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3. Legislation, Judiciary & Jurisdiction

Anticorruption laws in India where given more importance by seeing the present condition in entire country. Flowing through all government departments and public sector, corruption is like a plague that spreads continuously. Whosoever came into the ways of corruption, get involves in corrupt practices. Government officials at higher designation don't fear from taking bribe. It turns out as honour for them to take extra money for completing their official duties. It is being passed from one table to another.

3.1 Indian Penal Code, 1860& Prevention of Corruption Act, 1947 & 1988

The object for corruption and bribery of public servants had been immense heightened by war situation which is now over.These circumstances for corrupt practices will remain for significant time. As with time being the Contracts are wind up; healthy redundancy of government stores are being regulate of; it would take years to overcome shortage reconstruction, involving the disbursement of huge summate of government money.

All these actions offer vast range of corrupt practices, seriousness of the evil and possibility of its continuance or extension in future with immediate drastic change. There are certain provisions in the Indian Penal Code and Code of Criminal Procedure are aimed at checking corruption. All these provisions which are included in the general penal law of the land deal with almost all kinds of offences are inadequate to fight the problem of rampant corruption.

Especially, an enactment which is more than a century old like the Indian Penal code could not have for seen the present Hawala and other scams.

The opportunities for corruption thrown up by the post World War II era signified the need for a special legislate to which 'The prevention of corruption Act, 1947' was the outcome.

The 1947 Act was a fragment of formal legislation enacted to prevent the evil practice of corruption. It was a comparatively small fragment of legislation with only eight sections extending to the entire India except the state of Jammu and Kashmir. The Act owed its brevity to the Indian Penal Code and perhaps it is there that the 1947 Act happened to be unsuccessful in its mission.

The 1947 Act created only one offence i.e., criminal malfeasance by the public servants, to some extent, it overlapped on the preexisting offences. A major shift from the well established principle of criminal jurisprudence was that it enacted a new rule of presumptive evidence against the accused, the burden of proof being shifted to the accused. Nothing could be as effective, as this shift, because the accused involved in these cases are persons in power and in order to avoid their escaping from the clutches of law, the presumption of guilt is highly avoid their escaping from the clutches of law, the presumption of guilt is highly necessary. The Act, at the same time sought to protect honest public servants from harassment by mandating that the investigation against them could be made only by police officers of particular status and by making the sanction of the government or other appropriate authority, a condition precedent for their prosecution.

The Act referred in almost all sections under it to the Indian Penal Code for various offences like those under sections 161 and 165, unlike the Indian Penal Code; it was not applicable to all. “While the Indian Penal Code is essentially a penal statute, of much wider scope than the Act, the act no doubt contains a penal favour. But, it is in effect a piece of social legislation directed towards eradication of the evil of corruption amongst the services alone. In other words, public servants alone fall within the mischief of the Prevention of Corruption Act, and no one else.”

The law recognizes ‘Public Servants’ as a class on whom special protection and privileges are conferred. A special procedure is prescribed for them as they are to be subjected to severe penalties under the law for abuse of power or dereliction of their duties. In the 1947 Act, instead of defining the term “Public Servant”, as given in Section 21 IPC.Section 21 IPC does not give the definition of the term ‘Public Servant’ but only enumerates the various categories of persons who can be designated as public servants. The term signifies any person duly appointed and invested with authority to administer any part of the executive power of the government or to

execute any other public duty imposed by law. It is submitted that while the framework of section 21 indicate that the various items are illustrative and not exhaustive, the wording of the different heads especially (ninth and tenth) was so elaborate and comprehensive that it virtually amounted to an exhaustive definition. But, subsequently there were a number of amendments to sections of the Indian Penal Code.[1]

Section 21 of the original Indian Penal Code of 1860 contained only 10 clauses, and was drafted when there were no corporations, co-operative societies, Local Bodies, Service Commissions, Government Companies and elected Legislatures etc. Even, if, Lord Macaulay is to be adjudged a visionary who could look forward beyond his times in 1860, it was inconceivable for him to see the revolutionary developments in India stages by stages.

The Prevention Of Corruption Act, 1988 is intended to make the exiting anti-corruption laws more effective by increasing their scope and strengthening their provisions. It incorporates and consolidates the provisions of the Prevention of Corruption Act, 1947, the Criminal Law (Amendment) Act, 1952 into one comprehensive statute with certain modifications as are necessary to guarantee more effective and speedy methods to combat corruption amidst public servants.

Provisions of sections 161 to 165-A IPC have also been incorporated into this single Act. Enhanced penalties have been provided. The order of a trial court upholding the validity of the sanction to prosecute is given finality and it is not liable to be challenged once the trial has commenced. The proceedings are to take place on day to day basis. Substantial restrictions are placed in the way of the High Court's issuing orders to stay of proceedings and revising interlocutory orders.

A new concept i.e. 'public duty' finds a place for the first time in this statute. This has been done with the object that public duty has to be emphasized as an important ingredient instead of the emphasis being on the authority remunerating the public servant. Under the Prevention of Corruption Act, 1988 'public duty' means a duty has an interest and the expression 'state' comprehend corporation also which is being under the central, provincial or state act or an authority or body owned,

[1] S.K. Das, "Public Office, Private Interest", (2001), p. 139.

controlled or aided by the government or a government company as outline in Section 617 of the companies Act, 1956.

Section 2(c) of the Prevention of Corruption Act, 1988 gives the meaning of the term 'Public servant' and some of its sub clauses are analogous to some of the clauses under section 21 of the Indian Penal Code. There are 12 categories of persons which are covered under the definition of the term 'public servant under' clause (c) of section 2. There are two explanations. Explanation I says an individual that come under any of above sub clauses are public servants, whether appointed by the government or not. Explanation 2 says that wherever the words "Public servant" appear, it shall be made with a clear understanding to every person who is in actual possession of the position of a public servant, and it comes down to his rights to hold onto that very situation. They correspond to explanations 1 and 2 sections 21 of Indian Penal Code.

Section 3 empowers the central government or the state government to appoint by notification in the official gazette as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try offences under this act or conspiracy to commit such offences or any abetment thereof. Sub Section (2) of section 3 clearly lays down the qualifications for person who can be appointed as special judges for this purpose.

Sections 13 and 18 of the Code of Criminal Procedure, 1973 deal with the appointment of special magistrates. Sections 32, 33 and 34 of the code deal with the conferment, continuance and cancellation of power of session's judges. These sections are reproduced below for ready reference.

The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any Metropolitan Area outside his local jurisdiction.

The Prevention of Corruption (Amendment Bill), 2013, currently offences relating to corrupt practices of public officials is regulated by the prevention of corruption act, 1988. The Prevention of Corruption Act, 1988 deals with offences like taking a bribe, criminal misconduct and mandates prior government sanction to prosecute a public official. In 2008, an amendment bill was introduced which

included provisions relating to extending prior sanction for prosecution to former public officials, and the attachments of property of corrupt public officials. However, that Bill lapsed.

In 1999, the Law Commission of India recommended that a separate Bill relating to forfeiture of property of corrupt public officials be introduced. In 2007, the report of the second administrative reforms commission recommended that the act be amended to include bribe giving an offence, limit prior sanction for prosecution to certain cases, provide for the attachment of property of public officials accused of corruption, agreed to bring its domestic laws in line with the Convention. The UN convention covers offences like giving and taking bribe, illicit enrichment and possession of disproportionate assets by a public servant as offences, addresses bribery of foreign public officials, and bribery in the private sector.

The Prevention of Corruption (Amendment) Bill, 2013 was introduced in Parliament in August 2013. The Bill amends the Prevention of Corruption Act, 1988. The Bill provides for the offence of giving bribe by individuals and organizations, extends the requirement of prior sanction for prosecution to former public officials and covers attachment and forfeiture of property. The standing committee examining the Bill submitted its report in February 2014.

The Bill modifies various provisions of the Prevention of Corruption Act, 1988 and adds a few new provisions such as giving a bribe, and attachment and forfeiture of property.

Under the Principal Act, a bribe giver maybe penalized for abetting in the offence of taking bribe. Under the Bill, giving a bribe, directly or through a third party, is made an offence. Several experts have examined the issue of whether bribe giving under all circumstances should be made an offence under the principal Act. The UN convention states that giving bribe, either directly or indirectly, should be made a punishable offence. India has ratified this convention.

The report of the Second Administrative Reforms Commission has recommended that the Prevention of Corruption Act must distinguish between coercive and collusive bribe givers. The Standing Committee examine the Bill has observed that individuals who report the matter to the state after the payment of a

bribe in normal circumstances may be distinguished from those who a pay a bribe in compelling emergent situations. While in the former case no protection is necessary, in the later situation the court may take a decision based on facts and circumstances of the case. An argument has also been made that giving immunity to an "a harassed bribe giver" would incentivize him to report the incident.

Under the Principal Act, during a corruption trial, if a person makes a statement that he gave a bribe it would not be used to prosecute him for the offence of abetment. The Bill omits this provision. This may deter bribe givers from appearing as witnesses in cases against public officials.

Under the Principal Act, the offence of possessing disproportionate assets would require establishing the existence of disproportionate monetary resources or property in the public servant's possession. The Bill modifies this provision. To establish that the public servant had disproportionate assets, two things would have to be proven: (i) the possession of monetary resources or property disproportionate to his known sources of income, and (ii) the intention of the public servant to enrich him illicitly. Thus, by requiring that, in addition to the existence of disproportionate assets, the intention of the public servant to acquire disproportionate assets also be established, the Bill is raised the threshold for proving the offence. The Standing Committee has observed that the inability of the public servant to reasonably explain the source of the disproportionate assets should be sufficient for prosecution. The Committee has recommended that the element of intention be removed from the Bill.

Under the Principal Act, criminal misconduct by a public servant includes: using illegal means to obtain any valuable thing or monetary reward for himself or any other person; abusing his position as a public servant to obtain a valuable thing or monetary reward without public interest, for any person. The Bill redefines criminal misconduct by a public servant to only include: (i) fraudulent misappropriation of property under one's control, and (ii) intentional illicit enrichment and possession of disproportionate assets. In doing so, the Bill no longer covers the three circumstances provided for in the Principal Act.

The Principal Act contains a provision that transfers the burden of proof on the person facing trial for offences related to (i) taking a bribe, (ii) being a habitual offender and (iii) for abetting an offence. It states that if it is proved that the person

has accepted or given any reward, it shall be presumed under the offence of abetment. The Bill amends this provision. Under the Bill, the burden of proof is transferred to the accused person only for the offence of taking bribe. In this case, he would have to establish that the reward that he obtained was not a bribe. But for offences related to : (i) being a habitual offender, (ii) abetment, and (iii) giving bribe, it will not be presumed that he committed the offences, but would require the prosecution to establish the same.

Under the Principal Act, if the reward obtained by the public servant is considered as 'trivial' by the court, then it shall not be presumed as an act of corruption. The Bill deletes the provision related to a 'trivial' reward. The Principal Act penalizes a public servant who accepts or obtains a valuable thing for little or no cost, from person whom he is engaged in business transaction with or knows officially. The Bill has deleted this provision.

3.2 Right to Information

A democratic set up requires three basic aspects i.e. accurate information, equal and effective participation of all citizens in day to day governance, transparency and accountability on part of those in public offices. Democracy means elected representatives and informed choice is possible only on the basis of facts known and information available. Modern democracy include a wider and more direct concept of liability- a concept that goes farther the traditionally well established principle of responsibility of the executive to the legislature in a parliamentary democracy. Increasingly, the trend is towards the facts, in terms of standards of performance and service delivery, of public agencies to the citizen groups they are required to serve from time to time. Such answerability is possible only when public has access to information relating to the function of those agencies.

A contemporary democratic state being answerable to the people, the people are authorize to know what policies and programmes, how and why are being followed by the government. People have to pass trial every five years on the efficiency of the government, and decide whether it should stay in office or not, however, people are not able to make their choice intelligently unless they are given adequate information about the function of the government. Another factor justifying clear by the government is that, being an activist entity, Government gathers a wide

arsenal of powers in a welfare state where group of people are available to be used for own purposes. These powers are used to influence economic interests and personal liberty of the common citizen. It is important that these powers are practice for public good, not inappropriately for the purpose for which the powers are given. The objectives are best guarantee by giving access to the individual regarding government information. Since, powers exhibit to corrupt and absolute power tends to corrupt absolutely. There is an essential risk that the wide powers available to the executive may be used not for public good but for private gain or for corrupt motive. Therefore, in this situation, it is essential that people must have needed information about government operations as attainable. Free flow of information to the people goes to the very source of the matter in issue. Nothing will improve the image of the nation in the public eye as this factor-freedom of information is made at ease.

Any government, democratic or otherwise, without information or means of acquiring it, is behaved as prologue to a face, tragedy or both. Such government may misuse the power entitled to it or if it is allowed to function in secrecy. Secrecy being an exact tool of conspiracy ought not to be a system of regular government. Corruption grows vigorously in secret places and avoids public places. Secrecy is an evil in itself. It is now widely recognized that too much secrecy in government results in the erosion of the basic right of the citizen to know, dilution of responsibility of the government to inform the people and disappearances of the norms of accountability in the system of government. Greater public interest can only lead to disclose information which is being hold back from action, undermining public debate over public issues. Similarly, by releasing specific information or by manipulating information, government may be able to twist public opinion and falsify the consent of the community at large. Secrecy further grants power on the government. Certain kinds of information, are hold back from release, as per the situation requires a powerful weapons. It sometimes benefits to acquire control over political parties, high officials and private individuals. Reports of inquiries and investigations manage by government are examples to such power conferring information.

In order to make government more crystal clear and answerable to the public, the government of India appointed operating group on legislate right to information and promotion of open, transparent government under the chairmanship of Shri H.D. Shouri. The draft bill submitted by the working group was subsequently advised by

group of ministers constituted by the central government to guarantee free flow of information to be made available to the public. The said bill enacted "The freedom of Information Bill, 2000" introduced in parliament, was referred to the standing committee of parliament. It was ultimately passed by both the houses of parliament in December, 2002 and the same has been approved to by the president on 6th January, 2003. Freedom of Information Act, 2002 came as a breath of fresh air in an otherwise cagey and inaccessible system.

In 2005, the new right to Information Act was passed. The Right to Information Act, 2005 is improved version of the Right to Information Act, 2002. The new law is sure to help reduce corruption and malpractice in the government. The law lays down the architecture for accessing information, which is simple, easy, time bound and inexpensive. There will be severe penalties for dereliction to provide information or affecting its flow. In fact, it lay obligation on agencies to reveal information suo moto, thus degrading the cost of access. A major forward step is that the law now extends to all public authorities in the states and Union territories. However, cases of laying down penalty upon shamed government officials are low but this has worked tremendously. The Right to Information Act, 2005 is boon to the citizens of India.

Unnecessary request for obtaining irrelevant information bereave the needy citizens from their rights. Since, in government departments the records are not updated and information is not readily available, the citizens are facing problems in acquiring information. The necessary fee deposit mechanism under the Act should be simplified. The delay in giving essential information is also major reason of corruption, thus government should take immediate actions to avoid the situation.Still, the ideology of service providers, especially those belongs to government has yet not prepared imbibing their duties under the Act.

3.3 Central Vigilance Commission

Central vigilance Commission (CVC) was established in 1964 on the recommendation of the Santhanam Committee. In August 1998, this body was given statutory status. The CVC comprises powers to supervise the authorized functioning of Investigating Agencies like the Central Bureau of Investigation and Enforcement Directorate. Its present jurisdiction is limited to the Gazette officers and officers of

equivalent status only. It has no power to probe into the cases of political corruption. In 1962, Government constituted a committee under chairmanship of K.Santhanam to suggest measures to combat corruption .The subject of political corruption was kept outside its terms of reference. This committee found that the discretionary powers enjoyed by the civil servants led to harassment, malpractices and corruption.

Corruption flourishes due to lack of transparency. There is mystique about government procedures and decision making. Public servant who are in positions of authority leads to mystique use of their offices for private gain. Once there is transparency, the scope for corruption could be minimized, if not automatically eliminated. Governments across the world are bowing to the demands of objectivity and transparency in decision-making and opting for e-governance.

The second reason for corruption in Government is the delays caused by red tape and bureaucratic procedures. Very often, speed money is convenient option for citizens who want to get even their legitimate demands processed quickly. The third reason for corruption in government is the holding back of information retrieval for accessing precedents. Once such information is available in computer databases, retrieval becomes very fast and easy.

The essence of e-governance, among others, is disintermediation. In other words the minimum contact of citizens with government functionaries turns out to be the major source of corruption. With information on procedures and processes easily available from government sources in the internet, citizen contact with government functionaries is minimized. When governments progress to e-government or completely net-based government-citizen transactions, there is possibility that corruption can be completely eliminated. But, we proceed further, and take note of what Oscar Wilde said: “The thief is an artist; the policeman is only a critic.”

It can help achieve transparency, speed and access to information in systems of governance. However, it is still possible for public servants to extract their installments (monthly Bribes) by delaying the initiation of the process of dealing with the application itself. The central vigilance commissioner had a serendipitous experience in using IT to fight corruption. There was general criticism in the media that while vigilance agencies like anti-corruption departments were only able to catch the small Frey and punish them, the big fish-the senior officials- got away freely.

Thereare some merits in this argument. Senior officials did have certain advantages in the system that helped them get away with corruption. For example, 'Single directive' was a rule of the Government of India under which they sought protection. Under this rule, officers of the level of Joint secretary and above could not be investigated by the police or other investigating agencies without government permission. This rule greatly helped to protect corrupt senior officials.

There is no doubt that ICT is a powerful administrative tool. The website of the central vigilance commission itself became a useful instrument in publicizing information about corrupt officials, and thereby, conveying an impression to the public that the government of India had the will and capability to fight corruption and punish the guilty irrespective of the rank they held. It also opened channels of communication between the offices at the public whereby the common man could bring cases of corruption to the notice of the GOI.

Central Vigilance Commission Act, 2003 came into existence. The legislation of CVC do entitles them to investigate and more probably do inquiries that relates to offences committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any central Act, Government Companies, Societies and Local Authorities owned or controlled by the Central Government and for matters that are related to them.

The Commission would comprise of Central Vigilance Commissioner which would not be more than two Vigilance Commissioners.

The appointment of Central Vigilance Commissioner and Vigilance Commissioners shall be made by the President under authorization. The appointments shall be made by the President on the recommendation of a committee consisting of the Prime Minister as Chairperson and the Minister of Home Affairs and the Leader of the Opposition in the House of the People as members.

The Commission may call for reports, returns and statements from the Central Government or corporations established by or under any Central Act, Government companies, societies and other local authorities owned or controlled by that Government so as to empower it to exercise general supervision over the vigilance

and anti-corruption. One major area of corruption is procurement in Government Departments and Enterprises. To introduce greater Transparency into the system, the central vigilance commissioner issued a directive that once financial bids are opened, there will be no negotiations, except with the lowest bidder. Thanks to the spread of IT, many companies are now going in for reverse auction and use the internet as a means for procurement. This has probably resulted in savings of nearly 10-15 percent to organizations resorting to this method of procurement. The CVC also supported this new method.

In fact, to ensure better communication between government agencies and the central vigilance commission, all its instructions including the vigilance manual which were earlier considered as restricted, were uploaded on to the website for unrestricted access. All channels of communication to and from the Central Vigilance Commissioner were in the public domain.

In fact, the Central Vigilance Commissioner followed a three point strategy to fight corruption. Firstly, making rules and regulations to ensure transparency in entire government system. Second, empowering citizens by increasing access to information and opening up channels of communication between the central vigilance commissioner and the public to receive complaints of corruption and corrupt functionaries. Third, reporting people indulging in corrupt practices and the punishments meted out to them.

The cultures of centralized government and e-government are different. In e-government there is concern for speed, transparency and universal access. Centralized government systems thrive on limited access secrecy and delay. All over the world, such systems have been the breeding ground for corruption. The other problem is technophobia, which is one reason why most senior officials resist increasing the deployment of IT. But, this may be seen as a problem of transition.

3.4 Lokayukta

In the situation of political corruption, a non political, independence and high level inquiry commission and civil remedies were felt necessary and criminal process was to be recommended in necessary cases only on the basis of evidence collected by these high level enquiry commissions. The proposals of lokpal and lokayuktas on the

line of Ombudsman are to be seen in the light then onwards. They may strengthen the mechanism of enquiry of corrupt activities of Ministers, M.P's, M.L.A's and other influential politicians and high level officials. Such influential men will not be amenable to ordinary inquiries conducted by investigation agencies like CBI and state bureau of Investigation and enquiry commission.

The Hindu, on 9th January 1960, carried a news item. It went as follows:

"Enquiry into Charges:-Prime Minister Jawarharlal Nehru categorically ruled out any proposal for appointing a higher designated tribunal to investigate into charges of corruption against Ministers or persons in high authority. The main reason in Indiamostly matter than any other country was a democratic set-up, he could not see how such tribunal could function. The appointment of such a tribunal, Mr. Nehru felt, would "produce an atmosphere of mutual recrimination, suspicion, condemnation, charges and counter charges and pulling each other down, in a way that it would become impossible for normal administration to function". More than half the time of the Press conference was devoted by Mr. Nehru to answer this question of appointing a tribunal to enquire into the cases of corruption as recently urged by India's former Finance Minister, Mr. C. D. Deshmukh."[2]

History acknowledges that Nehru was guilty of indecision during some crucial moments while working in a corrupted milieu, which he was very much aware of Sankar Kumar Ray, in Rediscovering Nehru writes that Nehru was famously said to have told the noted British scientist and communist, John Desmond Bernal in 1954 in what was then known as Peking, "Most of my Ministers are reactionary and scoundrels but as long as they are my ministers I can keep some check on them. If I were to resign they would be the government and they would unloose the forces that I have tried since I came to power to hold in check"[3]. But, says ray further, "Nehru's sincerity to curb corruption was unmistakable. He was aware of the necessity for selfless and ethical commitment for politicians in India, which was in tatters, thanks to the unbridled loot of country's wealth by the British Raj."[4] He was also known to have said in a confessional mood, "if there is a selfish leadership, dishonest

[2] The Hindu, 9th January 1960.
[3] Sankar Kumar Ray, "Rediscovering Nehru", Mainstream Vol XLVI, No. 50, "Reconstructing India: Disunity in the Science and technology for development, Osiris, 2000"
[4] Ibid.

administration, economic distress and lack of a national purpose, such a society will always remain unstable. If we protect dharma, it will protect us; otherwise we will be neglected by it."[5]

Further the writer adds "had Nehru patronized corruption, the imprisonment of the powerful feudal lord and minister of civil supplies in the Congress Led Central Province Government in 1950, Rao Shiv Bahadur Singh, could not have been possible."[6]

Several factors were at work here. Immediately after Independence, there were various restrictive rules and regulations at work done to a general lack of resources and opportunity crunch in the economy. This gave rise to powerbrokers that served to bridge a gap between their clients and the governmental system. The transactions were obviously not going to be transparent. With the kind of discretionary powers that lay with them in the era of non-abundance in the country, which was in a nascent stage of development, their susceptibility to corruption was high. The system of accountability was poor and all of this together resulted in the beginning of corrupt practices in Indian Governance. Some of the cases during Nehru's regime and those which are quoted most often are the jeep scandal (1948), Mudgal Case (1951), LIC Mundhra deals (1957), Pratap Singh Kairon case (1964), and Biju Patnaik case (1965).

Corruption in India has acquired monstrous proportions in recent years. Anna's Jan Lokpal Movement based on reigning in corruption was preceded by several other initiatives undertaken from early November 2010 through late March 2011 by different bodies and individuals. The chief aim of the movement has been to tackle the problem of corruption in the Indian government through a piece of legislation called the Jan Lokpal Bill. The Lokpal movement is characterized into demonstrations, marches, acts of civil disobedience, hunger strikes, and wide use of social media. The protestors do not have political affiliations. In fact most of the protesters have been hostile towards any attempts to use them by political parties who might see it as an opportunity to strengthen their own agendas.

[5] Ibid.
[6] Ibid.

Newspapers carried reports of how Nagarajan Vittal the former Central Vigilance Commissioner of India who pleaded the cause of right to corruption free service as the fundamental right of every citizen, pointed out that it was essential to sensitize the entire population of the country and bring together every citizen who wants to fight corruption. It was the Lokpal movement that brought about this sensitization against corruption for the masses of the country.

The basic idea of the Lokpal has been taken from the office of Ombudsman, which has played an important role in examining corruption and wrongdoing in Scandinavian countries (Sweden, Denmark, Finland, and Norway) and other nations. In India, successive governments have tried to get these Bill enacted eight times. The Bill has been introduced in Parliament in 1971, 1977, 1985, 1989, 1995, 2001, 2005 and 2008, but was never passed. In 2010, the government once again proposed to introduce the Lokpal Bill into the Parliament. But the Bill was described as toothless and ineffective in meeting its purpose by the civil society. Their contention was over many issues. The most important among them was the drafting committee itself. The selection committee consisted of Vice president, PM, Leaders of Both houses, Leaders of Opposition of Houses, Law Minister and Home Minister. Barring Vice President, all of them were politicians whose corruption Lokpal was supposed to examine.

There were no issues too:

(1) No suo-moto action: Lokpal would have no authority to initiate suo-moto action or take any complaints of corruption from general public.

(2) Act only as an advisory body: it would be an advisory body. After enquiry in any case, it would forward its report to the competent authority.

(3) No police powers: Lokpal would be restricted to preliminary enquiry. It would not be endorsed with any powers to file a case against culprit.

(4) CBI and Lokpal would have no links between each other.

(5) Lokpal would have no role in investigation charges the Prime Minister in issues related to external affairs. This could not cover all the areas and at the same time would not be powerful to tackle the corruption.

With further description of Lokpal and its terms of usage according to law can be simplified as below.

Ombudsman means "The Grievance man" or "A commissioner of the Administration". A exact definition of Ombudsman cannot be stated. But, garner rightly states that he is an "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."[7]

According to Prof...S.K. Agrawal, the term 'Ombudsman' refers only to institutions which have their basic and unique characteristics:

(a) Ombudsman is an independent and non-partisan officer of the legislature who supervises the administration;

(b) He deals with specific complaints from the public against administrative injustice and mal- administration; and

(c) He has the power to investigation, criticize and report back to the legislature, but not to reverse administrative action.

Even in developed western countries they are not altogether successful. Traditionally, Ombudsman is an authority to review the administrative actions of various governments departments from the point of view of citizen's grievances. In Denmark, the ombudsman can review the administrative actions of ministers as well as of the civil servants. In some Scandinavian countries, the supervision of Ombudsman extends to even action of the legislators and members of the judiciary. The parliamentary commission as originally contemplated for the United Kingdom had no jurisdiction to report on decision taken or advice given by a minister. He can investigate into an administrative action only when required by a member of parliament to do so. Lord Lloyd wrote as early as in 1968 on Ombudsman envisaged might do some good, he could not in the very nature of things provide an adequate solution to the fundamental problems of administrative law.

Thinking on the improvement of those mechanisms especially in the matters of corruption control arose in many western countries including England. Under the

[7] Garner, "Administrative Law", 85(1985).

chairmanship of Lord Nolan committee on standards in public life was established by then Prime Minister of U.K, John Major in action to a series of scandals which embarrassed the government. The first report on M.P's, Ministers, civil servants and executive bodies recommended that all public bodies should draw up codes to form "General Principles of conduct which underpin public life namely selflessness, integrity, objectivity and accountability, openness, honesty, leadership. Something more has to be done in this regard to promote and reinforce these standards through guidance and training."[8]

The administrative malpractice or misuse and abuse of discretionary powers is a historical phenomenon. Interesting accounts are available in literature and epics. Even folktales depict this reality. The texture and expanse of administrative tentacles had covered and affected the wider sections of our society. Nevertheless, the phenomenon has assumed pointed significance in recent years. A variety of factors may have their role in enhancing the need for this institution, prominent amongst these could be:

(1) The concept of rights and duties as enshrined in our constitution and other positive laws;

(2) The ideology and realistic efforts towards the concept of welfare state and the idea of welfare state itself has lead to tremendous increase in the number and variety of governmental activities;

(3) The level of development as achieved by different sectors, regions and facets of our society;

(4) The expanding areas of government structures and officials are called upon to manage the entire range of affairs of socio-economic life of people;

(5) Intricacies and subtleties of government operations;

(6) Nature of discipline in an organization, level of competence of the functionaries and the pattern of supervision exercised;and

[8] Barnet, Camden, Enfield, Haringey and Islington Primary Care Trusts-(Model Corporate Governance Documents-September 2012)

(7) The capability and capacity of the existing structures of grievance redressal and their inability to cope up with the workload generated by the earlier stated developments.

Corruption and misconduct have been one of the serious concerns of independent India. These sentiments have particularly been expressed by those emphasizing morality and high standards in public life. The issue has been also been attracting the attention of elected representatives of India for several years. Strong views were expressed in parliamentary discussions on the criminal law bill, 1952, on resolution of 1954, on the setting up of a commission to examine the administrative set up and procedure of work of government of India, 1954 on the prevention of corruption (Amendment) Bill, 1955, on the prevention of Corruption (Second Amendment) Bill, 1962, and on similar other occasions.

The Administrative reforms commission (ARC) later submitted an important interim report on 'Problem of Redressal of Citizens Grievances' in 1966. In this report ARC recommended the initiation of two special authorities designated as 'lokpal' and 'Lokayukta' for the redressal of citizens grievances. The Lokpal aims and objectives would be dealing with complaints against ministers, secretaries at central and state level. While the Lokayukta would function in dealing with complaints against other specified higher designated officials. The Government of India then accepted the recommendations of ARC in this particular point of views. Bills were then introduced in 1968, 1971,1977,1985,1989,1996,1998 and 2001.

As a consequence, in India, the idea of Ombudsman has been gaining currency following publications of Whyatt report (1961), and M.C. Setalvad's inaugural speech in third All India lawyer's conference(1962). After the provisory report of the administrative reforms commission, a private member, Shri P.K. Deo came down before parliament, a lokpal Bill in 1967. It was not passed, as the union of government brought a lokpal and Lokayuktas Bill, 1968. Earlier this bill could be passed, the Lok Sabha was dissolved and consequently this bill was stand as not longer effective. A fresh bill was reintroduced in 1971. This also met similar fortune, owing to the dissolutions of Lok Sabha in 1977. At the days of Janta regime which followed, a fresh Lokpal Bill was introduced in Parliament. This Bill has with new modifications excluded the office of Lokayuktas which has been left to State

legislation and the result was these could not be enacted. Thereafter, the government came up with Lokpal Bill, 1985 in Lok Sabha. The Bill closely follows the model of Lokpal Bill, 1977. Owing to certain controversies, the 1985 bill was referred to select committee for reconsideration. In the meantime, the term of Lok Sabha ended and consequently the Bill lapsed. A re-energized effort were been made by the National Front Government oncoming in power in centre by introducing in parliament the Lokpal Bill,1989. In this respect, it is convenient to refer to the provisions of that bill indicating the broad features of the institution as proposed in India.

Lokpal Bill, 1989, According to the provisions of the bill, the institution of lokpal would comprise of a chairman and two members, who may be either acting or retired Supreme Court Judges.

It comprises of 33 clauses in the Bill including complaints within the meaning of "Prevention of Corruption Act, 1988" against the council of ministers with no exemption of the prime minister as well. The prime minister shall be the competent authority to take action on the recommendations of the lokpal, where in case all or any of the allegations have been sustained against a Minister. However, in case where the prime minister is involved, it is left to the Lok Sabha to take action as "Ultimately that political functionary is responsible to the people through their representatives". As in the case of the allegation made in the complaint has not been wholly or partially sustained then it would be closed.

Due tospecific circumstantial situation excluded from the jurisdiction of the Lokpal. Thus, the Lokpal will have no jurisdiction to conduct inquiry into any allegations against the President, the Vice-president, the Speaker of Lok Sabha, the Chief Justice or any judge of the Supreme court, the Comptroller and Auditor general, chief Election Commissioner, the Chairman or any member of the Union Public Service Commission.

The institution will have no jurisdiction to enquire into any matter concerning any person, if, Lokpal or any member has any bias in respect of the person or matter concerned. Moreover, the lokpal will also have no jurisdiction to inquire into a matter referred for inquiry under the Commission of Inquiry Act or into any complaint made five years after the date of offence mentioned in the complaint. The Independence of institution of Ombudsman has also been guaranteed. The salary and service conditions

including discarding from office will be the same as those of the Chief Justice of India in case of Chairman and that in case of members as those of the Judges of Supreme Court.

Lokpal Bill, 1998 was introduced by the Prime minister Atal Bihari Bajpayee on August 3, 1998 in Lok Sabha. According to the provisions of this Bill, the Lokpal will investigate into the charges of corruption alleged against the existing Prime minister, ex-prime ministers, Members of both houses of Parliament as well as Ex-Members of the both Houses of Parliament. But, Lokpal will not have power to do investigation into the charges against president, and then followed to the vice president, the speaker of Lok Sabha, the Chief Justice or any Judge of the Supreme Court, the Comptroller and Auditor General, Chief Election Commissioner and Other election Commissioners, the Chairman or any member of the Union Public Service Commission. Only such cases of corruption as those of the duration of ten years shall be presented before the Lokpal. According to another provision of the Bill, the institution of Lokpal will consist of two members in addition to the Chairman. The chairman of the Lokpal institution will be a Judge of Supreme Court in service or retired Chief Justice of the Supreme Court or one of the Judges of the Supreme Court, such appointment shall be for three years but no person can hold office, if, he is of more than 70 years. The Chairman of the Lokpal institution and the members of the institution shall be appointed by a Selection Committee. This seven member committee will consist of Vice-president, Prime Minister, Home Minister, Speaker of the Lok Sabha, Opposition leaders of Lok Sabha and Rajya Sabha and the leader of that House whose member is not Prime Minister, etc. The Chairman would be appointed by the President on behalf of this Committee headed by the Vice-President.

Presently, the Lokpal and Lokayuktas Act, 2013 has been passed by the Parliament. It ensure protecting citizens right against mal-administration, corruption, delay, inefficiency, non-transparency, abuse of position, improper conduct etc. Any Complaint that is to be made is supported by affidavit, making out case for investigating.

Lokayuktas in States is adopted by number of states. And Ombudsman system is being taken into consideration by enacting Lokayuktas Laws, e.g., U.P. Lokayuktas and Uplokayuktas Act, 1975; M.P. Lokayuktas and Uplokayuktas Adhiniyam, 1981;

Orissa Lokpal and Lokayuktas Act, 1970; Kerala Public Men (Prevention of Corruption) Act, 1983; Himachal Pradesh Lokayuktas Act, 1983; Karnataka Lokayuktas Act, 1984 etc.

A number of statutes supplemented by enabling rules and regulations define what constitutes misuse of public office, and such instances are made punishable either by departmental action or in more serious cases, in a court of law. In particular, the Prevention of Corruption Act, 1947, as the name of the statute indicates, is an enactment directed at preventing corruption.[9] In 1988, the Prevention of Corruption Act, 1947 was replaced by the Prevention of Corruption Act (1988). The Prevention of Corruption Act, 1988 intended to make the existing anticorruption laws more effective by increasing their scope and by making provisions more strong and effective.

The Indian Penal Code enacted by the British in 1860 and still valid today with a few minor amendments-continues to provide the basis of what constitutes use of public office for private servant taking pleasure other than legal disbursement, in respect of an official act. Section 162 of I.P.C. is about contentment being corrupt by illegal means to influence a public servant; Section 164 punishes abetment by a public servant of offences defined in Section 162 or 163; Section 165 is about a public servant gathering big ticket from a person concerned in proceeding or business transacted by the public servant; Section 168 prohibits a public servant from unlawfully engaging in trade; Section 161 and 165 are cross connected with the significant provisions in the Prevention of Corruption Act, 1988.[10]

The Prevention of Corruption Act, 1988, is a Social Welfare Legislation, which has been configured to eliminate corruption from Public Service. From the immemorial, Public Service has been entertained as an ideal and model class to set an example for the entire public to ensure that all public trade should be far from stained with corruption. That is why such legislation has been enacted to make public service as a model for the entire country. But, our past experiences have shown us that despite its existence and execution, corruption is increasing and thriving from day to day in public service and life and spreading like diseases of cancer and AIDS, it has been

[9] S.K. Das, "Public Office, Private Interest", (2001), p.139.
[10] Id. At p. 140.

fairly noticed by the Hon'ble Supreme Court of India in its recent judgement in a case under the Prevention of Corruption Act.

The Delhi Special Police Establishment Act, 1946 was passed with a perfect motive for the ordinance of special police force in Delhi to come under the powers for investigation of specific crimes in the Union Territories, for the superintendence and administration of said force. Also it has created extension of the control and limited powers for its members of said force to carry on investigation on specific offences.

Section 4 of the Act confers superintendence of DSPE in the Central Government. The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government who shall practice in respect of that police establishment such of the powers used by an Inspector- General of Police in respect of the police force in a State, as the Central Governmentmay specify in this behalf.

Under section 5 of the DSPE Act, the Central Government with the cooperation of the State Government has extended the control of DSPE division to entire States of J&K.

The Special Police Establishment is a specialized department for making inquiries and investigation into certain specified crime. It behaves as asupplementary to the State Police Forces and has contemporary powers of investigation in respect of the offences notified under section 3 and 5 of the DSPE Act, 1946. With the view to avoid counterpart of effort, an administrative arrangement has been arrived at between the Central Government and the State Governments regarding the types of cases to be taken up for investigation by the Special Police Establishment. With the establishment of the CBI in 1963, the Special Police Establishment has been made one of its Divisions and the nature of cases to be examined by the Special Police Establishment has been specified.

The DSPE Act does not deprive state police of their power to investigate against Central Government Employees.

Under Section 6 of DSPE Act, no member of DSPE can use powers and jurisdiction in any region in state without clearance of the Government of the State. Further, the

Supreme Court in the Dr. Nagambikadevi case held that the investigation under the provisions of DSPE Act is in respect of offences and not the offender.

Where orders and directions are issued by Court, then the CBI is under obligation to conduct investigation and there is no need of the consent of State Government. Therefore, the notifications under section 3 or 5 are not required to be issued.In certain cases the Magistrate and Sub-ordinate Court can entrust the investigation to CBI. However, the Magistrate cannot direct a Superior Police Officer to conduct investigation under section 156(3).

Section 6 of DSPE Act, although State Government had been given power to withdraw the consent but the combined effect of Section 21 of the General Clause Act read with Section 6 will be that the order issued by the government will not be in retrospective operation, and therefore, it will have no effect on the matters in which the investigation has commenced and the CBI is ceased of the matter.

Shortly after Second World War, Parliament was greatly concerned that opportunities for bribery and corruption among public servants that had immensely increased during the period of the war, and that ironically, such opportunities were expected to remain for considerable time therefore, considered to be in public interest that drastic legislative measures to be taken to lessen such opportunities for corrupt practices and acts. Hence, the Prevention of Corruption Act, 1947 was legislating to eradicate bribery and corruption.

The Section 21 of the first Indian Penal Code of includes only 10 clauses. The Eleventh Clause and Explanation 3 appending section 2 of the Indian Election Offences and Enquiries Act, 1920. The 12^{th} clause and Explanation 4 were appended by the Criminal Law(Amendment) Act, 1958.

The next stage of development of law is notable. While involving in the debate on the requisition grants for the Ministry of Home Affairs in June, 1962, some members of the LokSabha specifically-referred to the growing peril of corruption in administration. In reply to the debate of the then Home Minister insinuate that some members of Parliament and if possible, some other public men do sit with the officers in order to review the problem of corruption and make suggestion. According to the

notification release, a committee chaired by Shri Santhanam, M.P. was appointed with nine particular terms of reference.

This Committee submitted its report on March 31, 1964. The Committee made its recommendations on each of these matters. A Code of Conduct was also suggested accordingly for the Ministers. The Code, inter alia, casts an obligation on the Ministers to furnish to the Prime Minister/Chief Minister at the time of their initial appointment and every year thereafter, a declaration showing details of assets and liabilities and dependent relations of his family. It was also suggested that the chances of corruption would be minimized to a large extent, if, the executive is separated from the legislative and the Ministers are directly appointed on the basis of their proven meritorious performance and track record.[11]

The Prevention of Corruption Act, 1988, is intended to make the existing anticorruption laws more effective by increasing their scope and strengthening their provisions. It incorporates and consolidates the provision of the Prevention of Corruption Act, 1947, the Criminal Law Amendment Act, 1952 and Chapter IX of IPC into one comprehensive statute with certain modifications as are necessary to guarantee more effective and speedy methods to combat corruption among public servants. The long title of the Prevention of Corruption Act reads as follows:

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

The title given to the Act is undoubtedly part of the Act itself and the same can be used for the purpose of interpreting the Act as a whole, to ascertain its scope. Preamble is regarded as guidance for construction and it is a key to open the minds of makers of the Act. If, the words in the enactment are plain and clear capable of giving only one, plain and clear meaning, effort should be given to them irrespective of the consequences that may follow from it. The Supreme Court discussed the object and policy of the law in J. Jayalalitha case as under:

"Moreover the legislature has enacted the Prevention of Corruption Act, provided for a speedy trial of offences under the Act in public interest, as it has

[11] G. Sadasivan Nair, "Judicial Activism no Panacea for Prevention of Corruption", Cochin University Law Review (1997), p. 377.

become aware of rampant corruption amongst the public servants. Corruption corrodes the moral fabric of society and corruption by public servants not only leads to corrosion of the moral fabric of the society but is also harmful to the national economy and national."

In the A.R. Antulay Case, the court highlighted the rules of construction in respect of the statutory provisions of the Prevention of Corruption Act and said that:

"Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and deciding cases under it."[12]

In 1999, the Law Commission of India recommended that a separate Bill related to forfeiture of property of corrupt public officials be introduced. In 2007, the report of the Second Administrative Reforms Commission recommended that the Act be amended to include bribe giving as an offence, limit prior sanction for prosecution to certain cases, and provide for the attachment of property of public officials accused of corruption. In 2011, India ratified the United Nations Conventions against Corruption, and agreed to bring its domestic laws in line with the Convention. The UN Convention covers giving and taking a bribe, illicit enrichment and possession of disproportionate assets by a public servant as offences, addresses bribery of foreign public officials and bribery in the private sector.

The Prevention of Corruption (Amendment) Bill, 2013[13] was introduced in Parliament in August 2013. The Bill amends the Prevention of Corruption Act, 1988. The Bill provides for the offence of giving a bribe by individuals and organizations, extends the requirement of prior sanction for prosecution to former public officials and covers attachment and forfeiture of property.

Whistle Blowers Protection Act, 2011[14] is an Act of the Parliament of India which provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrongdoing in government bodies, projects and offices. The wrongdoing might take the form of

[12] A.R. Antulay Case, AIR 1984 SC 684
[13] Prianka Rao, "The Prevention of Corruption (Amendment) Bill, 2013", www.prsindia.org.
[14] The Whistle Blowers Protection Act, 2011.

fraud, Corruption or mismanagement. The Act will also ensure punishment for false or frivolous complaints. The Act was approved by the Cabinet of India as part of a drive to eliminate corruption in the country's bureaucracy and passed by the Lok Sabha on 27, December, 2011. The Bill was passed by Rajya Sabha on 21, February, 2014 and received the President's assent on 9, May, 2014.[15]

The Lokpal and Lokayuktas, 2013[16] has been passed by the Parliament for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries. The Lokpal consists of a chairperson and maximum of eight members of which 50% shall be judicial members. The Lokpal Chairperson or member shall not be connected with any political party and one member will eminent just nominated by the President. All Ministers including Prime Minister with some safeguards are covered by the Lokpal, excluding the public servants under Army, Navy and Coastal Guard. All entities receiving domination from foreign source in the context of (FCRA) Foreign Contribution Regulation Act in access of 10 lakh rupees per year are brought under the jurisdiction of Lokpal. The Lokpal provides adequate protection for honest and upright public servants. The Lokpal have power of superintendence and direction once any investigation agency including CBI for the cases referred to them by Lokpal. The Lokpal have the power to grant sanction for prosecution under section 20 (7)(a) of the Act. The Act also incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending. The Act mandate for setting up of the institution of Lokayukta through enactment of the law by the State Legislature.

[15] Cabinet Clears Whistle Blowers Protection Bill, The Hindu, 10 August, 2010.
[16] The Lokpal and Lokayuktas Act, 2013.