana has established the Commission on Human Rights and Administrative Justice of Ghana in October, 1993. It is a combination of three institutions namely; a human rights institution, the ombudsman and an anti-corruption agency under one umbrella.[213] The Commission on Human Rights and Administrative Justice of Ghana is empowered to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties. It is also empowered to investigate all instances of alleged or suspected corruption and the misappropriation of moneys by officials and to take appropriate steps, including reports resulting from such investigations to the Attorney General and the Auditor General.[214] These powers empower the CHRAJ to deal with corruption in Ghana as it is widely recognized as a major cause for many human rights violations.[215]

It is useful to refer to developments in the international human rights arena that can provide a framework for responding to human rights violations that take place due to corruption. In December, 1998 the Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment No.10 which deals with the role of NHRIs in the protection of ESCRs.[216] The CESCR recognized that it can be achieved by galvanizing the work of NHRIs and there is need to give full

[212] Kenya National Commission on Human Rights, "KNCHR Publications". Available at: http://www.knchr.org/index.php?=com_contentandtask=viewandid=73andltimid=85.

[213] Anna Bossman, "Promoting and Protecting Human Rights Ensuring Administrative Justice and Fighting Corruption in Ghana" (2007).

[214] *Ibid.*

[215] Anna Bossman, "The Anti-Corruption Mandate of Ghana's Commission on Human Rights and Administrative Justice, UN Conference on Anti-Corruption Measures, Good Governance and Human Rights" Warsaw (November, 2006).

[216] "The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights" UN Doc. E/C.12/1998/25 (14 December, 1998).

attention to the Economic, Social and Cultural Rights in all activities of NHRIs.[217] The CESCR also called upon states parties to the International Covenant on Economic, Social and Cultural Rights to ensure that the mandates accorded to all NHRIs are expanded, if necessary, so that appropriate attention is given to Economic, Social and Cultural Rights.[218] Thus, the National Human Rights Institutions are in position to take cognizance of corruption as a major impediment to the implementation of Economic, Social and Cultural Rights. The problem of corruption with regard to the enforcement of ESCRs needs to be addressed by NHRIs in response to the international human rights movement. The main problem with the NHRIs is with the respect to enforcement of human rights which is directly related to their institutional status and powers granted under law that establishes these institutions. Corruption affects the enforcement of Economic, Social and Cultural Rights and becomes an important factor that undermines the effectiveness of NHRCs in fulfilling their mandate to promote and protect human rights.[219] If corruption is indentified as an obstacle to the promotion and protection of any Economic, Social and Cultural Rights, it becomes necessary for the NHRC to take the necessary steps to address it. The Limburg Principles on the implementation of the international Covenant on Economic, Social and Cultural Rights declares that states parties shall use all appropriate means including legislative, administrative, judicial, economic, social and educational measures consistent with the nature of rights in order to fulfill their obligations under the Covenant.[220] The National Human Rights Commission in India has not an express mandate to fight against corruption under the Protection of Human Rights Act,

[217] *Ibid.*

[218] *Ibid.*

[219] C.Raj Kumar, "National Human Rights Institutions: Good Governance Perspectives on Institutionalizati on of Human Rights" 19 *A.M.U. International Law Review* (2003) at259.

[220] "The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights" UN Doc. E/CN.4/1987/17/Annex & January, 1987. It is reprinted in "The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights" 9 *Human Rights Quarterly* 1987 at 122.

1993. But there is need to interpret its role and functions with regard to the effect of corruption upon human rights. It is essential for the NHRC in India to formulate various effective anti-corruption measures. In this way, its role in protecting human rights will help in eliminating corruption and promoting integrity and good governance in India. The recognition of the rights to corruption free governance by the NHRC has the potential to bring the problem of corruption to the fore from of the national and political discourse. This will ensure that the state and all its instrumentalities act in accordance with the constitution and do not engage in any form of corrupt actions that will violate the fundamental rights of the India citizenry.[221] This would require governance to be based upon the underlying ideals, goals, objectives, aspirations and values of the constitution which have been undermined by the corruption. All individuals and institutions within the government would be expected to take the necessary steps to fulfill these fundamental rights.[222] The recognition of the right to corruption free governance will quickly empower the judiciary to bring forward the integration of the anti-corruption initiatives and human rights approach. Both these approaches are essential to increase the legitimacy of the state and to ensure the accountability in administration.[223] The judiciary is best suited to maintain this role as it has attempted in the past to create greater transparency and infuse institutional autonomy and independence in investigative agencies engaged in anti-corruption work. With the development of such a human right by the NHRC, the judiciary is in a far better position to develop jurisprudence relating to good governance.[224]

[221] Kumar, "Corruption, Development and Good Governance" at 551 cited in C.Raj Kumar *supra* note 14 at 157.

[222] *Ibid.*

[223] *Id.*, at 552.

[224] *Ibid.*

The role of National Human Rights Commission against corruption in India

There is an urgent need for the NHRC to revamp its mandate in the light of huge institutionalization of corruption in India. Corruption has not left untouched any institution in India.[225] It is a true fact of matter that all human rights are violated due to corruption. All matters of corruption have a close entanglement to violation of human rights. The Protection of Human Rights Act, 1993 in the opening paragraph notes that it is an Act to provide for the constitution of a National Human Rights Commission, the State Human Rights Commissions in the States, and the human rights courts for the better protection of human rights and for matters connected there with or incidental thereto. The NHRC must ensure that its investigations make due note of the fact that corruption is the root cause of potential violations of human rights.[226] In this regard, the NHRC may have to work in co-operation with anti-corruption agencies like the Central Vigilance Commission.[227] The purpose of the NHRC's new initiatives should be to ensure the protection of human rights and promotion of corruption free administration as a sine qua non for good governance.[228] The need for promoting transparency and accountability has been noted as an important requirement for corruption free governance. The Indian experience has demonstrated that the recognition of the right to information in India is an important step in ensuring corruption free service.[229] Thus, the NHRC ought to be to be engaged in efforts to fight corruption with a view to strengthening the legal and institutional framework for protecting the human rights. The following are some specific aspects of

[225] Norchi, The National Human Rights Commission of India as a Value Creating Institution at 127 cited in C. Raj Kumar *supra* note 14 at 158.

[226] C. Raj Kumar, *supra* note 14.

[227] *Ibid.*

[228] *Ibid.*

[229] *Ibid.*

institutional initiative that need to be taken by the NHRC for anti-corruption efforts to become part of its human rights agenda.[230]

To recognize the problem of corruption as human rights violation

The NHRC has to recognize internally that there are number of human rights violations that take place in India due to institutionalized corruption. There is also need to recognize the ineffectiveness of the criminal justice system in dealing with corruption. There are number of provisions in the Protection of Human Rights Act, 1993 that sufficiently empower the NHRC to recognize the problem of corruption as a violation of human rights. This recognition by the NHRC will go a long way in providing a policy framework for all bodies working within the NHRC, including the research, law and investigative divisions that are engaged in the promotion and protection of human rights.

Investigation of human rights violation

The investigative division of the NHRC, which examines allegations of human rights violation committed by police and other law enforcement machinery, ought to examine the issue of corruption as the cause of such violations.[231] Such an investigation ought to take place independent of any complaint that has been lodged or otherwise of a possible act of corruption committed by the police or other law enforcement machinery. The nature of corruption like human rights violation is such that the victims face threats and feel too insecure to disclose the names of the perpetrators for fear of reprisal. The investigation of human rights violations should include in a substantial manner, investigation into acts of corruption that have taken place, if any. The investigation should also examine the role of corruption in obstructing the investigation of human rights violations.[232]

[230] *Ibid.*

[231] *Ibid.*

[232] *Ibid.*

The NHRC ought to bear in mind the inextricable connection between human rights violations and corruption leading to abuse of power in India. In the light of this, nexus, it will become essential for NHRC to seek the help and assistance of anti-corruption bodies and other investigative agencies such as the Central Vigilance Commission and the CBI in investigating matters relating to corruption and its impact on human rights. But, there is the lack of independence of these investigative agencies. Thus, it becomes essential for NHRC to closely monitor the any type of joint investigative process among the CVC, CBI and the investigative Division of the NHRC[233]

The role of research division of the NHRC against corruption

The NHRC should sponsor and conduct a number of theoretical and empirical studies relating to corruption and its impact on the promotion and protection of human rights. The protection of Human Rights Act, 1993, S. 12(g) provides that the NHRC has a major responsibility to undertake and promote research in the field of human rights. The research division of the NHRC has a more important responsibility to assume a leadership role in identifying researchers and practitioners in commissioning working papers for evolving policy documents on the question of corruption and human rights. There is also need to examine the practices of other national human rights institutions in dealing with the acts of corruption. Thus, the research division of NHRC would be able to develop a comparative understanding of the issues related to corruption and human rights. All this could provide useful guidance to the NHRC in formulating and evolving its own policies. The role of the research division of the NHRC becomes very critical in this regard. It needs to examine the history of a number of human rights violations through empirical evidence that can provide a clearer understanding of the linkages between corruption and human rights. The NHRC is concerned with the promotion and protection of Human rights. This role and

[233] *Ibid.*

function of the NHRC can be performed effectively, if corruption is reduced. Thus it is the duty and responsibility of the NHRC to take steps to fight against corruption. It is the core responsibility of the NHRC for the protection and promotion of human rights. NHRC of India can make an immense contribution for the protection and promotion of human rights.[234] NHRC of India has been suffering from structural problems and functional deficiencies. It has no proper and adequate mechanisms for protection and enforcement of human rights.[235]

This transformation cannot happen without addressing the problem of corruption very effectively. In India, the corruption is the single most crucial problem that undermines governance and violates human rights. The main idea to establish the NHRC is to ensure that it remains vigilant over those who hold and exercise powers so that their conduct conforms to the national and international human rights norms. The work of the NHRC of India must constantly evolve and focus on those activities that result in the violation of human rights. If the NHRC of India understand its proper role and is able to function freely, bearing in mind the objectives for which it has been established, it will be able to fulfill social expectations of victims of human rights violations and society on account of corruption. At the same time, it should not compete with other democratic organs of State such as legislature, executive and judiciary. The NHRC of India should be a democratic institution with the capacity to link issues relating to human rights, corruption, development and good governance.

Right to information as a tool against corruption in India

The recent struggle to curb corruption in India at all levels of governmental decision-making has taken the form of efforts to promote transparency and enforce

[234] Audrey R. Chapman, "A Violation Approach for Monitoring the International Covenant on Economic, Social and Cultural Rights" 18 Human Rights Quarterly (1996) at 23-30.

[235] Philip Eldridge, "Emerging Roles of National Human Rights Institutions in South East Asia" 14 Pacifica Review (2002) at 209 & 215-21.

accountability by promoting the right to information at the state and central levels. The good governance approach of administering states should ideally focus on the principles of transparency and accountability.[236] It is important for decisions to be taken in a transparent manner and for decision-makers to be held accountable. This good governance form of accountability is broader than that of mere electoral accountability. While electing the ruled to office, democratic governance involves some form of accountability for ensuring respect for the rules, accountability of governance seeks to ensure that the people who are making decisions are involving the public in the process of making these decisions.[237] India has been making efforts for promoting transparency and accountability in governance. The recognition of the right to information and the establishment of the Central Information Commission are important milestones in this regards. The CIC provides for an institutional framework that will ensure transparency and is wholly engaged in the implementation of the right to information. Governmental decisions acquire legitimacy if the people's right to information is duly protected and they are in a position to enforce this right. This is possible only when decisions are made in a transparent manner. In order to ensure a corruption free society, it is necessary to empower the people so that they can resist the practices of official corruption. From the perspective of civil society activism, such resistance to corruption needs to start with the empowerment of the citizenry and this is possible through the full development of the right to information. For democratic governance to be meaningful, it is necessary that citizens must have access to information about what their government is doing and how decisions have been reached.[238] It is very clear that the right to information is a powerful tool for formulating the right to corruption free governance. The right to

[236] C. Raj Kumar, *supra* note 164.

[237] *Ibid.*

[238] Lotte E. Feinberg, "Open Government and Freedom of Information Fishbowl Accountability?" in Philip J. Cooper and Chester A. Newland (eds.), *Handbook of Public Law and Administration* 376 (Jossey-Bass, San Francisco, 1997).

information is the first step in checking governmental corruption as the people of India ought to be empowered by the availability of information on the decisions taken by the government that affect their lives. Commenting upon the relevance of the right to information for the control of corruption, Harsh Mander and Abha Joshi have observed that[239]:

"The right to information is expected to improve the quality of decisions making by the public authorities in both policy and administrative matters by removing unnecessary secrecy surrounding the decision-making process. The cumulative impact on control of corruption and the arbitrary exercise of power of the availability of such information to the citizen would be momentous".

The right to information movement initially started with the work of grassroots mass-based organization known as the Mazdoor Kisan Shakti Sangthan (MKSS) in the state of Rajasthan. Members of the Mazdoor Kisan Shakti Sangathan walked from village to village asking simple questions. Did the people know the amount of funds that were coming to their village for development? How was the money that came from different sources actually spent? Although these questions were simple but the poor and impoverished of India had never dared to ask.[240] When this information was collected, the MKSS went to the government block office, which is the authority that administers development funding in about a hundred villages, with a request to provide detailed information on development expenditure.[241] In response they were told that there was no government rule that would allow villagers to demand such information and receive it.[242] This resulted in the MKSS launching a people's campaign in the state of Rajasthan. The aim of the campaign was to conduct numerous public hearings

[239] Harsh Mander and Abha Joshi, *supra* note 39.

[240] Bunker Roy, The power of Information: A Grassroots Organization in India Defeats Corruption, 2 *D+C: Development and Cooperation* (2002) at 28.

[241] *Ibid.*

[242] *Ibid.*

in which cases of corruption and misappropriation of public funds were shared with a lot of people.[243] Aruna Roy has observed that the right to information in Rajasthan was aimed at ending the arbitrary use of power.[244] The MKSS campaign had focused on demanding transparency of official records, social audit of government spending and redressal machinery for people who had not been given their due.[245] The result of this powerful mass-based and grass-root civil society activism in the form of social struggle resulted in the State of Rajasthan as creating an environment in which corruption was less tolerated and accountability of the government official was enforced.[246] The MKSS movement to seek the right to information came about due to large scale rampant embezzlement of public funds. The consequences of these corrupt actions were non-employment or under payment to the local workforce and non-existent or bad quality assets on the ground which were meant for education, housing or health facilities for the rural poor.[247] The linkage between the human rights violations on account of institutionalized corruption and the lack of transparency and accountability in governance led the MKSS to establish a connection between the manipulation of official records and denial of life opportunities to the rural poor of India.[248] This resulted in the movement to seek the right to access to official records as a part of the right to life and livelihood.[249] This civil society activism was followed by a nationwide movement to seek national legislation on freedom of information which is inspired by work of MKSS in Rajasthan. The important links among lack of transparency, absence of accountability and institutionalization of corruption

[243] *Ibid.*

[244] Kalpna Sharma, "Right to Information Will Check Corruption" The Hindu, 24 February, 2002.

[245] *Ibid.*

[246] *Ibid.*

[247] *Ibid.*

[248] "Improving Accountability in Panchayati Raj" *India Together*, January 2003.

[249] *Ibid.*

gave the social and political impetus to seek the formulation of the law on the right to information.[250]

The relevance of the right to information in India is much more than merely allowing the free flow to information from the government to the public.[251] It is about people exercising their right to seek necessary information from the government so that it and its representatives are held accountable to the public. The right to information ensures that governmental decisions are made in a transparent manner and that the people are informed of decisions that affect them. The right to know, receive and impart information has been recognized within the right to freedom of speech and expression under Act 19 (1) (a) of the Constitution of India.[252] Specifically, the right to information has not been provided in the Constitution of India. It had read and interpreted by the Indian judiciary in Article 19 (1) (a) of the Constitution of India.[253] The Constitution has a sound framework for protecting human rights in the form of the right to equal protection of laws and the right to equality before law, the right to freedom of speech and expression and the right to life and liberty. This is supported by the right to constitutional remedies provided in Article 32 & 226, which is the right to approach to the High Courts and the Supreme Court through their writ jurisdiction for remedies in cases of violation of these rights. The right to information law has now been enacted in India and its states. The Freedom of Information Bill was passed by the Lok Sabha on 3 December, 2002 and by the Rajya Sabha on 16 December, 2002.[254] Furthermore, seeking to ensure greater and more effective access to information,

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[250] *Ibid.*

[251] Bela Bhatia and Jean Dreze, "Freedom of Information is Key to Anti-Corruption Campaign in Rural India" *Transparency International Newsletter,* 1st September, 1998.

[252] *S.P. Gupta v. Union of India* AIR 1982 SC 149.

[253] Granville Austin, *The Indian Constitution: Cornerstone of Nation* (Oxford University Press, New Delhi, 1966).

[254] Neelabh Mishra, "A Battle Half Won" *Combat Law* February, 2003 quoted in C. Raj Kumar, supra note14 at 167.

the government of India resolved that the Freedom of Information Act, 2002 be made more progressive, participatory and meaningful.[255] This was done after the proposal by the National Advisory Council suggested a number of changes. To facilitate these changes the government decided to repeal the Freedom of Information Act, 2002 and adopted a new legislation namely the Right to Information Act, 2005[256]. The preamble to the Act states that democracy requires an informed citizen and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed.[257] The CIC is an institutional mechanism that is designed to implement the right to information. The relationship between the right to information and its ability to reduce corruption needs to be understood. Information Commissioner M.M. Ansari has observed[258]:

"Lack of transparency and accountability encourage the government officials to indulge in corrupt practices, which result in lower investments due to misuse or diversion of funds for private purposes. As a result, the government's social spending yields no worthwhile benefits, because for instance the teachers do not teach, doctors and nurses do not attend health centers, ration card holders do not receive subsidized food grains and the promised jobs are not provided to the people".

[255] Shalu Nigam, Right to Information on Law and Practice (2006) at 155.

[256] Act No. 22 of 2005. The Act was published in the Gazette of India (Extraordinary) Part II- Section I, on 21 June 2005 and the Act received the assent of the President on 15 June 2005.

[257] The preamble to the Right to Information Act, 2005 reads: "An Act to provide for setting out the practical regime to right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commission and for matters connected herewith or incidental thereto".

[258] M.M. Ansari, Chief Information Commissioner (India), "Impact of Right to Information on Development: A Perspective on India's Recent Experience's" lecture delivered at UNESCO Headquarters, Paris on 15 May, 2008.

Such a situation leads crisis in governance. The most fundamental institutions of government become ineffective and do not deliver the goods and services. Such non delivery of services affects the citizens of India, particularly to the poor and vulnerable. It perpetuates poverty and harms the poor. It creates an environment of distrust between the people and the government, which impinges on the development and jeopardizes democratic governance. The right to information has been used successfully in a variety of areas.[259] Fighting corruption is one area where a lot of work needs to be done. The nature of corrupt transactions is such that information concerning them may not be easily available. The CIC needs to assume a leadership role. The information relating to transactions have a vital role for both the investigation and prosecution of cases relating to corruption. Abhijeet Singh has observed; in the gathering of information relating to development works and detection of corruption therein, a powerful weapon is social audit. Social audit refers to collection of official data and comparing it with actual progress of work. For instance a social auditor may take the progress report or measurement book for a development work and compare it with the on ground construction, thus highlighting discrepancies, if any, between the official version and the actual facts.[260]

Division or classification of human rights

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Right and the International Covenant on Economic, Social and Cultural Rights enumerate the various equal and inalienable rights of all members

[259] S.P. Sathe, *The Right to Information* (Eastern Book Company, Lucknow, 2007).

[260] Abhijeet Singh, "Corruption and Economic Development: Right to Information as a Remedy" February, 2006.

of the human family. The International Covenants classify these human rights and fundamental freedoms into two categories.[261]

a. Civil and Political Rights.

b. Economic, Social and Cultural Rights.

Some authors classify human rights into three generations of human rights[262]. The first generation of human rights are civil and political rights, the second generation human rights are economic, social and cultural rights and the third generation rights are collective rights. However, unlike the first generation and second generation rights, the third generation collective rights till now do not have legal recognition.

Civil and political rights

Civil rights are the rights which restrict the powers of the government in respect of actions affecting the individual and his autonomy. Political rights are rights that confer an opportunity upon individuals to contribute to the determination of laws and participate in government.

Economic, social and cultural rights

The economic, social and cultural rights have been considered as rights which require affirmative government action for their realization. It is also referred as second generation rights. These rights pertain to the well-being of the whole society. These rights are codified in the International Covenant on Economic, Social and Cultural Rights, 1966 and also in Article 23 to 29 of the UDHR, 1948.

[261] Dr. J.J. Mozika, "Corruption and Human Rights: The Right Based Approach towards Corruption" 4 (2) *India Human Rights Law Review*, 20 at 182.

[262] The division of human rights into three generations was initially proposed in 1979 by the Czech jurist Karel Vasak at the International Institute of Human Rights in Strasbourg, France.

Collective rights

Third generation or solidarity rights are the recently recognized category of human rights. This grouping has been distinguished from the other two categories of human rights in that its realization is predicted not only upon both the affirmative and negative duties of the state, but also upon the behavior of each individual. Rights in this category include self determination as well as a host of normative expressions whose status as human rights is controversial at present. Article 28 of the Universal Declaration of Human Rights proclaims that everyone is entitled to a social and international order in which the rights set forth in this declaration can be fully realized. This generation of human rights embraces six claimed rights. These include: the rights to political, economic, social and cultural self determination, the rights to economic and social development including the right to participate in and benefit from the common heritage of mankind, the right to peace, the right to healthy and sustainable environment, and the right to humanitarian disaster relief.

Link between corruption and human rights

The link between corruption and human rights is often clear but sometimes not so clear. Corruption directly violates human rights when a state acts or fails to act in a way that prevents individuals from having access to that right. For example, when an individual bribes a doctor to obtain medical treatment at a public hospital or bribes a teacher at a public school to obtain a place for his child at school, corruption infringes the right to health and education directly. Often, corruption may indirectly lead to human rights violation. If a public official allow the illegal importation of toxic waste from other countries in return for a bribe and the waste is placed in close to a residential area. The rights to life and health of resident of that place would be violated indirectly as the result of bribery. When a whistleblower is silenced by harassment, threats or imprisonment or killed, the right to liberty, freedom of expression, life and freedom from torture may all be

violated. Sometimes corruption play more remote role. When corruption during an electoral process raises concerns about the accuracy of the final result, social unrest and protest may occur and these may be repressed violently. In such a case, the right to political participation may be violated directly and repression of the social protests may also cause serious violations of human rights. When anti-corruption investigations and prosecutions not carried out in accordance with the human rights standards, it conflicts with the fundamental rights of privacy, due process, fair trial and so forth. Thus, corruption diminishes public trust and weakens the ability of the government to respect and protect human rights. In the widest sense, corruption obstructs national development and even this can be understood as an obstacle to the right of all peoples to freely pursue their economic, social and cultural development.[263] If corruption is perceived as violation of human rights it will raise awareness among people on the consequences of corruption on individual interest and how detrimental a minor corrupt practice may be for victims and the population generally. This might engage large sectors of the citizenry into strong support in fighting corruption.

Corruption and human rights interrelation

Many human rights activist, lawyers, jurists and almost everyone with any sense of justice consider that the problem of corruption hits at the bone of the society and it is a serious threat for human rights.[264] As the sun cannot be separated from sunshine, corruption cannot be detached from violation of human rights. Corruption as leading to human rights violation can be placed under following heads:

[263] C. Raj Kumar, *supra* note 164.

[264] D. Rangaswamy & Dr. Ramesh, "Problem of Corruption: Human Rights Perspective" 3 *Indian Law Review* 2011 at 71.

a. Corruption as violation of the right to education

As an empowering right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. The right to receive education requires states to make various forms of education available and easily accessible to all.[265] The education sector is not free from corruption. There are ample examples of blatant fraud and bribery in which education officials at all levels demand some from payoff for themselves, family or friends in return for their help in shaping the outcome of contracts, implementation efforts, distribution system etc.[266]

b. Corruption as violation to right to health

The right to health has gained the recognition of many international and regional human rights instruments as well as domestic legislations.[267] Corruption in health sector can take many forms, such as bribery of regulator and medical professionals, manipulation of information on drug trials, the diversion of medicines and supplies and corruption in procurement. Corruption in health sector undermines the doctor-patient relationship. The professional life of many doctors in India is deeply intertwined with marketing and entrepreneurial aspects of health care.[268] A significant number of private hospitals have personal investment. This results in a certain loss of neutrality and complicity when market forces are at play.[269] Hospitals put pressure on doctors to meet targets for patient admissions in return for an attachment.[270]

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[265] *Ibid.*

[266] *Id.*, at 76.

[267] The first notion of Right to Health under International Law is found in 1948 Universal Declaration of Human Rights which was unanimously proclaimed by the UN General Assembly as a common standard for all humanity.

[268] Sanjay Nagral, "Corruption in Indian Medicine or Over enthusiasm of the Marketing Department" XLIX (29) *Economic and Political Weekly*, 2014 at 14.

[269] *Ibid.*

c. Corruption as a violation of the right to fair trial and to an effective remedy

All individuals are entitled to equality before the courts and tribunals and have the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.[271] The relationship between corruption and human rights is particularly relevant with regards to the right to a fair trial because, the corruption is widespread in the administration of justice in India. Experience shows that there are many ways in which corruption can affect the administration of justice and right to a fair trial. The most immediate way is through bribing judges to obtain a favourable judgment, to speed up procedures, or to obtain bail. Corruption affects the right to fair trial and administration of justice when corrupt acts take place at the stage of investigation to manipulate evidence in favour of one of the parties or at the level of prosecution if the prosecutor alters the fact of the case.

d. Corruption as violation of the right of political participation

Political participation can take many forms, the most notable of which is voting in elections, joining a political party, standing as a candidate in elections, joining a non-governmental advocacy group or participating in demonstration and to equal access to public services etc. Human Rights activism at the global arena has resulted in various strategic documents and instruments that ensure and promote these political participation rights.[272] To bribe the voters in order to persuade them to vote or refrain from voting constitutes an interference with the

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[270] *Ibid.*

[271] The Right to Fair Trial is contained in Article 10 of Universal Declaration of Human Rights, (UDHR); Article 14 and 15 of International Covenant on Civil and Political Rights (ICCPR); Article 6 and 7 of European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); Article 8 and 9 of American Convention on Human Rights (ACHR) and Article 40 of Convention on the Rights of Child.

[272] The Right to Political Participation has been recognized as human right under Article 21 of Universal Declaration of Human Rights; Article 25 of International Covenant on Civil and Political Rights and Article 3 of the first Protocol to the European Convention on Human Rights.

integrity of an election and therefore directly violates the right to vote. Bribery in election process impedes the free expression of will of the electorate.

e. Corruption as a violation of the right to water

Access to safe water is a fundamental human need and a basic human right. Contaminated water jeopardizes both the physical and social health of all people. It has been argued that much of the lack of access to clean water and the increasing water pollution are not caused by lack of natural supply of water or by an engineering problem but by corruption. Corruption can have a detrimental effect on the quality of water. If a company bribes a public inspector to cover up the discharge of waste into water resources, the quality of water will suffer. Consequently, people utilizing that water for personal consumption will see their right to water of a good quality infringed upon.

f. Corruption as violation of right to food

Every human being has a right to be free from hunger and to have access to safe and nutritious food. The right to food has been accorded universal recognition as a human right. It is articulated in the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and several other international instruments.[273] The right to food also referred to as the right of everyone to be free from hunger. The right to adequate food guarantees all people the ability to feed themselves. It is defined as physical and economic access, at all times, to adequate food and means for its procurement. The core of the right to food implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable

[273] There are several other human rights instruments which clearly constitute the recognition of right to food. It is recognized under Article 2 of the Convention on Prevention and Punishment of the Crime of Genocide, 1948; Article 20 and 23 of Convention Relating to the Status of Refugees, 1951; Article 12 of Convention on Elimination of all Forms of Discrimination Against Women, 1979.

within a given culture. Corruption can seriously undermine the realization of the right to food. The U.N. Special Rapporteur on the Right to food indentified corruption as one of the seven major economic obstacles that hinder or prevent to the realization of this right.[274] In 1996, the declaration of the world food summit expressly mentioned corruption as one of the causes of food insecurity.

g. Corruption as a violation of the right to work

Every person has a right to earn his living by a freely chosen and accepted work. This right should not be understood as a right to obtain employment, but as a right of access to employment opportunities. An essential element of the right to work is that work must be freely chosen and accepted. In this sense, the right to work is complemented by the prohibition of slavery, servitude and forced and compulsory labor.[275] There are, however, many cases of forced labor and in several of those cases corruption are somehow involved. Corruption can be linked to the restriction of the right to work if a labor inspector is bribed by an employer so that laws prohibiting forced labor are not enforced. Corruption as a necessary tool to sustain forced labor violates the right to work.

h. Corruption as a violation of right to adequate housing

The right to housing has been codified under Article 25 (1) of Universal Declaration of Human Rights, 1948 (UDHR); since that time, the right to adequate housing has been reaffirmed on numerous occasions. The right to adequate housing, a component of the right to an adequate standard of living is concerned with the measures required to ensure that everyone has housing which is safe, healthy and adequate. The Article 17(1) of International Covenant on Civil and

[274] U.N. Economic and Social Council, Report by the Special Rapporteur on the right to food, Jean Ziegler, submitted in accordance with Commission on Human Rights Resolution 2000/10, U.N. December E/CN.4/2001/53, 7 February 2001, 69.

[275] The right to work is specially recognized under Article 21 of UDHR, Article 6 of the International Covenant on Economic, Social and Cultural Right (ISCESCR); Article 8 of International Covenant on Civil and Political Right (ICCPR) and Article 15 of the African Charter on Human and People's Rights (ACHR).

Political Rights, 1966 protects persons from arbitrary or unlawful interference with their homes. The right to adequate housing does not entail that the government has to build housing for the entire population or that housing must be provided free of charge to whoever requested for it. It is a right to access. It can be seriously undermined by corruption. If a company is interested in a piece of land to build a new commercial enterprise but the land is occupied by poor in an urban area, the company may resort to bribing to key official in order to be awarded a lease over land. This may result in the forced eviction of the inhabitants of the area.

i. Corruption as a violation of the right to development

The discourse on the right to development has evolved significantly, since it was proclaimed in the Declaration on the Right to Development in 1986. The declaration recognizes the right to development as a human right. The human right to development is a right to a particular process of development in which all human rights and fundamental freedoms can be carefully realized. The right to development stands violated through distortion of government expenditure. The large scale capital intensive projects preferred and approved by corrupt public officials provide more opportunities for corrupt behavior. The arbitrary allotment of natural resources violates the right to development. A CAG report of 2012 said that arbitrary allocations of coal blocks, during 2005-2009 had robbed the centre of potential revenue of 1.86 lack crore.[276] Natural resources belong to the people and the allocation procedure should be transparent and non-arbitrary. In *Surain Singh v. State of Punjab,*[277] the Supreme Court has observed that large scale corruption retards the nation-building activities and everyone has to suffer on that account. Corruption is corroding, like cancerous lymph nodes, the vital veins of

[276] The Hindustan Times, 25 September, 2014 at 13.
[277] (2009) 4 SCC 331 at 333.

the body politic, social fabric of efficiency in the public service and demoralizing the honest officers. s

j. Judiciary: the rights based approach toward corruption in India

The Supreme Court of India has expanded the ambit and scope of public interest litigation through its number of judgments, orders and directions to unearth corruption and maintain probity and morality in the governance. In the *State of Maharashtra v Balakrishnan Dattatrya Kumbhar*,[278] the Supreme Court observed that corruption is not only a punishable offence but it also undermines human rights, indirectly violating them and systematic corruption is a human rights violation itself as it leads to systematic economic crimes. In *Subramanian Swami v. Manmohan Singh*,[279] the Supreme Court observed that today corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the Indian democracy and the rule of law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular and democratic republic. In the same case, A.K. Ganguly J. observed; it cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the court is that any anti corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the court has to accept the one that seeks to eradicate corruption, to the not one which perpetuates it.

The probity in governance is a *sine qua non* for an efficient system of administration and for the development of a country an important requirement for ensuring probity in governance is the absence of corruption. The aforesaid

[278] (2012) 12 SCC 384.
[279] (2012) 3 SSC 64 at 100.

judgment indicates the emerging judicial trend of looking at the corruption cases from a human rights perspective and underlines the casual link between cases of corruption in public offices and violation of human rights.

Concluding Remarks

The fight against corruption is central to the struggle for human rights. Corruption has always greased the wheels of exploitation and injustice prevalent in the world. The political actors abuse their powers and they focus on gain only for the few people at the great cost of majority. For quite some time the anti-corruption and human rights movements work in parallel rather than tackling these problems together. Linking anti-corruption and human rights frameworks in practice requires understanding how the cycle of corruption facilitates, perpetuates and institutionalizes human rights violations. The first report on the human rights and corruption by the International Council on Human Rights Policy (ICHRP) has provided and important conceptual basis for aligning the work of both movements. For example, the ability to promote and protect civil and political rights rests upon effectively combating political and judicial corruption. Transparency and access to information empower individuals to make informed decisions for exercising their voting rights, to monitoring how state expenditures are spent. At the same time, creating such openness limits opportunities for abuses by politicians, police and judges. When accountability mechanisms are weak or non-existent, it becomes too easy for violations to occur. Similar clear linkages can be established between corruption and economic, social, and cultural rights. Under such approach the institutional and constitutional reform and transformation of the current political arrangements that have thrived on corruption would become an integral aspect of the struggle for the protection and promotion of human rights.

Introduction

During World War II, all methods were adopted to collect money for war preparation. The level of supervision of the officers declined because of the peculiar circumstances operating at that time which resulted into deflection of money and misuse of resources. Government took serious note of it and a cell was created in war department. In, 1946, Delhi Special Police Establishment Act was enacted and thereby a new investigative agency viz; Delhi Special Police Establishment came into existence for investigation of cases of corruption. It is noted here that the provisions regarding to the bribery were included[1] in Indian Penal Code, 1860[2] drafted by Lord Macaulay. These provisions of IPC were not proved sufficient and therefore as legal backing the Prevention of Corruption Act, 1947[3] was enacted. Latter on a committee headed by J.B. Kriplani submitted a report on "Corruption in the Railways 1951" followed by Santhanam Committee Report on corruption in 1964. After a long time of these pioneering works, in 1988 the Prevention of Corruption Act, 1947 was thoroughly amended and some sections of I.P.C. were deleted[4] to avoid contradiction.

Here, the Statement of Objects and Reasons of the Prevention of Corruption Act, 1947 (now repealed by the Prevention of Corruption Act, 1988, Act No. 49 of 1988) is noticeable. It clearly states that the scope for bribery and corruption of public servants had been enormously increased by war conditions and though the war is now over, opportunities for corrupt practices will remain for considerable time to come. Contracts are being terminated; large amounts of Government surplus stores are being disposed of; there will for years be shortage of various kinds requiring imposition of controls, and extensive schemes of post-war re-construction, involving the disbursement of very large sums of Government

[1] Section 161 to 165 A of Indian Penal Code, 1860 has been omitted by Section 31 of the Prevention of Corruption Act, 1988.
[2] Act No. 45 of 1860.
[3] Act No. 2 of 1947.
[4] *Supra* note 1.

money. All these activities offer wide scope of corrupt practices and seriousness of the evil and possibility of its continuance or extension in future are such as to justify immediate and drastic action to stamp it out.[5] The long title of the Prevention of Corruption Act, 1947 was "an Act for more effective prevention of bribery and corruption". It clearly states that the Prevention of Corruption Act, 1947 was enacted to make more effective provisions for the prevention of bribery and corruption.

Statement of Objects and Reasons of Prevention of Corruption Act, 1988

1. The Bill is intended to make the existing anti-corruption laws to more effective by widening their coverage and by strengthening the provision.
2. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944 to enable attachment of ill gotten wealth obtained through corrupt means, including from transferees of such wealth. The Bill seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.
3. The Bill, inter alia, envisages widening the scope of the definition of the expression "Public Servant", incorporation of offences under Sections 161 to 165-A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and trial has commenced. In order to expedite the proceedings, provisions for day to day trial of cases and prohibitory provision with regard to grant of stay

[5] Published in Gazette of India, Part V, Extraordinary, dated 23rd November, 1946.

and exercise of powers of revisions on interlocutory orders have also been included.

4. Since the provisions of sections 161 to 165-A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the Indian Penal Code. Consequently, it is proposed to delete those sections with the necessary saving provision.

The Prevention of Corruption Act, 1988

(Act No 49 of 1988)*

Preamble of the Act

"An Act to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith".

A preamble to a statute is a preliminary statement of the reasons which had made the passing to the statute desirable, and its position is immediately after the title and date of the royal assent.[6] The preamble is undoubtedly part of the statute whether the preamble be considered as an integral part of the statute or not, the general rule with regard to its effect on the enacting part of the statute has always been that if the meaning of the enactment is clear and unequivocal without the preamble, the preamble can have no effect whatsoever.[7] The preamble may be regarded like the title of a statute for the purpose of restraining, explaining or even expanding the enacting words but not for the purpose of qualifying or limiting the express provision incorporate in clear and unambiguous terms.[8] It may now be regarded like the title as part of a statute of the purposes of explaining[9] or even

* Received the assent of the President on 9th September 1988 and Act, published in the Gazette of India (Extraordinary part-II section 1 dated 12.09.1988.

[6] Halsbury's Laws of England, 2nd edition vol. 36 at 310

[7] Pollock, C.B. in *Salkeld v. Johnson*, 1848, 2 Ex 256.

[8] *State v. Hyder Ali*, AIR 1955 Hyd-128.

[9] *Income-Tax Special Purposes Commissioners v. Peunsel*, 1891 AC 531, 543; *Flitcher v. Birkendhed Corporation*, 1907 1 KB 205.

extending,[10] enacting words but not for the purposes of qualifying or limiting express provisions couched in clear and unambiguous terms. Preamble is usually regarded as a key to interpretation of an Act, and if the express provisions of the Act point out to a different interpretation the preamble should be construed as laying down the object of the Act.[11] It is a sort of formal introduction in the form of preliminary statement. It is an opening part of a statutory declaration, Acts, ordinances, and documental recitations and as such is not of a lesser significance than the main text itself. It is a good means to find out the meaning of statute.

Preliminary

1. **Short title and extent-** (1) This Act may be called the Prevention of Corruption Act, 1988.

(2) It extends to whole of India except the State of Jammu and Kashmir and it applies to all citizens of India outside India.

Commencement of the Act

Prevention of Corruption Act, 1988 does not mention the date; from when it would come into force. But the date of assent by the President is 9th September, 1988 and according the section 5 of the General Clauses Act, the new Act would come into operation on the date on which it receives the assent of the President. Thus, the date of commencement of the Act is 9th September, 1988. In *Sarbonand Roy v. State of Bihar*[12]**,** the appellant was convicted by the trial court under section 5 (1) (d) r/w section 5(2), Prevention of Corruption Act, 1947 for demanding and accepting bribe. The offence was allegedly committed on 28.7.1988. The appellant assailed the impugned judgment on the ground that no valid sanction order from competent authority was obtained by the prosecution. In this regard the argument given by the prosecution that, according to section 19(3)

[10] *Kearus v. Cordwainers Co.*, 1859, 6CB, 388, 408.
[11] *Ram Kripal v. Srikrishna Deo Pratap Singh,* AIR 1948, All 108
[12] [2014(133) AIC (PAT., H.C.)]

of Prevention of Corruption Act, 1988, no finding, sentence or order can be reversed or altered and therefore the impugned judgment cannot be altered on the ground of illegality, irregularity or any error in the sanction order. The case was registered under the provisions of the Prevention of Corruption Act, 1947 and there was no such type of provisions in the aforesaid Act. According to prosecution case, the alleged occurrence took place on 28.07.1988. Patna High Court held that Prevention of Corruption Act, 1988 received the assent of President on 9th September, 1988 and was published in the Gazette of India on 12th September, 1988. The new Act does not mention the date from which it would come into force. However, section 5 of General Clause Act, 1897 states that in such contingency, new Act would come into operation on the date on which it receives the assent of President and, therefore, the Prevention of Corruption Act, 1988 came into force with effect from 9th September, 1988 i.e., after the alleged occurrence and, therefore the provisions of the aforesaid Prevention of Corruption Act, 1988 are not applicable in the present case. Therefore, the impugned judgment of conviction and order of sentence cannot be sustained in the eye of law and the same is liable to be set aside.

2. **Definitions-** In this Act, unless the context otherwise requires-

a. "election" means any election, by whatever means held under any law for the purpose of selecting Members of Parliament or of any legislature, local authority or other public authority;

b. "public duty" means a duty in the discharge of which the state, the public or the community at large has an interest;

Explanation- In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a government company as defined in Section 617 of the Company, Act, 1956 (1 of 1956);

c. **"**public servant" means,-

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(iv) any judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorized by a Court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such Court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorized or required to perform any public duty;

(ix) any person who is the President , Secretary or other office-bearer of a registered Co-operative Society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid form the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the

Government or a Government company as defined in section 617 of the companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations; and

(xii) any person who is an office bearer or an employee of an educational, scientific, social cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1- Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2- Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

It is to be noted that definitions generally open with the words, "In this Act unless there is anything repugnant in the subject or context". If so, the definition given is normally to be taken, to apply wherever that word occurs in the statute. The definition, however, will not apply if the word appears in a subject or context which makes the application of the definition impossible and repugnant to the

meaning of the context in which the word is found.[13] Definition of certain words used in the Act are for that limited purpose only[14] and cannot be used to define those words in another statute.[15] Where, the same words occur in different statutes they cannot be deemed to be having one and same interpretation. A definition given in an Act must be substituted for the word defined wherever it occurs in the Act.[16] Expressions defined in an Act must be taken in the light of definition.[17] Definitions are devices to widen or limit the plain grammatical meaning of expressions and to assign an artificial meaning. The legislature at the same time provides that where adherence to such meaning will lead to repugnancy it can be departed from.[18] As regards to explanation it is settled principle of law that it does not enlarge the scope of original section but it simply helps in giving a clear meaning to the section.[19]

Appointment of Special Judges

3. Power to appoint Special Judges- (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:-

a. any offence punishable under this Act; and

b. any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

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[13] *Rambandhu Mishra v. Brahmanand Laik,* AIR 1950 Cal 524.
[14] *Dunichand v. Padman,* 1913 PLR No. 71, FB
[15] *Tulsiram v. C. Pal Ltd.* AIR 1953 Cal. 160
[16] *Jagat Chandra N. Vora and another v. The Province of Bambay and others* AIR 1950 Bom, 144
[17] *Anant Sadashiv v. Ratnagiri Jilha,* AIR 1953 Bom. 71
[18] *Ramchandra v. Bhalu Patnaik* AIR 1950 Orissa 137 FB.
[19] AIR 1951, All 155.

(2) A person shall not be qualified for appointment as a Special Judge under this Act unless he is or has been a Sessions Judge or an Additional Session Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

Appointment of Special Judges

The offences which have been made punishable under the Prevention of Corruption Act shall be tried by Special Judge only. Special Judges has to be appointed by Central or State Government by notification in Official Gazette. The government may appoint as many Special Judges for a particular area or areas or for a particular case or for group of cases as it is necessary.

Thus, the Special Judge is empowered to try any offences which have been made punishable under the Act. The Special Judge is also made empowered to try under any offences of conspiracy or any offence of attempt or any offences of abetment which have been committed by any person and is made punishable under the Act. To make it more precise, the following offences has to be tried by Special Judge only who has been appointed for that purpose by the government:

i. any offences punishable under the this Act.
ii. any conspiracy to commit an offence punishable under this Act.
iii. any attempt to commit an offence punishable under the Act.
iv. any abetment of an offence punishable under the Act.

It is further provided that only a person who is or has been a Session Judge or an Additional Sessions Judge or an Assistant Sessions Judge shall be appointed as Special Judge. In *J. Jayalalitha v. Union of India*[20] the question for consideration was before Supreme Court that whether the power of the state government to appoint Special Judge for an area or areas or for a case or group of cases is absolute, unfettered or unguided. The Supreme Court held that the discretion of

[20] AIR 1999 SC 1912

the government is not unfettered or unguided. The exercise of discretion by the government under section 3 has to be guided by the element of requirement in public interest. The conferment of such wide discretion in government by section 3 is not likely to lead any discrimination either by the matter of court by which the accused is to be tried or by the procedure by which he is to be tried. Whether he is tried by a Special Judge appointed for a particular area or areas or a Special Judge appointed for a particular case or group of cases, he shall be tried by a Special Judge of the same class and by the same procedure.

A Special Judge appointed under section 3(1), of the Act has jurisdiction to proceed exclusively against a public servant and exclusively against a non public servant as well, depending upon the nature of the offence referred to in chapter three of the Act. The junction of a public servant is not must for the Special Judge to proceed against a non public servant for any offence alleged to have been committed by him under Act. It is noted here that an offence under section 8 or section 9 can be committed by non public servant and he can be tried by Special Judge without junction of any public servant.[21] The scheme of the Act makes it clear that even a private person who has been committed any offence punishable under the Act, shall only be tried by a Special Judge, and by no other Court. It is not necessary that in every offence of corruption punishable under the Act, a public servant must necessarily be charged an accused. The existence of a public servant for facing the trial before the Special Court is not a must and even in his absence, a private person can also be tried for PC offences as well as non PC offences, depending upon the facts and circumstances of the case. It is not the law that only, along with the junction of a public servant, the Special Judge can proceeds against a private person who has committed an offence punishable under the Act. Private individuals who are found grabbing public funds in conspiracy

[21] *State through CBI, New Delhi v. Jitendra Kumar Singh* [(2014) (136) AIC 186 (S.C.)] para 25

with and active connivance of public servant are liable for being punished under the Act.[22]

Under section 4 (1) of the PC Act, it is stated that the offences specified in sub-section (1) of section 3 shall be tried by Special Judge only. Section 3 (1) (b) provides that any offences of conspiracy, attempt or abetment which have been committed under the Act shall be tried by Special Judge only. Therefore, it is quite clear that the abettor or the conspirator of an offence can be delinked from the delinquent public servant for the purpose of trial of the offences. An offence under sections 8, 9 or 12 can be committed by any person, who need not necessarily be a public servant. Offences of sections 8, 9, 12 can be committed by, either a public servant or by a private person or by the combination of both. A private person who has offered bribe to a public servant and thereby he has committed an offence punishable under section 12 of Act. This offence of bribery shall be tried by the Special Judge only, notwithstanding the fact that only a private person is the accused in the case and that there is no public servant named as an accused.

Exercising of power by Special Judge under Section 156 (3) of Cr. P.C.

A Special Judge is empowered to take cognizance of offences without the accused being committed to him.[23] But a Magistrate is not deprived of his power to take cognizance of an offence. Therefore a Magistrate as well as a Special Judge is empowered to take cognizance of offence punishable under the Act. Except it is not otherwise provided in law, a Special Judge enjoys all the powers of a court of original criminal jurisdiction. When a private complaint is forwarded by Special Judge to the police under section 156 (3) of Cr. P.C. for investigation, the police is bound to register crime and make investigation into the case. Even if the police conduct a preliminary enquiry regarding the allegations made in the

[22] *Ramesh Chand Jain v. State of M.P.* 1991 Cr. LJ2957

[23] The Prevention of Corruption Act, 1988, Section 5 (1).

private complaint, the police cannot say that there is no need for registering a crime on the basis of the private complaint. The Vigilance Cell is also bound to register a crime on the basis of the complaint sent to it for investigation under section 156 (3) of Cr. P.C. There is nothing improper in sending a private complaint to police for investigation. In *CBI v. State of Gujarat*[24], a complaint was filed the Special Judge for various offences under the PC Act and IPC. The Special Judge directed, that the investigation to be made by the CBI. On a revision petition filed by the C.B.I. contending that the Special Judge in exercise of his jurisdiction under section 156 (3) of Cr.P.C. could not direct investigation to be done by the C.B.I. The Gujarat High Court held that the Magisterial power cannot be stretched under section 156 (3) Cr. P.C., beyond directing the officer in-charge of the police station to conduct the investigation. The special Judge can only direct for further enquiry under section 202 Cr. P.C. Such further enquiry can be given to the police and not to the CBI.

4. Cases triable by Special Judges- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of Section 3 shall be tried by Special Judges only.

(2) Every offence specified in sub-section (1) of Section 3 shall be tried by the Special Judge for the area within which it was committed, or, as the case may be, by the Special Judge appointed for the case, or, where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a Special Judge may also try any offence, other than an offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

[24] II (2002), CCR 316 (Guj).

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a Special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis.

Cases triable by Special Judge

Section 4 of the PC Act dealt with the cases triable by Special Judge. Section 4 (1) of the Act, start with a non-abstante clause. It says that notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force the offences specified in sub-section (1) of Section 3 shall be tried by Special Judge only. Consequently, the offences referred in Section 3 (1) of the Act cannot be tried by the ordinary criminal court. Section 3(1) clause (a) and (b) deals with the offences punishable only under the PC Act and not any offence punishable under I. P.C. or any other law. Sub section (2) of section 4 provides that every offence specified in sub-section (1) of Section 3 shall be tried:

i. by the Special Judge for the area within which it was committed or;
ii. by the Special Judge who is appointed for conducting trial of a case or group of cases;
iii. where there are more Special Judges than one are appointed for a particular area, then by one of them as may be specified in this behalf by the Central Government.

Thus it is amply clear that only a Special Judges has jurisdiction to try the offences specified in sub-section (1) of section (3) committed by a public servant or a non public servant alone or jointly. Sub-section (3) of Section 4 provides that a Special Judge when trying any case relating to the offences referred in Section 3 of the PC Act may also try any offence which is not specified in section 3, if the accused can be charged under Cr. P.C. at the same

trial[25]. In other words, an accused person, either public servant or non public servant who has been charged for an offence under section 3 (1) of the PC Act, could also be charged for an offence under I. P.C. or under any other criminal legislation.[26] In the case *Vivek Gupta v.CBI and another*, the Supreme Court held that a public servant who is charged for an offence under the PC Act may also be charged for an offence under IPC by Special Judge at the same trial if the offence has been committed in a manner contemplated under Section 220 of Cr. P.C.

Concept of jurisdictional fact

The charges have not been framed against a public servant as well as private person, while they were alive and therefore the Special Judge has not got any occasion to "try any case" under section 3(1) of the PC Act. Trying any case of PC offences by a Special Judge under section 3(1) is a *sine qua-non* for exercising jurisdiction by the Special Judge for trying any non PC offences or for an offence which is not specified in section 3 (1) of the Act. Thus, "trying any case" for PC offences is a "jurisdictional fact" for the Special Judge to exercise powers to try any non PC offences which is not specified in section 3 (1) of the Act.[27] In sub-section (3) of section 4 of the Act, the expression "may also try" has been used. It gives an element of discretion on the part of the Special Judge which will depend upon the facts and circumstances of each case and the inter-relation between PC offences and non PC offences. A Special Judge is not expected to exercise their powers to try any non PC offences which are totally unconnected with the PC offences. If a Special Judge did not get any occasion for conducting trial of any PC offences, then the question for the trial of non-PC offences does not arise. Thus, under sub-section (3) of Section 4, trying of a PC offence is a

[25] The Code of Criminal Procedure, 1973, Section 220 (1) reads: If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offences,

[26] *State through C.B.I. v. J.K. Singh* [2014 (136) AIC 186 SC] para 34 at 195.

[27] *Ibid.* para 36 at 196.

jurisdictional fact to exercise the power for trial of non PC offences. The power of Special Judge to try the non PC offences is totally concerned with the "exercise of jurisdiction" to try PC offences. It is not concerned with the "existence of jurisdiction" of Special Judge. Existence of a jurisdictional fact is a *sine qua non* or condition precedent for the assumption of jurisdiction by Special Court. In *Ramesh Chandra Sankla v. Vikram Cement and Others*[28] the Supreme Court held that by erroneously assuming existence of jurisdictional fact, the Special Court cannot confer upon itself, the jurisdiction to try a case which otherwise it does not possess. In *Carona Ltd. v. Parvathy Swaminathan & Sons*,[29] the meaning and context of "jurisdictional fact" has been considered by apex court. Where the jurisdiction of a court or a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary or collectively to the merits of the issue.

In *Ratilal Bhanji Mithani v. State of Maharashtra*[30] it was noticed by the court that the trial of a warrant case starts with the framing of charges, prior to that the proceedings is only an inquiry.

In *State through CBI v. J.K. Singh*[31] the question before Supreme Court was whether on the death of the sole public servant, the Special Judge will cease to have jurisdiction to continue with the trial against the private persons for non-PC offences. In this appeal, the CBI has submitted the charge sheet for the offences against A-1 who was public servant as well as others non public servants accused. Learned Special Judge has framed charges against the accused persons for PC offences and non PC offences also. Thus the charges have been framed against the public servants as well as non public servants in respect of PC offences as well as non PC offences. After framing the charges the sole public servant was died. The Supreme Court held that the existence of jurisdictional fact has been absolutely

[28] (2008) 14 SCC 58
[29] (2007) 8 SCC 559; [2007 (60) AIC 146 (SC)]
[30] (1979) 2 SCC 179.
[31] Cr. Appeal No. 943 of 2008.

satisfied. On the death of sole public servant, the charge against that sole public servant alone abates and since the Special Judge has already been exercised his jurisdiction under sub-section (3) of section 4 of the Act, and that jurisdiction cannot be divested due to the death of the sole public servant.

In criminal appeal No. 161 of 2011, the FIR was registered on 02.07.1996. The charge sheet was filed before Special Judge on 14.09.2001 for the offences under Sections 120 B, 420 IPC read with Sections 13(1) and (2) of the PC Act. The charges against sole public servant under were not framed since he was died on 18.02.2005. The Special Judge also could not frame any charge against non public servant. In the instant case, not any P C offence was committed by any of the non-public servants so as to fall under section 3(1) of the PC Act. Consequently, there was not any occasion for the Special Judge to try the case for PC offences. Since, no PC offences was committed by any of the non-public servants and not any charges were framed against the sole public servant, while he was alive, therefore, the Special Judge did not get any occasion to try the case against non public servants accused under the Act. The Supreme Court held that the Special Judge has no jurisdiction under sub-section (3) of Section 4 of the Act to try non PC offences since the sole public servant was died before framing of charges.

Speedy trial of cases by Special Judge

Sub-section (4) of Section 4 provides that the Special Judge shall hold trial of offences on day to day basis. In *P. Ramachandra Rao v. State of Karnataka*[32], the Supreme Court held that in its zeal to protect the right to speedy trail of an accused the court cannot devise and almost enact bars of limitation beyond which trial shall not proceeds though the legislature and the statutes have not choosen to do so. Bars of limitation, which engrafted by judiciary or no doubt meant to provide and protect the right to speedy trial of an accused but a solution of this

[32] 2002 Cr. L J 2547 (SC).

nature gives rise to greater problems like scuttling a trial without adjudication stultifying access to justice and giving easy exist from the portal of justice. Such bars of limitation are uncalled and impermissible.

In case *Niranjan Hemchandra Sashital v. State of Maharashtra*[33] the petitioner/accused approached to the Supreme Court for quashing prosecution for disproportionate assets case pending against him since 1993. The Supreme Court held that if corruption cases are allowed to be quashed only on the ground of delay it may garner and pave way to anarchism and right to speedy trail does not become illusory when a time limit is not fixed. Hence, the apex court refused to exercise jurisdiction under Article 32 of the Constitution and directed the Special Judge to dispose of the trial by the end of December, 2013.

5. Procedure and Powers of Special Judge- (1) A Special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates.

(2) A Special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of Section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under Section 307 of that Code,

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall so far as they are not

[33] (2013) 4 SCC 462: AIR 2013 SC 1682: 2013 Cr. L J 2143.

inconsistent with this Act, apply to the proceedings before a Special Judge, and for the purposes of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in Sub-section (3), the provisions of Sections 326 and 475 of the Code of Criminal procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a Special Judge and for the purposes of the said provisions, special Judge shall be deemed to be a Magistrate.

(5) A Special Judge may pass upon any person convicted by him any sentence authorized by law for the punishment of the offence of which such person is convicted.

(6) A Special Judge, while trying an offence punishable under this Act, shall exercise all powers and functions exercisable by a District Judge under the Criminal Law (Amendment) Ordinance, 1944 (Ordinance 38 of 1944).

Power to take cognizance of an offence

The powers and functions of Special Judge were prescribed for the first time under the Criminal Law Amendment Act, 1952[34] and the Special Judge had been made empowered to take cognizance of offences without the accused being committed to him for trial. Under the Criminal Procedure Code, there are three type of method has been prescribed for taking cognizance of any offence by the Magistrate viz[35]:

i. upon receiving of a complaint of facts which constitute such offence;
ii. upon a police report of such facts;

[34] Act No. 46 of 1952. Now it had been repealed by Section 30 (1) of The Prevention of Corruption Act, 1947.
[35] The Code of Criminal Procedure, 1973, Section 190 (1).

iii. upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

If upon receiving a complaint or police report or information otherwise, it appears to the Magistrate that the offence is exclusively triable by Session Court, then he shall commit the case to the Court of Session[36] and after commitment of the case the Session Court shall take cognizance of offence.

Procedure and powers of Special Judge

Section 5 of the PC Act dealt with the procedure and powers of Special Judge. Under sub-section (1) of Section 5 of the Act, it is provided that a Special Judge may take cognizance of an offence without the accused being committed to him for trail. After taking the cognizance, he shall follow the procedure prescribed for the trial of warrant case by the Magistrate. The procedure for trial of warrant cases by the Magistrate is contained under Sections 238 to 250 of the Code of Criminal Procedure, 1973. Section 5 of the PC Act does not provide as to in what manner and on what material the Special Judge may take cognizance of the offences. Under Section 190 (1) of Cr. P.C. as stated above the Magistrate can take cognizance upon receiving a complaint of the facts which constitute the offence or even upon information received from any person other than a police officer or upon his own knowledge or suspicion that the offence has been committed. There is no other known or recognized mode of taking cognizance of an offence by a Criminal Court. Therefore, the Special Judge has to take cognizance of an offence in accordance with the provisions of law contained under Section 190 of Cr. P.C.

In *Mahipal v.State of U.P.*[37] the complainant has filed an application before the Special Judge under Section 156 (3) of Cr. P.C. The Special Judge has declined to pass order for registration of FIR. The petitioner approached to the

[36] *Id.*, Section 209, clause (a).
[37] 2009 Cr. L.J. 983 (All)

High Court. The High Court following the decision of the Supreme Court in *A.R.Antulay v.R.S.Nayak*[38] held that the Special Judge can order for registration of FIR for offences allegedly has been committed under the PC Act on a private complaint. The application under Section 156(3) Cr. P.C. cannot be rejected on the ground that the sanction of appropriate government would be required at the time of taking cognizance. In *Anosh Ekka v. State*[39], the court held that the Special Judge have power to deal with the matter under Section 156 (3) Cr. P.C. by virtue of Section 5(3) of the PC Act, 1988. In *B.S. Yediyurappa v. State of Karnataka*,[40] the Special Judge referred a private complaint to S.P. Lokayukta to investigate into offences allegedly was committed under P.C. Act. The petitioner challenged the order on the ground that such power has not been given to Special Judge under the Act. But the High Court held that under P.C. Act there is no such embargo on the power of Special Judge.

Power of Special Judge to tender pardon

Section 5(2) of the Act provides that the Special Judge has power to tender pardon, with a view to obtaining the evidence, to any accused person who is supposed to have been connected with the offence on the condition that such person shall make full and true disclosure of the whole circumstances of offence having within his knowledge. Such pardon shall be deemed to be tendered under Section 307 of Cr. P.C.

In *Mrigendra Nath Ghosh v. D.K. Chowdhury Dy. S.P. C.B.I.*[41] the accused persons for offences under Sections 120B/420/467/468/471/477-A IPC and Section 13(2) r/w Section 13(1) (d) of the PC Act, 1988, have been charged. During the course of investigation, under Section 306 of Cr. P.C the Magistrate has tendered pardon to the accused approvers. The Calcutta High Court held that

[38] 1984 Cr. L.J. 647 S.C.
[39] 2010 Cr. L.J. 259(Jhar)
[40] 2012 Cr. L.J. 1989(Karn)
[41] II (2002) CCR 286(Cal)

as per the provisions of the PC Act, the Magistrate has no jurisdiction at any occasion to tender the pardon to accused approvers. Being special Act, the provisions of the PC Act shall prevail over the provisions of general law. Where the approver's evidence contained material contradictions and improvements and the analysis of his three statements which was given by him at different stage showed that his testimony was unreliable, and the accused cannot be convicted on that basis. It is well settled principle of law that a witness who needs corroboration cannot be corroborated by himself by any statement which has been made at any earlier or later stage. His evidence needs to be corroborated by independent evidence and his own previous statement cannot be said to be independent evidence.[42]

A Special Judge trying offences under the PC Act has dual powers of Session Judge as well as Magistrate also. He controls and conducts the proceedings under the provisions of Cr. P.C. prior to filing of the charge sheet as well as after the filing of charge sheet for holding trail. Before filing of the charge sheet, a Special Judge under Section 167 of Cr.P.C. is fully vested with the powers to remand an accused for police or for judicial custody. He is empowered to conduct trail as a Session Court without there being any committal proceeding of Magistrate. A Special Judge enjoys more powers than a Sessions Judge for the reason that the Special Judge is vested with the powers of not only Session Court, but of the magisterial courts also for the purpose of conducting trial of offences under the PC Act. He conducts entire proceedings against an accused from the date of his arrest till to the final conclusion of the trial. A special Judge has powers to record the statement of an accused and tender him pardon before filing of charge sheet. The Special Judge can tender pardon at any stage of proceedings. At the stage of investigations when an accused applies for pardon, the other accused has not right to intervene or ask for hearing. The other accused against whom the evidence of the approver is likely to be used, would have sufficient opportunity to

[42] *P.V. Norasimha Rao v. State through CBI*, 2002 Cr. LJ 240 (Del)

cross examine the approver when examined in the course of trial and show to the court that his evidence is not reliable or he is not a trust worthy witness. Therefore, a co-accused cannot be permitted to raise objections at the stage of tendering pardon by another accused.[43]

Deemed to be Court of Session

It is provided under section 5(3) that the provisions of Cr.P.C. which are not inconsistent with provision of the PC Act shall apply to the proceedings before Special Judge and for the purposes of those provisions of Cr. P.C., the Special Judge shall be deemed to be a Court of Session. Under section 5(4), it is further provided that the provisions of Sections 326 and 475 of Cr. P.C. shall also be applicable to the proceedings before Special Judge and for the purpose of those provisions the Special Judge shall be deemed to be a Magistrate.

Powers of District Judge

The Special Judge while trying any offence is empowered to exercise all powers and functions exercisable by a District Judge under the Criminal Law (Amendment) Ordinance 1944[44].Thus, during investigation stage the applications for attachment shall be filed before District Judge only and not before Special Judge. In *H.C. Sathyan v. State by Police Inspector, Police Wing, Karnataka Lokyukta, Mysore,*[45] during investigation stage the Special Judge has passed an interim order for attachment of properties of the appellant. He challenged the aforesaid interim order before the High Court on the ground that under section 5(6) of the PC Act, the Special Judge has power to attach the properties only during the trial of case. At the investigation stage the Special Judge has not such power to attach the property of accused person. The High Court held that the

[43] *Ashok Kumar Aggrawal v. C.B.I.,* 2001 Cr. LJ 3710 (Del)
[44] Ordinance No 38 of 1944.
[45] 2012 Cr. LJ 387 (Ker) : 2012 (1) Crimes 718 (Ker)

interim order passed by Special Judge is illegal and therefore is liable to be quashed.

It is clear from reading of sub-section 6 of Section 5 of the PC Act that during investigation stage the application for attachment of property would be filed before District Judge and not before Special Judge. The Special Judge has given power to attach the property only during trial of the case. This legal position is not satisfactory and Section 5(6) of the PC Act should be amended and the Special Judge should be given power at any stage of proceeding such as enquiry, investigation or trial.

6. Power to try summarily- (1) Where a Special Judge tries any offence specified in sub-section (1) of Section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of Section 12 A of the Essential Commodities Act, 1955 (10 of 1955) or of an order referred to in clause (a) of sub-section (2) of that section, then, notwithstanding anything contained in sub-section (1) of section 5 of this Act or Section 260 of the Code of Criminal Procedure, 1973 (2 of 1974), the Special Judge shall try the offence in a summary way, and the provisions of Section 262 of 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial;

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Judge to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and

proceed to hear or re-hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by the Magistrates.

(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the Special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under Section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by the Special Judge.

Summary trial

Section 6 of the PC Act dealt with summary trial. Under Section 6(1), the Special Judge is empowered to conduct summary trial. The Special Judge is empowered to proceeds a case for summary trail in those circumstances where during trial it has been alleged that:

i. the offence has been committed by public servant in violation of sub-section (1) of Section 12A of the Essential Commodities Act, 1955 or;
ii. the offence has been committed by public servant in violation of clause (a) of sub-section (2) of Section 12A of the Essential commodities Act, 1955.

When summary trial is being made by Special Judge, the provisions of Sections 262 to 265 Cr. P.C. shall apply to such trial. In summary trial, the Special Judge can pass a sentence to the maximum period of one year for imprisonment. It is further provided that, if after commencement of summary trial, it appears to Special Judge that the nature of the case is such that the summary trial is undesirable. The Special Judge, after hearing to the parties may make an order to proceeds the case according to law prescribed for the trial of warrant cases by the Magistrate. Sub-section (2) of Section 6 provides that in case of a summary trial, if

the accused person has been convicted by Special Judge and the Special Judge has passed a sentence of imprisonment for one month and fine of two thousand rupees, then there shall be no appeal on behalf of convicted person under any law.

This section should be amended and it should be provided that where trivial amount of bribe is obtain or received by accused persons the Special Judges should be made empowered to proceed for summary trial.

Offences and Penalties

7. Public servant taking gratification other than legal remuneration in respect of an official act- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall not be less than [46][three years] but which may extend to [47][seven years] and shall also be liable to fine.

Explanations- (a) "Expecting to be a public Servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the office defined in this section.

[46] Substituted by Act No. 1 of 2014, for the words "six months".
[47] Substituted by Act No. 1 of 2014, for the words "five months".

(b) "Gratification". The word "gratification" is not restricted to pecuniary gratification or to gratifications estimable in money.

(c) "Legal remuneration". The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organization, which he serves, to accept.

(d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and, thus, induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

Taking gratification other than legal remuneration by public servant

Section 7 of the PC Act, 1988 regulates the demand side offence of bribery. It prohibits demand of bribe by public servant. The offence contemplated under Section 7 of the Act could only be committed by a public servant. Under section 7 of the Act, it is provided that any person who is a public servant or expecting to be a public servant:

a. accepts or obtains or;
b. agrees to accept or attempts to obtain;

any gratification as a motive or reward which is other than legal remuneration from any person, for himself or for any other person in the context of his official act or functions for:

i. doing or forbearing to do any official act or;
ii. showing or forbearing to show favour or disfavor to any person or;
iii. rendering or attempting to render any service or disservice to any person, and thereby he commits an offence of bribery under section 7 of the Act.

Meaning of the word 'accept' and 'obtain'

According to Shorter Oxford Dictionary, the word "accept" means to take or receive with a consenting mind. Such consent can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of prior agreement. If an acquaintance of a public servant voluntarily offers any gratification with the hope and expectation that in future, he would be able to get some official favour from him and the public servant willing takes or receives such gratification, it certainly amounts to acceptance.

According to Shorter Oxford Dictionary, "obtain" means to secure or gain (something) as the result or request or effort. In case of obtainment the initiative vests in the persons who receives and in the context a demand or request from him will be a primary requisite for the offence.

Demand and acceptance

In case *M.K. Harshan v. State of Kerala*[48] the Supreme Court has opined that to bring home charges of bribery, the twin concomitants of 'demand' and 'acceptance' must be substantiated. In so far as the offence under Section 7 is concerned it is a settled position in law that demand of illegal gratification is *sine qua non* to constitute the said offence and mere recovery of currency notes can not constitute the offence under Section 7 of the Act, unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be

[48] (1996) 11 SCC 720

a bribe[49]. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the charges of offence under Section 7 of the Act. The above legal position also will be conclusive in so for as the offence under Section 13 (1) (d) sub-clause (i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is further observed by the apex court that, in so far as the presumption is permissible and has to be drawn under Section 20 of the Act is concerned. Such presumption can only be drawn in respect of the offence under Section 7 of the Act and not in respect of the offence under Section 13 (1) (d) sub-clause (i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal ratification can follow only if there is proof of demand.[50] It is necessary for the prosecution to prove that the person demanding and accepting gratification is a public servant. The prosecution must also prove a demand for gratification and that the gratification has been given to the accused. If these three basic facts are proved, the accused may be found guilty for an offence under the provisions of law.[51]

Motive for demand and acceptance

Section 7 of the P.C. Act (corresponds to section 161 IPC) speaks about taking gratification other than legal remuneration by a public servant as a motive or reward for doing or for bearing to do any official act. It means that the bribe should be given in connection with the official act or conducts of the concerned public servant but in law the capacity of the concerned public servant, to show any favour or disfavour or render any service in connection with his official act or

[49] *B. Jayaraj v. State of A.P.* [2014(137) AIC 41(SC)] para 7 to 42: *C.M. Sharma V. state of AP* [2011 (97) AIC 150 SC]: *C. M. Girish Babu v. CBI* (2009) 3 SCC 779.

[50] *Ibid*, para 9 at 43.

[51] *Dr. Narain Singh v. State of M.P.* [2014(133) AIC 285 (M.P., H.C.)]

duties is not necessary. No doubt a public servant has no right to demand any bribe but when he is hauled up before a criminal court to answer a charge of having taken illegal gratification, the question whether any motive, for payment or acceptance of bribe is in existence or not, is certainly relevant and a material fact for consideration.[52] In *Dalpat Singh v. State of Rajasthan*,[53] the Supreme Court observed that where the evidence shows that neither the accused intended to show any official favour to the persons from whom they extorted money or valuable things nor those persons expected any official favour from them. They paid amounts in question solely, with a view to avoid being ill-treated or harassed. The court held that it is difficult to hold that the acts complained against the accused persons constitute an offence under Section 161 IPC, although it comes under Section 5(1) (d) of the Prevention of Corruption Act, 1947.

In *H.H.B. Gill v. King*,[54] the Privy Council observed that a public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. A judge neither acts nor purports to act as a judge in receiving a bribe though the judgments he delivers may be such an act. A government medical officer neither acts nor purports to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant can reasonably claim that whatsoever he did he did in virtue of his office. In case *Shiv Raj Singh v. Delhi Administration*,[55] the Supreme Court held that where a public servant is charged on allegation that he has taken illegal gratification for doing or procuring an official act, then it is not necessary for the court to consider whether or not the accused was capable of doing or intended to do such an act. Where it is alleged that the illegal gratification was taken by a police officer for doing or procuring an official act, the question whether there was

[52] *Madan Mohan Singh v. State of U.P.,* AIR 1954 SC 637
[53] AIR 1969 SC 17
[54] AIR 1948 PC 128
[55] AIR 1968 SC 1419: 1969 Cr. LJ. I (S C).

any offence against the giver of the gratification which the accused could have investigated or not, is not material for that purpose. If he has used his official position to extract illegal gratification, the requirement of law is satisfied. It is not necessary in such a case for the court to consider whether or not the public servant was capable of doing or intended to do any official act of favour or disfavor.[56] It is necessary to show whether there was any other public servant who was to be approached, where the public servant taking the money is himself in the very office by which the appointment would be made. In such a case persons would be taking money for him or for any other person in his office in order to do any official act or get it done.[57] When evidence showed that the complainant has strong motive for falsely implicating the accused and bribe was alleged to have been given for job which was not part of the duties of the accused, the conviction of the accused was set aside.[58]

The word gratification: meaning and scope

According to explanation (b) of Section 7, the word "gratification" is not restricted to pecuniary gratifications or to gratification estimable in money. Thus, it is used in its larger sense as connoting anything which affords gratification or satisfaction or pleasure to the taste, appetite or the mind. Money is of course, one source of affording pleasure, because it implies command over things which afford pleasure but there are various other objects which afford gratification. The satisfaction of one's desires whether of body or of mind is also a gratification in the true sense of this term. The craving for an honorary distinction or for sexual inter course is an example of mental and bodily desires, the satisfaction of which is gratification not estimable in money. A person may desire to marry his son to another's daughter, who may consent on the condition to doing some official favour. In short, the gratification is any benefit or reward given to influence one in

[56] *Chatur Das Bhagwandas Patel v. State of Gujrat,* AIR 1976 SC 1497 : 1976 Cr. LJ 1180 (SC)

[57] *State of Maharashtra v. Jagat Singh Charan Singh Arora,* AIR 1964 SC 492 : 1964 (1) Cr. LJ 432 (S.C.)

[58] *Jagdev Singh v. State of Punjab,* 1984 (2) Crimes 785.

one's behavior in office, and incline one to act contrary to the rules of honesty and integrity. Anything, whether a sum of money, an object which appeals to one's sense, a dinner, a plate full of fruit, a medicinal pill is gratification within the meaning of the term of gratification though the recipient may not be punishable on that account.[59] Thus, the "gratification" mentioned in Section 7 explanation (b) cannot be confined to payment of money. The prosecution has to prove before the court that the accused person has received a gratification other than legal remuneration. If it is shown that the accused has received the stated amount and that the said amount was not legal remuneration, the conditions prescribed by the Section 7 of the Act is fully satisfied. In the context of the remuneration legally payable to, and receivable by a public servant there is no difficulty in holding that where money is shown to have been paid and accepted by such public servant and that the said money is not legal remuneration, the presumption may be safely made as required under Section 20 of the Act.

The plain words of section exclude the defence that the benefit bargained for, was to go to somebody else. It also excludes the notion that an officer is protected if he agrees to do his official acts by the motive of accepting gratification for advancing some public object such as charity, science or religion. Certainly, that kind of motive is different from the desire of private lucre, but it may easily lead to oppression. The enjoyment of rights should not be hampered by any kind of such laudable thought. The public officer should not be affected in performing his duty to the crown in dealing with the subject by such laudable thought or consideration.[60] The payment of money to a public officer as a donation to a public institution in which such officer is interested would amount to an offence, if the motive of such payment was showing of favour in official capacity of the person making such payment or it was made as a reward for the favour

[59] P.V. Ramakrishna, *Hand Book on Prevention of Corruption Act, 1988* (S. Gogia & Company, Hyderabad, 7th ed., 2014).

[60] *Emperor v. Amiruddin,* AIR 1923 Bom 44.

shown in the past.[61] In *Mohd. Nazeeruddin v. state of A.P.*[62] it was contended by the accused that he did not receive the amount of 480 as illegal gratification because it was collected at the instance of the District Treasury Officer to meet the expenses of the audit party which was lodged in a hotel. It was only a contribution which comes within the term "legal remuneration" as defined under explanation (c) of Section 7. The court held that the demand or liability to make such payment was not legally sanctioned. Therefore, the amount collected by accused is illegal gratification. Even though, the accused had received the amount not for his personal purpose but for a charitable purpose or for the purpose of his employer, he commits the offence under Section 7 of the Act. The employer is not entitled to refuse to discharge his official duties, which are of public nature.[63] In *Palani Palli v. State*[64], the accused received certain amount from the complainant as contribution to Flag Day fund for doing on official act. It was held that if a public servant insisted upon a particular payment which did not amount to a legal remuneration as consideration for discharge of his official duties, he commits an offence under Section 7 of the Act. Even it was found that he had received the amount for a charitable purpose. Discharge of official duties, which are of public nature, cannot be refused.

Trivial amount of bribe

Clerk was prosecuted for demanding and accepting bribe of Rs. 150 from complainant for issuing solvency certificate in his favour and he was convicted by trial court. He filed an appeal against his conviction. During the pendency of the appeal he died and his legal heirs continued the appeal. After considering the fact that the appeal in question was being prosecuted by the dependents of the deceased-accused in order to enable them to get the provident fund and gratuity or other benefits because of the death of the accused and also considering the fact

[61] *Crown Prosecutor v. R.K. Pillai* AIR 1948 Mad 281: 1949 Cr. LJ 265.
[62] 1994 Cr. LJ 2304 (AP)
[63] *Sumanlal Shivlal Gheewala v. The State of Gujarat,* 1977Cr.LJ 626.
[64] 1996 (1) LW (Cr.) 1994 (Mad).

that the sanctioning authority did not consider whether departmental inquiry was just and proper in the circumstances of the case and looking to the triviality of the amount, the High Court set aside the conviction and allowed the appeal.[65] In *Tara Singh v. State of Punjab*[66] the accused was working as Patwari and accepted bribe of Rs. 50/- from the complainant for supplying jamabandi. There was no corroboration to the evidence of the complainant by independent witness. The High Court held that such bargains take place in secrecy and isolation and it is too far for the courts to presume that there would be independent evidence and convicted the accused.

In *Mohd. Hadi Hasan v. State of U.P.* the accused employed in the District co-operative Banks Ltd. Bareilly was convicted for having demanded and accepted Rs. 20/- as copies of arbitration decree to the complaint and the bribe amount was recovered from the accused immediately after his arrest and the plea of the accused that he was falsely implicated was not found convincing. The conviction was confirmed by High Court. In Nanak Chand v. State,[67] the appellant was convicted when he demanded Rs. 40/- and accepted from the complainant, who was a sweeper in the same office, for deducting part of salary to deposit in GPF account. It was argued in the appeal that it was not part of his job to open PF account of Municipal Corporation, Delhi employees and so there could be no occasion to demand bribe amount. The High Court held that if the accused public servant makes a representation, express or even implied, to the complainant that he was in a position to show him some favour in discharge of his official function and obtains money, then the offence of demand and acceptance of bribe would be complete.

In *Shivdas Dashrath Jadhav v. State of Maharashtra*, the accused was convicted for demanding and accepting Rs.500/- from complainant, an accused in

[65] *Hanumanthappa Murtyappa Vijapure v. State of Maharashtra*, 2004 Cr. L.J. 3001 (Bom)
[66] III (1999) CCR 487 (P & H)
[67] 2013 Cr. LJ 2962 (Del)

a criminal case being conducted by the appellant for managing witnesses to secure acquittal for him and brother co-accused. The High Court after analyzing the evidence held that- (i) the accused failed to prove his defence that complainant thrust the money in his pocket and merely because the complainant was involved in many criminal cases there is no ground to reject his testimony since the testimony of the complainant and panch witnesses was corroborated by evidence of tea stall owner where the accused accepted bribe; (ii) though Director and IGP is competent to remove a police prosecutor, the Joint Secretary attached to Home Department being higher in rank is competent to accord sanction for prosecution; and (iii) corrupt practices adopted by the Member of the Bar or the members of prosecution wing tarnish the image of judicial system in which common man has still certain amount of faith and, as such, instances give a serious jolt to the faith of litigants in judicial system and as such accused does not deserve any leniency in matter of sentence.

8. Taking gratification, in order, by corrupt or illegal means, to influence public servant- Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall not be less than[68][three years] but which may extend to[69][seven years] and shall also be liable to fine.

[68] Substituted by Act No. 1 of 2014, for the words "six months".
[69] Substituted by Act No. 1 of 2014, for the words "five months".

Taking gratification for inducing, to a public servant by corrupt or illegal means

Section 8 of the Act starts with the word "whoever" and the words "other than legal remuneration" have not been used in this section. It means that the offence contemplated in Section 8 of the Act may be committed by a public servant as well as by a non public servant also. It is provided that any person whoever-

a. accepts or obtains or;
b. agree to accepts or agree to obtain

any gratification as motive or reward from any person for himself or; for any other person for the purpose to induce any public servant by corrupt or illegal means in the context of his official act or function-

i. to do or forbearing to do any official act or;
ii. for showing or for bearing to show favour or disfavor to any person or;
iii. for rendering or attempting to render any service or disservice to any persons;

then he commits an offence and he shall be punished under Section 8 of the Act.

Section 8 of the Act dealt with the offence of soliciting or receiving, any illegal gratification by a person who, needs not to be a public servant. The gratification must be as a motive or reward for inducing to a public servant for doing or forbearing to do an official act.[70] **S**ection 8 of the P.C. Act is applicable to both; a public servant as well as a non public servant also, if he induces to a public servant to do or forbear to do any official act. In *Prakash Singh Badal v.*

[70] *B. Chinnaswamy Iyyengar v. Emperor*, 3 IC 668.

State of Punjab[71] it was argued by the appellant before Supreme Court that being a Member of Parliament he is a public servant and cannot be charged with the offences under Sections 8 and 9 of the Act. His contention was that Sections 8, 9, 12, 14 and 24 of the Act are applicable to private persons only and not to public servants. The Supreme Court held that the opening word of Sections 8 and 9 is "whoever". This expression of Section 8 and 9 is very wide and the public servants also come within the ambit of Section 8 and 9. A public servant who accepts gratification as a motive or reward for inducing to any other public servant by corrupt or illegal means, he commits an offence punishable under Section 8 of the Act. Restricting the operation of the expression by curtailing the ambit of sections 8 and 9 and confining it to private persons only would not reflect the actual intention of legislature. It is not permissible to contend that a public servant would be covered by section 13 (1) (d) (i) and therefore he would not be covered by Sections 8 and 9 of the Act. A public servant who obtains for "himself or for any other person" any valuable thing or pecuniary advantage by corrupt or illegal means, he commits an offence of criminal misconduct under Section 13 (1) (d) sub-clause (i) of the Act. It does not mean that the provisions of Sections 8 and 9 are not applicable to the public servants. Section 13 (1) (d) sub-clause (i) is totally different from the Sections 8 and 9 of the Act. If a public servant accepts gratification for inducing to any other public servant to do or forbear to do any official act, then his act of inducement clearly falls within the ambit of Section 8 of the Act. Further, if this act of inducement has to be done by exercising his personal influence, then it falls within the ambit of Section 9 of the Act.

Under section 13 (1) (d), it is not necessary to prove that the valuable thing or pecuniary advantage has been obtained by any act of inducement. Another difference is that under Section 13 (1) (d) (i) "a public servant" obtains "any valuable thing or pecuniary advantage" for himself or for any other person by corrupt or illegal means. On the other hand, under Sections 8 and 9 it is provided

[71] (2007) I SCCI : IV (2006) CCR 335 (SC)

that "whoever" obtains "any gratification whatever" for himself or for any other person by corrupt or illegal means for inducing to a public servants. In this regard explanation (b) of Section 7 is relevant. Under explanation (b) of Section 7 it is provided that the word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money. Thus, section 8 and 9 are much wider than Section 13 (1) (d) and clearly constitute different offences.

In *Kumar Suman Singh v. state of Bihar*,[72] a charge-sheet was filed against a private person for the offences under Section 8 of the PC Act and Section 120-B of IPC for inducing to a public servant to do an illegal act. When the trial court refused to discharge him, he questioned the legality in the High Court under Section 482 of Cr.P.C. The High Court held that Section 8 of PC Act is applicable to a private person, if he induces to a public servant, to do an illegal act and therefore refused to interfere with the order of trial court.

Section 8 penalizes the act of inducement to a public servant by corrupt or illegal means. Thus, to induce a public servant by corrupt or illegal means is an offence under Section 8 of the Act whereas to induce a public servant by exercising of his personal influence has been made an offence under Section 9 of the Act.

9. **Taking gratification, for exercise of personal influence with public servant**- Whoever accepts or obtains or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavor to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation,

[72] 2006 Cr. LJ 1599 Pat.

or government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall not be less then [73][three years] but which may extent to [74][seven years] and shall also be liable to fine.

Taking gratification to exercise his personal influence

Any person who, accepts or obtains or; agree to accept or agree to obtain any gratification whatever, as a motive or reward from any person, for himself or for any other person, for inducing to any public servant by exercising his personal influence, in the context of his following official acts or functions:

i. to do or forbearing to do any official act or;
ii. for showing or for bearing to show favour or disfavor to any person or;
iii. for rendering or attempting to render any service or disservice to any persons;

then he commits an offence and shall liable to be punished under Section 9 of the Act.

Difference between Section 8 and Section 9 of the Ac

Under Section 9 of the Act, an act of inducement by the exercising his personal influence with a public servant has been made an offence. While under Section 8 of the Act, an act of inducement by corrupt or illegal means has been made an offence.

10. Punishment for abetment by public servant of offences defined in Section 8 or 9- Whoever, being a public servant, in respect of whom either of the offences defined in Section 8 or Section 9 is committed, abets the offence, whether

[73] Substituted by Act No. 1 of 2014, for the words "six months".
[74] Substituted by Act No. 1 of 2014, for the words "five months".

or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

To constitute the offence of abetment, it is not necessary that the act abetted should be committed. The offence of abetment involves active complicity of abettor prior to actual commission of offence. It is essential that the abettor should substantially assist to the principal accused of offence. The offence of abetment may be committed by three modes:

i. by instigation.
ii. by criminal conspiracy.
iii. by intentionally aid.

11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant- Whoever, being a public servant, accepts or obtains or agrees to accept, or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

Under this section a public servant is made liable for punishment for accepting or agreeing to accept any valuable thing without consideration or with consideration which he knows to be inadequate. The entire evidence led by prosecution has also of the defence and the suggestions made to the prosecuting

witnesses have to be taken into account and only conclusion possible has to be arrived at.[75]

12. Punishment for abetment of offences defined in Section 7 or 11- Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall not be less than [76][three years] but which may extend to [77] [seven years] and shall also be liable to fine.

Under Section 12 of the Act, it is provided that abetment of offences prescribed under Sections 7 and 11 of the Act, in itself would be an offence whether such offence is committed or not. A person who abets any of the aforesaid offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to five years and shall also be liable to fine.

Mens rea of the bribe giver

In a trial for the offence of offering a bribe to a public servant, the state of mind of the accused, when he offers bribe is relevant. It is not relevant or necessary that the public servant to whom the bribe is offered is in position to do or not to do the intended act. In a trial under Section 165-A of IPC, it is the mens rea of the bribe giver that has to be considered and it should be sufficient to render him liable if his object in bribing or attempting to bribe the public servant was to induce the public servant to do official act or show or for bear to show, in the exercise of his official functions, favour or disfavor to him, it being quite immaterial whether the public servant was not in fact in a position to do or not to do the act or show or forbear to show the favour or disfavor in question.[78]

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[75] *Bharat Kumar Jayamani v. State of Gujarat*, 1982 Cr. LJ 1304.
[76] Substituted by Act No. 1 of 2014, for the words "six months".
[77] Substituted by Act No. 1 of 2014, for the words "five months".
[78] *Padam Sen v. State* AIR 1959 All 707; 1959 Cr. LJ 1276 (All)

In *Om Prakash v. State of Haryana*,[79] the appellant with co-accused suspected to be involved in a murder case offered bribe of Rs. 10,000/- to the Police Inspector investigating the case. The Inspector refused to accept the money but later accepted on insistence and prepared a memo, sealed the money in the presence of Head Constable and got FIR recorded. The defence of the accused was that in connection with the murder case some of their relatives who were accused came to court with more than Rs. 10,000/- and the Inspector snatched the amount from their hands. When threatened that if the amount is not received by them, the matter would be reported to the higher ups, a false case was thrust upon them by the Inspector. Both the accused were convicted under Section 12 of the PC Act by the trial court and the High Court upheld the same. In Appeal, after assessing the evidence, the Supreme Court held that the defence story set up by the appellant cannot be said to be wholly improbable in view of the delay in lodging FIR and discrepancies in the prosecution witnesses. The Supreme Court further held that when the demand has not been proved Section 20 of the PC Act will have no application and set aside conviction, giving benefit of doubt.

In *Sucha Singh v. State of Punjab*, the appellant offered bribe of Rs. 12000/- to police inspector, when he was arrested for an offence under Punjab Prohibition of Cow Slaughter Act. The inspector prepared a memo for the said money and sent to DSP for investigation. After registering FIR, the case was investigated by DSP. The appellant was convicted under Section 12 of the PC Act. In appeal, the High Court held that investigation not vitiated by preparing memo and registering FIR by the inspector and confirmed the conviction but reduced the sentence the period undergone and increased the fine amount from Rs. 1000 to 5000.

In *Gardara Singh v. State of H.P.*[80] the accused, an ex-military person was convicted for offering bribe to a judge to get the judgment in his favour. In next

[79] AIR 2006 SC 894: (2006) 2 SCC 250.
[80] 2009 Cr. LJ (NOC) 606 (HP)

day he realized his mistake and moves an application for tendering apology. In appeal, the High Court held that the accused had failed to prove that at the time of committing offence he was suffering from any mental illness and further held that the police did not exert any pressure on him to tender apology and conviction was proper.

In *Ghisalal v.state of M.P.*,[81]the accused, a liquor contractor was convicted by the Special Judge under Section 12 of the PC Act for giving a bribe of Rs. 500 to Station House Officer of police station. On appeal, the High Court found that: "two panch witnesses found hostile and one witnesses supported the statement of appellant who examined himself an oath in defence; the statement of SHO did not appear to be true that a bribe giver will offer bribe in the presence of two public persons and five police personnel present in his chamber; DSP, who investigated the case was not examined; no evidence like challan was adduced to support SHO's statement that the accused was caught twice or thrice while selling liquor in prohibited area and accordingly set aside the conviction".

In *R.P. Malik v. State of NCT of Delhi*[82] the petitioner was charge sheeted by ACB branch of Delhi Police for abetment under Section 12 of the Act. It was contended that the ACP filed a vexatious complaint against the petitioner at the behest of complainant Naveen Soni and therefore the FIR should be quashed. The High Court held that from reading of the FIR which has culminated in to charge sheet, it cannot be said that it has no substance and an issue requiring appreciation of evidence cannot be dealt with under Section 482 of Cr.P.C.

In *Kancharla Veeraiah v. State*,[83] the appellant, a private person and representative of twin cinema theatres at Yanam was convicted by trial Court for offence under Section 451of IPC and Section 12 of the PC Act, 1988 on the charge that he went to the house of complainant who was director of Local

[81] 2010 (1) Crimes 381 (M.P.)
[82] 2013 (2) Crimes 632 (Del)
[83] (2007) 1 MLJ (Cri.) 1300 (Mad)

Administration Department, Pondicherry and offered a bribe of Rs. 7000 for giving exemption of entertainment tax. In appeal the High Court re-appreciated the evidence and held that; to warrant conviction U/S 451 IPC, the prosecution must prove that the accused had committed an offence of house tress pass as defined in Section 442 of IPC and; to warrant conviction under section 12 of the PC Act, it is the bounden duty of the prosecution to prove that an offence under Section 7 or 11 of the PC Act has been abated by the accused. Therefore, the High Court acquitted the accused giving benefit of doubt.

In *S.N.Prasad v. State of Bihar*,[84] a vigilance enquiry was being conducted by the complaint Vigilance Inspector against appellant. The appellant offered bribe of Rs. 500 to Vigilance Inspector upon which he gave a complaint and a trap was laid by CBI. The appellant was prosecuted and convicted by Special Judge for the offence under Section 12 of the PC Act. On appeal the High Court re-appreciated the entire evidence and came to the conclusion that the prosecution could not proved the charges against the accused by unimpeachable and clinching evidence and acquitted the accused appellant by giving benefit of doubt.

Non public servant alone can be tried by Special Judge

The Special Judge has exclusive jurisdiction to try the offences which are committed by non public servant under Section 12 and Section 14 (b) of the PC Act. Even, if the offence abetted is not committed by the public servant, the person who abetted the offence is liable for punishment. A person who habitually commits the offence punishable under Section 12 of the PC Act shall be punished under Section 14 (b) of the Act. It is true that when an offence abetted is committed both the person who abetted the offence and the person who committed the offence can be tried at a same trial by Special Judge,[85]

[84] I (2001) CCR 52 (Pat)

[85] *Prabhu v. Union of India,* 2003 (3) Crimes 270 (Ker) : 2003 (5) AIC 803 (Ker)

Thus, when an offence under Section 7 or Section11 of the Act is abetted by a non public servant but that offence is not committed by such public servant, then the non public servant alone can be prosecuted and punished under Section 12 or Section 14 (b) of the Act.

13. Criminal misconduct by a public servant- (1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtains for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) While holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation- (1) For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant, who commits criminal misconduct, shall be punishable with imprisonment for a term which shall not be less than [86][four years] but which may extend to [87][ten years] and shall also be liable to fine.

Offence of criminal misconduct

Criminal misconduct committed by public servant has been made an offence under Section 13 of the Act. Firstly, this new offence of criminal misconduct was created by Section 5 of the Prevention of Corruption Act, 1947. The legislature advisedly widened the scope of the crime by giving a very wide definition in Section 5 with a view to punish those, who holding public office and taking advantage of their official position obtain any valuable thing or pecuniary advantage.[88] Though, the Act creates a new offence of criminal misconduct but to some extent it overlaps on the pre-existing offences.[89] Section 13 of the Act, corresponds to Section 5 of the Prevention of Corruption Act, 1947. Under Section

[86] Substituted by Act No. 1 of 2014, for the words "one year".
[87] Substituted by Act No. 1 of 2014, for the words "seven years".
[88] *Dhaneshwar Narain Sexena v. Delhi Administration*, AIR 1962 SC 195: 1962 Cr. LJ 203 (SC.
[89] *Narayan Nambiar v. State of Kerala*, AIR 1963 SC 1116: 1963 (2) Cr. LJ 186.

13 (1) of the Act, the main ingredient of the offence of criminal misconduct can be described as that the accused person is a public servant and he:

a. habitually accepts, or obtains, or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification other than legal remuneration, as motive or reward for the purposes as mentioned in Section 7 of the Act; or
b. habitually accepts, or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing without consideration or for consideration which he knows to be inadequate; or
c. he dishonestly misappropriates any property entrusted to him as public servant; or
d. he obtains any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant or without any public interest; or
e. he or any person on his behalf, is or has been in possession at any time during the period of his office as a public servant, as such pecuniary resources and properties which are disproportionate to his known sources of income and he is unable to satisfactorily account to it.

Meaning of the word 'habitually'

What constitute the proof of habit is not stated anywhere in the Act. In this regard any other legal provision also, is not available. In Halsbury's Laws of England[90] it is stated that: "however, no exhaustive definition of a habitual criminal and the question whether an offender is or is not a habitual criminal is always one of fact for jury. The mere fact that he has on a previous occasion been proved to be a habitual criminal and has subsequently relapsed into crime is not of

[90] Vol. IX, 2nd ed., at. 237.

itself conclusive. The accused is always entitled to call evidence to show that at the material time he is not a habitual criminal". In this regard some guidance can be received from Russell on Crimes,[91] wherein it is stated:

"a person can be found to be a habitual drunkard, it within twelve months preceding he has been summarily convicted at least three times for any of the offences specified in relation to drink". For the purpose of preventive detention on the ground of habitual criminality, it is further stated that[92]: "a person cannot be found to be habitually criminal, unless the person has been at least three times previously convicted of the crime charged".

In *Queen-Empress v. Baburam Kansari*[93] the accused was charged under Section 413 of IPC for habitually receiving stolen property. Norris and Beverly, JJ. held:

"We do not think that a man can be said to be habitually receiving stolen goods who may receive the proceeds of a dozen different robberies from a dozen different thieves on the same day, but in addition to the receipt from different persons there must be a receipt on different occasions and a different dates".

In *Biswabhaushan Naik v. State*[94], it has been said that, in construing the word habitually, used in Section 5 (1) (a) and (b) of the Prevention of Corruption Act, 1947, what is required to be proved as habitual bribe-taking. What constitutes proof of habit is not indicated anywhere in the Act, or in any other legal provision in this behalf. The attention has also been drawn for an analogy to Russell on Crimes as stated above. But it has been held that:

"these provisions cannot furnish any real analogy for guidance in respect of an offence of habitual bribe taking under clause (a) and (b) of sub-section (1) of

[91] Vol. 1, 1923 ed. at 247.
[92] *Ibid.* at 243
[93] AIR 19 Cal 190.
[94] AIR 1952 Orissa 289 at 301

Section 5 of the Prevention of Corruption Act, 1947; because obviously it is not meant that only instances of previous conviction of bribe-taking should be given in evidence, nor is there any particular sanctity attached to number three. Neither does Section 110 of Cr. P.C. which in its various clauses, refers to habitually commission of certain classes of offences, furnish any guide, because by that section mere reliable information that a person is a habitual offender in respect of certain specified offences without proof of the actual commission of those crimes, may be enough for action under Section 110 of Cr. P.C. The only provision that may afford some guidance is Section 413 of the IPC, which provides for enhanced punishment in the case of habitual receiver of stolen property. It has been held with reference to that section that in order that a person may be convicted under it, it must be shown that the offence of receiving stolen property has been committed on different occasions and on different dates". It was further held that a charge under Section 5 (1) (a) and (b) of the Prevention of Corruption Act, 1947 should refer to some specific period during which the accused is alleged to have committed the offence. The period may be one year may be two years, may be perhaps a little more but it cannot be so wide as to amount to an abuse of the process of the court. If the court finds that the prosecution attempts to give evidence of quite a very large number of instances, covering over an unduly long period, in proof of the alleged habitual misconduct, the court undoubtedly would have the power to require the prosecution to limit itself to a reasonable period of time, in order to prevent any prejudice arising in the mind of the court by allegations of numerous items. It is ordinarily desirable that prosecution of public servants for offence of criminal misconduct should mention the specific act or acts sought to be relied upon in proof thereof and to state in cases falling under clauses (a) and (b), that all or such of the instances as may be held proved, are intended to be relied upon as proof of the habit. But a trial cannot be held to be illegal on the ground that the particular items of bribery have not been specified in the charge, if the omission has not occasioned a failure of justice.

The words 'by habit' or 'by habitually' imply frequent practice or use.[95] There must be at least two or more case against the same individual to show habit.[96] The word 'habitually' must be taken to mean repeatedly or persistently, and habit is capable of proof by adducing evidence of the commission of a number of similar acts.[97] In *Maung Po Aung v. The King*[98] it was held that the world habitually means frequent practice or use. The word 'habit' implies a tendency or capacity resulting from the frequent repetition of the same acts. The aforesaid words have been used in Section 110 of Cr. P.C. in the sense of depravity of character as evidenced by the frequent repetition or commission of offence mention in the section.[99]

The evidence must be of persons who are acquainted with the accused and live in the neighborhood and are themselves aware of the accused reputation. It must be the opinion of witnesses from specific case coming to their knowledge and not merely from reports or rumours received from other.[100] It is not enough merely to assert that the person proceeded against is a person of criminal tendencies or that he is suspected of having committed certain crimes. The evidence must be specific and must relate to particular instances within the knowledge of the witnesses.[101] Evidence must relate to particular instances which have come to the knowledge of the deponent and must be specific mere belief and opinion without reference to acts and instances which have induced the witness to from opinion can hardly be regarded as evidence of repute.[102] In *P.B. Pande v. Emperor*,[103] it was held by Crump J. that the term habitually in Section 47, Evidence Act means usually, generally or according to custom. It does not refer to

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[95] *Bhubaneshwar*, 6 Pat I, 100 IC 967

[96] *Bonai*, 15 CWN 461

[97] *Local Govt. v. Hnumantha Rao*, AIR 1924 Nag 19 : 25 Cr. LJ 65

[98] 41 Cr.L.J. 495: 187 IC 609.

[99] *Bobhaneshwar Kaur v. King-Emperor*, AIR 1927 Pat 126: 28 Cr. LJ 359.

[100] *Ramalagan v. Emperor*, AIR 1924, Pat 500 : 1925 Cr. LJ 1377

[101] *Mohan Singh v. Emperor*, AIR 1926 Lah 45: 1926 Cr. LJ 1377.

[102] *K. Ranga Reddy v. King Emperor*, ILR43 Mad 450

[103] AIR 1925 Bom. 429: 26 Cr. LJ 1474: 89 IC 1042: 27 Bom.L.R. 1031.

frequency of the occasion but rather to the invariability of the practice. In *Azharuddin Ahmad v. the Crown*,[104] it was held that: "habitual misconduct may be defined as customary, constant or continual. In the Oxford Dictionary 'habit' is described as settled tendency or practice. We think it is difficult to hold that payment of bribe to three persons in the same transaction is sufficient to show a settled tendency or practice. In our opinion much more than this is required".

In *Nani Gopal Mitra v. State of Bihar*[105] it was held that where the charge did not disclose the amounts which the accused took as bribes and the persons from whom he had taken such bribes, this circumstance does not invalidate the charge, though it may be ground for asking for a better particular. When the accused did not complain in the trial court or the High Court that the charge did not contain the necessary particulars and the record disclosed that the accused understood the case against him and adduced all the evidence which he wanted to place before the court, the argument of the accused that he had no opportunity to prove his innocence cannot be accepted. Where the charge is of habitually accepting bribes it is not necessary that the various instances should be mentioned.[106]

Attempt to obtain bribe in a single instance

An attempt to obtain bribe in a single case which was never paid would not fall under clause (a) or (b) or (d) of sub-section (1) of Section 5 of the Prevention of Corruption Act, 1947 and would not, therefore, be corruption within the meaning of this Act.[107]

The word habitually occurring in Section 5 (1) (a) and (b) has to be regarded not to refer to an isolated act of criminal misconduct but to indicate persistency in doing the acts of accepting or obtaining of illegal gratification. In

[104] 52 Cr. LJ 355: 54 Cal WN 2 DLR 276: Pak Cas 1951: Dacca 78.
[105] AIR 1970 SC 1636: 1970 Cr. LJ 1396.
[106] *C.R. Bansi v. State of Maharashtra*, AIR 1971 SC 786: 1971 Cr. LJ 662.
[107] *Rajagopala Ayyar v. State*, AIR 1955 Mad 182

order to constitute an offence of criminal misconduct falling within Section 5 (1) (a) and (b) of the Act, *inter alia*, it has to be proved that the accused habitually accepts or obtains any illegal gratification other than legal remuneration as a motive or reward such as is mentioned in Section 161 of the IPC. The word habitually means 'usually' or according to custom. It does not refer to the frequency of occasions but rather to the invariability of practice.

Offence of criminal misconduct under Section 13 (1) (a)

Section 13 (1) (a) of the Prevention of Corruption Act, 1988 corresponds to Section 5 (1) (a) of the Prevention of Corruption Act, 1947. The essential ingredients of the offence under Section 5(1) (a) of the Act ware same as the Section 161 of IPC, subject to only one difference that the offence under the Prevention of Corruption Act, 1947 was an aggravated form of the offence than the offence under Section 161 of IPC.

Offence of criminal misconduct under Section 13(1) (b)

When the prosecution proves that the accused had received gifts on several occasions from a firm with which he had official dealings, the offence defined under clause (b) of Section 13 (1) would be established, if from the circumstances of the case it could be presumed that such gifts had been received as a motive or reward for showing undue favour[108].

Offence of criminal misconduct under section 13 (1) (c)

It is not necessary or possible in every case to prove in what precise manner the accused person has dealt with or appropriated the goods of his master. The question is one of intention and not a matter of direct proof but giving a false account of what he has done with the goods received by him may be treated as a strong circumstance against the accused person. In the case of a servant charged

[108] *S.A. Venkatraman v. State* AIR 1955.

with misappropriating the goods of his master, the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account was due to an accidental loss, then the facts being within the servant's knowledge, it is for him to explain the loss. It is not the law of this country that the prosecution has to eliminate all possible defences or circumstances which may exonerate him. If these facts are within the knowledge of accused, then he has to prove them. Of course, the prosecution has to establish a *prima facie* case in the first instance. It is not enough to establish facts which give rise to a suspicion and then by reason of Section 106 of the Evidence Act[109] to throw the onus on him to prove his innocence.[110]

In *Kantilal Gandalal Shah v. The State of Gujarat*[111] the accused who was the Secretary of a Co-operative Society received an amount of Rs. 275 on behalf of the society and the amount was credited in the books of the society. Subsequently at the instance of the accused the accountant made a cross entry showing that the credit entry made earlier was wrong. The accused appended his signatures under both the above mentioned entries. It was held that as the funds of the society were in the charge of the accused, the instructions given by him to the accountant to make wrong entry were only susceptible of the inference that he wanted to misappropriate the amount.

In *State v. Panduranga Baburao*,[112] a full bench of the Bombay High Court held that the language used by the legislature in Section 5 (1) (c) of the Prevention of Corruption Act, 1947 clearly negative any suggestion that the legislature intended to repeal the provisions of Section 409 of IPC. It was also held that it cannot be said that Section 409 of IPC is impliedly repealed by the provisions of

[109] The Indian Evidence Act, 1872, Section 106 reads: When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

[110] *Krishna Kumar v. Union of India*, AIR 1959 SC 139: 1959 Cr. LJ 1508.

[111] AIR 1974 SC 222 : 1974 Cr. LJ 310.

[112] AIR 1955 Bom 451.

the Prevention of Corruption Act, 1947 because it is impossible to say that the provisions of the two are wholly incompatible or that the two statutes together would lead to wholly absurd consequences.

Distinction between Section 13 (1) (c) of the Act and Section 405 of IPC

In *Om Prakash Gupta v. State of U.P.*[113], the Supreme Court observed that from the comparison the provisions of the two sections, it is clear that an offence under Section 405 IPC is separate and distinct from the one under Section 5 (1) (c) of the Act, 1947.

Offence of criminal misconduct under Section 13 (1) (d)

It is provided that if a public servant obtains any valuable thing or pecuniary advantage by corrupt and illegal means or; by abusing his position as public servant, without any public interest then, he commits an offence of criminal misconduct under Section 13 (1) (d) of the Act.

It is noted here that in Section 7 of the Act, the words accepts or obtains or agrees to accept or attempts to obtain has been used, specifically. But in Section 13(1) (d), the only word 'obtains' has been used by legislature. Thus, it is clear that there is a departure in the language used in clause (d) of Section 13 (1) and the word 'accepts' is omitted and therefore, mere acceptance of money without any other evidence would not be sufficient for convicting the accused under Section 13(1)(d) of the Act.[114]

Meaning of the terms 'obtains' or 'attempts to obtain'

The word obtains in Section 5(1)(d) of the Prevention of Corruption Act, 1947 does not eliminate the idea of acceptance of what is given or offered to be

[113] AIR 1957 SC 458 : 1957 Cr. LJ 575

[114] *Subash Parbhat Sonvane v. State of Gujarat*, 2002 Cr. LJ 2787 (S.C.)

given.[115] Though, it connotes an element of effort on the part of receiver. A public servant may accept money that is being offered to him, or he solicits payment of bribe or, he extorts bribe by threat or coercion. In each case, he obtains a pecuniary advantage by abusing his position as a public servant. In *Narayan Nambiar v. State of Kerala*,[116] the Supreme Court has explained the meaning of the word 'obtains' as follows:

"Obtains means acquire or get. If a corrupt officer by the said means obtains a valuable thing or a pecuniary advantage, he can certainly be said to obtain the said thing or a pecuniary advantage; but it is said that in clauses (a) and (b) the same word is used and in the context of those clauses it can only mean getting from a third party other than the government and, therefore, the same meaning must be given to the said word in clause (d). The word "obtains" in clauses (a) and (b) in the context of those provisions may mean taking a bribe from a third party, but there is no reason why the same meaning shall be given to the word used in a different context when that word is comprehensive enough to fit in the scheme of that provision. Nor can we agree that as dishonest misappropriation has been provided for in clause (c), the other cases of wrongful loss caused to the government by the deceit practiced by a public officer should fall outside the section. There is no reason why when a comprehensive statute was passed to prevent corruption, this particular category of corruption should have been excluded therefrom because the consequences of such acts are equally harmful to the public as acts of bribery".

Pecuniary advantage

The meaning of the words 'pecuniary advantage' is very wide and includes all cases of cash payment. Thus, the all objects in coins or specie as well as cash payment is included in the meaning of words pecuniary advantage. A man when

[115] P.V. Ramakrishna, *Hand Book on Prevention of Corruption Act, 1988, supra* note 59.
[116] AIR 1963 SC 1116: 1963 (2) Cr. L.J. 186.

he gets some money, in cash, he certainly makes a pecuniary gain and therefore has a pecuniary advantage.

In *Delhi Administration v. S.N. Khosla*, an Income Tax Officer obtains the goods on credit from various firms and failed to repay the amounts the Supreme Court held that the obtaining of goods on credit cannot be held to amount to obtaining pecuniary advantage unless there was an agreement between the trader and the officer that the later was not expected to pay for the goods.

Abusing his position

If a public servant obtains money from any person to conceal the birth of an illegitimate child, which is not an offence under IPC or any other criminal statute, he is guilty of abusing his position as a public servant within the meaning of Section 13(1) (d) of the Act by obtaining for himself a valuable thing or pecuniary advantage.[117]

In Section 13 (1)(d), abusing his position as public servant do not confine merely to misuse of his position as such public servant, but such misuse of his position must be with a dishonest mind. There is no prohibition for a public servant taking a loan when he is in need of money. But if he takes the loan from a person with whom he has got official dealings it may be improper.[118] It may even amount to misuse of his position since it is likely to create an impression in the mind of the person from whom he obtains the loan that he is likely to do favour to that person or withhold doing a favour if loan is not given. Unless it is established that the public servant has obtained such loan by corrupt or illegal means or by dishonestly misusing his position as public servant, the offence of Section 5 (1) (d) would not be made out[119].

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[117] *Siv Raj Singh v. Delhi Administration* , AIR 1968 SC 1419 : 1969 Cr. LJ 1

[118] P.V. Ramkrishna, *supra* note 59 at 374.

[119] *Ibid.*

In *Public Prosecutor v. T.K. Vishanatham*[120] it was held that where a Technical Investigator in the Regional Office of the Textile Commissioner, Madras, borrowed large sums of money as hand loans from several persons with whom he had official dealings and there is no evidence to show that the accused reminded to the persons of his position and obtained the loans, it cannot be said that the accused had dishonestly abused his position as public servant.

In *V.S.Abdul Sattar Shah v. Superintendent of Police, CBI, Cochin*[121] the accused, a Superintendent of Central Excise in the office of the Collector of Customs and Central Excise, Cochin was prosecuted for having received money from some job-seekers representing that he would be able to secure jobs for them in some industrial establishment. During trial, he argued before the court that at the relevant time, he was transferred to a range in whose limits the particular establishments did not fall and therefore he was not able to abuse his position as a public servant. The High Court rejected the plea and observed:

"Even if, on some working arrangements the appellant was asked to confine his supervision work to a particular range during a particular period that does not mean that the appellant had ceased to be a public servant who could have exercised supervision over the three industrial establishments mentioned above. If the appellant had gone to supervise those industrial establishments in his official capacity during the said period, I do not think that the appellant could have been prevented from discharging his functions merely on the ground that as per the working arrangements he had to attend to some other establishments. He continued to be the Superintendent of the Central Excise under the same Collector ate division during the period. Therefore, his acts could only be termed as those in his capacity as a public servant and not in his individual capacity".

[120] 1971 Cr. LJ 573

[121] 1987 Cr. LJ 1670 : 1987 (2) Ker, LT 19

Offence of criminal misconduct under Section 13 (1) (e) of the Act

Section 13(1) (e) corresponds to Section 5(1) (e) of the Prevention of Corruption Act, 1947. Under Section 13 (1) (e) of the Act, it is provided that if a public servant or any other person on behalf of him, during the period of his office, is in possession or has been in possession such pecuniary resources or property which are disproportionate to his known sources of income and he is unable to satisfactorily account to them, then he commits an offence of criminal misconduct. In *State of Maharashtra v.Wasudeo Ramachandra* Kaidalwar,[122] the Supreme Court held that to substantiate the charges under Section 5(1) (e) of the Act, the prosecution must have to prove that:

i. the accused is a public servant;
ii. the nature and extend of the pecuniary resources of property which are found in his possession;
iii. it must be proved that what are known sources of income of the accused public servant;
iv. lastly, it must be proved quit objectively, that such resources or property which are found in his possession are disproportionate to his known sources of income.

Once these above ingredients are established, the offence of criminal misconduct under section 13(1) (e) is made out and burden to prove to satisfactorily account for his possession of disproportionate assets shifts on accused person. Under criminal law, the nature and extent of burden to prove his innocence on accused person is well settled and accused is not bound to prove his innocence beyond all reasonable doubt. Thus, the public servant has to prove satisfactorily account for his possession of disproportionate assets and not to prove his claim beyond all reasonable doubt.

[122] AIR 1981 SC 1186 : 1981 Cr. LJ 884

According to explanation of Section 13(1) (e), the "known source of income" means income which has been received from lawful sources and also intimated in accordance with provisions of law. Thus, the prosecution has relieved from burden of investigating into sources of income of an accused to a large extent.

Known sources of income

The expression "known Sources of income' must have reference to sources known to the prosecution on a thorough investigation of case.[123] It is not intended that the known sources of income means sources known to the accused. It is not expected from prosecution to known all affairs of accused person which especially would be within the knowledge of accused person.

In *Biswabhaushan Naik v. State*,[124] the Orissa High Court held that travelling allowance cannot be treated as a source of legitimate income. In *C.S.D. Swami v. State*[125] the Supreme Court held that the prosecution would not be justified in concluding that travelling allowance was also a source of income where such allowance is ordinarily meant to compensate an officer concerned for his out of pocket expenses incidental to journeys performed by him for his official tours. In case of a public servant, the prosecution would naturally, infer that his known source of income would be the salary earned by him during his active service. If the prosecution has failed to disclose all the sources of income of an accused person, it is always open to him to prove those other sources of income which have not been taken into account or brought into evidence by prosecution.

In *M.M. Gandhi v. State of Mysore*,[126]it was held that travelling allowance given in whole time to public servants is not intended to be a source of profit. Known source of income means known sources of income to the prosecution after

[123] P.V. Ramakrishna, *supra* note 59 at 498.
[124] AIR 1952 Orissa 289 : 1952 Cr. LJ 1533
[125] AIR 1960 SC 7: 1960 Cr.L.J. 131.
[126] AIR 1960 Mys 111 : 1960 Cr. LJ 934

a thorough investigation and the onus of satisfactorily accounting for it is not as heavy an onus as is on the prosecution to prove its case beyond all reasonable doubt.[127] Travelling allowance cannot be taken as a legitimate source of income and therefore, onus would not be on the prosecution to lead evidence of the same. Whether savings have been made or not being within the special knowledge of the accused, it is on him to adduce acceptable evidence of the same and if the accused successfully discharges that onus, it is not open to the court to brush aside the same with the aid to any fancied legal fiction.[128] It is provided that an offence under section 13(1) (e) of the Act shall not be investigated without the order of a police officer not below the rank of Superintendent of Police.[129]

14. Habitual committing of offence under Sections 8, 9 and 12- Whoever habitually commits,-

a) an offence punishable under section 8 or Section 9; or
b) an offence punishable under section 12;

shall be punishable with imprisonment for a term which shall not be less than [130] [five years]but which may extend to [131] [ten years] and shall also be liable to fine.

15. Punishment for attempt- Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of Section 13 shall be punishable with imprisonment for a term [3][which shall not be less than two years but which may extend to five years] and with fine.

16. Matters to be taken into consideration for fixing fine- Where a sentence of fine is imposed under sub-section (2) of Section 13 or Section 14, the Court in fixing the amount of the fine shall take into consideration the amount or

[127] *Hemanta Kuamr Mohanty v. State of Orissa*, 1973 (1) SLR 1121
[128] *Ibid.*
[129] The Prevention of Corruption Act, 1988, Section 17, proviso (ii).
[130] Substituted by Act No. 1 of 2014, for the words "two years".
[131] Substituted by Act No. 1 of 2014, for the words "seven years".

the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

Investigation into Cases under the Act

17. Persons authorized to investigate- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,-

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmadabad and in any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank;

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorized by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or makes arrest therefor without a warrant:

Provided further that an offence referred to in clause (e) of sub-section (1) of Section 13 shall not be investigate without the order of a police officer not below the rank of a Superintendent of Police.

Investigation of the offences punishable under the PC Act

The main object of the legislature which has reflected under Section 17 of the Act is to protect the interest of public servant. But the main idea behind it is the public interest. It has been thought in the public interest that the investigation of the offences punishable under this Act should be conducted by responsible police officers. Under Section 17 of the Act, an alternative procedure has also been put in place and it is provided that after obtaining an order from a Metropolitan Magistrate or from a Magistrate of the first class, a police officer below the rank of Deputy S.P. may make investigate into offences punishable under this Act.

Under section 17 of the Act, an Inspector of the police of the Delhi Special Police Establishment, and in metropolitan areas including, Bombay, Calcutta, Madras and Ahmadabad, an Assistant Commissioner of Police and in other areas a Deputy S.P. or a police officer equivalent to him is empowered to make or conduct investigation into offences punishable under this Act.[132] Those police officers as stated above are also empowered to make arrest without warrant of Judicial Magistrate.[133]

Further, it is provided that State Government by general or special order may authorize to a police officer, who is not below from the rank of an Inspector of Police, to make investigation into offences punishable under this Act. Such police officer authorized by State Government may make investigation into offences and if it is required he also may make arrest to a person without order of

[132] The Prevention of Corruption Act, 1988, Section 17 (1), Clause (a), (b) and (c).
[133] *Ibid.*

Judicial Magistrate.[134] Further, it is also provided that an offence punishable under Section 13 (1) (e) of the Act shall not be investigated without the order of a police officer who is not below the rank of Superintendent of Police.[135] The SP is not required to write a judgment or a reasoned order, he is to satisfy himself that it is necessary to make investigation into offences but, it is not necessary to record the reason of that satisfaction.[136] During course of trial, it would be open to the accused person to examine the concerned S.P. that the order of authorization given by him was not in accordance with the requirements of law[137].

18. Power to inspect bankers' books- If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under Section 17 and considers that for the purpose of investigation or enquiry into such offence, it is necessary to inspect any bankers books, then notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries there from, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section.

Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorized in this behalf by a police officer of or above the rank of a Superintendent of Police

[134] *Ibid*, proviso (i)
[135] *Ibid*, proviso (ii)
[136] *Manavir Prasad Srhivastava v. State of M.P.* 2000 Cr. LJ 1232 (M.P.)
[137] *Ibid.*

Explanation-In this section, the expressions "bank" and "bankers' books" shall have the meanings respectively assigned to them in the Bankers' Books Evidence Act, 1891 (18 of 1891).

Power to make inspections into bankers' book

In course of investigation, police officer, who is not below the rank of Superintendent of Police, can make inspection into the bankers' book. The Superintendent of Police may authorize to an Inspector of Police to inspect the bankers' book for the purpose of investigation.

In Case, state of *Maharashtra v. Tapas D. Neogy*,[138] the Supreme Court held that within the meaning of Section 102 of Cr. P.C., a bank account is a property and a police officer can seize the account and issue the directions to the concerned Bank to prohibit the operation of account by the accused person. The Supreme Court observed that:

"It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the Courts in concluding the trails is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Cr. P. and the underlying object engrafted therein, in as much as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdraw by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. It may also be seen that under the Prevention of Corruption Act, 1988 in the matters of imposition of fine under sub-section (2) of Section 13, the legislature have provided that the court in fixing the amount of fine shall take into consideration the amount or value of the

[138] 1999 Cr. LJ 4305(SC) : (1999) 7 SCCC 685

property, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation so given in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 18 of the Prevention of Corruption Act".

Sanction for Prosecution and other Miscellaneous Provisions

19. Previous sanction necessary for prosecution- (1) No Court shall take cognizance of an offence punishable under Sections 7,10,11,13 and 15 alleged to have been committed by a public servant, [139] [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)],-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
(b) in the case of person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

[139] Substituted by Act No.1 of 2014, for the words "except with the previous sanction".

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) not finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission of irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-sanction (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation- For the purpose of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes references to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

Sanction for prosecution

Section 19 (1) of the Act, provides that no court shall take cognizance of an offence, punishable under Sections 7, 10, 13 and 15 of the Act, against public servant without previous sanction of competent authority. The existence of a valid sanction of competent authority is a pre-requisite for the court to take cognizance of offences enumerated in Section 19(1) of the Act. The bar is for court to take cognizance of offence. The object of Section 19 of the Act is to protect the interest of public servants against irresponsible, frivolous and vexatious proceedings. Certainly, it is necessary that the a public servant who has performed his official duties in good faith should be protected from unnecessary harassment of legal proceedings arising out of unfounded and baseless complaints. In the absence of such a provision, the public servant may not be inclined to offer his/her free and frank opinion and may not be able to function freely.[140] Thus, the underlying policy of Section 19 of the Act is to protect the public servant from unnecessary harassment by frivolous legal proceedings.

In *R.S. Nayak v. A.R. Antulay*,[141] the Supreme Court held that, a trial without sanction renders the proceedings *ab-initio* void. But the *terminus a quo* for a valid sanction is the time when the court is called upon to take the cognizance of offence. If, therefore, when the offence is alleged to have been committed, the accused was a public servant but by the time the court is called upon to take cognizance of the offence committed by him as public servant, he has ceased to be a public servant, no sanction would be necessary for taking cognizance of the offence against him.

20. Presumption where public servant accepts gratification other than legal remuneration- (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13

[140] *Manzoor Ali Khan v. Union of India & others* (2014) 7 SCC 321.
[141] AIR 1984 SC 684 : 1984 Cr. LJ 613

it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-section (1) and (2), the Court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

21. Accused person to be a competent witness- Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that,-

(a) he shall not be called as a witness except at his own request;

(b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless-

(i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged; or

(ii) he has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence.

22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in their application to any proceeding in relation to an offense punishable under this Act have effect as if,-

(a) in sub-section (1) of Section 243, for the words "The accused shall then be called upon", the words "The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon" had been substituted;

(b) in sub-section (2) of Section 309, after the third proviso, the following proviso had been inserted, namely :-

"Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under Section 397 has been made by the party to that proceeding";

(c) after sub- section (2) of Section 317, the following sub-section had been inserted, namely :-

"(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with enquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination";

(d) in sub-section (1) of Section 397, before the Explanation, the following proviso had been inserted, namely :-

"Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings:-

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies".

23. Particulars in a charge in relation to an offence under Section 13(1) (c)- Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), when an accused is charged with an offence under clause (c) of sub-section (1) of Section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so farmed shall be deemed to be a charge of one offence within the meaning of Section 219 of the said Code :

Provided that the time included between the first and last of such dates shall not exceed one year:

24. Statement by bribe giver not to subject him to prosecution- Notwithstanding anything contained in any law for the time being in force, a statement made by a person in any proceeding against a public servant for an offence under Sections 7 to 11 or under Section 13 or Section 15, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under Section 12.

25. Military, Navy and Air Force or other law not to be affected- (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any Court or other authority under the Army Act, 1950 (45 of 1950), the Air Force Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), the Border Security Force Act, 1968 (47 of 1968), the Coast Guard Act, 1978 (30 of 1978) and the National Security Guard Act, 1986 (47 of 1986).

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the Court of Special Judge shall be deemed to be a Court of ordinary criminal justice.

26. Special Judges appointed under Act 46 of 1952 to be Special Judges appointed under this Act- Every Special Judge appointed under the Criminal Law Amendment Act, 1952 for any area or areas and is holding office on the commencement of this Act shall be deemed to be a Special Judge appointed under Section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

27. Appeal and revision- Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court as if the Court of the Special Judge were a Court of Session trying case within the local limits of the High Court.

28. Act to be in addition to any other law- The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

29. Amendment of the Ordinance 38 of 1944- In the Criminal Law Amendment Ordinance, 1944,-

(a) in sub section (1) of Section 3, sub-section (1) of Section 9, clause (a) of Section 10, sub-section (1) of Section 11 and Sub-section (1) of Section 13, for the words "State Government", wherever they occur, the words "State Government or, as the case may be, the Central Government" shall be substituted;

(b) in Section 10, clause (a) , for the words "three months", the words "one year" shall be substituted;

(c) in the Schedule,-

(i) paragraph 1 shall be omitted;

(ii) in paragraphs 2 and 4,-

(a) after the words "a local authority", the words and figures "or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in Section 617 of the companies Act, 1956 (1 of 1956), or a society aided by such corporation, authority, body or Government Company" shall be inserted;

(b) after the words "or authority", the words "or corporation or body or Government Company or Society" shall be inserted;

(iii) for paragraph 4-A, the following paragraph shall be substituted, namely "4-A. An offence punishable under the Prevention of Corruption Act, 1988";

(iv) in paragraph 5, for the words and figures "items 2, 3, and 4", the words, figures and letter "items 2, 3, 4 and 4-A" shall be substituted.

30. Repeal and saving- (1) The Prevention of Corruption Act, 1947 (2 of 1947) and Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of Section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act.

31. Omission of certain Sections of Act 45 of 1860- Sections 161 to 165-A (both inclusive) of the Indian Penal Code (45 of 1860) shall be omitted, and Section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply to such omission as if the said sections have been repealed by a Central Act.

Conclusion

The Prevention of Corruption Act, 1988 is a puerile piece of legislation. It is not effective to check and control the very cancerous problem of corruption. As soon as possible it should be amended. In this regard the stringent provisions should be incorporated in the Act. Reason of corruption is greed for property. Therefore, this greed of property should be punished by way of confiscate entire assets of corrupt public servant not just of proceed of corruption. Corrupt public

servant should be boycotted from holding any public office. Their corruptibility should be treated as ineligibility and incompetency to hold any public office.

The Prevention of Corruption (Amendment) Bill, 2013

Introduction

There is a very long history of anti-corruption law in India. Before independence, an ordinance dealing with corruption and the attachment of property was promulgated under the Government of India Act, 1935. It was called the Criminal Law (Amendment) Ordinance, 1944 (Ordinance No. 38 of 1944). It was promulgated to prevent the disposal or concealment of property procured by means of certain scheduled offences, including offences under the India Penal Code of 1960. The Ordinance came into force on 23rd August, 1944. The Ordinance is one of the few remaining permanent ordinances given that it was enacted when the India and Burma Emergency Provisions were in effect and when the six month clause requiring ordinances to be statutorily enacted was suspended. Thereafter, in independent India, to supplement the provisions of IPC the Prevention of Corruption Act, 1947 was enacted. It was the first direct and consolidated law against corruption in India. The existing provisions under the IPC and other laws had proved inadequate to deal corruption of public servants, which had increased greatly during the war years, due to scarcity and controls. Therefore, a new law was required to deal with various post war scenarios, which provided multiple opportunities for corruption, these included post war reconstruction schemes, termination of contracts, and disposal of large number of government surplus stores[142]. The scope of the Prevention of Corruption Act, 1947 was considered very narrow and therefore the Prevention of Corruption Act, 1988 was enacted to replace it. The new Act of 1988 was intended to make existing

[142] Statement of Objects and Reasons of the Bill preceding the enactment of the Prevention of Corruption Act, 1947

anti-corruption laws more effective by their coverage. With the passes of time some deficiencies have been noticed in the law and therefore the Prevention of Corruption (Amendment) Bill, 2013 was introduced in the Rajya Sabha on 19th August 2013 to amend the PC Act, 1988, the Delhi Special Police Establishment Act, 1946 and the 1944 Ordinance. The Bill was referred to Standing Committee, and the Committee has submitted its Report on 6th February, 2014. Subsequently, on 12th November 2014 an informal and improved version of the Bill was approved by the cabinet of Government of India.

Objectives of the Bill

The main objectives of the 2013 Bill are as follows:

(a) Widening of the description of both the demand and supply sides of corruption by providing criminalization of;

i. bribe giving by any person/organization to public servant;

ii. bribe taking by public servant by direct or indirect manner;

iii. and corporate liability in bribe giving.

Thus the Bill seeks to criminalize both the collusive as well as coercive bribery.

(b) Protection of honest public servants.

(c) Lying down of criteria and procedure for sanction of prosecution.

(d) Confiscation of proceeds of corruption

Statement of objects and reasons

The statement of objects and reasons to the Bill makes it clear that the proposed amendments in law have been necessitated due to ratification of the United Nation Convention Against Corruption in May 2011; the international practice on treatment of the offence of bribery and corruption; judicial pronouncements in corruption cases to fill in gaps in description and coverage of offence of bribery so as to bring domestic laws in line with current international

practice. It is also needed to meet more effectively the country's obligation under UNCAC[143]

Main features of the Bill

Under the proposed Bill all aspects of passive bribery, including solicitation and acceptance of bribe, have been covered. The new provisions under the proposed Section 7 of the PC Act make it an offence for any public servant to request, agree to receive or accept or attempt to obtain from any person any undue financial or other advantage. Even without demand any advantage provided to public servant could be considered as bribe under proposed Bill. At present there is no provision under the PC Act to tackle consensual bribery and the consensual bribery goes unpunished. It is proposed to criminalize any act of consensual bribery. Under new Section 9, it will be an offence for the commercial organization, if any person associated with it offers or promises any financial or other advantage to public servant to obtain or retain business for such organization. Thus, under the proposed Bill corporate liability has been fixed for bribe giving to public servant. The proposed Bill extends the protection to the honest public servant against vexatious prosecution who ceased to be government public servant. At present, under Section 19 of the Act, the protection of sanction for prosecution by appropriate authority is available to serving public servant only, which is now proposed to extend to retired public servant also.

Through the proposed Bill, Sections 7, 10, 12, 14 and 20 of the PC Act, 1988 are proposed to be substituted. Sections 1, 5, 13, 15 and 19 are proposed to be amended. After Chapter IV of the PC Act, 1988, a separate Chapter i.e. Chapter IVA tiled "Attachment and Forfeiture of Property" (Section 18A-18N) has to be inserted. Sections 11 and 24 of the PC Act will have to be deleted. It is also proposed to insert an amendment in Section 6A of the Delhi Police Establishment Act, 1946.

[143] P V Ramakrishna, *A Handbook on Prevention of Corruption Act, 1988, supra* note 59.

Analysis of new formulation of Section 7 under the proposed Bill, 2013

Under the proposed Bill, 2013 Section 7 intends to regulate demand side of bribery. It criminalizes acts relating to a public servant being bribed. Under the proposed Section 7 of the Bill, an attempt has been made to create a new comprehensive definition of offence which covers all aspects of passive bribery including the solicitation and acceptance of bribe through intermediary and also acts of public servants acting outside their competence. In respect of bribery the proposed Section 7 (1) criminalizes the following acts of the public servant viz; any public servant who requests for, or obtains or agrees to receive or accepts or attempts to obtain an undue financial or other advantage from any person:

a. to perform a relevant public function or activity, improperly by himself or by another public servant or;
b. as a reward for the improper performance of a relevant public function or activity or;
c. performs, or induces another public servant to perform improperly a relevant public function or activity in anticipation of a undue financial or other advantage or;
d. a request or agreement or acceptance or attempt for an undue financial or other advantage itself constitutes the improper performance of a relevant public function or activity.

According to explanation (1) (a) of Section 7 (1), it shall be immaterial that a public servant requests or obtains or agrees to receive or accepts or attempts to obtain the advantage directly or through a third party. Further explanation (1) (b) provides that the financial or other advantage may be for the benefit of a public servant himself or another person. Explanation (2) provides that it shall be immaterial that whether the public servant knows or believes that his conduct is improper. According to explanation (4) where a public servant induces a person erroneously to believe that his influence with the government has obtained a title or other benefit for that person and thus induces to give him any financial or other

advantage as a reward for his service, he has committed an offence under Section 7 (1).

Public function or activity

Section 7 (2) (a) defines "public function or activity". A function or activity is a public function or activity if:

i. It is of a public nature.
ii. It is performed in the course of a person's employment as a public servant.
iii. It is expected that such function or activity has to be performs in good faith and impartially.
iv. A person who is performing that function or activity is in a position of trust by virtue of performing it.

Improper performance of a public function or activity

Section 7 (2) (b) of the Bill defines "improper performance of a public function or activity". According to Section 7(2) (b) of the Bill a public function or activity has to be construed to be performed improperly, when it is performed in breach of relevant expectation or there is a failure to perform it. The failure to perform a public function or activity itself constitutes the breach of relevant expectation.

Further, Section 7 (2) (c) of the Bill defines "relevant expectation". In relation to a public function or activity, relevant expectation means that such public function or activity has to be performed impartially or in good faith. According to Section 7 (2) (e) of the Bill the test of 'relevant expectation' is what a reasonable person in our country expects in relation to performance of a public function or activity.

The proposed Section 7(1) criminalizes five types of activities of a public servant, namely if he requests any person for; obtains; agrees to receive; accepts; or attempts to obtain any undue financial or other advantage for the improper performance of a relevant public function or activity then the concerned public servant commits an offence under proposed Section 7 (1) of the Bill. It creates

great ambiguity and confusion and may be problematic in future for a number of reasons. The phrase "requests for" seems to already be criminalized under the phrase "attempts to obtain" and to unite with or amalgamation of these two phrases in Section 7(1) seems more than enough. In this regard, the Law Commission of India[144] has recommended that the phrase "request for" should be deleted from Section 7 of the Bill[145].

The phrases "undue financial or other advantage" and "improper performance" repeatedly used in Section 7 of the Bill are also problematic. The proposed formulation "financial or other advantage" seems narrower than the existing Section 7 formulation of "any gratification whatever, other than legal remuneration"[146]. The word "gratification" has been defined expressly under Section 7 explanation (b) of the 1988 Act as the word gratification is not restricted to pecuniary gratification or to gratification estimable in money. It clearly covers sexual favours also as "gratification" in return for the public servant to do or refrain from doing a certain act. However, other advantage in the phrase financial or other advantage being interpreted using "ejusdem generis" does not seems to cover sexual favours in return for the public servant's acts or omissions.[147] Thus, the proposed amendment is narrowing the scope of corruption, instead of the stated intent of expanding it. Further the proposed Section 7 (a) deals with situations, which are very common in India, in which the public servant takes bribes to perform their functions properly.[148] This situation seems too covered under Section 7(1) (b) of 2013 Bill, but does not clearly express due to absence of an appropriate illustration. There is a need to resolve this situation by providing an

[144] Law Commission of India, 254th Report on 'The Prevention of Corruption (Amendment Bill) 2013' (2015).
[145] *Id*., para, 4.4 at 7.
[146] *Id.*, para 2.5.3 at 8
[147] *Id*.,
[148] *Id.*, para 2.7.1 at 10

appropriate illustration.[149] However, Section 7(1) (b) of the 2013 Bill criminalizes the mere act of obtaining, agreeing to receive, attempting to obtain any financial or other advantage. It is confusing because of two reasons. Firstly, it seems to comprise the minimum morality of entire Section 7 of the Bill.[150] If mere asking for a bribe is made an offence, then the purpose of Section 7(1) (a), (c) and (d) seems become unnecessary. Therefore it should be subsumed within the main section. Secondly, having four sub-sections of Section 7, it seems that Section 7(1) (a), (c) and (d) are required because there are certain circumstances which are not covered by Section 7(1) (b). That cannot have been the intention of legislative in expanding the scope of bribery offence under Section 7.[151] Lastly, Section 7 of the 2013 Bill repeatedly refers to the term relevant public function or an activity which borrowed from Sections 2 and 3 of the U.K. Bribery Act, 2010. The U.K. Bribery Act sought to punish private acts of bribery but wanted to classify only some of them as punishable. This is not relevant in the Indian context because the PC Act only deals with corruption amongst public servants. Moreover the proposed Section 7(2) (a) only defines "public function or activity" and therefore, the use of word "relevant" in Section 7 (1) creates unnecessary confusion.

The PC Act, 1988 only deals with corruption by public servant. The term "public duty" and "public servant" have been defined under Section 2(b) and 2(c) of the Act respectively. The proposed Section 7(2) (a) of the 2013 Bill deals with the definition of a "public function or activity". Therefore, the definition under Section 7(2) (a) of the term 'public function or activity' is unnecessary and only will create confusion because Section 7(2) (a) (i) and (ii) focuses on the public nature of activity or the performance in the course of a person's employment as public servant.

[149] The Law Commission of India in its 254th Report has recommended an illustration covering such instances where a civil servant 'R' asks a person 'P' to give him Rs. 10,000 to process his routine rations card application on time. R is guilty of an offence under this section.

[150] Law Commission of India, *supra* note 144, para 2.7.8 at 12.

[151] *Id*., para 2.7.9 at 13.

The last two sub-clauses of Section 7(2) (a) namely Section 7(2) (a) (iii) and (iv) make cumulative conditions that are supposed to be disjunctive. The U.K. Law Commission gives using examples of referees and agents accepting contractor's bid, emphatically states that "the duty to act in good faith is not the same as a duty to act impartially"[152]. For instance, paying an academic referee to write an unduly partial reference is a breach of the duty of good faith and not the duty of impartiality. Similarly, agents accepting bids from contractor's are not under a duty to assess the bids impartially, they must only assess the bids in good faith. The duty of impartiality on the other hand, is cast on the mediator.

Further, in Section 7(2) (c) (i) the terms "impartially or in good faith" have been used and which have used as disjunctive terms. Whereas, under Section 7(2) (a) (iii), the terms "impartially" and "in good faith" has been used as conjunctive term. Now it is unclear why it has happened. It creates great ambiguity and uncertainty between Section 7(2) (a) (iii) and Section 7(2) (c) (i). Again the Section 7(2) (a) (iii) and (iv) starts with the words "the person" performing the function or activity whereas the PC Act, 1988 only relates to public servant. Even the Section 7 (2) (a) (ii) talks about the function or activity being carried out in a person's course of employment as a "public servant". Thus, the clarity of the Bill is missing. Similarly, the invocation of the concept of "position of trust" in Section 7(2) (a) (iv) and Section 7(2) (c) (ii) is also confusing. It is very unclear how this "position of trust" will be interpreted given that the doctrine of public trust has not yet been brought into criminal law in India. It applies only into tort cases[153]. Section 7 (2) (d) is also problematic. The Section 7(2) (d) introduces with the words "anything that a public servant does". Later in the section the words "that person" has been used in place of public servant. Thus, the rest of Section 7 (2) (d) talks about "person". This is unnecessary because the PC Act, 1988 only relates to

[152] The United Kingdom Law Commission, Reforming Bribery, Law Com. No. 313 (2008) para 3.108 as quoted in Law Commission of India, *supra* note 144.

[153] Law Commission of India, *supra* note 144, para 2.11.6 at 19.

public servants[154]. However, the applicability of Section 7(2) (d) is also not clear, due to absence of an appropriate illustration[155]. In this regard, The U.K. Law Commission Report[156] provides some guidance through an example as under[157]:

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[154] *Id.*, para 2.11.10 at 21.

[155] The Law Commission of India has redrafted the entire Section 7 of the 2013 Bill. It is reproduced here as under:

7. **Offence Relating to Public Servant being Bribed**- 1. Any person, being, or expecting to be, a public servant who obtains or agrees to receive or accepts or attempts to obtain, an undue advantage from any person shall be punishable, with imprisonment which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

2. Notwithstanding anything contained in sub-section (1), any person, being, or expecting to be, a public servant who,-

a. obtains or agrees to receive or accepts or attempts to obtain from any person, any undue advantage, intending that, in consequence, a public function or activity would be performed improperly either by himself or by another public servant; or
b. obtains or agrees to receive or accepts or attempts to obtain, an undue advantage as a reward for the improper performance (whether by himself or by another public servant) of a public function or activity; or
c. performs, or induces another public servant to perform, improperly a public function or activity in anticipation of or in consequence of agreeing to receive or accepting an undue advantage from any person,

shall be punishable, with imprisonment which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1- For the purpose of sub-section ((1), the obtaining, agreeing to receive, accepting, or the attempting to obtain an undue advantage itself constitutes the improper performance of a public function or activity.

Illustration: A public servant, "R" asks a person, "P" to give him Rs. 10,000 to process his routine ration card application on time. R is guilty of an offence under this sub-section.

Explanation 2- For the purpose of sub-section (1), the expressions "obtains" or "attempts to obtain" shall cover cases where a person, being, or expecting to be, a public servant, obtains or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by acting in violation of a statutory duty or any set of rules, government policies, executive instructions and procedures; or by any other corrupt or illegal means.

Explanation 3- For the purpose of this section, it shall be immaterial whether-

a. such person being, or expecting to be, a public servant obtains or agrees to receive or accepts, or attempts to obtain (or is to agree to receive, or accept) the advantage directly or through a third party;
b. the undue advantage is, or is to be, for the benefit of such person being or expecting to be, a public servant or another person.

Explanation 4- "Expecting to be a public servant". For the purpose of this section, if a person not expecting to be in office agrees to receive or accepts or attempts to obtain from any person, any undue advantage by deceiving such other person in to a belief that he is about to be in office, and that he will then serve him, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

Explanation 5- For the purpose of this section, where a public servant, or a person expecting to be a public servant, induces a person erroneously to believe that his influence with the government has obtained

"R has recently retired from an influential position in the civil service. He or she is approached by P who is seeking a lucrative contract with a government department. P pays R a large sum of money to provide confidential information to P about the bidding processes. In this example, a prosecution should not fail at the outset simply because R is not currently engaged in a profession or performing a public function. The transactions between P and R clearly relate to past conduct of a public or professional kind. That should be sufficient to bring the matter within the scope of the offence".

Offence relating to bribing of a public servant under Section 8

The PC Act, 1988 does not directly criminalizes the supply side of bribery or active domestic bribery. The proposed Section 8 of the 2013 Bill criminalize the acts relating to bribing of a public servant. The new offence of supply side of bribery is proposed to introduce under the proposed Section 8 of the 2013 Bill because the experience has shown that in vast majority of cases the bribe-giver goes scot-free and it becomes difficult to tackle consensual bribery.[158]

Under Section 8 (1) (a) it is proposed to provide that any person who offers, promises or gives a financial or other advantage to another person to induce[159] or to reward[160] a public servant for the improper performance of a public function or activity and he know that the acceptance of such financial or other advantage by the public servant itself constitute the improper performance of a relevant public function or activity[161] shall be punished under this section. When the offence under this section has committed by a commercial organization shall

a title or other benefit for that person and thus induces that person to give the public servant, any undue advantage as a reward for this service, the public servant has committed an offence under this section.

[156] The U. K. Law Commission, *supra* note 152 para 3.26-3.27

[157] *Id*., para 2.11.9 at 20 as quoted in Law Commission of India, *supra* note 144.

[158] The Statement of Objects and Reasons of the Prevention of Corruption (Amendment) Bill, 2013

[159] The Prevention of Corruption (Amendment) Bill, 2013, Section 8 (1) (a) (i).

[160] *Id*., Section 8 (1) (a) (ii).

[161] *Id*., Section 8 (1) (b).

be punished with fine.[162] Thus, the Section 8 criminalizes corporate bribery also. It is immaterial that the person, to whom the financial or other advantage is offered, is the same person as the person who is to perform the concerned public function or activity.[163] It shall also be immaterial that such financial or other advantage has offered or promised by a person directly or through a third party.[164]

The 2014 amendment inserted a new sub-section (3) to Section 8 clarifying that "nothing in sub-section (1) shall apply to a person who after informing a law enforcement agency, offered or gave any undue financial or other advantage to another person in order to assist such law enforcement agency".

The proposed Section 8 (1) (a) and (b) suffers from similar problems as Section 7 (1) (a) and (b). Prima facie Section 8(1) (a) suggests that it criminalizes only those cases where the person bribes a public servant to perform a public function or activity improperly. It does not seem to cover those cases, which are very common in India, where the bribe giver seeks to perform his routine ration card application on time by giving a bribe.[165] Further, Section 8 (1) (b) of the 2013 Bill also suffers from legislative unclarity. No appropriate illustration has been put under Section 8 (1) (a) and (b) to bring legislative clarity and therefore in future it would likely to be legally interpreted variedly.

The 2014 amendment inserted a new sub-section (2) to Section 8. There is also unclarity in sub-section (2) of Section 8. Many times, the person giving the bribe may be required to pay the bribe money to a third person, who subsequently delivers to public servant. This situation has been covered by explanation of Section 8 (1). In the proposed sub-sec (2) of Section (8) the use of the word "person" covers all such cases where the immediate recipient of the bribe may be a public servant or a person expecting to be a public servant or any other person. However, for the avoidance of any doubt the Law Commission of India in its 254th Report recommended to put an explanation after sub-section (2) of Section (8) to

[162] *Id*., Section 8 (1) proviso.
[163] *Id.*, Section 8 (1) explanation.
[164] *Ibid.*
[165] Law Commission of India, *supra* note 144 para 3.3.1 at 26

clarify that the phase "another person" in sub-section (2) of Section (8) shall include a public servant or a person expecting to be a public servant. Keeping in mind the above discrepancy the Law Commission of India has redrafted the Section 8 of the Bill[166].

Offence of bribe giving

Thus, it is proposed that if any person who offers, promises or gives financial or other advantage to another person (third party/intermediaries) or public servant to induce or reward a public servant to perform improperly any public function or activity then he commit an act of offence of corruption. The proposed amendment prescribes equal punishment to both bribe takers, bribe givers and intermediaries. The immunity given to bribe giver under Section 24 of the principal Act, 1988 is proposed to be done away. Moreover, the collusive (consensual) bribery and coercive (harassed) bribery has been criminalized and

[166] Law Commission of India has redrafted the section 8 of the Bill. It is reproduced here as under:

8- Offence Relating to Bribing a Public Servant- Any person who-

a. offers, promises or gives an undue advantage to another person, and intends such undue advantage-

(i) to induce a public servant to perform improperly a public function or activity; or

(ii) to reward such public servant for the improper performance of such public function or activity; or

b. offers, promises or gives an undue advantage to a public servant and knows or believes that the acceptance of such undue advantage by the public servant would itself constitute the improper performance of a public function or activity, shall be punishable with imprisonment which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Provided that when the offence under this section has been committed by a commercial organization, such commercial organization shall be punishable with fine.

Illustration for sub-section (a): A person, 'P' gives a public servant, 'R' Rs. 10,000 to ensure that he is granted a license, over all the other bidders. P is guilty of an offence under this sub-section.

Illustration for sub-section (b): A person 'P' goes to a public servant, 'R' and offers to give him Rs. 10,000 to process his routine ration card application on time. P is guilty of an offence under this sub-section.

Explanation: - It shall be immaterial whether the person to whom the undue advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the public function or activity concerned, and, it shall also be immaterial whether such undue advantage is offered, promised or given by the person directly or through a third party.

(2) Nothing in sub-section (1) shall apply to a person, if that person has, after informing a law enforcement authority or investigation agency, offered or given any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the latter.

Explanation: - For the avoidance of doubt it is hereby clarified that the phase "another person" in this sub-section shall include a person being, or expecting to be, a public servant.

treated on same footing. During the Standing Committee's interaction with many stakeholders/NGOs it was suggested that consensual and harassed bribery need to be distinguished and should not be treated on same footing. In this regard, the committee has received the number of suggestions.[167] Some of them are as follow:

i. Punishment in collusive bribery should be made double from other coercive cases of bribery.

ii. Burden of proof should be on the accused in case of collusive bribery.

iii. Concept of plea bargaining should be available to bribe giver who is a victim of extortionary bribery.

iv. Section. 24 of the PC Act should be retained so that the bribe giver could feel free to cooperate with anti corruption bureau for laying of trap to catch alleged corrupt public servants. Deletion of Section 24 would make difficult to lying of traps.

v. In case of coercive bribery, the quantum of punishment for bribe giver should be reduced as compared to bribe takers in view of the fact that the bribe is paid to get the service or job for which he/she has legitimate right.

The line between coercive and consensual bribery is very thin. There may be number of instances where a coercive bribery case may be turned into a case of consensual bribery to implicate the bribe giver. Coercive bribery mostly takes place at the lower level of administrative apparatus where services are delivered to the common man in India therefore, the coercive bribery occurring at any level need to be curbed. It is noted here that the proposed Bill of 2013 penalize the consensual bribery as well as coercive bribery on same footing. The Standing

[167] The Department of Personnel and Training (DOPT) in their response have submitted that the bribe giver in the consensual bribery, who is also equally beneficiary of the act of corruption, may resort to the route of protection given under Section 24 to escape the liability, if protection is given to bribe givers in coercive bribery. It would be difficult to curb corruption without checking the supply side of corruption in both coercive as well as consensual bribery; See 69TH Report of Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, para 20 at 24-25.

Committee has suggested[168] for the protection of bribe giver in case of compelling emergent situation of coercive bribery.

It is pointed out by the Department of Personnel and Training that the intersection where the corporate entity interacts with the public servants provides a fertile ground feeding corruption.[169]

Corporate liability in bribe giving to public servant

The proviso of Section 8 (1) of the 2013 Bill criminalizes the corporate bribery. The act of bribe giving to a public servant by commercial organization has been made an offence under proposed Bill and is punishable with fine. On the other hand Section 9 of the 2013 Bill deals with the failure of a commercial organization to prevent bribery.

Under the proposed Section 9 of the 2013 Bill, a commercial organization shall be guilty of a offence if any person associated with it offers or promises or gives any financial or other advantage to a public servant for the purpose to obtain or retain any business[170] or he obtains or retains an advantage in conduct of business for such commercial organization.[171] Further, the proviso to Section 9 of the 2013 Bill provides that it shall be a defence for the commercial organization to prove that it has put in place adequate procedures designed to prevent any person associated with it from undertaking the stipulated criminalized conduct. A person

[168] It has inter-alia been suggested that bribe given in compelling emergent situation particularly in the case of hospitalization, protection may be provided to the briber givers as t he is compelled to pay bribe to save the life of an individual. The committee observes that the person who reports the matter of corruption to the anti-corruption agencies prior to offering bribe to the public servant has clear intention of not paying bribe and getting benefit out of it. He/she is rather cooperating with anti-corruption agencies to help the state to curb the demand of bribe by public servant and also be a part of lying of traps etc. Such types of individuals are although victim of bribe taker but help the state to curb corruption, therefore, they need to be protected by the state. The committee observes that the individuals who report the matter to state after payment of bribery in normal circumstances need not be protected whereas person who pays bribe in compelling emergent situation, the court may take decision based upon facts and circumstances of the case which could be laid down in the rules by Government; See 69th Report of Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, para 22 at 25.

[169] 69th Report of Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, para 28 at 28.

[170] According to Section 9 (3) (b) of the 2013 Bill "Business" includes a trade or profession or providing service including charitable service.

[171] The Prevention of Corruption (Amendment) Bill, 2013, Section 9 (1) (a).

who offers an undue advantage to public servant for the purpose of Section 9 (1) (a) or (b) would also be guilty for an offence under Section 8, whether he has prosecuted or not for such offence.[172] For the purpose of Section 8 and 9 the terms "commercial organization" mean[173]:

i. a body which is incorporated in India and carries on a business in India or abroad or;
ii. any other body which is incorporated outside of India but carries on a business in any part of India;
iii. a partnership firm or association of persons which is formed in India and carries on a business in India or abroad;
iv. any other partnership or association of persons which is formed outside India but carries on a business in any part of India.

A person is said to be associated with a commercial organization that performs services on behalf of such commercial organization.[174] It does not matter that in which capacity he performs services on behalf of such commercial organization.[175] He may be an employee, agent or subsidiary of such organization. Whether he is or not a person who performs services on behalf of the commercial organization it shall be decided by all relevant circumstances and not merely by the nature of relationship between them.[176] It shall be presumed unless the contrary is proved that an employee of a commercial organization performs services on behalf of such commercial organization.[177]

It is noted here that the proviso to Section 9 (1) of 2013 Bill provides a defence for the commercial organization that it had put in place adequate procedure to prevent corporate bribery. However, it does not require any obligation on the government to issue and publish guidelines in this regard,

[172] *Id.*, Section 9 (2).
[173] *Id*., Section 9 (3) (a).
[174] *Id*., Section 9 (3) (c).
[175] *Id*., Section 9, explanation (1).
[176] *Id.*, Section 9, explanation (2).
[177] *Id.*, Section 9, explanation (3).

especially when the burden of proof has been put on the commercial organization[178]. This provision will lead to an immediate and significant impact on the conduct of businesses, because they will not have any clarity on what is expected to them[179]. This might also impede the efficient functioning of small business, which will not be able to determine the adequate standard for themselves.[180] Therefore, Section 9 of the 2013 Bill should be amended to introduce a statutory obligation on the government to publish guidance and after sub-section (4) of Section 9; a new sub–section (5) should be added for this purpose[181]. There is a strong apprehension that this provision can be used as an escape route by the commercial organizations. Moreover, even in U.K. and U.S. it is mandated to issue guidelines in this regard. The U.K. authorities have put in place a detailed guidance for such procedures to provide clarity and certainty which are listed below[182]:

i. The principle of proportionate procedures.
ii. Top level commitment.
iii. Risk assessment.
iv. Due diligence.
v. Communications including training.
vi. Monitoring and review.

Person in-charge of commercial organization

In the proposed Bill, corporate bribery is made punishable only when it pertains to a public servant for the purpose of Section 9 (1) (a) and (b). Hence

[178] Law Commission of India, *supra* note 144 para 4.2.5 at 34.
[179] *Ibid.*
[180] *Ibid.*
[181] The Law Commission of India in its 254th Report has recommended that after sub-section (4) of Section 9; a new sub–section (5) should be added to the following effect:

"The central government shall prescribe and publish guidelines about the adequate procedures, which can be put in place by commercial organization to prevent persons associated with them from bribing any person, being or expecting to be, a public servant.

Provided that such guidelines shall be prescribed and published by the central government after following a consultation process in which the views of all the interested stakeholders are obtained through public notice".

[182] The U.K. Law Commission, *supra* note 152 para 6.108.

Section 9 is a distinct offence from Section 8. Further, Section 10 extends the liability of the commercial organization to every persons in charge of and responsible to the organization through a deeming provision[183]. Thus it is clear that Section 10 pertains to Section 9 and is not connected to Section 8[184]. It provides differing standards of how to treat corporate bribery within the same enactment[185]

Section 10 (1) of the 2013 Bill is a deeming provision. Under the proposed Section 10 (1) of the 2013 Bill it is provided that where a commercial organization is found guilty of an offence under Section 9, every person who at the time of commission of such offence was in charge and responsible to commercial organization for conduct of business shall be deemed to be guilty of such offence. Further, it is also proposed to provide under proviso of Section 10 (1) that if he proves that the offence was committed without his knowledge and he exercised due diligence to prevent the offence, he shall not be punished under Section 10 (1).

Under Section 10 (2) of the 2013 Bill it is proposed to provide that if an offence of Section 9 has been committed by the commercial organization with the consent or connivance or a negligence on the part of any director, manager, secretary or other officer of commercial organization then such director, manager, secretary or other officer shall also be deemed guilty and punished under this section.

The proposed Section 10 (1) of the 2013 Bill and Section 10 (2) with its elements of negligence are overly broad. For example, if an employee P of a company C, sitting in Bangalore bribes a local official R to get its clearance on time then the combined effect of the 2013 Bill is that P will be liable under Section 8; R under Section 7; and C under Section 9[186]. Each and every responsible person, in charge or director of company C who may be sitting in

[183] Law Commission of India, *supra* note 144 para 4.3.1 at 35
[184] *Ibid.*
[185] *Ibid.*
[186] *Id.*, para 4.3.2 at 35.

more than 2000 kms away shall be deemed to be punishable under Section 10 of the 2013 Bill[187]. Further, the punishment for vicarious liability to commercial organization is (civil liability) fine, whereas the punishment for in-charge of that organization is imprisonment with fine[188]. The punishment prescribed for commercial organization should be in addition to the punishment prescribed to individuals/associated with it and in-charge of the commercial organization[189].

Investigation of offences

Under Section 17A it is proposed to provide that when an offence committed by a public servant is relatable to any recommendation made by or a decision taken by him in discharge of his official duties, the investigation shall not be conducted without the previous approval of Lokpal or Lokayukta as the case may be. In case of arrest of a public servant on spot on the charge of accepting any undue advantage, no such approval shall be necessary. The protection of proposed Section 17A (1) has extended to ex-public servants also.

Confiscation and forfeiture of proceeds of bribery

The Principal Act of 1988 does not specifically provide for confiscation and forfeiture of proceeds of bribery. Now, insertion of new Chapter IV A (Attachment and Forfeiture of Property) containing section 18A-18N is proposed. The Law Commission has recommended[190] that the proposed Chapter IV-A should be deleted, but Standing Committee has appreciated[191] it because the procedure for

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[187] *Ibid.*

[188] *Ibid.*

[189] *Id.,* The Law Commission of India in its 254th Report has redrafted Section 10 of the 2013 Bill as follows:

"10- Where an offence under Section 9 is committed by a commercial organization, and such offence is proved to have been committed with the consent or connivance of any director, manage, secretary or other officer of the commercial organization, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceed against and punishable with imprisonment which shall not less than three years but which may extend to seven years and shall also liable to fine".

[190] Law Commission of India, *supra* note 144 para 8.1.8 at 45

[191] 69th Report of Standing Committee, *supra* note 169 para 27 at 28

attachment and forfeiture in cases of corruption of public servants are covered under following three laws:

i. The Criminal Law (Amendment) Ordinance, 1944
ii. Prevention of Money Laundering Act, 2002.
iii. The Lokpal and Lokayukta Act, 2013

Conclusion

There are many confusing provisions in the Bill. The Law Commission of India has rightly pointed out the number of legislative unclarity of the Bill. Therefore the provisions of the Bill should be revisited by Parliament and appropriate step should be taken before amending the anti corruption law. The recommendations of Law Commission and Standing Committee as well as other stock holders should be taken into consideration for re enacting the anti corruption law.

Whistle Blower Protection Act, 2011

A statute for protection of whistle blower

Whistleblowers play a crucial role in providing information about corruption. Public servants who work in a department/agency 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/her identity. If adequate statutory protection is granted, there is very likelihood that the government would be able to get substantial information about corruption. The term "whistle blowing'' itself is a relatively recent addition to our lexicon. In the united states in the post-Watergate era, after the trials and tribulations of Daniel Ellsberg, the man who "blew the whistle" on the so called "Pentagon papers" whistle blowing has not only been protected by statute but is also encouraged as an ethical duty on the part of the citizens. Furthermore, after the spectacular collapse of Enron and

WorldCom, the US Congress passed the Sarbanes-Oxley Act of 2002, granting sweeping protection to whistleblowers in publicly traded companies. Anyone retaliating against a corporate whistleblower can now be imprisoned for up to 10 years[192].

Laws providing such protection exist in the UK, the USA, Australia and New Zealand. The UK Public Interest Disclosure Act, 1998, the Public Interest Disclosure Act, 1994 of Australia, the Protected Disclosure Act, 2000 of New Zealand, and the Whistle blowers Protection Act, 1984 of USA are legislations providing protection to whistleblowers. All these laws generally provide for preserving the anonymity of whistleblowers and safeguarding him/her against victimization within the organization[193].

Freedom of speech and expression is a fundamental right given under the Article 19 (1) (a) of the Constitution. It is restricted right under the limitations given in article 19(2). This right also gives the power to raise the voice against the corruptions and oppressions done by the State. Corruption has become epidemic in India. Most time the corrupt practices are being done by the State agencies. State has enormous power contained with itself. The State by the use of these powers like police powers frightens the people not to go against the State. These pressures built techniques demoralize the people to fight against corruption. The Law Commission in its 179 Report has proposed a Public Interest Disclosure [Protection of Informers] Bill, which provides protection to whistleblowers. The Bill has provisions for providing safeguards to the whistleblowers against victimization in the organization. It also has a provision that the whistleblower may himself seek transfer in case he apprehends any victimization in the current position[194]. There was demand from the various civil societies to enact legislation

[192] Second Administrative Reform Commission, 4th report on 'Ethics and Governance' (June, 2006), para 3.6.1 at 77.

[193] *Id.*, para 3.6.2 at 78.

[194] *Id.*, para 3.6.3 at 78.

for the protection of these anti corruption bodies. The people or an organization that fights against the corruption is known as the whistleblower. This prolongs demand of the civil societies and people have been fulfilled by the legislature in the year 2014 when the Parliament has passed the Whistle Blower Protection Act, 2011. It got the assent of the President on 9 May, 2014. It is said that this new Act will play an important role for protecting and safeguarding to the whistleblowers.

Concluding remarks

There is steady decline of public standards, morals and ethics. The honesty cannot be merely infused by the law. To some extent, it can be infused by providing proper education of social values, moral values and ethical values to the common people in general and to the younger generation in particular. When in England Nolan Committee (Committee on Standards in Public Life) gave its first Report in 1995, it came under attack from members of House of Commons. Enoch Powell complained that the entire exercise has logically flawed. He said; "the trouble about Nolan Committee is that it was established to define the indefinable and reduce to a set of rules that which cannot be so treated". The House of Commons expects its members to behave as a gentleman would behave; but to sit down and draw up a schedule of how a gentleman will behave is in the nature of the case not possible. If it were, we could be without gentleman. If "my honorable friend" or "the honorable member" is not honorable, no amount of regulation or supervision will make him so[195]. Historically, the very existence of state is for the protection of basic rights of human beings. Despite this, by criminalization of coercive bribery the state automatically will be in position to jeopardize the common man of India for their basic needs. Mostly, coercive bribery takes place at the lower level of administrative apparatus where services are delivered to the common man. For example, if a person gives bribe in compelling emergent

[195] Michael Foley, The Politics of British Constitution, at 173 (1999) as quoted in Lalit Mohan Gautam, "The Prime Minister, Members of Parliament and the Lokpal: A Conceptual Analysis, Journal of the Campus Law Centre 1 (2013) at 125.

situations such as in case of hospitalization he is compelled to pay the bribe to save the life of an individual he commits the offence of bribery. Even, bribe given due to ignorance or illiteracy having no intension of bribery is proposed to be made an offence of briery. The line between coercive bribery and consensual bribery is very thin. Moreover, the occurring of bribery should be prevented at every stage rather to punish the victim of it. Such type of individual is victim of briber takers and therefore they should be protected not punished. In this regard, The Right of Citizens for Time Bound Delivery of Goods and Services and Redressed of their Grievances Bill, 2011 should be enacted very soon. In that law the officer who is in charge of delivery of service would be liable in the case of failure of delivery of service within time limit prescribed by the state and would be punishable with fine which could be extended to Rs. 50,000. It will provide a tool to the common man to avail their basic rights within the legal framework, particularly when coercive bribery is proposed to be criminalized under the 2013 Bill. Definitely, there should be zero tolerance to consensual bribery but at the same time consensual and coercive bribery cannot be put on same footing.

Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

Central Bureau of Investigation (CBI)

Introduction

There is a clear-cut and well-demarcated sphere of activities in the fields of crime detection and prosecution of an accused.[1] It is beyond any doubt or dispute that investigation of an offence is the field exclusively reserved for the police.[2] It may be subject to supervision of higher ranking officers of the police department. Thus, the overall superintendence in this regard vests in state government. The executive is charged with a duty to maintain vigilance over law and order situation. It is obliged to prevent crime. If an offence has allegedly been committed, it is the state's duty to investigate into the offence and bring the offender to book. During investigation, if it is found that an offence has been committed then it is duty of state through police department to collect evidence for the purpose of proving the offence. After completion of investigation, the investigating officer submits report to the court requesting the court to take cognizance of the offence under section 190 Cr. P.C. and his duty comes to an end. Section 2 (h) of Cr. P.C. defines the term investigation, according to which it includes all the proceedings under this code initiated for the purpose of collection of evidence conducted by a police officer or by any person other than a magistrate in this behalf. Investigation, inquiry, and trial are quite different things and represent different stages of criminal process. The first stage of a criminal case is reached where a police officer, either by himself or under an order of magistrate investigates into case. If he finds that no offence has been committed, he drops the proceeding. But if he forms an opinion that an offence has been committed, he sends up the case to a magistrate. Then, at the second stage, the magistrate inquires into the case. If no *prima facie* case is made out, he dismisses the complaint or discharges the accused. If in the opinion of magistrate, the *prima*

[1] *M.C. Mehta (Taj Corridor Scam) v. Union of India* (2007) 1 SCC 110

[2] *Id.*, para 44.

facie case is made out, he frames a charge and calls upon the accused to plead the same.[3] These proceedings are termed inquiry. The third and final stage is reached when the charge is farmed. The magistrate may then try the case himself, or commit it for trial to the Court of Sessions as the case may be. The object of investigation is to find out whether the offences alleged have been committed and if so who have committed them. Investigation should be fairly and impartially done. It must be fair and effective also, must proceed in the right direction in consonance with ingredients of the offence and not in a haphazard manner, more so in serious cases based on circumstantial evidence. Powers to investigate an offence is exclusively reserved for police, but it must be legitimately exercised in strict compliance with the provisions of statute. The High Court exercising its writ jurisdiction under Article 226 of the Constitution can interfere with investigation only in the rarest of the rare case where a case of abuse of power of investigation and non-compliance with the provisions of statute is clearly made out. In investigation proceedings, the following steps[4] are included:

1. To visit the crime place.
2. To ensure the facts and circumstances of the case.
3. To search and arrest of the suspected offender.
4. To collect evidences related with the occurrence of the crime.
5. To form an opinion whether any formal case is being made out on the basis of collected material so that accused is being sent to magistrate for the purpose of inquiry and trial and taking the necessary steps for the same by filing of a charge sheet under section. 173 of Cr. P.C.

The final step in the investigation, namely, the formation of the opinion as to whether or not there is a case to place the accused on trial is to be of the officer in charge of the police station and this function cannot be delegated and can be

[3] Dr. Murali Dhar Chaturvedi, *A Commentary on the Code of Criminal Procedure, 1973* (Allahabad Law Agency Publications, Allahabad, 2011)

[4] *H.N. Rishbud v. State of Delhi* AIR 1955 SC 196

performed by any other authority. There is no provision for delegation of the above function regarding formation of opinion but only a provision entitling the superior officer to supervise or participate under section 36 of Cr. P.C. Even a competent magistrate cannot compel the police officer concerned to form a particular opinion.

The CBI was established on 01.04.1963 vide government resolution issued by the Ministry of Home Affairs, Government of India. CBI, being a premier investigation agency of the country has a very crucial job to investigate into very technical and high profile cases of crimes. A proper investigation into crime is one of the essentials of the criminal justice system and an integral facet of rule of law. The investigation into crime should be fair, impartial and uninfluenced by external influences. When investigation into crime is being conducted by the CBI, it is supposed that CBI, as a premier investigating agency of the country, will discharge its responsibility with competence, promptness, and fairness and without being influenced and hindered by external influences. In the criminal justice, system the investigation of offences is the domain of the police. The investigation of offences is one of the important duties which the police have to perform. The aim of investigation is ultimately to search for truth and bring the offender to the book. Lord Denning,[5] has described the role of the police as follows[6]:

"In safeguarding our freedoms, the police play vital role. Society for its defence needs a well-led, well-trained and well-disciplined force or police whom it can trust, and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice. The Police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants"…….

However, what is crucial for an investigation is that it should conclude expeditiously from the point of view of all concerned. From the point of view of

[5] The Due Process of Law, First Indian Reprint (1993).

[6] *Id.*, at 102

the accused, a quick conclusion to the investigation will clear his name and image in society if he is innocent. Certainly, it is necessary for the interest of person who has been wrongly accused or framed for an offence. From the point of view of society, a quick closure to investigation is necessary so that those against whom there is evidence of the commission of a crime are tried at the earliest and punished if they are guilty. This, so far as society is concerned, is essential for maintaining the rule of law and from the point of view of the investigation, an expeditious conclusion of investigations is necessary because greater the delay, greater the chances of evidence being destroyed, witness being compromised or the accused being able to manipulate circumstances to his or her advantage. In *Samaj Parivartan Samudaya v. State of Karnataka*,[7] Supreme Court observed that our criminal jurisprudence contemplates that "an investigation should be fair, in accordance with law and should not be tainted. But, at the same time, the court has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law".

Legislative history of the Delhi Police Establishment Act, 1946

During world war second, the huge expenditures were incurred for various purposes which were connected with the war. It had brought situations in which unscrupulous and anti-social persons including both, officials and non officials, were enriching themselves dishonestly at the cost of public and government fund and therefore, the Government of India had decided to set up an organization to investigate offences relating to such transactions. The organization known as Special Staff, War Department was set up in 1941 by an executive order of the Central Government. It was kept under administrative control of Deputy Inspector-General of Police with Headquarters at Lahore. The superintendence of this special force was vested in the Defence Department which also, was known as

[7] (2012) 7 SCC 407

War Department. Thus, the purpose of setting up to this organization was, to make investigation into cases of corruption which were connected to War Department. The activities of this Special Staff were extended to the railways by the end of 1944. The jurisdiction and powers of investigation of officers of the Special Staff were challenged in a High Court, consequently, an ordinance[8] was promulgated[9]. On July 12, 1943 the then Governor-General, exercising his powers conferred upon him under section 72 of the Government of India Act, 1935 promulgated an ordinance.[10] Owing to world war second, an emergency had been declared and therefore, the powers were exercisable by him. The Ordinance was called as Special Police Establishment (War Department) Ordinance, 1943[11]. It extended to the whole of British India and came into force at once. By section 2(4), the Special Police Establishment (War Department) was constituted to exercise, throughout British India, the powers and jurisdiction exercisable in a province by the members of the police force of that province, possessing all their powers, duties, privileges and liabilities. It was constituted for the purpose of investigation of certain offences committed, wherever in British India, in connection with departments of Central Government. Under section 4, the superintendence of the Special Police Establishment (War Department) was vested in the Central Government. Under section 3, it was provided that:

"The Central Government may by general or special order specify the offences or classes of offences committed in connection with departments of the Central Government which are to be investigated by the Special Police Establishment (War Department), or may direct any particular offence committed in connection with a department of the Central Government".

[8] Ordinance No. XXII of 1943.

[9] P V Ramakrishna, *Hand Book on Prevention of Corruption Act, 1988* (S. Gogia & Company, Hyderabad, 7th ed., 2014); *The Management of Advance Insurance Co. Ltd. v. Shri Gurudasmal and Others* 1970 (1) SCC 633 para 4.

[10] Ordinance No. XXII of 1943.

[11] *Ibid.*

This ordinance would have lapsed on September 30, 1946. Before that on September 25, 1946, another ordinance[12] of the same name was promulgated. This constituted a Special Police Force for the Chief Commissioner's Province of Delhi for investigation of certain offences committed in connection with matters concerning departments of the Central Government. The scheme of this ordinance was slightly different. Under section 2, Special Police Establishment was constituted for the Chief Commissioner's Province of Delhi for the investigation in that province of offences notified in section 3. This was notwithstanding the provisions of the Police Act of 1861[13]. The Police Establishment had throughout the Chief Commissioner's province of Delhi in relation to those offences the powers, duties, privileges and liabilities of the regular police officers however, subject to any orders which the Central Government might make in this behalf. Section 3 of the new ordinance was almost the same as section 3 of previous ordinance. The only changes were that the offences had to be notified and the power to refer any particular case was not repeated. In the ordinance, section 5 provided that the consent of the Government of the Governor's province or the Chief Commissioner's province should be obtained to extend the powers and jurisdiction of Special Police Establishment, before it would be exercised in those provinces.[14] Ordinance No XXII of 1946 was repealed by the Delhi Police Establishment Act, 1946[15], which re-enacted the provisions of the ordinance. This Act came into force on 19th November, 1946 and it succeeded two ordinances which had been earlier passed by the Governor-General. After the Act came into force, the superintendence of Special Police Establishment was transferred to the then Home Department, Government of India, and its jurisdiction was extended to cover all the Departments of the Government of India. Now, its jurisdiction extends to all the states and union territories of India. Later, this Act had also been

[12] Ordinance No. XXII of 1946.
[13] Act No. V of 1861.
[14] *Supra* note 9.
[15] Act No. XXV of 1946.

amended from time to time by way of adaptation and modification.[16] It was passed when the Government of India Act, 1935 was in force. Entry no. 3 of the provincial legislative list in the 7th schedule to the Government of India Act, 1935, read "police including railway and village police." Entry 39 of the federal legislative list (now it corresponds to entry 80[17] of the list I (union list) of the seventh schedule to the Constitution of India) was as follows:

"39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit."

It was substituted by the India (Provincial Constitution) Order, 1947, as follows:

"39. Extension of the powers and jurisdiction of members of a police force belonging to any province to any area in another province, but not so as to enable the police of one province to exercise powers and jurisdiction in another province without the consent of the government of that province; extension of powers and jurisdiction of members of a police force belonging to any unit to railway areas

[16] Subsequently, original Act is amended by the Acts of 30 of 1950; 26 of 1952; 62 of 1956; 40 of 1964; 45 of 2003 and 20 of 2006. These amendments do not in any way materially affect the substance of the Act. Certain amendments have also been made in the Act by the adaptation of Laws Orders of 1950 and 1956. For instance, the words' State of Delhi' was substituted for 'Chief Commissioner's province of Delhi'. The words 'parts A and C states' were substituted for the words 'Provinces' occurring in section 5 and 6 and subsequently the words 'states and union territory' were also substituted.

[17] Constitution of India, List I entry 80 reads: "Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State".

outside that unit". By putting an explanation it was said that in this entry "*province*" includes a "*Chief Commissioner's province*". In this way the jurisdiction exercisable under entry 39 was made co-extensive again by the explanation with what was formally British India, which was meant both kinds of provinces.[18] The Delhi Police Establishment Act, 1946 was also adapted and amended on more than one occasion[19]. The first changes came by the Adaptation of Laws Order, 1950, enacted under clause 2 of article 372 of Constitution of India, on January 26, 1950. It made two changes. The first was throughout the Act for the words *"Chief Commissioner's Province of Delhi"* the words *"State of Delhi"* were substituted and for the word "*provinces"* the words *"part A and C states"* were substituted. This was merely to give effect to the establishment of "s*tates*" in the place of "*provinces"* under the scheme of Constitution of India.[20] The next changes were introduced by the Part B States (Laws) Act, 1951[21]. They were indicated in the schedule to that Act. Those changes removed the words "*in the states*" in the long title and the preamble. The purpose of this was to remove reference to the states in the phrase "*for the extension to other areas in the states"*. The more significant changes came in 1952 by the Delhi Special Police Establishment (Amendment) Act, 1952[22]. In the long title (after the Adaptation of Laws Order, 1950) the words were: "an Act to make provision for the constitution of a special police force for the State of Delhi for the investigation of certain offences committed in connection with matters concerning department of the Central Government etc".

After the amendment the words read as: "an Act to make provision for the constitution of a special police force in Delhi for the investigation of certain offences in part C states". Similar changes were also made in the preamble and in

[18] *Supra* note 9.
[19] *Supra* note 16.
[20] *Supra* note 9.
[21] Act No. III of 1951.
[22] Act No. XXVI of 1952.

section 3, and the reference to departments of Central Government was also deleted.[23] After that, in 1956 the Constitution (Seventh Amendment) Act, 1956, was enacted. Previously the Constitution specified the states as part A, B and C states and some territories were specified in part D in the first schedule of Constitution. By the amendment the distinction between parts A and B was abolished. All states (previously part A and B states) were shown in the first schedule of Constitution under the heading "*The States*" and part C states and part D territories were all described as "*Union Territories*".

Thereupon an Adaptation of Laws Order, 1956, was passed and in the Delhi Special Police Establishment Act, 1946 all references to "*part C states*" were replaced by the expression "*Union Territory*". Another significant change made by the amending Act was to remove from section 2 the words "*for the State of Delhi"* and all references to offences by the words "committed in connection with the matters concerning departments of the Central Government" were deleted.

A brief analysis of Delhi Special Police Establishment Act, 1946

The police is a state subject. Since, by virtue of Article 239 of the Constitution of India the union territories are being administered by the Government of India and except the Union Territory of Delhi, the union territories do not have any legislative assembly of their own. The Parliament is empowered to make laws on the subject of police for union territories. Article 239AA (1) provides that the Union Territories of Delhi shall be called the National Capital Territory of Delhi and article 239 AA (2) clause (a) provides that there shall be a Legislative Assembly for the National Capital Territory of Delhi. Under article 239AA (3) clause (a) the Legislative Assembly is empowered to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the state list as well as concurrent list, except with the matters enumerated under entries 1, 2, and 18 of the state list and entries 64, 65, and 66 of

[23] *Supra* note 9.

that list in so far as they relates to entries 1, 2, and 18. Article 239AA (3) (b) provides that nothing in sub-clause (a) shall derogate from the powers of Parliament to make laws with respect to any matter for union territory or any part thereof. Article 246 (4) of the Constitution of India provides that "Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State in respect of union territories notwithstanding that such matter is a matter enumerated in the State List". Therefore, in respect of union territories, by virtue of article 246 (4) of the Constitution too, the Parliament is competent to make laws on the subject of police, covered by state list, entry 2 of the seventh schedule to Constitution of India. DSPE is a police force functioning in the Union Territory of Delhi. The DSPE Act has been enacted to achieve four major objectives, which are reflected in the preamble[24], of the Act. It is enacted to make provision:

i. For constitution of a special police force in Delhi.
ii. For investigation of certain offences in the union territories.
iii. For the superintendence and administration of the said force.
iv. For the extension of the powers and jurisdiction of members of the said force to other areas.

By virtue of section 1 (2), the Act extends to whole of India. Members of the Delhi Special Police Establishment have been given all powers, duties, privileges and liabilities of police the officers of state for investigation of offences such as lodging FIR, making arrest a person, filling final report or charge sheet etc. Any member of the DSPE of the rank of Sub-Inspector or above shall be

[24] Delhi Special Police Establishment Act, 1946, preamble reads: "An Act to make provision for the constitution of a Special Police Force in Delhi for the investigation of certain offences in the Union Territories for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences.

Whereas it is necessary to constitute a Special Police Force in Delhi for the investigation of certain offences in the Union Territories and to make provision for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of the members of the said force in regard to the investigation of the said offences";……..

deemed to be an officer in charge of police station[25]. It means that the Act is an embodiment of entry 80 of list I, which enables Parliament to make law for extension of the operation of a police force to another state. The combined effect of section 5 (1) and section 6 of the DSPE Act is that the Central Government is empowered to extend the activities of the Delhi Special Police Establishment to any other state with the consent of concerned state.

DSPE is a police force functioning in the Union Territory of Delhi

In the *Management of Advance Insurance Co. Ltd. v. Shri Gurudasmal and Others,* [26] the appellant filed an appeal in the Supreme Court against the judgment and order of the Delhi High Court, Himachal Pradesh Bench at Simla passed in Civil Writ no. 365 of 1968. The contention of the appellant was that Delhi Special Police Establishment is not constitutional and it had no jurisdiction to investigate the case in another state as it neither belonged to a state nor to the Union Territory of Delhi. The Supreme Court held that Delhi Police Establishment means a police

[2525] Delhi Special Police Establishment Act, 1946, section 2 (2) reads: "Subject to any orders which the Central Government makes in this behalf, members of the said Police Establishment shall have throughout any Union Territory in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers duties, privileges and liabilities which police Officers that Union Territory have in connection with the investigation of offences committed therein. Section 2(3) reads: "Any member of the said Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in any Union Territory any of the powers of the officer in-charge of a police Station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders aforesaid, be deemed to be an officer in-charge of a police station discharging the functions of such an officer within the limits of his station".

Further section 5 (2) reads: "When by an order under sub-section (1) the powers and jurisdiction of members of the said Police Establishment are extended to any such area, a member thereof may, subject to any order which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force. Section 5 (3) reads: "Where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer-in-charge of a police Station in that area and when so exercising such powers, shall be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station".

[26] 1970 (1) SCC 633

force constituted and functioning in Union Territory of Delhi. Previously it functioned in the Chief Commissioner's Province of Delhi, then in the part C states of Delhi and now it functions in the Union Territory of Delhi.

It was argued by the appellant that after the Constitution (Seventh Amendment) Act, 1956 which removed the description "*part C states*" from the Constitution and introduced the expression "*union territories*" the present entry 80 of the union list (corresponding to entry 39 of the federal legislative list of the Government of India Act, 1935) cannot be read as enabling the power to be exercised in respect of police force belonging to the union territories such as Delhi.[27] The entry 80 of the Constitution speaks of a "*police force belonging to any state"* and not of a police force belonging to the union territory. The adaptation of the Delhi Special Police Establishment Act by the Adaptation of Laws (No.3) Oder, 1956 by substituting "*union territories*" in place of "*part C states*" cut the Act adrift from the entry under which the power could alone be exercised. In reply, the provisions of the General Clauses Act, 1897 as adapted by Adaptation Order (No.1) which defined the word "*state"* as respect any period before the commencement of the Constitution (Seventh Amendment) Act, 1956 shall mean a part A state, a part B state or a part C state; and as respects any period after such commencement, shall mean a state specified in the first schedule to the Constitution and shall include a union territory were brought before the court for its notice. Thus, under section 3 (58) of the General Clauses Act, 1897 the word "*state"* shall mean a state specified in the first schedule to the Constitution and shall include a union territory also. Supreme Court held that the above definition of the state furnishes a complete answer to the difficulty which is raised by appellant and entry 80[28] must be read so as to include union territory. Therefore, members of a police force belonging to the union territory can have their powers and jurisdiction extended to another state provided to the government of that state

[27] *Supra* note 9.
[28] *Supra* note 17

consents.[29] It was also argued that the above definition cannot be read at all the places where the word "*state*" occurs in the Constitution. The numbers of such articles were brought before Supreme Court for its consideration, one of which to them is article 246(2)[30]. It is contended that in that clause at least the definition cannot be read as including union territories and therefore the General Clauses Act, 1897 as amended, cannot be read in entry 80. The Supreme Court denied argument and held that the argument is correct that the definition cannot be always being read but the answer is plain. The definition applies, unless there is anything repugnant in the subject or context. After the Seventh Amendment India is a union of states[31] and the territories thereof are specified in the first schedule of Constitution. The union territories are mentioned separately. There is a distinction between states and union territories which cannot be ignored. When the definition is not being made applicable to the context or subject of the case then the word "*states"* refers to states, in the first schedule only. In *I.M. Kanniyan v. Income Tax Officer, Pundicherry and Another*[32] Supreme Court held that the definition of "*state"* in section 3 (58) of General Clauses Act, 1897 is repugnant to the subject and context of article 246 but there is nothing in the subject or context of entry 80 of the union list which can be said to exclude the application of the definition of section 3 (58) of General Clauses Act, 1897. Therefore, the definition of "*state*" in section 3 (58) in the General Clause Act, after the adaptation in 1956, applies and includes to union territories also, in entry 80 of the union list of Constitution of India.[33] In last it was also argued on the behalf of appellant that the entry 80 of the union list speaks of a police force "*belonging to any state*" and this phrase was

[29] *Supra* note 9.

[30] Constitution of India, art. 246 (2) reads: "Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "State List. Article 246 (4) provides that Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List".

[31] Constitution of India, art. 1 (1) reads: "India, that is Bharat, shall be a Union of States".

[32] (1968) 2 SCR 103 at 108

[33] *Supra* note 9.

also used in the Government of India Act, 1935 in entry 39 of the federal legislative list. It is argued that in Ordinance XXII of 1946 the phrase was "*for the Chief Commissioner's Province of Delhi*" and it was repeated in Act No.XXV of 1946 as the phrase "*for part C states*". Thus the word "*for"* took the place of the words "*belonging to"* in the entry. Then, the change has come to the present phrase "*a special police force in Delhi*"[34]. It was pointed out that the Special Police Establishment does not belong to the union territory of Delhi since the superintendence of it vests in the Central Government. It was stated that the force of the words "*belonging to*" is not the same as that of the word "*in*". Therefore, it was claimed that the Act is not in accord with the entry.[35] Various meanings of the expression "*belong to*" were suggested. On behalf of the appellants it was said that it meant "*employed by"* and not merely "*located in*". In this sense, it was argued that the Special Police Establishment did not belong to any state or union territory. On the opposite side it was argued that the words "*belonging to*" convey no more than a territorial nexus. The police force belongs to a part of India and it does not have to belong to a provincial government or a state government or a government of a territory. The extensions of the powers to such a force are also in another part of India. It shows that the police of one area operate in other area.[36]

Now the scheme of the Constitution is that the union territories are centrally administered and if the words "*belonging to*" mean belonging to a part of India, the expression is equal to a police force constituted and functioning in the Union Territory of Delhi. Previously the same force functioned in the Chief Commissioner's Province of Delhi and then in part C states of Delhi and now it functions in the Union Territory of the Delhi.[37] The Supreme Court held that it is not necessary to discover another meaning under which the whole scheme would become void. Provisions of law must be read as far as is possible with a view to

[34] *Ibid.*
[35] *Ibid.*
[36] *Ibid.*
[37] *Ibid.*

their validity and not to render them invalid. The expression "*belong to*" only conveys the meaning that it is a police force constituted and functioning in one area which may be authorized to function in another area.[38]

Extension of powers and jurisdiction of the members of DSPE to other areas

The Central Government may notify the areas, where DSPE can exercise its jurisdiction for the investigation of any offence or class of offences specified in a notification under section 3 of the Act[39]. Exercising the powers, under section 5, the Central Government, with concurrence of state governments has extended the jurisdiction of DSPE division to all states.[40] Under section 5 (1), the jurisdiction has been extended to Jammu and Kashmir also with the concurrence of the state government.[41] The DSPE Act was also extended to Union Territories of Dadra Nagar Haveli, Goa, Daman, Diu and Pondicherry on 27.12.1962 and 1.10.63 respectively. No member of DSPE can exercise powers and jurisdiction in any area of a state without the consent of concerned state government[42]. When a state government authorizes an officer of DSPE to exercise its jurisdiction, there can be no legal objection for entire force operating in that area.[43] The setting up of Delhi Special Police Establishment by the union government under DSPE Act does not by itself deprive the anti-corruption branch (Delhi Administration) of its

[38] *Ibid.*

[39] Delhi Special Police Establishment Act, 1946, section 5 (1) reads: "The Central Government may by order extend to any area including railway areas in a state not being a union territory, the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under section 3".

[40] Vide Notification dated 18.2.1963.

[41] Vide Notification no. 25/3/6 AVD. I dated 01.4.1961.

[42] Delhi Special Police Establishment Act, 1946, section 6 reads: "Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a state, not being a Union Territory or railway area without the consent of the government of the state".

[43] *Major E.G. Barsay v. State of Bombay*, AIR 1961 SC 1762

jurisdiction to investigate the offence of bribery and corruption against Central Government employee in Delhi.[44]

Creation of Central Bureau of Investigation

The CBI came into existence *vide* a resolution[45] issued by the Government of India, Ministry of Home Affairs. The resolution reads as follows[46]:

"The Government of India have under consideration the establishment of a Central Bureau of Investigation for the investigation of crimes at present handled by the Delhi Special Police Establishment, including specially important cases under the Defence of India Act and Rules particularly of hoarding, black-marketing and profiteering in essential commodities, which may have repercussions and ramifications in several States; the collection of intelligence relating to certain types of crimes; participation in the work of the National Central Bureau connected with the International Criminal Police Organization; the maintenance of crime statistics and dissemination of information relating to crime and criminals; the study of specialized crime of particular interest to the government of India or crimes having all India or interstate ramifications or of particular importance from the social point of view; the conduct of police research, and the coordination of laws relating to crime. As a first step in that direction, the Government of India have decided to set up with effect from 1st April, 1963 a Central Bureau of Investigation at Delhi with the following six divisions, namely":

a. Investigation and anti-Corruption Division (Delhi Special Police Establishment).
b. The Chemical Division.
c. Crimes Records and Statistics Division.

[44] *A.C. Sharma v. Delhi Administration*, AIR 1973 SC 913 : 1973 Cr. L J 902 (SC)
[45] No. 4/31/-T, Government of India, Ministry of Home Affairs New Delhi, the 1st April, 1963.
[46] As it is cited in *Navendra Kumar v. Union of India and Another* [(2014 (133) AIC 743 (GAU; H.C.)] para 33 at 752 & 753.

d. Research Division.
e. Legal Division and General Division.
f. Administration Division.

The Charter of functions of the above said divisions has annexed with the resolution. The assistance of the Central Bureau of Investigation has also made available to the State Police Forces on request for investigating and assisting in the investigation of inter-State crime and other difficult criminal cases.

Thus, it is clear from above resolution that the Government of India by an executive order has constituted an organization named Central Bureau of Investigation having six divisions thereof. One of the divisions of that organization, which is mentioned in aforesaid resolution, is Investigation and Anti-Corruption Division (Delhi Special Police Establishment) and by way of this resolution, the Delhi Special Police Establishment, which was originally established under the DSPE Act, 1946, has been made an integral part of CBI. The resolution neither approved by the cabinet nor produced before President of India to receive the assent of him. It is only issued by the Secretary to the Government of India. It has no legislative sanction. It is also clear that the CBI is constituted for six specific purposes which are mentioned in the resolution/ executive order. After being mentioned, its purposes, the expression "As a first step in that direction" are appeared in the resolution. It shows that the CBI was established as an adhoc measure to deal with certain exigencies.

Constitutionality of CBI

In *Navendra Kumar v. Union of India and Another*,[47] (I.A. Ansari and Dr. Mrs. Indira Shah, JJ) Gauhati High Court quashed the resolution, dated 01/04/1963, whereby CBI has been constituted and declared to it, unconstitutional. The petitioner challenged the constitutional validity of the formation of the CBI,

[47] [(2014 (133) AIC 743 (GAU; H.C.)]

its powers to investigate, and function as a police force, and its powers to prosecute an offender. It was argued that CBI is not a statutory body. It has been constituted under an executive order/resolution of Ministry of Home Affairs, Government of India. Since police is a state subject within the scheme of Constitution of India and only state legislature is competent to legislate on the subject of police. It was further argued by petitioner/appellant that in the absence of any law laying the birth of CBI, the exercise of powers of police by it, such as registration of FIR, arrest of person, investigation of crimes, filing of charge-sheets and prosecution of the offenders would offend the fundamental rights guaranteed under Article 21 of the Constitution of India, which provides that no person shall be deprived of his life and liberty except according to the procedure established by law. The word 'law' within the meaning of Article 21 would mean legislation and not executive instruction or executive fiat. Replying to the contentions of the petitioner, learned ASG (Additional Solicitor General), appearing on behalf of the CBI, submitted[48] that:

1. The CBI derives its power to investigate like a police, as contemplated by the Cr. PC. from the DSPE Act, 1946;
2. The CBI is only a change of name of the DSPE and the CBI is, therefore, not an organization independent of the DSPE;
3. The creation of CBI may also be taken to have been covered by entry 8 of list I (union list) of the seventh schedule to the Constitution of India[49];
4. Under Article 73 of the Constitution of India, the executive powers of the union extends to matters with respect to which Parliament has the power to make laws and aforesaid resolution can be treated to have been

[48] *Id.*, para 17

[49] Constitution of India, list I, entry 8 reads: "Central Bureau of Intelligence and Investigation".

issued by virtue of Union of India's executive powers under Article 73 of the Constitution of India[50];

5. The Constitutional validity of DSPE Act,1946 has already been upheld by the Supreme Court in *Advance Insurance Co. v. Gurudasmal*[51] and the history of formation of CBI has been highlighted in *State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others*[52] and also in *M.C. Mehta (Taj Corridor Scam) v. Union of India and others*[53]*;*
6. Since the CBI has been functioning for the last several years under the DSPE Act, 1946 it may not be sound or proper exercise of discretion to unsettle the settled law and thereby create turmoil unnecessarily;
7. The Central Government can also be treated to have constituted the CBI by taking recourse to its powers as specified in entry 1 and 2 of the list III (concurrent list) of the seventh schedule to Constitution of India[54].

Rejecting the above contentions, the court concluded that there is no dispute that the CBI came into existence with the resolution no. 4/31/-T, dated 1.4.1963. On careful reading of the resolution, it becomes clear that the resolution

[50] Constitution of India, art., 73 reads: "Subject to the provisions of this Constitution, the executive power of the Union shall extend-

a. to the matters with respect to which Parliament has power to make laws; and
b. to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to makes laws".

[51] 1970 (1) SCC 633

[52] 2010 (87) AIC 1 (SC): (2010) 3 SCC 571: 2010 (68) ACC 985 (SC).

[53] 2007 (53) AIC 192 (SC): (2007) 1 SCC 110

[54] Constitution of India, list III, entry I reads: "Criminal law, including all matters included in the Indian Penal Code at the Commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power. Further, List III, Entry II reads: Criminal procedure, including all matters included in the Code Criminal Procedure at the commencement of this Constitution".

does not refer any provision of the Delhi Special Police Establishment Act, 1946[55] as the source of its power to create the CBI. The Act empowers to Central Government to constitute special police force called 'Delhi Special Police Establishment' for union territories in Delhi[56]. Thus the name of the establishment, created by DSPE Act, 1946 is Delhi Special Police Establishment and not CBI. If a statute gives a specific name to an organization, it is not permissible to confer a new name on the organization by executive instructions. Since, it is found that resolution, which created the CBI, is not an act of delegated legislation; therefore, it cannot become a part of the DSPE Act, 1946. There is, noting either in the DSPE Act, 1946 or in resolution to show that the CBI is a creation of a delegated piece of legislation. In order to exercise powers under delegated legislation, it is necessary that the statute itself empowers the executive[57] to issue notification/resolution to meet the exigencies of time; whereas no such powers is vested in the Central Government by the DSPE Act, 1946. However, there is nothing on record that the resolution was produced before President of India and received his assent and, therefore, the resolution cannot be termed as the decision of the Government of India. Entry 8, list I empowers the Parliament to enact a law on the subject of "*Central Bureau of Intelligence and Investigation*". According to Constituent Assembly debates, the word "*investigation*" appearing within entry 8 list I, was intended to cover general enquiry for the purpose of finding out what is going on within the states and, it is not preparatory to the filing of charge-sheet

[55] *Supra* note 15.

[56] Delhi Special Police Establishment Act, 1946, section 2 (1) reads: : "Notwithstanding anything in the Police Act; 1861, the Central Government may constitute a Special Police Force to be called the Delhi Special Police Establishment for the investigation in any Union Territory of offences notified under section 3".

[57] Under various provisions of DSPE Act, 1946 the executive power of the Central Government can be traced as follows:

a. Under section 2 of the Act, the Central Government may constitute special police force called DSPE for Union Territory of Delhi.
b. Under section 3 of the Act, the Central Government may notify the offences, which may be investigated by the DSPE.
c. Under section 5 of the Act, the Central Government may notify the areas, where DSPE can exercise its jurisdiction.

against the offender, which only a police officer under Cr.P.C. can do. The meaning and importance of the word "investigation" appeared in entry 8, list I was explained by Ambedkar as under:

"The idea is this that at union office there should be a sort of bureau which will collect information with regards any kind of crime that is being committed by people throughout the territory of India and also make an investigation as to whether the information that has been supplied to them is correct or not and thereby be able to inform the provincial governments as to what is going on in the different parts of India so that they might themselves be in position to exercise their police powers in a much better manner than they might be able to do otherwise in the absence of such information".

Therefore, the source of power to create CBI as an investigation agency cannot be traced within entry 8 list I. The issue, with regard to the constitutional validity of CBI was neither raised nor argued nor has even the same been discussed and decided by the Supreme Court. This issue was never involved, even as ancillary, in any reported decisions of any other High Court or Supreme Court. Thus, even the concept of obiter dictum cannot be applicable here. It is also pointed out by High Court that the executive powers of the state are to fill up the gaps and not to act as an independent law making agency. If a legal right of a person is sought to be curtailed it has to be done only by statutory rules and not by an executive instruction.[58] In fact, the resolution, dated 1.4.1963, cannot be regarded as an executive action or decision of the union cabinet within the meaning of article 73, even, while it is never assented by the President of India. Therefore, it only can be regarded as the departmental instructions, which cannot be termed as "law" within the meaning of Article13 (3) of the Constitution of India. The impugned resolution/instruction can also not be regarded to fall within the expression "procedure established by law" under article 21 of the Constitution

[58] *Ram Jawaya Kapur v. State of Punjab,* AIR 1955 SC 549

of India. Thus, the actions of the CBI, in registering a case, arresting a person as an offender, conducting search and seizure, prosecuting accused etc. offend article 21 of the Constitution and therefore liable to be struck down as unconstitutional.

Power to make preliminary inquiry into allegations of corruption

The concept of preliminary enquiry is contained in chapter IX of the Crime Manual of the CBI.[59] However, this crime manual is not a statute and has not been enacted by legislator. It is a set of administrative orders issued for internal guidance of the CBI officer. In *P. Sirjuddin v. State of Madras*[60], the Supreme Court also expressed the need for a preliminary enquiry, in the offences relating to corruption, before proceeding against public servant. Although, in terms of section 154 of the Cr. P.C. when information is received relating to commission of a cognizable offence the first information report should be lodged, mandatorily. But, even under the Criminal Procedure Code, to carry out a preliminary inquiry is not unknown; and when an anonymous complaint is received, it is not imperative for investigating officer to initiate, immediately, the investigative process. In number of situations, it is permissible for good reasons to carry out a preliminary enquiry to find out the truth of allegations. Similarly, in the case of *CBI v. Tappan Kumar Singh*[61] the Supreme Court has validated to conduct a preliminary enquiry prior to registering an FIR on the ground that if at the time of; when first information is received, it does not disclose the commission of a cognizable offence. In *Lalita Kumari v. Government of U.P. & Others.*,[62] the Constitution Bench of Supreme

[59] Para 9.1 of the Manual says that when, a complaint is received or information is available which may, after verification, as enjoined in the Manual, indicate serious misconduct on the part of public servant but is not adequate to justify registration of a regular case under the provisions of section 154 of the Code, a preliminary enquiry (PE) may be registered after obtaining approval of the competent authority. Para 9.10 of the Manual states that PE relating to allegations of bribery and corruption should be limited to the scrutiny of records and interrogation of bare minimum persons which may be necessary to judge whether there is any substance in the allegations which are being enquired into and whether the case is worth pursuing further or not.

[60] (1970) 1 SCC 595

[61] (2003) 6 SCC 175

[62] (2014) 2 SCC 1 available at: www.indiankanoon.com

Court held unequivocally, that section 154 of the Cr. P.C. postulates the mandatory registration of FIRs on receipt of all cognizable offences. If information discloses commission of a cognizable offence, no preliminary inquiry is permissible. The scope of preliminary inquiry is not to verify the veracity of information but it is only as to ascertain whether the information reveals to commission of any cognizable offence or not. In which cases preliminary inquiry should be conducted, it will depend on the fact and circumstances of each case. The categories of cases in which the preliminary inquiry may be conducted are as under:

1. Matrimonial disputes/family disputes.
2. Commercial offences.
3. Medical negligence cases.
4. Corruption cases.
5. Cases, where there is abnormal delay.

The aforesaid circumstances are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

Power of Constitutional Court to monitor the investigation carried on by CBI

In *Manohar Lal Sharma v. Principal Secretary*[63] the CBI had registered preliminary enquiries against unknown public servants for offences under the P.C. Act relating to allocation of coal block for the period from 1993 to 2005 and 2006 to 2009. The inquiries and investigation was being monitored by the Supreme Court, the question was before the court that, whether the approval of Central Government is necessary under section 6-A of the DSPE Act[64] in a matter where

[63] AIR 2014 SC 666: (2014) 2 SCC 532: 2014 (1) SCJ 441

[64] Delhi Special Police Establishment Act, 1946, section 6-A (1) reads: "The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to-

a. the employees of the Central Government of the level of Joint Secretary and above; and

inquiry or investigation is monitored by the constitutional court. The Court held that section 6-A of the DSPE Act has no application to a constitutional court monitored investigation.[65] 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. The whole idea is to retain public confidence in impartial investigation into the alleged crime. There is no doubt that the objective behind enactment of section 6-A is to give protection to certain officers (Joint Secretary and above) of Central Government from frivolous and vexatious complaints. But its objective would also be achieved where investigation are monitored by the constitutional court. The constitutional courts are the sentinels of justice and have been vested with extraordinary powers of judicial review to ensure that the rights of citizens are duly protected.[66] The power under article 142 (1) to do complete justice is entirely of different level and of a different quality.[67] Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of the court. While, delivering the judgment, Justice Madan B. Lakur expressed his separate opinion but reached at same conclusion. His route was different. According to him a constitutional court monitored investigation is nothing but the adoption of a

b. such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Government"; Also see, Para 10.6 of the CBI (Crime) Manual, inter alia, provides that if a case is required to be registered under the PC Act against an officer of the rank of Joint Secretary and above, prior permission of the Government should be taken before inquiry/ investigation as required under section 6-Aof the DSPE Act, 1946 except in a case under section 7 of the PC Act, 1988 where registration of FIR is followed by immediate arrest of the accused.

[65] *Manohar Lal Sharma v. Principal Secretary*, AIR 2014 SC 666: (2014) 2 SCC 532: 2014 (1) SCJ 441

[66] *Babubhai Jamnadas Patel v. State of Gujrat* [(2009) 9 SCC 610]

[67] *Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujrat and Others* : [1991)] 4 SCC 406]

procedure of a "continuing mandamus" which traces its origin, like public interest litigation, to Article 32 of the Constitution and is our contribution to jurisprudence. Any statutory emasculation intended or unintended of the powers exercisable under article 32 of the Constitution is impermissible. The jurisdiction of the court of issue a writ of continuous mandamus is only to see that proper investigation is carried out.[68] The power of judicial review cannot be restricted by statutory provisions. It also does not amount to infringement of either the doctrine of separation of power or the federal structure. The restriction imposed by an Act on the powers of the union cannot be read as restriction on the powers of the constitutional court.

It is noted here that section 6-A was introduced under section 26 of the Central Vigilance Commission Act, 2003[69] by amending the DSPE Act, 1946. It was required to obtain the previous approval of the Central Government for conducting any inquiry or investigation against certain level (Joint Secretary and above) of officers of Central Government for any offence alleged to have been committed under the PC Act, 1988[70]. In *Dr. S. Subramanian Swamy v. Director,CBI*[71], the constitutional validity of it was challenged before Supreme Court. The Supreme Court held[72] that section 6-A of the DSPE Act, 1946 is unconstitutional and violates Article 14 of the Constitution of India. The apex court observed that "it seems to us that classification which is made in section 6-A on the basis of status in the government service is not permissible under Article 14 as it defeats the purpose of finding *prima facie* truth into the allegations of graft, which amounts to an offence under the PC Act, 1988. There can be no sound differentia between corrupt public servants which has to be based on their status. Definitely, irrespective of their status or position corrupt public servants are

[68] *M.C. Mehta v. Union of India* (2008) 1 SSC 407
[69] Act No. 45 of 2003.
[70] *Supra* note 64.
[71] 2014 (4) SCJ 468
[72] *Dr. S. Subramanian Swamy v. Director, CBI*, 2014 (4) SCJ 468

corrupters of public powers. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made. The criminal justice system of a country mandates that any investigation into the crime should be fair, in accordance with the law and should not be tainted by any extraneous consideration. It is equally important that influential persons are not able to misdirect or high jack the investigation so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law. These are important facts of rule of law. Any violation of rule of law, necessarily, amounts to negation of equality under Article 14 of the Constitution and, therefore, section 6-A absolutely fails in that context of Article 14 of the Constitution. The aim and object of investigation is ultimately to search for truth and any law that impedes that object may not stand the test of Article 14 of Constitution.

Power of superintendence over CBI

It is provided under DSPE Act, 1946 that Central Government may constitute Special Police Force called DSPE for Union Territory of Delhi.[73] The DSPE is now called or popularly known as CBI. The Central Government may notify the offences, which may be investigated by the DSPE.[74] It shall be done by notification in the Official Gazette. The superintendence of Delhi Special Police Establishment, except in cases of corruption,[75] shall vest in the Central Government.[76] The power of superintended for investigation into cases of the P.C.

[73] *Supra* note 55**.**

[74] Delhi Special Police Establishment Act, 1946, section 3 reads: "The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment".

[75] Delhi Special Police Establishment Act, 1946, section 4 (1) reads: "The Superintendence of the Delhi Special Police Establishment insofar as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), shall vest in the Commission".

[76] Delhi Special Police Establishment Act, 1946, section 4(2) reads: "Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government".

Act, 1988 has been shifted from government to Central Vigilance Commission. The administration of Delhi Special Police Establishment is vested in an officer, called Director of CBI, appointed by Central Government. The director has all the powers, like of Inspector-General of Police in a state in respect of DSPE.[77]

There can be no doubt that the overall administration of the CBI vests in the Central government which also includes, by virtue of section 3, the power to specify the offences or class of offences which are investigated by it. Once the CBI is empowered to investigate an offence generally by its specification under section 3, the process of investigation including its initiation is to be governed by statutory provisions which provides for initiation and manner of investigation of the offences. This is not an area which can be included within the meaning of superintendence in section 4 (1). Thus, once the jurisdiction is conferred upon the CBI to investigate an offence by virtue of notification under section 3 of the Act, the powers of investigation are governed by the statutory provisions and they cannot be stopped or curtailed by any executive instruction issued under section 4 (1). It is settled principle of law that statutory jurisdiction cannot be subject to executive control.

In *Vineet Narain v. Union of India and Another*[78], the single directive 4.7 (3)[79] issued by the Government of India, which contain certain instructions to the

[77] Delhi Special Police Establishment Act, 1946, section 4 (3) reads: "The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercised by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf".

[78] (1988) 1 SCC 226

[79] 4.7 (3) (i) In regard to any person who is or has been decision making level officer (Joint Secretary or equivalent or above in the Central Government or such officers as are or have been on deputation to a public sector undertaking; officers of Reserve Bank of India of the level equivalent to joint secretary or above in the Central Government, Executive Directors and above of the SEBI and Chairman & Managing Director and Executive Directors and such of the Bank officers who are one level below the Board of Nationalized Bank), there should be prior sanction of the Secretary of the Ministry/ Department concerned before SPE takes up any enquiry (PE or RC), including ordering search in respect of them. Without such sanction, no enquiry shall be initiated by the SPE.

CBI regarding modalities of initiating an inquiry or registering a case against certain categories of civil servants was challenged before Supreme Court through its writ jurisdiction under Article 32 of the Constitution of India. The court held that the single directive had been issued without any legislative sanction and it amounted to interdicting the investigations. The court observed that in the absence of any statutory requirement of prior permission or sanction for investigation, it cannot be imposed as a condition precedent for initiation of the investigation once jurisdiction is conferred on the CBI to investigate the offence by virtue of the notification under section 3 of the DSPE Act. Further, the law does not classify offenders differently for treatment there under, including investigation of offences and prosecution for offences, according to their status in life. Every person accused of committing the same offence is to be dealt with in the same manner in accordance with law which is equal in its application to everyone. Among other things, the court also considered a report given by an Independent Review Committee (IRC) constituted by government of India dated 8-9-1997 and noted its observation as:

"In the past several years, there has been progressive increase in allegation of corruption involving cases of public servants. Understandably, cases of this nature have attracted heightened media and public attention. A general impression appears to have gained ground that the central investigating agencies concerned are subject to extraneous pressures and have been indulging in dilatory tactics in not bringing the guilty to book. The decisions of higher courts to directly monitor investigations in certain cases have added to the aforesaid belief".

Furthermore, the necessity of previous sanction for prosecution is provided in section 19 of the PC Act, 1988 without which the court cannot take cognizance of offence under the Act. But there is no such previous sanction is required for investigation into offence either in the PC Act or DSPE Act or in any other statutory provision. Therefore, the single directive cannot be upheld as valid on

the ground of its being permissible in exercise of power of superintendence of the Central Government under section 4 (1) of the Act. It is noted here that originally the superintendence of CBI was vested in Central Government. In pursuance of the judgment of *Vineet Narain case,* the section 4 was amended. Now, section 4 (1) of DSPE Act provides that the superintendence of CBI, in cases of corruption shall be vested in CVC. There is no doubt that the overall administration of CBI is vested in Central Government. Presently, the CVC is required to exercise the superintendence over the functioning of the DSPE in matters relating to the investigation of offences allegedly committed under the Prevention of Corruption Act, 1988. In *Khemchand v. Superintendent of Police*[80]*,* the Supreme Court said, that the word 'superintendence' would imply administrative control enabling the authority enjoying such power to give directions to the subordinate to discharge its administrative duties and functions in the manner indicated in the order. But while investigating the offence the police officer should exercise the power as vested in him under the statute and the Cr. P.C. and to that extent, he enjoys statutory powers.

In glorious history of CBI, for quite some time its record was excellent. It enjoyed the confidence of the courts as well as people of whole country. It is a great misfortune for our country that today it is not better if not worse than any other police organization. In *Bofors Investgation case,* when it was revealed that Mr. Quattrocchi had received a large amount of money in a foreign bank because he had assured the Swedish Company that the deal will go through a designated date and it did. An ex-Director of CBI immediately informed to then director of CBI that Quattrocchi's name has appeared and there is reason to believe that he is conspirator and immediate steps should be taken to arrest him. This was not done. The written request and advice of the earlier CBI Director is on record and

[80] M. Cr. C. No. 1497/93 decided on 20.7.1994.

available. There are number of instances,[81] in existence where CBI is acted very poorly on the part of its integrity.

Concluding remarks

It is concluded that CBI has to play very crucial role by conducting fair and impartial investigation into cases of corruption. Investigation of anti-corruption cases is one of the primary activities of CBI. Due to ministerial intervention, CBI is not able to do his job with utmost professionalism. CBI has no functional and real life operational autonomy. In practice, the independence and autonomy of CBI has attenuated. As far as departmental action is concerned, the CBI has no role and the CVC exercises full power but can only make non-binding recommendations for departmental action which is to be ultimately taken by concerned department. In states where there is no CBI, the state police, which is frequently called anti-corruption bureau does the job. State's anti-corruption bureaus are wholly incapable to do their job. Presently, the supervisory power upon CBI has to be exercised by three entities viz; CVC, Lokpal and Ministry of Home Affairs, Government of India.

[81] *Centre for PIL v. Union of India*, para 28 is reproduced here that: "While CBI had to explain this averment made in para 18 of the writ petition, if really it wanted to convey to the court as to the non-availability of part II file to comment on the above allegation one would have expected CBI to come forward with a simple explanation that it is unable to respond to the above allegation in view of the fact that the said file was not traceable instead of averring in the affidavit that no such file is in existence. The use of the words "no such file" clearly indicates that what CBI intended to convey to the court in the first affidavit was to tell the court that such file never existed and it is only when the reply to the said affidavit was filed by the writ petitioners with a view to get over the earlier statement, the second affidavit was filed by Mr. Raghuvanshi interpreting the world "existence" to mean "not traceable". In the circumstances mentioned hereinabove, we are unable to accept this explanation of CBI and are constrained to observe that the statement made in the first affidavit as to existence of Part II file can aptly be described as suggestion false and suppressio veri. That apart, the explanation given in the second affidavit of CBI also discloses a sad state of affairs prevailing in the organization. In the affidavit, CBI has stated before the court that part II file with which the court was concerned, was destroyed unauthorisedly with an ulterior motive by none other than an official of CBI in collusion with a senior officer of the same organization which fact, if true, reflects very poorly on the integrity of CBI..."

Central Vigilance Commission (CVC)

Introduction

The very crucial problem of corruption in the Indian administration distorts the decision making process and gives rise to all kinds of vices. Incorruptibility and integrity is very essential requirement for public confidence in the administration of government departments.[82] Corruption assumes many forms. In *S.A. Kiri v. Union of India*[83], the Supreme Court has said that no employee of a nationalized bank or any other public sector corporation should engage himself, in collecting donations for any trust or other organization from persons with whom he comes into contact in the course of his employment. Such a practice is likely to lead to harmful results because in the world of commerce *quid pro quo* and not charity is the rule.

Historical background

To strengthen the existing mechanism for checking corruption amongst government servants, the Central Vigilance Commission (CVC) was created in February, 1964 by a resolution of the Government of India. The commission was established as a result of the recommendations of the committee on Prevention of Corruption popularly known as Santhanam Committee which was appointed in 1962. The committee had recommended that the commission should concern with two major problems, continuously being faced in public administration.[84]

1. Prevention of corruption and maintenance of integrity amongst the government servants; i.e. cases of corruption.

[82] M.P. Jain & S.N. Jain, *Principles of Administrative Law* 959 (Butterworth Publishers, 6th edn. Nagpur, 2010).
[83] AIR 1985 SC 893
[84] M.P. Jain & S.N. Jain, *supra* note 82

2. To ensure, just and fair exercise of administrative powers vested in various authorities by statutory rules or by other executive orders; i.e. cases of maladministration.

Thus, the committee had recommended that above two main problems should be kept within the purview of Central Vigilance Commission. In regards to the cases of corruption, the Government had accepted the recommendation of the committee but the recommendation, with regards to maladministration was not accepted. In this regard, the argument has given that the problem of maladministration was very big and it requires separate machinery by itself. If the commission is burdened with the additional responsibility for maladministration along with corruption, it would dilute its effectiveness in dealing with cases of corruption[85]. The status and functions of the Central Vigilance Commission was described as; the Central Vigilance Commission will have in the sphere of vigilance, a status and a role broadly corresponding to those of the Union Public Service Commission. It will have extensive functions designed to ensure that the complaints of corruption or lack of integrity on the part of public servants are given prompt and effective attention, and that the offenders are brought to book without fear or favour. In the constitutional and legal sense, its functions would be advisory but in reality, they would be advisory in the same sense as those of the Union Public Service Commission. The combined effect of, the independence of the Commission, the nature of its functions, and the fact that its report would be placed before parliament, would be to make the commission a powerful force for eradication of corruption in the public services.[86]

It was not the first time that the commission was created for the vigilance in the matter of corruption on the part of government servants. Before, creation of CVC, there was several organizations to deal with the matter of the corruption in

[85] *Ibid.*

[86] L.M. Bhatia, "Central Vigilance Commission: Its Role in Administrative Vigilance" XVII, Indian Journal of Public Administration 65 (1971)

governance. *Firstly*, as early as 1963, by an executive resolution, the government established the Central Bureau of Investigation. Before 1963, there was the Special Police Establishment under the Delhi Special Police Establishment Act, 1946 to investigate offences committed by the Central Government servants while discharging their official duties. With the creation of CBI, the Special Police Establishment was made a wing of CBI. For the purpose of investigation the CBI derives its power from the Delhi Police Establishment Act, 1946. The CBI functions under the administrative control of the Department of Personnel. *Secondly*, there existed the chief vigilance officer in each ministry/department having a number of vigilance officers under him. *Thirdly*, there was the Chief Technical Examiner's Organization which was created in 1957 under the Ministry of Works, Housing and Supplies for the purpose of conducting a concurrent technical audit of works of the Central Public Works Department with a view to securing economy in expenditure and better technical and financial control. *Fourthly*, there were existed commissioners for departmental enquiries. They were attached to the Ministry of Home Affairs for the purpose of conducting enquiries in the disciplinary proceedings against government servants. All of this is continued to exist with some modifications after the creation of the Central Vigilance Commission. After creation, of the CVC, some structural changes were made in the existing pattern of vigilance. Such as the Chief Technical Examiner's Organization was transferred to the administrative control of CVC and the task of investigation complaints relating to civil works of the government has been given to this Organization by the CVC. The Commissioners for the departmental enquiries were transferred to the control of CVC and the chief vigilance officer in each ministry or department came to be appointed in consultation with the commission. The CVC has also been given the powers to assess the work of these officers and assessment is recorded in their character rolls. With regards to CBI including S.P.E., not any change has been made. Thus, the *status quo* was maintained and CBI was not placed under the control of CVC. Though, the CVC

has been given certain functions in relation to recommendations made by the CBI in cases investigated by it[87]. The commission's main concern is with matters of corruption, misconduct, lack of integrity or any other kinds of malpractices on the part of government servants. Its role is limited. It is only advisory. The main tasks of the commission are coordination, supervision and advice rather than investigation the complaints itself. It has no adjudicatory functions such as in disciplinary proceedings against government servants. It is not even the competent authority for giving sanction of criminal prosecutions for offences committed by public servants while discharging their official duties. It has no machinery to investigate or enquire into complaints of corruption except to a limited extent.[88]

Vigilance is an integral part of all government institutions. Anti-corruption measures are the responsibility of the Central Government. The CVC as an integrity institution was set up by the Government of India in 1964. However, it was not a statutory body at that time. According to recommendations of the Santhanam Committee, CVC, in its functioning, was supposed to be independent to the executive. The sole purpose behind setting up of the CVC was to improve the vigilance administration of the country.[89] In September, 1997, the government of India established the Independent Review Committee to monitor the functioning of CVC and to examine the working of CBI and the Enforcement Directorate. Independent Review Committee vide its report of December, 1997 suggested that the CVC should be given a statutory status. It also recommended that the selection of Central Vigilance Commissioner should be made by a High Powered Committee comprising of the Prime Minister, the Home Minister and the Leader of the Opposition in the Lok Sabha and the appointment of Central Vigilance Commissioner shall be made by the President of India on the specific recommendations made by the HPC. The CVC shall be responsible for the

[87] M.P. Jain & S.N. Jain, *supra* note 82 para 3 & 4 at 960

[88] *Ibid.*

[89] *Centre for PIL & Anr. v. Union of India & Anr.* AIR 2011 SC 1267

efficient functioning of CBI. CBI shall report to CVC about cases taken up for investigations. The appointment of CBI Director shall be made by a committee headed by the Central Vigilance Commissioner. The Central Vigilance Commissioner shall have a minimum fixed tenure and that a committee headed by the Central Vigilance Commissioner shall prepare a panel for appointment of Director of Enforcement.[90] Several states have opted to control corruption through the vigilance commission. The vigilance commission has much weaker status than the Ombudsman. The Vigilance Commission is an agency of the executive and not of the legislature. Vigilance Commission is not allowed to take the matter of corruption beyond the will of executive because it has not statutory status. It has no separate investigatory mechanism and therefore it does not investigate complaints itself, but depends upon other government investigation agencies. The vigilance commission has no adjudicatory functions and is not a competent authority for sanctioning criminal prosecutions for offences committed by public officials while discharging their official duties. In *Sunil Kumar v. State of West Bengal*[91], the Supreme Court has well illustrated the type of problems which can arise in practice because of its non statutory basis. An enquiry officer was appointed to enquire into certain charges against the appellant who was a member of the Indian Administrative Service. After enquiry, the enquiry officer submitted his report, giving his findings on various charges leveled against the appellant. The report was then sent to the vigilance commissioner for his advice. Thereafter, the disciplinary authority which was the state government came to its own conclusions. The appellant was reduced from the higher to the lower salary in the same grade. He challenged the order on the ground that consultation with the vigilance commissioner who had no statutory status was unjustified. He also took the plea that the report of the vigilance commissioner was not furnished to him though the ultimate findings of the government were based on that report. The Supreme Court held that the disciplinary authority committed no serious or

[90] *Id*, para 22

[91] AIR 1980 SC 1170 : (1980) 3SCC 304

material irregularity in consulting the vigilance commissioner. The conclusion of the disciplinary authority was not based on the advice of vigilance commissioner, but was arrived at independently, on the basis of charges and the relevant material placed before the enquiry officer in support of the charges and the defence of the appellant. The final conclusions of the disciplinary authority were so much at variance with the opinion of the vigilance commissioner that it was impossible to say that the disciplinary authority's mind was in any manner influenced by the advice of the vigilance commissioner. The Supreme Court observed: "if the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the vigilance commissioner and obtained his views on the very same material".

Thus, the finding of the court was that there is no merit in the appellant's argument that a copy of the report of the vigilance commissioner ought to have been supplied to him. This finding of the court, on the question of supply of the vigilance commissioner's report to the petitioner does not seem satisfactory. Howsoever, the court may devalue the importance of consultation with the vigilance commissioner. The truth of the matter is that his opinion was taken into account by the disciplinary authority. Natural justice requires that the decision making authority must apply its own mind to the material before it. In fact, denying to it would be regarded as amounting to violation of natural justice. If the vigilance commissioner's report has not to be taken into account by the disciplinary authority or it play no role in influencing his mind then the consultation with him serves no purpose and the institution of the vigilance commissioner becomes useless. In the instant case the initial findings of the disciplinary authority were in consonance with the report of the vigilance commissioner. The disciplinary authority had adopted the opinion of vigilance commissioner. This shows that his opinion did have an impact on the mind of the disciplinary authority. It was only as a result of consultation with the Public

Service Commission that the disciplinary authority (government) changed its views. Public Service Commission has constitutional status, but vigilance commissioner has administrative status only. This position is not satisfactory. It is necessary to reconcile the demands of natural justice with any institutional functioning.

In *Nagaraj Shivarao Kargaji v. Syndicate Bank*[92], consultation with Chief Vigilance Commissioner and acceptance of advice of Chief Vigilance Commissioner was mandatory by a directive issued by Ministry of Finance, Department of Economics Affairs (Banking Division) in exercise of power under section 8 of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 in respect of penalty to be imposed on delinquent bank employee. The Supreme Court held that the aforesaid direction is wholly without jurisdiction and is plainly contrary to statutory regulations governing disciplinary matters. No third party like Chief Vigilance Commissioner or the Central Government could dictate the disciplinary authority or appellate authority as to how they should exercise their power and what punishment they should impose on delinquent officer. In *Satendra Chandra Jain v. Punjab National Bank*[93], once again the Supreme Court held that recommendation of chief vigilance commissioner regarding question of punishment is not binding on disciplinary authority.

On 18th December, 1997 the judgment in the case of *Vineet Narain v. Union of India*[94] came to be delivered. The constitution bench of the Supreme Court exercising its authority under Article 32 read with Article 142[95] of Constitution of India, in order to implement an important constitutional principle

[92] (1991) 3SCC 219 : AIR 1991 SC 1507, para 18 & 19

[93] (1997) 11 SCC 306, para 4 & 5 : (1997) 91 ELT 259

[94] (1998) 1 SCC 226) : (AIR 1998 SC 889)

[95] Constitution of India, art. 142 reads: "The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe".

of the rule of law ordered that the CVC shall be given a statutory status. It was also ordered that all the recommendations of the Independent Review Committee, which was established in September, 1997 by the Government of India, should be given a statutory status. The judgment in *Vineet Narran's case*[96] was followed by the Central Vigilance Commission Ordinance, 1999[97] under which the Central Vigilance Commission has made a multimember body headed by a Central Vigilance Commissioner. The 1999 ordinance conferred statutory status on CVC. The directions given by the Supreme Court in *Vineet Narain case* were incorporated in aforesaid ordinance. It is suffice to state that the 1999 ordinance was promulgated to improve the vigilance administration and to create a culture of integrity in governance[98]. The aforesaid ordinance was replaced by the Central Vigilance Commission Act, 2003[99] which came into force on 11th September, 2003.

A brief analysis of the Central Vigilance Commission Act, 2003

The Act has been enacted to provide for the constitution of a Central Vigilance Commission as an institution to inquire or cause inquires to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988, by certain categories of public servants of the Central Government, Corporations established by or under any Central Act, Government Companies, Societies and for matter connected there with or incidental thereto.[100] Thus the CVC is an integrity institution which is created under the Act. It is to supervise the vigilance administration. The Act provides a mechanism by which the CVC retains control over CBI. The object and purpose of the Act is to have an integrity institution like CVC which is in charge of vigilance administration and which constitutes an anti corruption mechanism. In its functions, the CVC is

[96] *Ibid.*
[97] Ordinance No. IV of 1999.
[98] *Centre for PIL v. Union of India*, AIR 2011 SC 1267
[99] Act No. 45 of 2003.
[100] Preamble of the Central Vigilance Commission Act, 2003.

similar to Election Commission, Comptroller and Auditor General, Parliamentary Committees etc.

Constitution of Central Vigilance Commission

Section 3 of the CVC Act, 2003 dealt with the constitution of Central Vigilance Commission. It is provided that a body known as Central Vigilance Commission shall be constituted to exercise the powers and function assigned to it under this Act and the Central Vigilance Commission which was constituted under section 3 (1) of CVC Ordinance, 1999[101], and now ceased to operate, shall be deemed to be constituted under this Act[102]. The Commission shall consist of a Central Vigilance Commissioner as Chairperson and not more than two Vigilance Commissioners as members[103]. The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons who have been or are in All-India Services or in any civil service of the union or in a civil post under the union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration[104]; or who have held office or holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations[105]. It is further provided that minimum one person necessarily shall be appointed from categories, as stated above in clause (a) and one person from clause (b)[106]. The words "who have been or are" appeared in section 3 (3) (a) refer to the person holding office of a civil servant or who has held such office. These words came up for consideration by

[101] Ordinance No. V of 1999.
[102] The Central Vigilance Commission Act, 2003, s. 3 (1).
[103] *Id*., s. 3 (2).
[104] *Id*., s. 3 (3) (a).
[105] *Id*., s. 3 (3) (b).
[106] *Id*., s. 3 (3) proviso.

Supreme Court in the case of *N. Kannadasan v. Ajoy Khose and Others*.[107] The Supreme Court held that the said words indicate the eligibility criteria and further they indicate that such past or present eligible persons should be without any blemish whatsoever and that they should not be appointed merely because they are eligible to be consider for the post. The constitution of CVC as a statutory body under section 3 of the Act shows that CVC is an integrity Institution. A Secretary to the commission shall also be appointed by Central Government[108]. The headquarters of the commission shall be at New Delhi[109].

Appointment of Central Vigilance Commissioner and Vigilance Commissioners

The Central Vigilance Commissioner and Vigilance Commissioners shall be appointed by the President of India[110]. It indicates the importance of the post. Every appointment shall be made by President, after obtaining the recommendation of a committee consisting of-

a. The Prime Minister- Chairperson;
b. The Minister of Home Affairs- Member;
c. The Leader of Opposition in the House of the People- Member.

Further, it is provided that the appointment of Central Vigilance Commissioner or any Vigilance Commissioners shall not be invalid merely by reason of any vacancy in the committee[111].

In *Centre for PIL v. Union of India*,[112] for the sake of brevity the Committee has been referred by Supreme Court as High Powered Committee. In this case the Supreme Court held that the High Powered Committee (HPC)

[107] [(2009) 7 SCC1]; *Centre for PIL v. Union of India*, AIR 2011 SC 1267.
[108] The Central Vigilance Commission Act, 2003, s. 3 (4).
[109] *Id*., s. 3 (6).
[110] The Central Vigilance Commission Act, 2003, s. 4 (1).
[111] *Id*., s. 4 (2).
[112] AIR 2011 SC 1267 para 30

performs a statutory duty in making the recommendation for appointment of Central Vigilance Commissioner. Thus, while making the recommendations, the service conditions of the candidate being a public servant or civil servant in the past is not a sole criteria. The HPC must take into account the question of institutional competency for consideration. If the selection adversely affects institutional competency and functioning then it shall be the duty of the HPC not to recommend such a candidate. The institutional integrity is also the primary consideration which the HPC is required to take into account for consideration while making recommendation under section 4 for the appointment of Central Vigilance Commissioner. Further it has to take into consideration the values, independence and impartiality of the institution. It has to take an informed decision keeping in mind the vital aspects indicated by the purpose and policy of the Act.

Terms and conditions of service of Central Vigilance Commissioner

The Central Vigilance Commissioner shall hold office for a term of four years or till he attains the age of sixty five years, whichever is earlier[113]. He shall not be eligible for reappointment in the commission[114]. Every Vigilance Commissioner shall also hold office for a term of four years or till he attains the age of sixty five years, whichever is earlier[115]. Further, it is provided that on ceasing to hold office, every Vigilance Commissioner shall be eligible for appointment as the Central Vigilance Commissioner in the same manner as specified in section 4 (1) of Act[116]. But the term of the Vigilance Commissioner who is being appointed as the Central Vigilance Commissioner shall not be more than four years in aggregate as the Vigilance Commissioner and the Central Vigilance Commissioner[117]. Originally it was provided that he will hold office for

[113] The Central Vigilance Commission Act, 2003, s. 5 (1).
[114] *Ibid.*
[115] *Id.*, s. 5 (2).
[116] *Id.*, s. 5 (2) proviso (1).
[117] *Id.*, proviso (2).

a period of six years or until he attains the age of sixty five years whichever is earlier. However, through a resolution of the government, his term reduced from six to three years with the proviso to extend his term in public interest for not more than two years. In the present Act four years term is not extendable.

Before entering upon his office, the Central Vigilance Commissioner and other Vigilance Commissioners shall make and subscribe an oath or affirmation before the President of India or any other person who is appointed by him for that purpose[118]. The form of oath or affirmation has been set out in the schedule to the Act. It is clear from reading the prescribed form of oath or affirmation that the Central Vigilance Commissioner or Vigilance Commissioner, who is being appointed to the office, will uphold the sovereignty and integrity of India and he will perform the duties of his office without any fear or favour, affection or ill will and will uphold the constitution and laws. The Central Vigilance Commissioner or Vigilance Commissioners may resign from his office by writing under his hand addressing to President of India.[119] The Central Vigilance Commissioner or Vigilance Commissioners may be removed from his office by the President in the manner as provided under section 6 of the Act.[120] There is a bar on his re-employment in the government or on his accepting any political or public office. On ceasing to hold office, the members of the Central Vigilance Commission (CVC) shall not be eligible for any diplomatic assignment[121]. He shall be ineligible for the appointment as administrator of any union territory.[122] He shall also be ineligible any such other appointment which is required by law to be made by the President of India.[123] Further, it is provided that the members of the CVC shall be ineligible for employment to any office of profit under the Government of

[118] The Central Vigilance Commission Act, 2003, s. 5 (3).
[119] *Id*., s. 5 (4).
[120] *Id*., s. 5 (5).
[121] *Id*., s. 5 (6), clause (a).
[122] *Ibid.*
[123] *Ibid.*

India or any other government of state.[124] These provisions are necessary to uphold the impartiality of the member of the CVC. The salary and allowances payable to the members of CVC and other conditions of services are similar to the members of Union Public Service Commission. [125] It is also provided that the salary, allowances and pension payable to members of CVC and other conditions of service shall not be varied to his disadvantage after his appointment.[126] The expenses of the commission, including the salary, allowances and pensions payable to members and other staff of CVC shall be charged on the Consolidated Fund of India.[127] The purpose and object of these provisions is to ensure the financial independence of CVC so that the CVC can fight against corruption effectively.

Removal of the members of the CVC

The Central Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by an order of the President of India on the ground of proved misbehaviors or incapacity after the Supreme Court, on a reference made to it by the President, has on enquiry, reported that the concern member of the CVC ought to be removed.[128] The President is empowered to suspend, and if deemed necessary, to prohibit also from attending the office during inquiry, to any member of CVC in respect of whom a reference has been made to the Supreme Court under section 6 (1) of the Act.[129] The President may, also remove from his office to any member of CVC on the following grounds,[130] if he:

1. is adjudged insolvent, or
2. has been convicted of an offence which involves moral turpitude; or

[124] *Id*., s. 5 (6), clause (b).
[125] *Id*., s. 5 (7).
[126] *Id*., s. 5 (7), proviso (3).
[127] The Central Vigilance Commission Act, 2003, s. 13.
[128] The Central Vigilance Commission Act, 2003, s. 6 (1).
[129] *Id*., s. 6 (2).
[130] *Id*., s. 6 (3).

3. engage in any other paid employment outside of his office or
4. is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind of body's or
5. has acquired such financial or other interest which is likely to affect prejudicially has functions as the member of CVC.

These above provisions, related to the appointment and removal for the members of the CVC has incorporated in the Act for the purpose of; to ensure the independence, impartiality, institutional integrity and insulation from external influence of executive in functioning of the Central Vigilance Commission. It also indicates that such protections are given to the members of CVC in order to enable the institution of CVC to work in a free and fair environment.

The powers and functions of the CVC

Section 8 of the CVC Act, 2003 deals with the functions and powers of the CVC which are as follows:

(1) The CVC is empowered to exercise its powers of superintendence over the functioning of the DSPE, popularly known as CBI in so far as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988[131] or an offence with which a public servant may be charged at the same trial under the Code of Criminal Procedure, 1973[132].

(2) The CVC is empowered to give directions to the DSPE or CBI, for the purpose of discharging the responsibility of investigation entrusted to it under section 4 (1) of DSPE Act, 1946[133] but it is not authorized to exercise the powers of superintendence over CBI in such a manner so as to require the CBI to investigate or dispose of any case in a particular manner[134]. The supervisory

[131] The Central Vigilance Commission Act, 2003, s. 8 (1) cl. (a).
[132] *Ibid.*
[133] *Id*., s. 8 (1) cl. (b).
[134] *Ibid.*

powers of CVC, is meant to observe and only give directions for the execution of task. It is intended to ensure that proper progress into investigation of case can take place without directing or channeling the mode or manner of investigation.

(3) The CVC shall enquire or cause an enquiry or investigation into matters referred by Central Government wherein it is alleged that a public servant being an employee of the Central Government has committed an offence under the Prevention of Corruption Act, 1988 or an offence with which he may be charged at the same trial under the Code of Criminal Procedure, 1973[135].

(4) The Commission shall inquire or cause an inquiry or investigation into any complaint made against any officials specified in section 8(2) of the Act, and it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 or an offence with which he may be charged at the same trial under Code of Criminal Procedure, 1973[136]. The officials specified in section 8 (2) are as follows[137]:

i. Members of All-India Services in connection with the affairs of the Union of India and all group A officers of the Central Government.
ii. Such level of officers as specified by notification in Official Gazette, of the corporation's establishment by Central Government, or government companies, societies, and other local authorities, owned or controlled by the Central Government.
iii. All embers of group B, group C, and group D services of the Central Government.
iv. Such level of officials or staff as specified by notification in Official Gazette, of the corporations, government companies, societies, and

[135] *Id.*, s. 8 (1) cl. (c).
[136] *Id.*, s. 8 (1) cl. (d).
[137] The Central Vigilance Commission Act, 2003, s. 8 (2), cl., (a) (b) and (c).

other local authorities which established or owned or controlled by Central Government.

(5) The Commission shall review the progress of investigations conducted by the CBI into offences alleged to have been committed under the Prevention of Corruption Act, 1988[138].

(6) The Commission shall also review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988[139].

(7) The CVC is made empowered to tender advice to the Central Government, corporations, companies, societies or local authorities established or owned or controlled by the Central Government on such matters which has referred to it by the Central Government or aforesaid bodies[140]. (8) The Commission shall also exercise the powers of superintendence over the vigilance administration of the various ministers of the Central Government or corporations, companies, societies or local authorities owned controlled by that government[141].

Action on preliminary inquiry in relation to public servants

On preliminary inquiry, if it is found that a *prima facie* case of violation of conduct rules relating to prevention of corruption under the Prevention of Corruption Act, 1988 has been made out against any group C or group D official of Central Government, then the Commission after giving an opportunity of being

[138] The Central Vigilance Commission Act, 2003, s. 8 (1) cl. (e).
[139] *Id*., s. 8 (1) cl. (f).
[140] *Id*., s. 8 (1) cl. (g).
[141] *Id*., s. 8 (1) cl. (h).

heard to the public servant shall proceed with one or more of the following actions[142]:

i. cause an investigation by CBI or any other agency.
ii. initiate of the disciplinary proceedings or any other appropriate action against concerned public servant by competent authority.
iii. closure of the proceedings against public servant and to proceed against the complainant under section 46 of the Lokpal & Lokayuktas Act, 2013[143].

Every preliminary inquiry shall be completed within the period of ninety days and for reasons to be recorded in writing a further period of ninety days from the date of receipt of the complaint.[144]

Action on investigation in relation to public servants

After preliminary, if Commission decides to proceed for investigation, it shall direct to DSPE or any other investigating agency to carry out investigation into the case as expeditiously as possible and submit its report to the Commission[145]. The investigation shall be completed within the period of six months extendable for further period of six months for the reasons to be recorded in writing from the date of its order.[146] The investigation agency in respect of cases referred to it for investigation by the Commission shall submit the investigation report containing its findings to the Commission.[147] The Commission shall consider every report and may decide as to[148]:

[142] The Central Vigilance Commission Act, 2003, s. 8A (1).
[143] Act No. I of 2014; The Lokpal and Lokayuktas Act, 2013, s. 46 (1) reads: "Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction , be punished with imprisonment for a term which may extend to one year and with the fine which may extend to one lakh rupees".
[144] The Central Vigilance Commission Act, 2003, s. 8A (2).
[145] The Central Vigilance Commission Act, 2003, s. 8B (1).
[146] *Ibid.*
[147] *Id.*, s. 8B (2).

i. file charge sheet or closure report before Special court against public servant or;

ii. initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.

Thus, the CVC as an institution has to perform an important function of vigilance in administration. It is a statutory body. The proceedings of the commission shall be conducted at its headquarters.[149] As far as possible, all business of the commission is to be done unanimously.[150] If the members of CVC differ in opinion on any matter, the same shall be decided by the opinion of the majority.[151] No act or proceeding of commission shall be invalid by reason of any vacancy or any defect in the constitution of commission or any irregularity in procedure of commission which does not affect the merits of the case.[152] The commission has all the powers of civil court.[153] The expenses of the commission shall be charged on the consolidated fund of India.[154] It is the duty of commission to present annually, a report to the President of India as to work has done by the commission within six months. The President shall cause to be laid the report before each House of Parliament.[155] 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 and is empowered to give directions to CBI. It is authorized to review the progress of investigations conducted by CBI into offences alleged to have been committed under the PC Act, 1988. CVC is also empowered to exercise superintendence over the vigilance administration of the various ministries of the Central Government, PSUs, government companies etc. The powers and functions discharged by CVC is the

[148] *Id*., s. 8B (3).
[149] The Central Vigilance Commission Act, 2003, s. 9 (1).
[150] *Id*., s. 9 (3).
[151] *Id*., s. 9 (4).
[152] *Id*., s. 9 (6).
[153] The Central Vigilance Commission Act, 2003, s. 11.
[154] The Central Vigilance Commission Act, 2003, s. 13.
[155] The Central Vigilance Commission Act, 2003, s. 14.

sole reason for giving to 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 larger interest of the rule of law.

Concluding remarks

The CVC has established as integrity institution to address the corruption and promote probity in governance. CVC is an advisory body. The CVC's advice is not binding on the appointing authorities. The problem arises when CVC wants sanction against corrupt higher bureaucracy but is not granted. If it is granted, it takes a lot of time. Adequate autonomy to CVC on the lines of Union Public Service Commission and CAG has not given. There is no any provision under CVC Act, 2003 for government departments to explain the reasons to the Parliament for non-acceptance of CVC advice. There is no proper mechanism has put in place for effective coordination between Lokpal and CVC. With the setting up of Lokpal, the multiple agencies such as Lokpal, CVC, and CBI, has to deal with complaint of corruption. The functions and powers of Lokpal and CVC are overlapping. The institutions of CVC, CBI and Lokpal are not fully integrated with each other.

The Comptroller and Auditor General of India (CAG)

History of the CAG

Originally, since 1958 the Comptroller & Auditor General of India (CAG) was known as the "Accountant General to the Government of India". Later, in 1860 it designated as the "Auditor General of India" and in 1866 as the "Comptroller General of Accounts". In 1884, it was called as the "Comptroller and Auditor General in India". Later, under the Government of India Act, 1935, it was called the "Auditor General of India"[156]. He was entrusted with the responsibility for the accounting and audit of the Government of India and eleven provincial governments. He was to perform his duties and functions through the Indian Audit and Account Department. There were fifteen Auditor General till 14th August, 1947. The Indian Independence Act, 1947 created two dominions of India and Pakistan from 15th August, 1947. When India, "woke to life and freedom at the stroke of the midnight hour" on the 14th August, 1947, Sir Bertie Monro Staig was the Auditor General of India. Sir Bertie Monro Staig, who had assumed the office on 11th April, 1945 continued as Auditor General after taking oath of allegiance to the Indian Dominion. He was the last British Auditor General and first Auditor General of Independent India. Shri V. Narahari Rao, who was the Secretary to Government of India, Finance Department, became the first Indian Auditor General of the free dominion of India on 15th August, 1948. The Constitution of India promulgated on 26th January, 1950 provided for the Comptroller and Auditor General of India, who was entrusted with the accounting and auditing functions of the union government and states governments, including the centrally administered areas and union territories. He was empowered to perform such powers in relation to the accounts of the union and of the states, as

[156] R. K. Chandrasekharan, *The Comptroller & Auditor General of India: An Analytical History (1947-1989)*, Vol. 1, (Ashis Publishing House, New Delhi-1990).

were conferred on or exercisable by the Auditor General of India immediately before the commencement of the Constitution of India. Under the Government of India Act, 1935 the Auditor General of India was appointed by His Majesty and could be removed from office in like manner and on like grounds as a judge of the Federal Court. His conditions of service were prescribed by His Majesty in Council. On vacating the office, he was debarred from holding any other post under the Crown in India. Neither the salary nor his rights in respect of leave of absence, pension or age of retirement could be varied to his disadvantage after his appointment. The salary, allowances and pension payable to or in respect of an Auditor General, was a charged item on the revenues of the federation. After independence, India became a union of states comprising nine part A states, nine part B states, nine part C states and one part D states. The CAG became responsible for the accounting and audit of the transactions of part B states, except Jammu & Kashmir. In case of part A states, he became responsible for the same with effect from the 1st April, 1950 (13th April, 1950 for PEPSU only). The Jammu & Kashmir was brought under CAG's jurisdiction from 1st May, 1958.

After independence, the office of the CAG is originated from article 148 to 151 of the Constitution of India. It is in continuation of the powers exercised by the Auditor General of India immediately before 1947. It is the supreme Audit Institution (SAI) of the country.

The fifth chapter of part five to the Constitution of India deals with the Comptroller and Auditor General of India. It comprises of four Articles i.e.148-151. It is provided that there shall be a Comptroller and Auditor-General of India[157]. He shall be appointed by the President of India[158]. He shall only be removed from his office in like manner and on the like grounds as a judge of

[157] The Constitution of India, art. 148 (1) reads: "There shall be a Comptroller and Auditor General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from his office in like manner and on the like grounds as a judge of the Supreme Court".

[158] *Ibid.*

Supreme Court[159]. Every person who is being appointed the Comptroller and Auditor-General of India, before entering upon his office he shall make and subscribe an oath or affirmation before the President of India[160]. Article 149 of the Constitution spells out the duties and powers of the CAG[161]. Article 150 specifies the forms of accounts of the Union and of the states[162]. The audit reports of the CAG, relating to the account of the Union shall be submitted to the President who shall cause them to be laid before each house of Parliament[163] and the audit reports of the CAG relating to the accounts of a state shall be submitted to the governor of the state, who shall cause them to be laid before the Legislature of the State.[164] The salary and other conditions of service of the CAG shall be determined by Parliament by law[165]. It is further provided that neither the salary of CAG nor his rights in respect of leave of absence pension of age of retirement shall be varied to his disadvantage after his appointment.[166] The administrative powers of CAG and the condition of service of persons serving in Indian Audit and Account Department shall be determined by the rules made by President after

[159] *Ibid;* The Constitution of India art.124 (4) reads: "A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity".

[160] The Constitution of India, art. 148 (2) reads: "Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule".

[161] The Constitution of India, art. 149 reads: "The Comptroller and Auditor General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were confirmed on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of Dominion of India and of the Provinces respectively".

[162] The Constitution of India, art. 150 reads: "The accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the Comptroller and Auditor-General of India, prescribe".

[163] The Constitution of India, art. 151 (1)

[164] *Id*., art. 151 (2).

[165] The Constitution of India, art. 148 (3).

[166] *Id*., proviso.

consultation with the CAG[167]. The Comptroller and Auditor-General of India shall not be eligible for further office either under Government of India or any state after he has ceased to hold his office.[168] The administrative expenses of the office of the CAG, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.[169]

The Constitution of India mandates that the CAG has to perform such duties and exercise such powers in relation to the accounts of the Union and of the states as were conferred on or exercisable by the Auditor-General of India immediately before the commencement to the Constitution of India, in relation to the accounts of the dominion of India and of the Provinces, respectively.[170] In this regard, the Parliament has enacted the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971[171]. It is popularly known as the CAG (DPC) Act, 1971 and came into effect, from 15th December, 1971. The Act defines the powers, duties and conditions of service of the CAG and other matters connected therewith. The Act gives authority to CAG to audit all expenditure from and receipts into the Consolidated Fund of India and the states.[172] Section 23 of the Act empowers the CAG to determine the scope and extent of the audit. The CAG Act lays down the principles to determine whether on entity falls within the purview of CAG's audit or not. The Act empowers to the CAG to make regulations to give effect to the provisions of the Act in regard to the scope and extent of audit. In 2006, by an office memorandum, the Ministry of Finance was

[167] The Constitution of India, art. 148 (5) reads: "Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General".

[168] *Id.*, art. 148 (4).

[169] *Id.*, art. 148 (6).

[170] *Supra* note, 161.

[171] Act No. 56 of 1971.

[172] TSR Subramaniam, "CAG: A Necessary Evil or a Bulwork"? 47 (43) *Economic & Political Weekly* 19-22 (2012).

also clarified the role of the CAG for conducting performance audit[173]. In pursuance of above provisions, the CAG has duty to conduct the performance audit in addition to financial and compliance audits. By definition the performance audit includes audit of "economy, efficiency and effectiveness" in the receipt and application of public funds.[174] Thus, it is clear that the interpretation of its own role in respect of the audit is within the purview of the CAG, which is a constitutional authority.

Appointment of CAG

As noted above that the Comptroller and Auditor General of India shall be appointed by the President of India and he shall only be removed from his office in like manner and on the like grounds as a judge of the Supreme Court[175]. It is pertinent to note here that neither the Constitution nor the CAG Act, 1971 prescribe any method or manner for the appointment of CAG. In a request for information under the Right to Information Act, 2005[176] made by virtue of an application dated 21-02-2013, wherein the information was sought that whether there is any approved system or procedure for selection of the Comptroller and Auditor-General of India[177]. Whether the system or procedure is formally laid down and well documented. The answer to these questions was in affirmative. The answers provided by the first appellate authority were that by virtue of the powers vested in the President of India under article 148 (1) of the Constitution, the President, through warrant under his hand and seal, appoints the Comptroller and Auditor General of India. After the issuance of the Presidential warrant, the Budget Division of the Department of Economic Affairs issues the Gazette Notification for the appointment of the CAG. It was further stated that the system

[173] *Ibid.*
[174] *Ibid.*
[175] *Supra* note 157.
[176] Act No. 22 of 2005.
[177] WP(C) 4653/2013 & 4619/2003 in the High Court of Delhi, decided on 13.08.20013; *N. Gopalswami & Ors v. Union of India* and *Mnohar Lal Sharma Advocate v. The Principal Secretary, Prime Minister Office and Others*, para5at 6 &7: Also available on: www.indiankanoon.com.in

of appointment is established in terms of past conventions and practices[178]. It entails that, on a note moved by the Ministry of Finance, the government makes recommendations to the President of India for the appointment of the CAG[179]. The first appellate authority also stated that the authorities in the government which are involved in the system of selection of the CAG are the Ministry of Finance, Cabinet Secretariat, the Prime Minister and the President of India. The position of the CAG is open to both, the civil servants as well as others, and there is no specified eligibility criteria/zone of consideration[180]. Under the aforesaid established procedure and practice, the Cabinet Secretariat, headed by Cabinet Secretary, the senior most civil servant having knowledge about the competence and integrity of the civil servants in government, sends the list of shortlisted names which have been approved by the Finance Minister to the Prime Minister for his consideration. The Prime Minister considers the shortlisted names and recommends one name from the list of shortlisted names to President of India for his approval. After the name is approved by the President, the CAG is appointed under the warrant and seal of the President of India. The manner in which the President has to function in appointing the CAG that he has to act on the aid and advice of the council of the ministers.

In the course of the Constituent Assembly debates, a amendments was proposed by one of the member Prof. K.T. Shah that "the Auditor-General should be appointed from among persons qualified as registered accountants or holding any other equivalent qualifications recognized as such, and having not less than ten years practice as such auditors" but it was rejected by the Constituent Assembly. Shri T.T. Krishnarmachari, opposing the proposed amendment, expressed the view that the CAG is not an accountant per se and he had a number

[178] *Ibid.*
[179] *Ibid.*
[180] *Ibid.*

of duties to perform and therefore he would have necessarily a comprehensive knowledge of the entire administration.[181]

In *N. Gopalswami & Ors v. Union of India* and *Mnohar Lal Sharma Advocate v. The Principal Secretary, Prime Minister Office and Others*[182], the appointment of the respondent no. 2 was challenged on the two grounds. *Firstly*, the appointment of respondent no-2 violates the principle of institutional integrity as contemplated in the *CVC case*[183] and the Punjab *PSC case*.[184] *Secondly*, the appointment of respondent no. 2 as the CAG has been done in arbitrary manner which lacked transparency. The petitioner also seek a writ direction or order commanding the union of India to frame a transparent selection procedure based on definite criteria and to constitute a broad based non-partisan selection committee, which, after calling for applications and nominations, would recommend to the President of India the most suitable person for appointment as the CAG. The Delhi High Court held that the appointment did not violate the principle of institutional integrity and is not arbitrary. There neither on integrity nor on competence was any material to show that the respondent no. 2 was not eligible for appointment as the CAG. There was no any disciplinary proceeding or criminal case pending against him. It was showed that the respondent had possessed thirty seven years of unblemished record. There was no adverse noting against him. The appointment of the respondent as CAG was based on a practice which had been followed and had became a convention over several decades and it had stood to the test of time.

In respect of appointment of CAG, the argument is made for a selection committee in line of National Human Rights Commission (NHRC), Central

181 R.K. Chandrasekharan, *supra* note 156 at 44

182 WP (C) 4653/2013 & WP (C) 4619/2013 in the High Court of Delhi, decided on 13.08.20013; by both these civil writ petitions, the common issues and questions were raised and therefore disposed of together in court.

183 *Centre for PIL & Others v. Union of India* : (2011) 4 SCC 1

184 *State of Panjab v. Salil Sobhlok* : (2012)5 SCC.

Information Commission (CIC) and Central Vigilance Commission[185]. The National Commission to Review the Working of Constitution found this argument "persuasive" but has rejected it. The Commission observed that it would be counterproductive to undermine the constitutional and moral authority of the Prime Minister by stipulating a mechanism that would supplant his decision making and said that no change is needed in the existing provisions. At the same time the Commission has recommended that a healthy convention should be developed to consult the speaker of the Lok Sabha before the government decides on the appointment of the CAG so that the views of the Public Account Committee (PAC) are also taken into account. If a healthy convention is considered desirable, why should it not be institutionalized?[186] Keeping in mind the constitutional responsibilities entrusted to the CAG, the CAG should clearly have[187]:

1. The professional knowledge and expertise.

2. The willingness to point out a finger at irregularity, impropriety, imprudence, inefficiency, waste, and loss of public fund, at whatever level this occurs.

3. The ability to weigh the legal and constitutional aspects of some of the issues that come before him.

4. A capacity for understanding complex technical, contractual, commercial, managerial or economic matters and forming careful judgments particularly when dealing with large government schemes.

5. Management abilities for running the vast department under him; and

[185] Ramaswamy R. Iyer, "CAG of India: Restoring a Diminished Institution" *Economic & Political Weekly* 5533-5535 31 December, 2005.
[186] *Ibid.*
[187] *Ibid.*

6. Underlying all these, a passionate concern for rectitude and propriety (fire in the belly), and impeccable and fierce personal integrity, accompanied by much tact and wisdom.

It will certainly be very difficult to find a person who combines all those elements but the person selected should meet at least a significant part of the above requirements.[188] It is argued that the CAG is much more than an accountant. It was argued first in the Constituent Assembly debate by T.T. Krishnarmachari. In view of a scholar it is a serious error.[189] This constitutional institution should not be allowed to obscure the point that it is also a specialized and professional institution and cannot easily be filled by a generalist[190]. Let us not forget the title of the post. It is an "Auditor General"[191]. The CAG is at the top of the pyramid in the Indian Audit and Accounts Department (IAAD). Immediately, below the CAG, there are three deputy CAGs. In the yearly years it was assumed that the CAG would be an IAAS (Indian Audit and Accounts Service) officer. Up to 1966, the first three CAGs came from IAAS. In August 1966, the fourth CAG was come from Indian Civil Service (ICS). In March 1972, the fifth CAG was again come from IAAS. After 1978, the successive CAGs have been come continuously from IAS. Thus, it is clear that since a long period the IAAD has been working under the CAGs coming from IAS cadre. It is like a systematic exclusion of IAAS from the top post of CAG. It has a demoralizing effect on the IAAS. That feeling can be right or wrong but is in existence and it is bound to have some effect on the commitment, zeal and courage with which the audit function is performed.

Role of the CAG

There are three basic pillars of democracy viz; the legislature, executive and judiciary. They have the primary role and responsibility to manage the affairs

[188] *Ibid.*
[189] *Ibid.*
[190] *Ibid.*
[191] *Ibid.*

of the country. The role of other constitutional and statutory bodies cannot be ignored in ensuring the process of qualitative governance. The Election Commission of India (ECI), CAG, and CVC etc. have an important role to play in ensuring the quality of governance and administration. The CAGs role should be viewed in the context of our constitutional scheme under which the executive is accountable to Parliament.[192] GAG is an essential instrument for enforcing the accountability mechanism as the CAGs reports on government's stewardship of public finance are required to be placed before Parliament and state Legislatures. To enable him to discharge his responsibility, without any fear or favour, he has given an independent status under article 148 of the Constitution[193]. In this regard, Dr. B.R. Ambedkar said in Constituent Assembly that[194]:

"Personally, speaking for myself, I am of opinion that this dignitary or officer is probably the most important officer in the Constitution of India. He is the one man, who is going to see that the expenses voted by the Parliament are not exceeded or varied from what has been laid down by Parliament in what is called the Appropriation Act. If this functionary is to carry out the duties, and his duties, I submit, are far more important than the duties even of the judiciary. He should have been certainly as independent as the judiciary. But, comparing the articles about the Supreme Court and the Articles relating to the Auditor General, I cannot help saying that we have not given him the same independence, which we have given to the judiciary, although I personally feel that he ought to have for greater independence than the judiciary itself".

[192] B.P. Mathur "The Meaning of the Attack on the CAG" Vol. 57, No. (37) *Economic & Political Weekly* 12- 14 (2012).
[193] *Ibid.*
[194] R.K. Chandrasekharan, *supra* note 156 at 45.

Dr. Rajendra Prasad, the first President of India laid the foundations stone for the new office of the Comptroller and Auditor General of India on 21st July, 1954. He observed as under[195]:

"In a democratic set-up involving allocation of hundreds of crores of rupees, the importance of this kind of scrutiny and check can never be over emphasized, particularly at the present moment when government is incurring large expenditure on so many welfare projects. Apart from these, the government has of late been taking up industrial undertakings in its hands which have to be worked on purely business lines. It is essential that every rupee that we spent on all these is properly accounted for. This important task, I am afraid, a task not always very pleasant, devolves upon the Comptroller and Auditor General and his office. In accordance with powers vested in him, he has to carry out these functions without fear or favour in larger interests of the nation".

Till 1990s, the Election Commission of India, even being constitutional body was working only as a wing of executive. He was being more sympathetic and much friendly toward the ruling parties. He was unable to fulfill his defined constitutional role as the guardian of purity in the electoral process. In December, 1990 with arrival of T.N. Seshan, the ECI become an active, independent and very strong constitutional body to oversee the electoral process. Seshan gave teeth to this constitutional body. Now it is widely perceived that ECI has strong will power to bark and bite when occasion demand for it. Only because of this, it became possible to eliminate the muscle power from the electoral process in India. But now there is also a need to eliminate the money power from electoral process. Same is applicable for the institution of CAG. In early 2008, with arrival of Vinod Rai as a Head of CAG, the institution of CAG has received its place as a constitutional body. Predecessor of Vinod Rai as the Head of CAG perceived their role only as the government servant rather than the servant of constitution or

[195] *Id.*; at 64.

Parliament or people of India. Vinod Rai as a Head of CAG "did a Seshan" to the institution of CAG.[196] In USA, the General Accountability office (GAD) is a part of legislative branch. In the U.K., the CAG is an officer of the House of Commons. CAG of India is not an officer of Parliament but is a constitutional authority and discharges his constitutional duties through a large and nationwide Indian Audit Department (IAAD). The CAG's reports on the 2G spectrum Allocation, Allocation of coal blocks, MDM Schemes, Commonwealth Games of 2010, and Antrix-Devas cozy have exposed serious misdeed of Central and State Government.

Till 1994, in India communication facilities were being provided only by The Department of Telecommunication (DoT) under the Ministry of Communications and Information Technology (MoC& IT). Due to development of information technology, India has emerged as fastest growing market in the world and therefore in 1994, private players were invited by way of investment for providing telecom services in India. In 1994, first National Telecom Policy was announced by the Government of India. The main objectives of this policy were to provide the world-class services at reasonable price and ensure the availability of basic telecom services to all villages[197]. It was very difficult to government to make available the required resources to achieve these targets and therefore the involvement of private sector was required. By this policy, government made several achievements but until some of objectives were to be met and many new changes in telecom sector at national and international level were also acknowledged and therefore a new telecom policy NTP-99 was announced by the

[196] TSR Subramanian, *supra* note 172 at 19

[197] Comptroller & Auditor General of India, Performance Audit Report on the issue o f Licences and Allocation of 2G Spectrum by the Department of Telecommunications. For the year ended March 2010, this report had prepared for submission to the President under Articles 151 of the Constitution. The report contains the results of examination by Audit of the Issue of Licenses and Allocation of 2G Spectrum of Department of Telecommunications, Ministry of Communication and Information Technology. The audit covers the period from 2003-04 to 2009-10.

government w.e.f. 1st April, 1999[198]. After sometime this sector has realized the widespread structural and institutional reform in India. On March 31, 2010 India's telecom sector became second largest network in the world after China.

Role of Telecom Regulatory Authority of India (TRAI)

The TRAI was set up by the Government of India in March 1997. TRAI is mandated for making recommendations on the following matters[199]:

i. Need and timing for introduction of new service provider.
ii. Terms and conditions of the licenses to be given to service providers.
iii. Efficient management of the available spectrum.

Spectrum allocation

Radio frequency spectrum is the entire range of wavelengths of electromagnetic radiation which is used as carrier of wireless transmission and thus a basic requirement for providing wireless services. It is a finite but non-consumable global natural resources and commands high economic value due to its heavy demand in the telecommunication sector. The word "spectrum" basically refers to the collection of various types of electromagnetic radiations of different wavelengths. Frequencies are allocated by the International Telecommunication Union (ITU) at "World Radio Communication Conference". Allocations are made on a regional basis and are made for different services. Allocation of spectrum in ITU Radio Regulations exists from 9 KHz to 1000 GHz. In India, radio frequencies are confined between 9 KHz and 400 GHZ. Some important characteristics of the radio spectrum are as follows[200]:

i. Radio frequency spectrum does not respect international geographical boundaries as it is spread over a large terrestrial area.

[198] Ibid.

[199] ibid.

[200] Ibid.

ii. Use of radio frequency spectrum is susceptible to overlapping interference and requires the application of complex engineering tools to ensure interference free operation of various wireless networks.

iii. Unlike the other natural resources, radio frequency spectrum is not consumed upon its usage. It is also liable to be wasted if it is not used optionally and efficiently.

Assignment of radio frequencies is governed by international treaties formulated under the aegis of the ITU. India falls in the ITU Region III. TRAI had to notify the rates at which the telecommunication services were to be provided within and outside India under the Act. The original Act of 1997 by which the TRAI was set up was amended in 2000. Under new amended Act it was provided that there shall be two separate bodies viz; Telecom Dispute Settlement and Appellate Tribunal for dispute settlement between licensees and licensor, two or more service providers and service provider and consumers. TRIA shall work as regulatory body. Thus, TRIA is an advisory body in the policy matters. CAG in its audit report has indicated the presumptive loss to exchequer of the Government of India, as 1, 76, 645 crore.

Allocation of coal blocks

The gap between the demand and domestic supply of coal was widening and consequently, imports were increasing in country. It was expected by Planning Commission that the production of coal from captive coal blocks allocated for captive mining would play a significant role in meeting the demand for coal in country but it had not happened and captive coal block had failed to do significantly. The issue of selection process for allocation of coal blocks for captive mining had been raised in the parliament and in the media also. Due to

above reasons this topic was selected for conducting performance audit by CAG. Audit observed that[201]:

"The procedure followed for allocation of coal block lacked transparency and it failed to arrive at the optimal price at which allocation of blocks should have been made".

There was a substantial difference between the price of coal supplied by CIL and the cost of coal produced through coal blocks allocated for captive mining and there was a windfall gains to the allocatees. There was lack of transparency and objectivity in the allocation procedure for captive coal blocks. In selection process, a system comprising incentives to encourage production performance and disincentives to discourage non performance was required for augmenting coal production from captive coal blocks in country but it was also not put in place. Coal is key contributor to the Indian energy scenario. It meets more than 50% of the total commercial energy needs of India. Out of the four major fuel resources viz; oil, natural gas, coal and uranium coal is largest domestic reserve of the country. This scenario is expected to remain the same in the foreseeable future unless alternative energy sources occupy centre stage. The State is deemed to have a proprietary interest in natural resources and must act as a guardian and trusty in relation to the public resources. Every decision of State or its instrumentalities must be sound and transparent. The State legally owns the natural resources on behalf of the citizens and the natural resources cannot be allocated to private hands without ensuring that the benefit of the low cost of the natural resources would be passed on to the citizens.

Concluding remarks

[201] Comptroller & Auditor General of India, Draft Performance Audit of Coal Block and Augmentation of Coal Production by Coal India Limited. Report of the CAG of India Union Government (Commercial), 2011-2012, at 84.

The CAG's reports on the expenditure in the 2G spectrum Allocation, Allocation of coal blocks, Commonwealth Games of 2010, and Antrix-Devas cozy arrangement has became the subject of debate all over the country. It has done during era of Vinod Rai as Head of CAG. He should be credited for achievement of bringing a constitutional body to realize its public responsibility and perform in a free, fearless and impartial manner. On the part of government the charges have been made that CAG has overstepped his constitutional mandate. The government sources have leveled allegations that the CAG is dabbling in policy matters, which falls exclusively in province of executive.[202] But any report of CAG does not give any credence to those allegations. The CAG neither suggested nor questioned any particular or specific policy to the executive. The constitutional mandate of CAG permits him to comment on the efficiency and financial impact of each policy decision, without questioning the legitimacy of the decision.[203] It is constitutionally mandated and within the jurisdiction of the CAG to make such comments on policy decisions. It is the duty of the CAG to point out the financial implications of policy decisions on public funds.[204] Now the question is that whether the public private partnership (PPP) projects come within the jurisdiction of CAG audit. The answer should be in affirmative because when public funds are involved, the CAG has a legitimate role.[205] The apex court has clearly indicated that the CAG is not a munim of the government[206]. It is a constitutional authority with a significant role as the watchdog of public finance.

[202] TSR Subramanian, *supra* note 172 at 19.
[203] *Ibid.*
[204] *Ibid.*
[205] *Ibid.*
[206] *Ibid.*

Introduction

In countries having a democratic form of government; it is observed that in recent times vast powers including discretionary powers are conferred on officers and officials in charge of administration.[1] It is also observed that while exercising powers, there is scope for abuse or misuse of such powers by persons manning the administration, leading to corruption and maladministration.[2] Where the greater power has been given to the executive in the field of governance, and then, there is greater need to safeguard the citizen from arbitrary and unfair exercise of power. In the countries which follow the common law system, control upon administrative powers or excesses is being done normally through courts. The superior courts review administrative decisions in the light of principles of administrative law. In India, the power of judicial review of administrative action does not has any value itself with the merits of the administrative decisions as a court is not to substitute its views on officials to whom the power is conferred by law. The efficacy of the power of judicial review of administrative action is very limited because in decision making process by courts there are several salutary principles which have been evolved over a period of time. In democratic countries, in the realm of the concepts of welfare state and good governance, with the growth and variety of administrative actions, the need to control such administrative actions not only by judiciary, but by an internal mechanism also, has become imperative, which conveniently can check or control such administrative actions. The quest for having a proper and effective mechanism to control administration had led to the birth of the institution of "*Ombudsman*" or Lokpal. It is said that the institution of *Ombudsman* has been in vogue in the Scandinavian countries for over a century and was adopted in Sweden as early as in 1809. Amongst the Common Law countries having parliamentary form of government, New Zealand was the first country which adopted the system of *Ombudsman* in the year

[1] *B.S. Yeddyurappa v. Sirajin Basha* (2014) Cr. L.J. 1469 Ker. para 22 at 1481.
[2] *Ibid.*

of 1962. In England it was established as a system in the year of 1966.[3] In modern times, the administration has a decisive role in making the socio-economic order of the society.

The past experience has showed that vesting of much discretionary powers in administration generates opportunities and possibilities to abuse of such powers by public functionaries or authorities which resulted in the maladministration and corruption. In the flush of such discretionary powers the public authorities or functionaries exhibit a tendency to disregard individual rights and welfare of people.[4] In this regard, Wheare observed[5] that "it is not eccentric to conclude that if there is more administration, there will be more maladministration".

Therefore, there is an urgent need to develop an adequate, proper and effective mechanism which can control the vast powers of administration to safeguard individual rights and also to lay down the procedure for redress of individual grievances against public administration. Essentially, the system of *Ombudsman* acts as an external agency, outside the administrative hierarchy to probe into administrative faults.[6] The object of it is to setting up and maintaining the standard of the concept of good governance in the functioning of government departments. The *Ombudsman* receives complaints of the citizens which can be investigated by him or by his experienced staff. After investigation, the Ombudsman can give relief to the aggrieved party in certain situation. The *Ombudsman* does not have any powers to quash or reverse administrative action or decision because it has to be done by the superior courts in exercising the power of judicial review. The *Ombudsman* follows inquisitorial procedure and it establishes the truth in the matters of certain administrative actions which has taken by the executive.

In India, the misuse of discretionary powers by public authorities is very common. Here, it is useful to refer the case, *Chandra Bansi Singh v. State of Bihar*.[7] In this case an order to acquire a large tract of land belonging to several persons was issued by the

[3] *Ibid.*
[4] *Ibid.*
[5] Wheare, Maladministration and Its Remedies, 3 (1973).
[6] *Supra* note 1
[7] AIR 1984 SC 1767: (1984) 4SCC 316

government. Later, it exempted a piece of land belonging to one family from the purview of the order. The Supreme Court held that the release of this piece of land from the purview of order was a pure and simple act of favouritism without there being any legal or constitutional justification for the same. The court held that the release of such order was bad and *non est* under article 14 of the Constitution of India. An interesting aspect of the case is that while the petitioner sought striking down the entire notification so that his land would also be released from acquisition but the court, on the other hand, held the entire notification as originally issued is valid after cancelling the exemption of the land is question. In respect of administrative actions or decisions the efficacy of the power of judicial review has diluted by several factors and therefore the number of administrative actions does not fall within the purview of this power. Often, the legislature does not lay down any clear norms, guidelines and procedure for exercising the discretionary powers which has to be given to the public authorities. The need for an institution of Lokpal in India can be described under following heads.

Lack of judicial control upon administrative action

The courts have very limited task to review the administrative action. The courts work on the assumption that the administration functions according to law. Exercising its power of judicial review, the court can quash administrative action on the grounds such as ultra-vires, malafides, and exercise of power for improper and interior purpose, irrelevant or extraneous considerations, failing to take into account relevant consideration or a patent error of law. Due to above limited grounds of judicial review it is not easy to get relief sought by individual. Further, it is very crucial to prove such grounds as malafides, improper purpose etc. The burden of proof lies upon the individual, who is going to challenge the specific administrative action and it is not easy to do so as he has no access to governmental record. Further, in the writ petitions, which are most common technique to challenge the administrative action, the courts go by the affidavits filed by concerned parties. They do not call for oral testimony or cross-examination. The affidavits may be in detail and informative but often they seek to hide more than they reveal. The power of judicial review does not cover many facts of the working of

administration. The judicial proceedings are dilatory, formal, time-consuming and costly. The court fees are needed. The lawyers have to be engaged to prosecute individual grievances. It makes very difficult to poor people of India to seek judicial redress of their grievances against administration.

Besides the judicial control the administration itself has its own internal control mechanism but its internal control mechanism has been found very inadequate. Pointing out the inadequacies of administrative review of its own decisions, the New Zealand Ombudsman has stated[8] that while dealing with the large number of complaints against discretionary administrative action it has often become clear to him that an off repeated review of a decision within the department is no guarantee of the wisdom and fairness of the ultimate decision. What usually happens is that the first decision is made at a lower level of administration, and as it goes up to a higher level for review, it starts building up its own defenses within the department. A process of rationalization generally brings out arguments in favour of the original decision that may not have been known to the person who made the earlier decision. The official bias is towards maintaining and supporting the original decision by inventing fresh arguments in its support. In this atmosphere, only representation of a good case by a responsible and independent person can generally ensure a genuine review by the internal control mechanism of administration.[9] It has therefore been felt that an external agency, falling outside the administrative hierarchy, is absolutely necessary to detect and check administrative lapses and faults and to supervise the administration so that the rights of the individuals are not unduly jeopardized.

Lack of legislative control over administration

There are three organs of the government in a democracy viz; judiciary, executive, and legislature. The legislature is responsible to make the laws for the nation. Its traditional function is to oversee the administration. But at present, the legislature is not able to oversee the administration properly. With the development of the party system,

[8] M.P. Jain & S.N. Jain, Principle of Administrative Law (Butterworth Publishers, Nagpur, 2009), at 905.

[9] *Ibid.*

instead of the legislature controlling the executive, it is the executive which largely controls the legislature.[10] It is a big body and is usually engaged in discussing policy matters and proposals for legislation and taxation. With the pressure of work, it has very lack of time to oversee the administration. The number of bills remains pending before the Parliament for enactment. There are no more chances left for addressing individual grievances on the floor of the House. The legislature has no mechanism to probe into administrative faults and lapses in individual cases. Thus, it becomes clear that the traditional organs in a democracy do not provide any adequate and effective control mechanism over the administration.

The institution of Lokpal: a conceptual analysis

The functioning of the institution of Lokpal is as an external agency and it has no place into administrative hierarchy[11]. The Lokpal has been given the responsibility to probe into administrative fault. It is a projection of the legislative function for the supervision of administrative function. The Lokpal is an appointee of the legislature and acts as its eyes and report to it. Therefore, the institution of Lokpal cannot be regarded as foreign with the parliamentary form of government. It does not supplant, but only supplements, the traditional legislative role of overseeing the administration. The institution of Lokpal is to help the legislature in its traditional supervisory function. With the help of Lokpal, the legislature becomes more capable and efficient to perform its traditional supervisory function upon administration. It has to be free from various defects which exist in the present control mechanism of the administration through courts, legislature and the administration itself.[12] The main sanction behind the Lokpal is the backing which he receives in his functioning from the legislature. Lokpal has power to report to the legislature on the result of his enquiries and investigations and therefore, not any one department of government wants to be discussed in Parliament or got adverse publicity in media. Due to these reasons the recommendations made by Lokpal generally accepted by the government. The Lokpal is a very strong authority to redress individual

[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*

grievances which arises from the administration. The Lokpal has to access the departmental files on complaint being made to him against the administration. The Lokpal is duty bound to satisfied himself by looking into the relevant papers whether there is any fault on the part of government or not. The complainant is not required to lead for evidence, or to prove his case before Lokpal. The Lokpal himself is duty bound to find out that the complaint made before him is justified, genuine or not. The court fee is not payable for filing complains before Lokpal. There is no need to engage a lawyer because the Lokpal himself is a lawyer of complaint. Lokpal works silently and discreetly and the administration gets chance of rectifying its mistakes without much loss of face. The Lokpal can give relief to an individual on many such grounds on which the courts usually are not able to give same relief. The proceedings of the Lokpal are not formalized and do not take much time to be completed. The work of Lokpal is complementary to the work of the court.

The Lokpal serves as a valuable tool to investigate complaints against government departments. The complaints of the people against administration are investigated by experienced staff of Lokpal. The members of investigating team work under the supervision of Lokpal. The findings of the Lokpal and his reasoned conclusions related to a complaint may ultimately be published and thus error and mistakes committed by government officials in handling citizen's affairs are exposed. The complainant is not required to establish a breach of law. There is enough, only to establish maladministration which causes injustice. Thus, the Lokpal seeks to hold the balance between the citizen and state and contributes to ensure the greater efficiency and humanity in administrative process. The functioning and the value of the institution of Lokpal are curative as well as preventive. The Lokpal gives relief to aggrieved party in certain situations. He induces more care in the administration and eliminates the major grievances to the people. He protects and preserves the rights of the poor people and Lokpal removes doubts about fairness in administration and improves the image of administration in public eyes. Removal of individual grievances keeps the public satisfied. Even when no remedy has been given by Lokpal in a particular case, the mere fact that an independent authority has reviewed the matter, removes the sense of

dissatisfaction from the complaint's mind. Thus, the Lokpal helps in removing the crisis of confidence between the administration and public and it becomes sign of public satisfaction[13]. The basic differences between the courts and Lokpal may be noted as[14]:

"The Lokpal has no powers to quash an administrative decision but the Lokpal can suggest the various types of remedies to the aggrieved. The Lokpal does not follow any elaborate court procedure and take action very fast. The procedure and functioning of Lokpal is not expensive, while the ordinary court procedure is very time-taking and costly. Ordinary courts are able to intervene very swiftly to prevent the recurrence or continuance of wrongful acts, because they can grant injunctions, declarations, writs etc. while Lokpal has no such powers".

The very purpose of Lokpal is to control the administration and to give protection to the citizen against injustice brought by faulty administration. The institution of Lokpal is closely concerned with the correct functioning of administration. Its main function is to trace the fault in public administration and it does not upset the process of governance. If there is no element of maladministration, then the Lokpal has to takes decision on merits. The institution of Lokpal works as a frontier with the law. It can deal with many facts of administration and administrative action with which the courts may not have any concern. The Lokpal can provide remedy to the individual for delay in administrative action. The Lokpal can give relief when the complainant does not receive any answer from the concerned department. Lokpal can also give relief when the departmental biasness occurs in decision making process. Thus, the Lokpal helps in improving the process of governance. He makes recommendations for the modification in the process of governance. Its functioning leads to setting up and maintaining the standards of governance. Thus, the institution of Lokpal can help in developing a body of principles of administrative due process. It is argued that the institution of the Lokpal or Ombudsman

[13] *Id.,* paras 1 & 3 at 909- 910.
[14] *Id.,* para 2 at 910.

will supplant the parliamentary system and undermine ministerial responsibility to Parliament. The Australian Ombudsman has refuted this view as follows[15]:

"Experience has shown that far from eroding such traditional systems, the institution of Ombudsman has reinforced and supported their functions. It is, I think, significant that on more than one occasion government ministers, as private members, have chosen to lodge complaints with my office on behalf of the constituents. Similarly, it is noteworthy that in a number of cases ministers have, as a result of investigations by my office of official actions, reviewed decisions in the light of information not previously known to them. On the other hand, I quite often receive complaint under the Ombudsman Act where it is apparent to me that resort to the political process might well have a better chance of achieving a result the complaint would like".

The institution of Lokpal in India: a historical perspective

The word Ombudsman is originally Swedish and means representative. In the Scandinavian countries, the Sweden is the first country which adopted the institution of Ombudsman in 1809[16]. Finland adopted it in 1919; Denmark in 1953 and Norway in 1963[17]. New Zealand adopted the system of Ombudsman in 1962[18]. Next is England

[15] Commonwealth Ombudsman, Fifth Annual Report 5 (1981-82), cited in Jain, *supra* note 8 at 909.

[16] The roots of the institution stretch back to 1809 in Seweden. Until the 20th century the roots of this institution did not extend beyond the Swedish boarder, but it was then adopted by other Scandian countries. It had received more and more popularity in the 1960, when it was established on a mass scale by the Commonwealth countries and by other European countries also. In the middle of 1983 approximately 21 countries had the institution of Ombudsman on the national level. By 2011 the institution of Ombudsman on the national level had spread to approximately 110 countries of the world. In many countries it has been established on regional, city provincial level also. In recent years the wholesale expansion of the institute of Ombudsman has been taking place as a consequence of the transition of many countries to democracy and to democratic structures of government. The transition to democracy accompanied by reforms of government has been observed primarily in Latin America, Central and Eastern Europe and also in parts of Africa and Pacific Asia. The countries that established their own Ombudsman during this time comprise Argentina,Costa Rica, Colambia, Guatemala, Peru, Nambia, South Africa, Poland, certain francophone African countries, Hungary, Lithuania, Slovenia, the Czech Republic, Thailand and Philippines.Building on this , under the principle of the Maastricht Treaty, the European Union established the European Ombudsman in 1995; available at: http://www.varuh-rs.si/about-us/history-of-the-institution-in-slovenia/origin-of-all-ombudsman-institutions/?L=6. Last visited: on 04/04/2016.

[17] *Ibid.*

[18] Available at: https://en.wikipedia.org/wiki/Office_of_the_Ombudsman_(New_Zealand). Last visited: on 04/04/2016.

which established the Ombudsman system in 1966[19]. Australia has established the Ombudsman system both at centre and state level also. The institution of Ombudsman has been adopted in all these countries with the basic idea to improve the process of governance and to control the activities of maladministration. The Administrative Reforms Commission in its interim report on the "Problems of Redressal of Citizen's Grievances" recommended the setting up of an institution of Lokpal at the centre.[20] The Commission argued in favour of its recommendations that the redress of citizen's grievances is basic to the functioning of the democratic government. It will strengthen the hands of the government in administering the laws of the land and its policies without any fear or favour or affections or ill will. It also will ensure the public faith and confidence in administration. The main issue before Commission was to suggest for an independent institution or authority to which the people of India have easy access for the redresses of their grievances. Bearing in mind that the individual himself has very strong feeling of grievances and it is the duty of the state to satisfy to him. The individual has to be given a reasonable opportunity to present his case before an independent and impartial authority. Such, authority should be different from the traditional hierarchy of the administration. It would be in itself a source of satisfaction to the citizen even the result of his case is not in favour to him. In the present circumstances, it is very difficult to ensure that the abuse of discretionary power by administrative authorities cannot be occurred. Therefore, there is need to ensure the integrity in administrative machinery. The parliamentary supervision by itself cannot fully ensure the integrity over the entire area covered by administrative discretion. Only various administrative tiers and hierarchies cannot be proved adequate for that purpose. An assumption of unquestionable superiority of the administration or a feeling of the sanctity of the authority on the part of superior authorities may prevent to the citizen from obtaining justice. Therefore, an institution to redress the grievances must be provided within the democratic system of governance. It has to be an institution in which the average citizen will have faith and confidence and through which he will be able to secure quick and inexpensive justice.

[19] Available at:www.google.co.in/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=history+of+ombudsman+in+england Last visited: on 04/04/1016.

[20] N.K .Acharya, Commentary on the Lokpal and Lokayuktas Act, 2013 (Asia Law House, Hyderabad, 2014) at 01.

Keeping in mind the above objectives, the Commission proposed to setting up an institution of Lokpal or Ombudsman in India.

The Government of India accepted the recommendations of the Commission. In 1969 to establish the system of Ombudsman in India, the Lokpal and Lokayuktas Bill, 1968 was introduced in Lok Sabha. There were a few deviations in the Bill from the model which was suggested by the Commission. One major deviation made by the Bill was to confine the jurisdiction of the Ombudsman to the central sphere only, leaving the States out of its purview whereas the Commission had suggested one comprehensive scheme covering the centre-state administration as a whole. The Bill lapsed due to dissolution of Lok Sabha. In 1971, another Bill was introduced in the Lok Sabha but again the Bill was lapsed due to dissolution of Lok Sabha. A third attempt was made in 1977, when a new Bill, entitled the Lokpal Bill, 1977 was introduced in Lok Sabha. The Bill was referred to the Joint Select Committee of Parliament which presented its report to Parliament in July, 1978. But the Bill lapsed again with the dissolution of the Lok Sabha. To give effect to the recommendations of the Administrative Reforms Commission eight Bills on Lokpal were introduced in the Lok Sabha in the past. Each time these Bills had lapsed due to dissolution of respective Lok Sabha except in the case of 1985 Bill which was withdrawn after its introduction.

The salient features of the Lokpal and Lokayuktas Bill, 1971

The Lokpal and Lokayuktas Bill, 1971 was dealt with only to central administration. It provided for the appointment of one Lokpal, and one or more Lokayuktas at the Centre. The Lokpal was to be appointed by the President after consultation with the Chief Justice of India and the Leader of the Opposition of the Lok Sabha. The Lokayuktas were to be appointed by President after consultation with the Lokpal. The appointment of the Lokpal and Lokayuktas was to be done by the President on the advice of Prime Minister with the theory of parliamentary form of government. He was to hold office for five years and a complete ban was imposed on his re-employment. He was given a security of tenure just like a judge of the Supreme Court. The salary of Lokpal and Lokayuktas was fixed by the Bill and was not to be varied to his disadvantage after his appointment.

These provisions were made to keep immune the Lokpal and Lokayuktas from the executive and parliamentary influences. The Lokayuktas were to be subject to the administrative control of the Lokpal. The Lokpal was given the power to issue general or special directions to the Lokayuktas to ensure the convenient disposal of investigation. But the Lokpal was not empowered to act as an appellate or revisory authority over the Lokayuktas. The Lokpal was not to question any finding, conclusion or recommendation of Lokayuktas. The Lokpal was empowered; to investigate an action falling within the purview of the Lokayuktas but it was needed to give reasons in writing for the same. A Lokayuktas was to officiate as the Lokpal, in case of vacancy or inability to perform his duties.

The function of Lokpal was to investigate any action which was taken by a minister or with his approval. The Prime Minister was excluded from the purview of Lokpal. He was also to investigate any action which was taken by a secretary or any other public servant belonging to that class which had been notified by the Central Government in consultation with the Lokpal for that purpose. Such an investigation could be under taken if a person made a complaint involving any grievance or allegation. A grievance was a claim by a person that he had sustained injustice or undue hardship in consequences of maladministration[21]. An allegation in relation to a public servant meant any affirmation that such public servant had abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue hardship or harm to any other person; or was actuated in discharge of his function as such public servant by personal interest or improper or corrupt motives; or was guilty of corruption or lack of integrity in his capacity as such public servant[22].

[21] The word maladministration was defined as: "an action taken in exercise of administrative functions in any case where such action or the administrative procedure or practice governing such actions was unreasonable, unjust, oppressive or improperly discriminatory; or where there, had been negligence or undue delay in taking such action or the administrative procedure or practice governing such action involved undue delay" cited in Jain, supra note 8 at 926.

[22] Jain, *supra* note 8 at 926.

The above definition of "allegation" covered circumstances of political corruption as well. The word "action" had been defined broadly so as to mean action taken by way of decision, recommendation or finding or any other manner and included failure to act. The Lokpal could also initiate investigation *suo motu* without a complaint having been filed, if in his opinion an administrative action could be the subject of a grievance or allegation[23]. Similarly, a Lokayuktas could investigate any action taken by or with the approval or a public servant other than one who fell within the jurisdiction of the Lokpal, if such an action amounted to grievance or allegation either on a complaints or *suo motu*.[24] Some types of administrative actions were exempt from being investigated by Lokpal or Lokayuktas. Such as the action taken in a matter affecting the relationship between the government of India and other countries or international organizations; action taken under the Extradition Act, 1962 or Foreigners Act, 1946; action taken in matters arising out of a commercial contracts; action relating to service matters; grant of honours and awards etc. The entire judicial setup was also exempt from the jurisdiction of Lokpal and Lokayuktas. A grievance was not to be investigated by Lokpal, if the complaint had a remedy available by way of proceeding before a tribunal or court. The time limit for making a complaint involving an allegation was five years from the date on which the alleged action have taken place. In the case of a "grievance" the time was twelve months from the date on which the complaint had come to know. It is also to be noted that the immunity was given to discretionary decisions from being questioned by Lokpal and Lokayuktas except when the discretion was not properly exercised. That immunity was given only in respect of complaints of maladministration but it was not available in respect of complaints of corruption. The reason for this was that most of corruption cases arise out of discretionary powers and exclusion of such decisions would provide an undue protection to corrupt public servants.[25] Before conducting an investigation the Lokpal was required to forward a copy of complaint to concern public servant and competent authority also. The public servant was entitled to offer his comments. It was prohibited to disclose the identity of the complainant at any stage of

[23] *Ibid.*

[24] *Ibid.*

[25] *Id.*, para 3 at 927.

investigation. The frivolous or vexatious complaint was to be rejected. He could refuse to investigate any complaint which was not made in good faith. The reason for not entertaining a complaint was to be given to the complainant. If after investigation it was found that the content of complaint was true then the Lokpal was empowered to recommend remedial measures and fix time to take action to competent authority.[26] The competent authority was to report back to Lokpal within one month about what he had action taken. If the Lokpal was not be satisfied with which action was taken by competent authority, he could made a special report to the President which was to be laid before Parliament. An annual report was also to be made to the President by Lokpal which was to be laid before Parliament. Provisions were made to punish for contempt of Lokpal and Lokayuktas. The primary idea of the Ombudsman in the Scandinavian and Common Law countries where the institution of Ombudsman has been introduced is to tackle the problem of maladministration, such as negligence, delay, inefficiency, bias and abuse of power which may not amount to corruption but in India the emphasis was for the both on maladministration and corruption.

In 1977, the third attempt was made to introduce the Lokpal Bill, 1977 in Parliament.[27] The western idea of Ombudsman was completely thrown in the Bill. The jurisdiction of the Lokpal was confined only to the "public men". The Prime Minister, central ministers, members of Parliament, members of the Legislative Assembly of the Union Territories and a few other elected functionaries was included in the term of "public men". The government servants were beyond the purview of the Lokpal. The proposed Lokpal was not concerned with the cases of maladministration; it was only concern with the cases of corruption. Thus, the whole purpose of the Bill was to control political corruption. The Bill as it was originally introduced in the Parliament had included a state Chief Minister within the purview of the Lokpal. However the Joint Committee of the Parliament recommended the deletion of this provision as the Chief Minister is primarily answerable to state Legislative Assembly. On May 10, 1979 an

[26] *Id.*, para 2 at 928.

[27] Rajeev Dhavan, "Engrafting the Ombudsman Idea on a Parliamentary Democracy: A Comment on the Lokpal Bill, 1977", 19 *JILI* 257, 1977.

amendment was moved by the government, by which the original position was restored.[28] Under the provisions of Lokpal Bill, 1977, the Lokpal was to be appointed by the President after consultation with the Chief Justice of India; chairman of the Rajya Sabha; and the Speaker of the Lok Sabha. The last two functionaries were required to consult with the leaders of the various parties in their respective Houses. Special Lokpal could be appointed by the President, if it was needed. In case of Prime Minister, the competent authority[29] was Speaker of Lok Sabha. In case of a minister, the competent authority was Prime Minister and for the members of the Parliament the competent authority was chairman of Rajya Sabha or Speaker of Lok Sabha as the case may be. The power was given to Lok Sabha to try some offences summarily. A person convicted by Lokpal was allowed to appeal in the High Court. Many other provisions were same as those of the 1971 Bill. Thus, the maladministration which is primary concern of the Ombudsman in the other countries was kept out from the purview of the Indian Lokpal under the Bill of 1977.

A brief survey of the working of Ombudsman system in other countries

In New Zealand, the Ombudsman system was adopted in 1962, when the Parliamentary Commissioner (Ombudsman) Act, 1962 was enacted[30]. It was replaced by Ombudsman Act, 1975 which was provided for one or more Ombudsman and also extent their jurisdiction. Each Ombudsman is appointed by the Governor-General on the recommendation of House of Representative. Thus, the Ombudsman is a nominee of the House of Representative and therefore, he gets support from all sections of House and his work has command for respect and credibility. His appointment by the House of Representative shows that he is independent from the executive. Besides this, he has a security of tenure. He holds office for a term of five years and he can be re- appointed[31].

[28] S.L. Verma, "Lokpal, Bureaucracy after the Common Man" 24 *Indian JL. of Public Adm*., 1978 at 1130-58.

[29] In the original Bill, the Prime Minister was the competent authority in respect of complaints against him. The Joint Committee was substituted the Speaker of Lok Sabha as the competent authority.

[30] Available at: https://en.wikipedia.org/wiki/Office_of_the_Ombudsman_(New_Zealand). Last visited: on 08/04/2016.

[31] OmbudsmanAct, 1975, section (1) & (2) available at: http://www.legislation.govt.nz/act/public/1975/0009/latest/DLM430984.html. Last visited: on 08/04/2016.

He can be removed from his office by the Governor-General upon an address from the House of Representative on certain grounds such as misconduct, neglect of duty, disability or bankruptcy.[32] Any person who is aggrieved from an administrative action can make a complaint to the Ombudsman. He can undertake investigation *suo motu* also. He can refuse to look into frivolous or vexatious complaints. He has power to review an administrative action even it is declared final by a statute. In case of doubt about the Ombudsman's jurisdiction, he can refer the matter to Supreme Court for a declaratory order. He has power to review the administrative action on the various grounds such as the administrative action is contrary to law, unreasonable, unjust, oppressive, discriminatory, wrong, is based on mistake of law or discretionary power is exercised on irrelevant grounds etc. Thus, it is clear that the Ombudsman has responsibility to examine the basic reasonableness of law. He has to satisfy that the law is just fair and reasonable. It is the firm rule of procedure that an official whose action is going to be investigated must be informed. But no person can claim to be heard by the Ombudsman as of right. The jurisdiction of the Ombudsman extends to "a matter of administration" and this phraseology excludes "matter of policy" from his purview.[33] Many a time, the questions of policy and administration are inextricably mixed up. No statutory test has been laid down to decide whether the governmental action is a policy matter or merely an act of administration. The underlying theory to draw a distinction between policy and administration is that the legislature only is responsible for policy matters. The decisions of the Ombudsman are not generally reviewed in a court of law. It is necessary to mention here that the Ombudsman himself does not make executive order. He only makes recommendation to the concerned department and the department has to take corrective step for the same. If the department fails to take action within the reasonable time, he may send a copy of the report to the Prime Minister and to Parliament also. The recommendations of the Ombudsman mostly implemented by departments; because of the fear of adverse publicity. The Ombudsman is also required to make annual report to

[32] M.P. Jain, "The Ombudsman in New Zealand", 6 *JILI* 307, 1963; Ombudsman Act, 1975 section 6; available at: http://www.legislation.govt.nz/act/public/1975/0009/latest/DLM430984.html Last visited: on 08/04/2016.

[33] Report of the Chief Ombudsman, 37 (1984), cited in M.P. Jain & S.N. Jain *supra* note 8 at 913. The New Zealand Ombudsman characterizes such a view as "altogether too simplistic". The Ombudsman Act makes no such distinction. According to Ombudsman, it is impossible to separate matters of policy from matters of administration.

Parliament. Thus, the ultimate arbiter is parliament. This is in consonance with the principle of parliamentary form of government and ministerial responsibility.

The reports made by Ombudsman to Parliament throw more interesting light on the working style of administration. He has criticized the issue of defective and confusing circulars and also giving wrong information to the people.[34] He has given relief for departmental mistakes and criticized undue delay in deciding matters. He has pointed out lacunae in administrative procedures. He has awarded damages for injury suffered by maladministration. At time, the officers having discretionary powers had adopted a firm rule of practice or a rule of thumb in each and every case which came before them without looking into special facts and circumstances of the case. The Ombudsman had criticized such official attitude. In some cases, the Ombudsman even suggested the amendment of law or regulations. Thus, the Ombudsman in New Zealand has been able to exercise the good deal of influence upon administration.

The British Ombudsman is officially known as Parliamentary Commissioner. It was established by the Parliamentary Commissioner Act, 1967.[35] The British Ombudsman is appointed by the Crown. He holds office till the age of 65 years. Sub-section 2a and 2b of the Parliamentary Act, 1967, as inserted by Schedule 8 of SI 2006, now specifies the seven years term. In practice an open competition is held for the post and an interview panel makes the final selection. The chairman of Public Administration Select Committee participates in the process and the panel has an external assessor from the Public Appointment Commissioner's office to ensure that the appointment is made fairly according to the Commissioner's Code of Practice.

To indicate the constitutional importance of the Ombudsman, the salary is paid from the consolidated fund, standing services, in the same way as a High Court judge. He can be removed from his office only on an address from both Houses of Parliament. The

[34] Case No. W15089 in the Annual Report, 1980 at 24, cited in M.P. Jain & S.N. Jain, supra note 8 at 912. A customs officer gives incorrect advice to the complainant. This led to his importing a car which he would not otherwise have done. He was charged the duty not under the normal tariff but on the concessionary basis as if the advice was correct.

[35] M.P. Jain, "Lokpal and the First Year of Ombudsman in England" 14 *JILI* 159 (1972).

departments placed under his jurisdiction are listed in second schedule of the Act. The additional department can be added in the list by an order of executive council without amending the statute. Certain matters having national or public interest are excluded from his jurisdiction. The Ombudsman does not normally investigate the matters which come within the purview of court. In *Re Fletcher's Application*[36], the court declined to question the Parliamentary Commissioner's discretion whether or not to undertake an investigation. There is a restrictive feature in functioning of Ombudsman in England. The complaint does not reach directly to Ombudsman. A person has to send his complaint through a member of the House of Commons. The underlying idea behind this provision is that the traditional function of the members of the Parliament is to seek Redressal for the grievances of the people. The House of Commons may also do a preliminary screening of the petitions so that the Ombudsman is not overloaded with work. The British Ombudsman has powers to compel to any authority, minister, or member of department to furnish information or produce document relevant to his investigation. He has powers to compel for the attendance and examination of witness. The Crown has no privilege in respect of to the production of document or giving of evidence. However, the cabinet proceedings are exempted from purview of Ombudsman and cannot be divulged. The Ombudsman sends a report of investigation to concern department or authority and to the Member of Parliament who sponsored the complaint. If it appear to him that injustice has been caused to the complainant, he can laid a special report before each House of Parliament. Each year he lays a general report before each House of Parliament. The Ombudsman in England has to investigate the complaints in which it has claimed that injustice has been caused due to maladministration on the part of government in exercise of administrative action. The administrative action includes failure to act. The term "maladministration" is not defined in the statute and the British Ombudsman has interpreted it in a broader sense. By interpretation the bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on has included within the meaning of maladministration[37]. The decisions which are thoroughly bad in

[36] (1970) 2 All ER 527

[37] Available at: www.google.co.in/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=history+of+ombudsman+in+england Last visited: on 08/04/2016.

quality or clearly wrong were also added in term of maladministration by the Ombudsman on the advice of Select Committee. The Ombudsman now criticizes the discretionary decisions which are simply bad on their merits. Bad decisions are bad administration and bad administration is maladministration.[38]Wheare has described what according to him may constitute maladministration as[39]:

"Transgression of law by the administrative authority, this could arise from failure to carry out a duty imposed by law; action going beyond the powers conferred by law; use of legal power for a purpose for which it was not intended; not following a procedure lay down by law; making of arbitrary or unreasonable decisions in the application of legal powers. Action of officials actuated by bribery or corruption, in this regards, influence may be used to persuade officials either to act or not to act in an area where they have discretion. Maladministration though not necessarily illegal such as delay in reaching a decision; discourtesy or rudeness; unfairness; bias; incompetence; ignorance; high-handedness; mistakes; failure to answer a letter; losing paper; giving misleading statements to citizens about their legal position; getting the facts of a case wrong; failure to take into account the facts which the department ought to have taken into account; negligence; misconduct. He emphasizes that bad law or bad rules necessarily produce maladministration. Here actions in accordance with law will constitute maladministration. Law may be ambiguous, obscure, self-contradictory, obstructive, or may embody in itself principles of discrimination, bias, injustice and all this will inevitably produce maladministration".[40]

Thus, the Ombudsman system has become a well-established feature in England. It helps to set and maintain standards of good administration for the government department. To make the Ombudsman system in Britain more effective several suggestions have been made. Earlier, he was appointed by the Crown merely on the advice of Prime Minster. It was not satisfactory. It was argued that he was an official of Parliament, not a servant of the executive and therefore the Parliament ought to be

[38] Wade, Administrative Law, 83 (1982) cited in M.P. Jain & S.N. Jain, *supra* note 8 at 917
[39] Wheare, *supra* note 5.
[40] *Id.*, at 917

consulted in his appointment. Now, the Prime Minister consults from chairman of the Select Committee before making an appointment. It has been suggested that the complainants have direct access to the Ombudsman.[41] It has also been suggested that the Ombudsman should have power to suggest changes in administrative procedure and law. At present, the Ombudsman is working within a very restricted frame viz; maladministration causing injustice. It is regarded very narrow jurisdiction to Ombudsman because he cannot question the merits of a decision, if it is taken without maladministration. It has been suggested by *Justice* in 1977 that the Ombudsman should be given broader jurisdiction to enable him to give relief for unreasonable, unjust, oppressive action.[42] But the British Ombudsman commenting on the Justice report stated that the limitations found on his power by *Justice* were more theoretical than practical and as it was there was no difficulty in his powers to investigate complaints involving unjust, oppressive or unreasonable administrative action.

In Australia, the Commonwealth Ombudsman was established by the Ombudsman Act, 1976[43]. There is two tear Ombudsman system in Australia. Both, the centre and states has its own separate Ombudsman. The Australian Ombudsman, which is known as Commonwealth Ombudsman consists; a Commonwealth Ombudsman; three Deputy Commonwealth Ombudsman and a Defense force Ombudsman. All of them hold office for seven years. The Commonwealth Ombudsman is eligible for re-appointment. He is appointed by the Governor-General and retires at the age of 65 years. He can be removed from his office on an address moved by both Houses of Parliament on the ground of misbehavior or mental incapacity. Thus, the Australian Ombudsman is an executive appointee because the Parliament plays no role in his appointment. The Ombudsman has jurisdiction to investigate complaints against action taken by government department or prescribed authority. The Ombudsman has to make investigation either on a complaint or *suo motu* against actions taken by a government department or authority into a matter of administration. Taking of action includes the making of a decision, recommendation,

[41] Justice, "Our Fettered Ombudsman" 5 16-19 (1977), cited in Jain *supra* note 8 at 919.
[42] *Ibid.*
[43] Available at: http://www.ombudsman.gov.au/about/our-history. Last visited: on 08/04/2016.

formulation of a proposal, and failure or refusal to take any action. Thus, the positive "taking of action" includes the negative "failing to take action" also. The Act does not define to the words "a matter of administration" into which the Ombudsman can enquire. It is because of the inherent difficulty to do so. It is very difficult to make demarcation between a matter of administration and a matter of policy.[44] Thus, the Ombudsman has much flexibility to take a wider view. In this regard, ultimately, the Australian Ombudsman has noted[45] that the Act did not exclude a matter from being a "matter of administration" on the basis that it might also be a "matter of policy" and he suggested that the Act might therefore authorize him to investigate all actions of a department or a prescribed authority. Usually, the Ombudsman does not investigate a matter if the complainant has right of access to a court or tribunal. If any doubt has been raised about the jurisdiction or power of the Ombudsman the Ombudsman can refer it to the Federal Court and Court can resolved it. The Ombudsman has to look into faults of administrative action on the grounds that:[46]

"the action appears to be contrary to law, or is unreasonable, unjust, oppressive, or improperly discriminatory; is in accordance with a rule of law or a provision of an enactment or practice, but that rule or provision or practice is unreasonable, unjust, oppressive or improperly discriminatory; is based either wholly or partially on a mistake of law or fact; or otherwise in all circumstances is wrong". The significance of the word "oppressive" has been explained interpreted by the Australian Ombudsman as follows:[47]

"The word oppressive is to be interpreted according to the plain dictionary meaning of describing an action which is burdensome, harsh, intimidatory, merciless, cruel or tyrannical. Oppressive conduct included an act or decision intended to bully a citizen or having the effect of overburdening a complainant in the pursuit of his legal entitlement, e.g. where an authority requests more information than it needs to make a decision. If an

[44] Commonwealth Ombudsman, First Annual Report, 1978 at 20, cited in Jain *supra* note 8.
[45] Fifth Annual Report, at 24 cited in Jain, *supra* note 8 at 921.
[46] Jain, *supra* note 8 at 921.
[47] *Id.*, Commonwealth Ombudsman, Fourth Annual Report, 16 (1982 & 83).

authority used its superior knowledge or position to place the citizen at a substantial disadvantage, it acts oppressively".[48]

The Ombudsman has no power to set aside a decision of administrator. He may suggest only remedial measures. If a department does not take action as recommended or suggested by Ombudsman within a reasonable time, he can report to the Prime Minister. He can also make a special report to the both Houses of Parliament. This makes Ombudsman's role very effective. He has to make an annual report to the Parliament. A large number of cases were completed without the Ombudsman resorting to the formal technique of investigation. In evaluating the work of Ombudsman, it has been said that he deals effectively with a number of complaints and that he provides very useful assistance to ordinary citizens who are in conflict with the administration. His activities have led to several procedural reforms within the administrative structure.

The Australian Prime Minister has said[49] that the institution of Ombudsman has helped the government administration to be "responsible, adaptive and sensitive" to the needs of the citizens. According to the Prime Minister, the institution has not either come in the way of ministerial responsibility nor has prejudiced in any way the role of the members of the Parliament.

The passage to passing the Lokpal and Lokayuktas Act, 2013

Since independence, the necessity for the statutory institution of Lokpal has being felt in India. In the year of 1966, the Administrative Reform Commission in its interim report had recommended setting up of an institution of Lokpal in India and in pursuance of the recommendations of the Administrative Reform Commission; time to time eight Bills on Lokpal were introduced in the Lok Sabha but not any one finally got to pass.[50] In the year of 2010, the government of India had gone to formulate a new Lokpal Bill and therefore the process had started to enact the Lokpal and Lokayuktas Act, 2013. Further, to pursue the efforts to setting up the institution of Lokpal a Joint Drafting Committee had

[48] *Ibid.*

[49] *Id.*, at 923.

[50] Statement of Objects and Reasons of the Lokpal and Lokayuktas Act, 2013.

constituted by government of India on 8th April, 2011. Keeping in mind the different views and opinions of the members of the committee which were emerged during course of discussion and deliberation it was became imperative for the government of India to introduce a revised and new Lokpal Bill and therefore on 4th August, 2011 the new Lokpal Bill, 2011 was introduced in Lok Sabha. Further, the Bill was referred to Parliamentary Standing Committee for their examination and report, to both the Houses of Parliament. After extensive discussion with number of stakeholders, the committee has suggested major amendments with the regard of scope and contents of institution of Lokpal which were proposed under Lokpal Bill, 2011. It was also suggested that Lokpal at the centre and Lokayuktas at the states should be conferred constitutional status[51]. Upon consideration of the recommendations of the Standing Committee it was decided to withdraw the Lokpal Bill, 2011 which was pending in Lok Sabha and to introduce a revised Bill for carrying out the necessary amendments for setting up of institution of Lokpal and Lokayuktas as constitutional bodies.[52] In the month of December, 2011 the revised Lokpal and Lokayuktas Bill, 2011 was introduced in Lok Sabha. However, the Bill was passed by Lok Sabha, but due to various objections raised by opposition parties it was not passed in Rajya Sabha.

The government of India is heading toward the policy of zero tolerance against corruption in India and therefore India has adopted and ratified the United Nations Convention against Corruption on 9th May, 2011. By adopting that Convention the government of India has accepted a number of obligations to fight against corruption. The United Nation Convention against Corruption envisages that the concern state parties of convention have duty to ensure the existence of a proper and effective legal mechanism in their domestic laws for criminalization of offence of bribery. In our country, the convention has come into force with effect from 8th June, 2011. The preamble of the Lokpal and Lokayuktas Act, 2013, it makes clear that the aforesaid Act is being enacted for more effective implementation of United Nations Convention against Corruption and also to provide a law for just and fair investigation and prosecution for

[51] *Id.,*
[52] *Id.,*

offences of corruption. Thus, the setting up of the institutions or bodies of Lokpal and Lokayuktas will further improve the existing legal and institutional mechanism thereby facilitating a more effective implementation of some of the obligations under the aforesaid convention.[53]

In the month of May, 2012 to develop and take a consensus oriented decision on the disputed issues of the Bill, it was referred to Select Committee. In the month of November, 2012 the Select Committee has submitted its report before both Houses of Parliament. Keeping in mind the report of Select Committee, the various amendments was proposed in the Bill and ultimately, it was passed by Rajya Sabha on 17 December, 2013.[54] The amended version of the Bill was sent back to the Lok Sabha and it was passed by Lok Sabha on 18 December 2013.[55] After it, the Bill was presented before President of India and received the assent of the President on 1st January, 2014 and thereby it became, The Lokpal and Lokayuktas Act, 2013.[56]

The object of the Act is to prevent and control corruption by the setting up of an independent and empowered body of Lokpal. It would receive the complaints of corruption against the specified categories of public servants. It has also to ensure that the complaints of corruption are being properly investigated and prosecuted. All of it has to be done in a time bound manner, with the help of special courts which has to be set up for that purpose. The Act also makes it incumbent for each state to pass within a year, a law setting up a body of Lokayuktas at the state level, but leaves it to the states to work out the details.

It is noted here that before the passing of the Lokpal and Lokayuktas Act, 2013, the great social activist Anna Hazare had mobilized the large masse of people including the youth, women and children of India. He also received the support of elite of India for his movement India against Corruption. Through social media, he and his team also, got unprecedented support for setting up an independent and empowered body of Lokpal.

[53] *Ibid.* at 2.
[54] *Id.*,
[55] *Id.*,
[56] Act No.1 of 2014.

The government accepted many of the suggestions from the Hazare team but differences remained on some important aspects mainly to the extent of coverage by the Lokpal.[57]

The Hazare team wanted all government officers to be brought under the Lokpal who would also look into all the complaints of failure to implement the duties under the proposed citizen's charters prescribed for public servants.[58] The government, many other social activists and commentators also differed upon this issue mainly on the ground that this would lead for an overburden Lokpal. It also would lead to a potential extent for abuse of power by a body supervising both integrity and performance of the entire range of official machinery.[59]

Salient features of the Lokpal and Lokayuktas Act, 2013

The Act provides for setting up a body of 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, but the nature and type of Lokayuktas has been left to the discretion of the state legislatures.

Under the Act, the chairperson of Lokpal and its eight members has to be selected by a committee consisting of the Prime Minister, the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Chief Justice of India or a judge of the Supreme Court nominated by the CJI and one eminent jurist as recommended by the other four members of the committee.[60] A search committee of at least seven members has to be constituted to shortlist a panel of eligible candidates for the post of chairperson and members of the Lokpal.[61] The panel of shortlisted members has to be put up before the selection committee. At least half of the members of the search committee and the institution of Lokpal shall be from amongst persons belonging to the schedule castes, the scheduled tribes, other backward classes, minorities and women. The chairperson and members shall be appointed by the President after obtaining the recommendations of the

[57] Sriram Panchu, "Repairing the Lokpal Bill" XLVII (3) *Economic and Political Weekly*, 2012 at 10-13.
[58] *Id.,*
[59] *Id.,*
[60] The Lokpal and Lokayuktas Act, 2013, section 4(1) (a), (b), (c), (d) and (e).
[61] *Id.,* section 4 (3).

selection committee headed by Prime Minister. The half members of the Lokpal shall be judicial members. It is provided that the Lokpal would receive complaints of corruption against the Prime Minister, Ministers of Central Government, Member of Parliaments, and all level officers of the Central Government.[62] Lokpal would also receive complaints of corruption against functionaries of any entity which is wholly or partially financed by the government with an annual income above a specified limit and also all entities receiving donations from foreign sources in excess of 10 lakh per year.[63] The Act states that on receipt of complaints against any public servant, except[64] the officials belonging to group A, B, C, or D of Central Government, the Lokpal may order for preliminary inquiry or investigation.

Under the scheme of the Act, it seems that for the purpose of preliminary inquiry and investigation the public servants have been divided into three categories viz., public functionaries including political public servants i.e. M.P., ministers of union government, chairperson of autonomous bodies established by an Act of Parliament etc.; public servants belonging to group A and group B officers of Central Government; and public servants belonging to group C and group D officials of Central Government. It is provided under the Act that on receipt of the complaint against the first categories of public servants as stated above, the Lokpal will order for preliminary inquiry or investigation. The preliminary inquiry shall be conducted by inquiry wing of Lokpal or CBI to whomsoever the Lokpal directs. The complaints against groups A and group B officers and public servants belonging to groups C and group D shall be referred to CVC for preliminary inquiry. The preliminary inquiry has to be completed within the maximum period of ninety days and has to be submitted to Lokpal.

In respect of public servants belonging to group A, or group B the CVC after completion of the preliminary inquiry will submit its report to the Lokpal[65]. In cases of public servants belonging to group C, or group D, the CVC will proceed in accordance

[62] Amrita Johri, Anjali Bhardwaj & Shekhar Singh, "The Lokpal Act of 2014: An Assessment" XLIX (5), *Economic and Political Weekly*, 2014 at 10-12.
[63] *Id.*,
[64] The Lokpal and Lokayuktas Act, 2013, section 20 (1), proviso (1).
[65] Johri, Bhardwaj & Singh, *supra* note 62 at 10.

with the provisions of the CVC Act 2003.[66] Upon receiving the report of the preliminary enquiry the Lokpal will give an opportunity to the public servant to be heard. If a *prima facie* case has been made out, then the Lokpal may order for an investigation by the CBI or by any other agency, or order for departmental proceeding against concerned public servant[67]. The investigation has to be completed within the maximum period of one year and the report has to be submitted before Special Court. A copy of report has also to be sent to the Lokpal.

The investigation report has to be considered by a minimum three member's bench of Lokpal. The Lokpal may grant permission to its own prosecution wing or to the investigating agency to file a charge sheet in the Special Court. The Lokpal may also instruct to file closure report or direct to initiate for departmental proceedings against concerned public servant. Apart from providing that the Lokpal would have its own Prosecution Wing, the Act provides for amending the Delhi Special Police Establishment Act, 1946 to set up a Directorate of Prosecution headed by a Director of Prosecution under the overall control of the CBI director for the purpose of deciding cases arising out of the Prevention of Corruption Act, 1988. The Act provides for setting up of Special Courts. All trials in the Special Courts have to be ordinary completed within one year, extendable to another one year for reasons to be recorded in writing.

The chairperson and other members of the Lokpal can be removed from his office by President of India on the ground of misbehavior.[68] The President may refer the question of misbehavior on the part of chairperson or any other member of Lokpal to Supreme Court. After an enquiry of the Supreme Court, the chairperson or any member of Lokpal shall be removed from his office by the President. The Prime Minister, Members of Parliament of both Houses is covered by Lokpal. The power to permit the Lokpal to conduct inquiry against Prime Minister is vested in Parliament. The Prime Minister's action relating to international security, public order, atomic energy and space

[66] *Id.,*
[67] *Ibid.* at 11
[68] The Lokpal and Lokayuktas Act, 2013, section 37.

have been kept out from purview of Lokpal.[69]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.[70] In respect of the matters referred by the Lokpal for preliminary enquiry or investigation to C.B.I., the supervisory power upon C.B.I. has been given to the Lokpal.[71] The Lokpal has jurisdiction to constitute an Inquiry and a Prosecution Wing separately. The Lokpal can take action only on a complaint filed before it. He cannot take action *suo moto.*

The Lokpal and Lokayuktas Act, 2013: a critical analysis

The Lokpal at central level and Lokayuktas at the state level which are similar to Ombudsman in foreign countries are recommendatory bodies and not disciplinary authorities with powers to punish offenders.[72] The Lokpal has jurisdiction to inquire into allegations of corruption against the officials of the Central Government and the persons occupying political offices such as M.P.s, ministers and also such other persons who occupying the statutory posts. The Lokpal has no jurisdiction to inquire into the allegations of corruption against private individuals.[73] In criminal jurisprudence, there are three stages for the conviction to an offender. The first is investigation by police which followed by the inquiry of the magistrate.[74] It ends with the framing of charges. The second stage is trial which includes the examination and cross- examination, receiving and consideration of evidence including documents.[75] The third stage is hearing of argument and renders the judgment which may be either in conviction or acquittal. The role of Lokpal is being involved only in the first stage. The Lokpal has no power to conduct trial or render judgment. Lokpal after investigation and inquiry makes a report to

[69] The Lokpal and Lokayuktas Act, 2013, section 14 (1) (a).
[70] *Id.*, section 14 (1) (b).
[71] The Lokpal and Lokayuktas Act, 2013, section 25.
[72] N.K. Acharya, *supra* note 20 at iii.
[73] *Ibid.*
[74] *Ibid.*
[75] *Ibid.*

the competent authority to take disciplinary action against the offenders and to prosecute them in criminal court in accordance with the Law.[76]

The Lokpal and Lokayuktas Act, 2013 is divided into three parts and fifteen chapters. It contains 63 sections. There is one schedule of the Act which is divided into five parts. Part one of the Act is "Preliminary" and part third of the Act deals with the "Establishment of the Lokayukta" in states. Part two containing sections 2 to 62 deals with "Lokpal for the Union". This part two of the Act has been divided into fifteen chapters. Chapter one deals with definitions.

Preamble of the Act

The preamble describes the policy and purpose of the Act. Every section of the Act will have to be interpreted in accordance with that policy and purpose. The preamble is the key or guide to understand the Act. Being part of the enactment, preamble governs all provisions of the Act. Every provision of the Act is to be interpreted within the scope and limits of the preamble. According to preamble, the Lokpal is a body for Union of India to inquire into allegations of corruption against certain public functionaries and the Lokayuktas is a body for states for the same. The preamble, further states that India has ratified the United Nations Convention against Corruption and the government of India is committed to clean and responsive governance. Its commitment must be reflected in effective bodies to punish the acts of corruption. Therefore, the Lokpal is a body to ensure more effective implementation of the United Nations Convention against Corruption and to provide fair investigation and prosecution in cases of corruption. Thus, the purpose and policy of the Act is to deal with only cases of corruption. Maladministration which is the primary concern of the Ombudsman in other countries has been kept out from purview of the Indian Lokpal. The Jurisdiction of Lokpal is limited to hold enquiries or investigations into the corrupt practices, against certain public functionaries. The Lokpal has also jurisdiction to initiate the prosecution against offenders, but it has no jurisdiction to decide the culpability or punish the offenders.

[76] *Ibid.*

Commencement of the Act

The Act applies to whole of India.[77] The usual expression excluding Kashmir is not included in the Act. It means that the Act applies to state of Jammu and Kashmir also. It is so because the subject of Lokpal is not included in the understanding between Indian and Maharaja of Jammu and Kashmir, at the time of its accession. Moreover, the Parliament has power to make any law for whole or any part of India for implementing any treaty, agreement or convention which is has to be made with any other country, association or body.[78] The Act applies to Indian officials residing in India or abroad or functioning within the state of Jammu and Kashmir also.[79] The officers, who are employed and working in embassies abroad have been kept within the purview of Lokpal. The members of Parliament, elected from states and officers of the union functioning in states are also covered by Lokpal. The Act shall come into force on the date to which the Central Government may decide by notification.

Definitions

Section 2 (1) (a) defines the word "bench". It means a bench of the Lokpal. The "chairperson" means the chairperson of the Lokpal.[80] It is an innovative expression because the chairperson may be male or female. Under section 2 (1) (c) the word "competent authority" has been defined in relation to various functionaries of Central Government. The competent authority[81] has to take disciplinary action against concerned public functionary. The Lokpal has to submit its report to competent authority for further action. The competent authority cannot dispute or disagree with the findings and

[77] The Lokpal and Lokayuktas Act, 2013, section 1 (2).
[78] Constitution of India, art 253.
[79] The Lokpal and Lokayuktas Act, 2013, section 1 (3).
[80] The Lokpal and Lokayuktas Act, 2013, section 2 (1) (b).
[81] According to section 2 (1) (c) of Lokpal and Lokayuktas Act, 2013, the Lok Sabha is competent authority in relation to Prime Minister. In relation to a member of the Council of Ministers, the Prime Minister is competent authority. In relation to a member of parliament, other than a minister, in case of Rajya Sabha, the chairman of Rajya Sabha is competent authority and in Lok Sabha the Speaker of Lok Sabha is competent authority. In relation to an officer who is serving under the Ministry or Department of Central Government the concerned Minister in-charge of the Ministry or Department is competent authority.

recommendations of Lokpal. The "complaint" means[82] a complaint, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988[83]. The body of Lokpal is not an individual. It is an institution. Minister is defined as Union Minister only; it does not include Prime Minister.[84] The public servant means[85] a person referred to in clauses (a) to (h) of sub-section (1) of section 14 of the Lokpal and Lokayuktas Act, 2013.

Establishment of Lokpal

Under the Act, it is mandated that the government of India shall establish a body called Lokpal.[86] The Lokpal shall consist, a chairperson and maximum eight members.[87] Half of the members of Lokpal shall be from judicial background.[88] A person who is or has been Chief Justice of India or is or has been a judge of Supreme Court or an eminent person shall be appointed as chairperson of Lokpal[89]. Half of the members of Lokpal shall be appointed from the community of schedule castes, scheduled tribes, other backward classes, minorities and women.[90] A present or retired Judge of Supreme Court or a present or retired Chief Justice of a High Court shall be eligible for the appointment as the judicial member of Lokpal.[91] A person of impeccable integrity and outstanding ability who has special knowledge and expertise of minimum twenty five years in the matters related to anti corruption policy, public administration, vigilance, banking, finance, insurance, law and management shall be eligible for appointment as the non judicial member of Lokpal.[92] A person who is less than forty-five years of age shall not be appointed as chairperson or member of Lokpal.[93] A person who is a Member of

[82] The Lokpal and Lokayuktas Act, 2013, section 2 (1) (e).
[83] Act No.49 of 1988.
[84] The Lokpal and Lokayuktas Act, 2013, section 2 (1) (k).
[85] *Id.*, section 2 (1) (o).
[86] The Lokpal and Lokayuktas Act, 2013, section 3 (1) reads: On and from commencement of this Act, there shall be established, for the purpose of this Act, a body to be called the "Lokpal".
[87] The Lokpal and Lokayuktas Act, 2013, section 3 (2), (a) and (b).
[88] *Id.*, section 3 (2), (b).
[89] *Id.*, section 3 (2), (a).
[90] *Id.*, section 3 (2), proviso.
[91] *Id.*, section 3 (3). (a).
[92] *Id.*, section 3 (3), (b).
[93] *Id.*, section 3 (4), (iii).

Parliament[94] or State Legislature[95] or Panchayat[96] or Municipality[97] shall not be eligible for the appointment as member or chairperson of Lokpal. A person who is convicted for the offence of moral turpitude[98] or has been removed or dismissed from the service of union or state[99] shall also be ineligible for the appointment as chairperson or member of Lokpal.

After obtaining the recommendations of a selection committee the chairperson and members of the Lokpal shall be appointed by the President of India.[100] The selection committee[101] shall consist, a chairperson and four other members. Any appointment of chairperson or a member of Lokpal shall not be invalid by reason of any vacancy in the selection committee.[102] A search committee of at least seven members having special knowledge and expertise in matters related to anti-corruption policy, public administration, vigilance, policy making, finance, banking, law and management shall be constituted[103] by selection committee[104]. The search committee will suggest a panel of names of eligible candidates for the post of chairperson and members of Lokpal. The selection committee may also consider the name of any other person whose name has not been recommended by search committee[105]. The President shall take all necessary steps for the appointment of chairperson and members of Lokpal at least three months before the expiry of term of ongoing chairperson or members of Lokpal.[106] Thus, the President shall initiate the procedure for appointment of chairperson or members of Lokpal in

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[94] *Id.,* section 3 (4), (i).
[95] *Ibid.*
[96] *Id.,* section 3 (4), (iv).
[97] *Ibid.*
[98] *Id.,* section 3 (4), (ii).
[99] *Id.*, section 3 (4), (v).
[100] The Lokpal and Lokayuktas Act, 2013, section 4 (1).
[101] The Prime Minister shall be chairperson of selection committee. The Speaker of Lok Sabha, Leader of Opposition of Lok Sabha, Chief Justice of India or a judge of Supreme Court nominated by him and an eminent jurist nominated by President on the recommendation of other four members shall be members of selection committee.
[102] The Lokpal and Lokayuktas Act, 2013, section 4 (2)
[103] *Id.,* section 4(3). According to section 4(3) proviso (1) of the Act, half members of the search committee shall be from the community of scheduled castes, scheduled tribes, other backward classes, minorities and women.
[104] *Ibid.*
[105] *Id.,* section 4 (3), proviso (2).
[106] The Lokpal and Lokayuktas Act, 2013, section 5.

advance at least three months ago. The chairperson and every member of Lokpal, who is appointed by President, shall hold office for a term of five years or until he attains the age of seventy years, whichever is earlier.[107] He may resign by writing under his hand and addressed to the President from his office.[108] The chairperson or any member of Lokpal may be removed from his office by the President in the manner as provided under section 37 of the Act[109]. The salary, allowances and other conditions of service of the chairperson of Lokpal shall equal to the Chief Justice of India[110]. Other members of Lokpal shall be entitled, the same salary and allowances, as a judge of the Supreme Court[111]. It is also provided that the salary, allowances, pension and other conditions of service of the chairperson or members of Lokpal shall not be altered to disadvantage after his appointment.[112] The Chairperson and members of Lokpal shall be ineligible for re-appointment.[113] He shall also be ineligible for any diplomatic assignment or any other appointment which is required under any law to be made by President.[114] His further employment to any other office of profit under the government of India or state is also prohibited.[115] He is prohibited to contest any election of President, vice-President, M.P., M.L.A., Municipality or Panchayat for a period of five years from the date of his retirement.[116] It is further provided that a member of Lokpal shall be appointed as

[107] The Lokpal and Lokayuktas Act, 2013, section 6.

[108] *Id.*, section 6, proviso (a).

[109] *Id.*, section 6, proviso (b). The Lokpal and Lokayuktas Act, 2013, section 37 (2) reads: Subject to the provisions of sub-section (4), the Chairperson or any member shall be removed from his office by order of the President on grounds of misbehavior after the Supreme Court, on a reference being made to it by the President on a petition signed by at least one hundred Members of Parliament has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such member, as the case may be , ought to be removed on such ground. Further section 37 (4) reads: Notwithstanding anything contained in sub-section (2), the President may, by order, remove from the office, the Chairperson or any member if the Chairperson or such member, as the case may be:

a. is adjudged an insolvent; or
b. engages, during his term of office, in any paid employment outside the duties of his office; or
c. is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

[110] The Lokpal and Lokayuktas Act, 2013, section 7.

[111] *Ibid.*

[112] *Id.*, section 7, proviso (2).

[113] The Lokpal and Lokayuktas Act, 2013, section 8 (1) (i).

[114] *Id.*, section 8 (1) (ii).

[115] *Id.*, section 8 (1) (iii).

[116] *Id.*, section 8 (1) (iv).

chairperson but his term of office shall not be more than five years in aggregate as the member and chairperson of Lokpal.[117]

In the event of occurrence of any vacancy in the office of chairperson by reason of his death or resignation, the President may appoint to senior-most member as the acting chairperson of Lokpal.[118] If the chairperson is not able to discharge his duties due to being unavailable or ill health or is on leave, the President may appoint the senior-most member as chairperson to discharge his duties.[119] There shall be a Secretary to the Lokpal[120]. He shall be to the rank of Secretary to government of India and he shall be appointed by the chairperson from a panel of names sent by Central Government[121]. There shall be a Director of Inquiry and a Director of Prosecution and he shall also be appointed by the chairperson from a panel of names sent by the Central Government[122]. The Director of Inquiry and Director of Prosecution shall be separate from each other. It is so because investigation should be independent from prosecution. Other staff of Lokpal, including officers shall be appointed by the chairperson or any other member of Lokpal to whom the power is specifically delegated.[123] The appointment of other staff of Lokpal has to be made after consultation with the Union Public Service Commission.[124]

Inquiry Wing of Lokpal

The Lokpal shall constitute an inquiry wing headed by a Director of Inquiry[125]. Inquiry wing shall conduct preliminary inquiry into offence alleged to have been committed by public servants punishable under the Prevention of Corruption Act, 1988.

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[117] *Id.,* section 8 (2).
[118] The Lokpal and Lokayuktas Act, 2013, section 9 (1).
[119] *Id.,* section 9 (2).
[120] The Lokpal and Lokayuktas Act, 2013, section 10 (1).
[121] *Ibid.*
[122] *Id.,* section 10 (2). Director of inquiry and Director of Prosecution of the Lokpal shall not be below to the rank of Additional Secretary to government of India.

[123] *Id.,* section 10 (3).
[124] *Id.,* section 10(3) proviso (1).
[125] The Lokpal and Lokayuktas Act, 2013, section 11.

Under the Act, it is not necessary to issue a public notification to constitute the inquiry wing of Lokpal.

Prosecution Wing of Lokpal

The Lokpal shall constitute a prosecution wing by notification published in official Gazette.[126] Prosecution wing will be headed by a Director of Prosecution.[127] The Prosecution wing will help to Lokpal to prosecute the public servants in anti-corruption courts. On direction of Lokpal, the Director of Prosecution will file a case on the basis of findings of investigation report in anti-corruption court and take all necessary steps for prosecution of public servants.[128] The report of Lokpal shall be treated as the report of investigation filed under section 173 of the Code of Criminal Procedure, 1973.[129]

Expenses of Lokpal

The all administrative expenses including all salaries, allowances and pensions of chairperson, members, secretary, and other staff of Lokpal shall be charged upon the Consolidated Fund of India.[130] Any fees or moneys taken by the Lokpal shall be part of the Consolidated Fund of India. The items to be spent from the Consolidated Fund of India need not to be subject matter of discussion by the Parliament. Thus, the Parliament is not competent to increase or decrease the expenses of Lokpal. The purpose of this provision is to ensure the financial independence of Lokpal.

Jurisdiction of Lokpal in respect of inquiry

The Lokpal has been made empowered to conduct inquiry into any allegation of corruption against the present or ex-Prime Minister of India.[131] But, under the proviso of section 14 (1) (a), some restrictions are imposed upon this jurisdiction of Lokpal. The Lokpal is not empowered to make inquiry into such allegations of corruption against

[126] The Lokpal and Lokayuktas Act, 2013, section 12 (1).
[127] *Ibid.*
[128] *Id.,* section 12 (2).
[129] *Id.,* section 12 (3).
[130] The Lokpal and Lokayuktas Act, 2013, section 13.
[131] The Lokpal and Lokayuktas Act, 2013, section 14 (1) (a).

Prime Minister which relates to international relations, external and internal security, public order, atomic energy and space.[132] Al the proceedings of inquiry against Prime Minister shall be initiated only by the two-thirds majority in the full bench of Lokpal.[133] Further, it is provided that all the proceedings of inquiry against Prime Minister shall be held in camera.[134] If the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of enquiry shall not be published or made available to anyone.[135] The Lokpal would receive the complaints of corruption against present or ex-ministers of the government of India,[136] members of both Houses of Parliament[137] and all level, group A or B or C or D, or equivalent to them officials[138] of Central Government. He also would receive the complaints of corruption against any chairperson, member, officer or employee of a governmental or semi-governmental body established by an Act of Parliament.[139] The Lokpal has jurisdiction to make inquiry into allegations of corruption against any person who is director, manager, secretary or any officer of a governmental, or semi-governmental society, association of person or trust, whether it is registered or not, and which annual income exceeds to a limit specified by the Central Government[140] or receives donations from foreign sources in excess of ten lakh per year.[141] Abettors and conspirators with all above have also been kept within the purview of Lokpal.[142]

Benches of Lokpal

Lokpal is an institution. It consists of a chairperson and eight other members. The Bench of Lokpal may be a division bench, three member's bench, five member's bench, seven members bench or full bench. There is nothing like single member bench. In every

[132] *Id.*, section 14 (1) (a), proviso (1) (i).
[133] *Id.*, section 14 (1) (a), proviso (1) (ii).
[134] *Id.*, section 14 (1) (a), proviso (2).
[135] *Ibid.*
[136] *Id.*, section 14 (1) (b).
[137] *Id.*, section 14 (1) (c).
[138] *Id.*, section 14 (1) (d).
[139] *Id.*, section 14 (1) (e).
[140] *Id.*, section 14 (1) (g).
[141] *Id.*, section 14 (1) (h).
[142] *Id.*, section 14 (3).

bench at least one of the members shall be judicial member and the judicial member only shall preside over the bench.[143] It is the chairperson's prerogative to constitute[144] benches, allot the work, withdraw and transfer cases from one bench to another.[145] However, he cannot transfer the case from the one bench to another *suo moto*. The benches normally sit at New Delhi.[146]

Procedure for inquiry and investigation

Under the scheme of Lokpal and Lokayuktas Act, 2013, in respect of public functionaries and officials of the Central Government all complains of corruption has to be made before Lokpal. Thus, the Lokpal is the receiving authority of all complaint of corruption against the public functionaries of union of India. After receiving the complaints the Lokpal shall examine the content of complaint and if the Lokpal is satisfied about of the content of complaint then the Lokpal shall pass an order for conducting a preliminary inquiry or investigation into the case. Under section 20 (1) clause (a), it is provided that the Lokpal on receipt of a complaint, if decides to proceed further may make an order for preliminary inquiry against concerned public servants. The purpose of preliminary inquiry is to ascertain whether there is in existence, a *prima facie* case or not[147]. Further under section 20 (1) clause (b), it is provided that where on receipt of a complaint, it is found that there exists a *prima facie* case of corruption, then the Lokpal may pass an order for investigation into case. Thus, the Lokpal can go into the procedure of investigation without any preliminary of the case. Under section 20 (1) clause (b), it is not necessary for Lokpal to make an order for preliminary inquiry, if on receipt of complaint the Lokpal is satisfied that the *prima facie* case of corruption has been made out. The preliminary inquiry has to be done by its own inquiry wing or CBI[148].

[143] *Ibid.*
[144] *Id.*, section 16 (2).
[145] The Lokpal and Lokayuktas Act, 2013, section 18.
[146] The Lokpal and Lokayuktas Act, 2013, section 16 (1) (f).
[147] The Lokpal and Lokayuktas Act, 2013, section 20 (1) (a).
[148] The Lokpal and Lokayuktas Act, 2013, section 20 (1) reads: The Lokpal on receipt of a complaint, if it decides to proceeds further, may order:

There are four provisos have been put under section 20 (1) clause (a) and (b) of the Act. Under proviso (i) of section 20 (1) clause (a) and (b), it is provided that, if Lokpal under section 20 (1) clause (a) has decided to proceed with preliminary inquiry, then the complaints or category of complaints in respect of public servant belonging to group A, B, C, or group D, official of Central Government shall be referred by Lokpal to CVC for preliminary inquiry.

It means that the preliminary inquiry into complaints or category of complaints belonging to public servants other than group A, B, C, or group D, such as Prime Minister, Union Ministers, Member of Parliaments, chairperson of a autonomous bodies established by an Act of Parliament etc., as enumerated under section 14 (1) clauses (a) to (c) and clauses (f) to (h) and has been kept within the purview of Lokpal, has to be done by Lokpal through its own inquiry wing or CBI. Further it is also provided that on receipt of complaint, if Lokpal has decided to proceed under section 20 (1) clause (b) for investigation against concerned public servant then the Lokpal before making an order for investigation, shall give an opportunity to concerned public servant for their explanation[149] Seeking of such explanation shall not be any bar or interfere with any search and seizure which is required by investigating agency.[150]

The complaints or category of complaints which has referred under proviso (i) of section 20 (1) clause (a) and (b) to CVC for preliminary inquiry, the CVC shall cause a preliminary inquiry into complaints through its Directory of Inquiry.[151]Upon completing the preliminary inquiry, in respect of public s

a. preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a prima *facie case* for proceeding in the matter; or
b. investigation by any agency (including the Delhi Special Police Establishment) when there exists a *prima facie* case: ……..

[149] *Id.,* section 20 (1) proviso (iii).

[150] *Id.,* section 20 (1) proviso (iv).

[151] The Central Vigilance Commission Act, 2003 newly inserted section 11A (1) reads: There shall be a Director of Inquiry, not below the rank of Joint Secretary to the Government of India, who shall be appointed by Central Government for conducting preliminary inquiries referred to the Commission by the Lokpal. Further, section 11A (2) reads: The Central Government shall provide the Director of Inquiry such officer and employees as may be required for the discharge of his functions under this Act.

ervant belongings to group A or B, the CVC will submit its report to the Lokpal and in respect of public servants belonging to group C or D, the CVC will proceed in accordance with the provisions of CVC Act, 2003.[152] Under sub-section (2) of section 20, it is provided that on the basis of material, information and documents which have been collected during preliminary inquiry, the inquiry agency will seek comments on the allegations made in complaint from concerned public servant and competent authority too.[153] After obtaining the comments, the inquiry agency will submit its report to Lokpal within sixty days from the date of receipt of the complaint.[154] Further, sub-section (4) of section 20 provides that every preliminary inquiry shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.[155] Thus, there is a clear discrepancy between section 20 (2) and section 20 (4) of the Act.

Under sub-section (2) of section 20, on receipt of every preliminary inquiry report from any Inquiry Wing or agency, a bench not less than three members of Lokpal shall consider the report and after giving an opportunity of hearing to concerned public servants; the Lokpal shall take one or more following actions:[156]

a. Investigation by any agency or CBI, as the case may be;
b. initiation of the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority;
c. closure of proceedings against public servant and to proceed against the complainant under section 46 of the Act.

If Lokpal decides to proceed for investigation into case, then the investigation shall be carried out expeditiously and shall be completed within the period of six months,

[152] The Lokpal and Lokayuktas Act, 2013, section 20 (1) proviso (ii).
[153] *Id.,* section 20 (2).
[154] *Ibid.*
[155] *Id.,* section 20 (4).
[156] *Id.,* section 20 (3).

which is extendable to another maximum period of six months.[157] Notwithstanding anything contained in section 173 of Cr.P.C, the investigating agency shall submit its investigation report to Special Court having jurisdiction in that regard and also shall forward a copy of investigation report to Lokpal.[158] Every report of investigation shall be considered by a bench not less than three members of Lokpal and after obtaining the comments of competent authority and public servant too, the Lokpal may:[159]

a. grant sanction to Prosecution Wing or investigating agency to file charge sheet or closure report before Special Court;
b. direct the competent authority to initiate the departmental proceedings or any other appropriate action against concerned public servant.

If, it has decided to grant sanction to Prosecution Wing or investigating agency to file charge sheet before Special Court then the Lokpal may direct to its Prosecution Wing or investigating agency to initiate prosecution in Special Court.[160] During preliminary inquiry or investigation may pass an appropriate order for safe custody of documents which are relevant and necessary for preliminary inquiry or investigation.[161] The Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or trial of the case in Special Court.[162]

Notwithstanding anything contained is section 197 of Cr.P.C. or section 19 of P C Act, or section 6A of DSPE Act, the Lokpal has power to grant sanction for prosecution against public servants.[163] After investigation, if it is found that the offence has been committed by Prime Minister, or a Union Minister, or a Member of Parliament, the

[157] *Id.*, section 20 (5).
[158] *Id.*, section 20 (6).
[159] *Id*., section 20 (7).
[160] *Id.*, section 20 (8).
[161] *Id.*, section 20 (9).
[162] *Id*., section 20 (11).
[163] The Lokpal and Lokayuktas Act, 2013, section 23.

Lokpal may file a case in Special Court and will send a copy of report to its findings to the competent authority.[164]

Powers of Lokpal

The supervisory powers over CBI have been given to Lokpal. The Lokpal, also, has power to give direction to CBI.[165] But the power of superintendence over CBI or the power to give direction to CBI, has to be exercised by Lokpal only in those matters which have been referred to CBI, by the Lokpal for preliminary enquiry or investigation.[166] These power of Lokpal shall not be exercised such a manner, which requires to investigate or dispose of any case in a particular manner.[167] The Lokpal has power to issue guideline for effective and expeditious disposal in those matters which have been referred to CVC for its preliminary inquiry under section 20 (1) of the Act.[168] Any officer of CBI, who is conducting investigation into a case, referred by Lokpal, shall not be transferred without prior approval of Lokpal.[169] The Lokpal may authorize to any investigating or inquiry agency to make search in any place and seize documents, if there is reason to believe that such documents may be relevant for investigation of the case.[170] It is so because the search and seizure is an essential part of any investigation. Therefore it is necessary that the Lokpal should have power to direct search and seizure of any document or object which is required for further action. For the purpose of preliminary inquiry, the inquiry wing of Lokpal has powers of civil court in respect of following matters[171]:

i. Summoning and enforcing the attendance of any person and examining him on oath;
ii. Requiring the discovery and production of any document;

[164] The Lokpal and Lokayuktas Act, 2013, section 24.
[165] The Lokpal and Lokayuktas Act, 2013, section 25.
[166] *Ibid.*
[167] *Id.*, section 25 proviso (1).
[168] *Id.*, section 25 (2).
[169] *Id.*, section 25 (3).
[170] The Lokpal and Lokayuktas Act, 2013, section 26.
[171] The Lokpal and Lokayuktas Act, 2013, section 27.

iii. Requisitioning any public record or copy thereof from any court or office;
iv. Requisitioning any public record or copy thereof from any court or office;
v. Issuing commissions for the examination of witnesses or documents. Such commission shall be issued only where the witness, in the opinion of Lokpal, is not in a position to attend the proceeding before the Lokpal;
vi. Such other matters as may be prescribed.

The Lokpal may utilize the services of central or states government for the purpose of conducting inquiry or investigation.

Attachment of assets

The Lokpal is authorized to attach the properties which are believed to be the proceeds of corruption. The Lokpal may authorize to any other officer for attachment.[172] Before issuing the order of attachment, the Lokpal or authorize officer will record his satisfaction in writing to the effect that if attachment is not made, the property may not be available for confiscation at a later stage. Such attachment has to be made for the period of ninety days.[173] As soon as the order of attachment is made, a copy of order with all other materials shall be sent to the Special Court which may extend the period of attachment.[174] Any person interested in the property may approach to Special Court for appropriate order of attachment. The attachment will not affect the person who is in possession of the attached properties.[175] He can continue to be in possession and in his enjoyment.

Confirmation of attachment

Within the period of thirty days the Lokpal shall approach the Special Court for confirmation and continuation of attachment. For this purpose the Lokpal shall direct the prosecution wing to file necessary application before Special Court to extend the

[172] The Lokpal and Lokayuktas Act, 2013, section 29 (1).
[173] *Ibid.*
[174] *Id.*, section 29 (2).
[175] *Id.*, section 29 (4).

attachment.[176] If the Special Court is of the opinion that the attached properties had been acquired through corrupt means, he can extend the attachment till the completion of proceedings before him.[177] If the public servant is acquitted by Special Court, the property attached shall be returned to the public servant.[178]

Transfer and suspension of public servants

The Lokpal has power to recommend to Central Government to suspend or transfer the public servant during pendency of preliminary inquiry or investigation.[179] It is for the reason that the accused officer may temper with evidence or may affect enquiry, adversely. Ordinarily the government shall accept the recommendations of Lokpal. If for any reason of administrative necessity, the government is not agreeing to suspend or transfer to the concerned public servant, it shall state the reasons in writing.[180] The Lokpal may issue appropriate directions to public servant who is entrusted with the preparation or custody of any document or records:[181]

a. To protect such document or record from destruction or damage; or
b. To prevent the public servant from altering or secreting such document or record; or
c. To prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

Constitution of Special Courts

To hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or this Act, such number of Special Court as recommended by the Lokpal shall be constituted by Central Government.[182] The Special Court shall ensure that each trail must be completed within the period of one year from the date of filing of the case in

[176] The Lokpal and Lokayuktas Act, 2013, section 30 (1).
[177] *Id.*, section 30 (2).
[178] *Id.*, section 30 (3).
[179] The Lokpal and Lokayuktas Act, 2013, section 32 (1).
[180] *Id.*, section 32 (2).
[181] The Lokpal and Lokayuktas Act, 2013, section 33.
[182] The Lokpal and Lokayuktas Act, 2013, section 35 (1).

court.[183] Further, it is provided that in case where, the trial cannot be completed within the prescribed period of one year, the Special Court, by time to time and the reasons to be recorded in writing may extend the period for three months at once.[184] Such extensions are limited so that the trial must be completed within the total period of two years, from the date of the institution of case in court.[185] It is noted here that there is nothing anything in section 35 of the Act, about the things, that what should happen if the case is not decided within the prescribed maximum period of two years and further, what should happen if the Lokpal is not satisfied with the reasons recorded by Special Court for not completing the trial within the prescribed period of two years.

Shortcomings of the Lokpal and Lokayuktas Act, 2013

No doubt in our country there is a urgent need for a body which can function with highest degree of independence and integrity and therefore the institution like Lokpal or Ombudsman should be properly setup to command the respect and confidence of the people. The institution of Lokpal and Lokayukta and mechanism for it provided under the Lokpal and Lokayukta Act, 2013 is very weak. There are various loopholes and lacunae in the Act. The appropriateness and efficacy of the Act can be discussed under the following heads.

Lack of independent investigative wing

There is no provision for separate and independent investigative wing under the Lokpal and Lokayuktas Act, 2013. The key success of any organization is to put corrupt in judicial process by carrying out fair and impartial investigation.[186] On that account the Lokpal and Lokayuktas Act, 2013 fails miserably.[187] The investigation is the foundation of any case and the independence of the investigation team makes all difference.[188] There

[183] *Id.*, section 35 (2).
[184] *Id.*, section 35 (2), proviso (1).
[185] *Ibid.*

[186] "The Lokpal and CBI", XLVII (3): *Economic and Political Weekly*, 2012 at 8.
[187] *Ibid.*
[188] Sriram Panchu, *supra* note 57 at 10

is no shortage of critical comment by the Supreme Court over the fact that the CBI is working under the umbrella of executive.[189] Under the Lokpal and Lokayuktas Act, 2013 the government retains administrative control over CBI including transfer, posting and promotions.[190] It means that every officer of the CBI is looking to the government for carrier advancement.[191] In fact, the director of CBI shall be chosen on recommendation of committee consisting Prime Minister, Leader of Opposition and the Chief Justice of Supreme Court. However, the only the director cannot ensure the independence and institutional integrity of his officer, when his career path is to be determined by the ministry. Under the Act, the CBI has been made answerable to the Lokpal only in those cases specifically, which are referred by Lokpal to CBI.[192] It can be said that the government has merely added one more authority to the various other that the CBI is already accountable to such as CVC, Department of Personnel and Law Ministry and Lokpal will work as just one more anti-corruption agency having no primacy.[193] Therefore, it is urgently needed that the investigative wing or agency should be brought fully, administratively and functionally, under control of Lokpal or the Lokpal should have its own cadre of investigators.[194] It is provided in the Act that the Lokpal will have powers of superintendence over the CBI. But such powers are meaningless without instruments to ensure actual administrative control.[195] The Act states that the transfer of CBI officers investigating cases referred by the Lokpal can be done only after the approval of Lokpal[196]. It ensures only partial administrative control over CBI and it is not adequate to provide the required functional independence to the CBI.[197] 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

[189] *Ibid.* at 11
[190] *Ibid.*
[191] *Ibid.*
[192] The Lokpal and Lokayuktas Act, 2013, section 25 (1).
[193] The Lokpal and CBI, *supra* note 186.
[194] Sriram Panchu, supra note 57
[195] Amrita Johri, Anjali Bhardwaj & Shekhar Singh, *supra* note 62 at 11
[196] The Lokpal and Lokayuktas Act, 2013, section 25 (3).
[197] *Id.*, at 11

making them vulnerable to pressure from the government.[198] It would have been much better if the CBI had been brought under the comprehensive administrative and financial control of Lokpal,[199] whose own expenditure is chargeable to the Consolidated Fund of India.[200] At the last, the appointment and removal of senior CBI officers should have to be made with the approval of Lokpal.[201] The Lokpal should also be made the receiving authority for the annual confidential reports of the CBI officers.[202] These measures were suggested by various civil society groups but ignored by the government.

Reservation within the institution of Lokpal

Minimum 50% reservation has been given in Lokpal to the persons belonging to scheduled caste, scheduled tribes, and other backward classes, minorities and women. The purpose of reservation in education and employment is to ensure the advancement and upliftment of the marginalized group in society. It is to provide special benefit by reservation to these groups to advance their educational and employment prospects. Now the question is that; what is the nexus between the representation mandated for these groups and the purpose of the Act. Whether the corruption is connected with anyone's caste, gender or religion? The result of it may be that any person belonging to these categories, when would be charged with corruption would like to pitch a special appeal before the members of that groups, to seek their sympathy or support.

Fixing the period of time for completion of trial, arbitrarily

The Act mandates that the any trial before special court will be completed within one year, extendable to another one year. The Act does not specify what would happen in those cases, where despite the best efforts, the trial does not complete within the prescribed period of two years.[203] This would give an incentive for the accused to delay

198 *Ibid.*
199 *Ibid.*
200 *Ibid.*
201 *Ibid.*
202 *Ibid.*
203 *Ibid.*

the proceedings.[204] This ambiguity could lead to the proceedings being abandoned just because they could not be completed in time and the accused getting off scot-free.[205] Further, to ensure the speedy trial, the time period should also be fixed by the higher judiciary in its own proceedings related to cases of corruption.

Discrepancy in procedure lay down for preliminary inquiry

There is a clear discrepancy between sub-section (2) and (4) of section 20 of the Act. The section (20) sub-section (2) specifies the time period for preliminary inquiry as sixty days, while section 20 sub-section (4) provides that every preliminary inquiry shall be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

Establishment of Lokayuktas in states: lack of powers and jurisdiction

It is provided under section 63 of the Act, that every state shall establish a body to be known as the Lokayukta for the state, to deal with complaints relating to corruption against certain public functionaries within the period of one year from the of commencement of the Act. It makes mandatory for states to establish a body of Lokayukta but the states legislatures are free to determine the powers and jurisdiction of the Lokayukta. Thus, the nature and type of Lokayuktas is left to the discretion of the state legislatures. The apprehension is that it can lead to be set up very weak and ineffective Lokayuktas in states. More and more cases of corruption affects the common people of India occurs within the jurisdiction of states. The corruption violates the basic human rights of the citizen of India and the absence of strong and effective body of Lokayuktas will not be able to protect the rights of people against corruption. It is argued by some scholars that the setting up of an institution of Lokpal and Lokayuktas for the

[204] The Parliamentary Standing Committee Report in its 48th report had also stated that; the Committee believes that it cannot be the intention of law that where acts and omissions by the accused create an inordinate delay in the preliminary inquiry or other factors arise which are entirely beyond the control of the Lokpal, the accused should get the benefit or that the criminal trial should terminate. For that purpose it is necessary to insert a separate and distinct provision which states that clauses 23 (2), 23(8) or other similar time limit clauses elsewhere in the Lokpal Bill, 2011, shall not automatically give any benefit or undue advantage to the accused and shall not automatically thwart or terminate the trial (48th Report of the Standing Committee, on The Lokpal Bill, 2011, 09 /12/ 2011).

[205] Amrita Johri, Anjali Bhardwaj & Shekhar Singh, *supra* note 62 at 11

country as a whole by one statute of Parliament will violate the federal principal of Constitution and Lokayuktas can only be created by state legislature since it has jurisdiction over ministers and officers at state level.[206] However this argument cannot sustain, successfully because Article 253 of the Constitution itself provides that; the Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or body. The Lokpal and Lokayuktas Act, 2013 is expressly made in pursuance of the United Nations Convention against Corruption. India has ratified the Convention on 9 May, 2011. Thus, a comprehensive law establishing the institution of Lokpal and Lokayuktas to fight against corruption at the centre and state level would be within the legislative competence of Parliament.[207] Further, it can be argued very safely that Entry I in the Concurrent List is criminal law and the Lokpal is meant to enforce the Prevention of Corruption Act, 1988 which is a Parliamentary statute and criminalizes the acts of corruption throughout the country. The Prevention of Corruption Act, 1988 provides punishments irrespective of whether the offence is committed in relation to Central or State Government.

Period of limitation

The Act states that the Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.[208] It seems to be unnecessarily restrictive, especially when, the large and complex scams are being exposed in India from time to time. Such complex scams involve high level public functionaries and unearthed only when political regime had changed. Therefore, if a complaint is accompanied with credible proof, there is no reason why it should not be examined by the Lokpal.

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[206] *Ibid.*

[207] *Ibid.*

[208] The Lokpal and Lokayuktas Act, 2013, section 53 reads: The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.

Improper mechanism for complaints of corruption against Lokpal and its staff

The President can make a reference on the ground of misbehavior to Supreme Court against chairperson or a member of Lokpal on the petition signed by at least one hundred members of Parliament.[209] In this regard, civil society group had suggested that the ordinary citizens also be empowered to make complaints against members of Lokpal but it was not accepted by the Select Committee.[210] The Select Committee in its report has noted that it was felt that "empowering citizens to approach the Supreme Court directly would result in flooding the Supreme Court with large number of petitions".[211] Further, it is provided in the Act that the Lokpal would itself deal with complaints of corruption against its own staff. It is against to the principle of that the all complaints of corruption should be dealt with by an independent institution or body.

Workability of Lokpal

Under the Lokpal and Lokayuktas Act, 2013 all public servants belonging to group C and group D are covered by CVC. There are near about 30 lakh public servants of these groups. The Act does not specify that how a CVC, located in Delhi would receipt complaints, conduct preliminary inquiries and exercise superintendence and issue directions on investigations against lakh of employees who are spread across thousands of post offices and manned railway crossings, and in the villages of India.

The inclusion of non-governmental organization

The Lokpal and Lokayuktas Act, 2013 envisages that an officer of a NGO which receives money from the government or public or foreign sources is deemed to be a

[209] The Lokpal and Lokayuktas Act, 2013, section 37.

[210] Interestingly, the Standing Committee, has accepted this suggestion and recommended in their report that: "the committee recommends that clause 8 (1) (iv) be added in the existing Lokpal Bill, 2011, to provide, specifically, that anyone can directly approach the apex court in respect of a complaint against the Lokpal (institution or individual member) and that such complaint would go through the normal initial hearing and filter as a preliminary matter before the normal bench strength as prescribed by Supreme Court rules, but that if the matter is admitted and put for final hearing, the same shall be heard by an apex court bench of not less than five members. It is but obvious that other consequential changes will have to be made in the whole of section 8 to reflect the addition of the aforesaid clause 8 (1) (iv). (48th Report of the Standing Committee, on The Lokpal Bill, 2011, 09 /12/ 2011), para 16-16A.

[211] Select Committee Report, para 14.1 as quoted by Amrita Johari, *supra* note 62 at 13.

public servant and hence, he is under the purview of Lokpal. NGO's are not part of the structure of governance. They do not have the power of decision making. They influence the decision making process, consequently, corruption takes place. It does not mean that they are equal to official organs of state. Dishonesty in running the affairs of an NGO should certainly invite penal action. But it should be by way of deregistration, denial of tax exemptions, inquiry and remedial action under statutes governing societies and trusts. The Lokpal is designed to combat high-level official corruption. The Lokpal is not meant to have the same catchment area as the Prevention of Corruption Act. There are huge numbers of NGO's running in India. The Lokpal will then not be able to focus on political and bureaucratic corruption.

Lokpal cannot take action *suo moto*

The Lokpal will take action only on a complaint filed before it. He cannot take action *suo moto.* After the receipt of complaint the Lokpal will examine whether the application contains all the particulars required or in the form and manner it is required to be filed. If the Lokpal is satisfied, about the form and content of the application it shall direct the investigation wing which will conduct the investigation into the complaint. It is noted here that under Karnataka Lokayukta Act, 1984[212] (hereinafter is referred as K L Act) the Lokayukta or Uplokayukta is empowered to take action *suo motu.*[213] As far as the state of Karnataka is concerned, the Karnataka Lokayukta Ordinance, 1984 was promulgated and thereafter the Karnataka Lokayukta Act, 1984 was enacted and the Act has come into force with effect from 15-01-1986.[214] In the objects and reasons of the K.L.Act, it has been stated that the institution of Lokayukta was proposed to be set up for the purpose of improving the standards of public administration, by looking into complaints against administrative action's including cases of corruption, favouritism and official indiscipline in administrative machinery. Thus, it is clear that the K.L.Act does not deal with only to an allegation of corruption. The allegation may be in relation to so

[212] Act No. 4 of 1984.
[213] B.S. Yeddyurappa v. Sirajin Bahsa (2014) Cr. L.J. 1469 at 1473 para 12 Ker
[214] *Id.*, para 25

many other forms of abuse of public office, lack of integrity, favouritism etc.[215] Therefore, the Karnataka Lokayukta has jurisdiction to enquire into complaints not only involving allegations of corruption but also allegations involving other types of misconduct and maladministration.[216] The object of the K.L Act is to uphold purity in administration.[217] The Lokpal and Lokayuktas Act, 2013 does not confirm such wide jurisdiction upon Lokpal in India.

The Lokpal has not given constitutional status

The institution of Lokpal which has to be established under the Act has not been given constitutional status. A pure statutory body is weaker than a constitutional body and therefore only a statutory body of Lokpal cannot be a substitute for anti-corruption laws. Under the constitutional scheme we have a strong and independent Election Commission of India. Democracy, which implies free and fair election, is a basic feature of Constitution. Under the Constitution the Election Commission of India has assigned a constitutional duty for conducting free and fair election. Despite of facing so many challenges from political parties, the Election Commission of India has proven its ability for conducting free and fair election in India. As far as problem of corruption is concerned, and to tackle it effectively, a National Commission against Corruption a kin to the Election Commission of India should be established.

In this regards, Hong Kong provides a useful model for an Independent Commission against Corruption (ICAC). The OECD[218] has explained the procedure for investigation and prosecution in the cases of corruption which is adopted by the Hong Kong Independent Commission against Corruption. It is as followed:

[215] *Id.*, para 67
[216] *Id.*, para 108
[217] *Ibid.*
[218] OECD, 'Specialized Anti-corruption Institutions: Review of Model's (2006) available at http://www. Oecd.org/data oecd/7/4/3997/975pdf

i. ICAC Report Centre receives a complaint (by individuals, legal persons, ICAC regional offices or by other governmental departments) about corruption;
ii. The complaint is examined by ICAC and categorized with a view to pursue or not pursue further action;
iii. For complaints with further action recommended, investigation will be carried out by ICAC's Operations Department;
iv. For complaints with substantiated evidence, relevant details will be submitted for the institution of prosecution to the secretary for justice, head of the Department of the Justice of the Hong Kong Special Administrative Region Government;
v. Prosecution of corruption will be conducted by the two ICAC sections (public sector and private sector corruption) of the Commercial Crime and Corruption unit, Prosecution Division, Department of Justice. It advises ICAC and handles its prosecutions;
vi. Report will be subsequently made to ICAC's operation Review Committee.

Lokayuktas in states

The Lokpal and Lokayukta Act, 2013 makes it mandatory to establishment of a body of Lokayukta in every state. The 12 states already have enacted the Lokayukta laws in India. The states are Orissa, Maharashtra, Rajasthan, Bihar, Uttar Pradesh, Madhya Pradesh, Karnataka, Haryana, Chhattisgarh and Uttaranchal.[219] Left states of India would be established the institution of Lokayukta within the period of one year from the date of commencement of Lokpal and Lokayuktas Act, 2013. The above state Acts does not follow any uniform pattern. In some of states, the task assigned to the institution of Lokayukta is to look into cases of corruption as well as maladministration. In other some states the task assigned to Lokayukta is confined only to mala administration. Thus, there is no uniform pattern followed in states in this respect. In a conference of Lokayuktas

[219] Jain, *supra* note 8 para 3 at 931

draft of a model Act was finalized expecting that all states will adopt the same by amending their respective state Act.[220] But this has not happened. The Lokpal and Lokayuktas Act, 2013 also does not make any provision in this regard. Speaking generally, the Lokayuktas under the States Act is a retired judge of Supreme Court or retired Chief Justice or Judge of a High court. His appointment is made by the Governor after consultation with Chief Minister, Leader of Opposition and concern Chief Justice of High Court. The term of appointment is for 5 or 6 years. In some states the provision is also made for appointment of Uplokayukta to reduce the workload of Lokayuktas. But the complaint against ministers and officers of the rank of secretary are enquired into by the Lokayuktas. After enquiry, if it is found that some action is required to take against officer, then the report is to be submitted to government for same. If the recommendation of Lokayukta is accepted by government, a full- fledged departmental enquiry is to be held against concerned officer and he would be punished according to rules applicable to him in such enquires. But the recommendations of Lokayukta are not binding upon the government and the tradition to honor the recommendations of Lokayukta has not yet developed in Stats of India. In same states like Karnataka and Madhya Pradesh, the Lokayukta have assistance of police establishment. Such police establishment functions under the superintended of Lokayukta. The Lokayukta can direct police investigation against ministers or officers. If charges are established, the Lokayukta can submit a report for grant of sanction. After obtaining the grant of sanction from competent authority, the Lokayukta police will file charge sheet in competent court. In the case, *M.P. Special Police Establishment v. State of M.P.*[221] Supreme Court held that the Governor may act independently in the matter of grant of sanction for prosecution against the Chief Minister or any minister or even ex-minister also. In these matters, there is real danger of bias in rendering of opinion by Council of Ministers. In case, *Justice K.D. Mahapatra v. Ram Chandra Nayak,*[222] Supreme Court held that the functions of Lokayuktas are of utmost importance to expose the practice of maladministration and to maintain the unpolluted administration within states. The investigation by Lokayukta is quasi-judicial

[220] *Ibid.*
[221] (2004) 8 SCC 788 at 799-800
[222] (2002) 8 SCC 1, para 12 : AIR SC 3578

in nature. The record of Lokayuktas organizations is not very impressive in tackling maladministration and corruption. But there are number of instance, where ministers had to resign on the report of Lokayukta. There is need to fill the lacunae in state's enactment, for Lokayukta through a comprehensive nationwide enactment. Despites number of short coming in states enactments, the Lokayuktas in some states has achieved greater success against corruption. In case *Andhra Pradesh Lokayukta/Up-Lkayukta, A.P. & other v. T. Ramasubba Reddy & Another*[223] the Hon'ble Supreme Court has opined that the legislative intent behind the enactment is to see that the public servants covered by the sweep of the Act should be answerable for their actions, so that the authorities under the Lokayukta worked as real Ombudsman for ensuring the people's faith in working as public servant is not shaken. The authorities under the Lokayukta are meant to cater the needs of the people at large with a view to see that public confidence in the working of the public bodies remains intact.

Concluding remarks

Corruption has spread like a virulent epidemic in the genetic code of Indian society. No one can ignore the basic truth that no magic wand or special button has been invented which can eliminate or reduce the problem of corruption within a short time. There is need to put in place a holistic and multi-pronged approach to fight against corruption. In working of anti-corruption institutions, high level of professionalism and objectivity is must. Constitutional status should be conferred upon the institution of Lokpal. No doubt, the Lokpal and Lokayuktas Act, 2013 is a positive step to fight against corruption, subject to the weakness described above. If the Act is properly implemented, it may provide a significant deterrent of corruption, especially the high level of corruption that seems to have become increasingly common in India.

[223] [(1997)] (9) SCC 42]

CONCLUSION

It is clear that corruption is prevalent since immemorial time in India. There are so many references which indicate that bribery and corruption are prevalent since ancient time in India and one of the most elaborate references is Kautilya's Arthashastra in which he has mentioned that despite greatest care taken in recruiting officials, there would be some officials who would be turn out to be corrupt. In the past, numbers of measures were also adopted to curb the problem of corruption. Hammurabi was a greatest ruler of the Babylon and he had addressed a number of letters to the provincial governors and asked them to punish the corrupt officers. During middle age also, corruption of every type was prevalent in India. Bribe was considered a very effective tool in the hands of conspirators but it was not so rampant in ancient and middle India. The numbers of anti-corruption measures have been put in place to curb the problem of corruption in India. After coming, the Britishers in India, corruption started taking place, fastly everywhere, and gradually became rampant in India. In present scenario, corruption has become synonym of livelihood in our society because people have lost their moral values; and they have imbibed corrupt practices in day to day routine work. Moral values and morality have become outdated and are part of history. It is noted, that during 1950s both the honesty and efficiency were dominating in the public life. Now a days, dishonesty, inefficiency, partiality, nepotism are dominating our public life. During the 1960s and 1970s, many bureaucrats and politicians became corrupt but still they were relatively honest. But over the last several years, only few people are honest. A large majority of bureaucrats and politicians are both inefficient and dishonest.

Briefly, it is concluded that in past governance had fewer failures because our past generation, including politicians had made big personal sacrifices during the national freedom struggle for our country. They were most committed persons for higher values, integrity, and accordingly they thought everything in welfare of social and national perspectives. They enjoyed the trust of the people. In subsequent years, even before the enforcement of emergency, internal feuds and

power politics had overtaken commitment to the vital task of governance. This period started to witness a new breed of civil servants, highly committed to extra constitutional elements and political bandwagon. It caused very serious loss to the governance system of country, particularly to the rule of law and Constitution. The failure of national level political parties had provided favorable opportunities for mushrooming, regional and sub-regional political parties. It led to splintered electoral outcomes in Indian politics. Consequently, coalition governments emerged at national and state level also. The coalition governments inherently became prone to political instability in country. This had adversely affected the system of governance and country started to face a series of big-big scandals, relating to large-scale embezzlements and cases of corruption among which some are the fodder scam, the hawala scam, Bofors scandal, and recently the Satyam scam, Commonwealth scam, and 2G scams, Mid Day Meal scam etc.

Corruption humiliates the ordinary citizen and undermines the effective use of public resources. Corruption undermines the rule of law. Corruption hinders the full realization of the basic human rights. Corruption affects economic growth of country. It diverts public resources meant for development, infrastructure, public health, education, anti-poverty programmes and thereby adversely affects the enjoyment of the basic human rights of the people. No country, however democratic, is free from corruption. This social evil touches the government officials, politicians, business leaders, journalists and ultimately it destroys the national economy, undermines social stability and erodes public trust. A country's progress is determined by good governance. An underdeveloped civil service opens the way for corruption by organized crime. Corruption adversely affects the skillful management of public resources and thereby the corruption is a horizontal problem for good governance also. It undermines all aspects of good governance viz; accountability, transparency, consensus oriented decision making process, fairness, impartiality, integrity, honesty etc. So, corruption is the enemy of the rule of law, development and good governance, and for becoming a just society at all. It may be concluded that the human rights approach of corruption control

mechanism is expected to enhance the institutional approach to fight against corruption in India.[1] The rule of law is an important facet of constitutional governance in India. This facet of constitutional governance needs to be established in India. The concept of rule of law needs to be reflected in the context of various social, economic and political affairs of the country. The anti-corruption initiatives should be integrated with the human rights approach. The researcher agrees with A.K. Ganguly J. who rightly observed that it cannot be disputed that where corruption begins all rights end[2]. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. The past legislative efforts have dealt with corruption as a crime, but not necessarily as a problem that undermines the enforcement of human rights.[3] Human rights approach to fight against corruption requires radical reform of state apparatus and galvanized civil society activism that are different from those required in regards to criminal violations.

Experience has shown that due to some inherent weaknesses in the Prevention of Corruption Act coupled with the lackadaisical approach of law enforcement machinery, the whole anti-corruption law of India has become toothless against corruption. It is found that the Prevention of Corruption Act has turned out to be a puerile piece of legislation[4]. This study finds that it merely recognized several forms of bribes and corruption, but did not prevent their occurrence in the country's system of governance.[5] It has created only a new branch of evidentiary law. The cases involving corruption charges against public officials inevitably take a much longer time to reach finality than other cases and

[1] See also C. Raj Kumar, *Corruption and Human Rights in India: Comparative Perspectives on Transparency and Good Governance* (Oxford University Press, New Delhi, 2011) at 212.

[2] *Subramanian Swami v. Manmohan Singh* (2012)3 SCC 64 at 100.

[3] See e.g. Upendra Baxi, *Liberty and Corruption*, (Eastern Book Company, Lucknow, 1989)

[4] See also H.L. Mansukhani, *Corruption and Public Servants* 78 (Vikas Publishing House, Noida, 1979)

[5] See also Krishna K. Tummala, "Corruption in India: Control Measures and consequences" 10 *Asian Journal of Political Science,* 2012 at 43-51.

therefore it is need to give priority of hearing to corruption cases and conclude such cases within a reasonable time.

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. It undermines the public confidence in the judicial process. Undoubtedly, certain reforms in the Criminal Procedure Code, 1973 are required. For instance, under section 197 of the Cr. P.C., and under section 19 of the Prevention of Corruption Act, 1988 it is provided that no court can take cognizance of any offence alleged to have been committed by a public servant without a prior sanction of the government in whose affairs he is employed. Unfortunately, the protection given by the colonial law makers to the public servants in the Code of 1898 still continues.

Through this study it is found that the anti-corruption agencies like CBI and CVC are very weak. They have not been given the strong teeth to do something better against corruption. CBI is bound to work under administrative control of Union Government. CVC has been established as an advisory body. CBI has not been given functional independence. CBI is bound to do their job under administrative control and huge pressure of Central Government. The institution of CAG has a limited constitutional task against corruption. CAG can only point out his finger and disclose the irregularities being committed by the central or state governments. The success of the criminal justice system depends upon fair and impartial investigation of the case. The investigation of the corruption cases falls under the jurisdiction of CBI. CBI is not allowed to do his job in a professional manner. Therefore, the present anti-corruption mechanism is inadequate. Thus, unless the investigating agencies like the CBI and the court functioned with the due autonomy, honesty, efficiency and boldness, improvement in governance would have no chance. Thus, the criminal justice system is not able to respond effectively and not able to ensure that the corrupt actually get punished. Transparency International of Germany has listed India as one of the most corrupt countries in the world.

The institution of Lokpal which has to be established under the Lokpal and Lokayuktas Act, 2013, is weak. Lokpal and CVC have overlapping jurisdictions. In this regard, the legislative provisions are not able to make clear cut demarcation between jurisdictions of CVC and Lokpal. Both the CVC and Lokpal have given the supervisory power upon CBI. Lokpal has not been given separate investigation wing. Inquiry against group A, B, C, & D officials has to be get done by CVC and inquiry against political functionary has to be get done by Lokpal. But in case where both group A, B, C, D officials and political functionaries are involved, it is not clear who would have jurisdiction to get done inquiry of the case.

The problem of corruption needs to be addressed urgently. As the number of past efforts in this regard have not achieved their goal, therefore, it becomes necessary to put in place some stringent measures for eliminating corruption. There should be multi-dimensional effort in the better form to eradicate the very dangerous cancer of corruption. In this regard the empowerment of ordinary citizens becomes necessary. Our national leadership is expected to devise a political mechanism to create a social atmosphere by empowering of people of India. Corruption is like diabetes and it can only be controlled, but cannot totally be eliminated. It may not be possible to root out corruption completely at all levels but it is possible to contain it within tolerable limits. Honest and dedicated persons in public life are the most important prescriptions to combat corruption. Corruption worsens our image in international market and leads to loss of overseas opportunities. No doubt, corruption is a global problem and all countries of the world have to confront, but solutions can only be home grown. Many new leaders when come into power declare their determination to eradicate corruption but soon they themselves become corrupt and start amassing huge wealth. There are many myths about corruption, which have to be exploded if we really want to combat it. Some of these myths are as the corruption is a way of life and nothing can be done about it. Only people from under developed or developing countries are prone to corruption. We will have to guard against all these crude fallacies while planning measures to fight against corruption. 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. We have to design a system that will check the corrupt practices and tendencies of the people.

The researcher finds that the results of the fourth part of the HT-MaRS Governance survey[6], stating that the consistent economic slowdown, coupled with governance crisis, has not only shaken the business confidence in the country, but has given industry leaders enough reasons to label the UPA-II leadership as "inefficient" and corrupt are alarming. Participants of the survey feel political class is the most inefficient vis-a- vis the judiciary, bureaucrats, civil society and the business community. According to the result of survey, 69.2% political executives are corrupt, 10.3% business society is corrupt, 33.3% bureaucracy is corrupt, 5.2% Judiciary is corrupt and 7.7% civil society is corrupt.[7] Political corruption is at the root of other types of corruption**.** The political parties are functioning undemocratically in India. The political parties collect huge party funds through back doors and the most of the money of political parties is unaudited. Every party makes compromises and offers favours to different groups and industrial houses while in power. Given this reality, it would be impractical to expect scrupulous honesty from parliamentarians as dishonesty was build into the system.[8] It is worrying to note when a former minister in the NDA government and BJP M.P. from Bombay, and Governor of U.P., Mr. Ram Naik, points out that those who successfully contest elections by making money from businessmen or spending huge sums from their own pockets, "try to recover their expenses in the first two years. What they get in the next three years is a bonus. M P-ship is reduced to a business"[9]. In 2010 India was ranked 87 out of 178 countries in

[6] "India Inc Unhappy with Status Quo" Hindustan Times, Lucknow, 16 Febuary, 2014 at 5, available at www.hindustan times

[7] *Ibid.*

[8] Chandan Mitra, *The Corrupt Society: The Criminalization of India from Independence to the 1990s* (Viking, New Delhi, 1998) at 111.

[9] *Id.* at 112

Transparency International's Corruption Perceptions Index.[10] The year 2011 has proved to be a watershed in the public tolerance of political corruption in India.[11] Corruption reduces economic growth. It reduces efficiency on which economic performance depends. Similarly corruption also hinders investments into the economy. Corruption is a major challenge being faced by the humanity. The former Prime Minister, Rajiv Gandhi, once remarked that every rupee spent by the government for poverty alleviation only fifteen paisa is reaching to the beneficiary. Another forty paisa may be spent on administrative overheads and the remaining forty five paisa last in corruption.[12] The public distribution system is designed to provide food security for those living below poverty line. However, the program saw many loopholes and goods reached the black market at the implementation stage. It has been admitted in Parliament that 31% of the food grains and 36% sugar disappeared from the public distribution system.[13] It amounted to Rs. 5000 crore and taken away by the corrupt shopkeepers, officials and politicians. An empirical study has shown that corruption lowered investment both domestically and internationally. It revealed that corrupt practices prevailed in economy is likely to reduce aggregate investment levels by 5% points less and per capita growth rates half a percent point less.[14] As per the UNDP Report of 1999, the GDP of India could grow by 1.5% and the foreign direct investment could increase by 12% if the corruption level in India comes down to that of Scandinavian countries.[15] It is also observed that corruption acts as an additional tax on investment by lowering the potential return.

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[10] Dr. Prabhas Chandra Singh, *Encyclopedia of Laws against Corruption* 1st edn. (Anmol Publications Pvt. Ltd., New Delhi 2012) c. 1 at 1.

[11] *Ibid.*

[12] N. Vittal, "Corruption" A paper submitted at the 5th Annual National Conference of NEPASI on Governance for Development: Issues and Strategies, organized by IGNOU between 24-25 August 2011, New Delhi.

[13] *Id.,* at 2

[14] Human Development in South Asia 199, (Oxford University Press, Karachi, 1999) at 98

[15] *Ibid.*

Former President of India Pratibha Patil flagged corruption as a major hurdle to good governance and called for a serious approach to increasing transparency in her address to the nation on eve of republic day. We the people of India, instead of getting lost in the mire of corruption, it is necessary to rise above from it and seriously look at bringing systemic changes to deal more effectively with the problem of corruption. Financial institutions, the corporate world and civil society, all must uphold high standards of probity in their working. Only a genuine partnership between the government and its people can bring about a positive change to create a just society."[16] So far as the country's governance is concerned, more and more corrective measures are required. Corruption and development are two sides of a coin. We cannot put across them on similar platform. If we will be able to root out this evil of corruption, better governance will automatically come and everyone will enjoy his human rights in India. Corruption has become one of the key stumbling blocks for India's progress today. Unless this Ebola of corruption is addressed, no amount of social policies will produce the result that for we are all aspiring. We now need to devise newer strategies to fight this Ebola. Mere institutional mechanisms like the Central Vigilance Commission, Lokpal or the Lokayukta cannot combat the problem of corruption without the informed and sustained participation of communities. We now need to use tools like social audit in our strategy to fight against corruption.[17] The fighting against corruption, need to be make a community movement. The people and communities need to be educated, empowered and the capacities to be built in them, so far they are able to effectively use the available mechanisms. India has taken a number of initiatives in this regard. The Right to Information Act, 2005 and the Whistle Blowers Protection Act, 2011 has been enacted, which certainly be proved a good step toward good governance. The fight against corruption has also been declared a high priority by the government of India. However, corruption remains widespread in the country and there are many

[16] The Times of India, 26 January, 2011, Lucknow edition.

[17] "Corruption and Development" available at http://rbalu.wordpress.com/2010/12/01/ corruption-and-development.

instances of political and bureaucratic corruption, public funds embezzlement, fraudulent procurement practices, and judicial corruption. The sectors most affected by corruption include public procurement, tax and customs administration, infrastructure, public utilities, and the police. The latter has been identified as one of the most corrupt institutions by various surveys. Recently, an exclusive 14-city HT-Gfk Mode survey[18] was conducted across 14 cities divided into 4 zones- North (New Delhi, Chandigarh, Jaipur and Lucknow), East (Kolkata and Patna), West (Mumbai, Ahmedabad, Indore and Pune), and South (Chennai, Bengaluru, Hyderabad and Kochi). A total of 2,065 respondents above the age of 18 years were surveyed. 50% of the respondents were male. Respondents were asked; what are the biggest problems that India is facing and were allowed to opt for multiple options. 81% respondents believe that corruption is among India's biggest problem. The people want the removal of discretionary quotas for politicians, and increase in transparency and web based-governance. [19] 72% respondents believed lower taxes on petro products easier import norms and a crackdown on hoarding could help prices low.[20] Talking on sports, the survey saw that people are blaming for inadequate infrastructure and funds and corrupt administrators for India's poor performance in global mega sports events such as the Olympics. [21] Corruption in judiciary has two manifestations one is the corruption in system and the other is corruption among the judicial officers. Whereas, the system is polluted, the judiciary, especially the higher judiciary, is relatively clean, though exceptions cannot be ruled out. Its operations are transparent. There is a system of correction in the form of reviews and appeals. Yet there is a lot of discretion of courts with regards to interlocutory orders on stay proceedings, vacation thereof, bail petitions, issuance of warrants, adjournments etc. There are many occasions when power can be misused though evidence of it may not be available due to existence of conduits. No wonder, due to connivance

[18] "After Roti, Kapda our Makkan, India Requires More" Hindustan Times, Lucknow, 21 November, 2014 at 10.

[19] *Ibid.*

[20] *Ibid.*

[21] *Ibid.*

of various functionaries in the system, "criminal justice succumbs to money power."[22] The country's justice delivery system appears to be on the verge of collapse. Instances of corruption have now begun to surface in our judicial system too.[23] There is a lot of hope in the judiciary to combat corruption by enforcement of law and deciding cases of bureaucratic corruption expeditiously. There are allegations that three successive Chief Justices of India made improper compromises to save a corrupt judge of the Madras High Court.[24]

Corruption is a significant impediment to the achievement of good governance in India. Political corruption needs to be curbed for developing a good governance framework.[25] The law enforcement work of the government to ensure corruption free governance ought to perceive as a part of the right of the people of India to seek a corruption free government. It is the duty of the government to ensure that all of its affairs are conducted in a manner that promotes transparency, accountability and integrity in the public administration. The collaborations should be ensured within the countries which have successfully managed to the menace of corruption to a large extent[26]. Accountability need to be infused by building of legal and institutional mechanisms so that the official corruption cannot be tolerated at any level of the decision making process.[27] The change of political corruption in India is possible only if the right to corruption-free governance is guaranteed through the empowerment of the Indian citizenry. The role of the media and other members of civil society are also very important to fight against corruption. [28] The media can expose the corrupt actions of politicians and bureaucrats. Strengthening of the judiciary should be accompanied by the passage

[22] Justice, V.R. Krishna Iyer, Times of India, 7 March, 2006.

[23] Chief Justice of India, Indian Express New Delhi, 12 March, 2006.

[24] Satya Prakash, Fault Time in Judicial Appointment Exposed, Hindustan Times, Lucknow, 22 July, 2014 at 11.

[25] Moshe Maor, "Feeling the Heat? Anti- Corruption Mechanisms in Comparative Perspective" 17 (1) *Governance*, 2004.

[26] *Id.*, at 213

[27] *Ibid.*

[28] *Ibid.*

of laws, rules, and regulations that are intended to punish acts of corruption.[29] The problem of corruption has the potential to affect democratic decision making and has threatened the rule of law in India. The foundations of democratic values are deeply rooted in India but the corruption has undoubtedly affected its cultural values. The lack of political and bureaucratic transparency and accountability culminate in a sense of callous indifference among the people.[30] These discouraging trends must be thwarted by the developing rights based approach against corruption. There is need to establish an accountability mechanism for the promotion of good governance. Community education and participation of the people in generating an attitudinal change is deemed to be one of the initial goals to fight against corruption.[31] There is a need for the empowerment of the people of India to fight against corruption on the basis of developing certain rights against corruption.

"Corruption is corroding, like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralizing the honest officers. The efficiency in public service would improve only when the public servants devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corruption would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke[32]". "The corruption by public servants has become a gigantic problem. It has spread everywhere. No fact of public activity has been left unaffected by the stink of corruption. It has deep and pervasive impact on the functioning of the entire country. Large-scale corruption retards the nation building activities and everyone has to suffer on that account[33]".

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[29] *Ibid.*

[30] *Ibid.*

[31] *Ibid.*

[32] *Swatantar Singh v. State of Haryana (*1997) 4 SCC 14.

[33] *State of M.P. v. Shambhu Dayal Nagar (*2006) 8 SCC 693: (2007) 1 SCC (Cri.).

The Public Distribution System (PDS) is the largest food distribution network of its kind in the world. Yet it has acquired notoriety of being the most corrupt system in the country. There is undoubtedly nexus between the Fair Price Shop (FPS) owners, transporters, bureaucrats and politicians. Diversion of PDS food grain occurs, both in the supply chain as well as at FPS. There is nothing in Food Security Act, 2013 for checking this malaise of PDS. Information technology can be used to curb this menace of food grain diversion. Modern technology will help in ensuring that the beneficiary regularly receives his/her entitlement of food grains of same quality as issued by FCI[34].

The law enforcement machinery of the state is generally weak and the accused in corruption cases abuse legal loopholes. From the enforcement stand point there may be valid justification for evolving a criminal law approach to address the problem of corruption, as it is essentially an economic offence.[35] However, the systematic loosing of the state's resources and massive corruption in the form of abuse of power by government officers, bureaucrats and police officers, demands a more, serious and affirmative response from Indian society.[36] The constitutional approach to dealing with the problem of corruption presupposes the fact that the corruption threatens the very foundation of Indian democracy and acknowledges that the Indian states are losing the faith of its people.[37] Moreover, having taken root in every department of the government, corruption creates a vicious environment that undermines the rule of law and social fabric of Indian society.[38] The problem has become so high in India that Indian democracy would bound to lose its grand democratic qualities if this problem is not addressed and tackled properly from the perspective of its impact on constitutional governance in India. The constitution has indeed shown great concern for the underprivileged and laid obligation on the state to take measures for improving the conditions of

[34] *People's Union for Civil Liberties v. Union of India and Others* (2013)2 SCC (Cri) 832

[35] C. Raj Kumar, *supra* note 1, at 111.

[36] *Ibid.*

[37] *Ibid.*

[38] *Ibid* at 112

their life. The various organs of the state have abused their power, became corrupt and acted in self interest rather than on the basis of public interest. The corruption has shattered the very basic objectives of the Constitution. The governance machinery tainted with scams and allegations of corruption are regularly coming to the forefront. Corruption in the implementation of development policies has culminated in the creation of poverty, lack of education, health care etc. The majority of the Indian populace, the rights and benefits conferred by the Constitution and enforced by the judiciary means nothing. A Transparency International study has revealed that the greatest sufferers of this petty corruption are not the middle classes, who often have the ability to grease greedy palms, but the poor-hawkers, rickshaw pullers and small tea-shop owners, small-time mechanics, poor migrants, laborers and slum-dwellers.[39] The government spends US $ 8.5 billion annually on the rural poor but most of it disappears on the way.[40] There is need to adopt the recommendations of the Lord Nolan Committee[41] 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. "These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinizing the conduct of every holder of a public office. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a *prime facie* case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated[42]". "It is high time that the public servants should be held personally responsible for their malafides acts in the discharge of their functions as public servants. We take it to be perfectly clear, that

[39] Rakesh Kalshain, "Corruption Notebook" in *Centre for Public Integrity* ed., Global Integrity: An Investigative Report Tracking Corruption, Openness and Accountability in 25 Countries: India 7 (200).

[40] *Ibid.s*

[41] The Summary of the Lord Nolan Committee's First Report on Standards in Public Life (1995) Available at http://www.archive.official documents.co.uk/document/parliam- ent/nolan/nolan.htm.

[42] *Vineet Narain v. Union of India* AIR 1998: SC 889.

if a public servant abuses his office either by an act of omission or commissions, and the consequences of that is injury to an individual or loss of public property, and action may be maintained against such public servant. No public servant can arrogate to himself the power to act in a manner which is arbitrary[43]".

While corruption at the higher level of the judiciary may not be rampant, lower levels of the judiciary in India are notorious for their own acts of corruption.[44] Recently, however, even the higher judiciary, High Court Judges in particular has come under the corruption scanner with the exposure of the Uncle Judge syndrome, provident fund scams in the High Court's and other allegations of corruption.[45] It is a very dangerous trend and poses a serious threat to the rule of law, social stability and democracy in India. The judiciary has a very difficult task, to not only ensure that other wings of the government are not corrupt, but also develop mechanisms of accountability for itself so that corruption within the judiciary does not get institutionalized. Transparency in governance requires that the functions of the state should be exercised in appropriate manner and corruption of any form can be nipped in the bud.[46] The aim and purpose of transparency in governance is to ensure the accountability and to avail the information relating to decision-making process in governance.[47] However, over the years, most Indian democratic institutions have lost their reliability and credibility because corruption has been taken place in their inner functioning. The National Commission to Review the working of the Constitution observed in its consultation paper "Probity in Governance" that[48]:

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[43] *Common Cause v. Union of India* AIR 1996: SC 3539.

[44] Civil Society to Assist Probe against Justice Dinakaran, Rediff.Com, 18 May 2011 available at http://www.rediff.com/news/report/civilsociety to assist in probe against justice dinkaran/20310518htm "Corruption Charges Slapped on Justice Dinakaran" Times of India, 19 March, 2011.

[45] V. Eshwar Anand, "Corruption in Judiciary: The Time for Action" The Tribune 3 December, 2010. Available at http://www. tribuneindia.com/2010/20 101203/edit.htm.

[46] C.Raj Kumar, *supra* note 1 at 84.

[47] *Ibid.*

[48] National Commission to Review the Working of the Constitution: Probity in Governance" 2.1 (2001).

"To the utter insensitivity, lack of shame and the absence of any sense of public morality among the bribe taker indeed they wear their badge of corruption and shamelessness with equal and a danger not only to the quality of governance but are threatening the very foundations of our society and the state".

Corruption has affected every institution of governance in India. Politicians and bureaucrats have figured prominently in various allegations of corruption. Corruption by itself poses a variety of problems relating to abuse of power and arbitrary decision making process. It resulted in determined denial of transparency, accessibility and accountability. The scourge of corruption is existed everywhere in India and therefore the fairness of governance is being undermined very badly.[49] Power holders abuse their powers in such a manner that they can earn money by illegal means. They make decisions on the basis of self suited socio economic objectives. They maximize their corrupt interest rather than public interest. Transparency International (TI) conducted a study in which sixteen states were scanned and around 5,000 rural and urban families were sampled. It estimated that every year ordinary Indians pay as much as a total of US $ 6 billion (2.5% of India's GDP) in bribes. In the Global Integrity Report, 2004 prepared by the US-based Centre for Public Integrity after a yearlong study of twenty five nations around the world; India has been rated as a weak democracy on account of corruption and lack of accountability in its public institutions.[50] The report has put India in weak category on a public integrity index, which measures the existence and effectiveness of laws and institutions that promote accountability and limit corruption. The report explains that the lacks of transparency in the Indian democratic and legal framework empowered the bureaucracy and have the way for abuse of power.[51] The report recognizes that, in India, there are powerful anti-corruption laws in place but their implementation is very weak. It adds that the system as a whole does not seem to have effective checks in place to prevent or

[49] Abid Hussain, "National Commission to Review the Working of the Constitution: Some Ideas on Governance".

[50] "India's Weak Democracy: Study" Times of India, 23 March, 2004.

[51] *Ibid.*

tackle corruption. There is no comprehensive effort to eliminate corruption from the government machinery. The war against corruption is largely waged by a few isolated individuals, selected citizen groups, a sprinkling of committed officers and the judiciary.[52] It is clear that the corruption of any from shall not be allow to be prevail the concept of good governance in India. The very result to ignoring this problem would mean that all effort in social and economic development would be affected adversely. Development of any kind would be possible in a free society. A society cannot be said to be free when the governance institutions and the individuals who operate it are corrupt and decisions are made not on the basis of merit, but on the basis of vested interests, where bribery is the rule and integrity is exception.

To the large extent, the Public Interest Litigation movement in India has promoted a certain degree of governmental accountability and ensured that the constitutional rights of the Indian citizenry should be duly protected. PILs can be used to checks the corruption and bribery levels of public officials. The Indian judiciary must accept the right to corruption free services in India and it should be recognize as a fundamental constitutional right to the people of India. It may be proved a more effective and constructive tool against corruption in India. Ultimately, it will ensure greater transparency and accountability in the system of governance in India. It should be more focused issue of judicial intervention. The tentacles of corruption are spreading fast in the society corroding the moral fiber and consequentially in most cases the economic structure of the country. It has assumed the alarming proportions in recent times. Corruption is one of the most talked about subjects today in the country since it is believed to have penetrated into every sphere or activity of the country. It is described as wholly widespread and spectacular. Corruption has reached to dangerous heights and to dangerous potentialities in our country.

[52] *Ibid.*

SUGGESTIONS

It is suggested that the National Commission against Corruption in India should be established as an institution akin to the Election Commission of India. It should be a single nodal agency to deal with corruption. It should be given all the powers, functions, responsibilities to investigate and prosecute cases relating to corruption. 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. It should not be depend upon the whim and fancy of the government. The functioning of the NCAC should be independent from the executive. It should not be under any ministry of Central Government. It should be independent from Prime Minister's office also. It should be financially independent. The sufficient fund is needed for effective functioning of NCAC. It should be made available by parliament. It should not be depend upon government discretion. The 'financial independence' of the NCAC should be in conformity of Election Commission of India. It has been noted that the Election Commission of India has not faced any financial problem in its functioning. Like Election Commission of India, the NCAC should be funded through Consolidated Fund of India. Accounts of NCAC should be subject to audit by the Comptroller and Auditor General of India and its report should be tabled in Parliament. It will ensure both the financial accountability and smooth functioning of NCAC. The composition of the NCAC should be similar to Election Commission of India. It should be given a constitutional status. Its work should be limited to only cases of corruption. The cases of corruption which are petty in nature should be excluded from its jurisdiction. The NCAC should be empowered to determine its investigative procedure and process. A public affairs division should be created under NCAC. It should be made responsible to provide the relevant information to media and larger public domain also. It will increase

the visibility of the commission. It should be ensured that the cases of corruption which have been investigated by investigative wing of NCAC must be brought to public domain without interrupting any rule of confidentiality. It will keep informed to the people about working of NCAC. The existence of NCAC, its working and procedure should be publicized. It is proposed that the NCAC should have with running seven wings. Intelligence wing should have to provide inputs to enquiry or investigation wing of the occurrence of misdeed and corrupt behavior in the government departments. All complaints of corruption would have to be received by NCAC by its complaint receiving centre. NCAC should be made empowered to take action *suo moto.* 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. After completing the preliminary enquiry, the enquiry wing has to submit its report to NCAC and investigation wing also. The investigation wing has to be assisted by auditing wing and if it is needed by prosecution wing also. The prosecution wing mainly has to assist for trial to special court or adjudicatory wing of NCAC. After making investigation the investigation wing has to submit charge sheet before adjudicatory wing or special court. Public affairs and information wing would have to ensure the transparency within the working of NCAC. 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.

The necessary framework for National Commission against Corruption

Keeping in mind the institutional challenges, the necessary framework for the success of NCAC should be as follows:

a. There should be political commitment against corruption.
b. There should be highest integrity in leadership.

c. There should be political and operational independence.
d. Adequate resources should be allotted to undertake its mission.
e. To access the documentation and questioning the witness, the adequate powers should be confirmed.
f. User friendly laws should be enacted.

There is need to develop political consensus among politician for establishing NCAC and the proposal for same should be come from the highest level of government. There is an own sense of insecurity among politician and developing of political consensus is very difficult therefore the civil society, media should come forward for creating circumstances for developing political consensus among politician in India. For effective functioning of NCAC, the resources are very critical. With the adequate resources a robust infrastructure should be developed. The proposed NCAC would have need for adequate resources to put together a comprehensive framework for the investigation and prosecution of offences of corruption. The resources should be allocated in such a manner that the autonomy of NCAC should not be compromised or undermined in any way. The most of anti-corruption institution has become politicized and are suffering from credibility loss. The political and operational independence should be ensured for maintaining the institutional credibility and legitimacy of NCAC. The massive support of civil society should also be gathered because it is necessary for success of NCAC. The powers of the NCAC should be clearly defined by a separate legislation. It should be given all the powers which are necessary to access documentation and questioning the witnesses. All aspects of dealing corruption should be included within the legal framework of NCAC. The leadership of NCAC should be of the highest integrity. Its working should not be interfered by political or other vested interests.

i. NCAC and its relationship to other institutions

The proposed NCAC needs to work on partnerships with governmental institutions and nongovernmental organizations in India and overseas. There is

need to be a broad level of engagement and interaction between NCAC, CAG, National Human Rights Commission and other similar institutions with a view to provide support to each other. This relationship should be institutionalized. The interaction between each other should not be only in an adhoc capacity. It should be based on shared principles and values of the institutions. It should work constantly to ensure good governance and to pursue the anti-corruption agenda, aggressively. Keeping in mind various shortcomings in the Lokpal & Lokayuktas Act, 2013 and it has not been given a constitutional status, it should be repealed. CBI would have to investigate only non PC offences. It would have no jurisdiction in PC offences or those offences which are connected to PC offences. 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. The punishment for offences committed under the PC Act should be made imprisonment not less than seven years but it should be made extendable to imprisonment for life time.

ii. To put multi-dimensional strategies to combating corruption

Given the complexities of the cancerous problem of corruption and law enforcement agencies that are working in India, it is important to develop a more focused approach to combating corruption. There should be multi-dimensional strategies to fight against corruption, which will have to involve the legal framework, the institutional mechanism, the investigation and prosecution machinery, the public awareness and education strategies, and civil society empowerment approaches etc. There is a need to make efforts with genuine desire and firm determination on the part of each and every above strategy. Funds for centrally and state sponsored schemes should go directly, to blocks and Panchayat instead of being routed through state and district exchequers.[53] The blocks and Panchayat should raise the bills for implementation of the scheme to a designated nationalized bank which will release the funds and seek reimbursement from centre or state later. It will ensure timeliness in releasing of funds, reduction in delays and eliminate the problem of unutilized funds. It will also ensure greater accountability and transparency leading empowerment of citizenry and reduction in corruption. Ultimately, it will be helpful to remove the archaic file based cheque-issue system. The people should be trained to monitor the progress of various government schemes and programmes, such as Pradhan Mantri Gram Sadak Youjana (PMGSY), MGNREGA, and Mid-Day Meal etc. Citizen's involvement in the monitoring system should be ensured. There is need to cut subsidy leakages. It should be ensured that not any one can able to subsidies themselves. To check the diversion of PDS food grain, the modern technology system should be used. To stop leakages, the Public Distribution System (PDS) should be totally computerized. With a view to bring back illegal black money stashed abroad, it is suggested that if a person or company is found holding unaccounted money in foreign accounts, then an equivalent amount in cash or assets of them in India should be seized and confiscated. It is also suggested that the Foreign Exchange Management Act should be appropriately amended and the

[53] Central Funds could go Directly to Blocks, Hindustan Times, 07 Jan, 2015 at 08.

competent authorities should be made empowered to seize and confiscate value equivalent of foreign exchange, foreign security or immovable property situated in India if it is found that they have been holding such assets aboard illegally. The 'conflict of interest' should be taken seriously in public domain and to disclose it should be made mandatory.

iii. Younger generation should be motivated for certain values

Younger generation should be motivated for certain values like integrity, patriotism, commitment to work, commitment to excellence and so on. Fighting corruption should also be one of the subjects included in the secondary schools and colleges. The educational institutions should not only focus on imparting the skills but also on values. Awareness among citizens about corruption and its effect upon society should be widely disseminated. Right to corruption free governance should be developed and recognized. The purpose of the awareness should be both to inform and to empower the citizenry. The efforts of the government to eliminate corruption and the information relating to the institutional mechanisms that are put in place to investigate allegation of corruption should to be widely disseminated.

iv. Deterrence mechanism

The deterrence mechanism against corruption should be strengthened very carefully. It is not the length of prison sentence or enormity of fine that deters a man but it is the certainty of detection, followed by conviction and proper execution of punishment that deter a man from wrongdoings. We must streamline our detecting and prosecuting machinery so that the culprit knows that there is more likelihood that his crime will be detected and convictions are sure to be followed.

v. Incentive and disincentive

Just as deterrent punishment can check a person from indulging in corrupt practices the rewards may also achieve similar result. Those who are upright efficient and honest should be given incentives by way of increased salary,

accelerated promotion and other honest benefits while those who lack integrity and sincerity can be visited with disincentives.

vi. Participation of civil society and interaction with NGOs

The role of civil society is central to the fight against corruption and cannot be ignored in any way. Therefore the partnership with NGOs and role of civil society should be expanded. Since the institutional credibility of anti-corruption agencies has lost to the large extent in India and therefore it becomes extremely important to work closely with NGOs and civil society for achieving corruption-free governance. Civil society and media should be involved in such a significant manner that the concept of corruption free governance does not remain only a policy goal or an institutional aspiration in India. Civil society is best suited to perform this role. It should be devoted exclusively to ensure that the decisions of the government are made in a transparent and socially accountable manner. Civil society, being a part of the democratic set up in India it should be involved in both rural and urban India at the grassroots level. Corruption free governance should be main part of civil society activism. The civil society should be made so empowered that it can seek transparency and accountability from decision makers. Public awareness should be raised regarding the existence, causes and gravity of the threat posed by corruption. The participation of civil society in anti corruption initiatives should be strengthened by adopting the following measures:

(a) The decision making processes should be enhanced.
(b) It should be ensured that the public has effective and proper access to information.
(c) The public information activities should be organized and the message to fight against corruption should be disseminated
(d) The freedom to seek, receive, publish and disseminate information concerning corruption should be respected, promoted and protected. This freedom may be subject to certain restrictions, but only provided by a just and reasonable law.

vii. Creating increased awareness among citizen

Awareness among citizens against corruption should be created. The awareness should be focused on the causes, effects and consequences of the problem of corruption. The purpose of the awareness should be to inform and empower to the common people of India. The information relating to the institutional mechanisms against corruption should be widely disseminated.

viii. Right to Information

The Right to Information is a most effective tool against corruption. It ensures the transparency and accountability in functioning of government. Right to information should be free of cost. All information should be available on the website of the department. There is a need to develop a mechanism that work as self declaratory of information. The tendency to hide the information should be give up and the tendency to place it in the sunshine of the public discourse should be developed.

ix. Right to corruption free-governance should be developed

The right to corruption free governance should be developed and recognized as a fundamental right, as a legal and human right also. When acts of corruption are brought before the judiciary for adjudication, it is important for it as an institution to take account of all legislative and constitutionally available mechanisms in upholding the right to corruption free governance as fundamental right, as a legal right and as a human right also. In this regard, the credibility of judiciary as an institution should be effectively used.

Books

1. A. Hurwitz and R. Huang (ed.), *Civil War and the Rule of Law, Security Development, Human Rights* (Viva Books Pvt. Ltd., New Delhi, 2009).
2. Ajit Mishra, *The Economics of Corruption* (Oxford University Press, New Delhi, 2005).
3. Amrita Singh and K. Kapoor and R. Bhattacharya (ed.), *Governance and Poverty Reduction beyond the Cage of Best Practices (*Phi. Learning Pvt. Ltd., New Delhi, 2009).
4. C. Rajkumar and K. Chockalingam (ed.), *Human Rights, Justice and Constitutional Improvement* (Oxford University Press, New Delhi, 2007).
5. Chandan Mitra, *Corrupt Society* (Penguin Books India Pvt. Ltd. New Delhi, 1998).
6. Dr. A. Ranga Reddy (ed.), *Dimension Of Crime And Corruption In India* (Serial Publication, New Delhi, 2005).
7. Dr. C. R. Jambekar, *Human Rights and Information Technology* (Kanchan Publishing House, New Delhi, 2008).
8. Dr. J. N. Barowalia, *Commentary on Right to Information Act* (Universal Law Publishing Co. Pvt. Ltd., New Delhi).
9. G.N. Jaya (ed.), *Democracy in India* (Oxford University Press, New Delhi, 2001).
10. G.S Monga & V.T Sanctis, *The Unsanctioned Economy in India* (Himalaya Publishing House ,Bombay 1984)
11. Justice M. Rama Joshi, *Ancient Indian Law, Internal Values in Manu Smriti* (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2007).
12. K. N. Gupta, *Corruption in India* (Anmol Publishers, 2001).
13. K. N. Kabra, *India's Black Economy and Maldevelopment* (Patriat Publishers, New Delhi, 1986).
14. M. A. Shewan & U. Veer, *Corruption Money Laundering and Law* (Mittal Publication New Delhi, 2011).

15. Meera Kaura Patel, *The Black Book Universal Guide to Uniform Legal Citations* (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2003).
16. N. (Author), Roots of Effective Governance (Icfai University Press, 2007)
17. N. Bhaskar Rao, *Good Governance: Delivering Corruption–Free Public Services* (Sage Publications India Pvt., New Delhi, 2013).
18. N.K. Singh, *The Politics of Crime and Corruption* (Harper Collins Publishers, New Delhi,).
19. N.Vittal, *Corruption in India, the Road to National Prosperity* (Academic Foundation, New Delhi, Jan.2013).
20. P.V. Ramkrishna, A *Handbook on the Prevention of Corruption Act, 1988* (S. Gogia Publishers, Hyderabad, 2014).
21. P.V. Ramkrishna, *A Treatise on Anti- Corruption Law in India* (Eastern Book Company, Lucknow, 2003).
22. Pardeep Sahni & Uma Medury, *Governance for Development Issues and Strategies* (Prentice'Hall of India Pvt. Ltd., New Delhi, 2003).
23. R. Ahuja, *Social Problem in India* (Rawat Publications, New Delhi, 1997)
24. R.K. Chandrashekharan, *The Comptroller & Auditor General of India: Analytical History, 1947-198* (Ashis Publishing House, New Delhi, 1990).
25. Rajani Ranjan Jha, *Lokayuktas, the Indian Ombudsman* **(**Varanasi**,** 1990).
26. S Guhan and S Paul, (ed.), *Corruption in India* (Vision Books, New Delhi, 1997).
27. S. K. Ghosh, *Indian Democracy Derailed* (APH Publishing Corporation, New Delhi, 1997).
28. S. Kaviraj and S. Khilnani (ed.), *Civil Society, History and Possibility* (Cambridge University Press India Pvt. Ltd., New Delhi, 2007).
29. S. Kumar, Dasgupta & M. Kumar Dasgupta (ed.), *Crime and Corruption in Indian Economy* (Deep & Deep Publications Pvt. Ltd., New Delhi- 2007).
30. S. L. Handre, *Poverty, Corruption and Inflation* (Supria Prakashan, Bombay, 1995).

31. S. Mookherjee, *Commentaries on the Prevention of Corruption Act, 1988,* (Hind Publishing House, Allahabad, 2013)
32. S. S. Gill, Pathology of Corruption (Horpur Collins Publishers India Ltd., 1998)
33. S.P. Sathe, *Administrative Law* (Butter worth's Nagpur , 2010).
34. Sudipta Kaviraj, *The Trajectories of the Indian State: Politics and Ideas* (Permanent Black, New Delhi, 2010).
35. Suresh Kohli *Corruption in India* (Chetana Publications, 1975).
36. Todd Landman (ed.), *Says library of International Relations, Human Rights* (Sage Publications India Pvt. Ltd. , New Delhi, 2010).
37. Upendra Baxi, *Liberty and Corruption* (Eastern Book Company Pvt. Ltd., Lucknow, 1989).
38. Vasant Nargolkar, *J P's Crusade for Revolution* (S.Chand Publishers, New Delhi, 1975).

Articles

1. "Judicial Ethics" 35 (1) Law *and Contemporary Problem*, Winter-1970.
2. "Judicial Independence and Judicial Accountability" 3 *Law and Contemporary Problem*, summer, 1998.
3. A Das Gupta, "Need for Urgent Reforms as Corruption, Civil Society Activism Delay Decision" The Hindustan Times, March 16, 2012.
4. A. Agrwal & S. Chadha, "Corporate Governance and Accounting Scandals, 48 (2) *Journal of Law and Economics* Oct., 2005.
5. A. Shleifer & R.W. Vishny, "Corruption" 108 (3) *Quarterly Journal of Economics*, 1993.
6. Advocates Survey, "Ruthless Crackdown on Corruption" The Hindu, March 16, 2012.
7. Amrita Johri, Anjali Bhardwaj & Shekhar Singh "The Lokpal Act of 2014: An Assessment" XLIX (5) *Economic and Political Weekly*, 2014.

8. Anil Divan, "A Trojen Horse at the Judiciary's Door" The Hindu, June 14, 2013.
9. Arun Chinmayi, "Making the Powerful Accountable" The Hindu, 29 Jan., 2014.
10. Arun, Chinmayi, "Making the Powerful Accountable" The Hindu, 29 Jan., 2014.
11. Arunima Jha, "Corruption: Way Forward" 1 (2) *Pragyan Journal of Law*, June, 2012.
12. Ashok Kapur, "We don't need this Extra- Constitutional Body" Hindustan Times, 4July, 2014.
13. Ashok Mukhopadhya, "Ethics in Governance: The Indian Perspective" XLI (3) *The Indian Journal of Public Administration*, July-Sept., 1995.
14. Bindeshwar Phathak, "Lokpal Dump the Bill, Change the System" Hindustan Times, New Delhi, 23March 1997.
15. C. Rajkumar, "Corruption and Human Rights"19 (19) *Frontline,* Sept. 14-27, 2002.
16. C. Rajkumar, "Corruption and Human Rights: The Human Rights to Corruption Free Services-Some Constitutional and International Perspectives" *Frontline,* Sept.14, 2002.
17. C.Raj Kumar,: "Corruption and Human Rights 2" Frontline , Vol.19,issue 20,sept.28-oct.11,2002.
18. D. Fantaye, "Fighting Corruption and Embezzlement in Third World Countries" 68 *Journal of Criminal Law*,
19. Dr. Nicholas, "The Financial Services Authority and Money Laundering: A Game of Cat and Mouse" 67 (3) *The Cambridge Law of Journal* Nov., 2008.
20. J. Hallak & M. Poisson, "Ethics and Corruption in Education" workshop held at IIEP Paris 28-29 Nov., 2001.
21. J.P. Narayan, "Crusader for Clean Politics" The Times of India, 9 Oct., 1979.
22. Kalpana Sharma, "Right to Information Will Check Corruption" The Hindu, 22 Feb., 2002.
23. Kalpana Sharma, "Right To Information Will Check Corruption" The Hindu, Feb.24, 2002.

24. Kalpana Sharma, "Right to Information wills Check Corruption" The Hindu, 22 Feb., 2002.
25. Kapil Sibbal, "Political Scene not Right for PM's Inclusion under Lokpal" The Economic Times, 21 June, 2011.
26. Kapil Sibbal, "Political Scene Not Right for PM's Inclusion under Lokpal" The Economic Times, June 21, 2011.
27. Krishna Kumar Tummala, "Corruption in India: Control Measures and Consequences" 43(10) *Asian Journal of Political Science,* 2002.
28. Lalit Kumar Gautam, "The Prime Minister, Members of Parliament and the Lokpal: A Conceptual Analysis" (1) Journal of the Campus Law Centre, 2013.
29. M. Flliot, "The Government v. the Ombudsman: What Role for Judicial Review?" 69 (1) *The Cambridge Law Journal,* March, 2010.
30. M.Harsh, P.Mabtia & W.Shrum, "Accountability and Inaction NGOs and Resource Lodging in Development" 41 (2) *Development and Change* March 2010.
31. Mathew Jenkins, "Anna Hazare, Liberalization and the Careers of Corrupting in Modern Indian: 1974-2011" XLIX (30) *Economic and Political Weekly,* 2014.
32. N.K. Singh, "The Journey of First Information Report" The Hindu, July17, 2012.
33. Naomi Hussain, "Rude Accountability: Informal Pressures on Frontline Bureaucrats in Bangladesh" 41 (5) *Development and Change,* Sep.2010.
34. P. Chandra & S. K. Bhatnagar, "Corruption: Its Impact upon Rule of Law in India" 4 (1 & 2) Pragyaan Journal of Law, 2014.
35. P. Chandra & S.K. Bhatnagar, "Central Vigilance Commission: Need to Maintain Institutional Integrity, Independence and Autonomy for its Effective Functioning" 1 (2) Journal of Legal Studies, July, 2013.
36. P. Marpakwar, "Corrupt Babus Profit from Anti-Terrror Buys" The Times of India, July 13, 2012.
37. P. N. Duda, "Many Steps Backward" The Hindustan Times, 9 Dec. 1996.
38. P. Sunder, "Don't Pass The Buck" Hindustan Times, July 10, 2012.

39. P.B. Pashigian, "On the Control of Crime and Bribery" 102 (4) *Journal of Legal Studies,* 1975.
40. Peter Blunt, "Cultural Relativism, Good Governance and Sustainable Human Development" 15 *Public Administration and Development,* 1995.
41. Peter T. Leson, & S. Sobel, Russel, "Weathering Corruption" 51 (4) *Journal of Law and Economics* (Nov., 2008).
42. R.B. Jain, "Political and Bureaucratic Corruption in India" XLI (3) *The Indian Journal of Public Administration,* July-Sept., 1995.
43. Rajeev Dhavan, "Judicial Corruption" The Hindu, 22 Feb., 2002.
44. Rajeev Dhavan, "Judicial Property and Tehelka" The Hindu, Nov. 29, 2012.
45. S. Morse "Is Corruption Bad for Environmental Sustainability? A Cross National Analysis" 11 (1) *Ecology and Society,* 2006.
46. S.H, Singh, "Presidential Reference on 2G Flawed on Fact and Logic, The Hindu, April 12, 2012.
47. Samuel Paul, "Corruption: Who will Bell the Cat?" (23) *Economic and Political Weekly,* June 7-13, 1997.
48. T. M. Bhargavi, "Giving Teeth to the Serious Fraud Office" The Hindu, June11, 2013.
49. U.S. Pandey, "Black Money and Bank Secrecy Law, Hindustan Times, June 7, 2012.
50. V. Eshwar Anand, "Law, Corruption in Judiciary: Time for Action" The Tribune, 3 Dec., 2010.
51. V. Venkatesan, "A Real Sting" 29 (10) *Frontline 19* May to June 1, 2012.
52. V. Venkatesan, "Judicial Accountability Bill Introduced in Lok Sabha" The Hindu, 2 Dec., 2010.
53. V.Venkatesan, "Judicial Accountability Bill Introduced in Lok Sabha" The Hindu, 2 Dec., 2010.
54. Vasundhara Sirnate & Rahul Verma "Changing The Rules of the Game" The Hindu, 22 Jan., 2014.

55. W. Berenschat, "Everyday Meditation the Policy of Public Service Delivery In Gujarat, India" 41 (5) *Development and Change*, Sep.2010.

Documents

1. Fifteenth Lok Sabha, Standing Committee on Personnel Public Grievances, Law and Justice, 48th Report on 'The Lokpal Bill, 2011'
2. Fifteenth Lok Sabha, Standing Committee on Personnel Public Grievances, Law and Justice, 69th Report on 'The Prevention of Corruption (Amendment) Bill, 2013' (Feb., 2014).
3. Law Commission of India, 154th Report on 'The Prevention of Corruption (Amendment) Bill, 2013' (Feb., 2015).
4. Second Administrative Reform Commission, 1st Report on 'Right to Information: Master Key to Good Governance' (June, 2006).
5. Sixteenth Lok Sabha, Standing Committee on Personnel Public Grievances, Law and Justice, 77th Report on 'The Lokpal and Lokayuktas and other Related Law (Amendment) Bill, 2014' (Dec., 2015).

Cases

1 *A.B.Bhaskar Rao v. Inspector of Police, CBI* (2012) 1 SCC (Cri.) 26.
2 *Anant Sadashiv v. Ratnagiri Jilha*, AIR 1953 Bom. 71.
3 *Arun Kumar Agarwal v. State of A.P.* AIR 2011 S.C. 3056.
4 *Ashok Kumar Yadav v. State of Haryana* [(1985)4SCC417]:(AIR:1987 SC454).
5 *Ashok Lanka v. Rishi Dixit* [(2005)5 SCC98] (AIR: 2005 SC2821).
6 *Ashok Tshering Bhutia v. State of Sikkim* AIR 2011 S.C. 1363.
7 *B. L. Wadhera v. Union of India* (AIR 2002 SC 1913).
8 *Bharat Kumar Jayamani v. State of Gujarat*, 1982 Cr. LJ 1304.
9 *Bhuri Nath v. State of J&K* [(1997)2 SCC745] :(AIR: 1997 SC1711).
10 *C.M. Girish Babu v. C.B.I. Cochin High Court of Kerala* AIR 2009 S.C. 2022.
11 *C.M. Sharma v. State of A.P.* AIR 2011 S.C. 608.

12 *Chittranjan Das v. State of Orissa* AIR 2011 S.C. 2893.

13 *Common Cause v. Union of India* (AIR1996 SC 3539).

14 *Dalpat Singh & Anr v. State of Rajasthan* AIR 1969 S.C. 17.

15 *Dalpat Singh and Anr v. State of Rajasthan* AIR 1959 S.C. 17.

16 *Hardwarilal v. G.D. Tapsee* [AIR: 1982 P&H439].

17 *Haribanshlal v. Sahodar Prashad Mahto* [(2010)9 SCC 655]:(AIR:2010 Sc 3381)

18 *Jagat Chandra N. Vora and another v. The Province of Bombay and other* AIR 1950 Bom, 144

19 *Jainarayan v. State of U.P.* AIR 1974 S.C. 226.

20 *K. Karunskran v. State of Kerala and others* [(AIR:2000 Sc 1458)]

21 K.*Karunakaran v. State of Kerala* 2007 (1)SCC 59

22 *Kazi Lhendup Dorji v. C.B.I. & others* 1994 Supp (2) SCC 116.

23 *Kuldeep Sharma v. State of H.P. & Anr*. AIR 2011 S.C. 1895.

24 Lalita Kumari v. Government of U.P. & ors (2014) 2 SCC 1.

25 M. C. Mehta (Taj Corridor Scam) v. Union of India (2007)1 SCC 110.

26 *M. Narayan Nambiyor v. State of Kerala* AIR 1963 S.C. 1116.

27 *Management of Advance Insurance Co. Ltd. v. Gurudasmal* (1970) 1 SCC 633.

28 *Manzoor Ali Khan v. Union of India* (2014) 7 SCC 321.

29 *Munnilal Mochi v. State of Bihar & Anr*. AIR 2011 S.C. 3025.

30 N. *Kannadasan v. Ajoy Khose and others* [(2009)7 Scc1]

31 *Navendra Kumar v. Union of India* and Another [(2014 (133) AIC 743 (GAU; H.C.)]

32 *Padam Sen v. State* AIR 1959 All 707; 1959 Cr. LJ 1276 (All)

33 *Pannalal Damodar Rathi v. State of Maharashtra* AIR 1979 S.C. 11910.

34 *Prabhu v. Union of India*, 2003 (3) Crimes 270 (Ker).

35 *Prakash Shing Badal v. State of Panjab & ors* 2007 (1) SCC 1

36 *R.K. Jain v. Union of India* [(1993)4 SCC119]: (AIR: 1993 SC1769).

37 *R.P. Malik v. State of NCT of Delhi*, 2013 (2) Crimes 632 (Del).

38 *Ram Chandra v. State of Bihar* AIR 1961 S.C. 1629.

39 *Ramchandra v. Bhalu Patnaik* AIR 1950 Orissa 137

40 *Rameshwer v. State of Rajasthan* AIR 1952 S.C. 54.

41 Ramlal Mohanlal Pandey v. State of Mumbai AIR 1960 S.C. 96.

42 *S.K. Venkatraman v. State* AIR 1958 S.C. 107.

43 *Samsher Shing v. State of Panjab* [(1974)2 SCC655]:(AIR: 1997 SC1711).

44 *Shiv Sagar Tivari v. Union of India* (1996) 6SCC 599

45 *Shri Shubhas Chandra Agarwal v. Common Cause Union of India* AIR 1996 S.C. 3539.

46 *State of A.P v. Nalla Raja Reddy* [(1996)3 SCC 28]:(AIR : 1967 Sc 1458)

47 *State of Bihar v. Basawan Singh* AIR 1959 S.C. R. 195: AIR 1958 S.C. 500.

48 *State of Bihar v. Baswan Singh* 1959 SCC 195: AIR 1958 S.C. 500.

49 *State Of M.P. v. Pradeep Kumar Gupta* AIR 2011 S.C. 2334.

50 *State of Maharastra v. Dnyaneshwar Laxman Rao Wankhede* (2009) 15 SCC 200.

51 *State of Maharastra v. Dnyaneswer Laxman Rao Wankhede* 2009 (15) SCC 200.

52 Surajmal Vs. State (Delhi Admin.) AIR 1979 S.C. 1408.

53 *Surajmal v. State (Delhi Administration*) AIR 1979 S.C. 1408.

54 *U. P. State Road Transport Corporation v. Suresh Chandra Sharma* 2010 (6) SCALE 87.

55 *Kazi Lhendup Dorji v.C.B.I. and others* 1994 Supp (2) S.C.C. 116.

Websites

1 http: //oecd.org/dataceed/62/54/35593188. path.

2 http:// www.unode.org/unode/en/corruption/index.html

3 http://annahazaresays.congress.com/2011/10/14/journey-of-a revolution/

4 http://annahazaresays.congress.com/2011/10/14/journey-of-a revolution/

5 http://articles.economicstimes.indiatimes.com/2011.06.21/news/29683690.

6 http://eci.nic.in/Electoral/Laws/Order Notifications/Symbols 170309 pdf (Last visited: on 10 /08/2015).

7 http://www. jstor.org/stable/10.1086/590129.(Last visited: 17/01/2013)

8 http://www.accessonline.org/or (0343) 155-443059

9 http://www.articles.economicstimes.indiatimes.com/2011.06.21/news/29683690.

10 http://www.bbc.co.uk/news.world-asia-inda-21241289.

11 http://www.bbc.co.uk/news.world-asia-inda-21241289.

12 http://www.cscsaarchive.org:8081/MediaArchive/liberty.nsf/%28docid%29/FE3EDO5FCA7AD418E5256C510026A313. (Last visited: 24 /09/2015.

13 http://www.cscsaarchive.org:8081/MediaArchive/liberty.nsf/%28docid%29/FE3EDO5FCA7AD418E5256C510026A313 accessed on 24 /7/2014.

14 http://www.cscsarchive.org:8081/media archive/liberty.nsf/%28docide.last visted:09/03/2013.

15 http://www.ecologyandsociety.org/vol11/iss1/art22/.

16 http://www.flonet.com/fl1919/19190780.htm(Last visited: 27/07/2012)

17 http://www.flonet.com/fl1919/19190780.htm.(Last Visited :2/05/2012)

18 http://www.forntline.in/statc/html/fl1507/15070790.html

19 http://www.forntline.in/statc/html/fl1507/15070790.html

20 http://www.frontline.net.com

21 http://www.frontlineonnet.com/fl1920/stories/20021011008607500.htm (Last visited: 18/06/2012).

22 http://www.himduonnet.com/2002/02/22/stories/2002022200031000htm.

23 http://www.hindu.com/2010/12/02/stories /2010120265661500.htm.

24 http://www.hindu.com/2010/12/02/stories/2010120265661500.htm.

25 http://www.hinduonet.com/2002/02/222stories/20202200031000.htm (Last visited: 13/01/2013)

26 http://www.icclr.law.upc.ca/publication/reports/bott pap.pdf. (Last visted: 24/03/2013).

27 http://www.indiankanoon.org/doc/310431/.

28 http://www.indiankanoon.org/doc/310431/.

29 http://www.jstor .org/stable/i251072.(Last visited: 6/08/2011)

30 http://www.jstor.org/stable/10.1086/652

31 http://www.jstor.org/stable/40389524.

32 http://www.jstor.org/stable/40389524. (Last visited: 01/03/2013).

33 http://www.jstor.org/stable/4073492.(Last visited :12/09/2012)

34 http://www.jstor.org/stable/839545309071

35 http://www.jstor.org/stable/i251177.(Last visited :13/07/2012)

36 http://www.loksatta.org/cms/documents/advocacy /corruption.pdf. (Last visited: 27/05/2013).

37 http://www.loksatta.org/cms/documents/advocacy/corruption.pdf accessed on 20/11/2015.

38 http://www.loksatta.org/cms/documents/advocacy/corruption.pdf accessed on 25/7/2014.

39 http://www.oecd.org/dataoecd/62/54/35593188.pdf.(Last visted: 12/05/2013).

40 http://www.rbalu.wordpress.com/2010/12/01/corruption/u n convention against corruption.pdf.(Last visited: 15/04/2013).

41 http://www.the hindu.com.net.in

42 http://www.trancparency.org/publications/gcr.(Last visited: 21/04/2013).

43 http://www.transparency India. Content/view/publications/u n convention against corruption.pdf (Last visited: 15/04/2013).

44 http://www.u4.no/helpdesk/query.cfm?id=188.(Last visited: 07/04/2013).

45 http://www.undp.org/governance /mdgs.htm.(Last visited: 12/05/2013).

46 http://www.undp.org/governance /mdgs.htm. (Last visited: 27/05/2013).

47 http://www.unesco.org/iiep.(Last visited:15/07/2012)

48 http://www.unodc.org/document/treaties/4ncac/publication/convention/08-50026/e.pdf.(Last visited:12/01/2013)

49 http://www.unodc.org/unodc/en/corruption/index. (Last visited: 28/04/2013).

50 http://www.unodc.org/unodc/en/treaties/cac/background/seceratary -general-speech.html.

51 http://www.unodc.org/unodc/en/treaties/cac/background/secretary-general-speech.html.

52 http://www.voiceofindia.in.content/view/6863/78.(Last visited: 21/04/2013

53 Stable http://www.jstor.org/stable/10.1086/651201.

54 Stable http://www.jstor.org/stable/40784056.(Last visited : 28/ 07/2015

55 Stable URL http://www.jstor.org/stable/10.1086/430808 (Lastvisited:16/03/2012)

56 Stable URLhttp://www.jstor.org/stable/10.1086/590129. (Last visited:16/03/2012)

57 Stable URLhttp://www.jstor.org/stable/4073492. Last visited :25/05/2012

58 Stable URL http://www.jstor.org/stable/i251072 (Last visited: 16/04/2012)

59 Stable URLhttp://www.jstor.org/stable/i251177. Last visited:12/04/2012.

60 URL:http://www.ecologyandsociety.org/vol11/iss1/art22/.

61 www.frontline.net.com.

62 www.hinduonnet.com/2002/02/22/stiries/2002022200031000htm.

63 www.hinduonnet.com/202/02/22/stories/200202220003100htm.

64 www.jstor.org/stable/40389524.

65 www.jstor.org/stable/839540309071.

66 www.thehindu.com.net.in

67 www.unesco.org/iiep. (Last visited: 16/04/2012).