CHAPTER – III
CONSTITUTIONAL AND LEGAL PROVISIONS TO CONTROL WHITE COLLAR CRIMES IN INDIA

India is a large country with a population of over a billion people. It is the second most populous country in the world after China. It is one of the fastest growing economies in the world and is attracting huge investments from developed countries. In spite of the healthy growth indices, a vast population still lives in poverty and does not have access to basic sanitation health care and education. The country’s progress is seriously hampered by all pervasive White Collar Crime. It is preventing the benefits of development from reaching the deprived sections of society. Weeding out White Collar Crime today is a major challenge before Indian Society.

The lawmakers of India have always been conscious of this problem. The British enacted the first codified law. The Indian Penal Code, in 1860, It had a chapter dealing with offences committed by public servant involving corrupt practices. Later a special piece of legislation was enacted i.e. The Prevention of Corruption Act, 1947, to deal specifically with the problem of corruption in public life. Amendments were made from time to time to keep pace with the changing times. Later on in 1988, it was replaced by a more comprehensive and broad piece of legislation i.e, The prevention of Corruption Act, 1988.

Apart from this Act, India is a signatory to the United Nation Convention against corruption (UNCAC). It has signed extradition and mutual legal Assistance Treaties in Criminal Matters with a number of countries to ensure mutual co-operation in matters pertaining to investigation of corruption and other criminal cases. Co-operation is sought from other countries under these treaties through the instrument of letters Rogatory (LRs)

It is worthwhile to have the White Collar Crime not only included the corruption but also other kind of offences such as food adulteration, misappropriation, evasion of taxes, money laundering etc.. A brief overview of the Indian Laws dealing with the problems of White Collar Crimes. The main laws and legal provisions i.e. the provisions of The India Constitution, the Indian Penal Code, 1860. The prevention of Corruption Act 1988 etc. exists in India but still these legal provisions are failing to curb the White Collar Crimes.
3.1 Provisions in Constitution of India to control White Collar Crimes.

3.1.1 Writs:–
Under Art. 226 and 32 of Indian Constitution writs are provided as well as facility of Public Interest Litigation (PIL) available, basically these are Five (5) Writs.

i) Writ of Habeas Corpus
ii) Writ of Mandamus
iii) Writ of Prohibition
iv) Writ of Certiorari
v) Writ of Quo-Warranto

All these writs are having their own impact and power in different fields, and actually these are nothing but “Powers in Hands of Judiciary to control the Administrative discretion”.

I) Writ of Habeas Corpus:-
The write of Habeas corpus is one of the most ancient writs known to the common law of England. The Latin phrases ‘Habeas corpus’ means ‘have the body’. This is a writ in the nature of an order calling upon the person who has detained another to produce the latter before the court, in order to let the court know on what ground he has been confined and to set him free if there is no legal justification for the imprisonment.

A writ of Habeas Corpus issued by the Supreme Court or by High Court must be obeyed by the person to whom it is issued. A willful disobedience by the person to whom it is issued would amount to contempt of Court and would be punishable with attachment of property and even imprisonment of the contemnor.

The writ of Habeas corpus provides a prompt and effective remedy against illegal restraints. The principal aim is to provide for a swift judicial review of alleged unlawful detention.

II) Writ of Mandamus:-
Mandamus means a command, it is an order issued by a court to a public authority asking it to perform a public duty imposed upon it by the Constitution or by any other law. Mandamus is a judicial remedy which is in form of an order from a superior court to any Government, court, corporation or public authority to do or to forbear from doing some specific act which that body is obliged under law to do or refrain from doing, as the case may be and which is in the nature of a public duty and in certain cases of statutory duty.
III) **Writ of Prohibition:-**

A writ of prohibition is a Judicial Writ. It can be issued against a judicial or quasi-judicial authority, when such authority exceeds its jurisdiction or tries to exercise jurisdiction not vested in it. When a subordinate court or an inferior tribunal hears a matter over which it has no jurisdiction, the High Court or Supreme Court can prevent it from usurping jurisdiction and keep it within its jurisdictional boundaries.

IV) **Writ of Certiorari:-**

‘Certiorari’ means ‘to certify’. It is so named as in its original Latin form it required ‘the judges of any inferior court of record to certify the record of any matter in that court with all things touching the same and to send it to the King’s Court to be examined’. It is an order issued by the High Court to an inferior court or any authority exercising judicial or quasi-judicial functions to investigate and decide the legality and validity of the orders passed by it.

V) **Writ of Quo-Warranto:-**

‘Quo-Warranto’ literally means ‘what is your authority’. It is a judicial remedy against an occupier or usurper of an independent substantive public office, franchise or liberty. By issuing this writ the person concerned called upon to show to the court by what authority he holds the office, franchise or liberty. If the holder has no authority to hold the office he can be ousted from its enjoyment. On the other hand, this writ also protects the holder or public office from being deprived of that to which he may have a right.

With the help of these writs administrative bodies can be pressurized, to perform and discharge their Constitutional and legal duties and obligation.

3.1.2 **Comptroller and Auditor-General of India. (CAG)**

CAG promote accountability, transparency and good governance through high quality auditing and accounting and provide independent assurance to our stakeholders, the legislature, the executive and the public that public funds are being used efficiently and for the intended purpose.

The office of Comptroller and Auditor General is called as ‘मतभण्डः’ as established about 150 years back.

India represents what we aspire to become; we strive to be a global leader in initiator of national and international best practices in public sector auditing.
and accounting and recognized for independent, credible, balanced and timely reporting on public finance and governance.\(^2\)

The Comptroller and Auditor General of India is an authority, established by the Constitution of India, who audits all receipts and expenditure of the Government of India and the State Governments including those of bodies and authorities substantially financed by the Government. The Comptroller and Auditor General is also the external auditor of Government - owned companies. The reports of the Comptroller and Auditor General are taken into consideration by the public accounts committees, which are special committees in the parliament of India and the State legislature. The Comptroller and Auditor General of India is also the head of the Indian Audit and accounts service, which has over 58,000 employees across the country.

**Appointment:**

Under Art. 77 of Indian Constitution the comptroller and Auditor General of India is appointed by the President of India upon recommendation by Prime Minister. On appointment, he / she have to take an oath of affirmation before the President of India. The Comptroller and Auditor General could not be removed from office other than through a procedure of impeachment similar to what is applicable to judge of Supreme Court of India.

**3.1.2.1 Indian Audit and Accounts Services:**

The Constitution of India (Art - 148) provides for an independent office to the Comptroller and Auditor General of India.

He is the head of Indian audit and Accounts Departments. His duty is to uphold the Constitution of India and laws of the Parliament in the field of financial administration.

**3.1.2.2 Scope of Audits:**

Audits of Government accounts (including the accounts of the State Governments) in India is entrusted to the Comptroller and Auditor General of India who is empowered to audit all expenditure from the revenues of the Union or State Governments, whether incurred within India or outside, specifically audits include.

a) Transaction relating to debts, deposits, remittances, trading and manufacturing.
b) Profit and loss accounts and balance sheets kept under the order of the president or Governors.
c) Receipt and stock accounts.

3.1.2.3 Audit Jurisdiction:-

The organizations subject to the audit of the comptroller and auditor General of India are-

a) All the Union and State Government departments and officers including the Indian Railways and posts and Telecommunications.
b) About 1500 public commercial enterprises controlled by the Union and State Governments, i.e. Government companies and corporation.
c) Around 400 non-commercial autonomous bodies and authorities owned or controlled by the Union or the states.
d) Over 4400 authorities and bodies substantially financed from Union or state revenues.

3.1.2.4 Duties and Powers:-

The comptroller and auditor General of India is the head of the Indian Audit and accounts Department and derives his constitutional standing as the Auditor of the Union and State Governments from Articles 149 to 151 of the Constitution. The duties powers and conditions of service of the comptroller and auditor general are laid down in the Controller and Auditor General’s (Duties, Powers and Conditions of Services) Act, 1971.

3.1.2.5 Audit Duties:-

i) Receipts and expenditure of the Union and the State Governments accounted for in the respective consolidated funds.

ii) Transaction relating to the contingency funds (created for use in emergency circumstances) and the public accounts. (Used mainly for loans, deposits and remittances)

iii) Trading, manufacturing, profit and loss accounts and balance sheets and other subsidiary accounts kept in any Government Department.

iv) Accounts of stores and stock kept in Government organizations, Government companies and Government corporations whose statute provide for audit by the Comptroller and Auditor General.

v) Authorities and bodies substantially financed from the consolidated funds of the Union and the states.
vi) Any body of authority even though not substantially financed from the consolidated fund at request of the President or the Governor.

vii) Accounts of bodies and authorities receiving loans and grants from the Government for specific purpose.

3.1.2.6. **Account Duties:**

The constitution provides that the format of the accounts of the Union and the State Governments is prescribed by the president on the advice of Comptroller and Auditor General. The Comptroller and Auditor General’s (DPC) Act 1971 authorizes the Comptroller and Auditor General to lay down for the guidance of Government Departments, the general principles of Government Accounting and broad principles applicable to audit of receipts and expenditure. The Comptroller and Auditor General also play a fiduciary role in Federal financial relations. Under Article 279 of the Constitution, he ascertains and certifies the net proceeds of taxes levied and collected by the Union but assigned to the states or distributed between the Union and States.

3.1.2.7 **Some landmark Corruption cases opened by Comptroller and Auditor General:**

i) **Hasan Ali’s income tax evasion:**

Hasan Ali’s income multiplied in 6 years to Rs. 54,268 Cr.

Income of Pune-based stud farm owner Hasan Ali Khan multiplied by over 100 times in six years from Rs. 529 crores to 54,268 crore in 2006-07, reveals Comptroller and Auditor General report tabled in Parliament today.

Khan, who is presently in custody of the Enforcement Directorate, has not filed returns for several years despite earning crores, comptroller and Auditor General said. His taxable income, according to the assessment made by Income Tax Authorities, jumped from Rs. 528.9 crore in 2001-02 to Rs. 5404.7 crore in 2002-03. Thereafter, it soared to Rs. 54,268.6 crore in 2006-07.

The report further said that Hasan Ali did not file income tax returns for five assessment years 2000 to 2007; he filed the tax returns for these years in May 2007 after Income Tax Notice following search operations.

The Comptroller and Auditor General also said “While computing his tax liability for the Assessment years, The Income Tax Department levied interest of Rs. 706.1 crore instead of Rs.4,056 crore for default in payment of advance tax.”
The report said in 2008-09 out of Rs.2 lacks crore that remained uncollected “One group namely Hasan Ali alone accounted for Rs. 71,874 crore of uncollected demand.”

3.1.2.8 Commonwealth Games 2010 Corruption:–

Mr. Suresh Kalmadi was appointed as Chairman of Common wealth games in India. He was Incharge of the common wealth games organizing committee preparing for commonwealth games to be held in Delhi, India. He has indulged in most balatant corruption nepotism and embezzlement of funds. In a country of 80 million poor he is organizing the most expensive and extra agent games. There are gross misappropriation of funds and financial bungling. He is renovating a stadium for 900, crores, hiring tradmill for machines 18 lacks a piece, buying toilet papers for Rs. 200 per roll, hiring an Umbrella for Rs.3500 etc.

3.1.2.9 Adarsh Housing Society Scam:–

The Adarsh Housing Society is a cooperative society in the city of Mumbai in India. It was reserved for the war widows and veterans of the Kargil War.

In 2010, the Indian media brought to public the alleged violations of rules at various phases of construction in the Adarsh Society. Questions were raised on the manner in which apartments in the building were allocated to bureaucrats, politicians and army personnel who had nothing to do with Kargil War and the way in which clearances were obtained for the construction of the building of the Adarsh Society. The Adarsh society high-rise was constructed in the Colaba locality of Mumbai, which is considered a sensitive coastal area by the Indian Defence forces and houses various Indian Defense establishments. The society is also alleged to have violated the Indian environment ministry rules. Activists like Medha Patkar had been trying to uncover the problems since at least 2004. It had led to resignation of the then Chief Minister, Ashok Chavan.

Several inquiries have been ordered by the army and the Government to probe into the irregularities. Some of the current occupants of the flats in the Adarsh co-operative society building have offered to vacate their flats at the earliest, denying allegations that they were allotted flats because they influenced or helped, in some manner, the construction of the society by violating the rules, investigation report is not submitted in this scam.

3.1.2.10 2G spectrum scam:–

Telecommunications Mr. A. Raja, now being popularly known as SPECTRUM Raja has become a famous personality overnight. The Spectrum
Scandal which has cost the government more than rupees 1 lakh crore is supposed to be the biggest scam the country has ever seen.\textsuperscript{6}

The Ministry of Telecommunications held by Raja is in charge for the allocation of Spectrum to the companies which offer mobile phone services in the country. In the year 2008, 2\textsuperscript{nd} generation (2G) Spectrum for GSM service providers was allotted to the private players.

There were a lot of controversies in the way Spectrum allocation took place by 2008 itself, now the minister’s office is being raided by the CBI for further investigation. The Minister claims that there is no truth in the allegations against him; he says that whatever procedure was followed in the year 2001 has been adopted by him as well. But there were mere 50 lakh subscribers in the year 2001 compared to 37.5 crore mobile phone users by the end of March 2008; there has been an exponential growth in the Mobile Market which is known to all of us. The fact that the market has grown by leaps and bounds in between 2001 and 2008 is unquestionable.

In the year 2001 the government was shouldering the responsibility to nurture the mobile services market, therefore the Spectrum license was not auctioned then. Even the private players in the industry would not have anticipated such a colossal growth in the mobile services market. The Government was then in a position to motivate and attract private players to operate in the mobile services space.

But that is not the case in 2008. Both domestic as well as MNC players consider investing in Telecommunications extremely profitable. In this sort of a scenario if the government decides to fix the same price, following the same procedure as it did in the year 2001 then it would be a deliberate attempt to put too small a price for the 2G spectrum.

3.3 \textbf{The Central Vigilance Commission:--}

The Central Vigilance Commission set up by the Government of India to advise and guide central government agencies, as well as it also have special power to analysis of complaints of corruption, professional misconduct, misuse of power by administrative bodies.
The Government of India has authorized the Central Vigilance Commission as the “Designated Agency” to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action.

It is an apex body set up by Government of India February 1964, on recommendation of committee on prevention of corruption, headed by Shri. K. Santhanam and Mr. Nettoror Srinivasa Rau were selected as 1st chief Vigilance Commissioner of India.

The Central vigilance commission has the status of an autonomous body, free of control from any executive authority, charged with monitoring all vigilance activity under Central Government of India and advising various authorities in Central Government organization in planning, executing, receiving and reforming their vigilance work.

Classification of the complaints, as follows:

a) Nature of Complaint: – Complaints relating to problem in delivery of public services or causes where citizen are harassed by public official probably with the expectations of bribe. Many of them may be in nature of grievance but the very cause of grievance may be an expectation of bribe.

b) Complaints indicating systematic and rampant corruption in various government activities, which may require detailed investigation and analysis.

c) Complaint against particular officials or particular transaction which do not affect the citizen at large and which can be dealt in routine manner.

d) Complaints pertaining to State Government, which do not fall under the commission Jurisdiction.

e) Complaints containing general, non-verification or non-vigilance matters.

3.4 Committee on public accounts: -

The Rules of procedures and conduct of Business in Lok Sabha provides for the Constitution of public accounts committee.

3.4.1 Constitution of the Committee:-

The Public Accounts Committee is constituted every year under Rule 308 0-F the Rules of Procedure and Conduct of Business in Lok Sabha. The Public Accounts Committee consists of not More than 22 members comprising of 15 members elected by Lok Sabha every year from amongst Its members according to the principle of proportional representation by means of single transferable
vote and not more than 7 members of Rajya Sabha elected by that House in like
manner Prior to the year 1954-55, the Committee consisted of 15 members who
were elected by Lok Sabha from amongst its Members. But with effect from the
year 1954-55, 7 members from the Rajya Sabha are also being associated with the
Committee. Till 1966-67, a senior member of the ruling party used to be appointed
by the Speaker as Chairman of the Committee. In 1967, however, for the first
time, a member from the Opposition in Lok Sabha was appointed as the Chairman
of the Committee by the Speaker.

This practice continues till date. The term of office of members of the
Committee does not exceed one year at a time. A Minister is not elected as a
member of the Committee, and if a member, after his election to the Committee is
appointed a Minister, he ceases to be a member of the Committee from the date of
such appointment. The Chairman of the Committee is appointed by the Speaker
from amongst the members of the Committee from Lok Sabha.

3.4.2 Scope and Functions:

The functions of the Committee, as enshrined in Rule 308(1) of the Rules
of Procedure and Conduct of Business in Lok Sabha, include examination of
accounts showing the appropriation of sums granted by Parliament for the
expenditure of the Government of India, the annual finance accounts of the
Government and such other accounts laid before the House as the Committee
may think fit. In scrutinizing the Appropriation Accounts of the Government of
India and the Report of The Comptroller & Auditor General of India thereon, the
Committee has to satisfy:
(a) That the moneys shown in the accounts as having been disbursed were
legally available for, an applicable to, the service or purpose to which they
have been applied or charged;
(b) That the expenditure conforms to the authority which governs it;
(c) That every re-appropriation has been made in accordance with the
Provisions made in this behalf under rules framed by competent authority.
It shall also be the duty of the Committee:—
(a) To examine the statement of accounts showing the income and Expenditure
of state corporations, trading and manufacturing schemes, concerns and
projects together with the balance sheets and statements of profit and loss
accounts which the President may have required to be prepared or are
prepared under the provisions of the statutory rules regulating the financing of a particular corporation, trading or manufacturing scheme or concern or project and the report of the Comptroller and Auditor General thereon.

(b) To examine the statement of accounts showing the income and expenditure of autonomous and scam autonomous bodies, the audit of which may be conducted by the Comptroller and Auditor General of India either under the directions of the President or by a statute of Parliament; and

(c) To consider the report of the Comptroller and Auditor General in Cases where the President may have required him to conduct an audit of any receipts or to examine the accounts of stores and stocks.

If any money has been spent on any service during a financial year in excess of the amount granted by the House for that purpose the Committee shall examine with reference to the facts of each case the circumstances leading to such an excess and make such recommendation as it may deem fit.

3.4.3 Nature and Scope of examination:

‘An important function of the Committee is to ascertain that money granted by Parliament has been spent by Government “within the scope of the demand.”’ The implications of this phrase are that (i) money recorded as spent against the grant must not be more than the amount granted, (ii) the expenditure brought to account against a particular grant must be of such a nature as to warrant its record against the grant and against no other, and (iii) the grants should be spent on purposes which are set out in the detailed demand and they cannot be spent on “any new service not contemplated in the demand.” The functions of the Committee extent “beyond the formality of expenditure to its wisdom, -Faithfulness and economy.” The Committee thus examines Cases involving losses, nugatory expenditure and financial irregularities. When any case of proved negligence resulting in loss or extravagance is brought to the notice of the Committee, it calls upon the Ministry/Department concerned to explain what action, disciplinary or otherwise, it had taken to prevent a recurrence. In such a case it can also record its opinion in the form of disapproval or pass strictures against the extravagance or lack of proper control by the Ministry or Department concerned. Another important function of the Committee is the discussion on points of financial discipline and principle. The detailed examination of questions involving principle and system is a leading and recognized function of the Committee. The Committee is not
concerned with questions of policy in the broad sense. As a rule, it expresses no opinion on points of general policy, but it is within its jurisdiction to point out whether there has been extravagance or waste in carrying out that policy.

Regularization of Excesses over Grants If any money has been spent by the Government on a service in excess of the amount granted by the House for the purpose, the Committee examines with reference to the facts of each case, the circumstances leading to such an excess and makes such recommendations as it may deem fit. Such excesses are thereafter required to be brought up Before the House by Government for regularization in the manner envisaged in Article 115 of the Constitution. To facilitate speedy regularization of such excess expenditure by Parliament, the Committee presents a consolidated report relating to all Ministries/Departments in advance of other reports.

3.4.4 Savings:-

The Committee looks upon savings arising from incorrect estimating or other defects or other defects of procedure no more leniently than it does upon excesses. It regards estimating on the safe side to be as faulty as estimating on the low side. In the words of the Committee “from one point of view, ‘safe’ estimating might be regarded as even more objectionable, as it might easily lead to extravagance, waste or worse”

3.4.5 Significance and Importance of Committee’s Work:-

Lok Sabha, having voted large sums of the taxpayers’ money does, in the interest of the taxpayers, expect in due course a detailed account of how the moneys have been spent. It must satisfy itself that the moneys so voted were directed to the intended purposes and were spent prudently and economically. The Comptroller and Auditor General examines the yearly accounts of the Government and after scrutiny certifies the accounts, subject to such reservations as he chooses to make, and submits his reports to the President who causes them to be laid before Parliament. It is difficult, if not impossible, for Lok Sabha to examine in detail the accounts, which are complex and technical. Further it cannot spare the time required for such examination. It is for these reasons that Lok Sabha has constituted the Committee on Public Accounts and entrusted it with the detailed examination of those accounts.
Another important function of the Committee is to discuss on points of financial discipline and principle. The detailed examination of questions involving principle and system is a leading and recognized function of the Committee.

The Committee’s work depends a great deal upon the results of audit and examination of the Accounts of the Union Government carried out by the Comptroller and Auditor General (C&AG). The audit by the C&AG is comprehensive and manifold. To cite an example, it involves among Others, (a) Accountancy Audit, (b) Regularity Audit, (c) Appropriation Audit, (d) Propriety Audit or what is also known as Discretionary Audit and (e) Efficiency-cum-performance Audit. In recent years, the technique of efficiency-cum-performance has been attempted in the audit of developmental schemes. The Audit examines as how far the implementing agency is adequate discharging its financial responsibilities in regard to the various schemes undertaken by it ascertains whether the schemes are being executed effectively and their operations conduct economically and whether they are producing the results expected of them. In fact, the Institute of Audit plays crucial role in the functioning of the Committee on Public Accounts and Comptroller and Auditor General is often termed as “friend, Philosopher and guide” of the Committee.

At the beginning of its term every year, the Committee makes a Selection of Audit Paragraphs included in the various reports of C&AG for in-depth examination. After holding deliberations and taking note of the time available at its disposal, the Committee selects the most important paragraphs from the Audit Reports for detailed examination and submits its reports to the House them.

3.4.6 Action Taken on Recommendations:

A report has value provided it is properly followed up. In the case of original report, to Government is required to intimate to the Committee the action taken or proposed to be taken by it on the recommendations contained in the Report normally within six months of the presentation. The Action Taken replies of the Government are considered by the Committee and after classification of the replies, an Action Taken Report is presented to the Parliament. The Government is further required to intimate to the Committee the action taken or proposed to taken by it on the recommendations contained in Chapter I of the Action Taken Report and also furnish final replies in respect of the earlier recommendations contained in the Original Report in respect of which either no replies had previously been received.
or only interim replies has been received. The action taken thus reported by the Government is laid on the Table of the H0L in the form of a Statement without any further comments by the Committee. This system not only ensures accountability of the Executive to Parliament but also enables Parliament and also the General public to appraise Government’s final replies to the Committee’s recommendations. The complete examination of a subject by the Committee.

3.5 **Provisions in Indian Penal Code:**

The laws to prevent Corruption in India were first enacted in the Indian Penal Code (Sec. 161 - 171) in 1860 by the British Government of India. These provisions prohibits a public servant from taking anything (in cash or kind) other than his /her legal remuneration for doing any act which he / she is under an obligation to do or not to do. Later, the Indian Parliament also enacted the prevention of Corruption Acts. First in 1947 and again in 1988, to strengthen the law of prevention of corruption by making it a little more particular and stringent. In the new Act, the minimum mandatory punishment has been prescribed and also the punishment (imprisonment) has been enhanced from 3 years to 5 years. But in spite of a very strict legal regim the corruption in India is increasing day by day and there is no sign of it getting under control by the new rule and the machineries created under them. When the provisions of Indian Penal Code were the only rules to prevent corruption, it was better controlled than today when we have a specific and comparatively and stricter law. Do we come forward to think about the reason for the rapid growth of corruption activities in government departments or we ourselves try to get an opportunity to take our own share in this corruption system? Actually, the provisions of the Indian Penal Code were enough to control the corruption till they were allowed to control it. When the corrupt officials and government servants were under an impression that if they will engage in corrupt practices the law will deal with them strictly and there will be no defense for them the corruption was under Control. But in 1952, Section 165-A was added in Indian Penal Code that made the abetting of corruption a specific offence and it gave an instrument in the hands of corrupt officials to frame the complaint of a corrupt practice with the abetment of it and got him punished by misusing the government machinery. Now even the person who is compelled to pay the bribe to an official for getting his work done will not dare to make a complaint in fear of getting himself charged with the abetment of the crime. The English Government of India was better concerned with the prevention of corruption but our own
government, in the name of preventing the misuse of anti-corruption from making a complaint against a public official due to the fear of getting himself charged with the offence of abetment of corruption. This has emboldened the already corrupt government officials to get involved in the crime without much fear and has contributed in the growth of rampant corruption in the country.

3.5.1 The definition of the term Bribery provided in Section 171-B of The I.P.C. as Follows:–

1) i) Whoever gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

ii) Accept either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery

2) A person who offers, or agrees to give or offers or attempts to procure, a gratification shall be deemed to give a gratification.

3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing, what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

Under Section 171-E of I.P.C. Punishment for Bribery is provided, which runs as follows: -

Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both

Provided that bribery by treating shall be punished with fine only.

Adulteration of food or drink intended for sale is also offence considered under Section 272 of the I.P.C.

Whoever adulterates any articles of food or drinks. So as to make such article noxious as food or drink intending to sell such article as food or drink or knowing it to be likely that same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
Sale of noxious food or Drink is an offence described under Section 273 of I.P.C.

Whoever sells, or offers or exposes for sale as food or drink knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Adulteration of drugs also an offence in I.P.C. under Section 274 which prescribes as follows-

Whoever, adulterates any drug or medicinal preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that will be sold or used for, any medical purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of adulterated drugs is strictly prohibited under Section 275 of I.P.C.

Whoever, knowing any drug or medicinal preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers to exposes it for sale, or issues it from any dispensary for medicinal purpose as unadulterated, or causes it to be used for medicinal purpose by any person not knowing of adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to six months, or with fine which may extend to one thousand rupees, or with both.11

Sale of drug as a different drug or preparation is an offence as provided under Section 276 of I.P.C.

Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medicinal preparation, as a different drug or medicinal preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.12

Dishonest mis-appropriation of property is an offence under Section 403 of I.P.C. described as an element of corruption and White Collar Crime.
Whoever dishonestly mis-appropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years or fine, or with both.\textsuperscript{13}

Criminal Breach of Trust is an offence under Section 405 which consists breach of trust which is a part of criminal offence.

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”

Punishment for criminal breach of Trust prescribed under Section 406 of I.P.C.

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.\textsuperscript{14}

Criminal Breach of Trust by carrier etc. is discussed in Section 407 of I.P.C.

Whoever, being entrusted with property as a carrier, wharfinger or warehouse keeper. Such property shall be punished with imprisonment of either description for a term which may extent to seven years, and shall also be liable to fine.

Criminal Breach of Trust by clerk or servant is an offence considered under Section 408 of I.P.C.

Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Criminal breach of Trust by Public Servant or by banker, merchant or agent is an offence under I.P.C. discussed under Section 409.

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of public servant or in the way of his
business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.\textsuperscript{15}

The offence of cheating discussed as under Section 415 of I.P.C.

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property, to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, reputation or property, is said to ‘cheat’\textsuperscript{16}

The offence of cheating and dishonestly inducing delivery of property is an offence prescribed under Section 420 of I.P.C.

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.\textsuperscript{17}

3.6 Criminal Procedure Code:-

Criminal Procedure Code 1973 together with Mutual legal Assistance Treaties (MLAT) in Criminal Matters and Extradition Treaties provides for the empowerment of the investigation agencies as under:-

Section 166 A and 166B of the Criminal Procedure code empower the crime investigation agencies of India to make requests to other countries as well as to entertain requests from other countries to render assistance in the investigation of crime registered in the respective countries. Such letters of request are popularly known as letters Rogatory. Such letters Rogatory are executed on the basis of Mutual Legal Assistance Treaties and Extradition Treaties India has signed with other countries. To date India has Mutual legal Assistance Treaties in Criminal matter with 20 countries and Extradition Treaties with 25 countries. The mutual legal assistance Treaties invariably has a chapter on assets recovery and sharing the same with other countries, International co-operation is sought on the basis of guaranty of reciprocity.
3.7 Prevention of Corruption Act, 1988:-

“If we can not make India Corruption - free then the vision of making the nation develop by 2020 would remain as dream”

Corruption is considered to be one of the greatest impediments on the way towards progress for developing country like India. The economic, social and cultural structure of our country is very strong; however, due to the menace called corruption, it has been adversely affected and has become defenseless against the forces of anti-social elements.

According to Shri.N.Vittal, former Chief Vigilance Commissioner, the first stage in the dynamics of the rule of law is the framing of effective rules and laws, which are equipped to hinder the everrising escalation of the corruption graph. It is in this context that the Prevention of Corruption Act, 1988 becomes highly significant.

3.7.1 Genesis:-

The prevention of Corruption Act, 1988 (henceforth referred to as PCA) came into force on 9th September, 1988 by repealing of the prevention of Corruption Act, 1947. The Criminal Law Amendment Act, 1952 and Sec. 161 to 165(A) of the Indian Penal Code with modifications, enlarged the scope of the definition of the expression ‘Public Servant’ and amended the Criminal Law Amendment Ordinance, 1944, The PCA, 1988, thereby widened the coverage, strengthened the provisions and made them more effective.

3.7.2 Public servant taking gratification other than legal remuneration in respect of an official act (under sec. 7 of Prevention of Corruption Act).

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward 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 of 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. Corporations or government companies referred to in Clause (c) of sec. 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.
3.7.3 Taking gratification, in order, by corrupt or illegal means, to influence public servant (Sec.9).

Whoever accepts or obtains, or agrees to accepts, 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 corruption or illegal mean, 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 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 not less than six months but which may extend to five years and shall also be liable to fine. 19

3.7.4 Taking gratification, for exercise of personal influence with public servant.

According to Section 5 of the Prevention of the Corruption Act the provision of Special judges to take cognizance which says -

1) A special judge may take cognizance of offences without the accused being committed to him for trial and in trying the accused person, shall follow the procedure prescribed by the code of criminal procedure, 1973, for trial of warrant cases by Magistrate.

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

3) Save as provided in Sub-Section (1) or Sub-Section (2), the provisions of Code of Criminal Procedure, 1973, shall so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge and for the
purpose of the said provisions, the court of the Special Judge shall be
deemed to be a court of Sessions and the person conducting a prosecution
before a Special Judge shall be deemed to be a public prosecutor.

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

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

6) A special Judge, while trying all offence punishable under this Act, shall
exercise all the powers and functions exercise by a District Judge under
the Criminal law Amendment Ordnance, 1944 (Ordinance 38 of 1944)

Section 7 of the Act deals with the public servant taking gratification other
than legal remuneration in respect of an official act, which says

Whoever, being, or expecting to be a public servant, accepts or obtains or
agrees to accept or attempt 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 on disfavour to any person,
with the central government or any state government or parliament or the legislature
of any state or with any local authority, corporation or government company
referred to in clause (c) of Section 2 or with any public servant, whether named
or otherwise, shall be punishable with imprisonment which shall not be less than
six months but which may extend to five years and shall also be liable to fine.

3.7.5 Punishment for abatement by public servant of offences defined in
Sections 8 or 9.

Whoever, being a public servant, in respect of whom, either of the offences
defined in sections 8 or 9 is committed, abets the offence, whether or not that
offence is committed in consequence of that abatement shall be punishable with
imprisonment for a term which shall be not less than six month but which may
extend to five years and shall also be liable to fine.
3.7.6 Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant.

Section 11 provides that:

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 in-adequate 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.  

3.7.7 Punishment for abatement, of offence? Defined in Sections 7 or 11:–

Whoever abets any offence punishable under section 7 or Section 11 whether or not that offence is committed in consequences of that abatement, 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.

3.7.8 Criminal misconduct by a public servant Sec. 13(1)

Sec. 13(1) of the act provides that:

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 Sec.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 the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or
c) If he dishonestly misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

d) If he:-
   i) By corrupt or illegal means for himself or for any other person any valuable thing or pecuniary advantage; or
   ii) By abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage; or
   iii) While holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

e) If he or any person on his behalf is in possession or has at any time dwelling the period of his office, been in possession for which the public servant can not satisfactorily account of pecuniary resources or property disproportionate to his known sources of income.

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.

3.7.9 Habitual committing of offence discussed under Section 8, 9 and 12 of the Act

According to Section 14 Whoever habitually commits
   a) an offence punishable under Section 8 or 9; or
   b) an offence punishable under section 12

Shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine.

3.7.10 Punishment for attempt:-

Section 15 of the Act deals with the punishment for attempt which says

Whoever attempts to commit an offence referred to in clause (c) or clause (d) of Sub-Section (1) of Section 13 shall be punishable with imprisonment for a term, which may extend to three years and with fine.

3.7.11 Matters to be taken into consideration for fixing fine described in Section 16:–

Where a sentence of fine is imposed under – Sub Section (2) of Section 13 or Section 14, the court in fixing the amount of the fine shall take into consideration
the amount or the value of the property, if any, which the accused person has obtained by committing the offence of where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account to account satisfactorily.

3.8 The Prevention of Food Adulteration Act 1954:-

The Ministry of Health and Family Welfare is responsible for ensuring safe food to the consumers, keeping this in view, a legislation called ‘Prevention of Food Adulteration Act, 1954’ was enacted. The objective envisaged in this legislation was to ensure pure and wholesome food to the consumers also to prevent fraud or deception. The Act has been amended thrice in 1964, 1976 and in 1986 with the objective of plugging the loopholes and making the punishments more stringent and empowering consumers and voluntary organization to play a more effective role in its implementation.

The subject of the prevention of Food Adulteration is in the concurrent list of constitution. However, in general, the enforcement of the Act is done by the State Government. The Central Government primarily plays an advisory role in its implementation besides carrying out various statutory functions/duties assigned to it under the various provisions of the Act.

The laws regulating the quality of food have been in force in the country since 1899. Until 1954, several States formulated their own food laws. But there was a considerable variance in the rules and specifications of the food, which interfered with inter-provincial trade. The Central Advisory Board appointed by the Government of India in and the food Adulteration committee appointed in 1943, reviewed the subject of Food Adulteration and recommended for Central Legislation. The Government for making such legislation as the subjects of food and Drugs Adulteration are included in the concurrent list. The government of India, therefore, enacted a Central Legislation called prevention of food Adulteration (PFA) in the year 1954 which came into effect from 15 June, 1955. The Act repealed all laws, existing at that time in the State concerning food adulteration.

In India a three tier system is in vogue for ensuring food quality and food safety. They are

* Government of India
* State Government

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Local Bodies

The prevention of Food Adulteration Act is Central Legislation. Rules and Standards framed under the Act are uniformly applicable throughout the country. Besides framing of rules and standards.

3.8.1 Prohibition of Import of Certain Articles of Food prescribed under Section 5:

No person shall import into India:

i) Any adulterated food;

ii) Any misbranded food;

iii) Any article of food for the import of which the license is prescribed, except in accordance with the conditions of the license; and

iv) Any article of food in contravention of any other provision of this act or of any rule made there under.

3.8.2 Prohibition of manufacture, sale, etc. of certain articles of food, section 7 of the food Adulteration Act, provides as under:

No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute:

i) any adulterated food;

ii) any misbranded food;

iii) any article of food for the sale of which a license is prescribed, except in accordance with the conditions of the license;

iv) any article of food the sale of which is for the time being prohibited by the food (Health) Authority (in the interest of public health;

v) any article of food in contravention of any other provision of this act or of any rule made there under;

vi) any adulteration

3.8.3 Penalties are described under Section 16:

1) Subject to the provisions of Sub-Section (1A) if any person:

a) Whether by himself or by any other person on his behalf, import into India or manufactures for sales or stores, sells or distributes any article of food:

i) Which is adulterated within the meaning of sub-clause (m) of clause (ia) of Section 82 or misbranded within the meaning of clause (ix) of that section of the sale of which is prohibited under any provision of Act or any rule made their under or by an order of the food (Health) Authority;
ii) Other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this act or of any rule made there under; or

b) Whether by himself or by any other person on his behalf, import into India or manufactures for sales or stores, sells or distributes any adulterant which is not injurious to health; or

c) Prevents a food inspector from taking a sample as authorized by this act; or

d) Prevents a food inspector from exercising any other power conferred on him by or under this Act; or

e) Being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any adulterant which is not injurious to health; or

f) Uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory or by public analyst or any extract thereof for the purpose of advertising any article of food; or

g) Whether by himself or by any other person on his behalf, gives to the vendor a false warrantee in writing in respect of any article of food sold by him, he shall in addition to the penalty, to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees 30

i) If the offence is under Sub-Clause (ii) or clause (a) and is with respect to an article of food, being primary food, which is adulterated due to human agency or is with respect to an article of food which is misbranded within the meaning of sub-clause (k) of clause (ix) of Sec.2; or

ii) If the offence is under sub-clause (ii) of clause (a), but not being an offence with respect to the contravention of any rule made under clause (a) or clause (g) of Sub-Section (1A) of Section 23 or under Clause (b) of Sub-Section (2) of Section 24, the court may, for any adequate and special reason a sentence of imprisonment for a term which shall not be less than three months but which may extend to two years, and with fine which shall not be less than five hundred rupees;
Provided further that if the offence is under sub-clause (ii) of clause (a) and in with respect to the contravention of any rule made under clause (a) or clause (g) of Sub-Section (1A) of Section 23 or under clause (b) of Sub-Section (2) of the Section 24, the court may, for any adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees.

[1A] If any person whether by himself or by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes

i) Any article of food which is adulterated within the meaning of any of the Sub-Clause (e) to (l) (both inclusive) of clauses (ia) of Section 2; or

ii) Any adulterant which is injurious to health.

He shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than one year but which may extend to six years any with fine which shall not be less than two thousand rupees; Provided that if such article of food or adulterant when consumed by any person is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of India Penal Code (45 of 1860), he shall be punishable with imprisonment for a term which shall not be less than 3 years but which may extend to term of life and with fine which shall not be less than five thousand rupees]

[(1AA) If any person in whose safe custody any article of food has been kept under sub-section (4) of section 10, tamper or any other manner interferes with such article, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which shall not be less than one thousand rupees]

[(1B) If any person in whose safe custody, any article of food has been kept under sub-section (4) of Section 10, sell or distributes such article which is found by the magistrate before whom it is produced to be adulterated within the meaning of sub-clause (h) of clause (ia) of Section 2 and which when consumed by any person, is likely to cause his death or is likely to
cause such harm on his body as meaning of section 320 of the Indian Penal Code, then, notwithstanding anything contained in Sub-Section (1AA), he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term which shall not be less than three years but which may extend to term of life and with fine which shall not be less than five thousand rupees.  

1C) If any person contravenes the provisions of Section 14 of Section 14 A, he shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than five hundred rupees.

1D) If any person convicted of any offence under this Act commits a like offence afterwards, then without prejudice to the provisions of sub-section (2) the court, before which the second or subsequent conviction takes place may order the cancellation of the license, if any, granted to him under this Act and thereupon such license shall notwithstanding anything contained in this Act, or in the rules made there under stand cancelled.

2) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender’s name and place of residence and the penalty imposed to be published at the offender’s expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be revocable in the same manner as a fine.

3.8.4 Section 17 of Food Adulteration Act discusses with offence by companies and provides as under,

1) Where an offence under this Act has been committed by a company:–

a) i) The person, if any, who has been nominated under sub-section (2) to be Incharge of and responsible to, the company for the conduct of the business of the company (hereafter in this section referred to as the person responsible) or

ii) Where no person has been nominated, ever person who at the time of offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company; and

b) The company,

shall be deemed to be guilty of the offence and shall be liable to be proceeded against the punished accordingly;
Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that exercised all due diligence to prevent the commission of such offence.  

2) Any company may, by order in writing, authorize any of its directors or managers (such manager being employed mainly in Managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated.

3) The person nominated under Sub-Section (2) shall, until:–
   i) Further notice canceling such nomination is received from the company by the Local (Health) Authority; or
   ii) He ceases to be a director or, as the case may be, manager of the company; or
   iii) He makes a request in writing to the Local (Health) Authority, under intimation to the company, to cancel the nomination (which request shall be complied with by the Local (Health) Authority) Whichever is the earliest, continue to be the person responsible:–

Provided that where such person ceases to be a director, or as the case may be, manager of the company, he shall intimate the fact of such cesser to the Local.

Provided further that where such person makes a request under clause (iii) the Local (Health) Authority shall not cancel such nomination with effect from a date earlier that the date on which the request is made.

4) Notwithstanding anything contained in the foregoing sub-section, where an offence under this Act has been committed by a company and it is proved that the offence that the offence has been committed with the consent or convenience of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company [not being a person nominated under Sub-Section (2)] such director, manager, secretary or other
officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 36

3.8.5 Forfeiture of the Property: -

Provisions of Forfeiture of the Property are prescribed under section 18 of Food Adulteration Act and provides as under, Where any person has been convicted under this Act for the contravention of any of the provisions of this Act or of any rule there under, the article of food in respect of which the contravention has been committed may be forfeited to the government. 37

3.8.6 Defenses available: -

Defenses which may or may not be allowed in prosecution under this Act are discussed under section 19 of the Act and provides as under:–

1) It shall be no defense in the prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature. Substance or quality of the food sold by him or that purchaser having purchased any article for analysis was not pre-judiced by the sale.

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves-

a) That he purchased the article of food:–

   i) In a case where a license is prescribed for the sale thereof from a duly licensed manufacturer, distributor or dealer.

   ii) In any other case, from any manufacturer, distributor or dealer, with a written warrantee in the prescribed form; and

b) That the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it] 38

3.8.7 Magistrate’s Power to impose enhanced penalties: -

Magistrate’s Power to impose enhanced penalties is discussed under Section 21 of the Prevention of Food Adulteration Act, 1954:–

Notwithstanding anything contained in Sec.21 of Criminal Procedure Code, 1973, it shall be lawful for any Metropolitan Magistrate or any judicial magistrate of the First Class to pass any sentence authorized by this Act except a sentence of imprisonment for life or for a term exceeding six years, in excess of his powers under the said section. 32.
3.9 **Essential Commodities Act, 1955:-**

Another kind of white collar crime is hoarding and black marketing of the essential Commodities through which hoarders and black – Marketers are earning huge amount by such earning is blood of poor masses. To control this menace the Essential commodities Act was enacted in the year 1955;

The Essential Commodities Act, 1955 was enacted to ensure the easy availability of essential commodities to consumers and to protect them from exploitation by unscrupulous traders. The Act provides for the regulation and control of production, distribution and pricing of commodities which are declared as essential for maintaining or increasing supplies or for securing their equitable distribution and availability at fair prices. Exercising powers under the Act, various Ministries/Departments of the Central Government and under the delegated powers, the State Governments/UT Administrations have issued orders for regulating production, distribution, pricing and other aspects of trading in respect of the commodities declared as essential. The enforcement/ implementation of the provisions of the Essential Commodities Act, 1955 lies with the State Governments and UT Administrations.

As per the decisions of the Conference of Chief Ministers held on 21 May 2001, a Group of Ministers and Chief Ministers had been constituted which recommended that the regulatory mechanism under the Essential Commodities Act, 1955 should be phased out.

Accordingly, the restrictions like licensing requirement, stock limits and movement restrictions have been removed from almost all agricultural commodities. Wheat, pulses and edible oils, edible oilseeds and rice being exceptions, where States have been permitted to impose some temporary restrictions in order to contain price increase of these commodities.

The list of essential commodities has been reviewed from time to time with reference to the production and supply of these commodities and in the light of economic liberalisation in consultation with the concerned Ministries/Departments administering these commodities. The Central Government is consistently following the policy of removing all unnecessary restrictions on movement of goods across the State boundaries as part of the process of globalisation simultaneously with the pruning of the list of essential commodities under the said Act to promote consumer interest and free trade.
The number of essential commodities which stood at 70 in the year 1989 has been brought down to 7 at present through such periodic reviews.

In conformity with the policy of the Government towards economic liberalisation, Department of Consumer Affairs is committed to the development of agriculture and trade by removing unnecessary controls and restrictions to achieve a single Indian Common Market across the country for both manufactured and agricultural produce and to encourage linkage between agriculture and industry. With this object in view, this Department introduced the Essential Commodities (Amendment) Bill, 2005 in the Parliament in the winter session of 2005 to enable the Central Government to prune the list of essential commodities to the minimum by deleting all such commodities which have no relevance in the context of present improved demand and supply position and to facilitate free trade and commerce. Only those commodities considered essential to protect the interest of the farmers and the large section of the people “below the poverty line” are proposed to be retained under the Essential Commodities Act, 1955.

The Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 is being implemented by the State Governments/UT Administrations for the prevention of unethical trade practices like hoarding and black-marketing. The Act empowers the Central and State Governments to detain persons whose activities are found to be prejudicial to the maintenance of supplies of commodities essential to the community. Detentions are made by the States/UTs in selective cases to prevent hoarding and black-marketing of the essential commodities. As per reports received from the State Governments, 119 detention orders were issued under the Act during the year 2007. The Central Government and the State Governments also have the power to modify or revoke the detention orders. The representations made by or on behalf of the persons ordered for detention are considered and decided by the Central Government.

In the context of unprecedented rise in prices of some essential commodities in the mid 2006, there had been widespread concern from various corners for taking immediate steps to mitigate the rising trend of prices of essential commodities. Representations from the Chief Ministers of Punjab and Delhi and also from the Governments of Andhra Pradesh, Rajasthan and Maharashtra were received for restoration of powers under the Essential Commodities Act, 1955 for undertaking dehoarding operations in view of the assumption that there is
speculative holding back of stocks particularly of wheat and pulses in anticipation of further rise in prices. Central Government has already taken a number of steps to control the price rise in essential commodities by trying to augment supply including through imports by reducing the duty level on import of both wheat and pulses to zero.

The situation was further reviewed by the Government and it was decided with the approval of the Cabinet to keep in abeyance some provisions in the Central Order dated 15.2.2002 for a period of six months with respect to wheat and pulses (whole and split), so as to tackle the crises on availability and prices of these commodities. Accordingly, the Government order No.1373 (E) dated 29.8.2006 by virtue of which the words or expressions made in respect of purchase, movement, sale, supply, distribution or storage for sale in the “Removal of (Licensing requirements, Stock limits and Movement Restrictions) on Specified Foodstuffs Order, 2002" notified on 15.02.2002 have been kept in abeyance for commodities namely wheat and pulses for a period of six months. The transport, distribution or disposal of wheat and pulses (whole or split) to places outside the State as well as import of these commodities have been kept outside the purview of the aforesaid Order of 29.08.2006. The Order of 29.08.2006 was initially in force for a period of 6 months, which was extended thrice for a period of 6 months each by Central Notifications dated 27.02.2007, 31.8.2007 and 28.02.2006. The Order permitted State/UT Governments to fix stock limits in respect of wheat and pulses.

To enable the State Governments/UT Administrations to continue to take effective action for undertaking de-hoarding operations under the Essential Commodities Act, 1955, the price situation was further reviewed by the Government and its has been decided with the approval of the Cabinet to further impose similar restrictions by keeping in abeyance some provisions of the Central Order dated 15.02.2002 for a period of one year with respect to edible oils, oilseeds and rice, so as to tackle the rising trend of prices as well as to ensure availability of these commodities to the common people. However, it has also been decided that there shall not be any restriction on the inter-state movement of these items and that imports of these items would also be kept out of the purview of any controls by the State Governments.
3.9.1 Powers to control production, supply, distribution etc: -

Powers to control production, supply, distribution, etc. of essential commodities prescribed in section 3. of the Acts provides as under,⁹⁹

(1) If the central Government is of opinion that is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair price, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the power conferred by sub-section (1), an order

(3) made thereunder may provide,-

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether appurtenant to

(c) a building or not, for the growing thereon of food-crops generally or of specified

(d) food crops, and for otherwise maintaining or increasing the cultivation of food-crops;

(e) for controlling the price at which essential commodity may be bought or

(f) sold;

(g) for regulating by licences, permit or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any

(h) essential commodity;

(i) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

(h) For requiring any person holding in stock, or engaged in the production, or in the Business of buying or selling, of any essential commodity,-

(a) To sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(b) In the case of any such commodity which is likely to be produced or received by him, To sell the whole or a specified
part of such commodity when produced or received by him, To the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other Person or class of persons and in such circumstances as may be specified in the order.

(i) For regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs which, in the opinion of the authority making the order, are, or, if Unregulated, are likely to be, detrimental to the public interest;

(j) For collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;

(i) for requiring persons engaged in the production, supply or distribution of or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating there to, as may be specified in the order;

[(ii) for the grant or issue of licenses, permits or other documents, the charging of fees therefor, the deposit of such sum, if any, as may be specified in the order as security for the due performance of the conditions of any such license, permit or other document, the Forfeiture of the sum so deposited or any part thereof for contravention of any such Conditions and the adjudication of such forfeiture by such authority as may be specified in the order;]

(k) for any incidental and supplementary matters, including, in particular, the entry, search or examination of premises, aircraft, vessels, vehicles or other conveyances and animals, and the seizure by a person authorised to make such entry, search or examination,-

(i) of any articles in respect of which such person has reason to believe that a Contravention of the order has been, is being, or is about to be, committed and any Packages, coverings or receptacles in which such articles are found;
of any aircraft, vessel, vehicle or other conveyance or animal used in carrying such articles, if such person has reason to believe that such aircraft, vessel, vehicle or other conveyance or animal is liable to be forfeited under the provisions of this Act;

(iii) of any books of accounts and documents which in the opinion of such person, may be useful for, or relevant to, any proceeding under this Act and the person from whose Custody such books of accounts or documents are seized shall be entitled to make copies thereof or to take extracts therefrom in the presence of an officer having the custody of such books of accounts or documents.

(4) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to him the price there for as hereinafter provided-

(a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;

(b) Where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) Where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

[(3A) (i) If the Central Government is of opinion that it is necessary so to do for Controlling the rise in prices, or preventing the hoarding, of any food-stuff in any locality, it may, by notification in the Official Gazette, direct that notwithstanding anything contained in sub-section (3), the price at which the food-stuff shall be sold in the locality in compliance with an order made with reference to clause (f) of sub-section (2) shall be regulated in accordance with the provisions of this sub-section.

(ii) Any notification issued under this sub-section shall remain in force for such period not exceeding three months as may be specified in the notification.

(iii) Where, after the issue of a notification under this sub-section, any person sells Foodstuff of the kind specified therein and in the locality so specified,
in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to the seller as the price there for-

(a) where the price can, consistently with the controlled price of the foodstuff, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) Where neither clause (a) nor clause (b) applies, the price calculated with reference to average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification.

(iv) For the purposes of sub-clause (c) of clause (iii), the average market rate prevailing in the locality shall be determined by an officer authorised by the Central Government in this behalf, with reference to the prevailing market rates for which published figures are available in respect of that locality or of a neighbouring locality; and the average market rate so determined shall be final and shall not be called in question in any court.

[(3B) Where any person is required, by an order made with reference to clause (f) of sub-section (2), to sell to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government, any grade or variety of foodgrains, edible oilseeds or edible oils in relation to which no notification has been issued under sub-section (3A), or such notification having been issued, has ceased to be in force, there shall be paid to the person concerned, notwithstanding anything to the contrary contained in sub-section (3), an amount equal to the procurement price of such foodgrains, edible oilseeds or edible oils, as the case may be, specified by the State Government, with the previous approval of the Central Government having regard to-

(a) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils;

(b) the general crop prospects;]
(c) the need for making such grade or variety of foodgrains, edible oilseeds or edible oils available at reasonable prices to the consumers, particularly the vulnerable sections of the consumers; and

(d) the recommendations, if any, of the Agricultural Prices Commission with regard to the price of the concerned grade or variety of foodgrains, edible oilseeds or edible oils.]

[(3C) Where any producer is required by an order made with reference to clause (f) of sub-section (2) to sell any kind of sugar (whether to the Central Government or a State Government or to an officer or agent of such Government or to any other person or class of persons) and either no notification in respect of such sugar has been issued under sub-section (3A) or any such notification, having been issued, has ceased to remain in force by efflux of time, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer an amount therefor which shall be calculated with reference to such price of sugar as the Central Government may, by order, determine, having regard to-

(a) the minimum price, if any, fixed for sugarcane by the Central Government under this section;

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon; and

(d) the securing of a reasonable return on the capital employed in the business of manufacturing sugar, and different prices may be determined from time to time for different areas or for different factories or for different kinds of sugar.

[(3D) The Central Government may direct that no producer, importer or exporter shall sell or otherwise dispose of or deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced, whether such godowns are situated within the premises of the factory or outside or from the warehouses of the importers or exporters, as the case may be, except under and in accordance with the direction issued by the Government:

Provided that this sub-section shall not affect the pledging of such sugar by any producer or importer in favour of any scheduled bank as defined in
clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) or any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), so, however, that no such bank shall sell the sugar pledged to it except under and in accordance with a direction issued by the Central Government.

(3E) The Central Government may, from time to time, by general or special order, direct any producer or importer or exporter or recognised dealer or any class of producers or recognised dealers, to take action regarding production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar in the manner specified in the direction.

(5) If the Central Government is of opinion that it is necessary so to do for maintaining or increasing the production and supply of an essential commodity, it may, by order, authorise any person (hereinafter referred to as an authorized controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order such functions of control as may be provided therein and so long as such order is in force with respect to any undertaking or part thereof,-

(a) the authorized controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have any power to give any direction inconsistent with the provisions of any enactment or any instrument determining the functions of the persons in-charge of the management of the undertaking, except in so far as may be specifically provided by the order; and

(b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller under the provisions of the order, and any person having any functions of management in relation to the undertaking.

3.9.2 Penalties: -

Penalties under essential commodities Act are discussed under sec. 7 of the Act as follows: -

1. If any person contrivance any order made under Section 3;
   a) He shall be punishable
ii) in the case of any other order, with imprisonment for a term which shall not be less that Three months but which may extend to seven years and shall also be liable to fine,
(a) any property in respect of which the order has been contravened shall be forfeited to the government;
(c) any package, covering or receptacle in which the property in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property shall, if the court so orders, be forfeited to the government.
2) If any person to whom a direction is given under c1. (b) of sub-section (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:
2-A) If any person convicted of an offence under sub-clause (ii) of c1. (a) of sub-section
or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine:
3) Where a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section, by order, direct that person shall not carry on any business that essential commodity for such period, not less than six months, as may be specified by the court in the order.  

3.9.3 Attempts and abetments: -

Any person who attempts to contravene, or abets a contravention of, any order made under sec.3 shall be deemed to have contravened that order.

Provided that where a person has abetted the contravention of any order for the purpose of procuring any essential commodity of the nature mentioned in sub-clause (v) of cl.(a) of section 2 for his own use or for the use of any member of his family or for the use of any person dependent on him, and not for the purpose of carrying on any business or trade in such essential commodity, the
court may, notwithstanding anything contained in section 7 and for reason to be mentioned in the judgment, impose a sentence of fine only.

3.9.3 False statements:-

If any person –

(i) When required by any order made under sec.3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish, He shall be punishable with imprisonment for term which may extend to five years or with fine, or with both.

3.9.4 Offences by companies:-

1. If the person contravening an order made under sec.3 is a company, every person who, at the time the contravening an order made under sec.3 is a company, every person who, who at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

2. Not with standing anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

3.10 The Customs Act, 1962:–

The Central Board of Direct Taxes and the Central Board of Excise and Customs are its revenue eyes governments require resources to discharge their
multifarious obligations. The problem of arresting evasion and avoidance of Taxes as well as growth of black money is as old as the rocks. The problem has assumed gigantic proportions and sophistication.

The oft quoted advice of Kautilya its that taxes should be collected as painlessly as the bee sucks the honey from the flower. The Kachhit Sarga of Valmiki’s Ramayana contains a similar advice. The ideal of the state should be to so conduct its affairs, without causing hassles or harassment in enforcing the law. The Constitution ordains likewise.

Perfection is a never ending quest. If through the process of restructuring the central Board of Excise and Customs, additional resources could be raised, concurrently arresting evasion and avoidance, it is certainly a wholesome goal.

3.10.1 Searches, seizure and arrest:–

Power to search suspected persons entering or leaving India etc. discussed in Section 100 of the Customs Act 1962:–

1) If the proper officer has reason to believe that any person to whom this section applies has secreted about his person, any goods liable to confiscation or about his person, any goods liable to confiscation or any documents relating thereto, he may search that person. 41

2) This section applies to the following persons, namely:–

a) Any person who has landed from or is about to board, or is on board any vessel within the Indian Customs waters;

b) Any person who has landed from or is about to board, or is on board a foreign-going aircraft;

c) Any person who has got out of, or is about to get into, or is in, a vehicle, which has arrived from, or is to proceed to any place outside India;

d) Any person not including in clause (a), (b) or (c) who has entered or is about to leave India,

e) Any person in a custom area.

Power to search suspected persons in certain other cases is discussed under Section 101 of the Customs Act, 1962:–

1) Without prejudice to the provisions of section 100, if an officer of customs empowered in this behalf by general or special order of the [commissioner of customs] has reason to believe that any person has secreted about his
person any goods of the description specified in sub-section (2) which are liable to confiscation, or documents relating thereto, he may search that person.

2) The goods referred to in Sub-Section (1) are the following:–
   a) Gold
   b) Diamonds
   c) Manufacturers of gold or diamonds
   d) Watches
   e) Any other class of goods which the Central Government may, by notification in the official Gazette, specify.\(^{42}\)

Persons to be searched may require to be taken before Gazetted officer of customs or Magistrate this provision discussed under Section 102 of the Act:–

1) When any officer of customs is about to search any person under the provisions of section 100 or Section 101, the officer of customs shall, if such person so requires, take him without unnecessary delay to the nearest Gazetted officer of Customs or Magistrate.

2) If such requisition is made, the officer of customs may detain the person making it until he can bring him before, the Gazetted officer of customs or the Magistrate.

3) The Gazetted officer of the customs or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

4) Before making a search under the provisions of Section 100 or Section 101, the officer of customs shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do; and the search shall be made in presence of such persons and a list of all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses.\(^{43}\)

Power to Screen or X-ray bodies of suspected persons for detecting secreted goods discussed under Section 103 of the Act:–

1) Where the proper officer has reason to believe that any person referred to in sub-section (2) of Section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and produce him without unnecessary delay before the nearest Magistrate.
2) A Magistrate before whom any person is brought under Sub-Section (1) shall, if he sees no reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person.

3) Where any such Magistrate has reasonable ground for believing that such person has any such goods satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or x-rayed he may make an order to that effect.

4) Where a Magistrate has made any order under Sub-Section (3), in relation to any person, the proper officer shall, as soon as practicable, take such person before a radiologist possessing qualifications recognized by the Central Government for the purpose of this section, and such person shall allow the radiologist to screen or x-ray his body.

5) A radiologist before whom any person is brought under sub-section (4) shall, after screening or x-raying the body of such person, forward his report, together with any x-ray pictures taken by him, to the Magistrate without unnecessary delay.

6) Where on receipt of a report from a radiologist under Sub-Section (5) or otherwise, the magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such directions.

7) Where any person is brought before a Magistrate under this Section, such magistrate may for the purpose of enforcing the provisions of this section order such person to be kept in such custody and for such period as he may direct.

8) Nothing is this section shall apply to any person referred to in Sub-Section(1), who admits that goods liable to confiscation are secreted inside his body, and who voluntarily submits himself for suitable action being taken for bringing out such goods.  

Section 104 of the Act deals with the Power to Arrest:–

1) If an officer of customs empowered in this behalf by general or special order of the [commissioner of customs] has reason to believe that any person in India or within the Indian customs waters has been guilty of an
offence punishable under Section 135, he may arrest such person and shall, as soon as may be inform him of the grounds for such arrest.

2) Every person arrested under Sub-section (1) shall, without unnecessary delay, be taken to a Magistrate.

3) Where an officer of customs has arrested any person under Sub-Section (1), he shall, for the purpose of releasing such person on bail or otherwise, he have the same powers and be subject to the same provisions as the officer-in-charge of police station has and is subject to under the code of criminal procedure, 1898.

4) Notwithstanding anything contained in the code of Criminal Procedure, 1898, an offence under this Act shall not be cognizable. As such many other provisions like Sec. 105 powers to search premises, Sec.106 power to stop and search conveyance, Sec.106-A power to inspect, Sec.107 power to examine persons etc.

3.10.2 Confiscation of goods and conveyances and imposition of penalties:–

Confiscation of improperly imported goods etc. are discussed under Section 111 of the Act:–

The following goods brought from place outside India shall be liable to confiscation:–

a) Any goods imported by sea or air which are unleaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause(a) of Section 7 for the unloading of such goods;

b) Any goods imported by land or inland water through any route other than a route specified in a notification issued under class (c) of Section 7 for the import of such goods;

c) Any dutiable or prohibited goods brought into any bay, gulf creek or tidal rival for the purpose of being landed at a place other than a customs port;

d) Any goods which are imported or attempted to be imported or are brought within the Indian customs water for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

e) Any dutiable or prohibited goods found concealed in any manner in any conveyance;
f) Any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

g) Any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of sec.32 other than goods inadvertently unloaded but included in the record kept under Sub-Section (2) of Section 45;

h) Any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of Sec.33 or Sec.34;

i) Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

j) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

k) Any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under Sec.109 is not produced or which do not correspond in any material particular with the specification contained therein;

l) Any dutiable or prohibited goods which are not included or any in excess of these included in the entry made under Section 77;

m) [Any goods do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under Section 77 [In respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of Section 54];

n) Any dutiable or prohibited goods transited with or without transshipment in contravention of the provisions of chapter VIII;

o) Any goods exempted, subject to any condition from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being enforce, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.\(^{46}\)
3.10.3 Penalty for improper importation of goods etc. Section 112 of the Act provides as under:–

Any person
a) Who, in relation to any goods, does or omit to do any act which act or omission would render such goods liable to confiscation under Sec.111 or abets the doing or omission of such an act, or
b) Who acquires possession of or is in any way concerned in carrying, removing, depositing harbouring, keeping, canceling, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 shall be liable

......

i) In the case of goods in respect of which any prohibition is in force under this Act or any other law for time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees] whichever is the greater;

ii) In the case of dutiable goods, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded on such goods, or five thousand rupees] whichever is the greater.

iii) In the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under Section 77 (in either case hereinafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees] whichever is the greater;

iv) In the case of goods falling both under clause (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

v) In the case of goods falling both under clause (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the differences between the declared value and the value thereof or five thousand rupees], whichever is the highest.
3.10.4 Different provisions in Customs Act for penalties:–

i) Section 113 of the Act deals with the Confiscation of goods attempted to be improperly exported etc.

ii) Section 114 of the Act deals with Penalty for attempt to export goods improperly, etc.

iii) Section 114 A of the Act deals with Penalty for short-levy or non levy of duty in certain cases.

iv) Section 115 of the Act deals with Confiscation of conveyances

v) Section 116 of the Act deals with Penalty for not accounting for goods.

vi) Section 117 of the Act deals with Penalties for contravention etc. not expressly mentioned.

vii) Section 118 of the Act deals with Confiscation of packages and their contents

viii) Section 119 of the Act deals with Confiscation of goods used for concealing smuggled goods.

ix) Section 120 of the Act deals with Confiscation of smuggled goods notwithstanding any change in form etc.

x) Section 121 of the Act deals with Confiscation of sale-proceeds of smuggled goods.

xi) Section 122 of the Act deals with Adjudication of confiscations and penalties.

3.10.5 Offences and Prosecutions:–

Sec.132 of the Act deals with false declaration, false documents etc.

Whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to six months, or with both.

Sec.133 of the Act deals with obstruction of officer of customs:–

If any person intentionally obstructs any officer of customs in the exercise of any power conferred under this Act. Such person shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.
Sec. 134 of the Act deals with Refusal to be X-rayed – If any person:

a) Resist or refuses to allow a radiologist to screen or to take x-ray picture of his body in accordance with an order made by the Magistrate under section 103 or

b) Resist or refuses to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out goods liable to confiscation secreted inside his body, as provided in Section 103 he shall be punishable with imprisonment for a term which may extend to six months or with fine, or with both. 49

[(a1)] Without prejudice to any action that may be taken under this Act, if any person:

a) Is in relation to any goods in any way knowingly concerned (in mis-declaration of value or) in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this act or any other law for the time being in force with respect to such goods or

b) Acquire possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under [Section 111 or Section 113, as the case may be or]

[(c) Attempts to export any goods which he knows or has reason to believe are liable to confiscation under Section 113]

He shall be punishable:

i) In the case of an offence relating to any of the goods to which section 123 applies and the market price whereof exceeds one lacks of rupees, with imprisonment for a term which may extend to (seven years) and with fine provided that in the absence of special and adequate reason to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than (three ears)

ii) In any other case, with imprisonment for a term which may extend to (three years) or with fine or with both 50
(2) If any person convicted of an offence under this section or under sub-
section (1) of Section 136 is again convicted of an offence under this section,
then he shall be punishable for the second and for every subsequent offence
with imprisonment for a term which may extend to seven years and with
fine.
Provided that in the absence of special and adequate reasons to the contrary
to be recorded in the judgment of the court such imprisonment shall not be
for less than (one year)

3) For the purpose of sub-sections (1) and (2) the following shall not be
considered as special and adequate reasons for awarding a sentence of
imprisonment for a term of less than (one year) namely:–

i) The fact that the accused has been convicted for the first time for an
offence under this Act

ii) The fact that in any proceeding under the Act, other than a
prosecution, the accused has been ordered to pay a penalty or the
goods have been ordered to be confiscated or any other action has
been taken against him for the same act which constitutes the
offences

iii) The fact that the accused was not the principal offender and was
acting merely as a carrier of goods or otherwise was secondary
party to the commission of the offence;

iv) The age of the accused\(^5\)

a) Section 135-A of the Act deals with Preparation

b) Section 135-B of the Act deals with Power of court to publish names place
of business etc. of persons convicted under the Act.

c) Section 136 of the Act deals with Offence by officers of customs

d) Section 137 of the Act deals with Cognizance of offences

e) Section 138 of the Act deals with Offences to be tried summarily

f) Section 138-A of the Act deals with Presumption of culpable mental state

g) Section 138-B of the Act deals with Relevancy of statement under certain
circumstances

h) Section 138-C of the Act deals with Admissibility of micro films, facsimile
copies of documents and as evidence –

i) Section 139 of the Act deals with Presumption as to document sin certain
cases

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Section 140 of the Act deals with Offences by companies


Direct Tax legislation are one of the significant modes which enables the State to release the objectives of both social and economic justice as also defraying the cost of rendering public services on the part of the state, economic order as enunciated in part IV (i.e. of Directive principles of State policy) of the Constitution of India. The emphasis is shifting progressively to voluntary compliance of tax laws; but it will be an exercise in futility, in cases it is not backed by strong deterrence it against tax evaders so that they do not go with impunity.

There are three modes built in the fiscal legislation for encouraging tax compliance:

a) Charge of interest
b) Imposition of Penalty
c) Launching of prosecution against tax delinquents

While charging of interest is compensatory on character, the imposition of penalty and institution of prosecution proceedings act as strong deterrence against potential tax delinquents.

Chapter XVII and XXI of Income Tax Act, 1961 contain various provisions empowering an income tax authority to levy penalty in case of certain defaults.

3.11.1 Penalties and Prosecutions

i) Section 140 A(3) of the Act deals with Failure to pay whole or any part of income-tax and / or interest in accordance with the provisions of Section 140A(1)

ii) Section 221 (1) of the Act deals with Default in making payment of tax within prescribed time.

iii) Section 271(1)(b) of the Act deals with Failure to comply with a notice under Section 142(1) or 143(2) or with a direction issued under Section 142(2A), if there is failure fine Rs.10,000/- for each failure.

iv) Section 271(A) of the Act deals with Failure to keep or maintain books of account, documents etc. as required under section 44AA fine Rs.25,000.

v) Section 271 AAA of the Act deals with undisclosed income in the case of search, fine 10% of undisclosed income of specified previous year.
vi) Section 271 B of the Act deals with Failure to get accounts audited under section 44AB or furnish such report as a required under Section 44AB. Fine ½ % of the total sales turnover, or gross-receipts.

vii) Section 271 BA of the Act deals with Failure to submit report under section 92E, Fine Rs.1, 00, 000/-.

viii) Section 2 HF of the Act deals with Failure to furnish return of income as required by Section 139(1) before the end of relevant assessment year fine Rs.5, 000/-.

ix) Section 271 FA of the Act deals with Failure to furnish annual information return within prescribed time under Section 285 BA (1) Fine Rs.100/- for every day during the failure continues.

x) Section 271 FB of the Act deals with Failure to furnish return of Fringe benefits fine, Rs.100/- per day during which the failure continues.

xi) Section 271 G of the Act deals with Failure to furnish information or documents under Section 92D, Fine 2% of value of the international transaction for each failure.

xii) Section 271 (1) (A) of the Act deals with Failure to answer any question put to the person (who is legally bound to state the truth of any matter touching the subject to his assessment) by an income-Tax authority. Fine Rs.10, 000/- for each fault.

xiii) Section 272 1(b) of the Act deals with Failure to sign any statement made by a person in course of income-tax proceeding fine Rs.10,000/- each default.

xiv) Section 272 A(1)(C) of the Act deals with Failure to comply with summons issued under section 131(1) to attend office to give evidence and produce books of account or other documents for Rs.10,000/- for each default.

xv) Section 272A (2) of the Act deals with Failure to comply with a notice issued under section 94, to give notice of discontinuance of business/profession under Section 176(3); to furnish returns/ statement mentioned in Section 133, 206, 206 C or Section 134 (or of any entry in such register or to allow copies of such register to be taken); to furnish return of income under Section 139(4A) or 139(4C) or to deliver in due time a declaration mentioned in section 197A or 206 C(1A); to furnish a certificate and required in section 203 or 206C; to deduct any pay tax under section 226,
to furnish statement as required by section 192 (2c); to deliver a copy of quarterly statement or TDS / TCS Section 200(3) / 206 C (3); to deliver quarterly return under Section 206A. Fine Rs. 100 for every day during which default continues. 54

3.11.2 Offences and Prosecution:

Section – 272 A of the Act deals with
Dealing with seized assets in contravention of the order made by the officer conducting search punishment rigorous imprisonment of 2 years fine.

Section – 275 B of the Act deals with
* Failure to comply with the provisions of Section 132(1) (ii b) punishment imprisonment up to 2 years and fine.
* Removal, concealment, transfer or delivery of property to thwart tax recovery, punishment up to 2 years and fine.

Section – 276 A of the Act deals with
Failure to comply with the provisions of Section 178(1)(3) by liquidator of a company punishment up to 2 years and fine.

Section – 276 B of the Act deals with
Failure to pay tax to the Government’s treasury of failure to pay the Government tax payable by him as required by Section 115-o (2) or Second proviso to Section 194 B. Punishment minimum 3 month imprisonment and fine and maximum 7 years and fine.

Section – 276 BB of the Act deals with
Failure to pay to the credit of central government tax collected under Section 206C punishment, minimum imprisonment of 3 months and maximum 7 years and fine 58

Section – 276 C(1) of the Act deals with
Willful attempt to evade tax, penalty or interest imposable under the Act, minimum punishment Rs.1,00,000/- and 6 months imprisonment and maximum.

Section – 276 C (2) of the Act deals with
Willful attempt to evade the payment of any tax, penalty or interest minimum punishment 3 month imprisonment and fine maximum 3 years and fine.

Section – 276 CC of the Act deals with
Willful failure to file return of income in time under section 139(1) or Section 148 of Section 153A or willful failure to file in time return of fringe
benefit under Section 115W D (1) or in response to notice under Section 115 WH (2) Minimum punishment imprisonment 3 months and fine maximum 7 years and fine.

Section – 276 D of the Act deals with
Willful failure to produce books of account and documents or willful failure to comply with a direction to get the accounts audited punishment up to 1 year and fine up to 10 Rs. daily.

Section – 277 of the Act deals with
Making a false statement in verification or delivering a false account or statement punishment minimum 3 month and maximum 7 years imprisonment and fine up to Rs.100, 000/-. Section – 277A of the Act deals with
Falsification of books of account or documents etc. Minimum punishment imprisonment 3 months and fine maximum imprisonment 3 years and fine.

Section – 278 of the Act deals with
Abatement to make a false statement or declaration punishment imprisonment 3 months and fine Rs. 1, 00, 000/- and maximum 7 years and fine Rs.1,00,000/-. 

Section – 278 A of the Act deals with
Punishment for second and subsequent offences under Section 276B, 276C(1), 276CC, 277 or 278. Minimum punishment 6 months maximum 7 years imprisonment for every of the offence.

Section – 278 BC of the Act deals with
Offences committed by companies/ firms/ HUMs and criminal liability of managing director, managing partner, Karta or any such officer, who willfully committed the offence for the company firm or HUF, punishment same in the case of company/ firm/ HUF.

Section – 280(1) of the Act deals with
Disclosure by public servant in contravention of Section 138(2) [may be prosecuted with previous sanction of central Government] punishment imprisonment upto 6 months and fine. 

3.12 The Foreign Exchange Management Act, 1999
Middlemen or touts, who take huge commissions for brokering deals pertaining to purchases from foreign suppliers, often transfer such money in foreign
currencies, claiming it to be the proceeds of some business abroad. This Act empowers the Directorate of Enforcement, India to investigate and prosecute such persons under the said act.

3.13 **White Collar Crimes committed through computer, Punished under IT Act 2000:-**

3.13.1 **Offence and punishment under IT, Act 2000.**

i) Section 43 of the Act deals with

Damages to computer, computer system, etc. with intention to commit fraud
punishment compensation to the tune of Rs.1 crores to the affected person.

ii) Section 44(a) of the Act deals with

For failing to furnish any document returns on report to the controller or
the certifying authority. Penalty not exceeding one lacks and fifty thousand rupees
for each such failure.

iii) Section 44(b) of the Act deals with

For failing to file any return or furnish any information or other document
within the prescribed time. Penalty not exceeding five thousand rupees for every
day during which such failure continues.

iv) Section 44(c) of the Act deals with

For not maintaining books of account or records, penalty not exceeding
the thousand rupees for every day during which the failure continues.

v) Section 65 of the Act deals with

Tampering with computer source document imprisonment up to three years,
or with fine which may extend up to two lack rupees, or with both.

vi) Section 66 of the Act deals with

Hacking with computer system with the intent or knowledge to cause
wrongful loss punishment imprisonment up to three years or with fine which may
extend up to two lacks rupees or with both.

vii) Section 67 of the Act deals with

Publication of obscene material in any electronic form, punishment
imprisonment up to 5 years and with fine which may extend to one lack rupees on
first conviction and its double punishment for second and subsequent conviction.

vii) Section 68 of the Act deals with

For failing to comply with the directions of the controller-punishment
imprisonment up to 3 years and fine up to two lacks or both.
vii) Section 70 of the Act deals with
Securing or attempting to secure access to a protected system. Punishment imprisonment which may extend to 10 years and fine.

viii) Section 71 of the Act deals with
For misrepresenting or suppression of any material fact from the controller or the certifying Authority. Punishment imprisonment up to 2 years or fine up to rupees one lack or with both.

ix) Section 72 of the Act deals with
For break of confidentiality and privacy. Punishment imprisonment up to 2 years or fine up to rupees one lack or with both.

x) Section 73 of the Act deals with
For punishing digital signature certificate false in certain particulars, punishment imprisonment up to two years or with fine which may extend to one lack rupees or with both.

xi) Section 74 of the Act deals with
Publication of Digital signature certificate for any fraudulent or unlawful purpose. Punishment imprisonment up to two years or fine up to rupees one lacks.

xii) Section 76 of the Act deals with
Any computer, computer system, floppies, compact disk, tape drives or any other accessories related thereto used for contravention of this Act, rules, orders or regulations made under, punishment liable to confiscation.56

3.14 The Prevention of Money Laundering Act 2002:–
Many public servants are able to hold their ill-gotten wealth in foreign countries, which they subsequently transfer to their homeland through money laundering, disguising them as funds, apparently from a legal source. This Act empowers the Directorate of Enforcement, India, and Financial Intelligence Unit, India, both agencies of the Government of India, to investigate and prosecute such persons under the said Act.57

3.15 The Right to Information Act, 2005:–
Generally laws are maid to control citizens to prevent them from doing crimes etc. But Right to Information Act has been made to empower citizens to make government and government officials responsible, make transparency in government administrative work and to reduce corruption.58
It emanates from fundamental rights under the constitution of India [Art - 19(1)]. This Act h came into force from 12.10.2005 and is applicable to all India excluding Jammu and Kashmir.

An Indian citizen can get any information held by government, certified copies of Government document and record. Beside he can personally inspect government records and take copies thereof.

3.15.1 Objects of the bill:

The right to information Act, 2005 is chiefly based on the following principles

1) To preserve the paramount of democratic ideals and to have to informed citizenry.
2) Maximum Disclosure – Of all information documents available with public authorities, except those not permitted specifically in the Act (with a view to preserve confidentiality of sensitive information)
3) Obligation to publish and automatic dissemination of the significant information of public authorities in public interest through public domain and directory/ booklet.
4) To create culture of Transparency and accountability in Government and all public authorities, so as to contain corruption and achieve efficient operations with limited resources.
5) To serve overriding public interest over the protected interest in disclosure of information.
6) To establish Mechanism to facilitate Access to the information and documents.
7) Resources need not be misused for unreasonable demand of to voluminous information.
8) Provisions of the Right to Information Act have overriding effect over other laws if any provisions thereof inconsistent with it.
9) Constitution of Central Information commission and state information commissions to ensure implementation of provisions of the Act by all Government Departments and public authorities through the mechanism of appeal to be made to them by the aggrieved person.
3.15.2 What does information mean?
   Section 2(f) describes information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, log books, contracts, reports papers, samples models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force but does not include ‘file noting’.  

3.15.3 Which rights are included in Right to Information Section 2(j) describes.
   It includes the right to:–
   i) Inspect works, documents, and records.
   ii) Take notes, extracts or certified copies of documents or records.
   iii) Take certified samples of material.
   iv) Obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printout.

3.15.4 What does a ‘Public Authority’ mean?
   Section 2(h) describes public authorities who are bound to supply information on request of information under this (RTI Act, 2005) as follows:–
   Public Authority means any authority or body or institution of self-government established or constituted:–
   i) By or under the constitution;
   ii) By any other law made by parliament;
   iii) By any other law made by State Legislature;
   iv) By notification issued or order made by the appropriate government and includes any:–
      a) Body owned, controlled or substantially financed.
      b) Non-government organization substantially financed directly or indirectly by the appropriate Government.

3.15.5 Obligations of Public Authorities:–
   Section 4 of the Act consist the provisions of obligations of public Authorities.
   i) Every public authority shall:–
      a) Maintain all its records duly categorically and indexed in a manner and the form which facilitates the right to information under this Act and ensure
that all records are appropriate to be computerized are, within a reasonable
time and subject to availability to resources, computerized and connected
through a network all over the country on different systems so that access
to such records is facilitated;

b) Publish within one hundred and twenty days from the enactment of this
act, -

i) The particulars of its organization, functions and duties;

ii) The powers and duties of its officers and employees;

iii) The procedure followed in the decision making process, including channels
of supervision and accountability;

iv) The norms set by it for the discharge of its functions;

v) The rules regulations, instructions, manuals and records, held by it or under
its control or used by its employees for discharging its functions;

vi) A statement of the categories of documents that are held by it or under its
control;

vii) The particulars of any arrangement that exist for consultation with, or
representation by the member of the public in relation to the formulation
of its policy or implementation thereof;

viii) A statement of the boards, councils, committees and other bodies consisting
of two or more persons constituted as its part or for the purpose of its
advise, and as to whether meetings of those boards, councils, committee,
and other bodies are open to public, or the minutes of such meetings are
accessible for public;

ix) A directory of its officers and employees;

x) The monthly remuneration received by each of its officers and employees,
including the system of compensation as provided in its regulations;

xi) The budget allocated to each of its agency, indicating the particulars of all
plans, proposed expenditures and reports on disbursement made;

xii) The manner of execution of subsidy programmes, including the amounts
allocated and the details of beneficiaries of such programmes;

xiii) Particulars of recipients of concessions, permits or authorizations granted
by it;

xiv) Details in respect of information, available to or held by it, reduced in an
electronic form;
xv) The particulars of facilities available to citizens for obtaining information, including the working hours of the library or reading room, if maintained for public use;

xvi) The names, designations and other particulars of the public information officers;

xvii) Such other information as may be prescribed; any thereafter update these publication every year

c) Publish all relevant facts while formulating important policies announcing the decisions which affect public;

d) Provide reasons for its administration or quasi-judicial decisions to person.

2) It shall be a constant Endeavour of every public authority to take steps in accordance with the requirements of clause (b) of the sub-section (1) to provide as much information suo-motu to the public at regular intervals through various means of communications, including internet, so that the public have the minimum resort to the use of this Act to obtain information.

3) For the purpose of sub-section (1), Every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

4) All materials shall be disseminated taking into consideration the cost effectiveness local language and the most effective methods of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

3.15.6 Section 20 Prescribes Penalties under RTI, Act 2005, provides as under,

1) Where the central information commission or the state information commission, as the case may be at the time of deciding any complaint or appeal is of opinion that the central public information officer or the state public information officer, as the case may be, has without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under Sub-Section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of request or obstructed in any manner in furnishing
the information, it shall impose a penalty of two hundred and fifty Rupees (250/- Rs) each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees;

2) Where the Central Information commission or the state information commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public information officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information with the time specified under Sub-Section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete, misleading, information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the central public information officer or the state public information officer, as the case may be under the service rules applicable to him. 

3.16 Anti-Corruption Bureau of States:–

These police agencies of the States are meant mainly for investigating corruption cases within the States under the Corruption Act. They are responsible for the prevention, detection and investigation of corruption crime only and are not engaged in conducting other police duties such as handling conventional crimes and law and order. After investigating a crime, they file the investigation reports in a court of law to launch prosecution.

3.17 Central Bureau of Investigation (CBI):–

The CBI is an investigating agency set up by the Government of India to investigate crime, especially corruption cases, in Union Territories, which are directly administered by the Government of India. Over a period of time, it has become the premier corruption investigation agency in the country. It enjoys high credibility amongst the people of India. As a result even the States also refer sensitive and large-scale corruption cases to the CBI for investigation. The High Courts of various States and the Supreme Court of the country have powers under the Indian Constitution to entrust investigation of any crime to the CBI for investigation.
The CBI has a training academy of its own. It not only provides training to its own personnel but also organizes in-service training courses for the investigators and prosecutors of the State agencies. The State agencies look up to the CBI as an expert agency for guidance in matters relating to investigation and prosecution of corruption cases. The co-operation between the two sets of agencies is highly satisfactory.

3.18 Provisions under Administrative Law:

3.18.1 Meaning Ombudsman:–

‘Ombudsman’ means ‘a delegate agent, officer, or commissioner’.

According to Garner 69 Ombudsman is an officer of parliament, having as his primary function, the duty of acting as an agent for parliament, for the purpose of safeguarding citizens against abuse or misuse of administrative power by the executive. In India Local some states have Lokayukta.

3.18.2 Importance of Ombudsman:–

‘Ombudsman is not a super-administrator to whom an individual can appeal when he is dissatisfied with the discretionary decision of a public official in the hope that he may obtain a more favourable decision. His primary functions are to investigate allegations of maladministration’.

3.18.3 Powers and Duties of Ombudsman:–

The Ombudsman inquires and investigates into complaints made by citizen against abuse of discretionary power, maladministration or administrative inefficiency and takes appropriate actions. For that purpose, very wide powers are conferred on him. He has access to departmental files. The complainant is not required to lead any evidence before the Ombudsman to prove his case. It is the function and duty of the Ombudsman to satisfy himself whether or not the complaint was justified. He can even act suo-motu. He can grant relief to the aggrieved person as unlike the powers of a civil court, his powers are not limited.

3.19 Status of Ombudsman:–

Generally, the Ombudsman is a judge or a lawyer or a high officer and his character, reputation, and integrity are above board. He is appointed by parliament and thus he is not an officer in the administrative hierarchy. He is above party political and is in a position to think and decide objectively. There is no interference even by parliament in the discharge of his duties. He makes a report to parliament and sets out reactions of citizens against the administration. He also makes his
own recommendations to eliminate the cause of complaints. Very wide publicity is given to those reports. All his reports also published in the national newspaper. Thus, in short, he is the ‘Watch Dog’ or ‘Public Safety Valve against male administration, and the ‘protector of the little man’.

Indian Parliament so far has not enacted any Act though a proposal to constitute an institution of Ombudsman (Local) was made by the Administrative reforms Commission as early as in 1967. Some states however, have enacted statutes and appointed Lokayukta.

Now-a-days Shri. Anna Hazare, Social Activist has also observed fast unto death to introduce the ‘Jan Lokpal Bill’ which have the same concept of ombudsman, even the Jan Lokpal will have great power and freedom to act against corruption. In this the Lokpal will be called ‘Jan Lokpal’ means representative of the people. Due to pressure of Anna Hazare and social our country elected the drafting committee on Jan Lokpal Bill and soon drafting work will be started.

This Jan Lokpal Bill is of based on proposal which was made in the year 1967 by Administrative Reform Commission.

As above discussed there are number of laws and legal provisions to control the White Collar Crimes in India, but still these crimes and criminals are slowly and steadily spreading their tantacles in the society at large and much wrong has already done by now.

Even the year 2010 is declared year of corruption. Maximum corruptions are opened in this Year. The biggest cases of White Collar Crime in recent past are 2G Spectrum Scam.

Commonwealth Games scam and Adarsh Society scam in our state i.e. Maharashtra and in spite of existing several laws for controlling the White Collar Crimes such crimes are increasing rapidly and present laws are unable to curb the menace of the White Collar Crimes in our Country, as such there is a need to make an elaborate and consolidated law to control such crimes.
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