CHAPTER – VI

CONCLUSION AND SUGGESTIONS

CONCLUSION

There are adequate laws in India to fight corruption in the public sector. The Prevention of Corruption Act 1988 is a comprehensive law which covers all possible acts pertaining to corruption and corrupt practices by public servants. There are laws relating to tracking, seizing, and confiscating proceeds of such crimes, both inside and outside the country. India has signed mutual legal assistance and extradition treaties with 20 and 25 countries respectively to facilitate international co-operation in the fight against corruption. Ratification of the UN Convention against Corruption by India will further strengthen its resolve to fight against corruption by providing and obtaining international co-operation.

Despite all these measures and laws, the country is still not free from the scourge of corruption. Corruption is still one of the biggest impediments to extending the benefits of development and progress to the poorest of the poor. The Indian criminal justice system is facing many problems and challenges in its fight against corruption. At present, there is no law to deal with corruption in the private sector, which has grown in leaps and bounds in last two decades, as envisaged in the UNCAC. Offenders take advantage of the very strict requirements of Indian courts to prove every point beyond doubt. The system suffers from inherent delays; as a result punishment is not swift. Corruption is considered a ‘high profit-low risk’ activity by corrupt public servants. Recoveries of assets, which are proceeds of crime, remain a big challenge. Such assets are often held offshore and getting them back is a Herculean task, especially in the absence of desired international co-operation.

The fight against corruption is, therefore, not an easy one. We need to join forces against this enemy, with all resources at our disposal to achieve better and more effective results. The United Nations Convention against Corruption can be seen as a watershed in the resolve of the international community to fight corruption. The provisions relating to asset recovery in the UNCAC are the most important, in my opinion. Effective use of the
same by signatory countries will, therefore, go a long way to achieving better results in this regard. International co-operation to fight corruption as envisaged in the UNCAC is therefore inescapable and a requirement of the hour. There is a much better grasp today of the extent to which corruption is a symptom of fundamental institutional weaknesses. Instead of tackling such a symptom with narrow intervention designed to “eliminate” it, it is increasingly understood that the approach ought to address a broad set of fundamental institutional determinants. However, the challenge of integrating this understanding with participatory process has barely begun. The implementation of institutional reforms can benefit significantly from the participatory process that is being developed for anti-corruption activities. Equally important, any participatory process, however sophisticated, ought to lead to concrete results beyond enhanced participation and heightened awareness. Thus, identifying key institutional reforms in India, and mobilising support for such reforms, needs to be fully integrated into the participatory process from very early on. Such early convergence is likely to promote a better balance between prevention and enforcement measures in addressing corruption. Until recently, the pendulum was firmly in the “enforcement” corner. The gradual swing towards the middle ground has taken place due to recognition of the limitations to expose legalistic enforcement measures, since the law institutions themselves are currently part of the corruption problem in India.

Therefore, corruption is an intractable problem; it is like diabetes, which can only be controlled, but not totally eliminated. It may not be possible to root out corruption completely at all levels but it is possible to contain it within tolerable limits. Honest and dedicated persons in public life, control over electoral expenses, could be some of the important prescriptions to combat corruption. Corruption has a corrosive impact on our economy and leads to loss of overseas opportunities. Corruption is a global problem that all countries of the world have to confront: solutions, however, can only be home-grown.

One important issue which has risen not only today but many times before is the security of tenure of key functionaries: of district collectors, of Superintendents, of Police, and I do recognize that everybody is entitled to ask for this. No system of Government can deliver if the people can be changed without notice or with short-term notices. Short tenures do not produce accountable results. I do recognize the difficulty.
This is a matter in which the Central Government by itself cannot move. The Central Government has to work with the States. But I do propose to bring this subject before the National Development Council as an integral part of improving the quality of our administration, making it more transparent and more accountable. If we are going to pursue these goals, then it is necessary that our Civil Servants should be entitled to a minimum security of tenure so that they can be judged whether they are equal to the task which has been assigned to them or not.

We have now much more resources today in our country to change the world around us than we had ever before. We have an explosion of ideas. We have a society that is becoming increasingly more politicized, but also more vigilant. These are opportunities not available to our predecessor. Therefore, the Public Servants need to be idealistic enough to take up this challenge of building a new India free from fear of war, want and exploitation. They should be innovative enough to look for new opportunities. They must be sensitive enough to contribute to creating a just and humane society. They ought to be modest and lead decent but simply life style eschewing conspicuous consumption and extravagant living. They are supposed to have concern for those who work for us and inspire them through example. Unless the Public Servants inculcate this commitment to do excellence at the grassroots level and at the earlier stages in one’s career in the Civil Service, it will not be possible to create an environment of growth and development at the national level. As members of the most prestigious of the Civil Services, they must impart and take afar the message of seeking a commitment to quality and excellence in the work they do, in the service of the people of this great country India. Compassion must be combined with competence. That should be the motto of a meritocracy.

After doing research on this topic, its clear that, public servant bears much importance because without a good public servant the country was not progress if public servant become dishonest then the country will go down in terms of its progress. If good public servant are influenced or disturbed by the political superior or by the citizen. Still the country will go in ruin.

Public servant must be incharge of some public duty public duty no where define in this code. If may how ever be said that all person having to discharge the delegated
function of administration of state are public servant.

After doing brief reading of this topic its become clear that without a efficient public servant country will not progress with the independence of the country the responsibilities of the service have become onerous. They may make or mark the efficiency of the machinery of administration, a machinery so vital far the peace and progress of the country. A country without a efficient public servant cannot progress. What ever democratic institution exist, of experience has shown, that is essential to protect the pubic service as far as possible from political and personal influence.

State wants to control over the offences but no fruitful result came out even then some corruption acts are found. There are some drawbacks in the rules framed by the Government. Who is responsible for the same either the Government or public servant or the public who is not much aware about their rights?

There can be many factors responsible for making the public servants as bad and they start to ruin the country and there can be adverse influence over the public servants either on the side of Ministers (i.e. Political Superiors) or the General Public which behaviour can detract the public servants from their right path. Here both aspects (i.e. BY and AGAINST) are to be focused.

In Indian scenario, the Public servants may not be supposed to be indifferent of their social and economic background. The personnel attached with the Public servants come from different castes, religions, languages and other political and social background. At times they indulge in favouritism towards their own caste, sect, religious group and other kind of factionalism, Hence, in view of all these problems the Public servants are not supposed to function with their full vigour and capacity unless and until the bottlenecks present within the body of these agencies would not be removed and taken away afar to such a distance from where they cannot return back in the main stream of the law enforcement system.

Now it is first and foremost necessary to know the Correct and clear meaning of the public servant so that the hasility of the accused may be determined. Therefore there are upto some extent synonym words like public officer, civil servants, civil post holder, defence servant. To remove the doubts about the proper legal status of public servant, some tests have been fixed. Now we come to the conclusion that who are public servant.
Section 21 of the IPC while defining 'public servant' has denoted as many as twelve categories of persons. It includes not only the State and Central Government employees but also others like Judge, Juryman, assessor and arbitrator. It also includes every person in the service or pays of the Government or remunerated by fees or commission by the Government. Each category is different from other and there is hardly any relationship of master and servant in some of the categories.

Clause (3), of Section 21, as it at present stands, takes within its purview every Judge including any person empowered by law to discharge whether by himself or as a member of any body of persons, any adjudicatory function. Prior to its amendment by Act 40 of 1964, the Clause (3) read simply ‘Every judge’. Clause (3) was amended to read, as it at present stands, pursuant to the recommendations of the Santhanarn Committee. In Pam 7.6 of the Report, it was recommended that a further category should be added to include all persons discharging adjudicatory functions under any Union or State Law for the time being in force. With this end in view, the Committee recommended that Clause (3) should read: Every judge including any person entrusted with adjudicator), functions in the course of enforcement of any law for the time being in force.’ At the Bill stage, the clause was recast so as to give full effect to the recommendation of the committee and this equally becomes clear from the statement of objects and reasons accompanying Bill No. 67 of 1964 which when adopted became Act 40 of 1964. In pars 2(a) of the Statement of Objects and reasons it is stated that the definition of public servant in Section 21 of the Indian Penal Code is proposed to be amended so as to bring within its purview certain additional categories of persons such as persons performing adjudicatory functions under any law, liquidators, receivers, commissioners etc. ‘If we recall the earlier discussion about the history of evolution of Cl. (12)(a) and the entire range of recommendations, of the Sanatham Committee, it can be confidently said that M.L.A. was never intended to be brought within the conspectus of clauses of Section 21 so as to clothe him with the status of a public servant.

**Public Servant** – Public servant is defined in section 21 the Code. A public servant on leave does not cease to be a public servant. Where a person expects to be in office and promises to do favour on occupying the office and accepts a bribe, the section

---

applies. Where a public servant is *functus officio*, when the offer of bribe is made offence under is constituted. But a contrary view has been expressed in a number of cases, viz. *Ajudhvi Prasad*\(^{722}\), *Gopeshwar Mandal*\(^{723}\) and *Bhim Singh*\(^{724}\) etc. The latter view is supported by the Supreme Court in *Mahadev Dhanappa Gunaki v. State of Bombay*\(^{725}\). A person who *de facto* discharges the duties of a public servant is liable under this section.\(^{726}\) Where a convict warder accepts gratification from prisoner for smuggling certain papers with some person outside the jail he commits the offence under this section.\(^{727}\)

**Legal remuneration** – Anything which is given to a public servant by the Government which he serves or by any person having authority from that Government to give or what is given to him by any person, whosoever if the Government permits him to accept the gift, is legal remuneration. In a case where a judicial officer went in company with a litigant in his court to a cloth shop and accepted a present of cloth which was paid for by that litigant to gain favour with the judge in his suit, it was held that the judicial officer was guilty under this section.\(^{728}\)

**Motive or reward** – It is essential that a gratification should be obtained as a motive or reward.\(^{729}\) The motive or reward mentioned in this section is the consideration for showing favour which is not necessarily identical with the motive or intention of the giver of the illegal gratification.\(^{730}\) It is not necessary to show that some favour was done to the briber, it would be sufficient if he was led to believe that the matter would go against him if he did not give the officer a present.\(^{731}\) Where A, a civil surgeon accepts a fee of Rs. 5/- for medical examination of B and certifying that he is a suitable candidate for admission to the police training college Moradabad, A would be guilty under this section if he had led B to believe that his recommendation would go against him if he did

---

\(^{721}\) Venkatarama Naidu, A.I.R. 1929 Mad. 756.

\(^{722}\) A.I.R., 1928 All. 752.

\(^{723}\) A.I.R., 1948 Nag. 82.

\(^{724}\) A.I.R. 1955 Raj. 108.

\(^{725}\) A.I.R. 1953 S.C. 179.

\(^{726}\) Ram Kristo Das, (1871) 16 W.R. 27 (Cr.)

\(^{727}\) Saifull Rasul, A.I.R. 1924 Bom. 385.

\(^{728}\) Bhimrao, (1924) 27 Bom. L.R. 120.


\(^{730}\) A.I.R. 1918 Mad. 738.

\(^{731}\) A.I.R. 1925 Bom. 261.
not pay the fee even though B was medically perfect.

A public officer has no right to demand any bribe but when he is hauled up before a criminal court to answer charge of having taken illegal gratification, the question whether any motive for payment or acceptance of bribe at all existed is certainly a relevant and a material fact for consideration.\footnote{A.I.R. 1954 S.C 637.}

In a case a police constable granted bail to the complainant without demanding anything by way of reward or bribe or gratification before he finished the entire world of granting the bail. When everything was over he asked for some tip which was given to him. It was held that the act of the constable in demanding tip did not constitute an offence under section 161.\footnote{Deep Chand, A.I.R 1966 Punj. 302.}

**Official Act** – Simple acceptance of money is not an offence under this section; it must be as a motive or reward for an official act. If a person accepts money as a motive or reward for an act which cannot be said to be an official act he would not be guilty under this section.\footnote{A.I.R. 1952 All. 667.}

The gist of the offence under this section is the nature of the act and if the act complained of is not part of the official duty or conduct of the person then it does not become an official act and any payment made for such act will not amount to an offence,\footnote{(1956) 9 Sau. L.R. 39.} Payment of a sum to a public servant whether paid before or after doing of official act would constitute-bribe,\footnote{1970 Cri. L.J. 793.} if it is obtained as a motive or reward.

Where a person who is a public servant employed in the office where an appointment is to be made, takes money in order to get the appointment made, he would be taking money under this section whether he takes for himself or any other person in his behalf in order to get the work done.\footnote{Jagat Singh, (1963) 66 Bom. L.R. 244 (S.C.).} In Mahesh Prasad,\footnote{1955 S.C.J. 153.} the Supreme Court has held that a public servant who receives illegal gratification as a motive for doing or procuring an official act would be guilty under section 161, whether or not he is capable of doing it, or whether or not he intends to do it. But police officer, who lays a trap and receives a gratification, not with the intention of taking it as a bribe but in order to bring

\footnotetext[732]{A.I.R. 1954 S.C 637.}
\footnotetext[733]{Deep Chand, A.I.R 1966 Punj. 302.}
\footnotetext[734]{A.I.R. 1952 All. 667.}
\footnotetext[735]{(1956) 9 Sau. L.R. 39.}
\footnotetext[736]{1970 Cri. L.J. 793.}
\footnotetext[737]{Jagat Singh, (1963) 66 Bom. L.R. 244 (S.C.).}
\footnotetext[738]{1955 S.C.J. 153.}
to book the person who had offered him the gratification, cannot be said to be an accomplice and is not guilty under this section.\textsuperscript{739}

In \textit{Manshankar},\textsuperscript{740} the accused who was a lecturer in a Government College, was appointed as an examiner in one of the examinations. He received a bribe for giving more marks to one of the examinees. It was held that the accused could not be convicted under this section because as examiner he was not a public servant and the bribe was not obtained by him in connection with any official functions as a public servant.

\textbf{Gratification} – Gratification need not he confined to payment of money. It is receiving of anything other than legal remuneration.\textsuperscript{741} it is something which gives satisfaction to the recipient.\textsuperscript{742} A public servant accepting a donation, to a charity in which he is interested, as a motive for showing favour to donor in his official acts, is guilty under this section,\textsuperscript{743} Even customary payment in the nature of \textit{dasturi} comes within the mischief of section 161.\textsuperscript{744}

In \textit{Madhukar Matti Bholekar v. State of Maharashtra},\textsuperscript{745} the accused a Gram Sevak demanded some illegal money for transferring the house in the name of the complainant and to allot a number to the house. Rs. 14/- was payable as taxes due to the Government. Accused allegedly demanded Rs. 80/-inclusive of Rs. 14/- as tax. A trap was laid and marked notes to the denomination of Rs. 50/-, Rs. 20/- and Rs. 10/- were handed over to the accused. Smaller notes were enclosed inside bigger ones. The accused being unaware of such enclosure accepting the notes under the impression that it was only 50 rupees but having no remaining change kept it on the table. The accused was caught by police and charged under section 161 I.P.C. read with section 5(1)(d) of the Prevention of Corruption Act. It was held that on these facts no case of illegal gratification under section 161 I.P. Code was proved because in a situation of this type where two parallel conflicting versions are possible, the explanation of the accused that he was unaware of the fact that two smaller notes were inside 50 rupees note and that he searched his pocket to return the balance amount after deducting Rs. 14/- but finding no 

\textsuperscript{739} Mahadeo Dhanappa, A.I.R. 1952 Bom. 435.
\textsuperscript{740} 1970 Cri. L.J. 679.
\textsuperscript{742} A.I.R. 1959 Bom. 543
\textsuperscript{743} A.I.R. 1923 Bom. 44.
\textsuperscript{744} A.I.R. 1947 Nag 109.
\textsuperscript{745} 1992 Cri L.J. 2366 (Bom).
change he kept the money on the table asking the complainant to arrange for change would have to be accepted.

**Attempt** – To ask for a bribe is an attempt to obtain one; and a bribe may be asked for as effectually in implicit terms.\(^{746}\) In a case where an application was made for renewal of licence of gun and the clerk concerned demanded from the applicants to invest Rs. 100 in war loan in consideration of his putting up, application before the Sub-Divisional Magistrate it was held that the demand and amounted to an attempt to commit an offence under this section.\(^{747}\)

**Abetment** – A mere offer of illegal gratification amounts to an abetment of offence under section on 161; actual money or other consideration need not be produced at the time the offer is made.\(^{748}\) In a case where the accused offered to pay illegal gratification to Food Inspector for giving certificates in respect of ration cards, though the offence under section 161 was not committed but the accused would be liable for having abetted the Food Inspector to commit an offence under this section. Here the question whether ration cards were true or false had nothing to do with the case.\(^{749}\) A person who in order to avoid pecuniary injury or personal molestation complies with the demand of a public servant for an illegal gratification is guilty of abetment of an offence under this section.\(^{750}\)

**Relevancy of oral evidence** – In appreciating oral evidence under this section the question in each case is whether the witness is a truthful witness and whether there is anything to doubt his veracity in any particular matter about which he deposes. Where the witness is found to be partly truthful or to spring from tainted sources, the court may take the precaution of seeking some corroboration, adequate and reasonable to meet the demands of the situation but a Court is not entitled to reject the evidence of a witness merely because they are government servants, who in the course of their duties or even otherwise might have come into contact with investigating agencies. For that matter it would be wrong to reject the evidence of police officers either on the mere ground that they are interested in the success of the prosecution. It is extremely unfair to a witness to

---

\(^{746}\) (1878) 2 All. 253.
\(^{747}\) A.I.R. 1945 Pat. 258
\(^{748}\) A.I.R. 1925 Pat. 48.
\(^{750}\) Pandita (1950) Nag. 299.
reject his evidence by merely giving him a label.\textsuperscript{751}

This section deals with the offence of a private person taking a bribe to influence a public servant by corrupt and illegal means. Under this section the recipient of consideration is not a public servant though the motive is the doing of something or showing of a favour by public servant.\textsuperscript{752}

\textbf{COMMENT}

\textbf{S. 163} - Under this section a public servant is sought to be deflected by personal influence. This section deals with taking gratification by a private individual for the exercise of personal influence over a public servant. The words “personal influence” is not defined in the Code. It means an influence to dominate the will of a public servant. The difference between sections 162 and 163 is that in the former case a public servant is sought to be influenced by corrupt or illegal means and under the latter section he is sought to be deflected by personal influence.

In \textit{Mahenarti Chotelal ithargali v. Slate of Maharashtra},\textsuperscript{753} the appellant was convicted for receiving illegal gratification to induce public servant under section 163 by the High Court. In this case the police raided one guest house and found immoral trafficking going on there. The Inspector and Sub-Inspector struck a deal with the proprietor of the Guest House for dropping the prosecution and instructed him to pay the illegal gratification through the appellant. The proprietor reported the matter to Anti-Corruption officials who laid a trap and the appellant was trapped. The trial court held the appellant and the police-officer liable under sections 163 and 161, I.P. Code. But the High Court convicted the appellant under section 163, I.P. Code and acquitted the Inspector and Sub-inspector as proprietor could not prove as to instructions against them.

The Supreme Court allowed the appeal and acquitted the appellant on the ground that the deal was struck between the police official and proprietor and not between the appellant and proprietor. He was just a middle man who did not offer to induct a public servant but the public servant wanted to receive the amount through him. So the Supreme Court found the judgment of High Court unreasonable on this count. \ldots

\begin{footnotesize}
\textsuperscript{752} R. Chinnasawami Iyenger, 11 Cri. L.J. 696.
\textsuperscript{753} A.I.R. 1998 S.C. 601.
\end{footnotesize}
S. 164 - Punishment for abetment by public servant of offences defined in section 162 or 163 – Whoever being a public servant in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration, which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

S.165 - Public servants are prohibited from accepting presents under this section. If they are allowed to take presents they may be induced to take bribes in the shape of presents. Under this section taking presents with any motive or as reward is not relevant. This section prohibits taking valuable things without consideration from a person having any connection with the official functions of the public servant.

S. 165 A - This section was inserted in 1952. It deals with the offence of abetment of offences under sections 161 and 165 of the Code. This section provides enhanced penalty for the offence of abetment in these two cases. For a conviction under this section the requirement of section 107 must be satisfied although it is not necessary that the offence abetted should have been committed.

The essence of the offence under this section is wilful disobedience of an express direction of law by a public servant with an intention to cause injury to any person. This section contemplates breach of some statutory duty with a view to cause injury to any person. A mere breach of departmental rules or regulations not having the force of law cannot fall under this section.

---

757 Appaji Naram, (1895) Buc. 764.
S. 166-A of the Code deals with duties of a public servant conducting an investigation. There are three clauses in section 166-A. Clause (a) provides that a public servant who knowingly disobeys any direction of law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or other matter shall be punished.

Clause (b) provides that when a public servant knowingly disobeys to the prejudice of any person any other direction of the law regulating the manner in which he shall conduct such investigation shall also be punishable.

Similarly clause (c) provides that a public servant who fails to record any information given to him under sub-section (1) of section 154 of the Criminal Procedure Code in relation to cognizable offence is punishable under sections 326-A, 326-B, sections 354, 354-B, sections 370, 370-A, 376, 376-A, 376-B, 376-C, 376-D, 376-E or section 509, shall also be liable to be punished.

Any person found guilty under any of the clause (a), (b) or (c) of section 166-A shall be punished with rigorous imprisonment for a term which shall not be less than six months and which may in suitable cases extend upto two years and shall also be liable to fine.

S. 166 B - The newly added section 166-B of the Indian Penal Code deals with punishment for non-treatment of a victim. It punishes any person in charge of a hospital whether the hospital is public or private and whether it is run by Central or State Government. Even hospitals run by local bodies or any person is covered by this section. Any person of the above category is punishable under this section. The punishment may extend to one year imprisonment or with fine or with both fine and imprisonment.

S. 167 - This section deals with an incorrect framing or translating of a document or electronic record the preparation or translation of which is within the scope of his official duty provided he was aware of it and it was done with the intention or knowledge that it was likely to cause injury to any person.

S. 168 - This section makes punishable those public servants who are legally bound not to engage in trade. If public servants are allowed to engage in trade they would not be able to devote their undivided attention to their official work. Moreover they may take unfair advantage over other traders of their official position for the advancement of
their trade. Trade in its wider sense covers every kind of trade, business, profession, occupation, calling or industry. The work of preparing plans and estimates is a trade.\textsuperscript{758}

In \textit{Kanwarjit Singh Kakkar. v. State of Punjab}, the appellants Rajinder Singh Chawala and Kanwarjit Singh Kakkar are working as Government doctors in State of Punjab. It was alleged by one Raman Kumar that both these Government doctors were doing private practice in the evening and charge Rs. 100/- in cash per patient as prescription fee. While Dr. Rajinder Singh checked the blood pressure of patients Dr. Chawla issued prescription slips and medicines to the patients after checking them properly and charged Rs. 100/- from each patient. The complainant has taken medicines for his ailment and the doctor charged Rs. 100/- as professional fee from him. It was also alleged that Government doctors are not allowed to charge fee and it was contrary to government instruction. It was also alleged that these two doctors could be nabbed doing private practice as they were trapped receiving Rs. 100/- as consultation charges from the complainant. On the basis of this P.I.R. a case, was registered under the Prevention of Corruption Act and section 168 I.P. Code, which makes public servant unlawfully engaging in trade an offence.

It was held that indulgence in private practice by Government doctor cannot be held to be trade merely because it is in contravention of service rules. Doctor's duty to treat patient is in discharge of professional duty which cannot be held to be a trade so as to make out or constitute an offence under section 168 Indian Penal Code.

This section is an extension of the preceding section. It prohibits a public servant from purchasing or bidding for property which he is legally bound not to purchase.

Ingredients.—Section-170 consists of two ingredients

(1) A person (a) pretending to hold a particular office as a public servant knowing that he does not hold such office, or (b) falsely personating any other person holding such office.

(2) Such person in such assumed character must do or attempt to do an act under colour of such office.

\textbf{Pretends to hold office} – Mere personation to hold office is not an offence, but the doing or attempting to do some act under colour of the office which he pretends to

\textsuperscript{758} Mahesh Kumar Dhirajlal Thuchar, 1974 Guj. L.R. 2.
hold is an offence. The essence of the offence lies in the false assumption of the role of the public servant.\textsuperscript{759} It is necessary that the accused knew that he did not hold the office which he pretended to hold.\textsuperscript{760}

**Any act** – The offender must be shown to have attempted to do or to have done some act in his assumed character ‘under colour’ of his office. The question whether the offender made or not any gain out of his activities while he poses as a public servant is an immaterial consideration.\textsuperscript{761}

**Under colour of office** – The act done under the colour of an office is an act having some relation to the office which the accused pretends to hold. Where a person falsely personated as a Head constable and under colour of such pretended office collected from villagers a small sum of money, he was guilty under this section.\textsuperscript{762}

S. 171 - Under this section merely wearing of a garb or carrying any token resembling any garb or token used by that class of public servants with the intention to pose as such public servant is punishable. If it is garb the accused must wear it and not merely carry it and if it is token he must exhibit it and not merely keep it in his pocket, it is not necessary that some act must be done or attempted to be done in the assumed garb.

There are other section in I.P.C. i.e. 213-215, 217-223, 225A and 228, 409 which deals with offences by and against public servants. In addition of it the Criminal Law Amendment Act 2013 has enhanced. The Punishments of Public Servants, moreover has also interested new sections viz : 166A and 166B, 370(7), 376(7) in I.P.C. Also section 197 of Cr. P.C. has been amended.

**PREVENTION OF CORRUPTION ACT**

The Prevention of Corruption Act, 1988 is like the Gita or Bible to everyone, who is a public servant or one who deals with public servants. The objective for which the ACT was promulgated is to prevent bribery and corruption among public servants and create purity and cleanliness in the society.

The objects clause describes the act as “an Act to consolidate and amend the law relating to the prevention of corruption and for matters connected therein”. The ACT

\textsuperscript{759} Satyapal Thapar, A.I.R. 1951 All. 482.
\textsuperscript{760} P.R. Goyal Pillai, (1974) M.L.J. (Cr.) 308.
\textsuperscript{761} Satyapal Thapar, A.I.R. 1951 All. 482.
\textsuperscript{762} Lakshminarayan Tripathy, A.I.R. 1943 Pat. 378.
amends the Prevention of Corruption Act, 1947 and also consolidates the legislation dealing with offences under the category bribery and corruption in public services scattered in different enactment. The provisions of other enactment relating to prevention of corruption in public services contained in the Indian Penal Code and The Criminal Law Amendment Act, 1952, are now redundant and have been repealed by this ACT.

Some of the major changes brought about by the Prevention of Corruption Act, 1988, are as under:-

1. The definition of "public servant" has been enlarged;
2. A new concept of public duty has been introduced for the first time [Section 2 (c)(viii);
3. Minimum sentence of six months has been prescribed for the offences committed under the Act. The Courts have been denied any discretion, either for special or adequate reasons, to reduce the sentence from six months;
4. The State Government or as the case may be, the Central Government has now the power to make an application to the District Judge for the attachment of the money or property which is believed to have been acquired by the public servant by corrupt means;
5. The concept of ‘known sources of income’ has undergone a radical change. This now means not only the income received from any lawful sources but also includes such receipt that has been intimated in accordance with the provisions of any law, rules or orders for the time-being applicable to the public servant.

Section 2 (c) of the Prevention of Corruption Act, 1988, defines the public servant as under:-

i) Any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

ii) Any person in the service or pay of a local authority;

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

iv) Any judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicator functions;

v) Any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver of commissioner appointed by such court;

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

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

viii) Any person who holds an office by virtue of which he is authorised or required to perform any public duty;

ix) Any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

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

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

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

**Explanation 1** - Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

**Explanation 2** - wherever the words Public Servant occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Section 13 to 15 of the ACT introduces or defines new offences, not earlier provided under the Indian Penal Code, that is, the offence of criminal misconduct on the part of public servants. Section 13 provides that a public servant shall be guilty of misconduct, if it was proved that he or any person on his behalf was in possession of 'disproportionate assets' i.e. property or valuables, disproportionate to his known income for which the accused could not satisfactorily account. Section 14 provides deterrent punishment for habitual committers of specific offences under (Sec.8, 9 and 12) of the ACT. An attempt to commit offences under specified subsections of Section 13 of the ACT is deemed a crime under Sec.15 and liable for punishment

The public servant can no longer sit tight and wait for the prosecution to conclusively prove his guilt beyond doubt and hold the dictum that until the contrary is proved everyone in the face of law is deemed innocent. The prosecution still has the responsibility, but the procedure is rendered more perfect and transparent. When certain circumstances against the public servant are pointed out, it equally becomes his responsibility to explain his conduct satisfactorily and prove his innocence or else he may be presumed to be guilty. In short if the prosecution proves the specific actions of the public servant implying presumptions of misconduct under the ACT, it is the duty of the public servants to explain those of his actions satisfactorily. In criminal law the motive of the crime is to be established, as it is assumed that crime is committed by the mind.
principally and meekly executed by the hands or other limbs of the body. This benefit is not available to a public servant accused under the Prevention of Corruption Act, 1988.

Lest the quick and summary provisions of the ACT results in misplaced action and innocent officers or public servants are unduly victimized, the ACT also provides in-built safeguards intended for honest public servants. As a gun can fire in all directions, every tool created to fight or prevent the wrong can be put to abuse or misuse. In the enthusiasm for cleaning or removing misconduct, enforcement action should not result, and it should not be possible that in the intention of its removal, dirt is actually thrown on an object that is clean already. While it is necessary and in public interest that corruption in public services should be eradicated, it is equally in public interest that honest public servants should be able to discharge their duties without fear of false, frivolous and malicious accusations. The provision to safeguard and prevent unintended abuse or harmful action under the act is provided in Chapter V of the ACT titled 'Sanction for Prosecution & Other Miscellaneous Provisions '. These are powerful and effective tools, but these should be used only by the most responsible persons at senior levels, N.; and that too only after consultation and obtaining the prior sanction of an equally competent public authority. These are the essence of the safeguards provided in the Chapter V of the ACT to ward off hasty or unwarranted use of the enforcement provisions of the ACT

Anti-corruption philosophy and laws in India target public servants as they perform public duty. Any dereliction or defect in the performance of such duty will affect the country and the people at large. This cannot be permitted or tolerated.

Public duty has been defined as a duty in the discharge of which the State and the public at large have an interest.

The term ‘public servant’ was first defined in Section-21 of the Indian Penal Code, 1860. This has been elaborated in the Prevention of Corruption Act, 1988 (P.C. Act) in Section-2(c).

Role of Lokayukta in combating Corruption and Mal-administration and measures for strengthening these Institutions.

Nowadays, corruption is internationally recognized as a major problem in society, one capable of endangering the stability and security of societies, threatening social,
economic and political development and undermining the values of democracy and morality. International cooperation is indispensable to combat corruption and promote accountability, transparency and the rule of law.

In its widest connotation, corruption includes improper or selfish exercise of power and influence attached to a public office due to the special position one occupies in public life. The developing countries like India face this problem. Throughout the fabric of public life in the developing countries runs the scarlet thread of bribery and corruption.

Corruption hurts the public directly and tragically, particularly as it penalizes the honest and rewards the dishonest among them.

Corruption and mal-administration impose a great strain on democracy and we all know that corruption is the end product of a process of administration and is preceded by mal-administration.

To live in a society which pursues good governance practices is today a basic human right. The quality of an individual citizen's life is materially affected by both the decisions taken by government and the manner in which those decisions are implemented.

Besides being a most objectionable corrupt practice, this custom of 'speed money' has become one of the most serious cause of delay and inefficiency and no work culture. Deliberate delay in the movement of papers by petty officers in Government offices in the hope of collecting 'speed money' is one way of frustrating honest citizens.

Frequently enough the dishonest contractors and suppliers who, having obtained the contract by undercutting, want to deliver inferior goods or get the approval for sub-standard work, and for this purpose are prepared to spend a portion of their ill-earned profits. Tax evasion, malpractices in the share market and in the administration of companies, monopolistic controls, under invoicing or over-invoicing, hoarding, profiteering, sub-standard performance of contracts of constructions and supplies, evasion of economic laws, bribe, election offences, malpractices, are some examples of white collar crime. Behind this sordid picture of conditions is a fine network of details about the techniques adopted in the process of corruption. while small people might give bribes to get small favours there are large contractors and other anti-social sharks who consciously follow corrupt practices to further their greedy designs.
Thus the honest taxpayers pay their legitimate dues, pay the extra taxes to make up for the tax-evader, and also pay interest on tax-evader's investment in loans. It amounts to penalizing honesty and rewarding dishonesty.

There is yet another temptation to which some officials succumb, namely, to use their public office as a means of making money in an allied private business in which they are engaged. Doctrinaire attempts to regulate public morals is yet another root of corruption. Prohibition is one source which provides the police with immense opportunity for corruption. The more the laws the greater the opportunities for making easy money.

A second set of social cause of corruption can broadly be described as lack of personal virtue or a sense of morality. Corruption is a consequence of the way of life of our acquisitive society, where people are judged by what they have rather than what they are. The possession of material goods seems to have become the sine qua non of life. There inevitably results a scramble for acquisition of glittering prizes, irrespective of the means adopted. The lack of vigilance by the people has also contributed to the growth of corruption.

The best means to combat corruption, even in terms of the cost for society, is prevention. Effective prevention can thus reduce the extent and the costs of penal action.

The unlimited, unbridled and unchannelized powers exercised by political leaders in democative setup as Heads of the department is also responsible to a very great extent for mal-administration and corruption. The said powers should be curtailed and political intervention be reduced in public administration.

The so called red tapeism in bureaucracy requires proper tapering. The rules and procedure of administration should be simplified and made transparent. The administrative processes in all matters in which citizens are directly involved should be simplified and classified.

The most important element in combating corruption is effective and speedy punishment. The judicial system has failed and we will have to think alternative method by which the effective punishment could be achieved. It has been realized that the departments are slow in efficiency or with the desire to protect corrupt officials in going slow in departmental action.

Re-organization of vigilance departments is required. This department is mainly
intended to investigate and punish corruption and the misuse of authority by individual members of the services under the Government. However, there is no organic relation between the Administration vigilance Division and the Vigilance Officers of various departments.

The press has played a significant role in uncovering the cause of corruption and in mobilizing public opinion against such practices. Elsewhere too, it has done a great deal to publicize cases of proved corruption or allegation of corruption. But it has not played its legitimate role of probing administration.

Providing channels for ventilation of grievances is bound to have a very sobering effect on an erratic administration. It lies with the public, which should be prepared to put up a stiff fight against it. For every corrupt official, there are hundreds of members of the public wanting to make use of him and to feed him. A society that does not attach any stigma to the corrupt man can hardly be rid of such ignoble men.

Effectiveness of Lokayukta is related to his primary objective: to ensure that the constitutional state is maintained, that public authorities respect citizens' rights and laws and that administrative problems are corrected (eliminate formalities, reduce delays, revise discretionary decision-making processes. Consequently, this mission is divided in to two parts: monitoring and correcting, if necessary, public authorities' behaviour. This is why the Lokayuktas effectiveness, or his success in getting his recommendations implemented by public authorities, relies on his ability to make public authorities accept and understand his recommendations. His purpose is to resolve conflicts, which he must make public authorities aware of.

SUGGESTIONS

After doing research work on the topic in hand deeply, some suggestions are formulated which definitely can be helpful in controlling the offences by and against public servants. These suggestion are twofold i.e. firstly, there are few suggestions for taking action against public servants where they have committed offences. Secondly there are few suggestions which are called general suggestions in protection and welfare of public servants –

Personal Responsibility of Public Servant

The apex court of India has made serious attempt to declare personal
responsibility of Public servant. The best example of it is the high profile case of Common Cause Registered Society vs Union Of India & Others on 25 September, 1996. There in an innovative and refreshing action was taken by Supreme Court Bench and held that in two matters concerning two former Union Ministers, Mr. Satish Sharma and Ms. Sheila Kaul are personally liable for misfeasance of duty. The hon’ble court observed that "A Minister who is the executive head of the department concerned distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people's property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people. We have no hesitation in holding that Capt. Satish Sharma in his capacity as a Minister for Petroleum and Natural Gas deliberately acted in a wholly arbitrary and unjust manner. We have no doubt in our mind that Capt. Satish Sharma knew that the allottees were relations of his personal staff, sons of Ministers, sons/relations of Chairmen and members of the Oil Selection Boards and the members of the Oil Selection Boards themselves. The allotments made by him were wholly mala fide and as such cannot be sustained."

The Court observed that "It is high time that the public servants were held personally responsible for their mala fide acts in the discharge of their functions." It was a case where, after elaborate verification, the court found that an allotment of petrol pumps in favour of 15 persons by Mr. Sharma was vitiated by a lack of transparency, nepotism and arbitrariness. The court found the allotments wholly mala fide, arbitrary and motivated by extraneous considerations.

The court further observed that "We are of the view that the legal position that exemplary damage can be awarded in a case where the action of a public servant is oppressive, arbitrary or unconstitutional is unexceptionable. The question for consideration, however, is whether the action of Capt. Satish Sharma makes him liable to pay exemplary damages. In view of the findings of this Court, the answer has to be in the affirmative. Satish Sharma's actions were wholly arbitrary, mala-fide and unconstitutional. This Court has given clear findings to this effect in the Common Cause case. We, therefore, hold that Capt. Satish Sharma is liable to pay exemplary

\[763\text{ Common Cause Registered Society vs Union Of India & Others, S.C dated 25 September, 1996}\]
\[764\text{ Ibid}\]
The court conclude that a public servant could be made liable for paying exemplary damages for his acts of misfeasance in public office, the Bench relied upon certain decisions of the Supreme Court as well as the House of Lords. The decisions in Ramana Dayaram Shetty vs. Lucknow Development Authority were relied upon to hold that in the matter of grant of largesse, the Government and its officials should act in a fair, just and transparent manner and that if they act maliciously and deliberately causing injury to the citizens of the state, they could be held liable for damages. The decision of the Privy Council in Rookes vs. Barnard was relied upon to hold that exemplary damages could be awarded for "oppressive, arbitrary and unconstitutional action by the servants of the Government".

The Bench directed Mr. Sharma to pay Rs. 50 lakhs by way of exemplary damages to the Government exchequer. Similarly, in the case relating to Ms. Kaul, the court directed her to pay Rs. 60 lakhs on finding that she had grossly abused the powers and discretion vested in her and that her acts amounted to misfeasance of public property by a public servant.

With a view to putting an end to all kinds of legal controversies and technicalities and placing the matter on a firm, clear and unambiguous footing, it is necessary to enact a law providing that where a public servant causes loss to the state by his mala fide act or omission, he should be made liable to make up for it. It is immaterial whether it is called damages or compensation or surcharge - the idea being restoring to the state the loss suffered by it because of the mala fide act of its official. Such a provision must be extended to all `public servants', as defined in the Indian Penal Code and the Prevention of Corruption Act, which expression has been interpreted to include members of Parliament/legislators and ministers. Such a law would have the merit of obviating several questions - whether the Government can be asked to pay damages to itself, whether the power to grant or allot some benefit can be called `property', whether such action of the public servant constitutes a tortious action, whether damages/exemplary

---

765 ibid
766 Ramana Dayaram Shetty vs. The International Airport, 1979 AIR 1628, 1979 SCR (3)1014
767 Rookes v Barnard [1964] UKHL 1
768 Common Cause Registered Society vs Union Of India & Others , S.C dated 25 September, 1996
damages can be awarded for such acts and if so on what basis and to what extent, whether a public office is a trust and questions of locus standi. It would also contribute to avoidance of multiplicity of proceedings and be more effective than a mere criminal prosecution under the IPC or the PC Act\textsuperscript{769}. The law must, however, provide that proceedings there under be taken on the basis of information received including an audit report or a report of any commission, committee or body competent to examine the facts. The authority empowered to launch the proceedings must be an independent high level officer/agency whose tenure, conditions of service and independence should be firmly and fully guaranteed as has been done in the case of the Central Vigilance Commissioner. Different authorities may be prescribed for different classes of public servants.

Such a course has become absolutely essential and urgent. The public servants must be put on notice that they will make good the loss caused by them to the state by their mala fide acts, that they should no longer be under the cosy impression that their mala fide order/action would at best be set aside by the court and that nothing would happen to them personally. They should be made aware that a mala fide act or action carries the liability for damages/compensation\textsuperscript{770}.

Creating a personal liability of this kind would contribute greatly to good governance and emphasise the need for a transparent, fair and honest exercise of power. It would in no way dampen the initiative of the ministers or officials, nor would it inhibit them in any manner from effectively discharging their functions. A responsible Government and the concept of accountability are not antithetical to good governance; on the contrary, they promote it - they contribute to public good. Mere errors of judgment would certainly not expose the public servants to such a consequence but where their actions are mala fide, i.e. where the action or order has been taken/made knowing that it is contrary to law and prejudicial to the interest of the state or where the action/order is taken/made with corrupt or other oblique motives, they should be held responsible. If such acts result in loss to the state, they must be made liable to make good the same\textsuperscript{771}.

Paving the way for making public servants accountable if they fail to perform their duties, court has stated that people can seek damages on account of their "inaction".

\textsuperscript{769} \url{www.thehindu.com/2001/02/05/stories/05052524.htm}  
\textsuperscript{770} ibid  
\textsuperscript{771} ibid
Currently, no law exists under which government employees can be prosecuted or held liable for inaction. The move of seeking such damages, a first in the country except in defamation cases, if put to use effectively is likely to make public servants more responsible. On 23 Jan 2016 while pronouncing judgment Additional District Judge Kamini Lau observed: "Failure to act is an actionable wrong as much as any malafide action by such public servant for which the aggrieved person can seek damages for all the physical, mental, emotional, psychological, social and financial loss and sufferings caused to him. For this, a public servant would be liable in his personal capacity."

The judge noted that the general impression about personnel manning public institutions not performing and getting away with it needs to change. "It is this malaise which ails public institutions. Today that needs to be taken care of. It is time that public servants, particularly officers of the government, police, corporations, municipal bodies, etc, are made to answer for the inconvenience, trauma and loss caused to the public due to their failure to act on time and to make them liable for such inaction.

The court was hearing a civil suit filed by head constable Satish Chand against four other cops, including an inspector and an additional sub-inspector, who allegedly did not register an FIR on his complaint and instead booked him in a false case under Section 107/151 CrPC for breach of peace. Chand sued the four cops and sought a compensation of Rs 1 lakh on grounds of defamation and loss of reputation. His plea, however, was dismissed by a trial court so he appealed before the district court.

On June 2, 2004, the four cops refused to take action on Chand's complaint saying that his minor son was beaten up by some boys. In his plea, he said that instead of inquiring into the matter the cops started beating him and booked him in a false case in which he was later discharged.

---

772 Anil Kumar Vs. M/S. I Sky B & Ors, CS No. 323/13
773 ibid
774 The Times of India on Dated Aug 27, 2015.
Making Defensible Decision

Making defensible decision sometime is necessary while it cannot be used as shield. Like in South Africa once Gandhiji had taken shelter in a police station to get protection from angry mobs, who were strongly opposed to his struggle for indentured labors. During this, the officer-in charge of the station lied to the mob that Gandhiji had left the station long ago. This persuaded the crowd to disperse and Gandhiji was saved from possible injury or death.

Moreover, In the aftermath of Bombay blast in 1993, the then CM had deliberately included the name of a Muslim populated area among the list of blast affected site to convince people that it was not an attack on Hindus alone. This prevented a violent communal retaliation from the affected community.

Sometimes a civil servant has to resort to lies for maintaining law and order, to give hope to people or to prevent people from panicking during a difficult situation. If one lie benefits the public at large then it should not be considered as a compromise on ethics. Honesty forms one of the most significant civil service values. It is the ability of civil servant to be truthful to his inner-self and public both. But, the word truth has to be taken in broader sense. The ultimate truth as per Gandhi is establishment of progressive and socially integrated society and the civil servant can refrain from speaking truth or lie in order to uphold supremacy of public interest. Chanakya too has reiterated the same by introducing Kutil NITI where deviant means like lie is acceptable till the time it harmonize the society.

To illustrate, if some terrorist attack has happened and state's machinery has come to a stand still. In such situation if civil servant in order to avoid chaos and restore law & order in public, issues an authoritative statement of everything being in control then it may not be unethical fully. However, Public Servant should use such means as a matter of exception and not rule.

A civil servant is expected to be morally upright and possess highest standard of ethical conduct. He is expected to be a role model in the society and lead by examples. His actions must be defensible before legislature, judiciary, constitutional values and larger citizenry. In this context lying is obviously not a desirable trait to be there in a civil servant.
Therefore it is not ethical for a civil servant to lie even in case of public interest. But in cases where it can be proved without doubt that significant public interest is in stake and situations are not permitting to present the truth, civil servant can lie only if in future he can beyond doubt defend his actions with facts and reasons.

**Acting in Public interest**

If we look at Section 19 of the P.C. Act which bars a Court from taking cognizance of cases of corruption against a public servant under Sections 7, 10, 11, 13 and 15 of the Act, unless the Central or the State Government, as the case may be, has accorded sanction, virtually imposes fetters on private citizens and also on prosecutors from approaching Court against corrupt public servants. These protections are not available to other citizens. Public servants are treated as a special class of persons enjoying the said protection so that they can perform their duties without fear and favour and without threats of malicious prosecution. However, the said protection against malicious prosecution which was extended in public interest cannot become a shield to protect corrupt officials. These provisions being exceptions to the equality provision of Article 14 are analogous to provisions of protective discrimination and these protections must be construed very narrowly. These procedural provisions relating to sanction must be construed in such a manner as to advance the causes of honesty and justice and good governance as opposed to escalation of corruption\(^7\).

**Public Servant Should be Political Neutral**

Neutrality in Indian Civil Services means the civil servants should execute duties in accordance to laws and regulations without prejudice against or preferential treatment towards any groups or individuals. He should not confuse between ‘political neutrality’

\(^7\) Dr. Subramanian Swamy vs. Dr. Manmohan Singh and another CIVIL APPEAL NO. 1193 OF 2012 Para 18.
with ‘programme neutrality’. At the stage of policy formulation, the role of public servants is to render free and frank advice which should not be coloured by any political considerations. Once a policy or programme has been approved by the elected government, it is the duty of the Public servant to faithfully and enthusiastically work for its implementation. Not carrying out this task in the right spirit would amount to misconduct inviting appropriate sanctions. A corollary of permanence is political neutrality of civil servants i.e., (i) their advice is expected to be non-partisan; (ii) they do not undertake work which is of benefit to one party; (iii) senior civil servants are restricted from taking part in party politics even outside of their professional roles.

Political neutrality in parliamentary system of government is:

(i) Politics and policy are separated from administration. Thus, politicians make policy decisions; public servants execute these decisions.

(ii) Public servants are appointed and promoted on the basis of merit, rather than on the basis of party affiliation or contributions.

(iii) Public servants do not engage in partisan political activities.

(iv) Public servants do not publicly express their personal views on government policies or administration.

(v) Public servants provide forthright and objective advice to their political masters in private and in confidence. In return, political executives protect the anonymity of public servants by publicly accepting responsibility for departmental decisions.

(vi) Public servants execute policy decisions loyally and zealously, irrespective of the philosophy and programs of the party in power and regardless of their personal opinions. As a result, public servants enjoy security of tenure during good behaviour and satisfactory performance.

Sardar Patel had made the following observations in the Constituent Assembly to support the continuance of the pre-independence civil service structure: “It needs hardly to be emphasized that an efficient, discipline and contended civil service assured of its prospects as a result of diligent and honest work, is a sine-qua non of sound administration under democratic regime even more than under an authoritarian rule. The service must be above party and we should ensure that political considerations, either in
its recruitment or in its discipline and control, are reduced to the minimum if not eliminated altogether.”

Unfortunately, this vision of civil service neutrality no longer holds good. Changes in governments particularly at the state level often lead to wholesale transfer of civil servants. Political neutrality is no longer the accepted norm with many civil servants getting identified, rightly or wrongly, with a particular political dispensation. There is a perception that officers have to cultivate and seek patronage from politicians for obtaining suitable positions even in the Union Government. As a result, the civil services in public perception are often seen as increasingly politicized.

The Commission is of the view that the political neutrality and impartiality of the civil services needs to be preserved. The onus for this lies equally on the political executive and civil servants. The Commission in its Report on “Ethics in Governance” while examining the ethical framework for Ministers has recommended that a code of ethics for Ministers should inter-alia include the following: “Ministers must uphold the political impartiality of the civil service and not ask the civil servants to act in any way which would conflict with the duties and responsibilities of the civil servants.” Sardar Patel once said on Role of Civil Servant: “Today, my Secretary can write a note opposed to my views. I have given that freedom to all my Secretaries. I have told them, `If you do not give your honest opinion for fear that it will displease your Minister, please then you had better go. I will bring another Secretary!’ I will never be displeased over a frank expression of opinion.”

In the wake of transfers of bureaucrats and dismissal of governors because of their perceived political leanings, Narendra Modi government amended the service conduct rules for bureaucrats, mandating them to be politically neutral, besides maintaining high ethical standards and discharging their duties with impartiality.

The Government of India amended the All India Services (Conduct) Rules, 1968, so that officials of the Indian Administrative Service (IAS), Indian Police Service (IPS) and the Indian Forest Service (IFoS) should maintain “high ethical standards, integrity

---

776 http://iasmaker.com/contents/display/neutrality-in-indian-civil-services
777 ibid
778 http://www.livemint.com/Politics/JRtPPScyTXwKFvtMI1bDLI/Centre-amends-All-India-Services-rules-to-promote-impartiali.html
and honesty; political neutrality; promoting of the principles of merit, fairness and impartiality in the discharge of duties (and) accountability and transparency.”

The new rules “require officers of these three services to maintain confidentiality of information in relation to one’s duties as required by existing laws and rules. Particular emphasis is placed on maintaining confidentiality and refraining from disclosing information if it may prejudicially affect the interests protected under Section 8(1)(a) of the Right to Information Act, 2005,” it said, referring to a landmark law brought in by the previous United Progressive Alliance (UPA) government to curb corruption and increase transparency in governance.

The new list of “do’s and don’ts” include being “responsive” to the public “particularly to the weaker sections”, be courteous and maintain “good behaviour with the public”.

The amended service rules also call on the officials to “commit themselves to and uphold the supremacy of the Constitution and democratic values, defend and uphold the sovereignty and integrity of India, the security of state, public order, decency and morality.”

It also call on bureaucrats to “maintain integrity in public service; take decisions solely in public interest and use or cause to use public resources efficiently, effectively and economically; declare any private interests relating to his public duties and take steps to resolve any conflicts in a way that protects the public interest.”

The amended service rules also mandate officials not to “place themselves under any financial or other obligations to any individual or organization which may influence him in the performance of his official duties; not misuse his position as civil servant and not take decisions in order to derive financial or material benefits for himself, his family or his friends.”

Officials should “make choices, take decisions and make recommendations on merit alone; act with fairness and impartiality and not discriminate against anyone, particularly the poor and the under-privileged sections of society; refrain from doing anything which is or may be contrary to any law, rules, regulations and established

779 ibid
Accountability and Transparency

Transparency and accountability in administration as the sine qua non of participatory democracy, gained recognition as the new commitments of the state towards its citizens. It is considered imperative to enlist the support and participation of citizens in management of public services. Traditionally, participation in political and economic processes and the ability to make informed choices has been restricted to a small elite in India. Consultation on important policy matters, even when they directly concern the people was rarely the practice. Information-sharing being limited, the consultative process was severely undermined. There is no denying the fact that information is the currency that every citizen requires to participate in the life and governance of society. The greater the access of the citizen to information, the greater would be the responsiveness of government to community needs. Alternatively, the greater the restrictions that are placed on 'access', the greater the feelings of 'powerlessness' and alienation.

Without information, people cannot adequately exercise their rights and responsibilities as citizens or make informed choices. Government information is a national resource. Neither the particular government, nor public officials, creates information for their own benefit.

This information is generated for the purposes related to the legitimate discharge of their duties of office, and for the service of public for whose benefit the institutions of government exist, and who ultimately (through one kind of import or another) fund the institutions of government and the salaries of officials. It follows that government and officials are 'trustees' of the information of the people. Nonetheless, there are in theory, numerous ways in which information can be accessible to members of the public in a parliamentary system. The systemic devices promote the transfer of information from government to parliament and the legislatures, and from these to the people.

Members of the public can seek information from their elected representatives.

780 ibid
Annual reporting requirements, committee reports, publication of information and administrative law requirements also increase the flow of information from government to the citizen. Recent technological advances also help to reduce further the gap between the 'information rich' and the 'information'.

However, in spite of India's status as the world's most populous democratic state, there was not until recently any obligation at village, district, state or national level to disclose information to the people, information was essentially protected by the colonial secrets Act 1923, which makes the disclosure of official information by public servants an offence. The colonial legacy of secrecy, distance and mystification of the bureaucracy coupled with a long history of one party dominance proved to be a formidable challenge to transparency and effective government let alone an effective right to information secretive government is nearly always inefficient in that the free flow of information is essential if problems are to be identified and resolved. 

**Ethical behaviour of Public Servants**

Public Servants are expected to be on Service throughout the country and their decisions have strong binding character. So, administrative and managerial capacity should not be effected by political instability and uncertainties in the Governance. Effective policy making and regulation, Effective coordination between institutions of governance, Leadership at different levels of administration are expected from him. Service delivery at the cutting edge level, continuity and balance of changes in administration is a challenge to his job. Public servants have special obligations to the community because of three reasons.

First, they are responsible for managing resources entrusted to them by the community.

Second, they provide and deliver services to the community.

Third, they take important decisions that affect all aspects of the community life.

The community has a right to expect that their Public servants functions fairly, efficiently and impartially. It is essential for the community to be able to trust and have assurance in the reliability of the Public servant’s decision-making process. The decisions and actions of Public servants should reflect the policies of the government of the day

---

and the standards that the community expects from them as government servants and they are expected to maintain the same standards of professionalism, responsiveness, and impartiality. Therefore Public Servant need to be ethically Strong and morally justified all the times while policy making or implementing.

**Duties must be defined**

It is a well settled law that where everything which is in writing, there should be no problem. But anything which is not prescribed that will create problem for the society. In India duties of public servant are not clearly defined. He has to do all such duties as are delegated to him by laws, by laws, orders and regulations. Sometime he has to go beyond the scope of his office which leads to hardship. Therefore clear duties must be defined so that nobody could misuse their position and they could work more than puppet of ruling government. If duties are marked in clear framework it would improve the performance of public servant because most of the time they waste their measure time in coordinating the activities and policies of government and foul politicians consider them their servant and guard. It is clear that they are the servant of public and should be made responsible for the public only. Public servant should be kept away from dirty game of politics. It is possible only when their duties are defined clearly.

**Answerable to judiciary**

In India list of scams are unlimited. Sometimes they are highlighted because of the involvement of ministers, public servant or because of amount involved in it otherwise our pro active media made them high profile. But end of all scams is with judiciary only. Judiciary is considered as guard of constitution because it hold, upholds and protects the spirit of constitution. There are four ministries in the union government which are regarded as gold mines for making money i.e Defence, Petroleum, Power and Communication. Four other departments where corruption is rampant are Public Works, Police, Excise and Revenue. But our Judicial System has tightened the whole scene by holding that Any suspicion of leniency from the court would compromise the public’s faith in judiciary. The S.C bench comprising of Justices T.S. Thakur, Kurian Joseph and R. Banumathi said the only objective of punishment under the Prevention of Corruption
Act is deterrence and denunciation\textsuperscript{782} and there is no scope for a public official convicted of corruption to reform, and his punishment under the country’s anti-corruption law is meant to reflect the public’s abhorrence for his crime.

The court held that there is no room for sympathy or leniency towards a public servant convicted of corruption. In fact, the 1988 statute does not even give scope for a corrupt public servant to reform, the judgment said. In 11 page verdict delivered by a three-judge bench recently reasons that once a public official is convicted under the Prevention of Corruption Act, 1988, he automatically loses his job. This situation affords him no second chance to redeem his conduct in public life\textsuperscript{783}.

The verdict, authored by Justice Joseph, said courts cannot risk not making the punishment “appropriately deterrent”. Any suspicion of leniency or sympathy from the court to a convicted public servant would compromise the public’s faith in judiciary, the Supreme Court cautioned. “The judgment on sentence shall not shock the common man. It should reflect the public abhorrence of the crime. Misplaced sympathy or unwarranted leniency will send a wrong signal to the public, giving room to suspect institutional integrity, affecting credibility of its verdict,” Justice Joseph observed.

The 1988 Act was amended last year to increase the punishment for corruption. Minimum punishment under Section 7 (public servant taking gratification other than legal remuneration) of the Act has been raised from six months to three years and maximum punishment from five years in jail to seven years. Under Section 13 (criminal misconduct by a public servant), the punishment was raised from one year to four years and the maximum to 10 years and fine. The judgment dealt with the case of a police officer who was caught red-handed taking a bribe of Rs. 25,000 in January 2001\textsuperscript{784}. Therefore it is clear that neither judiciary nor constitution will leave any sympathy with corrupted public servant and for their each act they are answerable to judiciary in particular and public in general.

Now there are General Suggestions (i.e. in protection and welfare of public servants) which are necessary to be considered. If the lacunas hereinafter mentioned are removed there will be no offence by or against public servants. These suggestions are

\textsuperscript{782} The Hindu, New Delhi, 3 May 2015.
\textsuperscript{783} ibid
\textsuperscript{784} ibid
hereunder –

1. **Suggestions for Public Servants to refrain them from offences**

   It is well accepted that adequate number of Police Personnel are ever needed to tackle the continuous problem of crime and other law violations, for it is also equally true that in a civilized society there can be no place for the persons who are prone to unsocial and criminal behaviour hence needs to be eliminated altogether. Against this background, it is interesting to note the addition to the police strength in the country during the last two years. The All India Civil Police strength (including District Armed Reserve Police) has gone up marginally by 65000 from 9.04 lakh in 1991 to 9.69 lakh in 1995. Uttar Pardesh accounts for the maximum number (1.24 lakh), followed by Maharashtra (1.21 lakh). Inclusive of the Armed Police, the total strength of police has increased by only about a lakh between 1991 to 1996. The adequacy of the police is generally assessed with reference to pre-major criteria.

2. **Sufficient Budget**

   A large Budget is needed for maintenance of police staff and other amenities etc. the annual report of the Reserve bank of India (1998-99) brings out State finances to be in a dire state. The gross fiscal deficit (G.F.D.) of the State Governments as a percentage of Gross Domestic Product has gone up steeply form the average of 2.6% during 1991-97 to 4.3% in 1998-99. The revenue deficit of the State Government has more than doubted to rupees 40,539 crore in 1998-99 from Rs. 15372 crore in 1997-98, thus showing an increase of 147.6%. The revenue deficit for 1999-2000 is estimated to increase to Rs. 43,236 crore. The combined G.F.D. of the States is budgeted at Rs. 80,223 crore with the revenue deficit contributing 53.9% of G.F.D. On the other hand, the disturbing feature is the sharp decline in the rate of growth of development expenditure. All these figures points to be need for a serious review of all public expenditure so as to concentrate only on those activities which are inescapable. In other area, the state will have to shed its responsibilities. This will mean downsizing the government a term which gives nightmares to all political parties; leave aside the associations of Government Employees.

3. **Ultra Modern Arms & Ammunitions is Needed**

   The police in India has to perform a difficult and delicate task in view of the deteriorating law and other situation, riots political turmoil, student unrest, terrorist
activities, increasing incident of bribery, corruption, tax evasion, violation of fiscal laws, Nib smuggling and money laundering and other type of serious and inhuman Trade and activities like use and dealing in Narcotic drug etc. in addition to this organized criminal gangs are gaining strong roots in the society. The Indian police today find itself handicapped not in its numerical strength but its inadequate infrastructural facilities like modern weaponry and equipment, transport and communication Network and more importantly, need based training which is of paramount importance to make it more efficient and effective instrument of law enforcement.

4. Satisfactory Working Conditions

It is the common knowledge that police has to perform its functions under adverse situations and under unhealthy working conditions. Policemen are not provided with adequate housing and other recreational facilities which are deemed to be basic amenities for living a normal life. States show a sense of apathy for the lack of adequate housing facilities for the police. Ideally, looking to the nature of their responsibilities, all police persons should be provided accommodation by the Government.

5. Political Pressures and Corruption be Eliminated

In India Public servants including Police and Other Central agencies under the control of Central government are generally believed to function under the direct interference of the respective governments. They are interfered with in their day to day functioning by the government officials and functionaries of political parties and their leader etc. sometimes such an interference goes to an alarming extent that the Investigating agency who had captured a particular criminal after a hectic exercise but due to links of such criminal with one or other top political leader or their allies they easily managed their release from the clutches of the police or other Public servants. The situation is more worsened when there becomes direct nexus between politician and criminals. The recent criminalization of politicians provides undesirable protection to professional offenders and all sorts of pulls and pressures are exerted on the police to be lenient with the offender and sometimes they are even compelled to drop the proceedings against the criminal. This has a demoralizing effect on a police force which goes to the advantage of offenders.

6. Criminalization of Police be Controlled
An independent study by social scientist Ramesh Bhan found a growing number of Senior police officers have been getting involved in serious crimes like rape, murder and custodial deaths. The study says “As the link between criminal and politicians become stronger, the relationship is able to subvert the loyalty of functionaries at various levels in the Government, including the police. A probe by the Uttar Pardesh State Government found links between several senior officers of the elite Indian Police Service (I.P.S.) and notorious criminal gangs in the state. According to Marwah, the problem worsened three decades ago when the state freed the police force from judicial control and put it under the control of politicians.”

7. Society towards Police be Cooperative

The function of the Police becomes more typical and complex when the society seems to be unwilling to help and co-operate with the police in their task of prevention, investigation and apprehending of criminals. Their job is rendered difficult because of lack of public support. People are generally not willing to testify against the offender due to risk of threat and violence and tiresome criminal procedure.

Secondly, people are most unwilling to help police in crime detection and apprehending the offender due to fear of possible harassment at the instance of police officials. The reason is that police has a very low profile in the eyes of public and there is a general distrust for them. Expressing his views on the functioning of the police in India the noted jurist (since deceased) Nani Palkiwala observed a professional and Hon’ble Police force is valuable in every society but it is invaluable in a society like ours which is marked by three characteristics of divisiveness in discipline and non cooperation.

8. Judicial trust towards Police be Created

There is general tendency on the part of the courts to look with suspicion the evidence put forth by police. Unfortunately the relationship between the police and Magistracy in India lacks mutual trust and confidence. In quite large number of cases police evidence is not considered sufficient and honesty of the police is doubted by the Judicial officers. Needless to say that there is need for these two agencies of criminal justice to work in close harmony (but not such type of harmony as to prejudice of the accused) and trust for each other. The magistracy should take notice of the fact that police

785 “Murder Assault bribery the policeman’s beat in India”, Ranjit Devraj Asia Times, Oct. 25, 2000.
generally have a better knowledge of the accused his mode of living habits, character and antecedents which enables them to reach proper conclusions relating to his guilt, which are not always susceptible of being reduced to absolute legal proof.

9. **Attitude of the Police be soft**

The police, generally, does not leave its belligerent attitude that it had adopted during the militancy period or in a period of grave disturbances over a particular region or in a particular state. Take the example of Punjab, where the police had been given a “free hand” to deal with abnormal violent conditions during the period of militancy in the state. Rather there is a need to bring a compete change in the mind set because only handful wayward officials at the junior and senior levels bring a bad name to the entire force. They could easily be identified and put under watch.

10. **Police Causalities be given Justice**

The very nature of policemen jobs generates animosity, thereby endangering their own life in discharge of their duties. All these include operations against terrorists, extremists, robbers’ dacoits or resultant accidents. At times police personnel are not able to cope-up with the work culture or under work pressure are not able to balance between the family and work. Sometimes they are driven to commit suicide. There are dates collected by the National Crime Record Bureau which presents the state, U.T. and city wise information relating to police personnel killed or injured on duties during various operations and accidents. The data’s also present rank wise causalities or injuries sustained by police personnel. As per these data’s a total number of 2667 police personnel died during the year 2000, out of which 827 were killed while performing their duties and 111 committed suicides. The causalities include civil as well as the armed personnel of various states and U.Ts who sacrificed their lives while performing their bonafide duties during the year. More so 56.3% of the police causalities while performing duties were due to accidents, anti-terrorists/extremists operations and anti-dacoity operations claimed 28.3% and 2.5% deaths respectively.

11. **State Terrorism be Controlled**

The Prevention of Terrorism Ordinance (POTO), captiously invoking anti-terrorist sentiment, defines “terrorist act” vaguely and vagariously and if enforced by rogues in uniform, may achieve the silence of the grave, not the vibrancy of the Republic.
Freedom of expression, the oxygen of fundamental rights, is freedom to differ even demonstratively silencing critical voices by legislative gag is the device to mug or muzzle free speech and keep enforced peace.

12. **Treating Rule of Law with due Regard**

A section of Senior Police officers treat the rule of law with contempt. This reality was enforced when a writer Mr. R.M. Pall I was recently invited to give lectures on "Rule of law and the Police" and 'Human Rights in relation to weaker sections". to a group of I.P.S. officers of the rank of Inspector General of Police and Deputy Inspector General of Police from different states of the country. When instances similar to the ones mentioned above were brought to their notice, several police officers present at the lecture took a dismissive attitude about the Supreme Court, the National Human Right Commission, activists and groups saying that the critics had no understanding of the problems that the country was facing.

13. Citizens should not misuse their rights to derogate the Public servants.

14. Citizens should not file false litigation against a public servants, doing lawful duty with the feeling of retaliation or teaching lesson.

15. Citizens should not take revenge against a public servant who supported the opposite party being found on right path.

16. Sometimes, Honest on public servant has to go out of his/her boundary for the end of justice, such act done in furtherance of justice should not be misuse by the opposite party.

17. The Court should not take positive action against public servant just on a very petty matters.

18. Public servants are here to maintain law and order, therefore their morale should not be harmed by the politicians just to take cheap popularity from general public.

19. The High Officials should escape from cheap praise of political chiefs by destroying the career of the junior public servants.

20. The General Public should give co-operation also to public-servants whenever needed and expressed by the public servants.

21. There should be harsh action against that citizen who by malafide intention has destroyed the career of public servant by using all types of illegal methods.
22. Public servants should be praised, awarded, rewarded timely their problems should be removed and realised such as food, shelter, money medicine, leave, tiredness safety, welfare, dignity so that public-servant may not detract from their statutory path. General Public should also have sympathy affection, cooperation forwards good public-servants.