AN ANALYTICAL STUDY ON THE LAWS RELATED TO CORRUPTION IN INDIA

A dissertation be submitted in partial fulfillment of the requirement for the award of degree of master of laws.

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CERTIFICATE

This is to certify that the dissertation titled, " AN ANALITICAL STUDY ON THE LAWS RELATED TO CORRUPTION IN INDIA " is the work done by ANKIT UPADHYAY under my guidance and supervision for the partial fulfilment of the requirement for the Degree of Master of Laws in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

I wish her/his success in life.

Date --------------   Dr.Gitu Singh

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DECLARATION

I, Ankit Upadhyay, student of legal studies, BBD UNIVERSITY ,Lucknow declare that the dissertation entitled "AN ANALYTICAL STUDY ON THE LAW RELATED TO CORRUPTION IN INDIA " submitted by me for the award of degree of Masters of Law in school of legal studies BBD UNIVERSITY, LUCKNOW is an work carried out by me and it has not been submitted to any other University/Institution for the award .

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This dissertation is in form, it is as a result of many people's contributions. I cannot afford to maintain the name of everyone who, in one way or the other, offered me helping hand. Let me mention the following to represent others.

First and foremost, my gratitude is directed to my family back home, with out them this dissertation would not be possible. They have been a great support structure both emotionally and financially throughout my study life. No amount of words could accurately convey my gratitude.

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ABBREVIATIONS

A.I.R.	ALL INDIA REPORTER
A.T.M.	AUTOMATED TELLER MACHINE
C.B.I.	CENTRAL BUREAO OF INVESTIGATION
F.I.R.	FIRST INFORMATION REPORT
R.T.I.	RIGHT TO INFORMATION
U.K.	UNITED KINGDOM
U.S.A.	UNITED STATE OF AMERICA
C.O.I.	CONSTITUTION OF INDIA
I.P.C.	INDIAN PENAL CODE
Cr.P.C.	CRIMINAL PROCEDURAL CODE
C.V.C.	CENTRAL VIGILANCE COMMISSION

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CHAPTER-I

INTRODUCTION

1.1 INTRODUCTION

Corruption is not a recent phenomenon in India. There are several references to the prevalence of corruption in ancient India. The famous Vedic prayer addressed to the divine power reads,-Oh Lord, knowing everybody and everything in the most accurate manner, thou knowest the regenerate of good conduct and the degenerate, the destroyers of good works for general public. Do Thou exterminate the latter from their roots.‖ This shows that even in Vedic times corrupt practices probably existed. Divinity was invoked to use its knowledge and power to exterminate the degenerate, the criminal and the corrupt for the sake of humanity. Corruption in India has been a problem ever since the country had been having a multilayered administration by officers, ministers and other administrative chiefs. The corruption problem in ancient India, bundled with bribery, kept infesting the society more and more in an alarming rate. This is quite clear from the way the contemporary writers like Ksemendra and Kalhana have condemned the government officials, as well as other employees of different levels, in their celebrated works. Ksemendra in his Dasavataracaritam has advised the king to remove all the officials, ministers, generals and priests from office with immediate effect, who were either taking bribes themselves or have been indulging in corruption in some other way. Yet another work by Ksemendra, called Narmamala, depicts corruption bribery spreading fast like rampant maladies. He also found an answer to the much discussed question howto stop corruption in India of his time; he has explicitly addressed the contemporary intelligentsia to step forward and shoulder the responsibility of purging their folks.

Kalhana too was merciless in his condemnation of the corrupt government officers in India of his own time. He damned the officials outright and asked the king to stay alert from their evil entente. Kalhana has also cited some examples of top incidents of corruption in India of his days. He said that Bijja became even richer than the king as he sought to unfair means of getting money, while Ananda managed to achieve a high post in the office by bribing his higher officials.

Lot can be gathered about the prevalence of corruption in ancient India from the text ‘by Kautilya who was a minister in the Kingdom of Chandragupta Maurya . Artahshastra[1] provides a list of 40 kinds of embezzlement. In all these cases, the concerned functionaries such as the treasurer (nidhayaka), the prescriber (nibandhaka), the receiver (pratigrahaka), the payer

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Artahshastra

(dayak), the person who caused the payment (dapaka) and the ministerial servants (mantri-vaiyavrityakara) were to be separately interrogated.In case any of these officials were to lie, their punishment was to be enhanced to the level meted out to the chief officer (yukta) mainly responsible for the crime. After the enquiry, a public proclamation (prachara) was to be made asking the common people to claim compensation in case they were aggrieved and suffered from the embezzlement. Thus, Kautilya was concerned about carrying the cases of fraud to their logical conclusion. The Arthashastra states that an increase in expenditure and lower revenue collection (parihapan) was an indication of embezzlement of funds by corrupt officials.

The Arthashastra[2] of Kautilya thus shows that the ancient system of governance and administration was quite contemporary in operational guidelines when dealing with corruption. It also quite convincingly demonstrates that corruption is not an exclusive feature of modern times alone. The fact that the menace has survived and thrived through the ages speaks volumes about its endurance.

Governments of all historical eras have recognised its illegality and devised legal instruments to tackle the problem, but they have not been able to overcome its spread as well as acceptability in society.

Indian moral dilemma towards corruption is traceable in its history. Indian history tells of the capture of cities and kingdoms after guards were paid off to open gates, and commanders paid off to surrender. Any invader willing to spend cash could brush aside India‘s Kings, no matter how many tens of thousands soldiers were in their military.

Hardly any resistance was given by the Indians at the Battle of Plassey. Clive paid off Mir Jaffar and all of Siraj Ud Daula‘s army was folded to a mere 3,000 odd soldiers. There has always been financial exchanges for capturing Indian forts. Golconda fort was captured in 1687 after the secret back door was left open. Mughals vanquished Marathas and Rajputs with nothing but bribes. The Raja of Srinagar gave up Dara Shuko‘s son, Sulaiman to Samrat Aurangzeb after receiving a handsome bribe. There were many cases where Indians participated on a large scale in treason due to bribery.

Now-a-days bribery and corruption among public servants and politicians has reached the climax in our society. Corruption has penetrated into every sphere of Governmental and political activities. Mr. Tyler Marshall threw some light on the extensiveness and intensiveness of the

[2] Artahshastra

problems of corruption in India in comparison with the Western Countries. He narrated:

“Unlike western democracies, where corruption tends to be concentrated towards the top of the hierarchy, in India it has infested not only politics but also virtually every level of society”

To speak in one sentence- corruption in public services in India now stands a great national problem putting bar on her path of progress.

Obviously, the question arises:

- What the Government of India is doing to solve this great problem?
- Is it that the Government has become a silent-observer?

Certainly not for steps have already been taken via adoption of various anti-corruption measures to fight with. But one thing to be always borne in our mind that what constitutes the Government? Can we imagine a Government minus the politicians, the so-called leaders of the nation? In the opinion of the researcher, they are the source of power and at the same time source of corruption. They are the leaders of the people and at the same time of those who abet corruption and who adopt it. So, there lies the real answer.

Of course there are certain defects in the anti-corruption measures, so adopted, but now it is clear that these defects are not solely responsible.

The corruption by parties, politicians and men in power holding public services has gone to such an extent that public have started losing faith in the rule of law which is very harmful.

Being Indian and having taken birth on this soil I should not be reluctant in taking pain to pen at least some thing for the elimination of this national problem. I feel the pages that I have already covered so far are sufficient at least to create an impression regarding the very existence of corruption in various nations and specifically in our society as a great national problem.

1.1.1 CORRUPTION IN INDIA IS A CONSEQUENCE OF THE NEXUS BETWEEN BUREAUCRACY,POLITICS AND CRIMINALS-

- Corruption3 in India is a problem that has serious implications for protecting the rule of law and ensuring access to justice. As of December 2009, 120 of India's 542 parliament members were accused of various crimes, under India's First Information Report procedure wherein anyone can allege another to have committed a crime.
- Many of the biggest scandals since 2010 have involved high level government officials, including Cabinet Ministers and Chief Ministers, such as the 2010 Commonwealth Games scam (Rs.70,000 crore (US$9.8 billion)), the Adarsh Housing Society scam, the Coal Mining Scam (Rs.1.86 lakh crore (US$26 billion)), the Mining Scandal in Karnataka and the Cash for Vote scams.
- A 2005 study done by the Transparency International in India found that more than 92% of the people had firsthand experience of paying bribes or peddling influence to get services performed in a public office.
- Officials are alleged to steal state property. In cities and villages throughout India, groups of municipal and other government officials, elected politicians, judicial officers, real estate developers and law enforcement officials, acquire, develop and sell land in illegal ways. Such officials and politicians are very well protected by the immense power and influence they possess. Apart from this, slum-dwellers who are allotted houses under several housing schemes such as Pradhan Mantri Gramin Awaas Yojana, Rajiv Awas Yojna, Pradhan Mantri Awas Yojna etc., rent out these houses to others, to earn money due to severe unemployment and lack of a steady source of income.

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[3] Ibid

1.1.2 INDIA IS NOW NO LONGER CONSIDERED A SOFT STATE.

- India was ranked 38th by money held by its citizens in Swiss banks in 2004 but then improved its ranking by slipping to 61st position in 2015 and further improved its position by slipping to 75th position in 2016.According to a 2010 The Hindu article, unofficial estimates indicate that Indians had over US$1,456 billion in black money stored in Swiss banks (approximately US$1.4 trillion).
- Indian companies are have been reported to misuse public trusts for money laundering. India has no centralised repository—like the registrar of companies for corporates—of information on public true.

1.2 AIM & OBJECTIVE:

- To uphold the sovereignty and integrity of the nation .
- To bring good governance through good laws and good people .
- To eradicate corruption by getting rid of causes that creates corruption .
- To optimize utilization of our human and natural resources for improving quality of life of citizens .
- To advice the govt. for making administrative reforms to make corruption free India .

1.3 SCOPE & LIMITATION:

This research to be carried out effectively it was limited on both time and space. That is to say, the study focused only on the various legislations and implementations of corruption laws on democratic governance of India. The research focused on the various Indian legislations and compared them with the anticorruption legislations of some other countries, the researcher came out with final recap of information from all these sources.

As a matter of fact, much work has already been done in India and also in West Bengal for the control or minimization of Corruption in our democracy. However, what I feel is that there is still huge scope for a comprehensive co-ordination among the law implementing authorities and even further legislation in the field of corruption.

As such the present work is a humble attempt to give specific suggestions in the field of legal battle of corruption in India and to improve the transparency in the general governance.

1.4 STATEMENT OF PROBLEM

In India the ugly face of corruption after independence was made public by the media mainly with the scam of Bofors gun deal, then the Share Market Scam involving the broker Harshad Mehta, Tehelka Dot com, Operation Duryadhan, Telgi Ghotala and 2G scam came as endless phenomena in Indian society. Despite the recommendations of the Kothari and later Satish Chandra committees, we have over time diluted the standards of the public service. Not only do our evaluation systems not ensure the selection of the best and the brightest, over time the qualifications of those selected have been declining also.

The second World War provided a fillip to the growth of corruption. It got an impetus in the post war flush of money and consequent inflation. The subsequent period from the Seventies witnessed the start of the era of political corruption and criminalization of politics, of conducting or allowing corruption in the electoral process using power and with links between criminals and politicians resulted in the total demoralization of our public lives.

Corruption has become a freelance activity of everyone, everywhere. In Europe, stories of political parties/ officials having taken huge kickbacks for public works projects are heard frequently. In countries like Belgium, Italy, Austria, France and Spain considerable numbers of political figures are being actively investigated. In Britain, over the years, many members of parliament have come under the cloud of scandals involving corruption and personal/political interests. In China bureaucrats have commercialized their administrative powers and are no different from their counterparts elsewhere. In Japan, Philippines heads have often rolled due to open indulgence in corruption. People in developing countries cannot console themselves on the fact that corruption is everywhere. There is urgent need to ponder seriously over the causes and effects of corruption in the systems and to find ways out of the menace.

1.5 HYPOTHESIS

To arrive at a conclusion with the aforesaid objectives the following hypothesis are framed

- Right from 1860 till the date, from time to time, various laws relating prevention of corruption in public services in India have been made. Yet, corruption has been increasing.
- A critical analysis of all the Anti Corruption Laws reveals the existence of various flaws within.

- A public servant alleged for corruption can be prosecuted by the Prosecution and tried by Judiciary. Unfortunately, both are found to be defective and corrupt to some extent.
- Necessity arises to have an extensive and intensive critical study of the relevant Anti Corruption Laws in India as well as in the State of Orissa and the judicial trend there on expressed by the Honourable Apex Court and High Courts for finding out ways for rectification of the aforesaid defects.
- Suggestions need to be advanced to rectify the felt defects in Anti Corruption Laws, Prosecution and Judiciary so that a corrupt public servant can be punished and corruption in public services can be prevented in India. Both preventive and remedial measures need to be follow.

1.6 RESEARCH METHODOLOGY

This is an analytical research. Analytical research tries to make critical evaluation of the existing state of affairs, considers the lacunae, if any, in the present system and searches for required development which the time demands.

The primary sources of data in this study are : legislations, judicial decisions, parliamentary proceedings, reports of various commissions, Gazettes, conventions, covenant and laws. And the secondary sources of data are : books, journals, commentaries, crime reports and analysis, Governmental reports and publications, news papers, periodicals, e-journals, e-books, e-blogs, various web sites and published and unpublished scholarly writings. In recent years significant improvements have been made in the measurement of corruption, in the construction of composite corruption indices, and in the design and implementation of surveys. Beyond applying improved empirics through amulti pronged and empirical research with operationally relevant utilization . We can effectively utilize empirical analysis in the design and implementation of action programmes. The Economic Development Institute at the World Bank, in collaboration with the transparency international and local NGOS, has developed a methodological approach integrating within one empirical framework the various components identified so far for understanding and combating corruption.

CHAPTER-II

CAUSES OF CORRUPTION

2.1 INTRODUCTION

In India corruption has been injected in the blood of every citizens, people use to give bribe to make their work faster & to make illegal work as a legal work and these have been tradition in every offices of government.

According to a survey study, the following factors have been attributed as causes of corruption:

- Greed of money, desires.
- Higher levels of market and political monopolization
- Low levels of democracy, weak civil participation and low political transparency
- Higher levels of bureaucracy and inefficient administrative structures
- Low press freedom
- Large ethnic divisions and high levels of in-group favoritism
- Gender inequality
- Poverty
- To live luxurious life
- To gain facilities faster
- Political instability
- Contagion from corrupt neighboring countries
- Low levels of education
- Lack of commitment to society
- Extravagant family

2.2 CORRUPTION EQUATION

Drawing upon the concepts described above, a corruption equation can be set out as follows (Klitgaard 1998):

$$C = R + D - A$$

In the above equation, C stands for corruption, R for economic rent, D for discretionary powers, and A for accountability.

The equation states more opportunities for economic rent exist in a country, the larger will be the corruption. As like as , the greater the discretionary powers granted to administrators, the greater will be the corruption. However, the more administrators are held accountable for their actions, the less will be the corruption, and hence a minus sign in front of accountability.

Stated differently, the equation tells us that a fertile ground for growth of a thoroughly corrupt system will emerge in a country if it satisfies the following three conditions:

- It has a large number of laws, rules, regulations, and administrative orders to restrict business and economic activities and thereby creates huge opportunities for generating economic rent, and especially if these restrictive measures are complex and opaque and applied in a selective, secretive, inconsistent and non-transparent way;
- Administrators are granted large discretionary powers with respect to interpreting rules, are given a lot of freedom to decide on how rules are to be applied, to whom and in what manner they are to be applied, are vested with powers to amend, alter, and rescind the rules, and even to supplement the rules by invoking new restrictive administrative measures and procedures; and
- There are no effective mechanisms and institutional arrangements in the country to hold administrators accountable for their actions.

2.3 LEVELS

Although corruption can occur at a variety of levels, attention has usually been directed at only two – namely, the high and the low – and these are believed to reinforce each other.

High level corruption[4] refers to misconduct at the top and by leading politicians. Since these people are generally well-off and have a lot of privileges associated with their high office, their corrupt behaviour is not attributable to low pay and out of necessity to meet the living expenses of their families. Instead, greed is considered a main motivating factor. But there are other compulsions. To remain in office, for example, can also be an overriding motivating force.

[4] Ibid

With election campaigns becoming expensive, corruption related to campaign financing is a big political issue in some countries. The need to dispense favours among political allies, colleagues and subordinates to keep them happy, cooperative and loyal is another factor. Moreover, in some societies there are traditions and customs whereby elected officials are expected to make substantive contributions to the welfare of the people in constituencies that elect them. For instance, in some countries a politician is required by tradition to present an expensive gift at a wedding involving a supporter in his electoral district. When such a community has a large number of wedding receptions, birthday parties, anniversaries, celebrations, rituals, festivals, and fund raising ceremonies for all sorts of worthy causes, the financial burden of these festivities can fall heavily on elected officials. And the higher up you are in the pecking order, the larger is the contribution you are expected to make by custom and long held traditions of the land. Hence, there are economic, political, social and cultural imperatives that motivate higherlevel bureaucrats to engage in rent seeking activities.

At the other end, low level corruption – such as the underhand payment that has to be made to a clerk to expedite the issue of a driving license – has its own set of problems. In this case the general perception is that civil servants with insufficient salaries to meet the living expenses of their families are driven by necessity to engage in corrupt practices. Raising their pay, it is argued, will mean less need to depend on illegal activities to earn a living while they have more to lose if they get caught. This sounds reasonable and there are cases where countries that pay their civil servants well, tend to have less public sector corruption than in those where pay scales are low. But there is no hard evidence to suggest that low level public employees are less greedy than their superiors. The line between need and greed corruption is hard to draw and it is hard to determine where one ends and the other begins.

Thus, there are those who believe that increasing pay without other complementary measures is not likely to have a significant impact on reducing corruption. On the contrary, the cost to the government budget of paying employees more, may be much larger than the benefit that may result from reduced corruption. Moreover, when no serious efforts are made to control inflationary pressures in a country, shopkeepers will take an increase in civil servant salaries as a sign for them to raise prices. Higher pay leading to higher prices and higher costs of living mean there is no increase in the "real" wage of government employees and no improvement in their

welfare. But raising civil servants' pay, by causing a general increase in prices, will lead to a deterioration of economic conditions for everybody. This illustrates the point that there is a need to control inflation, restore macroeconomic stability, address the underlying causes for destabilizing speculative behaviour, and to build confidence in the economy for the success of any reform measure.

Aside from encouraging corruption, low pay has other detrimental effects on the attitudes and performance of public employees. It contributes to reducing incentives, low morale, increased inefficiency, moonlighting and absenteeism and loss of self respect and dignity. As a result, some of these employees become nasty, rude and indifferent in their dealings with the general public. They can be exasperating and create a lot of nuisance value to ordinary citizens. Under these circumstances, it is also hard to recruit and retain good workers as they will seek employment or leave to take up more challenging and higher paying jobs in the private sector or abroad. Hence, rather than considering the matter only from the corruption point of view, a more wide-ranging civil service reform programme, including adjusting salaries to cover the living expenses of an average family when inflationary expectations have been brought under control, would need to be given careful and serious attention where such conditions prevail in a country.

Corruption can occur in many sectors, whether they be public or private industry or even NGOs (generalyy in public sector). However, only in democratically controlled institutions is there an interest of the public to develop internal mechanisms to fight against corruption, whereas in private industry as well as in NGO in public control. Therefore, the profits are largely decisive.

2.4 GOVERNMENT & PUBLIC SECTOR

Public corruption includes corruption of the political process and of government agencies such as tax collectors and the police, as well as corruption in processes of allocating public funds for contracts, grants, and hiring. Recent research by the World Bank suggests that who makes policy decisions (elected officials or bureaucrats) can be critical in determining the level of corruption because of the incentives different policy-makers face.

Political corruption is the abuse of public power, office, and resources by elected government officials for their own gain, by extortion, soliciting or offering bribes. It can also take the form of office holders maintaining themselves in office by collecting votes by enacting laws which use taxpayers' money. Evidence suggests that corruption shall have political consequences with citizens being asked for bribes becoming less likely to identify in country or region.

2.4.1 WITHIN THE POLICE:

Police corruption is a specific form of police misconduct designed to achieve financial benefits, personal profits, career advancement for a police officer or officers in exchange for not pursuing or optional pursuing an investigation or arrest or aspects of itself where force members collude in lies to protect their precincts, unions and/other law enforcement members from accountability. One common form of police corruption is soliciting or accepting bribes in exchange for not reporting organized crime like- drug or prostitution rings or other illegal activities. When civilians become witnesses to police brutality, officers are often known to respond by harassing and intimidating the witnesses as retribution for reporting the misconduct. Whistleblowing is not common in law enforcement, one of the main reasons being because officers who do so, normally face reprisal by being fired, being forced to transfer to another department, being demoted, being shunned, losing friends, not being given back-up during emergencies, receiving professional or even physical threats as well as having threats be made against friends or relatives of theirs or having their own misconduct exposed, in response to reporting the misconduct of other officers. In America another common form of police corruption, is when white supremacist groups, recruit members of law enforcement into their ranks or encourage their members to join local police departments to repress minorities and covertly promote white supremacy.

Another example in the police officers flouting the police activities in order to secure convictions of suspects-for example, through the use of surveillance abuse, false confessions, police perjury and/or falsified evidence. Police officers have also been known to sell forms of contraband that were taken during seizers (such as confiscated drugs, stolen property or weapons).

Corruption and misconduct can also be done by prison officers, such as the smuggling of contraband (such as drugs or electronics) into jails and prisons for inmates or the Another form of misconduct is probation officers taking bribes in exchange for allowing paroles to violate the terms of their probation or abusing their paroles. More rarely, police officers may deliberately and systematically participate in an organized crime themselves, either while on the job or during off hours. In most major areas, there are internal affairs sections to investigate suspected police corruption or misconduct.

2.4.2 IN THE JUDICIAL SYSTEM

Judicial corruption refers to corruption-related to magistrates, through receiving bribes, improper sentencing of convicted criminals, bias in the hearing,remit the sentence and judgement of arguments and other such misconduct. Judicial corruption can also be conducted by prosecutors and defense attorneys.

An example of prosecutorial misconduct, would be a politician or a crime boss bribing a prosecutor to open investigations and file charges against an opposing politician or a rival crime boss, in order to hurt the competition.

An example of attorney misconduct, would be a defense attorney refusing to represent a client for political or professional motives.

Governmental corruption of judiciary is also known in many transitional and developing countries because the budget is almost completely controlled by the executive bodies. The latter undermines the separation of powers, as it creates a critical financial structure of the judiciary. The proper national wealth distribution including the government spending on the judiciary is subject of the constitutional economics.

It is important to differentiate between two methods of corruption of the judiciary: the government, and the private. Judicial corruption can be difficult to completely eradicate, even in

developed countries also. Corruption in judiciary also involves the government in power using the judicial hand of government to press the opposition parties in the detriments of the state.

2.4.3 WITHIN THE MILITARY

Military corruption refers to the abuse of power by members in the armed forces, in order for career advancement or for personal gain by a soldier or soldiers. One form of military corruption in the United States Armed Forces, is a military soldier being promoted in rank or being given better treatment than their colleagues by their officers, due to their race, sexual orientation, ethnicity, gender, religious beliefs, social class or personal relationships with higher-ranking officers in spite of their merit.

In addition to that, the US military has also had many instances of officers sexually assaulting fellow officers and in many cases, there were allegations that many of the attacks were covered up and victims were coerced to remain silent by officers of the same rank or of higher rank.

2.5 CORRUPTION UNEARTHED BY PUNJAB AND HARYANA HIGH COURT :

On November,9 ,2013 The Hindusthan Times, Patiala reported the judgment-forfavour fact on record and a secret inquiry by the Hon‘ble Punjab and Haryana High Court had found that former CBI special judge Hemant Gopal acquitted a man for extraneous consideration[5].

After the investigation suggested he was guilty of grave misconduct and impropriety, the court suspended him as add. district and sessions judge Of Faridkot, which was his last post. The secret report circulated to full court said that the judge was in touch with a middleman named

[5] News Paper (The Hindu, New Delhi, January 2009)

Sushil Singla, who after accepting bribe from accused, visited the judge's house at Patiala, where he was then in the CBI special court.

"All these facts and circumstances point to the involvement of Hemant Gopal and prove that he passed judgment of acquittal in favour of Parminder Singh for extraneous consideration," says the report, adding: "Sushil Singla (the middleman) entered the CBI judge's house with a bag containing the money but came out without it, which shows it was handed over to Hemant Gopal."

High court registrar (vigilance) Arun Kumar Tyagi conducted this inquiry on the complaint of former legislator Mangat Rai Bansal, who submitted video evidence in the high court. The video suggests that the middleman had demanded Rs. 40 lakh each from Bansal and two other accused but instead of paying bribe, Bansal chose to film the deal and expose the judge as "corrupt".

The inquiry based on five points found the judge Hemant Gopal guilty of involvement in this bribery scandal. Based on the call details of Singla and the judge, the high court inquiry team concluded that the judge was in constant touch with the middleman all through the deal.

SUMMARY OF INQUIRY

A man named Shekher Kumar introduced Sushil Singla (law officer known to judge Hemant Gopal) to former legislator Mangat Rai Bansal, whose house Singla visited on various days, including April 17 and 18 April, when money was handed over.

On April 17, Mangat Rai Bansal, Kulwant Rai and Parminder Singh handed over Rs. 40 lakh to Sushil Singla at Bansal house as bribe for Hemant Gopal to acquit the three of paddy embezzlement.Bansal filmed the deal on a hidden video camera On April 18, Singla visited the house of judge Hemant Gopal by taxi arranged by Bansal and handed over the money to the judge.

Singla demanded another Rs. 80 lakh, and Bansal and Kulwant Rai refused to pay, while Parminder Singh agreed to pay Rs. 40 lakh.

On April 19, Singla refunded Rs. 10 lakh to Kulwant Rai and Rs. 15 lakh to Manoj Bala, wife of Bansal; and as a result of this deal, while Parminder Singh was acquitted, Bansal and Kulwant Rai were convicted.

CHAPTER - III

METHOD TRIED TO ABOLISH CORRUPTION

3.1 INTRODUCTION OF ANTI-CORRUPTION LAWS IN INDIA

In India two separate sets of law and procedure are being followed to charge, prosecute and convict the corrupt public servants.

- Criminal Proceedings
- Departmental Proceedings

There is no hard and first rule as to the strict adherence to a particular set. Generally offences which are of comparatively lesser gravity and for which no strong evidence is available are subjected to 'Departmental Proceedings'. Here the punishment awarded to the delinquent public servant is neither imprisonment nor fine in contradiction to that of 'Criminal Proceedings'. The principles of the law of evidence are not strictly followed in Departmental Proceedings' where as it is strictly followed in 'Criminal Proceedings'. It is the discretion of the disciplinary authority to permit the delinquent public servant, the assistance of a legal practitioner having regard to the circumstances, that such assistance is justified in departmental enquiries where as it is a matter of right on the part of the delinquent public servant to engage a lawyer of his choice to conduct his case on his behalf.

A public servant who has committed an offence under the provisions of the India Penal Code, 1860, and Prevention of Corruption Act, 1988 as discussed in subsequent pages is subjected to the Criminal Proceedings[6]. The offences are investigated and in bribery-cases the trap is arranged and the charge sheet is framed by the Anti-Corruption-Agencies. Thereafter the delinquent public servant is prosecuted in the Special Judge-Court and convicted or acquitted by the Special Judge. The public prosecutor empowered by the Central Government prosecutes the case on behalf of the prosecution side. The delinquent public servant may plead for himself or can engage an advocate on his behalf. Appeals can be preferred from the orders and judgment ofthe Special Judge to the High Court and subsequent appeals to the Supreme Court.

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[6] Right to Information Act, 2005, The Prevention of Money Laundering Act, The Prevention of Corruption Act, 1988, 2002, The Prevention of Corruption Act, 1947, The Indian Penal Code and The Criminal Law Amendment Act, 1944 etc

3.2 SOME IMPORTANT LAWS TO ABOLISH CORRUPTION

3.2.1 Right to information act 2005

The 2005 Right to Information Act required government officials to provide information requested by citizens or face punitive action, as well as the computerisation of services and the establishment of vigilance commissions. This has considerably reduced corruption and opened up avenues to redress grievances

The major sources of corruption include a determined denial of transparency, accessibility and accountability, cumbersome and confusing procedures, poliferation of mindless controls, and poor commitment at all levels to real results ofpublic welfare.

The executive at all levels attempts to withhold information to increase its scope for control, patronage, and the arbitrary, corrupt and unaccountable exercise of power. Therefore, demystification of rule and procedures, complete transparency and pro-active dissemination of this relevant information amongst the public is potentially a very strong safeguard against corruption.

Ultimately the most effective systemic check on corruption would be when the citizen herself or himself has the right to take the initiative to seek information from the state, and thereby to enforce transparency and accountability. In this context, the movement for “Right to Information” is very important. Accordingly, the Right to Information Act, 2005 has been enacted.

The Lok Sabha passed The Right to Information Bill, 2005 on 11th May 2005 and the Rajya Sabha passed the Bill on 12th May 2005 and it received the assent of the President of India on 15th June 2005. The Act was published in the Gazette of India (extraordinary) on 21st June 2005. The provisions of subsection 1 of section 4, sub-section (1) and (2) of section 5, sections

12, 13,15, 16, 24, 27 and 28 came into force at once, and the remaining provisions ofthe Act came into force from 12th October 2005.

The new legislation is an improvement version of The Freedom of Information Act, 2002, with intention to ensure greater and more effective access to information.

THE SALIENT FEATURES OF THE RIGHT TO INFORMATION ACT, 2005

- All citizens shall have the right to information.
- Public Authorities have legal obligation to provide information, published manuals, maintain web sites etc.
- Designation of Information Officers.
- Disposal of Request for Information in a timely and effective manner.
- Restriction for Third Party Information.
- Certain Information are prohibited and exempted from the provision of the Act.
- Information Commissions with administrative and quasi-judicial powers are to be established. Reasons are to stated for rejection of application.
- Appellate Officer is to be appointed by the Public Authorities to hear the appeals against the decision of the Public Information Officer.
- Penalties are to be imposed for non-furnishing of Information.

3.2.2 RIGHT TO PUBLIC SERVICES LAWS

Right to Public Services legislation, which has been enacted in 19 states of India, guarantee time bound delivery of services for various public services rendered by the government to citizen and provides mechanisms for punishing the errant public servant who is deficient in providing the service stipulated under the statute Right to Service legislation is meant to reduce corruption among the government officials and to increase transparency and public accountability[7].

The Indian express, (New Delhi), January 2008

The common framework of the legislations in various states includes, granting of "right to public services", which are to be provided to the public by the designated official within the stipulated time frame. The public services which are to be granted as a right under the legislations are generally notified separately through Gazette notification. Some of the common public services which are to be provided within the fixed time frame as a right under the Acts, includes issuing caste, birth, marriage and domicile certificates, electric connections, voter's card, ration cards, copies of land records, etc.

On failure to provide the service by the designated officer within the given time or rejected to provide the service, the aggrieved person can approach the First Appellate Authority. The First Appellate Authority, after making a hearing, can accept or reject the appeal by making a written order stating the reasons for the order and intimate the same to the applicant, and can order the public servant to provide the service to the applicant.

An appeal can be made from the order of the First Appellate Authority to the Second Appellate Authority, who can either accept or reject the application, by making a written order stating the reasons for the order and intimate the same to the applicant, and can order the public servant to provide the service to the applicant or can impose penalty on the designated officer for deficiency of service without any reasonable cause, which can range from Rs. 500 to Rs. 5000 or may recommend disciplinary proceedings. The applicant may be compensated out of the penalty imposed on the officer. The appellate authorities has been granted certain powers of a Civil Court while trying a suit under Code of Civil Procedure, 1908, like production of documents and issuance of summon to the Designated officers and appellants.

3.2.3 THE PREVENTION OF CORRUPTION ACT-1988

Public servant taking gain 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 persons,or form himself or form any other person, any type of gratification whatever, other than legal remuneration, as a motive of reward for doing or forbearing to do any

official act or for showing or forbearing to show, in the exercise of his official functions, like or dislike to any person or for rendering or attempting to render any service or disservice for any person, with the Central Government or any State Government or Parliament of both houses or the Legislature of any State or with any local authority, corporation or Government sectors , or with any public servant, whether named or otherwise shall, be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine or with both.

EXPLANATION. -

- "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 offence defined in this section.
- "Gratification" - The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.
- "Legal remuneration". - The words "legal remuneration" means it is not restricted to remunerations to which a public servant can lawfully demand, but it include all remuneration which he is permitted by the Government which he serves, to accept.
- "A motive or reward for doing". - A person who accepts a gratification as intention or reward for doing that what he does not intend or does not in a position to do, or has not done, comes within these expressions.
- Where a public servant forces or offers a person intentionally to believe that his influence with the Government has obtained a title for this person and thus forces that person to give the public servant, money or any other gratification as a reward for that service, that public servant has committed an offence under this section.

Accepting gratification, in order, by corrupt or unlawful means, to influence public servant . Whoever takes, or obtains, or agrees to take, or attempts to obtain, from any person, for himself or for any other person, any type of gratification whatever as a intention as reward for inducing, by corrupt or unlawful 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 like or dislike of any person, or to render or such public servant to show favour or dis-

favour to any person, or to render or attempt to render any service or dis-service of any person with the Central Government or any State Government or Parliament including both the houses or the Legislature of any State or with any local authority, corporation or Government organisation 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 be not less than six months but which may extend to five years and shall also be liable to fine or with both.

Taking gratification for exercise of personal influence with public servant . Whoever takes ,accepts or obtains or agrees to take or attempts to obtain, from any person, for himself or for any other person, any type of gratification whatever, as a intention of reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear for doing any official act, or in the exercise of the official functions of such public servant to show favour or disfavour towards any person, or to render to attempt to render any service or dis-service to any person with the Central Government or any State Government or Parliament including both the houses or the Legislature of any State or with any local authority, corporateral Government organisation 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 be not less than six months but which may extend to five years and shall also be liable to fine or with both.

Public servant obtaining valuable thing , without consideration from person concerned in proceeding or any business transacted by that public servant. Whoever, being a public servant, takes or obtains or agrees to take or attempts to obtain for himself, or 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 any business transacted or about to be transacted by such public servants, 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 be not less than six months but which may extend to five years and shall also be liable to fine or with both.

1. <u>SHORT TITLE AND EXTENT.</u>

(a) This Act may be called the Prevention of Corruption Act, 1988.

(b) It extends to the whole of India including the State of Jammu and Kashmir and it applies also to all citizens of India outside India.

2. <u>DEFINITIONS</u>. In this Act -

(a) "Election" means any election, by whatever means held under any law for the purpose of selecting members of Parliament including both the houses 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 sections of the Companies Act, 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 by the Government or a Government organisations as defined in sections of the Companies Act, 1956.

(iv) Any Judge , including any person empowered by law to discharge, whether by himself or as a member of any body , any adjudicatory functions.

(v) Any person authorised 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 or by a competent public authority who controls .

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

(viii) Any person who holds any public office by virtue of which he is authorised 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, who is for receiving or having received any financial help from 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 by the Government or a Government company as defined in sections of the Companies Act, 1956.

(x) Any person who is a chairman, member or employee of any Service Commission, organization or Board, by whatever name called, or a member of any selection committee appointed by such Commission, organization 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, miscellaneous workers or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by an University or any other public authority in connection with holding or conducting examinations.

(xii) Any person who is an office-holder or an employee of an educational, scientific, social, cultural or other institutions, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or any organization 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 also mentioned in Indian penal code.

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 or taking salary from the government for serving public works.

3. POWER TO APPOINT SPECIAL JUDGES.

- The Central Government or the State Government may, by notification in the Official Gazette, can appoints 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 the clause (a).

- 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 Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure in the lower or district court.

4. CASES TRIABLE BY SPECIAL JUDGES.

- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 , 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.
- 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.
- 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, be charged at the same trial.
- Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a special Judge shall have power to make, as far as practicable, hold the trial of an offence on day-to-day basis.

5. PROCEDURE AND POWERS OF SPECIAL JUDGE.

- A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in 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.
- A special Judge shall take cognizance of any offences with or without the accused being committed to him for trial and, in trying the accused persons, he shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 , for the trial of warrant cases by the Magistrates.

- 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, a special Judge shall be deemed to be a Magistrate.
- 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.
- A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 .
- Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 , shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge, and for 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.

6. POWER TO TRY SUMMARILY

- Where a special Judge tries any offence specified in sub-section (1) of section 3, alleged to have been committed by any public servant in relation to the contravention of any special order referred to in sub-section (1) of section 12A of the Essential Commodities Act, 1955 or of an order referred to in clause.
- Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 , there shall not be any 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 sections of the said Code is made in addition to such sentences, but an appeal will lie where any sentence in excess of the aforesaid limits is passed by the special Judge.
- 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 , the special Judge shall try the offence in a summary way, and the provisions of sections 262 to 265 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. 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 Magistrates.

7. PUBLIC SERVANT TAKING GRATIFICATION OTHER THAN LEGAL REMUNERATION IN RESPECT OF AN OFFICIAL ACT.

- Whoever, being, or expecting to be a public servant, takes or obtains or agrees to take or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a intention or reward for doing or forbearing to do any of the official act or for showing or forbearing to show, in the exercise of his official functions, likes or dislikes 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 including both the houses or the Legislature of any State or with any local authority, corporation or Government organizations referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine or with both.

EXPLANATIONS

- Expecting to be a public servant- If a person is 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 might be guilty of cheating, but he is not guilty of the offence defined in this section.
- Gratification-The word gratification is not restricted to pecuniary gratifications or to gratifications estimable in money.
- 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.
- Where a public servant induces a person erroneously to believe that he is in influence with the Government has obtained a title for this person & thus induces that person to give the public servant, money or any other gratifications as a reward for this service, the public servant has committed an offence under this section.
- Legal remuneration- The words legal remuneration are not restricted to remuneration which is a public servant can lawfully demand, but include all remuneration which he is permitted by Government or by organization, which he serves, or accept.

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 unlawful 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 like or dislike to any person, or to render or attempt to render any service or disservice of any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation[9] or Government organization 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 be not less than six months but which may extend to five years and shall also be liable to fine or with both.

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 intention or reward for inducing, by the exercise of personal influence, any public servant which named or otherwise to do or to forbear to do any official activity, or in the exercise of the official functions of such public servant to show like or dislike 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 organization 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 be not less than six months but which may extend to five years and shall also be liable to fine or with both.

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, abetments of the offence, whether or not that offence is committed in consequence of that abetments, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine or with both.

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[9] Ibid

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 has knowledge to be inadequate, from any person whom he has knowledge 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 be not less than six months but which may extend to five years and shall also be liable to fine or with both.

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, will be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine or with both.

13. CRIMINAL MISCONDUCT BY A PUBLIC SERVANT.

- A public servant is said to commit the offence of criminal misconduct,

  (a) If he habitually takes or obtains or agrees to take 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 takes or obtains or agrees to take or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he has knowledge to be inadequate from any person whom he has knowledge 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 has knowledge to be interested in or related to the person so concerned or,

(c) If he dishonestly or of intention to fraudulently misappropriates or otherwise converts for his own use of any property entrusted to him or under his control as a public servant or he allows any other person so to do or,

(d) If he,

(i) By corrupt or unlawful means, obtains for himself or for any other person any valuable thing or pecuniary advantage or

(ii) By miss using his position as a public servant, obtains for himself or for any other persons 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, or 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- 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.

- Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine or with both.

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 punishble under section 12, shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine or with both.

15. PUNISHMENT FOR ATTEMPT.

- Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section of section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

16. Matters shall 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 will fix the amount of the fine will take into consideration the amount or 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 satisfaction.

17. PERSONS AUTHORISED TO INVESTIGATE.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 , 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 Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 , 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 to a person without a warrant- Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he has right to investigate any such offence with or without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest of a person without a warrant: Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 will not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

18. POWER TO INSPECT BANKERS' BOOKS.

If from information received from any source or otherwise, a police officer has reason to belive that the commission of an offence which he is empowered to investigate under section 17 and considers that for the purpose of investigation or inquiry for such offence, it is necessary to inspect any bankers' books, then notwithstanding anything contained in any law for the time being in force, he has power to 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 suspect 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 which is below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

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 .

19. PREVIOUS SANCTION NECESSARY FOR PROSECUTION.

- No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 to have been committed by a public servant, except with the previous sanction,

  (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 a 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.

- Notwithstanding anything contained in the Code of Criminal Procedure, 1973,

(a) No finding, sentence or order passed by a special Judge will 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 or 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.

- Where for any reason whatsoever any kind of 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 for the removable of the public servant from his office at the time when the offence was alleged to have been committed.
- In determining under sub-section (3) whether the absence of, or any of the error, omission or irregularity in, such sanction has occasioned or resulted in a failure of the court shall have regard to the fact whether the objection should have been raised at any earlier stage in the proceedings.

<u>EXPLANATION</u>. For the purposes of this section,

(a) Error includes competency of the authority to provide the sanction;

(b) A sanction required for prosecution which includes reference to any requirement that the prosecution shall be at the instance of all the specified authority or with the sanction of a specified person or any requirement of every similar nature.

20. <u>PRESUMPTION WHERE PUBLIC SERVANT ACCEPTS GRATIFICATION OTHER THAN LEGAL REMUNERATION</u>.

- Where, in any trial of an offence punishable with section 7 or section 11 or clause

(a) Or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted/rejected or obtained or has agreed to accept or attempted to obtain for himself, or for any of the other person, any type of gratification or any type of valuable thing from any person, it will be presumed that 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 intention or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows that it is an inadequate.

- Notwithstanding anything contained in sub-sections (1) and (2), the court has power that it may decline to draw the presumption referred to in either of the said sub-sections, if the gratification of any type or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly has be drawn.
- Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification of any type or any valuable things of any type has been given or asked/offered to be given or attempted/tried to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to be given or attempted to give that gratification of any type or that valuable thing of any type, 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.

21. **Accused person to be a competent witness**. Any person having a charge with an offence punishable under this Act, shall be a competent witness for the defence and may given evidence on oath in disproof of the charges made against him or for any of person charged together with him for the same trial, Provided that

(a) He will not be called as a witness except at his own request.

(b) His failure to give evidence will not be made the subject for any comment by the prosecution or give rise to any presumption against himself or any person charged together with him for the same trial

(c) He will not be asked, and if asked will not be required to answer, any question tending to show that he has committed or has 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 has been convicted of the offence 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 will be asked to any type of question of any witness for the prosecution with a intention 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. <u>THE PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE, 1973, SHALL IN THEIR APPLICATION TO ANY PROCEEDING IN RELATION TO AN OFFENCE PUNISHABLE UNDER THIS ACT HAVE EFFECT AS IF</u>,

(a) In sub-section (1) of section 243, for the words The accused[10] 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 will 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 the proceeding.

(c) After sub-section (2) of section 317, the following sub-section had been inserted, namely- Notwithstanding anything contained in sub-section (1) or sub- section (2), the Judge may, if he thinks fit and that 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 for the subject to the right of the accused to recall the witness for cross-examination.

[10] Sec of the code of criminal procedure 1973

(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 the court on an application which is made by a party for such proceedings, then the court will not ordinarily call for the record of the proceedings,

(i) Without giving the other party an opportunity for showing cause why the record should not be called for; or

(ii) 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.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 , when an accused is charged for 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 framed 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 had offered or he agreed to offer any gratification of any type or any valuable thing of any type to the public servant, shall not subject such person to a prosecution under section 12.

25. MILITARY, NAVAL AND AIR FORCE OR OTHER LAW NOT TO BE AFFECTED.

- 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 , the Air Force Act, 1950 , the Navy Act, 1957 , the Border Security force Act, 1968, the Coast Guard Act, 1978 and the National Security Guard Act, 1986 .
- 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 a special Judge will 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 after 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 the such commencement, every such Judge will 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 on a High Court as if the court of the special Judge were a Court of Session trying cases within the local limits of the High Court.

28. ACT TO BE IN ADDITION TO ANY OTHER LAW.

The provisions of this Act will be in addition to, and not only in derogation of, any other law for the time being in force, and nothing will be contained herein will be 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 the Schedule,

(i) Paragraph 1 shall be omitted;

(ii) In paragraphs 2 and 4, 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 organization as defined in section 617 of the Companies Act, 1956 or a society aided by such corporation, authority, body or Government company shall be inserted, after the words "or authority", the words "or corporation or body or Government company or society" will be inserted.

(iii) For paragraph 4A, the following paragraph shall be substituted, namely 4A. An offence punishable under the Prevention of Corruption Act, 1988 .

30. REPEAL AND SAVING.

- The Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952 are hereby repealed.
- Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897 , anything done or any action taken or purported to have been taken or done under or in pursuance of the Acts so repealed will, 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 165A (both inclusive) of the Indian Penal Code, 1860 shall be omitted, and section 6 of the General Clauses Act, 1897 , will apply for such omission as if that said sections had been repealed by the Central Act.

3.2.4 CRIMINAL MISCONDUCT BY A PUBLIC SERVANT.

- A public servant is said to commit the offence of criminal misconduct, -

  (a) If he habitually takes or obtains or agrees to takes or attempts to obtain from any person for himself or for any other person any type of gratification other than legal remuneration as a intention or reward such as is mentioned in Section 7, or

  (b) If he habitually takes or obtains or agrees to takes or attempts to obtain for himself or for any other person, any of the 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 for having any type of 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 personal use of 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 unlawful means, obtains for himself or for any other person any type valuable thing or pecuniary advantage, or

    (ii) By taking disadvantage of his position as a public servant, obtains for himself or for any other person any type of valuable thing or pecuniary advantage, or

    (iii) While holding office as a public servant, obtains form any person any type of valuable thing or pecuniary advantage without any public interest,

  (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.

<u>EXPLANATION</u>. For the purposes of this section known sources of income means income received from any legal/lawful sources and such receipt has been intimated in accordance with the provisions of any of the law, rules or orders for the time being applicable to public servant.

- Any public servant who commits or tries to commits criminal misconduct will be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

TO ESTABLISH OFFENCE UNDER THIS SECTION, IT MUST BE PROVED THAT-

- The accused was a public servant or expected to be a public servant at the time when the offence was committed.
- The accused accepted or obtained or agreed to take or attempted to obtain unlawful gratification form some person.
- For himself or for any other person
- Such gratification was not a remuneration to which the accused was lawfully entitled
- The accused accepted such gratification as a motive or reward for,

(i) Doing or forbearing to do an official act, or

(ii) Doing or forbearing to show like or dislikes to someone in the exercise of his official functions, or

(iii) Rendering or attempting to render any type of service or disservice to some one with the Central or any State Government or Parliament or the Legislature of any State, of with the local authority, Corporation or Government organization referred to in Sec. 2. sub-sec. (c) or with any public servant, whether named or otherwise.

3.2.5 THE INDIAN PENAL CODE, 1860 & THE CODE OF CRIMINAL PROCEDURE, 1973

Necessity arises to devote one separate part for critical study of the important statutory provisions of the Indian Penal Code, 1860 & the Code of Criminal Procedure, 1973, since in addition to the provisions of the Prevention of Corruption Act, 1988, certain provisions of the Indian Penal Code along with the Code of Criminal Procedure also govern the law and procedure relating to corruption.

An analysis ofthe relevant provisions of IPC & Cr. P.C is required to provide a clear concept basing on which the judicial trend thereon can be assessed, the defects of such relevant statutory provisions can be exposed and remedial measures can be suggested.

The following provisions of the Indian Penal Code deal with the various offences of corruption[11] and the related matters.

(a) Definition of Public Servant (Section 21)

(b) Offences by or relating to public servants -Chapter IX

(c) Criminal misappropriation of property

(d) Criminal Breach of Trust

(e) Apart from the above the offences of abetment and criminal conspiracy and attempts to commit offences- 511 which are applicable for other offences in general are also equally applicable to the various offences of corruption. As such no separate discussion is required.

3.2.6 THE CENTRAL VIGILANCE COMMISSION ACT, 2003

The central vigilance commission[12] was set up on February 1964 on the recommendations of the Santhanam Committee on the prevention of corruption offences to advise and guide the Central Government agencies on the issues of the vigilance. On 25th August, 1998, The central vigilance commission received statutory status by the promulgation of an Ordinance by the President.

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[11] Dr. Renu, " Handbook on Anti-Corruption laws (Practice and procedure)" 2015

[12] Central vigilance commission (CVC) vigilance manual I (6th ed. 2005)

Perhaps not ironically, legislative actions were precipitated after a PIL was filed seeking the intervention of the Supreme Court due to inaction by the Central Bureau of Investigation in relation to certain corruption cases. The central vigilance commission is only an investigating agency and it does not have power to formulate or make policy. The CVC Bill was introduced in Parliament and was passed in 2003. The statement of the objects and the reasons in the CVC Act, 2003 states that it is an act which inquire or cause inquiries to be conducted into the offences alleged to have been committed under POCA by the certain categories of public servants of the Central Government, corporations established under any of the Central Act, Government organization, as well as societies or local authorities owned or substantially controlled by the Government. Section 3(2) of The central vigilance commission Act lays out the constitution of The central vigilance commission as consisting of a Central Vigilance Commissioner who is the Chairperson, as well as two Vigilance Commissioners that act as the Members. These three persons are appointed from persons who have either been in the All India Service or similar service with background on administration, including policy administration, banking, finance, law, vigilance and investigation.

A Committee of the Prime Minister, the Home Minister, and the Leader of the Opposition are tasked with making appointments to The central vigilance commission under Section 4(1) of The central vigilance commission Act. Section 8 of The central vigilance commission Act lays out the powers and functions of the The central vigilance commission which include exercising superintendence over the Delhi Special Police Establishment for the examination of offences under POCA, inquire or cause an investigation to be made on the recommendation of the Central Government for offences under POCA, review the progress of investigations conducted by the Delhi Special Police Establishment, etc. The central vigilance commission will have the same powers as a civil court to summon and enforce attendance, receive evidence on affidavits, etc. Section 12 clarifies that the proceedings before the Commission are deemed to be judicial proceedings. At the close of the year 2014, a total of 13,659 complaints were pending with the Central Vigilance Officers concerned for the investigation, out of which 6,499 complaints were pending beyond a period of six months.

The Commission shall consist of-

(a) A Central Vigilance Commissioner - Chairperson;

(b) Not more than two Vigilance Commissioners - Members.

The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons -

(a) Who have been or are in an All-India Service 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; or

(b) Who have held office or are holding office in a corporation established by or under any of the Central Act or a Government organization owned or controlled by the Central Government and the persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations:

Provided that, from amongst the Central Vigilance Commissioner and the Vigilance Commissioners, not more than two persons shall belong to the category of persons referred to either in clause (a) or clause (b).The Central Government shall appoint a Secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

Every appointment shall be made 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 the Opposition in the House of the People - Member It is also clarified by the Section that, “the Leader of the Opposition in the House of the People” shall, when no such Leader has been so recognized, include the Leader of the single largest group in opposition of the Government in the House Of the People.

The powers and functions of the Central Vigilance Commission have been provided under Section8. The powers and functions of the Commission shall be to-

(a) Exercise superintendence over the functioning of the Delhi Special Police Establishment insofar as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 , or an offence with which is a public servant specified in the sub-section (2) may, under the Code of Criminal Procedure, 1973 , be charged at the same trial,

(b) Give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under subsection (1) of section 4 of the Delhi Special Police Establishment Act, 1946 (25 of 1946): Provided that while exercising the powers of superintendence under clause (a) or giving directions under this clause, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner;

(c) Inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Govt. or a corporation established by or under any Central Act, Govt. companies, society and any local authority owned or controlled by that Govt, has committed an offence under the Prevention of Corruption Act, 1988 , or an offence with which a public servant may, under the Code of Criminal Procedure, 1973 , be charged at the same trial,

(d) Inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) where in it is alleged that he has committed an offence under the prevention of Corruption Act, 1988 (49 of 1988) and an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 , be charged at the same trial.

(e) Review the progress of the investigations conducted by Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988 or the public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial,

(f) Review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988.

(g) Tender advice to the Central Govt, corporations established by or under any Central Act, Govt. companies, societies and local 166 authorities owned or controlled by the Central Govt. on such matters as may be referred to it by that Govt, said Govt. companies, societies and local authorities owned or controlled by the Central Govt. or otherwise.

(h) Exercise superintendence over the vigilance[13], administration of the various Ministries of the Central Govt. or corporations established by or under any Central Act, Govt. or corporations established by or under any Central Act, Govt. Companies, societies and local authorities owned or controlled by that Govt.

[13] Ibid

CHAPTER-IV

STRATEGIES AND LEGISLATION TO COMBAT CORRUPTION

4.1 WHO IS RESPONSIBLE?

Ultimately, all parts of society must share their responsibility for containing corruption because all are willing or unwilling participants. Each corrupt/unlawful transaction requires a buyer and a seller. The govt. is responsible for the dealing with the civil servants who engaged in the extortion and bribery but it is the businesses and individuals who offer bribes to the civil servants to obtain certain advantages.

In most countries, the demand for the reform is being led by the organizations of civil societies and the international donor community. An active, involved and empowered citizen is indeed to the essential of any anti-corruption campaign. Reformers can only achieve real gains when a society changes its expectations and understanding of its entitlement to a govt. that is not corrupt. For their part, govt. leaders, politicians and bureaucrats must provide the political will to address all forms of corruption. Govt. need to introduce appropriate legislation to reduce corruption and provide whatever means are necessary to ensure that appropriate steps shall be taken to build systems of integrity and rule of law.

While all those who are part of the problem must be part of the solution, it would be the unrealistic and cost-prohibitive to attempt to eliminate corruption completely. Such a strategy would be likely to create new inefficiencies in govt. Draconian anti-corruption programs, moreover, can have a negative effect on the personal freedoms and fundamental human rights if the regulations translate into excuses for public officials to become increasingly abusive toward the citizens. Additionally, bureaucratic discretion is necessary for the effective administration. The aim, therefore, is not to achieve complete rectitude but rather a fundamental increase in the honesty, efficiency, and fairness of government.

The responsibility of containing corruption must not ignore the participation of international firms, foreign govts. and others engaged in corrupt practices either actively or passively. A number of instruments are available to curb cross-border corruption. The new no bribery pledge initiated by OECD is one. Among stronger measures are the criminalization of bribe, including the prosecution of companies and govt. in the North, and tax deductibility of bribes paid by Northern companies in the South.

4.2 PREVENTION: AN IMPORTANT TOOL IN FIGHTING CORRUPTION

The approach presented in this dissertation is essentially holistic. Corruption is seen in today's world as a systemic issue requiring the donors to work on several fronts and to collaborate with all branches of government and many parts of society. The approach to promote good governance system through among other things, prevention, is to help client countries cure corruption and build integrity among socities, and therefore, improve their public services and create an enabling environment for the private sectors & others sectors also. The Govt. and Anti-Corruption[14] program comprises three activity areas:

(a) For improving public sector service delivery by focusing on public sector accountability and lawful reform in order to re-introduce rule of law,

(b) For building integrity by promoting governmental accountability and transparency, and

(c) Building an prevention and anti-corruption capacity of the public Sector including parliament, watch dog and enforcement agencies, and the Judiciary and of civil society, particularly by strengthening non-governmental organizations and the media. The program dovetails with other reforms such as,

Public Sector Management program, which focuses on the prevention through civil-services of the reform and public-expenditure planning and management, as well as, on the supporting of governance activities, research and dissemination of the findings.

Legislative reforms to strengthen parliament role in overseeing the executive but also the passing of the new anti-corruption legislation Legal reforms, that strengthen the rule of law Building integrity, which means using of public powers for the public good, is the flip side of fighting corruption. Experience gained from work with the countries demonstrates that it is preferable to the focus on the prevention through the building of integrity, which suggests a positive, pro-

[13] The Prevention of corruption Act, 1988

active preventive approachs. It is often easier to get various stakeholder groups to support the preventive measures through the creation of a system of national integrity rather than specific measures designed to fight from the corruption.

4.3 RAISING PUBLIC AWARENESS

Educating and involving the public in building integrity is the key to the preventing corruption and thereby the key of challenge and the keystone of this holistic integrated strategy and can take different forms:

- Public education and awareness campaigns ,
- Conduct annual broad based national/municipal integrity workshops were all stakeholders are invited to discuss the problems and suggest changes,
- Inform citizens about their rights, and empower to the citizens to monitor the govt. through periodic service delivery surveys,
- Production and dissemination of a national integrity strategy and an annual corruption survey at national, municipal and sub-county level,
- Investigative journalism and information by the media, and
- Dissemination of the TI Source Book and experiences of other countries in combating corruption

The rationale for these tasks can be explained by the case of the Mali, where an SDS was conducted in 1995. Mali has some of the worst social indicators in world, but the majority of villagers said the quality, timeliness, and cost of services delivered to them were no problem. This experience confirmed the need to increase public awareness on a broader scale. The strategies listed above, that are organized and implemented with govt. clients of the World Bank, will be described below.

Beyond govt. members of the media play a critical role in raising public awareness. A free and independent media with professional investigative capabilities can be a nation builder. By drawing attention to corruption, journalists can turn corruption from a seemingly low risk, high profit activity for those involved to one that is high risk and low profit. It can be a key player in

fostering democratic elections by educating the public as to each political candidate's philosophies, values and goals.

4.4 ROLE OF JUDICIARY IN COMBATING THE CORRUPTON IN INDIA

Judicial precedent or case law consists of law found in the judicial decisions. A judicial precedent is the principle law on which a judicial decision is based. It is the ratio-decidendi otherwise known as the reason for the decision. It is not everything said by a judge in the course of his judgment that constituents a precedent, only the pronouncement on law in relation to the material facts before the judge constitutes a precedent. The doctrine of judicial precedent as a common law doctrine applies to only those Courts which are empowered to administer adjective common law of which forms part of the doctrine.

Customary Courts, Sharia Courts of Appeal and area Courts are not empowered to apply adjective common law. Therefore, the common law doctrine does not apply to them nor does any legislation provide for a precedent system in customary Courts. As a common rule under the doctrine of 'stare decisis' a Court is bound to follow decisions of a higher Court in the hierarchy. But a lower Court is not bound to follow a decision of a higher Court which has been over-ruled.

Further-more, a lower Court is not bound by a decision of a higher Court where that decision is in conflict with a decision of another Court which is above such higher Court in the hierarchy. In principles, a lower Court is entitled to choose which of the two conflicting decisions of a higher Court of equal standing it would follow. It should be noted that a binding precedent may be abolished by the legislation.

The Indian Constitution has created a democratic, republic and a trinity of instrumentalities to enforce its paramount provisions without fear or favor, affection or ill-will. The executive echelons, when they exceed their power as inscribed and circumscribed in the 'suprema lex', are subject to scan, scrutiny and correction by the higher judiciary. The legislature has vast law-making powers and is functionally competent to perform an inquest into the administration. But,

when it transgresses its constitutional bounds, the court can quash its action by writs, or command fresh operation by means of appropriate directions.

The dishonest practices indulged in by the public men and bureaucrats have already been criminalized. The drawback in the Indian Penal Code in the matter of offences dealing with bribery and accepting of illegal gratifications by public servants have been sought to be remedied by passing a specific legislation, “The Prevention of Corruption Act”. State legislatures have also taken steps to supplement in the corruption control. Even the National Police Commission has acknowledged partiality, corruption and failure to register cognizable offence in the police departments. A major amount of the cases, which go without prosecution, are corruption cases. The only organization now sought to intervene in the field is Judiciary. In fact, the higher judiciary by way of its judicial activism has tried to fill in the gaps created by the executive including the prosecuting and the investigating agencies and competent higher sanctioning authorities. It has even tried to fill up some of the lacunae created by the legislature because of its passive or lethargic response to the problem of corruption.

The three organs of the State, provided under the constitution, namely the Legislature, the Executive and Judiciary, to run the affairs of the country are complementary to each other. The Constitution framer had envisaged a clear distribution of powers and functions for these three organs. The passing of laws is the exclusive domain of the Legislature at the Union level as well as the State level, while the Executive – the most important, the powerful one, is entrusted with the duty to implement the legislation. The role of the Judiciary is to administer justice in accordance with the law of the land, and also to adjudicate the constitutional validity of the law enacted by the Legislature.

‘Judicial Activism’ denotes the encroachment by Judiciary into the Executive and Legislative domain. Let us see the present position of the Legislature and the Executive and then juxtapose the comparatively holy status the judiciary holds. The harsh reality is that the masses in the country have been let down by the Executive and the elected representatives.

“With the growing deinstitutionalization of Indian polity, the role of the elected representatives has been brought down from legislation to that of power brokers. The politicians of all shades have contributed in a big way to bring the present day impasse where corruption is the rule of the

day and to be an M.L.A. or M.P. is treated as a licence to indulge in all sorts of unlawful activities.

"One of the major tasks of the Executive is crime detection and crime prevention. In the 'hawala cases, fodder scam and other corruption cases' the criminals involved are high politicians and ministers who control the Executive. The Police, the investigative agencies and even the prosecutors are influenced by them. In this situation, can it be expected that these corruption cases will be conducted at all the by the executive? It is in this circumstance that the judicial activism took a different colour and shape. The judiciary is the only organ which could not be took over by the politicians. It is this faith among the public that gave momentum to judicial activism. The 'hands off' doctrine adopted by the Judiciary in the year 1980, underwent a drastic change in the nineties since the Judiciary felt that it is necessary to protect the constitutional guarantees and the democratic principles.

The Vohra Committee is of the firm belief that crime exists in politics and exposed the nexus between the criminals world with the politicians which now poses a serious threat even to our national security. Crimes and Criminal law are shaped by the criminal policy which in turn is a part of wider political policy. Theentire criminal policy, including the criminal law, criminal procedure, evidence, penal policy and the wide range of other activities covered in the administration of criminal justice system are administered by the power yielders to safeguard their own security and comfort. Crime detection and crime prevention are on the mercy of politicians. This ensures for them the monopolized use of State force to repress and suppress those activities which they regard as potential threat to their security and comfort.

Under these circumstances, it is highly necessary that an independent organization keeps under check the other two branches of the Government. This necessitated the judicial activism to take a sweeping change from its earlier position. This change is reflected in many decisions.

CHAPTER-V

POLITICAL ECONOMY OF REFORM

5.1 INTRODUCTION

After Independence the policymaking elite in India launched a project of economic development with a heavy involvement of the state and a democratic polity. In the first three decades since then, in the 50's, 60's and 70's, there were many successes and at least as many failures of this developmental project. In terms of eco. success, this particular project led to the foundation of a complex industrial economy, though some parts of the economy are highly inefficient and not very cost effective. This project also led to a fairly reasonable rate of agricultural growth, with publicly provided or subsidised irrigation and chem. fertilizers, sometimes at the cost of a heavy fiscal burden and some environmental degradation. In terms of the democratic exper., apart from consolidating a massively diverse polity into some unified political and administrative framework, over time ripples of democratic equality spread out as if in concentric circles to ever increasing numbers of hitherto subord. groups and castes.

Many of the failures of the project we are now all familiar with. The major failure at the overall macro-economic level was that the growth rate in national income was very slow, particularly in per capita income. A colossal and highly inefficient public sector became a drain on the resources mobilised by the government. There was rampant corrupt., both political and bureaucratic; some of this corruption flowed from the regulatory structure of the economy, particularly the nightmarish maze of controls and regulations that the government imposed. The sluggish growth could not match the growing aspirations of the up-and-coming subordinate groups. In that sense there was a chasm between the political and the economic development. The political mobil. gave rise to aspirations of groups that now came up from below overcoming a long history of social inequality and oppression, but the economy could not match those aspirations. Due to the slow growth, the elite that controlled the economy did not have Adeq. state resources to placate those who were banging at the gates with increasing assertiveness; this obviously led to economic and polit. frustrations and social fragmentation all around. This was beginning to be widely felt by the middle 70’s[15].

[15] Ibid

Partly in response to this rising frustration, the elite in India over the last two decades launched a process of economic reform with a view to unleashing the entrep. forces from the shackles of controls and regu., hoping that some of the ensuing economic growth would trickle down to the clamouring masses. The changes introd., particularly since the early 90's, were dramatic by past standards in India, but quite unremarkable by the standards of many other develop. countries, particularly in East Asia and Latin America. The major elements of changes in policy over the last decade include:

(a) Delicensing and deregulation of investment and production in most industries, and the introduction of a general regulatory framework in the case of monopolies (rather than case-by case discretionary control);

(b) Discount. of exclusive reservation of many key industries for the public sector and of budgetary subsidies to public sector enterprises, with some small steps towards privat. in more recent years;

(c) Gradual abolition of quantit. restrictions on imports (except for some consumer goods);

(d) Movement towards a market-determined exchange rate (within limits) and

current account convertibility;

(e) Reduction of average levels of direct and indirect taxes and some streamlining and rational. of the tax structure;

(f) Some reform in the financial sector (abolition of control of capital issues, more Comp. among banks and insurance companies, deregul. of some interest rates, insistence on capital adequacy norms, etc.).

In some sectors of the economy significant reforms have yet to be started, for example, in storage and movement of commod. in agriculture, labour regulations, reservation in small-scale industries (except very recently in some industries like garments). In other sectors reforms have started but the pace is sometimes erratic and slow. A recent internat.l survey of business environment by the World Bank indicates that in India 16 per cent of manager's time is still spent in dealing with the bureau. as compared to 5 per cent in Latin America. Some of the obstructive regulations by state government . (in matters like electricity and water supply and land acquisition and registration) are still in place. Government-controlled financial institutions

still dominate the financial markets. Import-weighted tariff rates are still relatively high at 30 to 35 per cent on average. There is strong opposition from organised labour to privatisation, and from politicians and bureaucrats to giving any genuine autonomy to public enterprises. Jenkins (1999) has pointed to some accomp. of 'reform by stealth', for example in the matter of some state governments looking the other way as the stringent labour laws are evaded or diluted by factory owners in practice. But some of the major political blocks to reform are difficult to surmount this way and the constel. of interest groups that lock in the system in a low-level equilibrium (for an elaboration of this argument see Bardhan (1984, 1998)) is still quite powerful. Nowhere is this as evident as in the case of the contin. fiscal crisis of the state.

The various (implicit and explicit) fiscal subsidies of the central and state Govern. to a plethora of interest groups (mostly relatively rich) and the interest burden on borrowing to cover current expend. contribute to a fiscal deficit of about 11 per cent of GDP (as large as at the time of the crisis in early 90's), and the more alarming feature is that the revenue deficit as per cent of GDP is now much larger. Many state governments are near bank. after paying the large recurring bills of salaries and pensions. The contingent liabilities of state governments (in the form of borr. by the public enterprises under their control) are not counted in the estimates of fiscal deficits, and already run to about 6 per cent of GDP. The central government has also various ways of parking their additional deficits in the public financial sector. Large public dissavings (in the form of fiscal deficits and public enterprise losses) keep the interest rates high, and that cripples the credit-starved small-scale industries (who do not have much access to the equity markets).

This kind of fiscal prof. has also its obvious adverse consequences in the form of the state governments' diminishing share in social expenditure, and the central government's diminishing involvement in public investment (not adequately compen. by rise in private investment). Capital expenditure (of central and state governments together) as a percentage of GDP declined from about 6.6 per cent at the end of the 80's to 3.4 per cent at the end of the 90's.

India's creaking infrastructure (ports, railways, power, irrigation, etc.) has become bottleneck to industrial and agricultural growth. The resultant high real costs for Indian business make it uncompet. internationally in many branches of manufacturing. Even in agricultural products it has been observed that it is cheaper to import wheat in south India from Aust. than from Punj.

The largest single contributor to fiscal deficit for the country as a whole is the staggering burden of losses in the state electricity boards. The massive investments in these enterprises over the years have yielded a neg. return of 17 per cent by a current estimate. The corp. of the state electricity boards with independent regulatory bodies has been very slow in most states. The problem of cross-subsidisation of agricultural and residential users by over-charging industrial users is now being somewhat mitigated by reform in some states. But the losses due to theft and illegal connections (with complicity of electricity board employees in collab. with politicians and criminals) keep on mounting (in U.P. alone there are about 2 million illegal-- katia- -connections, and the total annual loss due to so-called trans. and distribution losses run to about Rs. 30 billion). Unless and until the problem of charging market prices and user fees for infrast. services is resolved, the chances of substantial foreign investment to relieve the infrast. bottleneck are low.

An analysis of many of the fundamental problems besetting Indian reform requires an exercise in political sociology. In the rest of this Chapter we shall briefly focus on the various kinds of dis. that have appeared in the Indian scene between the policy of economic reform and the political and adminis. processes. Economists often ignore these and are surprised when things do not proceed in the way they want. We need to have a better understanding of why reform is so halting and hesitant, why there is no substantial political constit. for reform (outside the small confines of India's 'pink press' and sections of the metropolitan elite), why even the few supp. of reform underplay it at election time.

(a) Any process of sustained economic reform and investment requires a framework of long-term policy to which the gover. can credibly commit itself. But the political process in India seems to be moving in the opposite direction. While becoming more democ. and inclusive in terms of incorporating newer and hitherto subord. groups, it is eroding away most of the structures of institutional insulation of long-run economic management decisions against the wheeling-dealing of day-to-day politics. There are very few assurances that commit. made by a government (or a leader) will be kept by successive ones, or even by itself under pressure. A political party that introduces some reforms is quick to oppose them when it is no longer in power.

(b) With the extensive deregul. of the last two decades it was expected that corruption that is associated with the system of permits and licenses would decrease. There are no hard estimates, but by most anecdotal accounts corrupt. has, if anything, gone up in recent years. Some of the newer social groups coming to power are quite nonchalant in suggesting that all these years upper classes and castes have looted the system, now it is their turn. This has implications for the milking of the remaining obst. regulations, particularly at the level of state gover. As elections become more and more expensive, the demands on business from the politician-regulator are unlikely to relent.

(c) Much more than economic reform, the major economic issue that captures public imagination is that of job reser. for an increasing number of 'backward' groups, which is accepted by all parties. In the last decade of market reform more and more of the public sector job market has been carved up into protected niches. Cynics may even argue that the retreat of the state, implied by economic reform, is now more acceptable to the upper classes and castes, as the latter are losing their control over state power in the face of the emerging hordes of hitherto subordinate groups, and opting for greener pastures in the private sector and abroad. As subord. groups capture state power, they are not likely to easily give up the loaves and fishes of office and the elaborate network of patronage distrib. that goes with it, whatever the rhetoric of reform they mouth when they entertain visiting dignit. from the Western countries. This is more acutely the case at the state gover. level where these groups are more secure in power.

(d) As we have mentioned above, there have been few sub. reforms in the agricultural sector, and the non-agricultural informal sector has been hurt by the credit crunch. Yet these two sectors constitute 93 per cent of the total labour force. No wonder they are not enthused by the reforms carried out so far. In fact even organised farm lobbies (with the exception of some small sections under leaders like Sharad Joshi or Bhupinder Singh Mann) are not very active in demanding reforms of agricultural controls like those on storage and on domestic and foreign trade. They may be worried that the dismant. of the existing structure of food, fertilizer, water and elect. subsidies, in exchange of receiving, say, international agricultural prices, may be too complex and politically risky a deal. In any case the high admin. procurement prices for grains have

now eroded India's earlier (largely unexploited) competitive advantage in world grain markets.

(e) Political power is shifting more to the regional governments and regional parties, which makes national coordination on macro policy more difficult. For example, fiscal consoled. in general and a substantial reduction in the subsidies in particular are difficult when the national government depends on the support of powerful regional parties that assid. nurse their parochial interest lobbies with a liberal use of subsidies (implicit or explicit). As the logic of economic reform and increased competition leads to increased regional inequality, it is not clear how the Indian federal system will resolve the tension between the demands of the better-off states for more competition and those of other states (which a weaker Centre can ill afford to ignore politically) for redistributive transfers. Can, for example, a shaky coalition government at the Centre, dependent for its survival on the large number of MP's from weak states (like Bihar or Uttar Pradesh), ignore their redistrib. demands to compensate them for losing out in the inter-state compet. for private investment? It is also the case that a large number of entry taxes on goods imposed by governments even in otherwise leading states in economic reform (for example, Maharashtra, Tamil Nadu) are making the goal of reformers to unify an integrated all India market that much more distant.

(f) Another anomaly is that while the political power of reg. governments is increasing, at the same time their fiscal dependence on the Centre is also increasing. (Between the middle 1950's to middle 1990's, the fraction of states' current expenditures financed by their own revenue sources declined from around 70 per cent to around 55 per cent.) A signif. part of the central transfers is discretionary (examples are the numerous central sector and centrally sponsored schemes); these and discretionary subsidized loans are often used by the Centre more for political influence in selected areas than for the cause of fiscal or finan. reform or of poverty removal.

(g) Reform would have been more popular if it was oriented to aspects of human development (education, health, child nutr., drinking water, women's welfare and autonomy, etc.). Reformers usually are preoc. with problems of the foreign trade regime,

fiscal deficits, and the constraints on industrial investments in the factory sector, and they believe that once these are handled right, trickle-down will take care of the issues that concern the masses. Among other things, the reformers have paid little attention to the crucial problems of gover. in matters of achieving human development, which will be inexorably there even if trade, fiscal and industrial policy reforms were successful. If the administrative mechanism of delivery of public services in the area of human development remains seriously deficient, as it is today in most states, chances of const. a minimum social safety net are low, and without such a safety net any large-scale program of economic reform will remain polit. unsustainable, not surprisingly in a country where the lives of the overwhelming majority of the people are brutal. by the lack of economic security.

(h) Of course, decentral. of governance which the 73rd and the 74th constitutional amendments in the early 1990's ushered in most of the country (around the same time as serious economic reforms were also launched) has raised hopes for better delivery of public services, sensitive to local needs. But so far the progress in this respect has been disapp. in most states, both in terms of actual devolution of authority and outcome variables. [Let me quote from one such general evaluation, by Mahi Pal in EPW, September 8, 2001: "With some exceptions in Kerala, Madhya Pradesh, Tripura and West Bengal, nothing worthwhile has been devolved to the panchayats. The bureaucracy at all tiers of panchayats is holding the balance."] Note also that in Kerala and West Bengal decentralisation with regular panchayat elections started long before the constitutional amendments. In many states not just the bureaucracy (which often has overlapping functions with the panchayats) has been reluctant to let go, the local MLA's, in order to protect their patronage turf, have hijacked the local electoral and administrative process (even in otherwise better-run states like Tamil Nadu). In Andhra Pradesh, a state supposedly at the forefront of economic reform, the Chief Minister is reportedly using inform. technology to further centralise (and personalise) the administrative process. Even in the relatively successful case of West Bengal, the major role of panchayats has been in identifying beneficiaries of government programmes and the management and implementation of local infrast. projects like roads and irrigation, funded by tied grants from the Central or state government. There is no serious involvement of the panchayat in the management or control of basic public services like

primary education, public health and sanitation or in raising local resources. Of course, prior land reforms in Kerala and West Bengal have made the panchayats somewhat less prone to capture by the village landed olig. as in large parts of north India.

(i) Another potential link between economic reform and decentral. largely unutilised in India relates to small-scale, particularly rural, industrial. (In fact rural non-farm employment grew at a much slower rate in the 90's than in the 80's.) The Chinese success in the phenomenal growth in rural industries is often ascribed to decentralisation, by which the Central and provincial governments gave 'positive' incentives to the local government-run village and township enterprises (by allowing them residual claimancy to the money they make) and 'negative' incentives to keep them on their toes (in the form of refusing to bail them out if they lose money in the intense compet. with other such enterprises). In India decentralisation is usually visualised only in terms of delivery of welfare services, not in terms of fostering local business development, and yet if this link could be established, economic reform would have been much more popular, as local informal-sector industries touch the lives of many more people than the corporate sector. A programme of economic reform that involves curbing the petty tyranny and corrupt. of the small industry inspectors (who currently act as serious barriers to potent. entry), encouraging micro-finance and marketing channels, and providing the 'positive' and 'negative' incentives of Chinese-style decentralisation, has the potential of opening the floodgates of small-scale entrepreneurship in India. Examples of successful cooperative business development with the leadership of the local government, though rare in India, are not entirely absent. Take the case of the Manjeri municipality in the relatively backward district of Malappuram in north Kerala, with not much of a pre-existing industrial culture. In this area the munic. authorities, in collaboration with some NGO's and bankers, have succeeded in converting it into a booming hosiery manufacturing centre, after devel. the necessary skills at the local level and the finance. This and other award-winning panchayats in Kerala (often CPM controlled) dispel the common press up. that civic bodies in the villages and small towns of India do not have the capable. to take the leadership in developing and facilitating skill-based small-scale and medium-scale industries.

(j) Finally, it is anomalous to expect reform to be carried out by an adminis. set-up that for many years has functioned as an inert, arbitrary, heavy-handed, corrupt and uncoord. monolith. Economic reform is about competition and incentives, and a governmental machinery that does not itself allow them in its own internal organization is an uncon. proponent or carrier of that message. Yet very few economists discuss the incentive and organiz. issues of administrative reform as an integral part of the economic reform package. We have an administrative structure domin. by bureaucrats chosen on the basis of a generalist examination (rank in that early entry examin. determines the whole career path of an officer no matter how well or ill suited s/he is in the various jobs s/he is scuttled around, each for a brief sojourn) and promot. are largely seniority-based, not merit or performance-based. There are no wellen forced norms and rules of work discipline, very few punishment. for ineptitude or malfeasance, and there are strong disincen. to take bold, risky decisions. Whether one likes it or not, the government will remain quite important in our economy for many years to come, and it is difficult to discuss the implement. of economic reform without the necessary changes in public administ. including incentive reforms, accomp. by changes in information systems, organiz.l structure, budg. and accounting systems, task assignments, and staffing policies. In these matters there is a lot to learn from the (successes and failures of) innovative administ. reform experiments that have been carried out in many develop. countries in the last decade or so (see, for example, the account on reforms in tax adminis. in Mookherjee (1997).

5.2 ACHIEVING ANTI-CORRUPTION REFORM IN DEMOCRACIES:

There are two basic models of the reform process: one based on the exercise of political power and the other based on a contractual model of consensus[16]. Those who expect to lose from reform can be outvoted and out-maneuvered, or they can be co-opted or compensated to accept change. A key strategic decision for reformers is whom to include in their coalition and whom to force to accept the costs of reform. Should one buy off corrupt officials and private persons and

firms, or should one shut them out of the reformed system? How much will reform goals be undermined by the process of generating a coalition to support change?

Although I have demonstrated how corruption can coexist with electoral politics, democratic governments are sometimes able to reform. The examples of reform that have been most thoroughly studied, however, involve not outright corruption, but the webs of connections and favoritism that accompany patronage networks in government employment. Nevertheless, they provide some general lessons about when durable reform can occur. In the nineteenth century the United States, Great Britain, and many urban American governments reformed their systems of public employment and procurement. Some Latin American countries with democratic structures have also had reform periods.

[16] Right to Information Act, 2005, The Prevention of Money Laundering Act, The Prevention of Corruption Act, 1988, 2002, The Prevention of Corruption Act, 1947, The Indian Penal Code and The Criminal Law Amendment Act, 1944 etc

Barbara Geddes' (1991, 1994) work on civil service reform in Latin American democracies provides a useful starting point. Assume that politicians and parties want to remain in power. They may then face what Geddes calls the "politicians' dilemma" where the country as a whole would benefit from an end to patronage, but no individual politician or political party has an incentive unilaterally to institute a merit system. Anyone who did so would give up votes to the opposition with no corresponding political benefit. Geddes then postulates a case in which the public benefits of reform are recognized by voters. A politician who advocates reform gains political support that can be balanced against the losses from the reduction in patronage jobs. Obviously, a minority party, with little hope of becoming part of a future government, can support reform more easily than a majority or governing party. In fact, the minority party may face a paradox. If its reform position is popular enough to give it a real chance of winning the next election, that very fact may make it a less enthusiastic reformer. Once a party obtains power, it may violate its electoral promises with the result that voters do not believe subsequent promises, discouraging such promises in the future.

Geddes argues that politicians and political parties in Latin America recognize the dilemma of reform. In her analysis there are two situations in which reform is possible. First, a single party may have a dominant position, but government inefficiency, caused by corruption and patronage, threatens its hold on power. Then it may support reform in spite of the costs borne by public officials. Elections, even if they always return the same party to power, have a constraining effect on the ruling party. Second, if several parties are evenly matched in their access to patronage appointments, and if they will benefit symmetrically from reform, they may be able to collaborate to legislate change. Colombia, Uruguay, and Venezuela provide examples of reforms carried out during periods of balance in access to patronage. In Colombia a further factor encouraging reform was partisan violence that threatened the democratic framework. All sitting politicians had an interest in reforms that would help end this violence. This argument about political balance applies to any of the political systems discussed above although it is another vote in favor of a Westminster system since it tends to produce two major parties that may be capable of bargaining over reform.

Balanced political parties are not sufficient, however. An important deterrent to reform is the personalized nature of politics. The greater the importance of personalized circles of support, the

harder it will be to carry out broad-based reforms. Supporting my earlier discussion of closed-list and open-list PR, Geddes argues that voting by closed-list proportional representation facilitated the reform effort in Colombia and Uruguay because the voting rule limited the conflicts between individual politicians and political parties. In an open-list system patronage ought to be especially difficult to eliminate because individualized benefits to voters and campaign workers loom large. In fact, the two systems that did not reform, Brazil and Chile, both had open-list systems. Coalition governments in Chile, whose members had little in common, were held together by patronage. However, the contrast between closed- and open-list proportional representation is about necessary, not sufficient conditions. Thus under a closed-list system the rank and file will not be harmed by reform, but no reform will occur if party leaders use their positions to illicitly enrich themselves or their parties.

The Latin American experience has generally been quite disheartening. Political coalitions for reform are possible, but they are often fragile. Not only do some democratic forms make reform politically difficult, but even when reform does occur, it may not last. All of Geddes' "success" stories are followed by periods of breakdown when patronage, corruption, and inefficiency reappeared. Reforms are likely to be fragile if they are the product of temporarily favorable political conditions. To be sustained, the first stage of reform ought to be implemented to produce supporters who push to maintain and extend the initial successes.

For additional insight on these issues consider civil service reform in the United States and Great Britain in the nineteenth century. An emphasis on the balance of political forces seems relevant in both the United States and Great Britain. When reform occurred, both used first-past-the-post voting rules that typically produced two balanced parties alternating in power. No political grouping benefited disproportionately from its access to patronage, and all shared in the benefits of reform. Britain's parliamentary system, with strong party discipline, limited the scope for individual favor seeking. Even though members represented individual districts, they had a limited ability to trade favors for votes. The increase in the size of the electorate in the nineteenth century and the elimination of many small constituencies reduced the benefits of patronage appointments.

In the United States party discipline did not prevail, a factor that discouraged reform, and, in fact, reform did come later in the United States than in Britain. The separately elected president at the head of the executive branch, however, could view the tradeoff between patronage and service efficiency from a national perspective. By the late nineteenth century, a bipartisan political coalition that included the president supported the Pendleton Act that started the federal government on the road to establishing a civil service system. Both countries demonstrate the strains that arise when some constituents care about the efficiency and fairness of the services provided by the state, and others just want jobs and corrupt favors. The strains are of two kinds: giving out government jobs and contracts can become a political cost instead of a benefit, and managing the conflict between constituents who want favors and those who want efficient service can be difficult. If the quality of government services begins to loom large in voters' minds, politicians – both legislators and cabinet secretaries – may begin to doubt the political benefits of patronage. The relative political salience of particularized benefits relative to public goods can shift over time even if the underlying constitutional structure remains constant.

In the United States and Britain politicians complained about how much time and energy they spent dealing with job-seekers (Chester 1981: 155–6; Johnson and Libecap 1994; Maranto and Schultz 1991; Parris 1969: 50–79). If the number of jobs is not expanding rapidly, many applicants will be disappointed. The number of the disgruntled and their families may vastly exceed the number of satisfied patronage appointees. Dispensing patronage becomes a nuisance, not a privilege. Neither the United States nor Britain experienced revenue windfalls during the reform period, so that fiscal constraints made the distribution of jobs politically costly. The situation in Venezuela provides a useful contrast. There, windfall oil profits undermined reform efforts as the state went on a hiring spree (Geddes 1994). In other countries statist policies require large numbers of state sector employees to staff state firms. The very size of the state sector lowers the political costs of patronage, as it increases the economic costs.

Reform politicians in America and England mobilized powerful business support for a more efficient public service. Nineteenth-century business interests wanted a post office that delivered the mail effectively, and they wanted their merchandise to pass through customs quickly. They might be willing to bribe individual customs agents for speedy service, but they generally preferred a system that eliminated such payoffs (Johnson and Libecap 1994). Businessmen may

tolerate a certain level of corruption, but begin to protest if the level of graft escalates, as it apparently did in urban America in the latter part of the nineteenth century. Urban reform in the United States was given a push when graft levels increased from 10 to 30 percent of the value of contracts and benefits (Calvert 1972). In developing and transition countries businesses have voiced similar objections in the present day. For example, in Brazil President Collor's downfall was hastened by his reputed decision to increase "commissions" from an average of 15 percent of the value of deals under the previous regime to 40 percent.

In short, even with no fundamental change in the constitutional structure, the costs of allocating jobs and contracts through patronage and payoffs may come to outweigh the benefits for political leaders. In a democracy not everyone need support reform; it can be carried out if enough voters begin to see that it will be, on balance, beneficial. Reform ought to be more likely in governments with constitutional frameworks that limit the ability of politicians to benefit from patronage and corruption, and in systems where power is balanced across political groupings. Nevertheless, the United States reformed in the nineteenth century in spite of the lack of strong parties. The existence of a separately elected president subject to powerful electoral pressures helped, but part of the explanation appears to be the growing importance to voters and business interests of competently provided public services.

5.3 CONCLUSIONS

Democratic elections are not necessarily a cure for corruption. Instead, some electoral systems are more vulnerable to special interest influence than others. If narrow groups wield power, some groups use legal means, and others are corrupt. The choice of tactics can be influenced by the nature of the political system. In all democracies competitive elections help limit corruption because opposition candidates have an incentive to expose corrupt incumbents. However, the voting rules used to select the legislature, the existence of a separately elected president, and the need to finance political campaigns introduce incentives to favor special interests that do not exist in autocratic regimes.

The tendency of political systems to provide narrowly-focused goods and services instead of broad-based public goods is a familiar complaint about democracy. Constitutional structures

differ in their ability to overcome the influence of narrow interests and supply broad-based public services. Past work, however, has not considered corruption as a separate category but has made too simple a contrast between public goods and narrow benefits. I have tried to show that it is valuable to distinguish between benefits that flow to a politician's constituents and those that provide personal enrichment. Structural reforms designed to limit the amount of pork barrel politics may simply lead to higher levels of illegal corruption and to the use of public money and power for the private benefit of politicians and their corrupt supporters. I have isolated some of the features of a democratic government that ought to discourage corruption, everything else being held equal.

The passage of time, however, can produce reform opportunities even in political systems that seems otherwise inhospitable to reform. Furthermore, even systems at the top of the integrity list may suffer from entrenched corruption until a change in circumstances makes reform possible. These changes include both the growth of a private economic sector that includes firms that demand a well-functioning government and the maturation of the political system to the point where politicians see that they can win elections by appealing to voters' demands for a cleaner and more effective government. Windows of opportunity may open in individual countries that can give reformers a chance to make their case.

Although the value of clean and efficient government to the electorate and the business community will ebb and flow over time, underlying constitutional structures can help or hinder reform efforts. Sometimes the structure of government is itself so dysfunctional that it is difficult to see how anything constructive can be done without fundamental changes in the way the political demands of the electorate are translated into a representative structure. Of course, I am not recommending that every nation adopt a Westminster parliamentary system. One would need to know much more about the underlying political cleavages in the country and about the impact of structure on other aspects of government. All I mean to accomplish here is to alert government reformers to the need to design constitutional systems that give politicians an incentive to provide broad-gauged public goods, and that deter both pork barrel spending and corrupt self-dealing.

CHAPTER-VI

CONCLUSION AND SUGGESSTIONS

6.1 A SCIENTIFIC, PRECISE, EXACT AND LEGAL DEFINITION OF 'CORRUPTION' NEEDS TO BE PROVIDED IN SECTION 2 OF THE PREVENTION OF CORRUPTION ACT, 1988.

In fact, the term "Corruption" has not yet been exactly defined in any statute. This aspect has been clearly analyzed at Chapter iii. Even the Prevention of Corruption Act, 1988, which is a special penal statute to prevent corruption has failed to provide a precise, scientific and legal definition ofthe term "Corruption". Section 7 to Section 16 of the Act only deal with the various forms of corruption by giving definition of various offences and prescribing the punishments for such offences .

IT is an inherent negative defect since 11 March 1947. Such defect was also there in the Prevention of Corruption Act, 1947. Such negative defect needs to be rectified as soon as possible. Therefore, the legislature should take a note of it and provide a scientific, precise, exact and legal definition of corruption by bringing the suitable amendment of Section 2 of the Act of 1988.

Definition of "Corruption" is just to be incorporated at the beginning of Section 2 of the Act.

6.2 POLICE OFFICERS OF THE RANK OF SUB-INSPECTOR OF POLICE ALSO BE EMPOWERED TO INVESTIGATE INTO THE CASES UNDER THE PREVENTION OF CORRUPTION ACT, 1988.

As discussed in Chapter III, according to Section 17, the police officers below the rank of Inspector of Police are not at all authorized to conduct investigation into cases under this Act, where as under Chapter - XII of the Code of Criminal Procedure, 1973, a Sub-Inspector of Police is empowered to investigate even in warrant cases for the cognizable offences punishable with higher and more stringent punishments than what has been prescribed for the offences under the Prevention of Corruption Act, 1988.

So it is suggested that in view of the pervasiveness of corruption in public services in our country, an amendment may urgently be made at Section 17 of the Act so as to empower also the Sub-Inspector of Police to investigate into the cases of corruption under this Act.

6.3 EITHER THE PROVISION OF PREVIOUS VALID SANCTION AS A CONDITION PRECEDENT FOR A VALID PROSECUTION SHOULD BE ELIMINATED FROM THE STATUTE BOOK BY OMITTING SECTION 19 OR THE LIMIT OF THREE MONTHS BE FIXED FOR ISSUING SANCTION ORDER UNDER SECTION 19.

The judicial trend on “sanction for prosecution” shown by the Hon’ble Supreme Court and High Courts of India in number of recent cases, as critically analyzed under Chapter IX at Part I,

urgently requires the omission of Section 19 from the Prevention of Corruption Act, 1988. If it is impossible to omit, at least a time limit of three months for issue of sanction by the competent authority be prescribed at Section 19. Such time limit for issue of sanction is required since a close scrutiny of Sec. 19 shows that no time limit has been prescribed for granting sanction order under it.

Honourable Apex Court in order to fill up the lacuna fixed the time limit of three months in Vineet Narain V. Union of India7 for granting sanction order. According to the Court such direction is to remain in force till Government frames guide lines or rules in this regard .The Court further declared that when statute does not prescribe a time limit for sanction orders, the accused can not take advantage of the Departmental Rules.

He can only complain against the officers for their lethargy and neglect of duty, which may lead to initiation of Departmental inquiry against them and imposition of consequent punishments.

6.4 THE NEED FOR SPEEDY TRIAL OF CASES BY SPECIAL JUDGE REQUIRES THAT A PERIOD OF LIMITATION BE PRESCRIBED FOR COMPLETION OF THE TRIAL, BY THE PREVENTION OF CORRUPTION ACT 1988: -

Justice delayed is justice denied. This is equally applicable to all cases including the cases of corruption. Speedy trial of corruption cases by Special Judge is the demand of the day. This has been too echoed by the Indian judiciary.

The judicial direction given by the Honourable Apex Court in Raj Deo Sharma vs. State of Bihar (as stated under Chapter IX at Part I) to the effect that in cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years and whether the accused is in jail or not, the Court shall close the prosecution evidence on completion of a period oftwo

years from the date ofrecording the plea ofthe accused on the charges framed. The Apex Court holds the view that such period of limitation would be followed whether the prosecution has examined all the witnesses or not within the said period and the Court can proceed to the next step provided by law for the trial of the case. The above, according to the Court is not applicable to a prosecution under Prevention of Corruption Act 1988.

Again, the Honourable Apex Court has expressed that prescribing the periods of limitation at the end of which the trial Court would be obliged to terminate the proceedings amounts to legislation, which, cannot be done by judicial directives and within the arena of the judicial law-making power available to Courts.

The above discussions make it clear that the Indian Judiciary feels it helpless to prescribe a period of limitation to be followed by the trial Court within which proceedings should be terminated since that would amount to legislation and cannot be done by the judicial directions and within the arena of judicial law –making power. As such it is suggested that the necessary steps may be taken by the legislature in this regard and a new section be added in the Prevention of Corruption Act, 1988 prescribing a period of limitation to be followed by the trial Courts within which the proceedings under this Act should be completed.

6.5 THE FUTURE OF THE RIGHT TO INFORMATION ACT, 2005 AND PREVENTION OF CORRUPTION IN PUBLIC SERVICES IN INDIA:

According to Section 3, "all citizens" have the right to information where as under Section 6 "a person" who desires to obtain any information under this Act can apply for such information. Strictly speaking as per the Jurisprudence, both the above terms are not one and the same. The concept of person includes "natural person" and "legal person". A citizen is a natural person. Thus according to Section 3 only a natural person has the right to information whereas, as per

Section 6 both the natural person and legal person have such right and can apply for that. Such positive legal defect needs to be removed by suitable amendments of Section 3 & 6.

- Section 19 prescribes a period of limitation of maximum forty five days from the date of receipt of appeal (first appeal) within which the appeal shall be disposed of where as no such period of limitation for the disposal of the second appeal has been provided under this Act. Thus for the speedy disposal of the second appeal within a reasonable time, a period of limitation needs to be prescribed by the statute and as such the necessary amendments be made at Section 19 ofthe Act.
- Section 5 at sub-section (1) provides that Central Public Information Officers or State Public Information Officers are to be designated by every public authority, where as ,section 18 at sub-section (1) clause (a) mentions that such officers are to be appointed and if not appointed, it will be a ground for filing complaint. Definitely the terms "designated" and "appointed" are not one and the same. Such anomaly needs to be immediately removed by suitable legislative amendments.
- Similarly Section 10 at sub-section (2) clause (e) provides that a review can be made under Section 19, whereas section 19 provides for preferring appeal. Such anomaly also needs to be immediately removed by suitable legislative amendments.

At the end of this , I must say that the Right to Information Law should be based on the principle of maximum disclosure which calls for all information held by authorities to be available to the public subject only to limited exceptions for protecting legitimate concerns, so that, transparency can be maintained and corruption can be prevented properly in public services in India through the instrument ofsuch law in future.

India is the largest democracy in the world and it is plagued by high rates of corruption. An article that analyzes Corruption Perceptions Index by Transparency International, argues that there are other "variety of independent causes of corruption" (Mele) and challenges that "identifying those causes is the first step toward implementing steps to prevent and deter the phenomenon." (Mele). Mele identifies 4 personal causes, 2 cultural, 2 institutional, and 2 organizational for corruption. The personal causes of corruption are: personal greed, decline of personal ethical sensitivity, no sense of service when working in public or private institutions, and low awareness or lack of courage to denounce corrupt behavior.

The two cultural factors Mele identifies are: cultural environments that condone corruption and lack of transparency, especially at the institutional level. The Institutional factors are: regulations and inefficient controls, and slow judicial processes. Organizational factors include: lack of moral criteria in promotions and downplaying or reacting mildly to corruption charges. Mele also states that the causes are "applicable, on a greater or lesser scale, to different cultural and geographical environments" (Mele). The possible causes Mele suggests are easily recognizable in the cases discussed the previous sections. Aside from the cases of corruption described above, there many major controversies that erupt regularly and minor ones that often go unnoticed.

Preventive measures have been taken to end corruption in India. One of the steps taken at targeting corruption is the recent demonetization process put into effect by Prime Minister Narendra Modi during November 2016. Demonetization was done by Modi to curtail the black money problem pervading in the country for centuries. Black money and counterfeit money issues have parasitic effect on the social and economic growth of the country and are major issues that must be addressed at the grassroots. Despite the right idea of demonetization to create positive difference in the economy and society by replacing the old Rs.500 and Rs.1000 currency notes with new ones, the government faced transitional challenged due to lack of careful preplanning in coordination with the Reserve

Bank of India and issuing the new notes to banks and ATMs. Since India is a cash-flow society, people always have five hundred rupees and thousand rupees at home for day to day financial needs. The overnight change brought in by Modi, created many problems, beginning with the limit imposed on how much an individual can exchange or withdraw from their bank accounts per day due to the lack of availability of new currency notes. The public suffered from having to wait in long lines in front of ATMs and banks, causing frustration and many reported cases of altercations. Marriages were being called off due to insufficient cash availability; but places like gas stations, hospitals and crematoriums saw thriving business because they were given leniency to accept the older currency notes.

Corruption thrives in India for various reasons, one of which is allowing, succumbing and participating in acts of corruption. In his book Culture of Corruption in India, Satishchander Yadav writes that everyone is responsible for creating a culture of corruption.

He explains: Ultimately, all parts of society must share the responsibility for containing corruption because all are willing or unwilling participants. Each corrupt transaction requires a buyer and a seller. The govt. is responsible for dealing with civil servants who engage in the extortion and bribery but it is businesses and individuals who offer bribes to civil servants to obtain certain advantages.

Another possible reason of the continued existence of corruption is Greshman Sykes and David Matza's Neutralization theory. Neutralization theory offers a way for the people who are about to or in the process of the committing deviant act neutralize or turn off their sense of morality and their responsibility to follow the law. The techniques of neutralization are- denial of responsibility, denial of injury, denial of the victim, condemnation of the condemners, and appeal to higher loyalties. According to this theory, acts of corruption are neutralized through rationalizations and deceiving oneself into believing that the acts the individual is about to commit is not corruption and is not against to the individuals morals.

Rent seeking too is a possible source of corruption; "people are said to seek rents when they try to obtain benefits for themselves through the political arena" (Henderson). An important feature of rent seeking is that it adds to an individual's wealth without creating new wealth ("Rent-seeking"). The Economist reports that "it is the boom in large-scale rent-seeking – the use of wealth to distort the allocation of resources from which more wealth could be produced – that has opened up a new era of corruption" ("Fighting Corruption in India"). Grafts are another reason corruption continues. Graft is "to take illicit or unfair advantage of an office or a position of trust for personal gain" ("graft"). Graft is described as "an enormous tax on the economy" (Manuel) and targeting this issues will fix many other problems affecting the nation: "Tackling graft is the linchpin to fixing the income inequality, environmental problems and creaking education and pension system, and to appeasing growing public anger" (Manuel). Corruption causes a breakdown of trust between the government and its people. By removing the factors

that encourage corruption, it becomes easier to mend the damaged system or even shift towards creating a new corruption-free society.

Even though it is not possible to cover every aspect of corruption, one significant characteristic needs to be covered because of its power to make the structural changes necessary to eradicate corruption, that is: the attitude of the people, which affects the culture. Much of the population remains indifferent to or have thoroughly adjusted to the way of life of corruption they meet with on a daily basis. They no longer raise their eyebrows when police officers ask for bribes instead, they do what needs to be done to be on their way and brush off the incident; it is not important enough to even worth remembering because it is something that happens to them often. This is the common Indian man’s attitude toward corruption, especially when it comes to bribery – it needs to be paid to get tasks done. The attitude of the middle class must shift to change the way the system operates now; they must be repulsed and angry at the way they are being cheated and have been cheated all their life. Many whistleblowers and journalists who have reported on corruption have been murdered and with the judicial system being as corrupt as it is, investigations are constantly put on hold and justice delayed. As seen from Transparency International’s Global Corruption Barometer, the main reason people do not report corruption is because they fear the consequences, which could be as grave as losing one’s life or all of one’s family. It is for this very same reason that people are tolerant of corrupt activities - they fear for their lives and for the lives of their family members.

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