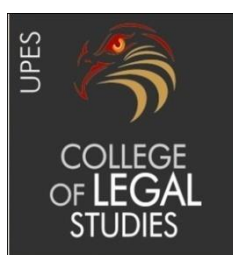


“CRITICAL ANALYSIS ON CORRUPTION IN INDIA”

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*This dissertation is submitted in partial fulfillment of the degree of
B.A., LL.B. (Hons.)*



College of Legal Studies

University of Petroleum and Energy Studies

Dehradun

2015

CERTIFICATE

This is to certify that the research work entitled “**Critical Analysis on Corruption in India**” is the work done by Shruti Agrawal under my guidance and supervision for the partial fulfillment of the requirement of B.A., LL.B. (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

Signature & Name of Supervisor

Designation

Date

DECLARATION

I declare that the dissertation entitled “**Critical Analysis on Corruption in India**” is the outcome of my own work conducted under the supervision of Dr. Sujata Bali, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

Signature & Name of Student

Date

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ABBREVIATIONS

Adv: Advocate

ARC: Administrative Report Committee

BOD: Board of Directors

BPI: Bribe Payers Index

BSE: Bombay Stock Exchange

BVA: Bihar Veterinary Association

CAG: Comptroller and Auditor General

CBI: Central Bureau of Investigation

CEO: Chief Executive Officer

CFO: Chief Financial Officer

CID: Crime Investigation Department

CPI: Corruption Perception Index

CS: Cabinet Secretariat

CVC: Central Vigilance Commission

CWG: Common Wealth Games

GOI: Government Of India

IMG: Inter- Ministerial Group

INR: Indian Rupees

IT: Information Technology

MDIT: Multi Disciplinary Investigation Team

NCRB: National Crime Record Bureau

OC: Organizing Committee

PAG: Principal Accountant Generals

PCA: Prevention of Corruption Act

PIL: Public Interest Litigation

PMO: Prime Minister Office

PSBs: Public Sector Banks

PSEs: Public Sector Entities

SC: Supreme Court

SFIO: Serious Fraud Investigation Office

TABLE OF CASES

State of Bombay v. Vishwakant Srikant Pandit, AIR 1954 Bom 109

V.Srinivasan vs The Secretary Writ Petition No.7424 of 2013 and M.P.Nos.1 & 2 of 2013

Bhimrao, AIR 1925 Bom 261

Ajudhia Prasad, ILR 51 Allahabad 467

Emperor v. Tyabjee, AIR 1923 bom 44

A.W.chandekar, AIR 1925 Nagpur 313

K.Selvaraj v. State, 2004 Cri LJ 3754(Mad)

Gurdial singh v. state of Punjab, 2003 Cri LJ 3312 (P&H)

Kumar Suman Singh v. State of Bihar, 2006 Cri LJ 1599(pat)

C.N.Peters v. State, AIR 1959 ALL.483

Padam Sen v. State, AIR 1959 Allahabad 707.

Om Prakash v. State of Harayana, AIR 2006 SC 894.

N.P. Prabhu v. Union of India, 2003 Cri LJ 2261 at 2262 (Ker.)

Somnath Tripathy v. State of Jharkahnd, 2006 Cri LJ NOC 20 (Jhar)

Sucha Singh v. State of Punjab, 207 Cri LJ 1912(P&H)

State of Madhya Pradesh v. Veerashwar Rao, AIR 1957 SC 592

Gurbachan Sing v. State AIR 1970 Delhi 102

Dharam Sarup v. State, AIR 1953 ALL37

Baij Nath Prasad V. State of Madhya Pradesh, AIR 1957 SC 494.

Ram Pukar Singh v. State, AIR 1954 ALL 223

State v. Yash pal AIR 1957 Punjab 91.

Writ Petition (C) No. 539/2003.

Vineet Narain v. Union of India (1996) 2 SCC 199

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1. Introduction

1.1 Meaning of Corruption:

Corruption in Latin words “*Corruptus*” and “*corrumpere*” which means to destroy and to break respectively, now question arise as the act of corruption ruptures what, so it breaks the laws, moral values and moreover a duty. It is neither we don’t see in our daily life nor which we don’t find in our society rarely as it has many varieties with involvement of different categories of people. It is basically relates to the abuse of position or power by those person to whom such power is vested with trust. So they are the one diverge from their moral, cultural, ethical and most importantly civic values.

The main focus is on the human personality and most importantly honesty and accountability which has been affected by tempt of power and to gain personal benefit which hinders the public interest and damage the society to its root.

Corruption is a “ deliberate and intentional exploitation of one’s position , status or resources directly or indirectly for personal aggrandizement whether it to be in terms of material gain or enhancement of power , prestige or influence, beyond what is legitimate or sanctioned by commonly accepted norms, to the detriment of the interests of other persons or the community as a whole.”¹

The Indian Penal Code has also defined corruption in legal terms in section 161:²

So in general sense Corruption is caused when there is any deviance in the decision making process made by public officer or any authoritative person or body for their personal benefit by means of bribery, fraud or any other mode which are illegal in the eye of law and unethical also while discharging their duty.

¹ Avasthi, A & Maheshwari ,*Public Administration*, Lakshi Narain Agarwal (13th ed.),p.342

² Whoever being or expecting to be a public servant accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification whatever other than legal remuneration as a motive or reward for doing or forbearing to do any official act or for showing or to show in the exercise of his official function favor parliament or legislature of any State or with any public servant as such ,shall be punished with imprisonment of either description for a term may extend to three years or with fine or with both.”

So in layman language, when a public official through its act where he holds a position or power by exercising such power or using his position to misuse the public goods and money for their benefit, which:

1. Breaks the laws and allege to have committed an offence
2. Under those laws where he suppose to fulfill its duty
3. Doing such an act to benefit himself or herself or any other person
4. And by doing this he/ she is getting or earning some consideration which he is not supposed to in the eye of law.

For example by paying some commission to TC for purchase of railway ticket so as to avoid the slip where he /she has to be give more money. Where this commission received by TC goes into his pocket and not to the government.

By paying commission to the agents who makes process easy to obtain license or contract for the construction by not lawful ways.

1.1.1. Corruption and its relation with organized crime³:

Organized crime and corruption are intimately connected as in wherever there is organized crime, corruption is there.

Corruption in the criminal justice system and specially in law enforcement agencies is a necessary condition for survival of organized crime.

Example: police forces and customs department are especially vulnerable because they operate at the front line of law enforcement. No major criminal enterprise can survive its activities for long period of time without the assistance and protection from police forces. Police corruption scandals around the globe consistently demonstrate intimate corrupt connections between police officers and criminals.

The most vulnerable police are those who are engage in decreasing illegal markets such as pornography and prostitution, trafficking in drugs and people.

Corruption is an important tool used by organized crime to minimize the risks inherent in conducting illegal activities. Bribery is used not only to corrupt police and customs officers but also to corrupt tax officials, juries, and judges.

³ Ibid

When organized crime has fully penetrated the system of state, it gets difficult to differentiate between Gangsters and Government.

1.1.2. What is Corruption Perception Index (CPI)?⁴

CPI is a league table of international corruption with the least corrupt countries at the top and the most corrupt at the bottom. It has been published annually by the NGO Transparency International since 1995. The League table measures perceived level of corruption among public officials and politicians rather than corruption as such. Countries which fall between the scores of 100 -0 which are resultant from the polls and surveys conducted in each country.⁵

Report of Transparency International Index 2014, India now ranks as 85 out of 175 countries and scores 38 out of 100. India has improved its rank as compared to 2013 report where, India ranked at 95 out of 175 countries.⁶

Some critics of the CPI have pointed out that the CPI fails to take account of the supply side of bribery, which often originates in the developed world, so in response to such criticism, Transparency International created the Bribe Payers Index (BPI) in 1998.

Critics still claimed further weaknesses:

1. Constructing a league table on the basis of perception assumes that the perceptions of survey respondents are both accurate and representative.
2. The perceptions of International businessmen differ from those rural laborers.
3. The entire CPI rests on the measurement of perceptions of corruption but perceptions may reflect not the actual incidence of corruption but its openness and the extent to which it is published.
4. The use of different surveys for different countries raises the issue of whether like is being compared to like.⁷

⁴ Ibid

⁵ Ibid

⁶ <http://www.transparency.org/country#IND>

⁷ Reddi's Anti-corruption laws and departmental enquiries, 4th edn., orient publishing company, pg. 26

CPI has got wide publicity and fulfills Transparency International's aim of raising public and political awareness of corruption.

1.1.3. What is Bribe Payers Index (BPI) ?

It is a League table of bribery in International Trade in which the countries are ranked on their willingness to offer bribes.

It measures the supply side of bribery by identifying the country or origin of bribe givers whereas the Corruption Perception Index focuses on bribe recipients. Transparency International produces both CPI and BPI and first BPI was published in 1999.

In 2014, Report on BPI, India rank 19 out of 28 and scores 7.5 out of 10.⁸

Although this table present on a similar 10-0 numerical scale, the BPI differs in important respects from the CPI:

- It is highly selective and based, in 2002, on surveys on 15 emerging market economies, relating to 21 exporting countries.
- It is based on only one source of data, 835 interviews are conducted by the Gallup International Association, rather than using the CPI method of using different sets of data from several independent organizations.⁹

Even though BPI is useful complement to the CPI but it has serious methodological limitations.

1.2 Historical perspective:

Corruption is a relic of the past. It has always existed in human society in one or the other form. Kautilya in his famous work "Arthashastra" referred various forms of corruption, so it is evidently corruption prevailed in his times otherwise he could not have given thought to this idea. Apparently, the scope of corruption was limited in the past as the civil servants in that era as they did not have a sway on all aspects of our

⁸ Transparency index India available at <http://www.transparency.org/country#IND>, last accessed on 31st March, 2015

⁹ Reddi's Anti-corruption laws and departmental enquiries , 4th edn., orient publishing company , pg. 27

lives. A handful of officials , who were required for collection of taxes and enforcing of law and order through which they misuse their discretionary power in the absence of written laws or rules.

Rise of British Era with the fall of Mughal Empire – where corruption was assumed in alarming position. The East India Company , a body of British traders who exploited India by wealth and brought India on the verge of bankruptcy. The British king appeared in the grab of a benevolent despot seemingly to put an end to the corrupt East India Company’s rule and run the administration of India with caution and care. No doubt British monarchy tried to build up a good administrative system in India still some of the departments like police, revenue, and excise which ere vested with vast discretionary powers were prone to corruption. A considerable number of judges in the lower layer of judiciary were also said to be corrupt to the core. Corruption was confined to lower strata of administrators till the outbreak of World War. The reason behind why top officials who were mostly British were not corrupt , firstly they got highly alluring remuneration; secondly , they did not remain in contact with the community. Moreover the confinement of the British administrative system to a small scope, the depression of economy of British India, the limited circulation of money were also the effective reasons responsible for keeping corruption under limits.

The outbreak of war unleashed forces of corruption. The unscrupulous officials got golden opportunity to grab wealth. According to the Bengal Administration Enquiry Committee (1944-45) “The Second World War breeds conditions which make money making easy. The Possession of license became a thing of high value and dishonest and unscrupulous persons did not hesitate to offer bribes in order to secure the license to trade in the commodities affected. War conditions, thus provided the opportunity of illicit gain by reason of two things, namely, (a) Ill advised administrative action; (b) defects in the Law which make detection of offences difficult and which provide inadequate penalties for convicted offenders.”¹⁰

With the dawn of independence, India entered into the era of welfare state. As soon, the activities of the government got multiplied the officials were assigned new and unfamiliar tasks. This resulted in the emergence of new set of laws, licenses and permits which gave adequate opportunities for corruption. The lust for power and

¹⁰ Report of the Bengal Administration Enquiry Committee 1945, para 223-24

craze for higher status were supplementary to the gravity of the malady. Efforts were made to bring the corrupt officials to book but the methods used gave a belief that government was not serious in eradicating corruption. Another notion which gained momentum with the passage of time was that while government stood against corruption, it did not believe in weeding out corrupt officials.

Things became still worst when democratically elected representatives who were both bound to serve their constituents with dedication and utmost honesty also got entangled in the various circle. The so-called custodians of Indian nationalism and the saviors of her territorial integrity themselves became the cause of gradual erosion of cherishingly built Indian democratic superstructure. They craved for monopoly in politics, through fair and foul methods. Doling out loaves and fishes to their political adherents and distributing quotas and permits amongst their henchmen resulted in accentuation of suspicion against their integrity. The official, who danced to the tune of political Godfathers also did not lag behind in making hay while the sun shone brightly. It led to the utter frustration of the honest and conscientious officials whereas unscrupulous yes men who signed the dittoed lines and obliged their political bosses were amply rewarded by lucrative assignments, choicest station of posting and letters of appreciation for commendable work. The tales for suppression, frequent transfers to god-forsaken places and less prestigious placements for those who failed to appease the political high ups began to be repeated. Thus corruption reached the climax within few decades of our attainment of independence. Charges of corruption have been leveled in almost all the states of India against the Chief Minister and other cabinet Ministers, not only by opposition political parties but also the faction between the party itself. The Das Commission's report against Punjab Chief Minister, P.S.Kairon, was revealing. The Commission blew the whistle on the infirmities of administrative officials appeasing the Chief Minister by extending patronage to his kith and kins and extending them maximum possible concessions in the minimum possible time.¹¹ The Commission remarked, *"The speed with which those officers moved was unusual and remarkable. It is true that there can be no objection to expedition if the thing done is not in itself objectionable. Such breakneck speed in the disposal of a serious matter*

¹¹ Dr. Bhagwan and Dr. Bhushan, Public Administration, S.Chand & Company Ltd., Revised Edition 2010, Pg. 406

for which elaborate rules have been framed to be observed and performed is not at all normal and can be attributable only to some powerful force regulating the speed.”¹²

The conditions which have existed in those days can be inferred by observing through the efforts made by the Government to control this disease of corruption. Where the suggestions made by the A.D.Gorwala committee that is how to increase the efficiency of the governance. Further one more committee was constituted to increase more efficiency in the governance which was Santhanam committee was constituted in the year of 1962 to study the problem of corruption and further said that the increasing of the act of dishonest by ministers and specially those who hold the office for long time where he got plenty of time to extract the money and slowly through illegal means like nepotism, fraud and other means , if this has been carried out for little longer than none of the measures will work out to curb this disease of corruption as it will eat the whole Nation without being noticed for long time and when it get into notice it is already too late to combat so it like cancer which is not being detected at starting stages and when it does detected it is already too late to recover from it. Similarly corruption is like cancer.¹³

From many years there have been n number of scam which have shaken the Nation and some of them are:

- Coal Allotment Scam (Cost – 186000 Crores)
- 2 G Spectrum Scam (Cost – 176000 Crores)
- Commonwealth Games (CWG) Scam (Cost – 70000 Crores)
- Mega black money laundering Scam (Cost – 70000 Crores)
- Adarsh Housing Scam (Cost – 18978 Crores)
- Stamp Paper Scam (Cost – 20000 Crores)
- Boforce Scam (Cost – 400 Million)
- Fodder Scam (Cost – 950 Crores)
- Hawala Scam (Cost – 8000 Crores)
- Satyam Scam (Cost – 14000 Crores)
- Stock Market Scam (Cost – 3500 Crores)

¹² Das Commission report , p.155

¹³Rajak Jeevan, *Corruption in India: Nature, Causes, Consequences and Cure*, IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 18, Issue 5 (Nov. - Dec. 2013), PP 20-24 e-ISSN: 2279-0837, p-ISSN: 2279-0845. www.iostjournals.org

- Madhu Koda Scam (Cost – 4000 Crores)

1.3 Causes of Corruption:

Corruption is a universal fact and well known by everyone. With time it has increased to the roots of our society from where it can't be controlled by our society. Especially in India it has grown so fast in so less time with different techniques which are difficult to trace it as they are based on the loopholes of our laws. There are various reasons as why the corruption has grown so much in our country, there are several factories because of which corruption has grown to this extent, these are:

1. Historical

Before the beginning of Second World War, corruption did exist but amongst the lower rank officer especially revenue earning departments, like income tax, customs and central excise etc. also including money spending departments like public work department, police, health etc. On the other hand, higher ranks officer were less corrupt and free from the evil. During 'Great Depression', the flow of economy was reduced which affected the nations after the First World War, which also restricted the activities of the State, so which is giving very small window to corrupt and be corrupted, but this scenario was changed after Second World War. War involved expenditure of thousand of crores of rupees over various kinds of war supplies. This wartime scarcity led for opportunities for corruption, favoritism, black money, bribery¹⁴. The post war inflation further aggravated the scarcities. So the scarcities caused due to Second World War resulted in the spread of bribery and corruption among all the ranks of the civil officers. After the Independence, the need to develop our economy was realized and arouses the necessity of controls, permits and quotas. It opened the gates of black marketing. The black money began to be unscrupulously displayed to win over the governmental officials. Thus a large scale racket of wholesale corruption became the order of the day.¹⁵

¹⁴ Avasthi, A & Maheshwari, *Public Administration*, Lakshi Narain Agarwal (13th ed.), pg 602

¹⁵Dr. Bhagwan and Dr. Bhushan, *Public Administration*, S.Chand &Company Ltd., Revised Edition 2010, Pg. 408

2. Conflict of values in expanding economy:

In the olden days, a moral code prescribing simple living and high thinking profoundly influenced the mechanism of social control and social responses. But in the emerging mass society with its emphasis on purposively initiated process of urbanization and industrialization, there has come about a steady weakening of the old system of values without its being replaced by an effective system of new values.¹⁶ Therefore, Honesty and integrity have become scarce and malpractices have come to be regarded as something unavoidable and certain in administration, trade, business, politics, practically in every sphere of public activity in India. As due to deviation in values and ethic of people it has led to grow corruption so much and to this extend. So for the people now ideas of ethics, values are old fashioned who doesn't have any place in modern times¹⁷.

3. Economic necessity:

Economic necessity means the basic monetary which is to be given to the people who are earning as in terms of salary and in case of inadequate salary where cost of living is touching the peak which makes difficult for an individual to survive so to for their survival they get tempt towards the acts of corruption to fulfill their needs, so this one of main cause of corruption. The salaries paid to the government officers either have been inadequate or as compared with the business executives working in companies much less. The occasional rise in D.A. hardly helped in neutralizing the ever rising prices of the commodities. As noticed in current years that the rise in cost of living has majorly affected the middle class family. Consequently, the standard of living has suffered an eclipse. An employee, who cannot afford to be a silent spectator to the ever deteriorating economic standards, takes to accepting of illegal gratification to make both ends meet and maintain his standards of living in keeping with his status and position in the administrative hierarchy.¹⁸

Due to inflation in the economy of the country it gets difficult for government employees who have low pay scale or salary to survive in this type of economy so

¹⁶ Avasthi, A & Maheshwari, *Public Administration*, Lakshi Narain Agarwal (13th ed.),pg 603

¹⁷ Rajak Jeevan, *Corruption in India: Nature, Causes, Consequences and Cure*, IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 18, Issue 5 (Nov. - Dec. 2013), PP 20-24 e-ISSN: 2279-0837, p-ISSN: 2279-0845. www.iostjournals.org

¹⁸Dr. Bhagwan and Dr. Bhushan, *Public Administration*, S.Chand &Company Ltd., Revised Edition 2010, Pg. 408

they are the more vulnerable sector of the society who gets temp towards corruption if we compare to those graduates of Indian institutes of management who gets far better pay scale even in a freshman who have no experience.¹⁹

Moreover due to lack of availability of jobs it has aided to spread the corruption more. So the people who don't have jobs gets more attracted towards corrupt practices. They will be ready to pay lump sum amounts for the job offer to the higher officials or politicians.²⁰

Therefore it is very certain that government servants are the worst hit and have had to face an appreciable fall in the standard of living.

4. Population:

We look into our country population then it rank as 4th most populated country in the world and our literacy rate is very low so the combination of huge amount of population and low literacy rate is one of the deadliest combinations as it gets more vulnerable to corruption.²¹ Due to fail of family planning commission for decreasing the population the country has also one of factor for increase in the rate of corruption. As caring parents they will not like their children to starve and to live in the state of poverty hence they resort to corruption.

5. Sociological:

Corruption is the result of the greedy where greatness of individual and nobility of their family is judged by what they possess rather than by what they are. The acquisition of wealth has become *sine qua non* of life. People indulge in acquiring wealth without caring for the means they adopt. Thus, materialism is important to status which results in possession of money and economic power, group loyalties etc. seem to be increase because of the general apathy or inability of all sections of

¹⁹ Rajak Jeevan, *Corruption in India: Nature, Causes, Consequences and Cure*, IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 18, Issue 5 (Nov. - Dec. 2013), PP 20-24 e-ISSN: 2279-0837, p-ISSN: 2279-0845. www.iosrjournals.org

²⁰ "Causes of Corruption", available at <http://www.mindcontroversy.com/causes-of-corruption-in-india/>, last accessed on 30th March,2015

²¹ Rajak Jeevan, *Corruption in India: Nature, Causes, Consequences and Cure*, IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 18, Issue 5 (Nov. - Dec. 2013), PP 20-24 e-ISSN: 2279-0837, p-ISSN: 2279-0845. www.iosrjournals.org

the society to appreciate in full the need of strict observance of a high standard of behavior. Due to this ,it has led to increase in white collar crimes and economic crimes which has led to the failure of law agencies to curb corruption.

The best way to get one's work done or for an speedy disposal of a file concerning the long pending work, is to give some money or illegal gratification to the corrupt employees, this enables him to continue certain standard in the modern society where outward appearance matter.

6. Procedural Causes:

The defective procedural system and poor anti-corruption law also cause corruption in public services. The Railway Corruption Enquiry Committee revealed lacunae in the rules and regulations which ultimately lead to corruption. Even the Santhanam Committee referred to cumbersome and dilatory procedures in government offices.

When anti-corruption body has caught a person red-handed while he was involved in corrupt practice then also he will be punished less as for the initial actions that person will be suspended for some time then he will be re-assigned for the job at the same level so the inference we can draw from it that irrespective of the fact that he has been caught for corrupt practices still he is continuing his job. So overcome from such situation it is required that the government need to have stringent measures like the punishment to be severe and he shall not to be allowed to resume his post in the future so by doing this it will create a fear in the mind of the officials that if they caught then they have to face severe action against them. So it might reduce the corruption.²²

7. Political:

After the independence, corruption in India has reached the zenith. It is not only ministers at the Central or State are involved but also M.Ps., M.L.As., the Pradhan and Sarpanches exert pressure on the officials at their respective levels and get all the illegal things done. Judges are also not safe from the overwhelming influence of the ruling party and its top bosses. The judges who are committed to the ideology of the ruling party may seek promotions and elevations to higher offices while others not toeing its line may be by-passed or superseded.

²² "Causes of Corruption", available at <http://www.mindcontroversy.com>, last accessed on 30th March,2015

8. Combination of commercial and industrial magnates, etc:

It is not always the government officers who take the initiative in the matter of corruption. Corruption is existed when there is collusive that is when a person is willing to bribe and the other person is willing to be involved in corrupt practices. So the presences of both readiness and ability to corrupt have been observed in industrial and commercial classes. For them corruption is an easy way to secure large unearned profits by various devices, and also the necessary means to enable them to pursue their vocations or retain their position among their own competitors.

Further, there is another class of dishonest merchants, 'suppliers and contractors', who have perfected the art of getting government business, contracts, etc., by undercutting and making good the loss by supplying inferior goods, etc.²³

9. Lack of Independent detective agency:

As we aware of the Fact that India have no detective agency which can investigate with full power and freedom to expose the corrupt individuals independently. Specially CBI who draws its authority from DSPE and under the control of Prime Minister so it hinders in the working of it and its efficiency and its effects get reduced as a guilty person knows that he will be set free by using his contacts at political party. So the anti-corruption bodies to be independent.²⁴

10. Safeguards for Public services:

There is too much security of tenure is given to the Indian Bureaucracy in India. No civil servant should not be removed through an authority who is subordinate to that by which he was appointed it means that a civil servant can be removed by an authority which is above him and below to its position.²⁵

11. Encouragement of unhealthy competition:

Competition is good in the business as it provides better services and goods to the public at reasonable price, in the absence of it which will lead to monopoly in the market which further leads to rise in price. But in India competitive market is not

²³²³ Avasthi, A & Maheshwari ,*Public Administration*, Lakshi Narain Agarwal (13th ed.),pg 605

²⁴ *Causes of corruption in India*, <http://www.mindcontroversy.com>, last access on 31st March 2015

²⁵ Article 311 of the Constitution

being encouraged as we can see when there is any bid how very less company appears , as it is well known between companies that those who better connection with government will have better chances of winning. So, companies with no political influence will not bid for the tender in spite of being a good company. Therefore bidders who have political connection.²⁶

12. Due to lack of tolerance of people towards corruption has led to increase of corruption and public forum to combat corruption allows corruption to bridle our people.²⁷

1.4 Consequence of Corruption:-

Corruption is like a disease which has spread in every root of our country and it has not affected only segment but it has been eating every segment of the country whether it is political, economical, social, judicial, environmental and national security. It has its hold on every segment and that to so deep it has become impossible to curb it but it can be controlled before its gets too late. As this is affecting every sector of our country whether private or public. Some of the consequences are:

1. Political consequences:

It affects the Political machinery of a country as it makes the corrupt person as its leader which will eat the whole system for their benefit and they wont much care about the public interest. So the people will not trust their system and this will lead to chaos in the country and it will give bad impression at international level. it also affects the election process as only corrupt will get a chance as they will use their power to spread this disease more and more. This will also lead to less effectiveness of the laws as we give the power by electing them as our leader whose duty is to bring measures to protect the public interest which will be highly affected. It will lead to collapse the whole administrative structure.

2. Economical consequences:

Corruption destroys the economics of our country as it reduces the revenue of our country which will increase the cost of goods in the country which will not

²⁶Causes of corruption in India, <http://www.mindcontroversy.com>, last access on 31st March 2015

²⁷ Abdulraheem A., *Corruption in India : An overview (Cause, consequences and remedial measures)*; Social Action Vol. 59 October – December 2009.

be affordable by the people. There will be problems in running the fiscal policy in the country. It will make the poor more poorer and the rich more richer which will bring the vast difference in the income of the people. Further the imposition of taxes will be arbitrary as they will impose higher tax so that they can full their pockets with public money. It will reduce the investment in the country there will be no development and it will also reduce the competition in the market. There will be misallocation of funds and resources of the country. It will make the country bankrupt. More of black money will be deposited in the foreign account the more India will have debts on her head. Black money is like an aid to the corruption , it further helps to grow more in the country as the people get away by depositing black money in foriegin accounts. This will destroy the democratic system of our country.

3. Social Consequences:

The consequences on the society of corruption has reached the dangerous level, as this will destroy the confidence of the people in the system of the country , their leaders , these institutions which promises to work for public interest. It will affect the integrity of each individual where giving bribe will become like normal every day activity. It brings down the transparency in the system and it affects the values of the society. It violates the basic fundamental rights of the people of India.

4. Environmental consequences:

Well corruption doesn't directly affects the environment but it does indirectly as the corrupt officials will give away the project to such organizations or corporation which will hardly care to protect the environment which will degrade the environment and lead to environmental consequences . the emission of carbon will be more which we will affect the ecological system of our country. It will pollute water, air , noise ,soil which will deeply affect the resources of the country which are very valuable and limited .

5. Threat to National Security:

If there is ant severe danger to anything in the country due to corruption is then it National Security, as the number of organized crime will be increased, smuggling of weapons, money laundering, involvement of terrorist, which will completely

shook the country as no one will be protected as the protected agencies themselves are corrupted.

So the corruption is like cancer for the country if it is not be controlled then it will destroy the whole country.

1.5 Forms and levels of Corruption

Corruption is difficult to define, there is no particular definition and no particular form of it. To understand the basic nature of corruption this sub topic has been divided into 3 parts . Part I deals with the categories of Corruption; Part II deals with magnitude of corruption and Part III deals with forms of corruption.

1.5.1. Part I - Categories of Corruption:

Categorization consists of Political, economic, administrative, Business, organized and chaotic corruption.

1. Political Corruption :

Political corruption involves lawmakers, such as monarchs, dictators and legislators, such official's engage in corruption when they seek bribes or other rewards for their own political or personal benefit in return for political favours to their supporters at the expense of the public interest.²⁸

The main reason of political corruption is that when a person gets the power to provide politics and policies guidance and have the decision making power and by abusing his position and not working in the public interest instead for their personal benefit. this lead to bad faith of people in the political system of our government as their elected leaders are corrupted. Generally the people involved in this are the one who are at higher level of administration and political level.²⁹

A transaction between private and public sector where they convert public goods converted into private-regarding payoffs. It genereally takes place at the higher level

²⁸ "Conceptualizing Corruption- forms,, causes ,type and consequences available at <http://www.icac.org.hk/news/issue30eng/button4.htm> last accessed on 30th March,2015

²⁹ José G. Vargas-Hernández , THE MULTIPLE FACES OF CORRUPTION: TYPOLOGY, FORMS AND LEVELS, available at <http://www.ameppa.org/upload/Typology.pdf>, last accessed on 31st March 2015.

of the political system. Political corruption leads to the improper allocation of resources and also falsifies the manner in which decisions are made.³⁰

It includes:

- voting irregularities
- nepotism (favoritism granted to relatives regardless of merit) and cronyism (favoritism granted to old friends regardless of merit)

2. Economic corruption:

It is a corruption where monetary value is involved which results in earning profits. It has implications of determining the loss of income, how and how much for the economy, etc.³¹

3. Administrative Corruption :

In the administrative corruption the behaviors of public agents neglect the principles of efficiency, truthfulness and rightfulness, it results in transfer of public benefits to private benefits taking advantage of the entrusted power, as for example, in the form of nepotism that results in the transfer of benefits from society to family members.³²

So corruption is that factor which changes the execution of policies, mostly in cases where you get a license even when don't qualify for it³³

Taking into consideration the magnitude of corruption, the type of corruption can be grand corruption and petty corruption. According to the depth, corruption can be individual and systemic. Some examples of forms of corruption are bribery, collusion, embezzlement of public funds and theft, fraud, extortion, abuse of discretion,

³⁰“Drive away the Evil from India available at <http://blog.wisdomjobs.com/drive-away-the-evil-from-india/lass> accessed on 31st MArch,2015

³¹ José G. Vargas-Hernández , THE MULTIPLE FACES OF CORRUPTION: TYPOLOGY, FORMS AND LEVELS, available at <http://www.ameppa.org/upload/Typology.pdf>, last accessed on 31st March 2015.

³²Ibid

³³ Module Iii- Introduction to corruption, available at <http://info.worldbank.org/etools/docs/library/35970/mod03.pdf>, last accessed on 31st March,2015

favoritism, clientele, nepotism, the sale of government property by public officials, patronage, etc.³⁴

Administrative Corruption includes persons like higher authorities, officers, police officers, clerks, peons, etc. For example, If we give money, then we can get anything difficult, easily. Give money no need to visit the office, you will get driving licenses. By Bribe, a blind and handicap can also get driving license.³⁵

4. Organized corruption:

A well-organized system of corruption in which there is a clear idea of whom to bribe how much should be offered and are confident that they will receive the favor in return Organized corruption is often carried out by crime gangs and syndicates and includes white-collar crime and identity theft.³⁶

5. Chaotic Corruption

A disorganized system where there is no clarity regarding whom to bribe and how much should be offered. Entrepreneurs may need to bribe several officials, but with no guarantee that they will not face further demands for bribes or that the things will be done.³⁷

6. Corporate Corruption:

This occurs in relationship between private business corporations and the suppliers or clients. It also occurs within corporations, when corporate officials use the corporation resources for private gain, at the expense of the shareholder.³⁸

³⁴ José G. Vargas-Hernández , THE MULTIPLE FACES OF CORRUPTION: TYPOLOGY, FORMS AND LEVELS, available at <http://www.ameppa.org/upload/Typology.pdf>, last accessed on 31st March 2015

³⁵ The Different types of corruption , available at <http://www.indiastudychannel.com/resources/138785-The-different-types-Corruption.aspx>,last accessed on 31st March,2015

³⁶ Drive away the Evil from India available at <http://blog.wisdomjobs.com/drive-away-the-evil-from-india/>lass accessed on 31st MArch,2015

³⁷ Ibid

³⁸ “Conceptualizing Corruption- forms,, causes ,type and consequences available at <http://www.icac.org.hk/news/issue30eng/button4.htm> last accessed on 30th March,2015

1.5.2. Part II – Magnitude of Corruption :

Part II deals with the magnitude of corruption whether it is at small scale as in small amount of money is involved or at large scale affecting public and against public interest.

The magnitude of corruption has been defined by Pedersen and Johannsen (2008) for measuring corruption distinguishes:³⁹

Daily or day to day corruption which occurs at the lower levels in the system of administration so what requires is behavior so gain the benefit through the act of administrative malpractice⁴⁰.

Whereas Grand corruption occurs at both the levels i.e. the middle and higher level in the administration which have direct relations with political government whose intentions are to avoid the democratic process. So this type of corruption is linked to the particulars of the private –public relations within the society.⁴¹

1. Petty Corruption :

The term "petty corruption" is used for the corruption which are done on the small scale or the corruption which is done on the low-level and it seems to be little if we compare it to the overall business transactions and it majorly affects the poor and small firms but some firms are earning profit by this corruption.⁴²

This is the daily corruption which occurs by implementing the end of politics to follow existing laws, rules and regulations. It can be defined when the public officers misusing their position or power to practice corrupt act at the smaller scale and leaving effect on the innocent public.⁴³ It is a corruption based on day-to-day life.

³⁹José G. Vargas-Hernández, THE MULTIPLE FACES OF CORRUPTION: TYPOLOGY, FORMS AND LEVELS, available at <http://www.ameppa.org/upload/Typology.pdf>

⁴⁰ Ibid

⁴¹ Ibid

⁴² Petty Corruption, available at http://www.readyratios.com/reference/business/petty_corruption.html last accessed on 1st April,2015

⁴³ Drive away the Evil from India available at <http://blog.wisdomjobs.com/drive-away-the-evil-from-india/lass> accessed on 31st MArch,2015

2. Grand Corruption:

Grand corruption which occurs at top level in the administrative system, here the participants or the main culprits who have the power to enact policies and rules, who will enact in such a way in which they can have benefit out of it so this one of the most dangerous corruption as its affect the whole Nation and just small group of people like in petty corruption. is considered the most dangerous type of corruption. This occurs at financial, political and administrative centers of power⁴⁴

This type of corruption where the participant are head of states, ministers, or other senior government officials and serves the interests of a narrow group of business people and politicians as criminal element.⁴⁵

1.5.3. Part III – Forms of Corruption

Part III deals with the classification of corruption or forms of corruption. As we have seen many classification of corruption through news, paper and other media. But we don't know the actual difference between each. The basic classification includes bribery, fraud, extortion, embezzlement, nepotism and others.

1. Bribery :

Bribery is the most seen form of corruption, it is being used in day to day sphere, even for the small work. It is basically giving some amount of money to a person from whom we have asked for favor due to his position. it is basically giving some incentive to a public servant or any person for carrying out some work which is not legal or which he should not be doing or expected to do. It can be imitated by offering bribe also, it doesn't need to an event to happen, even a mere offer of some money can be termed as bribe. It can be in any form of financial, more valuable to less tangible ones like information or favors. It can be in a form of active or passive, it can be present in government activities or in business activities. It has no limit.

Paying to a police for not giving a slip is a bribe. Paying to peon for passing the file to the higher authority is a bribe. Paying your faculty for not failing you is bribe.

⁴⁴ Ibid

⁴⁵ "Conceptualizing Corruption- forms,, causes ,type and consequences available at <http://www.icac.org.hk/news/issue30eng/button4.htm> last accessed on 30th March,2015

People with money generally buy the powerful person for their own benefit like big corporations who want to escape payment of tax, environmental regulation to minimize the pollution, import or export liability etc. It all affects the competition in the market, affects public interest and national economy.

By saying like that “ bhaiya, kuch karcha pani lelo aur humein jaane doo.” This is offering a bribe to a traffic police man is very common example of bribery.

2. Fraud :

Fraud means cheating or deception. In this a person manipulates or gives wrong information to another so as to cheat or to do fraud. It is basically done to hide your real identity. It is a financial crime. Fraud consists of the use of misleading information to induce someone to turn over the property voluntarily, such as the case of misrepresenting the amount of people in need of a particular service.⁴⁶

It happens when a person dishonestly deceives another person through deception

Examples: forgery, smuggling, counterfeiting, identity theft etc.

3. Embezzlement

Embezzlement means misappropriation or theft of funds of an employer by a disloyal employee. It is a type of corruption which takes place by stealing other's property, value or money by a person to whom it has been entrusted. Embezzlement in case of public sector it distresses the innocent citizens because public officers embezzle resources meant for public services. It is not limited to money and also includes all goods and property that were meant for the public benefit.

4. Extortion:

Extortion means obtaining money, property or any other valuable things from a person through coercion. It is an example of corruption where a person forcefully or by means of coercion obtains money or any favors for his own benefit. In governmental activities extortion takes place when government agencies are not providing services on time and intentionally delaying its process so as any service

⁴⁶ José G. Vargas-Hernández, THE MULTIPLE FACES OF CORRUPTION: TYPOLOGY, FORMS AND LEVELS, available at <http://www.ameppa.org/upload/Typology.pdf>.

receiver will pay or offer money so that his work can be done within time or quickly, so those who pay gets a preferential treatment.

5. Nepotism:

It is another form of corruption it occurs when any officer favors his close friend or relatives by misusing their position. It is like giving preferential treatment to their family or relatives or close friends. It occurs in both public and private sector.

Examples:

- College Director's son is having low attendance in one subject due to which he won't be allowed to sit for exams therefore Director changes his attendance percentage and make it above the 75%, now his son can sit for exams, so Director has committed Corruption in form of nepotism. In this his son will never be able to learn the basic concepts and also will never be regular and sincere for his work which will hamper his career and his future.
- Suppose A as a qualified person fill an form of a job where a particular qualifications are required but he filled the forms of his relatives for that job knowing that they will not qualify the requirement. So he is guilty of nepotism. Here he has given jobs to those who doesn't even qualify for that job so he has hampered the interest of Nation.

6. Money laundering:

Money laundering involves "washing" dirty money clean.

Money laundering has the same relationship to corruption as a receiver of stolen goods has to a thief. Every thief needs to dispose of stolen goods so as to avoid detection and prosecution and at the same time doesn't want to compromise with the material value of the goods.

The aim of any corrupt transaction is to generate a profit for an individual or group and money laundering is the processing of these criminal profits to disguise their illegal origin. Money launderers enable the corrupt to enjoy their criminal profits without revealing their original source.

For the corrupt, the problem is how to gain the control of illicit funds without attracting attention to the underlying activities or themselves.

The answer is to disguise the sources by changing the appearance of the profits and by locating them in places where they are less likely to attract interest from law enforcement agencies.

Money laundering has three phases:

1. Placement stage where illicit funds are introduced into the financial system and broken down into a number of different financial packages.
2. Layering stage where the launderer goes through a series of conversions and /or movements of the illicit funds to distance them from the source and make it more difficult to track.
3. Integration stage when the illicit funds are re-integrated into the legitimate economy by, for example, buying real estate or investing in conventional businesses.⁴⁷

⁴⁷ Reddi's Anti-corruption laws and departmental enquiries , 4th edn., orient publishing company , pg. 17

2. Major Scams in India :

2.1. Coal scam:

Coalgate or Coal allocation scam is one of the major scams in India which concerned the Indian government regarding the allocation of coal deposits to private as well as public companies. CAG accused Government of India for allocation of coal blocks as improper during the period of 2004-2009. Further BJP, the opposition lodged a complaint in 2012 which lead to CBI investigating whether the allocation was influenced by corruption.⁴⁸

CAG gave 2 reports on allocation of coal blocks, in both the reports CAG raised two allegation on the GOI i.e. the GOI could have used competitive bidding but dint choose to do it . Secondly the “Illegal gain” to the allocates were ₹10673 billion (US\$170 billion)⁴⁹ but the final report gave the figure at ₹1856 billion (US\$29 billion)⁵⁰

Several allegation were made against

- S. Jagathrakshakan, Minister of State for information and Boradcasting in the UPA Government ,
- Subodh Kant Sahay, Tourism Minister in the UPA government wrote a letter to Prime Minister Manmohan Singh requesting him for allocation of a coal block to a company named SKS Ispat and Power in which his younger brother, Sudhir Sahay hold a position of Executive Director.
- Ajay Sancheti's SMS Infrastructure Ltd. was allegedly allocated coal blocks in Chhattisgarh at low rates⁵¹
- Vijay Darda, a Congress MP and his brother Rajendra Darda, the education minister of Maharashtra.

⁴⁸ "Draft Performance Audit, Allocation of Coal Blocks and Augmentation of Coal Production by Coal India Limited" Report of the Comptroller and Auditor General of India (Union Government (Commercial)). Comptroller and Auditor General of India (Union Government (Commercial)). Retrieved 8 September 2012. Hereafter Draft CAG Report

⁴⁹ Ibid

⁵⁰ "Transcript: Prime Minister Manmohan Singh Counters 'Coalgate' Allegations - India Real Time - WSJ". Blogs.wsj.com. 27 August 2012. Retrieved 6 March 2014.

⁵¹ "Sancheti firm caused Ch'garh govt Rs37cr loss". *Times of India*. Retrieved 7 September 2012.

- UPA partner Rashtriya Janata Dal's leader Premchand Gupta's sons' company also applied for a coal block during the period when Premchand Gupta was the Union minister for corporate affairs
- Congress. MP, Naveen Jindal's Jindal Steel and Power got a coal field in February 2009 with reserves of 1500 million metric tones.

Further 2 BJP member of Parliament filed a complaint on which CVC directed CBI enquiry in 2012. Income tax Department also started their enquiry.

Due to this , Coal ministry decided to form an Inter Ministerial Group in June 2012 regarding the de-allocation of coal blocks. On 26th September 2012, IMG recommended to de-allocation of 13 blocks out of 31 blocks which they have reviewed.⁵²

Finally , a PIL was filed in the Supreme Court of India by adv. M.L.Sharma for cancellation of allotment of coal blocks. Supreme Court held in the case of Manohar Lal Sharma Vs. Principal Secretary & Others on allocation of coal blocks, 25/08/2014 that the allocation of coal blocks made during the period of 1993 to 2010 are illegal and unconstitutional and it has suffered with arbitrariness, lack of transparency and also involvement of corruption and malafide intentions to gain profit.

2.2. 2G Spectrum Scam ;

The 2G spectrum scam was one of the biggest scam and also a political and IT scam which involved the politician , government officials for illegally charging from IT companies for frequency allocation licenses which is to be used to create 2G spectrum subscription for mobiles. “The discrepancy between the cost collected and authorized to be collected was 1766.45 billion (US\$28 billion) estimated by CAG based on 2001 3G and BWA spectrum-auction prices⁵³. On 2nd April 2011, CBI filed a charge sheet but on 19th August 2011 it was totally rejected by TRAI that this plan has made a profit of INR 30 billion (US\$500 million)⁵⁴” and this allegation was also rejected by Kapil Sibal in 2011 who talked about Zero loss theory that the distribution of 2G license dint amount to loss rather the frequencies were not sold less than its

⁵² 6 More Coal Blocks to Be Cancelled, 7 to Lose Guarantee". Outlook India. 26 September 2012. Retrieved 26 September 2012.

⁵³ <http://indiatoday.intoday.in/story/what-is-the-2g-scam-all-about/1/188832.html>

⁵⁴ <http://www.indianmirror.com/indian-industries/indian-scams/twogspectrum.html>

cost. Finally on 2nd February, 2011 PIL was filed in Supreme Court where all theories of loss, profit or zero loss were put to an end where SC held that the allotment of 2G license were unconstitutional and arbitrary and further it cancelled all 122 license issued while Raja as Communication and IT minister i.e. 2007 to 2009. The conviction against Mr. Raja was declared in the 2G scam. Further SC during its decision also said that Mr. A.Raja has changed the policy for some companies in order to get personal benefit from them at the cost of public money. During the trial, the concept of zero loss theory was also ousted as soon as government revised the base price for 5 MHz 2G spectrum auction INR 140 billion (US\$2.4 billion), leading the value of spectrum to amount to roughly INR 28 billion (US\$470 million) per MHz.⁵⁵

The amount given by the SC was nearly to the amount mentioned by CAG in its report. No second thought that Mr. A Raja has manipulated the whole plan in smart manner as instead of following the first-come first serve basis he followed first come and who complied with the conditions.

This scam was came into limelight when Subramanian Swamy on nov. 8th, 2008 wrote a letter to PM Manmohan Singh and not only one letter but many letters regarding policy of 2G spectrum which has been followed and asking to take some action against such practice but due to no response from Mr. Sing's side. So on 27th November 2010, Mr. Swamy decided to file a case against Mr. Raja regarding corrupt practices which has been carried out for allotment of 2G spectrum license where no proper rules and procedure were followed and license was issued at 2001 price which resulted in a loss of about Rs. 1.76 lakhs crore to the government. On 10th January 2008, companies were given small window of time to provide their intent letter and cheques and many companies were already tipped off by Mr. A Raja and they were waiting with their cheques and other required documents.

Further CAG in its report mentioned that Mr. A. Raja intentionally ignored the advice of finance and law ministers advice regarding the issuance of license amounting benefit to some operators. They also mentioned that the prices were based on 2001 which not only cost loss to the government but also its national treasury and economy. There are many operators who got benefit from this are Bharti, voda, BSNL etc.

⁵⁵What is 2G Scam all about available at <http://indiatoday.intoday.in/story/what-is-the-2g-scam-all-about/1/188832.html> ,last accessed on 31st March, 2015

Finally on 2nd February, Mr. A. Raja got arrested by CBI. Other persons who were also accused in this scam are :

- M.K. Kanimozhi, daughter of former TN Chief Minister M. Karunanidhi, is a Rajya Sabha member and also has a stake of 20% in her family owned business Kalaignar TV.
- ArunShourie, the minister for Telecom during 2003 in the previous BJP regime.
- Pramod Mahajan, the minister for Telecom between 1999 and 2003.
- Siddhartha Behura, former telecom secretary
- Pradip Baijal, a bureaucrat who is supposed to have executed policies that favored certain Telecom companies when he was heading the TRAI.
- R K Chandolia, private secretary of Raja during UPA-I and also an Indian Economic Service officer

In 2011, Time Magazine listed this scam at number 2 on their list of “ Top 10 Abuses of Power “ just below the Watergate Scandal.⁵⁶

2.3. **CWG scam:**⁵⁷

Common Wealth Games,2010 is one of the most well known and shameful scam of India in which Mr. Suresh Kalmadi, Chairman of the Organizing Committee of the CWG was main accused. Various improper or corrupt contracts took place and also misuse of power or abuse of position happened much before the main event. Amount Rs. 70,000 crores were collected out of which only half was spent on games and sportspersons. Further it was declared through investigation that Mr. Kalmadi gave a contract of Rs. 141 Crore to Swiss Timing for its timing equipments which was excessively high by Rs. 95 Crores which is not only high but also unreasonable.⁵⁸

Sportspersons and athletes were shifted from their apartments which were exclusively meant for them to untidy and low types of apartment just 10 days before the starting of CWG. CVC, who was investigating into this scam about the misuse of power and

⁵⁶ What is the 2G Scam all about available at <http://indiatoday.intoday.in/story/what-is-the-2g-scam-all-about/1/188832.html> last accessed on 31st March,2015

⁵⁷ Commonwealth Games available at <http://www.indianmirror.com/indian-industries/indian-scams/commonwealth.html> last accessed on 31stMARCH,2015

⁵⁸ Ibid

position for personal gains discovered that lack of compatibility in tenders like excessive inflated price and no proper purchase of equipment and using misappropriate funds, intentional delay in fulfilling of contracts, false payments to non-existing parties and others.⁵⁹

This scam came into limelight by CAG even before CWG was started. Further on the basis of audit report of CWG, CAG sent a questionnaire to Prime Minister's Office (PMO) and Cabinet Secretariat (CS) to get the information how come this scam took place when these two offices were looking into it on each and every detail of it. As Policy decision was under the control of CS and it was monitoring the administrative functions and these two things were control of PMO, Mr. Singh as its head. Both PMO and CS dint respond to the questionnaire sent by CAG. There were question on to the formation of Organizing Committee and also for those Central Ministers which were looking into CWG. As OC was created with the consent of CS and PMO but after sometime the decision of Ministers were changed and they gave the charge to Mr.Kalmadi and removed Mr. Sunil Dutt, who was Sports Minister. The whole organization was involved in this scam as things got worse when Union Cabinet Committee , which was formulated to keep a check on corrupt practices in the games and this committee was formed before the hosting of CWG and it was headed by Late Arjun Sing , who was first president of this committee but during the CGW Mr. Jaipal Reddy, Urban Development Minister was heading this committee and this committee was functioning under the control of PMO and CS. CAG was not only looking into the administrative responsibility but also into other lapses.⁶⁰

It was further noted that Mr.Kalmadi was also involved in misappropriation of funds during Queens Baton Relay which was held in London for which Enforcement Directorate also filed case against Mr. Kalmadi on the allegation made by British Authorities. Further a case was registered against the officials of MTNL and HCL for broadcasting at very high prices about Rs. 400 crore.⁶¹

⁵⁹ Ibid

⁶⁰ CWG Scam2010, available at http://swapsushias.blogspot.in/2011/08/cwg-scam-2010.html#.VRzWd_yUdlx last accessed on 31st March,2015

⁶¹ Ibid

No doubt Mr. Kalmadi used his cleverness and manipulated the whole team to collect money unfairly on the name of CWG⁶².

Further in investigation report it was came up that no proper norms were followed for appointment of officers and further the muster rolls showed of all those names of non-existing person. CBI further claimed that the appointments made in OC were no experts as required by the post. As per the records only 100 officials were on the rolls against the record of strength of 2,100 officials in 2003-2009.⁶³

Further the only lacuna was not only on administration but it has lacked in many sectors while hosting CWG like infrastructure , security, equipments , economical impact and no proper organization⁶⁴.

2.4. Satyam scam⁶⁵

Satyam Scam was one of the biggest corporate fraud which held in 2009 and which shook the whole country and specially corporate world. In this scam , the main accused was Mr. Ramalinga Raj who was the Chief Executive officer of Satyam Computers Services limited , which is a IT company which has operation in 65 Countries. This scam has caused Rs. 14,162 Crores to investors and illegal gain of Rs. 2,743 Crores by various means of fraud.⁶⁶

The company's management fraudulently exaggerated its revenue and profits and also by entering false sales invoice just to hike the profit of the company and its value with the help of their auditors. Due to this all the investors of the market was attracted by looking its unbeatable profit margins and further they were cheated. So this led to rise in the price of shares. Which attracted CBI to look into it and it's activities.⁶⁷

CBI formed a investigating team, Multi Disciplinary Investigation Team (MDIT) to investigate into Satyam Company, they took 45 days to investigate and to prepare a detailed report on it and after its report they filed a case against main accused Mr. Raju on the grounds of Cheating, Forgery, falsification of accounts and criminal

⁶² Ibid

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ Satayam Scam available at <http://www.indianmirror.com/indian-industries/indian-scams/satyamscam.html> lass accessed on 31st March ,2015

⁶⁶ Ibid

⁶⁷ Ibid

conspiracy. Further Mr. Raju also took the ownership of properties of companies which not only hyped the company's revenue but also reported the holding of cash about Rs. \$1.04 billion which can't be so simply exist.⁶⁸

The whole scam took place in 3 parts, first part was in the year 1999 and the next three years where the company sold the software named Y2K phenomenon, so the company made good money. Second part, in the year of 2001, company started its falsification of accounts so as to keep the price of share high. Now, the promoters of the company who have made profits due to high price of shares to switch their side from shares to infrastructure.⁶⁹

Further detailed report was submitted by SFIO (Serious Fraud Investigation Office) that involvement of auditors and lack in their control over the audit and Mr. Raju had developed 374 infrastructure firms and 8 investment companies which will help him to boost the land promotion and become the biggest land promoter which will lead to end of second phase. Now, Part three where the company fraudulently and falsely showing the revenue of the company but in real they were starving for funds and all promoters were trying to save the company from sinking. Now one of the Directors received an email just before the BOD meeting. BOD meeting was about to buy 2 firms namely- Maytas Infra Ltd and Maytas Properties Ltd. The email which was sent to Palepu mentioned to blow the fraud practice which has been carried out by the company, so he forwarded the mail to another independent director, Mr. Rao, chairman of audit committee who further forwarded to Mr. Gopalkrishnan where he tried to convince Mr. Rao that no fraud practices have been carried out and further to clarify the doubts in this regard in the audit meeting but this meeting never held. Further Mr. Raju was not responding to this mail and Rao's calls.⁷⁰

This scam was then compared with the US Enron's Scandal. Further Mr. Raju resigned from his post and confessed that he had manipulated the company's accounts by US\$1.47 billion. Moreover US SEC (Securities Exchange Commission) charged

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Ibid

PWC with amount of \$6million for its involvement in Satyam Scam and also for not forming its duties regarding audit⁷¹.

Mr. Raju along with 2 other accused granted bail by Supreme Court on Nov.4th,2011 on the ground that CBI failed to file a charge sheet against the accused even after 33months of arrest. Moreover Raju appointed a task force to dissolve the issue with maytas before exposing the fraud accounting. After the limelight on this scam the new interim CEO was appointed Ram Mynampati⁷².

Then CID arrested CFO of Satyam Vadlamni Srinivas and kept in judicial custody. Later on Government appointed new members of Satyam⁷³

2.5. Fodders scam 1996⁷⁴

Fodder scam or chara ghotala is one of the famous scam in India. It is the best example of Embezzlement. This scam took place in the year of 1996 in state of Bihar, it involved top most member of State Government i.e Chief Minister Lalu Prasad Yadav and also former Chief minister Jagannath Mishra. This scam involved large number of herds for imaginary animals or livestock, where various medicines, animal husbandry equipment were bought for those animals which never existed. Even though it came into limelight in the year of 1996 but it has been carried out from two decades i.e. from the time of Jagannath Mishra as Chief Minister in during 1970's. due to its existence for so long and also involvement of top most members of State government , bureaucrats, business people has shook the whole country for a while. This type of corruption has been recognized as symbolic to political corruption and criminalization⁷⁵

It became very clear by looking into the scam that the main culprit of this whole scam is Lalu Prasad, so the legal proceeding started against him and also that he can't

⁷¹ Ibid

⁷² Ibid

⁷³ Ibid

⁷⁴Fodders Scam available at <http://www.indianmirror.com/indian-industries/indian-scams/foddersscam.html> last accessed on 31st March,2015

⁷⁵ Ibid

continue as Chief Minister so he resigned from his post on 25th July,1997 but he played so clever that he made his wife as new Chief Minister Rabri Devi.⁷⁶

In this scam apart from Lalu Parsad and Jagannath Mishra , around 200 people were punished for imprisonment for 2 and 7 years. Lalu as feeling proud and takes the credit that he is only person on whom lok sabha debated for whole session. And only 53 cases were filed in this scam⁷⁷

Basically this scam should have initiated by stealing at small level involving only few government officials who would have submitted falsified the accounts by showing major expenses but with time , this pilfering grown at such scale that it involved more officials and businessman and sooner it converted into a whole organized criminals as Mafia.

It was CAG who noticed in the year of 1985 that State of bihar is lagging behind on the submission of monthly accounts , so Mr. Chaturvedi intimated a warning to CM of Bihar Chandar shekhar that this might be a sign of stealing or corrupt practice, so many precautions were suggested by CAG and PAG (Principal Accountant Generals) from the Centre. But all these warning were ignored and dint pay any attention to it⁷⁸.

During investigation it was discovered in a conference in 1985 that the existence of Animal Husbandry Mafia gang , it was exposed by Bihar Veterinary Association (BVA). Due to change made in the members of BVA which proved the control of mafia in the association. By looking at such practices some of the Ex-BVA took the initiative to put an end to this practice so they started collecting all information regarding to it so to expose it. Finally it was on 27th January 1996, when Mr. Amit Khare, Deputy Commissioner of West Singhbhum district raid all the offices and departments of animal husbandry and collected all the information through which it became clear that Mafia was involved in such corrupt practices. And it was made publically with the help of Journalist Ravi S. Jha. He by referring all the evidence collected through raid exposed Government's involvement in this scam.

Through CBI investigation it was clear that the committee was equally involved in this scam. Followed by this finally PIL was filed in Supreme Court of India. Bihar

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Ibid

High Court transferred the case to CBI on March 1996, where through investigation it became clear the role of Laloo Prasad in this scam. Therefore on June 1996, CBI requested to Governor of Bihar that to conduct a legal proceeding against Laloo for which the permission was granted and also the five senior government were taken into judicial custody. After the initiation of investigation they unleash the whole truth about the scandal. CBI raided Laloo's residence and filed a charge sheet against him and other 55 co-accused.⁷⁹

Finally on July 26th, 1996 Bihar State Government ordered to arrest Laloo but he already had anticipatory bail but this was denied and then he appealed to supreme court for such denial but this was also denied by the court on 29th July. Following the next day he was again arrested and sent to Bihar Military Police Guest House. On 12th December 1997, Laloo was released after spending 135 days under judicial custody. Finally the trial was ended on May 2013 where 500 people were accused and punished for different offences. CM Laloo, R.K.Rana, Dhruv Bhagat were highlighted as accused. The court held Laloo and Jagannath as accused and held imprisonment for term of 5 years and 4 years respectively.⁸⁰

2.6. Cash for vote scandal⁸¹

It is one of the political corruptions which shattered the belief of all citizens on the Parliamentary system of our country. As in this scam, UPA alliance which is headed by Mr. Mohan Singh but under control of Sonia Gandhi bribed the members of Parliaments of BJP so as to earn the confidence vote on 22nd July 2008 for Indo-US Nuclear deal. Marxist Community Party withdrew its confidence from UPA's decision in the Lok Sabha due to which confidence voting was initiated. Further Marxist Party declared their disappointment towards the project where India will get supply of nuclear technology from US and in return UN will inspect and split the nuclear programs as per their aspects into civil and military and this will make India inferior to US which was not acceptable to the Party. Not only CPI(M) was against but also BJP was against this deal on the ground that it will hinder the development of the Country's Nuclear Program. Therefore looking into this scenario UPA called all

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Cash for vote available at <http://www.indianmirror.com/indian-industries/indian-scams/cashfor.vote.html> last accessed on 31st March, 2015

the MPs either sick or was in jail to attend the meeting and they won the confidence vote as majority of the seats held by UPA in the Parliament. They defend their project on the basis that India needs more electricity to develop nuclear infrastructure. But this win of confidence vote was crushed by the BJP MPs specially by Ashok Argal who took out the bundles of cash during the session when debate was on in the parliament and further alleged UPA for giving bribe to them as to buy their vote during vote of confidence. Moreover BJP strongly demanded PM Manmohan Singh's resignation based on various allegations put on him and not only BJP was demanding but also CPI(M) also demanded the same and stated that they had been approached by the UPA members to cast the vote in favor of them in return of cash they had been bribing them. BJP claimed to have video recording as an evidence of bribe. But UPA government denied such kind of bribe practice.⁸²

Then the Speaker of Lok Sabha Mr. Somnath Chatterjee involved the Delhi police to investigate into this case. On August 2nd 2008, which is after a period of 2 weeks, BJP produced documentary evidence including printed copy of video and explanatory letter from 2 of the MPs where it has been clearly shown that 3 members of BJP i.e. Ashok Argal, Faggan Singh Kulaste and Mahaveer Bhagora were bribed by the UPA members were submitted to the investigatory committee. Further BJP raised allegations against CCN-IBN who recorded the BJP's sting operation to sting the government but did not broadcast it but it was broadcasted on 12th August 2008 after the investigating committee gave green signal to CCN-IBN.

Investigating committee started the investigation on 30th July 2008 and this committee was known as Kishore Chandra Deo Committee. On December 2008, Committee gave a declaration that it did not find any evidence against Mr. Amar Singh and Ahmad Patel for bribing. Amar Singh was a known member of Samajwadi Party (SP) who started supporting UPA when Left front opposed it. So the committee asked for more detail investigation into the activities of Mr. Sanjeev Saxena, Sohail and Sudhendra Kulkarni. Further it was discovered that Sanjeev is the right hand of Amar Singh and Kulkarni was having a similar post to the BJP leader L.K. Advani. and Sohail was a member of Bhartiya Janta Yuva Morcha⁸³.

⁸² Ibid

⁸³ Ibid

Finally the conclusive report was submitted by the committee that few member didn't agree with the conclusion given by the committee and desired to have additional investigation. It gave the conclusion that the proof of video which was submitted as main evidence was not enough to hold the allegation of bribe as it wasn't clear who was in the car and what happened in the house. So there was no sure shot proof was there to prove that any money was offered for vote. Furthermore, in Jan 2009, Police started additional investigation against Kulkarni, sohail and saxena which was recommended by the committee.⁸⁴

On the contrary, in November 2013 an autobiography was released by Drohkaal ka Pathik, former MP Pappu Yadav stating that bribe was offered for trust vote in 2008 both Congress and BJP got Rs.40 Crores each for their support.

Further, on 17th March 2011, a report was submitted where a Congress adviser Nachiketa Kapur expressly accepted that the Party has enough funds to bribe the MPs to get their support and further he accepted that the bribe has already been paid off to four Mp's of RDL (Rashtriya Lok Dal). Another report was produced where a congress wing leader Satish Sharma exposed to US employee that the party has collected money around Rs.500 million to Rs 600 million for bribing Mps to get their support and he made this statement exactly five days before the vote of confidence to be held.⁸⁵

2.7. Harshad Mehta Scam⁸⁶

This scam came into limelight in the year 1992 when Harshad .M. Mehta was in the spotlight of public consideration with many financial crimes accused for. He was an Indian Stock broker who professed in huge stock who set out the scheme bankrolled by irrelevant bank receipts, which his company agreed to prepare in advance of transactions between banks. There were around 27 criminal allegations which were filed against him.⁸⁷

He worked in the New India Assurance Company, but in the year of 1980 he resigned from his job so that he can join the stockbroker P. Ambalal who was associated to the

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Harshad Mehta Scam available at <http://www.indianmirror.com/indian-industries/indian-scams/harshadmehtascam.html> last accessed on 31st March,2015

⁸⁷ Ibid

BSE. Later on, in 1981 he was employed as a sub broker for stockbrokers J.L. Shah and Nandalal Sheth. As soon as he had enough experience Mehta along with his brother Sudhir came up with a project “Grow More Research and Asset Management Company Limited”. After sometime Mehta's company hunt for the financial assistance from J.L. Shah and Nandalal Sheth it is when BSE offered for a sale of broker's card. Another person who was also included in this scam was Nimesh Shah who also an important role and a safe game and though he is believed to be a important player in the Indian stock market.⁸⁸

When Harshad Mehta started buying shares in weighty figures which highlighted his name in the stock market. Real trouble started when he bought the shares of Associated Cement Company (ACC) and raised the value of the shares from Rs.200 to Rs. 9000 (around.) which was a rise about 4400% as per the stock markets norm but he succeeded in stating the reason behind such hike as the high level bidding for the substitution of cost theory which means that the old companies to be valued only on the basis of the amount of money which is to be required to generate another similar company at equality. It is also known as replacement cost theory.⁸⁹

Harshad's firm not only worked as a broker but also as collateralized bank receipts. Ready Forward transaction were carried out by using these bank receipts which were to used in hot-term bank-to-bank lending. Like this everyone gave him a name of "Big Bull". But in real he took advantage of the lacunas in the banking system and emptied off funds from inter-bank transactions.⁹⁰

Apart from buying ACC shares at heavy rates , he also bought the various industrial shares at a heavy premium. Consequently it leads to rise the sensex. Eventually these schemes of him dint last for long and he was exposed as banks started to claimed their money back. Due to this sensex again came to normal rates from where it raised⁹¹.

By looking into all this all together 72 criminal offences and 600 civil actions were charged against him. Soon it became public and later on he was declared as guilty of Criminal offence by order of the Bombay High Court and Supreme Court of India for this financial scandal which valued INR 4999 crores (US\$830 million) which

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ Ibid

⁹¹ Ibid

occurred in the Bombay Stock Exchange (BSE). This led to come out with new regulations and laws by Bombay Stock Exchange and SEBI so as to fill the lacunas in the laws.⁹²

Mehta firm played very smartly as it made sure not to disclose the identity of buyer and seller. As it was brilliantly taken care of by the brokers as they made the market and undertaking the transactions on behalf of a bank to maintain an impression of validity. Further he used an additional tool i.e. the bank receipt (BR) which is received by the buyer from the seller on the sale of securities and guarantees to give the securities to the buyer. Therefore the buyer gets the hold of securities in the seller's trust.⁹³

Now Mehta utilized this method by locating two banks namely the Bank of Karad (BOK), Mumbai and the Metropolitan Co-operative Bank (MCB) who were prepared to provide counterfeit bank receipts exclusive of any government securities. So by using all these fake bank receipts he borrowed money from various banks, making them think that they were giving against government securities, so Mehta finally using this money to raise the price of shares in the stock market. So like this he made profit and bank receipts got retired when it was supposed to be returned to the bank⁹⁴.

Though many banks apprehended that they were holding fake BR's which had no value and use and Mehta by using his brilliant idea by withdrawing all amount from the bank nearly Rs 4,000 crores. As soon as it came into limelight Mr. Mehta got arrested, further chairman of Vijya Bank along with Mehta his brother was also got arrested on the grounds of embezzlement more than 2.8 million shares (2.8 million) of about 90 companies, including ACC and Hindalco, through forged share transfer forms.

But this is not the end, when he came back he tried to re-enter to the market as share expert by giving tips on investment but this was objected by the High court and again held Mehta as guilty for criminal offence and was sentenced to jail for five years along with fine.⁹⁵

⁹² Ibid

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Ibid

On 31st of December 2001 Mehta died due to heart ailment in the Thane civil hospital⁹⁶.

After nine years of his death the Public Sector banks (PSBs) and the Income tax departments finally got their money back by liquidating Mehta's property. His property's liquidation the amount of which is to be paid to Rs1, 995.66-crore to the I-T department and Rs 199.25-crore to the State Bank of India (SBI).⁹⁷

⁹⁶ Ibid

⁹⁷ Ibid

3. Anti-corruption Laws in India

Legal framework plays vital role in combating corruption in India without which it wouldn't be possible to control the corruption at the speed at which it is been increasing.

The laws against corruption in India are:

The evolution of the Anti-Corruption Law in India was in the pre-independence period, where the Indian Penal Code (IPC) was the main tool to combat corruption in public life.

1. The Indian Penal Code, 1860
2. Prevention of Corruption Act,1988 was enacted along with many modifications.
4. Income Tax Act,1961 in terms of tax agreement
5. Right to Information Act,2005
6. Prevention of Benami Transactions Act,1988
7. Whistle Blowers Protection Act,2011

Enforcement agencies in India to curb the corruption and who act as watch dog to make sure no corrupt practices can be carried out in the administrative function and if did then the investigating agency will investigate into the matters. This concept was coined by Santhanam committee in 1964 specially CVC and CBI. Further agencies are:⁹⁸

- I. The Central Vigilance Commission
- II. Central Bureau of Investigation
- III. Central and Auditor General
- IV. National Crime Records Bureau
- V. Lokpal under Lokpal and Lokayuktas Act,2013

⁹⁸ *The National Anti-Corruption Strategy*, Central Vigilance Commission, September 2010 available at <http://cvc.nic.in/NationalAntiCorruptionStrategydraft.pdf>, last accessed on 2nd April,2015

3.1. IPC ,1860

In this there is a whole chapter on ‘Offences by Public Servants’ which are from Sections 161 to 165 provided the legal framework to prosecute corrupt public servants. At that time the need for a special law to deal with corruption was not realized.⁹⁹

During the Second World War which created shortages and gave chance to corrupt elements to abuse the situation which lead to a large scale corruption in public life. This situation was not sustained even after the war which made legislatures more worried regarding this threat and they felt the need to bring the drastic legislative measures in section 161 to 171. On the other hand, further it was noticed that the IPC provisions were not efficient enough to deal with the rising corruption problem among public servants. Therefore the Prevention of Corruption Act, 1947 was enacted, but this Act 1947 did not redefine nor expand the definition of offences related to corruption which were already in existence in the IPC. Further, it also adopted the same definition of ‘Public Servant’ as in the IPC.¹⁰⁰

3.2.Prevention of Corruption Act,1988

3.2.1. Analysis of Provisions:

The Prevention of corruption Act,1988 was enacted to consolidate and rectify the laws relating to the prevention of corruption and other matters connected to it. It received the assent of the President on 9th September ,1988 and this Act has repealed The Prevention of Corruption Act,1947 and the Criminal Law Amendment Act,1952. It further omitted the sections of IPC from 161 to 165 –A¹⁰¹.

Some of the major modifications brought into the Act,1988¹⁰²:

1. The definition of public servant has been enlarged
2. A new concept of public duty has been introduced for the first time – section 2(c)(viii)

⁹⁹ 4th report on Second Administrative reform commission,2007, pg 58

¹⁰⁰ Ibid

¹⁰¹ Reddi's *Anti-corruption Laws and Departmental Enquiries* , 4th edn., Orient Publishing Company , pg. 121

¹⁰² Ibid

3. For the offence committed under this Act the minimum sentence is of six months. The courts have denied any discretion even for special or adequate reasons to reduce the sentence from six months;
4. Now Central or State Government may make an application to the District Judge for the attachment of the money or property which is believed to have been acquired by the public servant by corrupt or illegal means;
5. Source of income as a concept has been changed radically. Now the income received from any lawful sources but also that such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time-being applicable to the public servant.

Definitions of Public servant :

The ambit of the definition of Public Servant has been increased so as to include the office bearers of the registered co-operative societies receiving any financial aid from the government, government co-operation and government company, the human resources of universities , Public service commission, Banks, etc ¹⁰³

It has been defined in the Section 2(c) ¹⁰⁴ of the Act .The word “Public Servant” means a person who is in service at the time when the Court is called upon to take cognizance of the offence. ¹⁰⁵

¹⁰³ Ibid

¹⁰⁴ 2(C): *Public Servant*¹⁰⁴:

I. any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

II. any person in the service or pay of a local authority

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

IV. any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory sanctions;

V. any person authorized by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

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

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

Further this Act has divided the offence into two groups .i.e.

1. Offences relating to corruption
2. Offence other than corruption,

So if a Statue make any person as public servants within the meaning of section 21 of the IPC alone then he cant come under the purview of Prevention of corruption Act as offences of corruption but for the offences other than corruption and they would be considered as deemed public servant . therefore to convict under this Act the definition of public servant to be followed.¹⁰⁶

Offences and Penalties of this Act deals from sections 7 to 12 as corresponds to section 161 – 165-A of the IPC , it relates to the offences relating to gratification, in cash or kind, other than legal remuneration with respect to an official act, or to influence public servants or for exercise of personal influence with the public servant, or abetment and punishments for such offences.

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

IX. any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid 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 or aided by the Government or a Government company as defined in section 617 o the Companies Act, 1956 (1 of 1956);

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

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

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

¹⁰⁵ State of Bombay v. Vishwakant Srikant Pandit, AIR 1954 Bom 109

¹⁰⁶ V.Srinivasan vs The Secretary Writ Petition No.7424 of 2013 and M.P.Nos.1 & 2 of 2013

Section 7 Public servant taking gratification other than legal remuneration in respect of an official act¹⁰⁷:

Section 7 of this Act repeals section 161 of IPC along with the amendment that the minimum punishment has been prescribed as six months and maximum has been changed to three years from three years.

A public Servant or person expecting to be a public servant renders himself guilty of an offence if:

1. If he accepts or obtains , or agrees to accept, or to attempts to obtain from some person a gratification;
2. If such gratification is not legal remuneration;
3. If he accepts such gratification as a motive or reward;
 - a. Doing or forbearing to do, an official , act or
 - b. Showing , or forbearing to show , favor or disfavor to someone in the exercise of his official functions; or

¹⁰⁷ Section 7 of the Prevention of Corruption Act,1988

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

Explanation.-

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

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

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

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

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

- c. Rendering or attempting to render any service or disservice to any person with the Central or State Government or Parliament or the legislator of any state or with public servant.

So this section talks about the acceptance of gratification as reward or motive for allowing or disallowing to do an official act public servant from a person.

It is not mandatory that the public servant must have the power or in the position to perform act or do favor or disfavor for which the bribe has been given to him and also it is not necessary that the act for which bribe was given must have been done. It is satisfy even if any representation is being made for the act or the act will be done and such representation is being made to the public servant for which he has obtain a bribe makes him guilty under this section even if he had or has no intention to perform and has performed or does not actually perform the act. It is not mandatory that the favor to be shown to the person who offered the bribe. It is sufficient even if the person who gave the gratification is led to believe that the matter would go against him if he dint pay bribe or gratification.¹⁰⁸

Even if a public servant who doesn't have the authority or power or not even in that position and pretending himself to have such power and for which he has taken bribe is also liable under this section.¹⁰⁹

If a Public servant accepts donation for public purpose or to a institution or for charitable purposes or religious purposes in which he is interested it will amount to an offence under this section, if the motive for such payment was for showing favor to the donor in his position or if the donation was made as a reward for a favor shown in the past. Where, however such donation is made to public servant independently of his doing any official act, no offence is committed.¹¹⁰

Further Rule 22 of the Conduct Rules ,1964 , also prohibits Government servants for taking or accepting any favor or contributions or collection of cash or in kind for any

¹⁰⁸ Bhimrao, AIR 1925 Bom 261

¹⁰⁹ Ajudhia Prasad, ILR 51 Allahabad 467

¹¹⁰ Emperor v. Tyabjee, AIR 1923 bom 44

purpose except with the prior permission of the Government or prescribed authority¹¹¹.

Public servant can never justify on the basis that he accepted a gift or bribe by influence that the order passed by him was however just and fair one and against the same person who gave the bribe.¹¹²

The cases where trap witness taking assistance of public servant who was lesser in rank than officer to be trapped may be non-compliance of Rule 41 of the vigilance Manual but it would not in any way vitiate the trap just because the rules under manual are administrative and no observance of the same there was no mandatory violation, which would affect the validity of the prosecution.¹¹³

In a case where money was recovered in presence of witness and colored liquid was discovered after washing hands of accused, which was clearly showed that the accused had taken bribe. Color in which purse of accused was dipped it turned into pinkish color, so it was held that there were no material contradictions in the statement of witnesses.¹¹⁴

The word “motive” refers to a future act while the word “reward” refers a past favor. And the word “gratification” is not been defined but it can be understand as per the explanation which says that the word is not restricted to any pecuniary gratification or to gratification estimable in money. Thus it can be used in its large interpretation as affords gratification or satisfaction or pleasure as per the taste or the mind.

Section 8 and 9 of Prevention of Corruption Act,1988 both relates to section 162 and 163 of IPC which are repealed¹¹⁵.

Section 8: it talks about Taking gratification, in order, by corrupt or illegal means, to influence public servant.¹¹⁶

¹¹¹ Reddi's Anti-corruption laws and departmental enquiries , 4th edn., orient publishing company , pg. 131

¹¹² A.W.chandekar, AIR 1925 Nagpur 313

¹¹³ K.Selvaraj v. State, 2004 Cri LJ 3754(Mad)

¹¹⁴ Gurdial singh v. state of Punjab, 2003 Cri LJ 3312 (P&H)

¹¹⁵ Reddi's Anti-corruption laws and departmental enquiries , 4th edn., orient publishing company , pg. 135

¹¹⁶ 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

Applicability of section 8 is also applicable on those also who are not public servant if they had influenced any public servants to do any illegal act.¹¹⁷

When the accused gave a spontaneously explanation at the same time when the crime is committed such explanation becomes *res gestae* within the meaning of section 6. Even though such statement is doubtful as in admissibility of it in court as when the statement was made the investigation must have begun, so it should be admissible, especially when it is exculpatory statement as the conduct of accused under section 8. there is no reason why that evidence should be shut out in other cases.¹¹⁸

Ingredients of the offence under section 8 {old Sec.162, I.P.C.} are

- a. When a person offers a gratification to another person to induce a public servant for allowing or disallowing any official act by means of illegal act;
- b. Such person has accepted or agrees to accept including an attempt to take gratification from any person.
- c. Either such gratification is for himself or not;
- d. Such gratification in a form of motive or reward

The offence is said to be committed when there is an acceptance or attempt to accept illegal gratification whether as motive or reward by means of influencing or inducing public servant for illegal means. Irrespective of that a person has achieved in inducing or attempt to induce public servant. The completion of an act as an offence is when the public servant receives the gratification either way by reward or as motive by illegal or corrupt means. What is mandatory is the presence of intention, the public servant should *mens rea* while accepting the gratification in way of motive or reward through illegal means and such *mens rea* can be collected from evidence. Here the gratification is used to induce a public servant.

for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

¹¹⁷ Kumar Suman Singh v. State of Bihar, 2006 Cri LJ 1599(pat)

¹¹⁸ C.N.Peters v. State, AIR1959 ALL.483

Here the difference between section 7 and 8 is that , in section 7, the gratification in form of reward or as motive has been given to a public officer to allow or disallow or to show any kind of favor or disfavor to any person or to perform or not to perform any official act as under his capacity by illegal way. And other difference is that it talks about gratification other than legal remuneration i.e an amount which he is legally not bind to accept to perform or not to perform any official act under his position.

Whereas in section 8, the gratification in form of motive or reward has been offered to a person who will further induces a public servant to perform or not his official act or to show any kind of favor or disfavor to other person by illegal means. Further in this section it has not been mentioned that gratification other than legal remuneration, therefore the interpretation which can be drawn out of it that the gratification as in form of reward or motive which has been received might be legal and it can be termed as fair compensation for the favor or disfavor done.

So in section 7 Public servant is directly involved and has directly accepted the bribe but in section 8 a person who is not a public servant has been bribed to further bribe the public servant.

For an example: suppose a pleader is hired to defend a case and he receives a remuneration which is legal in the eye of law on the contrary if he receives it as a motive to influence or induce a judge for being favorable to his client by illegal means and by not putting his fair arguments so he has committed an offence and will be punishable under this section but he wont be punished under this section if he has induced the judge by means of corrupt even though it is illegal so he won't be punished under this section as an abettor.

Further to constitute an offence under this act three things need to be satisfied:

1. An offer for gratification must be done , gratification in form of motive or as reward for inducing another person through illegal means;
2. Such person who is induced must be public servant;
3. Further the offer which is made must be for public servant to favor or disfavor or to perform or not to perform an official act.

What is "personal influence"

Well this term “personal influence” has not been defined anywhere. But its meaning can be construed through “Undue Influence” as given under civil law. Which can be said as where one party take an unfair advantage over other party so it can be allied with the meaning of personal influence as where a party unfairly take an advantage of public servant for his own benefit. meaning of personal influence has wider scope as compared to undue influence.

Section 9 talks about taking gratification by exercising of personal influence over public servant¹¹⁹

Example : An advocate who receives a fee for arguing a case before a judge ; a person who receives pay for arranging and correcting a memorial addressed to Government , setting forth the services and claims of the memorialist.

This section talks about a person giving gratification in form or motive or reward by illegal means to a person and such person is using or exercising personal influence on public servant to favor or disfavor or to perform or not perform any official act.

So the question arises as to the exercising personal influence on public servant as this section is focusing on exercise of personal influence. Whether using such exercise constitute as an offence or not, so exercising personal influence how much is awful still it is not an offence under this Act. But what constitutes an offence is when any gratification is being added while exercising personal influence for getting the favor done. Further to bring such activity under this section then such influence shall be improper and unfair and such shall be without immodesty is to be clubbed while exercising personal influence by person over the other.

For example: if an advocate is arguing in the court for his case before a judge and advocate have some personal influence on the judge due to his credibility and he has

¹¹⁹ Section 9 of the Prevention of Corruption Act,1988 : Taking gratification, for exercise of personal influence with public servant.- Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause {c} of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine

not being paid his fee to be consider as gratification in way of motive to induce a judge for his client so he won't be charged under this section and it is the duty of the presiding judge or officer to give the order or judgment without any fear or influence.

Under section 8 and 9 of the Act,1988 it is an offence for a person to accept any gratification as a motive or reward for improperly influencing a public servant by illegal means or by the exercise of personal influence. Though these sections cover all persons whether or not they are public servant, in effect their provisions will be made use of only when the offender is a person other than a public servant and such cases will not to be dealt under administrative authorities. If a person commits an offence under these sections and he is public servant then they will convict under section 7.

Section 10 Punishment for abetment by public servants of offences defined under section 8 and 9.¹²⁰

This section repealed section 164 of IPC and it intends to punish abetment by a public servant of offences mentioned in section 8 and 9 when committed in respect of the public servant himself.

That a public servant shall be punished if he gets induced by a person and favors or disfavors him or perform or doesn't perform an official act. He shall be punished by sentencing him for 6 months but not more than five years along with fine.

Section 11 talks about Public servant who obtains valuable things without consideration from persons concerned in proceeding:¹²¹

Under this section, it will constitute an offence for a public servant who will accept or agrees to accept or acquires for himself or for other person any valuable thing which

¹²⁰ Section 10 of the Prevention of corruption Act,1988:

Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, 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.

¹²¹ Section 11 of the Prevention of Corruption Act,1988

Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

is without consideration or knowingly accepts such consideration which is inadequate from any person who is involved or about to be involved in matter or in business transaction which is will fall under his scope.

Under section 7, the gratification is taken as a motive or reward but under section 11, the question relating to motive or reward is immaterial. The mere accepting of valuable thing without consideration or for inadequate consideration from a person who is interested or having relation or connection with official activities or functions of the public servant, it will constitute as an offence.

Further this section prohibits a public servant from accepting unfair advantage from a negotiation with a person he gets into contact with them through official works. But it doesn't prohibit a purchase or sale of anything at a fair price by a public servant from a person with whom the public servant is doing business transaction on behalf of the Government in his official capacity.

Section 12 Punishment for abetment of offences defined under section 7 or 11.¹²²

According to this section, the offering of a bribe or anything valuable to a public servant without any consideration or inadequate consideration is an offence by itself and merely an abetment.

Important point to be considered under this is the state of mind or intention of the accused when he offers a bribe or anything valuable thing to a public servant. When there is an instigation to a public servant to commit an offence under section 7 so at the same time offence under section 12 is also satisfied irrespective of the fact that whether public servant has accepted or not or gave consent to perform an act or any favor.¹²³

In this case, the accused was a suspect in the murder case and was also alleged to have offered bribe to Police Inspector as complainant. Incident happened on the early morning at the residence of complainant in the presence of two constables. What also raise q question was the presence of two constables early in the morning and there is

¹²² Section 12 of Prevention of Corruption Act, 1988

Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

¹²³ Padam Sen v. State, AIR 1959 Allahabad 707.

also discrepancy in the evidence as to the sealed package of parcel containing bribe money. Further FIR was lodged after long day even though the Police station was 50 yards away from his residence and further more accused was not arrested just after the incident. So the accused was given benefit of doubt as discrepancies in the evidence and was not accused under this act.¹²⁴

In the case where a special judge was appointed and he had exclusive jurisdiction to try those offences which are punishable under section 12 and 14(b) of PC Act,1988 and in case any offence under section 7 or 11 of the Act abetted by a non-public servant only then it can be tried by a Special Judge for such offence under section 12 or 14 (b) of the Act.¹²⁵

In a case where a petitioner was an Enforcement Officer in department of Transport , who was alleged to have demanded for bribe for discharging seized jeep. Then a charge sheet was filed against him and was submitted. Competent Authority gave permission for prosecution of petitioner. Further the question was raised was about conducting re-investigation, which was denied as the court could not direct even though in secret enquiry held by CID where the petitioner was found innocent , now he can use this report as in his defense but no re-investigation can be conducted.¹²⁶

In another case where the sentenced was reduced , in this case the appellant at that time was 25 years and the offence was committed 16 years ago and since then he has been facing trials. So the Court while giving sentence considered this fact and gave him jail time for one month and 4 days with increased fine Rs. 1000 to 5000.¹²⁷

Section 13 talks about Criminal misconduct by a public servant¹²⁸

¹²⁴ Om Prakash v. State of Harayana, AIR 2006 SC 894.

¹²⁵ N.P. Prabhu v. Union of India, 2003 Cri LJ 2261 at 2262 (Ker.)

¹²⁶ Somnath Tripathy v. State of Jharkahnd, 2006 Cri LJ NOC 20 (Jhar)

¹²⁷ Sucha Singh v. State of Punjab, 207 Cri LJ 1912(P&H)

¹²⁸ Section 13 of Prevention of Corruption Act,1988

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

[a] if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

[b] if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with

Section 13 (a) and (b) of the PC Act,1988 is corresponds to section 5(1)(a) and (b) of the repealed Act.

Now this two subsection has same ingredients of section 7 and 11 the only difference between these provisions are that the offence under section 13 are more aggravated than section 7 and 11. As under section 7 and 11 the offence was constituted by accepting gratification only where as in section 13 apart from gratification , it is mandatory to have habitual commission. Further another difference is magnitude of punishment as in section 7 and 11, minimum sentence is six months and not exceeding five years where as in section 13, minimum is one year and not exceeding seven years.

Section 13(1) (c) which corresponds to section 5(1)(c) of the repealed Act.

In this section , the offence constituted is analogous to Section 409 of IPC, where a public servant commits the breach the criminal breach of trust then he will be guilty under this section , irrespective of the fact that he misappropriated or allowed any

the official functions or himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

[c] if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

[d] if he, -

by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

[e] if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation – For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

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

person to misappropriate the property which was entrusted to him in his official capacity.

The major difference in these two sections is that of the variation in punishment as in section 13 the minimum punishment is one year and it cannot exceed seven years where as in section 409 of IPC there is no minimum punishment is provided and imprisonment can be exceeded 10 years or life imprisonment for life.

Whenever an offence falls under both the sections then prosecuting agency may charge public servant either under IPC or PC Act,1988 as per facts of the case. While exercising such discretion it is necessary to keep in mind the magnitude of the offence and other materials relating to it. Further it gets clear that the offence which is committed is of grave nature and the PC Act,1988 is not sufficient to penalize such offence then it should be dealt under IPC which provides severe punishment .ie. Maximum is imprisonment up to 10 years or life imprisonment. Public servant can also be charged under both Acts simultaneously . so the benefit is out by clubbing both section is that the Court will get opportunity to penalize by giving sentence not less than 1 year and maximum imprisonment upto 10 years or life imprisonment.

There was a case where the question was raised as if an accused committed an offence and that offence falls in the ambit of both the Acts and if he been tried under PC Act only and whether he can be charged under Section 409 even when he has been acquitted under PC Act so the Supreme Court held that he can be tried for prosecution and conviction even though he was set free under PC Act¹²⁹

Section 13(1)(d) of PC Act,1988 relates to section 5(10)(d) of the Repealed Act 1947.

So this section talks about that if a public servant receives any valuable things or even pecuniary advantage through illegal means then he is guilty for criminal misconduct.

Furthermore this offence has not been defined in IPC and under this clause it has no merits Whether it had motive or reward.

Section 13(1)(e) relates to section 5(1) (e) of the repealed Act,1947. In this section, whenever a public servant or anyone on his behalf or any time during hw was public servant holds the possession of assets misappropriation to his known source of

¹²⁹ State of Madhya Pradesh v. Veerashwar Rao,AIR 1957 SC 592

income for which he can't satisfactorily account so he will be guilty under this section.

Section 19 deals with Sanction for prosecution¹³⁰:

This section is analogous to section 6 of the Repealed Act but in this section, section 19(3) has been added which was not present in section 6 of Act,1947. This section

¹³⁰ Section 19 of the Prevention of Corruption Act,1988

19. Previous sanction necessary for prosecution:

No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, 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 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.

[1] Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

[2] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

- a. no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;
- b. no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission 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.

In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.- For the purposes of this section,-

- a. error includes competency of the authority to grant sanction;
- b. a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

provides that on the ground of irregularities of sanction, Courts order can neither reverse its order nor stay on the proceeding on such ground or any other ground.

This section talks about the previous sanction for prosecution in the case of a person who is employed in relation to affairs of government or any other authority.

Basically it provides protection to the innocent Public servant and not a shield for the guilty.¹³¹ And the discretion to sanction for prosecution is totally absolute and further it cannot be questioned in Court.¹³²

In another case it was held that in any trial where sanction is not there then such is trial is null and subsequent trial with proper sanction is not barred in the court.¹³³

In a case where there is no sanction then no cognizance of the offence can be carried out at all. As sanction is required only for the purpose of taking cognizance of offence. If the cognizance has been taken and it gets exhaustive then there is no longer need of trial or conviction.¹³⁴

Therefore the need of previous sanction is that to provide protection to a public servant who while discharging his official duty might create enemies and those enemies to take revenge might file frivolous , malicious or vexation of prosecution so to save such public servant from unwanted harassment or undue hardship . the administration alone has assigned the duty to assess and weigh the accusation against the public servant on the basis of background of his work and conduct of him .

No doubt the sanctioning authority has absolute discretionary power to provide sanction or not after satisfying itself whether the material placed before them discloses a prima facie case against the person who asked for prosecution. The authority can ask for more facts if he is not been satisfied with the particulars of the facts and may refuse sanction on any ground if he considers prosecution expedient.

This section gave a right to a public servant who has been alleged to have committed an offence to be allowed to be proceeded against in a court of law until unless the facts placed before the competent authority considers that there is no need to proceed

¹³¹ Gurbachan Sing v. State AIR 1970 Delhi 102

¹³² Dharam Sarup v. State, AIR 1953 ALL37

¹³³ Baij Nath Prasad V. State of Madhya Pradesh, AIR 1957 SC 494.

¹³⁴ Ram Pukar Singh v. State, AIR 1954 ALL 223

with prosecution. And such case might lead to an acquittal and in terms of evidence whether they are sufficient or it is a matter of court. And if at any time sanctioning authority feels that there is some consideration is involved then they should accord such even in the case of doubt¹³⁵.

Further if previous sanction has not been taken then the trial will become void ab initio and in case trial has been commenced then such to be set aside.¹³⁶

Moreover it talks about the competent authority , if a sanction is given by the authority higher than the competent authority then such sanction cannot be held as invalid.¹³⁷

In this section no particular form has been said to be followed for sanction or to be set out in exact words.. here the sanction represents deliberate decision of the competent sanctioning authority. Here the court expect from the competent authority to apply his mind to all the facts and circumstances of the case before according its sanction¹³⁸ .

There is no way to prove that whether competent authority has applied its mind or not so as to avoid such delays in the prosecution and expenses and for the sake of convince and uniformity of practice two forms have been drawn up i.e. form E-7 and E-8 where as E-7 is to be used in cases where Central Government is required to give sanction and in E-8 where sanction to be given for prosecution by an authority other than Central Government.

Now it further talks about the authentication of sanction¹³⁹ issued by other competent authority then such sanction to be signed by the officer who is competent to remove the accused public servant from his office at the time when the offence is committed and cognizance to be taken by the court when sanction is issued either under section 19(1) or 19(2) of the Act. The validity of such sanction can be proved by the prosecution by representing a copy of a Gazette Notification relating to the appointment of the officer signing the sanction to the office held by him at the time of

¹³⁵ Reddi's Anti-corruption laws and departmental enquiries , 4th edn., orient publishing company , pg. 122

¹³⁶ Supra

¹³⁷ Stae v. Yash pal AIR 1957 Punjab 91.

¹³⁸ Reddi's Anti-corruption laws and departmental enquiries , 4th edn., orient publishing company , Page 124

¹³⁹supra

the issue of the sanction or order of appointment in the case of an officer whose appointment is not notified in the Gazette.¹⁴⁰

The basic rule of jurisprudence is that it is the duty of prosecution to prove a case beyond a shadow of doubt all the ingredients of the offence whereas the accused is not required to prove that he is not guilty.¹⁴¹

3.2.2. Lacunas of the Act¹⁴²:

1. Prior sanction : As per the Act, it is necessary to accord prior sanction from the competent authority before approaching any court for trial so this process takes long time which leads to delay in the process and it provides protection to public servant as the competent authority generally protects their subordinate and at times by challenging the authority by saying that the authority has not been fair.
2. Corruption by private entities: this Act does not include in its ambit the corruption by private parties as they are the bribe givers and there is no provision to punish them as to fulfill the concept of collusive corruption as suggested in the 4th report of ARC but no provisions have been made in this regard.
3. Speedy disposal: the time for disposing of corruption cases should be very less and it should not be delayed for long time otherwise it may cause danger to the complainant as the accused person will try to take revenge from him. Further there should be provision for exemplary punishment which will punish public servant and this will act as a deterrent to other officials from corrupt practices.
4. Bribing foreign officials: in this Act there is no provision for punishment of bribing foreign officials and there has been made mandatory as per UNCAC where there shall be a provision for punishment of bribing a foreign official.

¹⁴⁰ Ibid

¹⁴¹ Supra, Page no. 132

¹⁴² *The National Anti-Corruption Strategy*, Central Vigilance Commission, September 2010 available at <http://cvc.nic.in/NationalAntiCorruptionStrategydraft.pdf>, last accessed on 2nd April, 2015

3.3. Income Tax Act,1961:

Government has planned to amend IT Act ,1961 so that the Government can get into contract with those countries where the black money has been deposited specially in Swiss Bank.¹⁴³

Well as per the news flash on the media regarding the measures which have been taken by the Government to bring back the black money home , they have placed a proposed bill in the Parliament in this session and they are hoping to get it pass where they will contact with Countries . here the Swiss Bank has agreed to exchange of information relating to banking and non-banking transactions. So this is one of the positive initiative have been taken by the government to bring back black money.¹⁴⁴

3.4. Right to Information Act,2005

The Government has taken one of the best initiative by enacting RTI Act,2005. This Act has helped a lot to curtail the corruption in the system as it has brought the transparency and accountability to the system as now anyone can seek information to any of the public authorities and they can't deny it until unless it affects the Nation as a whole¹⁴⁵.

But there are criticism to this Act as in it there are certain no. of restrictions which have imposed for not disclosing the information specially given under section 8(1) (e) and 8(1)(j) of the Act. Further section 11 talks about the information about third party which can't be disclosed . so if this Act has to be more valuable to combat corruption then the list of denial of information shall be reduced otherwise the public authorities will always take a defense of non-disclosure¹⁴⁶ .

3.5. The Benami Transactions (Prohibition Act),1988:

This Act came to prohibit the benami transaction, which means where the transactions are being done with unknown person or with no name , the government has the right

¹⁴³ *The National Anti-Corruption Strategy*, Central Vigilance Commission, September 2010 available at <http://cvc.nic.in/NationalAntiCorruptionStrategydraft.pdf>, last accessed on 2nd April,2015

¹⁴⁴ "Bill on black money likely in ongoing Parl session: Rev Sec", http://www.moneycontrol.com/news/current-affairs/billblack-money-likelyongoing-par-session-rev-sec_1326139.html?utm_source=ref_article, last accessed on 4th April,2015

¹⁴⁵ *The National Anti-Corruption Strategy*, Central Vigilance Commission, September 2010 available at <http://cvc.nic.in/NationalAntiCorruptionStrategydraft.pdf>, last accessed on 2nd April,2015

¹⁴⁶ Supra

to acquire those properties which are benami .i.e. there is no one to claim for that property. Even though the right has been given to the government still there is no proper rules have been laid for confiscating of property. So if no proper rules have been given then the government official may abuse their position and confiscate property for their personal use which will amount to corruption. Further more it is very easy to convert black money into white mooney by investing into immovable property through such transaction like jewellery, gold ,properties etc. so to combat with this kind of situation it is made mandatory that the unique number to be given on such article while selling so that the records cane be maintained and further black money cant be converted into white money through benami transactions.¹⁴⁷

3.6. Whistle Blowers:

3.6.1. Meaning and types of Blowers

Meaning: It is has been evident through history that the concept of whistle blower has been existed in Ancient India then by means of informers or suchaka as stated by Kautiliya¹⁴⁸

Whistle blower and whistle blowing refers to an umpire or referee who blows the whistle whenever a foul game or rules are broken to make law agencies and public aware that the rules are broken. But now this term has been added in the dictionary as per the need as those persons who blows the illegal activities in an organization to the public, this is basically being used in corporate sector. Here the illegal activities can be termed as corrupt practices or fraud or embezzlement and others forms. It is basically done to make the Government authorities aware about such practices and to initiate an investigation against such organization.

“Whistle Blower” it means when any person who expose the unlawful activity in the affairs of the company or within the organization out in the public. The act of blowing the whistle becomes the act of vengeance against whom the whistle is blown and so as to protect such person whistle blower policy came.

Some important aspect of this concept can be understood through:

¹⁴⁷ Ibid

¹⁴⁸ “Any informant (suchuka) who supplies information about embezzlement just other perpiteration shall, h succeed in providing , gets his reward one sixth of the amount of the question; if he happens to be a government servant then he shall get one-twelfth of the amount fir such act”

1. An employee who expose his organization where he believes that unethical or illegal activities are being carried on and to stop such practices by alerting management.¹⁴⁹
2. It can be done by former employee also¹⁵⁰
3. Employee producing evidence of illegal activities which is not known to public¹⁵¹

Types of Blowers:

There are different types of whistle blowers in the society, which are:¹⁵²

1. Internal Blowers: these are those whistle blowers who are employee of that organization and they blow the whistle to their seniors about the illegal activities which have been carried out in the organization or in the department by another employee.
2. External blowers: these blowers are those who are part of an organization and blows the whistle in public, media so to make everyone aware of the illegal practices being carried out in the organization.
As comparing to internal and external , former is a positive act as it gives a chance to the organization to rectify such activities in the organization.
3. Alumini Blowers: whistle blower is a former employee of that organization, who blows the illegal activities of that organization.
4. Open Blowers : this relates to the identity of the blower , when the identity of the blower is exposed in the public
5. Personal Blower: here, the blower has exposed the unfair activities which have been carried out against him only.

¹⁴⁹ R.M Green (1994) defines a whistleblower as an Employee who, perceiving an organizational practice that he believes to be illegal or unethical, seeks to stop this practice by alerting top management or failing that by notifying authorities outside the organization.

¹⁵⁰ Sekhar (2002) defines whistle blowing as an attempt by an employee or a former employee of an organization to disclose what he proclaims to be wrong doing in or by that organization.

¹⁵¹ Boatright (2003) whistleblowing is the release of information by a member or former member of an organization this is evidence of illegal and/or immoral conduct in the organization that is not in the public interest.

¹⁵² Whistleblowers And Their Protection In India: An Overview, <http://www.legalservicesindia.com/article/article/whistleblowers-and-their-protection-in-india-1693-1.html> (last accessed on 4th april, 2015)

6. Government Blowers: here the blowers are government servant or officials who blows the unethical activities which have been carried out in an organization.

3.6.2. United Nations and Whistle Blower's Policy

The nations who have ratified United Nations Convention against Corruption, it is binding on all those nations to follow this convention. This convention has given many anti corruption measures which an institution and law agencies shall follow. These measures curb the corruption and sanction them. There are provisions under this convention which deals with whistle blower protection.

Article 8(4) of the Convention talks about codes of conduct for public officials:¹⁵³

Under this Article it makes ratifying States to have proper authorities where public officials can report of an act of corruption and such authorities to in compliance of their domestic law.

Article 13(2) talks about Reporting channels:¹⁵⁴

In this Article the States have to take proper measures to make it sure that the public must aware of anti-corruption authorities and also have the access to them for reporting of a corrupt act.

Article 33 talks about Protection of reporting persons¹⁵⁵

¹⁵³ Article 8(4) of Unites Nation Convention against Corruption:

8(4) Codes of Conduct for public officials: Each State Party [ratifying nation] shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

¹⁵⁴ Article 13(2) of Unites Nation Convention against Corruption:

13(2) Reporting channels: Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

¹⁵⁵ Article 33 of Unites Nation Convention against Corruption:

33 Protection of reporting persons: Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

This Article talks about the measures which are to be taken by the State for protecting those persons who has reported an offence of corruption to a competent authority.

3.6.3. Indian Scenario:

After Independence, there have been developments in the Indian economy including corporate sector, with so much of rapid growth corruption also grew with it, slowly it spread like a disease in the country for which a cure was in need required. It has spread in every sphere of the country whether judiciary, administration, politics and also in corporate sector. So the efforts has been made to tackle the corruption :

1. 179th Law Commission Report:

Chief Vigilance Commissioner, Mr. N. Vittal in August 1999, sought to draft a bill in regard to protection of informants or genuine person to the Law commission. Further commission prepared a report on the “ The Public Interest Disclosure and Protection of Informers”¹⁵⁶ further the commission recommended to have a legislation with the title “The Public Interest Disclosure (Protection of Informers) Bill,2002”

2. Recommendations of ARC :

Commission on Administrative reforms recommended in its 4th report on “Ethics in Governance” that there should be a system for whistle blowers as if such system wont be present then an honest or genuine person will never come forward to report an offence of corruption or abuse of power which needs to be exposed in the public to protect their interest but it will never due to the fear of reprisal. Such system can provide a tool for encouraging transparent and good governance in the country.¹⁵⁷

3. Case of Satyendra Dubey, 2004 :

In this case where an Indian Oil Corporation officer, Shanmughan Manjunath, blown the whistle of his Company due to which it sealed a petrol pump as they were selling adulterated fuel, after sometime he was murdered as their was no law to protect him as the Bill was pending. So this let to pressure on the

¹⁵⁶ One Hundred and Seventy Ninth Report on “The Public Interest Disclosure and Protection of Informers” Law Commission of India (December, 2001) under the Chairmanship of Shri. B.P Jeevan Reddy

¹⁵⁷ Ethics in Governance, Fourth Report, Second Administrative Reforms Commission, January, 2007, para 3.6.4

government as PIL was filed for this case,¹⁵⁸ so NDA government gave interim measures to protect whistle blowers but the Act was still pending¹⁵⁹. A movie/Film has been shot based on this incident titled 'Manjunath'(2014).

4. The Whistle Blowers (Protection in Public Interest Disclosures) Bill,2006:

After the recommendation made by law commission in its 179th report the Public Interest Disclosure and Protection of Informers Act,2002 was converted into Bill,2006 with an aim to give protection to the innocent from any type of harassment, departmental inquiry etc.¹⁶⁰

5. The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010

This bill was presented in the Lok Sabha on August 26, 2010 which was further sent to Parliamentary Standing Committee for scrutinizing it in details and they submitted its report on June 9, 2011 under the chairmanship of Mr. Jayanthi Natarajan on June 9, 2011.

Finally the Whistle Blower Protection Act,2011 enacted which was passed in the Lok Sabha on 27th December 2011 and on 21st February 2014, in Rajya Sabha and it got President's assent on 9th May,2014

This Act gave a system to investigate all alleged claims on corruption and abuse of power by public servant and to provide protection to such person who reveals the unfair or corrupt practices in organizations. Government bodies, offices etc.

3.6.4. Advantages of this Act:¹⁶¹

1. As per section 3 , it has widen the ambit of this section by including government servant or any person and also NGO can also disclose to a competent authority about corrupt practices.
2. The important concept of Public Interest Disclosure means as any information is received is to be treated as in public interest and unlike the provisions contained the Officials secret Act,1923.

¹⁵⁸ Writ Petition (C) No. 539/2003.

¹⁵⁹ V. Venkatesan, Defending the Whistle-Blower, Frontline, Vol. 21 Issue 12 June 05-18, 2004.

¹⁶⁰ Definition of 'Public Interest Disclosure', see Section 2(c) of WBPID Bill, 2006

¹⁶¹ Whistleblowers And Their Protection In India: An Overview, <http://www.legalservicesindia.com/article/article/whistleblowers-and-their-protection-in-india-1693-1.html> (last accessed on 4th april, 2015)

3. This Act is enacted to protect those persons who exposed the organization or offices where unfair practices are going on. Such person to be protected from any type of harassment, departmental inquiry etc. so the Competent authority to make sure to provide such protection and to give proper direction to the respective authorities to protect those persons.
4. Identity : CVC makes sure that a whistle blower's identity or documents shall not be disclosed out in the public so as to protect him. And Commission can also to pass interim measures so that any act of corruption can be stoped during the inquiry.
5. Victimization: if there is apprehension that any person is about to be victimized because he filed a case or assisted in an inquiry then he shall file for redress before Competent Authority and such authority to take measures to protect him so that he can't be victimized.

3.6.5. **Lacunae of the Act** :¹⁶²

1. This Act doesn't provide financial incentives to the whistle blowers.
2. This Act neither deals in the corporate nor in the private sector.
3. The definition of victimization in the whole Act.
4. Right to appeal has not been given under the Act but only for imposition of penalty.
5. No actions will be taken on the complaints made by unknown person.
6. Lokpal has not been considered as competent authority under this Act even though it a National Level Anti-corruption and Grievance Redress Agency)
7. No procedures have been specified under this Act how to deal with the complaints.
8. Time shall be specified for solving complaints.

¹⁶² Ibid

3.7. Central Bureau of Investigation(CBI)

3.7.1. Mechanism of CBI :

As corruption in public services was alarming state during World War, which lead to establishment of special Police establishment (S.P.E) in 1941, its function was to investigate the cases of bribery and corruption in transactions where the war and supply departments were involved. By the end of 1942, its jurisdiction was increased by including cases of corruption in the Railway Department¹⁶³.

The Delhi Police Establishment Act,1946 has established an administrative system known as Delhi Special Police Establishment (D.S.P.E) , which has to investigate in the cases of corruption where public servants are involved. Further there was an addition to this machinery by adding an enforcement wing which was to deal with the offences related to breach of import and export regulations in the year 1953. This establishment existed till 1963 as this establishment being replaced by the Central Bureau of Investigation (CBI) which is famous as the most formidable anti-corruption organization in India, It was suggested by the Santhanam Committee on Prevention of Corruption, 1964.¹⁶⁴

But this body is not a statutory body as it was originating its authority from the D.S.P.E Act,1946. The CBI is the chief central police agency in the field of crimes and corruption. It is the nodal anti-crime and anti-corruption agency¹⁶⁵.

Further it consists of three main divisions –

- (i) Anti Corruption Division
- (ii) (ii)Special Crime Division
- (iii) (iii)Economic Offences Division.

The bureau is headed by a Director and assisted by 3 additional directors and 15 joint directors, a Legal Advisor and supporting staff.¹⁶⁶

Its investigation plays a major role in the Nation as it deals with the political and economical existence of Country. As this body is established, specially to deal with

¹⁶³ Bhagwan and Bhusan, *Public Administration*,S.Chand & Co. Ltd.(Revised 2010 edn.) Page no. 410

¹⁶⁴ Avasthi, A & Maheshwari ,*Public Administration*, Lakshi Narain Agarwal (13th edn.), page no. 611

¹⁶⁵ Ibid

¹⁶⁶ Bhagwan and Bhusan, *Public Administration*,S.Chand & Co. Ltd.(Revised 2010 edn.) Page no.411

criminal cases relating to corruption, fraud and other cases. Its function can be broadly categorized in to three categories:

1. Offence of corruption committed by the departments of government, Delhi public sector undertakings and financial institution.
2. It also deals with economic crimes including bank frauds.
3. Thirdly, it deals with special crimes viz., Terrorism, Blast. Fourthly, it investigates Cyber Crime Cases.¹⁶⁷

By analysis its function then the inference which can be dawn that its basic work is to investigate and therefore it is also termed as investigating agency and this creates a fear in the mind of corrupt officials that they should not be noticed by this agency , if they did then it will be a doomsday for their rest of their life and by doing this it play an important role by protecting public interest. This Agency has created its image as most effective mechanism to check on corruption by its working and because of this , this agency is under control of Cabinet secretariat and not Ministry of Personnel since January 30, 2003.¹⁶⁸

3.7.2. Lacunas in the CBI :¹⁶⁹

1. As CBI's authority is drawn from D.S.P.E Act,1946, therefore it has limited power.
2. There are not enough no. of personnel in the CBI.

As filing of so many corruption cases and the happening of Scams in India , it has increased the work of the CBI, so it suggested to divide this Agency into two parts

1. An agency which will solely deal with the corruption cases
2. An agency which will deal with the organized crime

Further suggestion is that CBI should be made an independent body so that its working can be more effective and efficient, and enact its own Act so that its

¹⁶⁷ Supra

¹⁶⁸ Ibid

¹⁶⁹ *The National Anti-Corruption Strategy*, Central Vigilance Commission, September 2010 available at <http://cvc.nic.in/NationalAntiCorruptionStrategydraft.pdf>, last accessed on 2nd April,2015.

authority and power will not be drawn from Delhi Police Establishment Act,1946, and also appoint competent and honest officer¹⁷⁰

3.8. Central Vigilance Commission

3.8.1. Santhanam Committee's recommendations:¹⁷¹

Due to the so much increase of corruption whole Nation felt the danger zone as if no measures have been taken now then it will be too late to combat against corruption so a committee was formed consisting of seven members- 5 M.Ps and 2 senior officials of the ministry of Home Affairs and along with K. Santhanam as its chairman. He was appointed in June, 1962. This Committee was authorized to review present laws and instruments to fight against corruption and to advice what measures and practical steps to be taken to curb the corruption. So it examined the working of the vigilance machinery of the Govt. of India and recommended improvements in their working. It was also expected to suggest improvements in the Govt. Servants' Conduct Rules and see the speedy trial of cases of bribery, corruption and criminal misconduct.

Suggestions of Committee:¹⁷²

1. To amend the Article 311 of the Constitution so that the judicial process in corruption cases easy and speedy.
2. An establishment of a Commission which will act like watchdog on the administrative function of the Government at every level so it suggested Central Vigilance Commission having autonomous powers.
3. To amend the Govt. servants conduct rules to make them more restriction on employment of retired govt. employees by private businessman.
4. There is need of amend in the Defence of India Act, 1962

So to make these recommendation the government has strengthened the CBI and to vest with additional powers. Moreover to improve co-ordination and co-operation between the Administration and The CBI then the Home Ministry needs to issue to each Ministry and departments of the Govt. that their vigilance officers and heads should report to CBI for investigating such cases in which charges of bribery and corruption are made against the public servants. It was suggested that all records and

¹⁷⁰ Avasthi, A & Maheshwari, *Public Administration*, Lakshi Narain Agarwal (13th edn.), page no. 612

¹⁷¹ Bhagwan and Bhusan, *Public Administration*, S.Chand & Co. Ltd.(Revised 2010 edn.) Page no.411

¹⁷² Supra

documents required by the CBI should be placed at their disposal for inspection and scrutiny within a fortnight of such a request. Likewise if the CBI suggested transfer of an employee during the course of investigation it should be readily compiled with the Dept. concerned.¹⁷³

The investigation of offences alleged to have been committed under the Prevention of corruption Act, 1988 were henceforth brought under the purview of the Central Vigilance Commission section 8 of the Central vigilance Commission, 1999.¹⁷⁴

3.8.2. Mechanism of CVC

Vigilance machinery at the administration level:¹⁷⁵

There are two types of vigilance system at the department level i.e.

1. The Administration Division in the Ministry of Home Affairs: its function is to give direction , co-ordination to make sure that proper and fair actions has been taken by the Ministers.
2. Vigilance units in every ministries and departments: its function is deal with All India Personnel.

Central Vigilance Commission:

It was set up in the year 1964 who act as watchdog organization to keep a check on corruption and to promote transparency and integrity in the Government¹⁷⁶.

This commission is an advisory body but it is an independent body like UPSC but CBI and S.P.E doesn't fall under its jurisdiction as in it rely on CBI to investigate in the cases of corruption. It has to submit an annual report every year in which it declares that when the Government has not followed his advice to curb the corruption.¹⁷⁷

It consists of 3 directorates i.e.:

1. The Directorate of General Complaint and Redress:

¹⁷³ Ibid

¹⁷⁴ Ibid

¹⁷⁵ Ibid

¹⁷⁶ Avasthi, A & Maheshwari ,*Public Administration*, Lakshi Narain Agarwal (13th edn.), page no. 612

¹⁷⁷ Ibid

2. Central Police Organization
3. Directorate of vigilance¹⁷⁸

Members of Commission:

The commissioner is to be the chief executive of the commission, to be appointed by the President of India for a term of 6 years; further it consists of a secretary, one officer on special duty, one technical commissioner, 3 commissioners for departmental enquires, 2 under Secretaries and 6-Technical Commissioner¹⁷⁹

Functions¹⁸⁰:

1. To commence an enquiry where a public servant has been alleged for acting in for illegal act or in a corrupt manner;
2. To conduct an investigation in to a complaint where a public servant has been alleged for not performing his duty of has been refrained from performing for corrupt purposes.
3. To collect the reports from different agencies so as to keep checking on their functioning and to exercise supervision on them and their anti- corruption work.
4. After accepting the complaints it further request CBI or concerned authority to investigate on it.
5. It keep reviewing the procedures and practices of administration which relates to integrity in it.
6. It can review progress of the investigation which have been carried out under PC Act,1988.

Vigilance system is being in every level of administration i.e. at State and district level.

At State Level¹⁸¹:

There is Vigilance Commission at each State which is situated a the Centre and also have special police establishment. Its jurisdiction is limited to the executive functions of the State and it cant deal in political corruption.

¹⁷⁸ Bhagwan and Bhusan, *Public Administration*, S.Chand & Co. Ltd.(Revised 2010 edn.) Page no.412

¹⁷⁹ Supra

¹⁸⁰ Ibid

¹⁸¹ Ibid

Functions of each State Vigilance Commission vary from State to State but some of them are:

1. To commence an enquiry where a public servant has been alleged for acting in for illegal act or in a corrupt manner;
2. To conduct an investigation in to a complaint where a public servant has been alleged for not performing his duty of has been refrained from performing for corrupt purposes.
3. To collect the reports from different agencies so as to keep checking on their functioning and to exercise supervision on them and their anti- corruption work.
4. It keep reviewing the procedures and practices of administration which relates to integrity in it.

Members of State Vigilance Commission:

1. State Vigilance Commissioner
2. Commissioner for Departmental enquires

State Vigilance Commission is headed by State Vigilance Commissioner, his status is equivalent to the position of High Court Judge and his office term is of 5 years. After retiring as commissioner he is not eligible to join as employee under Union or State Government.

This commission submits its report annually before State Legislature.

Vigilance at Division and District Level¹⁸²

At every District and division level there is Divisional Vigilance Board which has been set up and it comprises of :

1. Divisional Commissioner
2. Deputy Inspector General of Police
3. Division Vigilance Officer

¹⁸² Ibid

At the District Level it is headed by District Vigilance Officer and he is appointed by District Collector or Deputy Commissioner along with the consultation of Divisional Vigilance Board.

It deals with the integrity of the administration. Every year an annual meeting or conference is conducted where these Commissions discuss the mutual issues which have been faced by them.

There was a supreme court case where Supreme Court removed a rule of Single Directive which use to afford shield to the senior servants from the investigation conducted by CBI on the basis of Suo Moto but Governemnt intentionally added this point in the Act which will give power to the authority to conduct pre-enquiry to the administrative department. So such kind of action taken by government has hindered the power of the CVC and CBI.¹⁸³

3.8.3. Lacunas in the Commission¹⁸⁴:

1. As CVC doesn't have its own agency to investigate in to the cases of corruption which not only delays the process but also has to rely on CBI so that there conducting further investigation or not. They has wait for the CBI to act which will take time and by taking such time it does harm the society as the corrupt practice will keep on increasing.
2. Further the government is appointing ex-vigilance commissioner in other governmental posts so the functioning of this commission is not at its best as it will affect the decision making power of the Commissioner as he will look into its not benefit.
3. Further this Commission is just advisory body and also not fully independent so the measures suggested by this commission are not fully complied due to lack of binding authority and there is no punishment for it either.
4. Moreover the function if this commission is to vigilance the government departments and public undertaking but they don't have power to appoint their own Central Vigilance Officer as the power is vested to appoint him to government.¹⁸⁵

¹⁸³ Vineet /arain v. Union of India (1996) 2 SCC 199.

¹⁸⁴ Avasthi, A & Maheshwari ,*Public Administration*, Lakshi Narain Agarwal (13th edn.), page no. 613

¹⁸⁵ *The National Anti-Corruption Strategy*, Central Vigilance Commission, September 2010 avaiable at <http://cvc.nic.in/NationalAntiCorruptionStrategydraft.pdf>, last accessed on 2nd April,2015

3.9. Comptroller and Auditor and General:

Basically CAG duty is to audit the accounts of as in expenditures and receipts. So if any embezzlement in an organization is going it can be detected by CAG. It performs a important role in detecting the corruption activities in terms of monetary value.¹⁸⁶

Further in the 4th Report of the ARC which suggested that the CAG to report to the government on noticing or detecting any irregularity while auditing the accounts. Further it should provide training to its staff in the forensic audit so that it can detect the corruption at the very first level of it and also the abuse of power and position.¹⁸⁷

3.10. National Crime Records Bureau:

NCRB's duty is to collect all data base of crimes in the India and make a record of it and to make sure it accessible in the public domain and specially to include corruption cases. This is suggested in the 4th report of ARC.¹⁸⁸

¹⁸⁶ Ibid

¹⁸⁷ Ibid

¹⁸⁸ Ibid

4. Conclusion and Suggestions

4.1. Conclusion:

Corruption has been an all pervasive issue. It has captured the headlines on the front page of newspapers, has been a matter of discussion on the public forums, has captured our imagination in the cinema and is still on top while we discuss the failure of our state. A lot of research has gone alongside to figure out what feeds this socio-political menace. Social scientists have pitched in multiple arguments to explain corruption. They see it as deviance and innately human. For philosophers like Plato, corruption leads to the fall of the state and therefore a state with strong foundations of virtue and knowledge and where a selfless philosopher king sits at its heart, is essential for the progress of the mankind. However, these theories appear to be utopian and on turning the pages of the past one feels that corruption has existed in all times even though in various degrees.

Let's go back in the history of Indian civilization itself to get a better understanding in this regard. Kings which were considered to be divine authorities collected huge sums of taxes from their people and spent it on their lavish lifestyles. In this regard instances can be found out amongst all the dynasties with no exception. Corruption was a primary reason in the demise of Mughals. Corruption disillusioned the subjects living in different princely states and weakened the *Maratha* and *Rajputana* royalty. Thereafter, the East India Company became the house of corruption and some of its administrators like Warren Hastings and Clive Lloyd were even charged by the parliament of Britain for amassing huge unaccountable wealth.

Post independence, people had hope that the new government of India will be transparent and accountable to them. This was proved to be true for some years of the *Nehruvian* era. However, thereafter corruption has become central to our discussions on India. There is no dearth of scams which one can associate with India. These scams have questioned our freedom time and again. Further, they have shaken the faith and trust of the people of India in their government. Nevertheless, amidst this hue and cry suggestions have been coming on board. The idea of establishing an institution of *Lokpal* on the lines of *Ombudsman* of Nordic nations has been the most vehement and most discussed. It is needless to say however, that such suggestions in a parliamentary democracy take time in order to be materialized. Numerous bills on

Lokpal have collapsed in the parliament and political parties are yet to arrive on a consensus over the powers and function of *Lokpal*. Further, the Central Vigilance Commission which was constituted in the year 1964 on the recommendation of Santhanam committee has overlapping functions with the Central Bureau of Investigation. A new law recently has attempted to do away with this overlapping but it seems clarity will come with time. Moreover, the influence of the government in power on these institutions cannot be denied. This is not a good sign for the health of these institutions.

Amidst this pessimism one should not forget the landmark Right to Information Act. It is regarded as an achievement of Indian democracy. The Act has apparently made the government more accountable and transparent and has given the people of India, a power to question the acts of the executive. Further, an Act on the protection of whistleblowers has been enacted in the year 2014. Even though there are several lacunas in these legislations, one might see them as healthy moves in the Indian governance. It is noteworthy here that world over a strong emphasis has been laid on the idea of ‘good governance.’ It is stressed hereunder that people of a nation should get their due share. Also, the government should act more responsibly and be accountable to the aspiration of its countrymen. This idea has challenged corruption the world over. The impact of this notion can be seen on India too. Movements like India against corruption have their genesis in this idea. The current government is relying heavily on mechanisms like e-governance to bring in transparency. More and more people are being brought into the banking system so that benefits can be directly transferred to their accounts. People are being encouraged to make use of tools like ‘Citizen’s Charter’ to question the executive. These are some of the positive steps to curb corruption to some extent.

However, one cannot avoid the fact that corruption acts as an incentive to the economic system. There are a number of people who are not part of the formal economic system and undertake economic activities informally. Though their actions lead to corruption in the long run, performing such actions is the only option they have for their survival. It is essential for the government to identify such individuals and create suitable means of living for them. The state should make use of its power to regulate these activities to avoid loss to itself and to its citizens.

Hence, one gets a feeling that corruption is a highly complex amalgamation of socio-economic and political failures. It is deep rooted in the society and legislation would never be enough to curb it completely. We require a holistic framework which is context specific and looks at corruption on a case to case basis. Another issue I would like to highlight is that, state alone isn't capable of fighting corruption. Citizens are responsible for their daily transactions and they should be careful as a drive for even a little bit of convenience could lead to a corrupt action.

4.2.Suggestions

Daily corruption is increasing and spreading like a disease in our country which has no cure. There is no cure to end this disease, the only way is to control it. If considering the measures to control and curbing the corruption then our country surely is lacking behind as we do have laws and legislation which claims to curb corruption but in reality check they are full of lacunas and loopholes

The whistle Blower Protection Act,2011 was enacted in 2014. It is just has come. It is not a matured Act as it is like an infant which will grow with some time. No doubt the efforts which have been taken to bring this Act are very appreciable. To provide better effect to this Act rules shall be formulated.

Here, Author would like to give some suggestions for Whistle Blowers Protection Act:

1. Information should be spread about this act as many people still don't know about this Act, so it can be done through seminars conducted by both government and non- government agencies to disclose the importance about this act and various modes through which disclosure can be done.
2. Amendment shall be made to bring private enterprises under its view.
3. This Act to be amended so as to provide monetary incentives to whistle blowers.
4. This Act shall define the term "Victimization"
5. This Act to include Lokpal as a competent authority to try such complains.
6. Further amendment to be making in the scope of competent authority.
7. This Act to make an agency which will deal how to protect whistle blower and also will guide them.

8. A system to be develops for dealing or cutting out the false complaints and some punishment to be given for such practices.

Suggestions for CBI :

1. As filing of so many corruption cases and the happening of Scams in India , it has increased the work of the CBI, so it suggested to divide this Agency into two parts
 - I. An agency which will solely deal with the corruption cases
 - II. An agency which will deal with the organized crime
2. Further suggestion is that CBI should be made an independent body so that its working can be more effective and efficient, and enact its own Act so that its authority and power will not be drawn from Delhi Police Establishment Act,1946, and also appoint competent and honest
3. Moreover due to lack of coordination between CBI and other Anti-Corruption Bodies so they should have some mechanism so that this drawback can be remove.

Suggestions for CVC :

1. An amendment shall be made in this Act to widen its power by making allowing this Commission to co-ordinate with other agencies.
2. Further this commission shall spread the word knowledge against corruption.
3. It shall all appoint more officers so as to have more effective and efficient working of the commission as there are many public undertaking and government departments so it gets difficult to vigilance every department so it requires more personnel to it.
4. As discussed earlier in the lacunas that the pre-enquiry of an officer by the its own department will hinder the case so the power should be given to CVC.

BIBLIOGRAOGHY

Articles Referred:

- Rajak Jeevan, *Corruption in India: Nature, Causes, Consequences and Cure*, IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 18, Issue 5 (Nov. - Dec. 2013), PP 20-24 e-ISSN: 2279-0837, p-ISSN: 2279-0845.
- Abdulraheem A., *Corruption in India : An overview (Cause, consequences and remedial measures)*; Social Action Vol. 59 October – December 2009.
- José G. Vargas-Hernández , THE MULTIPLE FACES OF CORRUPTION: TYPOLOGY, FORMS AND LEVELS, available at <http://www.ameppa.org/upload/Typology.pdf>.
- One Hundred and Seventy Ninth Report on “The Public Interest Disclosure and Protection of Informers” Law Commission of India (December, 2001) under the Chairmanship of Shri. B.P Jeevan Reddy

Books Referred:

- Avasthi, A & Maheshwari ,Public Administration, Lakshi Narain Agarwal (13th ed.)
- Dr. Bhagwan and Dr. Bhushan, Public Administration, S.Chand &Company Ltd., Revised Edition 2010
- Reddi’s Anti-corruption laws and departmental enquiries , 4th edn., orient publishing company

Websites Referred

- www.icac.org.hk
- <http://info.worldbank.org>
- www.transparency.org
- www.indianmirror.com
- www.cic.nic.in

- www.acbap.ap.gov.in
- www.Indiankannon.com
- www.acr.gov.in