

CHAPTER-5

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Corruption is such an obnoxious phenomenon that it has to be fought at all times and on all fronts irrespective of the degree of success achieved. Corruption has crept into the texture of our political life. The notorious hawala cases and scams which involve millions and billions of rupees reflect the character, of integrity, sincerity, and honesty on the part of the politicians, the so called representatives of 'We the people of India'.¹

Even after sixty seven years of independence, we are still economically enslaved and are severely subjected to imperialism. Today's hawala cases and other scandals are said to have involved billions of rupees. These huge amounts must have been pocketed by our politicians to sustain their hold in the public office. To win election, and to maintain one's position in the party one may have to grease the palms of several people right from top to toe in the political set-up.²

On the basis of the present research work, some conclusions have been made with a clear matter of facts. These are detailed stated as below.

- (1) Corruption in India: A Historical Legacy, In India corruption came out from inheritance as an legacy from its past ancient rules who probably always think of getting some gifts (nazrana) from person that are being dealt. Kautilya envisage different methods of corruption in public services. He writes "just as it is impossible to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for the government servant not to eat up, at least, a bit of the king's revenue."³ Kautilya also mentions corruption in the judiciary. He also recommends severe punishment for corrupt judges.⁴

¹ Dr. M.P. Sharma and B.L. Sadana, "Public Administration in Theory and Practice", (2003), p. 670.

² Vinay K. Dubey, "Corruption in Public life", Pratiyogita Darpan, November, 2007.

³ R. Shamastry, "Arthshastra", (1967), pp. 15-18.

⁴ Ibid.

The Mahabharata emphasizes that persons who are greedy, thieves, hostile to king and minors should not be recruited in the service of the state.⁵

During the British rule, corruption was generally confined to lower level functionaries, barring few rare cases of high level of corruption. Even among the lower levels, corruption was prevalent only among the staff of a few departments like PWD, Excise, Forest, Civil Supplies and the Police. The higher Civil Services were generally free from corruption. During the Second World War time (1939-45) the seeds of corruption were sowed in the concerned departments due to scarcities, controls, rationing and numerous other activities relating to civil works and supply contracts. The corruption level also went upward bringing higher officers within its clutches where transactions increased in number and in monetary terms involving crore of rupees were done. After independence, elected leaders came under power and started being corrupting by misusing designation under control.⁶

In our country, it is widely believed that corruption on a petty scale is rampant in the Railways and the Public Works Departments. Basically, it is the result of the uneven operation of the market forces of supply and demand.⁷

Surveys of Corruption study in India came out with facts where the Police Department is the most corrupt; Judiciary and Land Administration are the next most corrupt public services. When compared with basic services, the government hospitals are the most corrupt, followed by the electricity services, While Water supply Department has a low corruption score.⁸

The elections have become a farce and are deliberately rigged. They lose their representative character. The muscle mafia and money power ensure bogus voting, ballot-snatching, violence and other corrupt practices. This is usually done in collusion with the local politicians. Sometimes, corrupt and non dedicated civil

⁵ Upendra Thakur, "Corruption in Ancient India", (1976), p. 20.

⁶ Iris Bulter, "The Elder Brother", Hodder Stoughton, London, 1973.

⁷ www.google.com; see also www.wikipedia.com

⁸ Joseph J. Centuria, "Political Corruption", Encyclopaedia of Social Sciences, pp. 448-452; see also Peter H. Odegard, "Political Corruption in States", Encyclopaedia of Social Sciences.p.52-53; see also, The Times of India, (New Delhi), November 15, 1999.

servants are assigned to the election related duties. People do not get that government which they want to install and thus they are the victims.⁹

The Indian Judiciary is not entirely free from corruption. However, corruption in the judiciary does it rarely reach the top level. The court staff has been found to be corrupt in many cases. Corruption in Judiciary mostly relates to the administrative matters.¹⁰

Corruption is a universal phenomenon. No society is free from it. In many developed and developing societies corrupt practices, as specified by legal or administrative rules, are customary and widely accepted as normal behavior. Such behavior, however, in some Third World countries, is regarded as undesirable for the achievement of socially necessary outcomes. Nor corruption is confined to less developed or state socialist economies, as scandals such as Watergate Affair or, in the U.K, the Poulson Affair, demonstrate.

Multinational companies and other large industrial trading companies of the developed countries, bribe the politicians and bureaucrats of developing countries for selling their machines, plants, weapons, aeroplanes, warships and also for obtaining contracts for constructing bridges, establishing power plants and getting licences. The World Bank estimates that corruption amounts to 5 percent of the World Economy, well over \$1.5 trillion.¹¹

In India, administrative and political corruption no longer surprises us. It has become a normal thing as well as an integral part of our administrative, judicial and political culture. Mr. Satyapal Dang, a respected leader of the communist movement in Punjab is not exaggerating when he says that corruption seems to have become the worst bane of the Indian Society.

“Corruption at the high level will damage the economy and the country in the long run. Corruption at the ground level has made the life of people miserable already. Instances of such corrupt activities are innumerable. You may get a highly inflated bill for electricity, and correction proving possible only, if, a bribe is paid. You may

⁹ Rakesh Bhatnagar, “Corruption, in competence in Police and Judiciary must be tackled”, The Times of India (New Delhi): November 15, 1999.

¹⁰ Syed Hussein Alatas, “Corruption: Its Nature, Causes and Functions”, p.74.

¹¹ N. Bhaskara Rao, “How ‘notes for votes’ dampen democracy”, The Hindu (New Delhi), April 6, 2009.

not get a certified copy in accordance with rules, unless, you pay some extra money over and above the fees, so on and so forth. On the other hand, unscrupulous and short sighted parents get high marks for their wards by paying bribes and many other undeserved favours are secured in this way.”

The problem of corruption goes on increasing as society gets more and more organized and urbanized and becomes more ramified. Then it turns out to crystal clear itself in a variety of shapes varying contempt. The milk-vender make milk nutrients weaker by adding milk, the Sanitary inspector who secretly do illegal at it, grocer who does not use genuine weights, the traded who profiteers at the least available opportunity, the contractor who does a shoddy job road building, the engineer who puts the seal of approval on it and the city father who has a ‘cut’ in the contractor’s ill-gotten wealth- all these are corrupt.

But, there is an even more banal form of corruption, when men who wear the purple of commerce control party machines and political power. This type of dishonesty is more dangerous because it sets in motion the machinery of corruption, eating into the very vitals of society.

The basic postulates of corruption¹² can be defined as under.

- (1) It is deliberate or intentional exploitation of one’s position, status or resources.
- (2) It may be done directly or indirectly.
- (3) It is done for personal aggrandizement- Whether it is material gain or enhancement of power or prestige or influence.
- (4) It is done by violating legitimate, sanctioned or commonly accepted norms of behaviours.
- (5) It is done against the interests of the community or persons.

The facets of corruption are many. The more recognized common facets of corruption include¹³ Taking bribe, giving bribe, Misusing facilities, giving improper access,

¹² Dr. M.P. Sharma & Dr.B.L. Sadana, “Public Administration in Theory and Practice”, (2003), p. 674.

¹³ N. Narayanaswamy, M.P. Boraian & M.A. Jeyaraju(Edit.), “Corruption at the Grassroots- The Shades and Shadows”, (2000), p. 41.

stealing things, letting others steal, allowing unique favours, diluting quality of work. Taking undue favours; Accepting poor quality, spying for others. Paying for work not done, claim without delivery, Granting without receipt, Manipulating accounts and abetting manipulations etc.

There are number of factors which are responsible for corruption. The factors responsible for corruption are as under.

The Administrative Factors includes Administrative Delays, Clumsy Handling of Corruption cases, inefficient Judicial System, low risk high profit, corruption at ministerial level, excessive controls and curbs, lack of transparency etc.¹⁴

The social factor responsible covers social environment, Hinduism, family and caste, consumerism, dowry and absence of strong public opinion against corruption etc.¹⁵

The legislative and political factors responsible for the corruption includes inadequate laws to deal with corruption, lack of willingness to enforce laws, uncertainty and in stability in the system and faulty electoral practices etc.¹⁶

The economic factors responsible for the corruption are low salaries, vexatious tax system, post retirement social insecurity and extravagant life style etc.¹⁷

There is lack of political will to control corruption. Resultantly, the cancer of corruption has eaten into the vitals of our society and the moral standards of the people have degenerated gradually with time. At present, it is at its lowest ebb, which we cannot afford to overlook any longer.

Corruption has become rampant everywhere today in public life and what is most frustrating to see is that most people have accepted it as an integral part of their lives and have learnt to live with it. So, they feel that it is better to take the easy way out by compromising with corruption instead of fighting it and suffering endlessly.¹⁸

¹⁴ G.E. Caiden, "Toward a General Theory of Official Corruption", Asian Journal of Public Administration, Vol. 10, No. 1: 3-26.

¹⁵ N. Vittal, "Corruption in India", (2002), p. 18.

¹⁶ D. Narsimha Reddy, "Crime, Corruption and Development", (2002), p. 103.

¹⁷ Dr. M. Halayya, "Corruption in India", p. 101; see also The Hindu, (New Delhi), 20th April, 2008.

¹⁸ The Hindu, (New Delhi), 20th April, 2008 & April 6th, 2009.

Some of the effects of the corruption on the development of the country and society are disinvestment, insecurity, diversion of funds, misallocation of talent, tax evasion, increase in government expenditure, poor quality of infrastructure and services, ignorance of basic services to poor, criminalization of politics, effect on investigations and trials, effect on health and welfare of community. Further, it also affects the efficiency and performance of the public servants.¹⁹

Corruption violates human rights of the people as it hinders the process of achieving civil, political, economic and social rights. The unequal application of law leading to selective enforcement due to corruption creates an environment of scant regard for law and legal institutions.²⁰

The Indian Penal Code, 1860 is the first legislation to deal with corruption cases. There are some provisions in the Indian Penal Code to deal with the problems of corruption. For example, the provision for punishing criminal conspiracy, Criminal breach of trust by a public servant or a banker, cheating etc. could be invoked to deal with many situations arising out of corrupt practices.²¹

The Delhi Special Police Establishment Act, 1946 was passed to make provision for the constitution of a special force in Delhi for the investigation of certain offences in the Union Territories for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the offences.²²

Section 6 of the Act is because 'police' is a state subject, being in list II, Entry 2 of the seventh schedule. The setting up of the Delhi Police Establishment Act does not by itself deprive the anticorruption branch of the state of its jurisdiction to investigate the offence of bribery and corruption against Central Government employees.²³

The provisions, which included in the Indian Penal Code, covers almost all kinds of offences, are inadequate to fight the problem of rampant corruption. The

¹⁹ Subhash C. Kashyap, "Eradication of Corruption and Restoration of Values", p. 44

²⁰ C.Rajkumar, "Corruption and Human Right", p. 20.

²¹ S.K. Das, "Public Office, Private Interest", (2001),p. 140.

²² Ibid.

²³ Id. At p. 1736.

opportunities for corruption thrown up by the post World War II era signified the need for a special enactment. The Prevention of Corruption Act, 1947 was the result.²⁴

The 1947 Act was a piece of social legislation enacted to prevent the evil practice of corruption. It was comparatively small piece of legislation with only eight sections extending to the whole of India except the Jammu and Kashmir. The Act owed its brevity to the Indian Penal Code and perhaps it is here that the 1947 Act happened to be unsuccessful in its mission.²⁵

The Prevention of Corruption Act, 1988 has introduced drastic and far reaching amendments with a view to broadening its base and to overcome certain legal loopholes which were considered advantages to the accused facing corruption cases. It incorporates and consolidates the provisions of the Prevention of Corruption Act, 1947, the Criminal Law (Amendment) Act, 1952 and as of Indian Penal Code into a comprehensive statute with certain modifications as are necessary to guarantee more effective and speedy methods to combat corruption among public servants.²⁶

The Prevention of Corruption Act, 1988 is a very powerful legislation except for some defects. The punishment provided under the Act in corruption cases is not sufficient. Secondly, the procedural delays and technicalities of law is also responsible to defeat the object sought to be achieved by the Act.

Thirdly, the tendency in India is that law recognizes 'public servants' as a class on whom special protection and privileges are conferred. A special procedure is prescribed for them under the law for abuse of power or dereliction of their duties. In fact, this coupled with the class bias of judicial officers and the feeling that if they are convicted, it entails more sever penal consequences; make them seek for stronger evidence than is required in average criminal cases. This results in the acquittal of the accused even in cases in which the corruption is documented in the press or is established by commissions of enquiries.²⁷

One of the main tasks of the Executive is enforcement of law. For the prevention of corruption, the proper enforcement of law with enthusiasm on the part

²⁴ Id. At p. 1743.

²⁵ P.S. SEEMA, "Eradication of Political Corruption-An Evaluation of the Legislative and Judicial Efforts ", *The Academy Law Review* (1999), P. 178.

²⁶ A.S. Ramachandra Rao, "Commentary on Prevention of Corruption Act", (2004), p.1.

²⁷ *Vinod Kumar v. State of Punjab*, AIR 2015 SC 1539.

of the investigating machinery is necessary. In the hawala cases, fodder scam and other corruption cases, the criminals involved are high politicians and ministers who control the executive. The Police, the investigative agencies and even the prosecutors are controlled by them. In this situation, it cannot be expected that these cases would reach their logical conclusions.²⁸

Indian judiciary is one of the most powerful Judiciary in the world. It has played a vital role in combating the menace of corruption also. The court has not only encouraged and accepted PIL in the matters of corruption but has gone further to order investigation in corruption cases even without sanction. The court has laid down that MP, MLA, Kotwal, Municipal Councilor are Public Servants within the meaning and scope of term 'Public Servant' defined in the Prevention of Corruption Act, 1988.²⁹ Further, the Apex court has also evolved the concept of awarding exemplary damages in the corruption cases.³⁰ However the effectiveness of the judicial activism would ultimately depend on the effective investigation into the corruption cases and acts of illegality committed by high level politicians and bureaucrats.

The psychological climate of freedom of action for the investigating agencies like CBI created by the Judicial Supervision, control and specific direction coupled with the public opinion and resentment against rampant corruption may go to some extent, towards creating some more enthusiasm in the enforcement efforts. But, it has got its own limits. The ultimate success of these efforts depends on the presence of reliable evidence of corruption and this is possible only on an Adhoc basis from case to case. In border line cases of corruption, which are difficult to be proved, it appears, that whole of the judicial exercises have ultimately gone futile except creating a public opinion against political and high level corruption in the country.³¹

To tackle the problem of corruption at Central Level, the Government constituted Special Police Establishment in 1943 and this organization was replaced

²⁸ The Central Vigilance Commission Act, 2003; Section 8(g), Section 9.

²⁹ R.S. Nayak v. A.R. Antulay, AIR 1984 SC 684; see also Section 13(1)(e) of 1988 Act.

³⁰ P.S. SEEMA, "Eradication of Political Corruption-An Evaluation of the Legislative and Judicial Efforts", The Academy Law Review (1999), p. 200.

³¹ Id. At p. 400.

by the Delhi Special Police Establishment in year 1946. Presently, this organization is a part of Central Bureau of Investigation.³²

The Central Bureau of Investigation (C.B.I) was set up in 1963 by a resolution of the Ministry of Home Affairs. Presently, it is under the Ministry of Personnel and enjoys the status of an attached office. It plays an important role in preventing corruption and maintaining integrity in administration.³³

CBI is a specialized investigating agency which takes up cases of corruption by the high ranking officers of Central Government and Central Public Sector Undertakings. Cases which have inter-state and international ramifications are also taken up for investigation when referred to by the State Governments or entrusted by Constitutional Courts. Conviction rate in cases prosecuted by CBI has been between 65 to 70 percent which is comparable to the best investigation agencies of the world.³⁴

The 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 having great extent powers to supervise the functioning of investigating Agencies like the CBI and Enforcement Directorate. Its present jurisdiction is limited to the Gazette Officers and officers of equivalent status only. It has no power into the cases of political corruption.³⁵

All departments in the Central Government have a Chief Vigilance Officer(CVO) at the top level assisted by Vigilance Officers (VO) down the line to handle of his VO's, is required to monitor the functioning of the department, review the working procedures and streamline them to eliminate opportunities for corruption, and to ensure that the people who come to transact work with the department are not subjected to corruption.³⁶

On completion of the investigation, the CBI will forward its report to Chief Vigilance Commission, where its advice required. CBI generally recommends

³² Dr. Giriraj Singh, "The Tidal Wave of Corruption", (2001), p. 55.

³³ Ochulan Chinenye Leo, "Ethical and Moral Implications of Corruption", Canadian Social Science, Vol. 7., No. 5, 2011, p. 223-228.

³⁴ K.L. Malhotra, "FACETS OF VIGILANCE-Prevention to Prosecution", (2001), p. 312.

³⁵ N. Vittal, "Fighting Corruption and Restructuring Government", (2001), p. 231

³⁶ Id.

‘prosecution’ in cases of bribery, corruption or other criminal misconduct or where a substantial loss is caused to the government or public body.³⁷

In a democratic country, it is mandatory for the government to have confidence of the people, so that, they frame policies which will be acceptable and beneficial for all. To ensure the effective discharge of the administrative activities by the Government, the State is invested with the power of inquiry and investigation.³⁸

The Administrative Reform Commission (ARC) submitted a special interim report on ‘Problem of Redressal of Citizens Grievances’ in 1996. In this report ARC recommended the setting up of two special authorities designated as ‘Lokpal’ and ‘Lokayukta’ for the redressal of citizen grievances. The Lokpal would deal with complaints against ministers and secretaries at central and state levels and the Lokayukta would deal with complaints against other specified higher officials.³⁹

The government of India accepted the recommendations of ARC in this regard. Bills in this regard were introduced in 1968, 1971, 1985, 1989, 1996, 1998 and 2001. However, the institution of Lokpal has not as yet been created at the centre although efforts have been made since 1959 while Institution of Lokayuktas/Lokpal has been established by many States through State Legislations. They provide for inquiry/investigation into complaints of corruption against public servants. He protects citizen’s right against mal-administration, corruption, delay, inefficiency, non transparency; abuse of position, improper conducts etc. The procedure to be followed is informal and inexpensive and technicalities do not come in way. It is, therefore, a strong step to check on corruption.⁴⁰

Information Technology can help achieve transparency, speed and access to information in systems of governance. However, it is still possible for public servants to extract their 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. It also opened channels of communication

³⁷ K.L. Malhotra, “FACETS OF VIGILANCE-Prevention to Prosecution”, (2001), p. 312.

³⁸ G. Sadasivan Nair, “Judicial Activism no Panacea for Prevention of Corruption”, Cochin University Law Review (1997),p. 410.

³⁹ J.J.R. Upadhaya, “Administrative Law”, (2001), p. 366.

⁴⁰ G. Sadasivan Nair, “Judicial Activism no Panacea for Prevention of Corruption”, Cochin University Law Review (1997), p. 416.

between the offices at the public whereby the common man could bring cases of corruption to the notice of the Government of India.⁴¹

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. Such accountability is possible only when public has access to information relating to the functioning of Government. The Right to Information Act, 2005, therefore was passed to impose obligation on government agencies to disclose information suo moto, thus reducing the cost of access.⁴²

An provisionally imposition of the Right to Information Act, 2005, was undertaken independently and it has concluded that more people are now using it in unknown ways together information, denying the rumor that the RTI is an instrument concentrated in the hands of social activists.

The media has a very major role in disclosing corruption. The media has a unquestionable role to play in changing society's posture. The Press is the watchdog of democracy and public good, and has contributed remarkably to the unveiling of corruption at different places.

With the advent of PIL, some NGOs are agitating the matters of corruption over the judicial forum and creating some new trends in establishing new legal principles.⁴³ Common cause, a social service organization, has set examples by bringing serious issues of corruption to the notice of the higher courts. The judiciary too rose to the occasion and set a new trend in prevention of corruption.⁴⁴

But, functioning of many Non-Government Organizations and voluntary organizations at the grassroots level or at higher levels are not upto the mark. Many of them exist only on paper and hoodwink the authorities and members of the public when we lay so much emphasis on institutions of civil society.

⁴¹ N. Vittal, "Role of ICT in Minimizing Corruption in India", The State, IT and Development, (2005),p. 152,154

⁴² Lalit Dadwal, "Right to Information", MDU Law Journal 2005, p. 256,263.

⁴³ Indian Corruption Study, 2005 by T.I. (India), p. 200.

⁴⁴ Dr. M. Sridhar, "Corruption in Public Offices: Role of Judiciary and Citizen", Cr. Lj (2000), p. 100.

In every society, there is a limited room for sinners. Corruption can be minimized and checked but not eradicated altogether, therefore, it can be concluded that it is futile to take a purist view. Transparency International India(TII), a Non-Partisan Organization, is among the 92 affiliates of Transparency International (TI), headquartered in Berlin, Germany and founded by Peter Eigen, a former World Bank Official, in May 1993. Each affiliate is dedicated to fight corruption in its respective country and follows an unbiased, non investigative approach. TI India was set up in 1997 as a political, Non-Governmental Organization.

It is dedicated to combat corruption through practices that bring about absolute transparency and integrity. It is an organization of concerned citizens dedicated to maximize accountability of Governmental Institutions, elected representatives and government machinery towards the general populace, but on building holistic systems to combat corruption.

Corruption cannot be totally eliminated but it must be brought down to the minimum level. One of the most common responses to graft of bribery earlier has been hurried piecemeal institutional reforms and introduction of tighter checks on routine administrative work for a short time that follows the incident. It has to be radical operation encompassing administrative, legal, social, economic and other changes.

Great care should be exercised in selecting officers for appointment to high administrative post. Only those persons whose integrity is above board should be appointed to these posts. At the time of making promotions from non gazette to gazette ranks, all those whose integrity has been doubtful should be eliminated. Every officer whose duty it is to sponsor a name for promotion should be required to record a certificate that he had seen the record of service of the Government Servant and he is satisfied that the Government Servant is a man of integrity.

As a minister needs to be a member of parliament or of a state legislature criminal elements have managed to enter legislature bodies in large numbers and some of them have succeeded in becoming ministers and chief minister. To reverse the trend it is necessary to lay down some minimum qualifications and conditions of eligibility for the post of a minister and delink minister-ship from membership of parliament or of a state legislature. Only persons of undoubted integrity, equipment

and special knowledge and or practical experience in the subject concerned could be considered for minister-ship.

To curb corruption, it is further suggested that bureaucrats, police, officers, politicians and all others holding key positions who are corrupt and misuse their power must be punished at any cost because if they are spared, they will continue to prosper in our country. A legislation or amendment should be made in law to provide that all such bureaucrats, politicians, police officers and all those holding key government positions, which are corrupt, should not be allowed to perform their official duty or hold any post during the period their cases are pending in the courts.

If, anyone is found corrupt, should not be swiftly send behind the bars and strict legal action be initiated against him or her and all perks and facilities available to them should be withdrawn, no pension or retirement benefits should be given to them and all property should be immediately confiscated. Further, the punishment in corruption cases must be enhanced. In cases of corruption, the accused must be severely punished so that others may deter. Therefore, it is suggested that necessary amendment in the Prevention of Corruption Act, 1988 should be made for providing provisions for severe punishment and fine.

India has parliamentary form of government, which works on the principle ministerial responsibility. The responsibility of the Government to Parliament and through it to the electorate should make it accountable.

Since the ministers are heads of departments, the accountability passes through them to the lower levels of administration. Thus, in theory the administration is accountable to the Parliament, the electorate and also to the judiciary which has the power of reviewing its decisions on grounds of legality. But, the principle of accountability does not work in the desired manner. In India, we have a big government performing enormous functions. It is difficult for parliament to exercise control over such a large bureaucracy. Therefore, what is required is to enforce the principle of accountability at all levels. The power must be used only in accordance

with law and every one must be held accountable for wrong doing or misuse of authority.⁴⁵

The low paid government servants are entrusted with responsibilities of inspection, supervision, grant of licences, in matters like gradation of commodities, passing of goods at customs etc. While the general increase in the salaries of government servants is a matter to be decided in the light of national economy and the taxpaying capacity of the people, it may be worthwhile in the country's interest to examine whether the categories of officials who have to exercise considerable discretion in matters relating to taxation, issue of valuable permits and licences, or otherwise deal with matters which require high degree of integrity, should not be given special attention regarding states and emoluments, thus appraisers and examiners in the customs.

Inspectors in the excise and the Income Tax Departments, supervisory personnel in the Central Public Works Department, Railway and Postal Department and analogous categories etc. should be made to feel that the improvement of their condition is a matter of special concern to the government. Even more important that improvement in the scales of salaries is the need to provide housing, medical facilities for the Government Servant and the need to provide housing, medical facilities for the Government Servant and his family, and assistance towards the education of children, especially of those who have to serve far away from their own states. It is also suggested that the Government must undertake the provision of housing on an adequate scale and till then to have a sufficient number of requisitioned accommodation to accommodate all their staff. When Government servants of the same department or allied departments live in a colony it is not easy to indulge in unsocial practices without being noticed or talked about.⁴⁶ It is therefore, suggested that status, respect and salary structure of government servants must have a rational relationship with the nature of duties assigned to them.

Office procedures should be simplified and levels of hierarchy reduced. Instead of the present system in which a file takes rounds of several offices, before a decision is taken, new pattern of decision making ought to be evolved. It is

⁴⁵ Dr. M.P. Sharma and Dr. B.L. Sadana, "Public Administration in Theory and Practice", (2003), p. 687.

⁴⁶ Suresh Kohli (ed.), "Corruption in India", p. 115.

particularly necessary where public dealings are involved. There should be a single window-decision system. It will save the public from harassment. Official forms should be brief and simple so as to enable an ordinary citizen to understand them easily. All information should be provided therein as to where to apply and how much time would be required for completion of the work.

Discretionary powers are exercised by different categories of Government servants all of whom are not endowed with high sense of dedication and integrity in equal measure. There is scope for harassment, mal-practice and corruption in the exercise of discretionary powers. While we recognize that it would not be possible to completely eliminate discretion in the exercise of powers, it should be possible to devise a system of administration which would reduce to the minimum even if there is a certain seeming loss of perfection, the need for exercise of personal discretion consistently with efficiency and speedy disposal of public business. Even so, there would be quite a considerable area where exercise of discretion could not be eliminated. It will, therefore, be necessary to devise adequate methods of control over exercise of discretion. This should be studied and a system of control should be devised keeping in view the needs of the situation, the difficulties that arise on account of the vastness of our country and the basic principles which are enshrined in our Constitution and Jurisprudence.⁴⁷

Decentralized administration helps reduce corruption. It takes decision making closer to beneficiaries and so makes officials more responsive. Giving Panchayats financial powers and more autonomy will be helpful to the people at grassroots level.

There should be greater participation of the users in the administration. Projects and programmes would certainly improve when the beneficiaries participate in their design and implementation. Regular consumer surveys can highlight the problems and suggestions of users.

A thorough study should be made in respect of each Ministry/Department Undertaking of the extent, the possible scope and modes of corruption, prevention and the remedial measures prescribed, if any and their effectiveness. The administrative delays are one of the major causes of corruption. Administrative delay must be

⁴⁷ Id. At p. 110.

reduced to the extent possible and firm action should be taken to eliminate all such causes of delays as provide scope for corrupt practices.

Each ministry/department/undertaking should immediately undertake a review of all existing procedure and practices to find out the cause of delay, the points at which delay occurs and to devise suitable steps to minimize the possibility of delay. Time-limits should be prescribed. If not already done, fix dealing with receipts, files etc., and these should be strictly enforced. Superior officers should consider it their responsibility to find out whether in any particular matter there has been any avoidable delay and call persons responsible for the delay to account for.

All situations at a level lower than that of Under Secretaries should be avoided. The responsibility of the section should be only that of putting up previous papers and precedents. This procedure should be strictly observed in Ministries/Department which has to deal with the great of licences or permits of various kinds. The levels at which substantive decision could be taken should be prescribed and any attempt to involve as many as possible should be discouraged and dealt with severely, if found to be persisted in.

One major source of corruption is that the guilty are not punished adequately and more important, they are not punished promptly. This is because of the prolonged delay in the departmental inquiry procedures. One of the reasons for the departmental inquiry being delayed is that the inquiry is to be done in addition to their normal work. The same is true for the presenting officers also.

Each organization, therefore, may immediately review all the pending cases and the Disciplinary Authority may appoint Inquiry Officers from among retired honest employees for conducting inquiries. The names of these officers may be got cleared by the CVC. The CVC will also separately issue an advertisement and start building a panel of names all over India who can supplement the inquiry officer's work in the department. In fact, it will be a healthy practice to have all the inquiries to be done only through such retired employees because it can then be ensured that the departmental inquiries can be completed in time. If any service/departmental rules are in conflict with the above instructions they must be modified with immediate effect.

In order to ensure that the departmental inquiries are completed in time, the following time limits may be prescribed.

- (a) In all cases which are presently pending for appointment for Inquiry Officer and Presenting Officer, such appointments should be made within one month. In all other cases, the Inquiry officer and the Presenting Officer should be appointed, wherever necessary, immediately after the receipt of the public servant's written statement of defence denying the charges.
- (b) The oral inquiry, including the submission of the Inquiry Officer's report, should be completed within a period of six months from the date of appointment of the Inquiry Officer. In the Preliminary inquiry, in the beginning, requiring the first appearance of the charged officers and the Presenting Officer, the Inquiry Officer should lay down a definite time-bound programme for inspection of the listed documents, submission of the lists of defence documents, before the regular hearing is taken up. The regular hearing, once started, should be conducted on day to day basis until completed and adjournment should not be granted on frivolous grounds.

One of the causes for delay is repeated adjournments. Not more than two adjournments should be given in any case so that the time limit of six months for departmental inquiry can be observed.

Exigencies of public service required grant of extension or re-employment of Government servants who have attained the age of superannuation and are about to retire or retired. Such servants are also employed or re-employment should be that the person concerned has had a good reputation for integrity and honesty. If, this condition is not fulfilled, the person concerned should not be considered eligible for grant of extension or re-employment.

It has already been said that the most potent cause of corruption in this country is the political corruption. It became endemic from 1969 when a minority government succeeded in maintaining itself in office by the use of money power. In the 1971 elections, money power was used on a much larger scale than even before. In March, 2009, there were more than a dozen instances of television news channels showing cash in large quantities being transported or distributed by political leaders in the

context of the elections. The 2009 Assembly cum Lok Sabh elections in Andhra Pradesh could well be the most “expensive” ever in India; nearly half the voters, it is alleged, are given Rs. 500 or more per vote.⁴⁸

Concerned about the malaise, the Election Commission has taken certain initiatives recently. It has been appointing “Expenditure Observers” to track and validate expenditure on various kinds of campaign activity. It has made it obligatory for candidates to file expenditure statements a couple of times during the campaign period. There is provision that candidates must file these statements within a specific period after the election is over. But there is no evidence that this made any difference.

More than all this, it is the media’s vigilance that has been exposing the practice. But then, some experts would say the more such news reports appear on TV channels, the more is the spread of the practice, with the amounts involved only growing and voter expectations growing as well.⁴⁹

The best bet is for voters themselves to reject the lure. They need to understand the linkage better notes-for-votes and the bribes citizens end up paying to get what they are entitled to get from the government and from their elected representatives. Civil society groups should step up their efforts at the local level against voters being lured. And, the Election Commission should come up with more deterrent measures. Only then will the poll process become truly free and fair.

There is urgent need of reforming the corrupt electoral practice. Unfortunately there has been talk of reforms since 1971, there have been number of committees but till date no serious attempt has been made to tackle this problem. The following reforms are suggested:

- (a) The first past the post electoral system should be replaced by one which will demand 50 percent of an electorate to vote in order that an election be deemed valid, 50 percent of the votes polled for a candidate to get elected and the right of the voter to reject polled for a candidate to get elected and the right of the voter to reject candidates by marking the ballot. Such system will make it

⁴⁸ N. Bhaskara Rao, “How ‘notes for votes’ dampen democracy”, *The Hindu* (New Delhi), April 6, 2009.

⁴⁹ *Ibid.*

difficult for a person to win on a minority vote bank and will discourage the use of muscle power to intimidate voters. It would also enable the voter to give their verdict based on the reputation of the candidates.

- (b) All politicians should be subjected to intensive income tax scrutiny. These along with the audited accounts of the political parties should be publicized. Any failure should lead to disqualification of the party.
- (c) The Election Commission while reviewing the above quoted profile also suggested certain reforms:
 - (1) The Government should enact a special law that “no law breaker should be a law maker.” A criminal who is convicted for a non-cognizable offence and undergone five years of rigorous imprisonment should be debarred from contesting any election ranging from that of the President to a member of the panchayat.
 - (2) Political parties should file a declaration that they would not field candidates or give tickets to those convicted.
 - (3) The commission be empowered to derecognize and deregister the parties found to have fielded convicts.

Laws should be passed in parliament to make it obligatory for all Ministers, M.P's and M.L.As to declare the assets owned by them, their spouse and their children every year. These should be printed officially and made available to anyone who wants to pay for it. Any falsification of these statements should be declared a punishable offence involving imprisonment. Ministers should be required to go further. They should list all contracts entered into by them or their family members. Should the finance minister's wife, for example, serve as a consultant to a private bank; the fact should be disclosed to the people. The same rule should apply to government officials and members of judiciary also.

The Judiciary of India is not 'elected' by the people. The Cabinet, including the Prime Minister, is answerable to the Parliament/Legislature, hence to the people. The Executive, is answerable to the Government, hence to the people through the

government is power for the time being; but the Judiciary is not constituted like the government or the Executive.

This implies that there has to be an Authority outside the Judicial System, drawing power from the people, to take cognizance of the failures of the system and the Judges individually. The creation of a Judicial Ombudsman(say, Nyayik Lokayukta, or the like nomenclature) by the Governor in the States or by the President at the Centre, on the advice of the Chief Minister/Prime Minister in consultation with the speaker/Chairman of the Houses of Parliament/Legislatures as the case may be, and also of the Leader of Opposition in the concerned Houses will give adequate representation of the people in the functioning of the Institution.

Judges who have held high or top positions in the Judiciary and the Executive, making recommendations on its findings to the Competent Authority for suitable actions, and finally reporting only to the Parliament or the Legislature – a dispensation which exists in a number of a democratic countries, and goes by different names including Judicial Ombudsman. At the same time, the system must ensure independence of the Judiciary.⁵⁰

In order to evolve a system of Judicial Ombudsman, consistent with independence of Judiciary, the true nature of the functions of the court must be appreciated. The functions of a court of law may be cleared classified into two groups:

- (1) Jurisdictional functions, dealing with settlement of disputes in accordance with Substantive Law; and
- (2) Procedural functions as a tool or means to discharge the jurisdictional function.

The former leads to adjudication of rights and liabilities of contending parties; the latter shows the route through which the former may be reached in a fair and speedy manner. The first is an end in itself; the second is the mean by which the end may be achieved. Parties have a vested interest in the Substantive Law, but not in the Procedural Law.

⁵⁰ Justice Kamleshwar Nath, "Delays and Corruption in Indian Judicial System-Remedial Measures", Transparency International India, p. 47.

The Independence of a Court of Law in the jurisdictional function is obviously paramount in the sense that judicial acts in that field should be open to scrutiny only in the higher judicial forum established by law and nowhere else.

The telling remarks of the Chief Justice Venkatachaliah made just after his retirement deserve to be mentioned in this context as the accountability of the system is inherently important for a fair system. Chief Justice Venkatachaliah said:

“Every Judge in the country recognizes that the professional competence and social relevance of the Judicial Institutions cannot be unrelated to the system’s accountability. But, the enforcement of the accountability must be so sensitive that it does not make a dent in judicial independence. If an outside tries to enforce accountability, it will certainly affect judicial independence. Nobody can watch the watchman. The Judiciary itself will have to adopt the culture of accountability and set up control mechanisms.”⁵¹

In Indian Judiciary, the appointment of the Judges of higher courts had always been semi-political in nature since its very inception. The Judicial appointments made by the collegiums of senior most Judges of Apex Court so far have produced mixed results. Both intelligence and mediocre appointments were made in the late seventies and thereafter. Indeed, bad appointments produce bad Judges. It is only after the constitution Bench of the Supreme Court, wherein it was held that the opinion of the Chief Justice of India shall have primacy in all appointments to the higher courts.

The setting up of a National Judicial Commission as proposed by the Law Minister is partly in line with the Constitutional Commissions proposals of 2002 which tilts in favour of a semi-political model.

As per this the collegiums should consist of the following members:

- (1) Three senior most Judges of the Supreme Court,
- (2) The Law Minister;
- (3) The Nominee of the Prime Minister;

⁵¹ Arun Beriwal and Rupal Chaturvedi, “Judicial Corruption and Removal of Judges”, AIR 2003 Journal, p. 351.

(4) Two Ministers of Ruling party,

These collegiums of 7 members seem to be ex-facie lopsided as it does not include in it the Leaders of the Opposition and at least two eminent public persons.

Although, it is difficult to suggest an ideal collegium but in these times of coalition governments, it would be better to have an open and larger collegium to minimize the voices of dissent and to ensure that the lawyers of sterling integrity and caliber are appointed to the higher Judiciary. Therefore, to have a leader of the opposition and one more eminent public person (Nominee of the Prime Minister) would serve the purpose in a better manner.⁵²

To confer powers of both appointment and disciplinary control on one body may prove to be counter-productive exercise as Judges would not be able to discharge their duties properly, if they are made accountable to the collegiums of their peers and some politicians. The accountability of the Judges shall not be made subject to continuous scrutiny of a political collegium as it is likely to create a dent in the impartial and fearless functioning of the system.

The National Judicial Commission must be in a place at the earliest to appoint/select persons of unmatched integrity. The presence of such an apex body will inspire confidence in both, the citizens and the judiciary. This will also act as a deterrent and we might be saved from the chronic embarrassment of having Judicial Committees set up to probe into the conduct of erring Judges and in the process, rendering the entire judicial system vulnerable to public scam. The delays in our legal system are well known. There are more than 30 million cases pending in various courts. The average time span for a dispute to be resolved through the court system is about twenty years.

So, the major issue of the judiciary is pending cases throughout the system and it requires a complete way of resolving strategy to clear all those cases through some simple principles in the best and effective manner.

We are thankful to the initiative of Information technology taken by Justice Venkatachaliah when he was Chief Justice of India. It made the initiation with the use of this technology and its process by Supreme Court. It then came into the effective

⁵² Ibid.

process for the judiciary to get the entire judicial processes to scrutinize from an information technology ways. The process can be executed promptly without denying any facts of sacred principles of law and justice. It is, therefore, suggested that, if it is not possible to create more infrastructure for Judicial offices and Courts, then, two shift system must be started immediately so that the cases could be disposed off more quickly.

“Corruption prevention allowance” or “money to nourish honesty” is also suggested to tackle corruption. Informers who pass on information relating to bribery may also be adequately rewarded.

Investigating agencies like CID, CBI, Anti-Corruption Bureau and others should be made totally free from political pressures and this can be possible only if politicians are not their masters and do not yield and influence over them and are not allowed to interfere in their way of functioning in anyway. Those who are part of the investigating agencies sometimes themselves fall prey to the political pressure and become an integral part of the evil nexus. Therefore, investigating agencies should compromise individuals with proven integrity who can place the national interest above everything else.

Investigating agencies should be given more power to conduct surprise raids and initiate first information report against anyone in the country. There should be no obligation to obtain prior sanction for prosecuting senior officials and politicians. They should conduct more and more raids to nab corrupt people. If they do so properly, then the menace of corruption can be controlled to a large extent.

While the role, powers and functioning of the existing anticorruption agencies require improvement, much faith has been expressed in the institution of Lokpal. This is a step in the right direction, but one would do well to remember that we do not require institutions just in form. Unscrupulous politics has already taken better of several high offices with people alleging lack of objectivity and of impartiality against some of the office holders, e.g., Governors, Chief Ministers, Speakers of Legislatures and Cabinet Ministers. It is sad fact that the criminals and the corrupt enjoy protection and privileges in the name of ‘compulsion of coalition politics’ and stark legality divorced of morality.

The Lokpal, whenever his office comes into existence, will have to additionally guard his position in relation to other constitutional heads, in specific cases. In other words, Lokpal's office will provide an avenue in form to consider complaints against those under his purview even in high offices, but how far it would effectively be able to secure the purpose of his office, will have to be seen subsequently.

Revolutionary developments in information technology can be put to use for bringing about transparency and accountability in administration by introducing computers in a big way as an integral part of the apparatus of administration. Computer communication network from village to state level may be required to move closer to the citizen. A multipurpose citizen database with unique key name, age, income, land holding, education, ration card number.

Caste and community and other relevant data required to provide various services expected of the government departments. Interlinking of departments with multipurpose connectivity up to village level has to be taken up in a phased manner, keeping the cost factor in mind. Building the required infrastructure has to be taken up as a long term strategy.

Social Information booths with interactive computers can be of much use to reduce corruption. The booths, like STD, ISD, PCO booths, may provide information regarding the procedures for availing various services, eligibility conditions for getting benefits, the format of applications, government orders, the standards, the status of applications, etc. These booths can be manned by individuals and voluntary organizations.

Electronic government is the new buzz word that promises to bring about a new culture in citizen government interactions and transactions. It also offers immense potential for reduction of corruption at field level.

For the effective enforcement of the Right to Information Act, 2005, the following suggestions can be made:

- (a) Imparting comprehensive training to government functionaries regarding RTI Act, 2005 is most essential.

- (b) There should be proper documentation of cases and results of the applications that were filed under the RTI Act, 2005 for wider dissemination.
- (c) Besides, pin pointing the flaws in government mechanism, simultaneously, the CSOs should come forward in support particularly towards the “proactive disclosure” under the Act.
- (d) To ensure corruption free governance, the consumer protection act, 1986 should also be enforced effectively alongwith the Right to Information Act, 2005.

Intelligent and effective propaganda can play a great part in fight against corruption. Such propaganda should on the one hand avoid giving an exaggerated idea that a particular case is more general than it is, and on the other it should convince the public that the authorities have no sympathy with the corrupt officials and are determined to put them down. It will be desirable to create a special cell in the Home Ministry consisting of representatives from All India Radio, Press Information Bureau, and the Films Division to evolve effective propaganda and publicity measures. Representatives of the press may also be associated.

Further, there should be no publicity at the time of investigation or during departmental inquiry, however, effective and widespread publicity by the press. What is required, is to ensure, that true facts and arguments are available to those who edit the cases.

It is submitted that non association of trade organization or their representatives in matters like licensing and allocation of scarce commodities encouraged malpractice and corruption to some extent. It is further stated that government has to depend upon the reports submitted by its officers working in the field regarding the worth of the applicant. These officers are not always in a position to assess correctly the actual position.

Therefore, it would be better, if serious thought is given as to how trade associations or their representatives could be associated in the matters of granting licences and allocation of scarce goods. The organizations may be associated in the screening of the capability of the applicants, their entire history of performance and conduct, with necessary recommendations to the issuing authority. These

organizations may be beneficial examining the methods of misuse and improper utilization of goods obtained under the licence. Also its modes of obtaining forms with undeserved advantage.

It is also suggested that the government must recognize and encourage NGO's and other voluntary organizations to come forward and participate in the anticorruption programme.

Depending upon politicians and officials would make a society helpless and at such circumstances it requires a strong civil society that takes the initiative. A strong civil society meant to be comprising full of groups that hold down together for social goals and it would create essential foothold to bear against the corrupt.

The only solution beneficial in prevention of corruption largely lies in paying attention to the basic sense of social discipline that is growing friendly and intolerant to corruption in many ways which has being attained by looking countries. Also a better society can lead to environment with no nonsense activities.

People need to develop following values that would strengthen their society. It can be possible by simplicity, honesty, Integrity, sacrifice and justice. The change in attitude would give importance to country and society over the person. It would create an immanent sense of social responsibility that is required to be included into the system, among other thing. Individual must have willingness to participate in democracy with a faith in national integration. It must have respect for its constitution will all spirit and includes him in improving efficiency and the systems.

It can be seen the above characterizes present situation are marked erosion of the values and sentiments. Weak social can never fight corruption and thus the type of values and attitudes mentioned above as a major part of the war.

Corruption and crime can perhaps never be altogether eliminated. However they can be controlled and contained. And this can happen only, if, those who carry the responsibility of governing the country work with a singular mission of securing the greatest good of all our people in an accountable manner.

Such a goal is achievable, if, the political parties at all levels keep politics strictly where it belongs; immunize the functioning of public institutions, as well as

those who run them, from politicization and day to day interference and not allow any kind of compromise in ensuring that every corrupt act is met with prompt and severe punishment irrespective of the power, influence or status of the offender. If such a path is followed, we can look forward to our country achieving speedy progress and development and eradicating poverty, discrimination and exploitation.

If, however, there is failure to cure our polity and governance of their existing ills, there is every danger that the growing dissatisfaction and anger of our people may soon created a situation which imperial the very unity and integrity of our country.

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