CHAPTER VII

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The present dissertation attempts to study and to investigate systematically the causes of proliferation of corruption, efficacy of its control in the modern Indian society with special reference to Assam. The ever increasing corruption syndrome has entered into the body politic of the modern society. Rampant corruption came with the increased economic activity and political apathy. The mounting pile of corruption creates increasing complexities of their control. Increase in complaints, investigations, prosecutions, departmental proceedings and punishment entail more intensified tussle against corruption than any increase in it. Eventhough, a situation has developed in the modern Indian society where each individual's corruption is limited only by the limited scope he finds for it and it exists in a wide dimensions beginning from the top echelons down to the lowliest low in the society.

The India has the longest history of anti-corruption work, prevalence of corruption never fails to evoke a gushing torrent of abuse, even from the
most docile. This canker is fast destroying our economy and our morale. People now have come to believe that those in authority are themselves corrupt and so do not wish to improve matters though they make a lot of noise to distract attention from this and to meet the rising tide of criticism. Corruption has spread in the society as an epidemic disease and haunting the conscience of the nation. People are now do not rely on the means of controlling corruption, yet in practice we must evolve our own method through trial and error to tackle this problem; depending on the nature and depth of its roots. Corruption amongst public servants is most prevalent when salaries are low, opportunities great for illegal use of office and policing weak. So, it is best to analyse the problem critically and expose inadequacies of the rule of law available for its control.

In order to effectively check corruption much remains to be done positively and constructively. The existing laws dealing with corruption must have some deficiencies causing failure to check corruption unto the desired extent. The findings of litigation in court cases under different provisions prove inadequacy of anti-corruption laws at least in some specific areas. Beginning with the provision of anti-corruption
law regarding previous sanction necessary for prosecution, it is revealed from the judicial pronouncements in many cases, that the prosecution of most corrupt public servants may fail due to procedural wranglings resulting from exclusive executive lapses assessed under S.161 or S.164 or S.166 of the I.S.C. (45 of 1860) or under Sub-section (2) (or Sub-section 3 A) of S. 5 of the P.C. Act, 1947 in respect of provisions of sanction. The famous Antulay litigation in Bombay High Court and many other litigations in the Supreme Court and High Courts in India highlights the deficiencies in the existing provisions of granting previous sanction for prosecution. The common complaint is that, at the top there stays presiding deities of corruption in ease and hence are not interested in tackling corruption. Coupled with this is the charge of double standards of ethics, which they claim are applied to the tenants of political summit and their do-gooders. The approach in the Antulay litigation was in accordance with the policy underlying S. 6 is that a public servant is not to be exposed to harassment of a frivolous or speculative prosecution. It was held in R.S.Nayak - V - A.J. Antulay that, where offences as set out in S. 6 are alleged to have been committed by a public servant, sanction of only that authority would be necessary who would be
entitled to remove him from that office which is alleged to have been misused or abused or corrupt motives. Existence of a valid sanction is a prerequisite to the taking of cognizance of the offences. In the absence of such sanction, the court would have no jurisdiction to take cognizance of the offence.

In R. Menon - v - Union of India, 1966, LJ (c)387, where the accused ceased to be a public servant at the time the court took cognizance of offence, it was decided that the Sec. 6 of the Act, does not apply.

In Dharmadatan, K.S. - v - Central Government, A.J.R. 1979 ; S.C. 1495(2 Judges) (1979)2 SCJ,331 ;1979, Cr.L.J. 1127, it was held by the Supreme Court that Sec. 19 (old Sec. 6) applies only where at the time when the offence was committed, the offender was acting as a public servant. As the appellant had ceased to be a public servant at the time when the cognizance of the case was taken against him by the Special Judge, no sanction under Sec. 19 (old Sec. 6) was necessary.

In Nirmalendu Biswas - v - State, it was held by the Guwahati High Court, that the sanction for prosecution of the appellant granted without authority and hence is a nullity.
It is evident from the decisions of the Supreme Court and High Courts in India in many cases of corruption and bribery, that the existing provision of s. 6 (now section 19) of the Prevention of Corruption Act, regarding previous sanction necessary for prosecution often leads to failure in penalising corrupt. If the accused has ceased to be a public servant at the time when the court is called upon to take cognizance of the offence alleged to have been committed by him as public servant, s. 19 (old Sec. 6) is not attracted (R.S. Nayak V A R Antulay). The Supreme Court observed that when the provisions of s. 6 (new Sec. 19) of the Act, are examined it is manifest that, two conditions must be fulfilled before its provisions become applicable. First the offences mentioned therein must be committed by a public servant while discharging statutory duties. Secondly the public servant is employed in connection with the affairs of the Union of India or a State and is not removable from his office save by or with the sanction of the Union Government or the State Government or is a public servant who is removable from his office by any other competent authority (C.A. Venkataraman V State). Both these conditions
must be present to prevent a court from taking cognizance of an offence mentioned in the section without the previous sanction of the Union Government or the State Government or the authority competent to remove the public servant from his office. If either of these conditions is lacking the essential requirements of the section do not stand in the way of a court taking cognizance without a previous sanction.

In the Prevention of Corruption Act, 1988, the change in S. 6 (now section 19) has been made only in sub-section (3) and (4). Now sanction cannot be challenged in any court unless failure of justice has in fact occasioned and unless the objection, if possible, has been raised at an earlier stage in the proceedings. Not only this, no proceedings can be stayed even unless in the opinion of the court any failure of justice was occasioned. Though the intention of the Legislature in providing for sanction under S. 19 (old section 6) is not to shield the guilty persons, there was scope for the delinquent to escape by raising the technical plea of invalidity of sanction.

Public Servant Taking Gratification: -

The provision of the Prevention of Corruption Act, 1947, as amended from time to time, are evere
to put down bribery and corruption but they also aim at protecting public servants from victimisation and unnecessary harassment in being dragged into frivolous and vexatious proceedings. Under the provisions, the prosecution sanctioning authority has important function to discharge.

The main ingredients of the charge of an offence under Section 7 (old section 161 IPC) of the Act as observed by Honourable Justice Sanganath Mishra in R.S. Nayak - V - A.C. Antulay are:

1. that the accused was a public servant.
2. that he must be shown to have obtained from any person any gratification other than legal remuneration and
3. that the gratification should be as a motive or reward for doing or forebearing to do any official act or for showing or forebearing to show, in the exercise of his official function, favour or disfavour to any person.

The prosecution in this case failed due to absence of the ingredient No. 1.

In C.T. Eden - V - State of U.P., the Supreme Court laid down that explanation to S. 7 of the Act (old S. 161 I.P.C.), provides that the word gratification is not restricted to pecuniary gratification or to gratification estimable in money. Therefore there is no justification for not giving the word 'gratification' its meaning.
In the case of State of Bihar - v - Seewan Singh, the Supreme Court has stated that corroboration need not be evidence that the accused committed the crime, it is sufficient even though it is merely circumstantial evidence of his connection with the crime.

In Rao Shiv Bahadur Singh - v - State of Vidhyan Pradesh, the Supreme Court held that the evidence of the witnesses who were not willing parties to the giving of the bribe and were only actuated with the motive of trapping the accused could not be treated as the evidence of accomplices. But their evidence was nevertheless, the evidence of partisan witnesses who were out to trap the accused and could not be relied for implicating the accused without independent corroboration.

In Jai Narain - v - State, the appellant had admitted recovery of the amount from his pocket. His explanation was rejected on account of the infirmities. It was held by the Supreme Court that he was rightly convicted in the absence of the corroborative evidence.

It is noticeable from the findings of many litigations in court cases of bribery and corruption that it is very difficult to establish a case of taking gratification by a public servant, though the dimension of
this serious type of crime is miserably wide in public life. The giving and taking of bribe, according to legal provisions is a crime and the relevant sections under the P.C. Act, provides for punishment of a public servant taking a bribe. But the section is applied only when it is established that the accused received gratification which was not legal remuneration as a motive or reward. The section does not provide for punishment of the giver of bribe. It is essential to provide punishment of both bribe giver and taker. As bribery and corruption starts from the top echelons and reaches the lowest ebb in the society, it is not possible to account, how many corrupt there and how much they made in a given time. It becomes a regular feature of day to day life and a matter of speculation only. The corrupt are too many, their methods too devious and their accomplices too great in number. A very small proportion of the corrupt are caught in the legal net. Therefore laws are not adequate answer to the menace of corruption. S.7 of the P.C. Act, (old S. 161 of I.P.C.) provides punishment against the public servant who obtain gratification for doing or forebearing to do any official act or for showing or fore bearing to show in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person with
any authority. One of the important ingredients of the offence under the section is to detect whether the accused had received the gratification as a motive or reward. It is not easy to establish the presence of this ingredient. As such in majority cases the accused is acquitted. Secondly if the giver of gratification is not an interested witness, the detection becomes complicated.

However the change in law made by the 1968 amendment of the Act, by creating a new offence called "criminal misconduct" as defined in clauses (a), (b), (c) and (d) of S. 13(1) (old S.5(1)) makes the provisions more effective in trapping delinquents habitually accepting gratification and valuable things. The scope of the offence under S. 13(1)(d) (old S.5(1)(d)) of the Act is wider than that of the offence under S. 7 to 9 (old S. 161 to 163 I.P.C.). Under S. 13(2), a public servant can be punished on the charge of criminal misconduct irrespective of motive or reward for showing favour. Provisions for receiving awards by Government servants are also being made by a separate, but substantially similar sets of conduct Rules enacted by State legislature. At present, two sets of such rules are in force for Assam Government Services, "The Assam Services (Discipline and Appeal) Rules, 1964" and The Assam Civil Services (Conduct) Rules, 1965. The provisions
however are not being strictly followed, and as a result in majority of prosecutions, the corrupt public servants escape from punishment. On the contrary, public servants who perform their duties impartially, without any fear or favour and strictly in accordance with law or rules fail to provide corrective justice due to highhandedness and political interference in favour of the corrupt public servant.

Inspite of creating scope by new amendments of the P.C.Act, the corruption in our country become a convention, a tradition, a psychological need and necessity. Such a regular practice cannot be eradicated from our society without a radical change in the environment. A high standard of ethical behaviour of the people right from top to bottom along with an effective change in the administrative structure is needed to fight corruption.

Many cases of corruption remains suppressed and undetected and the corrupts are being freed from any legal action due to administrative negligence of motive or inefficiency. Such cases are countless in number. Two such instances are cited below:

Case No. 1:

This is a case of misappropriation detected in the year 1971. The summary of findings of enquiry on the departmental proceedings submitted by Sri J.C. Sarmah, Additional Director of Agriculture (Hills) was that –

(1) The misappropriation of Govt. money by Sri Ahmed to the tune of Rs. 5,14,859.06 has been established and he now stands liable to this amount. Rule No. 11 under 'Assam Contingency Manual' itself dictates the punishment for such refund of expenditure improperly incurred.

(2) As charged it was not dereliction of duty, but proved to be a deliberate action for misappropriation.

(3) The charge of serious misconduct on the part of the officer is also found to be correct.

Altogether nine charges were levelled in the enquiry report against Sri Ahmed. Sri Ahmed retired from service while the case of misappropriation was in the process for action for an indefinite period. In the meantime Sri Ahmed filed a case in the Session Court, Jorhat claiming his pensionary benefits under C/R No. 686 of 1987. Due to negligence on the part of the Government to submit reply to the court for an indefinite period, an Ex-parte decree has been given in favour of the accused.
Case No. 2:

A programme of supplying potato seeds to the flood affected cultivators was implemented in 1986 by the Assam Seeds Corporation Ltd. for an amount of Rs. 4.00 crores. On allegations being raised in the Assam Legislative Assembly by an opposition member regarding irregularities and misappropriation of this programme, the matter was discussed in the Assam Cabinet and formed an inquiry Committee to find out the facts for punishment of officials responsible for the lapses.

The salient points of the inquiry report presented to the house on 18th March, 1988 were as follows.

The potato seeds were supplied by some traders obtaining licence from the Directorate of Agriculture for an amount of Rs. 4.00 crores for distribution to cultivators. It was also alleged that the potato seeds were purchased from Fancy Bazar, Guwahati instead of supplying certified seeds and that too in higher prices. In order to arrive at a decision on the issue quoted above, the Inquiry Committee decided to examine -

(1) the prevailing prices of table as well as seed potatoes in the states of Meghalaya, West Bengal, Bihar, U.P. and M.P.

(2) Availability of seed potato in Assam and other States.
(3) Whether the suppliers of the alleged seed potato were traders and if so their standing as seed dealers.
(4) The procedures followed in inviting tenders.
(5) Departmental investigation conducted on the alleged departmental irregularity.

During examination of various records, the Inquiry Committee noted that most of the tenderers obtained seed licenses from the Director of Agriculture after the advertisement issued by the A.D., Assam Seeds Corporation Ltd. on 16th Oct., 1986. In a number of cases, the tenderers were considered without considering the first requirement viz. as dealers in the seed dealing business possessing the seed dealing license well before the time of advertisement. The Inquiry Committee further learnt that the A.S.C. considered three cases on the basis of a letter written by a Joint Director of Agriculture (Pulse) in violation of the terms of the advertisement. The Committee also came across overwriting, alteration in the tender papers. The Inquiry Committee therefore decided to obtain a written clarification from the A.S.C., A.S.C. on these points. On examination by the Inquiry Committee it was found that 17 tenderers obtained dealing licenses after the issue of the notification/advertisement on 16th Oct. 1986 inviting tenders and three tenderers obtained licenses after the closing date from
the Director of Agriculture.

The inquiry Committee after examination of various aspects recommended that a thorough probe should be made into the affairs of the potato seeds deal by an independent authority so as to enable the Government to proceed against the persons at fault and to streamline the Administration of the Directorate of Agriculture and the Assam Seeds Corporation.

Since then the case is under investigation and the corrupt public servants of this case are yet to be brought to the legal net for punishment.

Interpretation:

It is revealed from the style of administration and functioning in the Government departments that little action is taken by the authorities in departments against the corrupt practices when such cases come to their notice. Delay in departmental proceedings and initiation of necessary actions in each case in time causes hardship in conviction of defendants.

Another important factor responsible for the escape of a good number of corrupt people is that the P.C.AAct provides punishment to corrupt public servant only. As such those who cannot be accommodated within
the definition of 'public servant' has no scope for prosecution, causing increase in corruption indiscriminately. Corruption by persons other than public servants particularly those who are in power can practise in a rampant way without fear and consequences. The Antuley nexus between political power and money has existed since imperial ages in the history.

A meaningful socio-legal study of this important piece of legislation aimed at maintaining rectitude and integrity in political and public life, as suggested by the Law Commission of India in its 23rd report (1968), change in law is required to ensure speedy trial of cases of bribery, corruption and criminal misconduct and make the law otherwise more effective.

Though there have been some alluring, but ineffective attempts to check the evil including the recent amendments in the Prevention of Corruption Act, 1947, bickering of corruption in public life becomes increasingly complex and unchecked, instead of being saddled. The proliferation of corruption has resulted from manipulation of power. This power is manifested negatively, in the effective insulation of the corrupt appropriations of income and advantage from denunciation and removal.
Among all the forms of corruption so far identified, public servant taking gratification other than legal remuneration in respect of an official act and taking gratification or obtaining valuable things for exercise of personal influence with public servant are rising in number. A corrupt officer himself may be efficient, but he fishes in the inefficient and slow processes of the government, around him most of the corrupt inducements aimed at so much to alter administrative decisions in their favour, rather to expedite them. In most of the cases, the anxiety to avoid delay has encouraged the growth of dishonest practices like the system of 'speed money' which has become a common type of practices particularly in matters relating to the award of contracts. Two important factors—(1) unwarranted secrecy in the transaction and (2) unbridled discretion vested in officials, offered scope for dishonest practice of 'speed money' in the offices. For existence of corruption in public life two groups Viz. one who are willing to corrupt and the other who are willing to be corrupted appear to co-exist peacefully. As such bribe givers are also not less responsible for the practices of corruption. But in the P.C. Act, there is no provision for punishing the bribe giver.
Among the attempts so far made by the Government to combat corruption, the setting up of the Santhanam Committee in 1962 to review existing instruments and to advise on practical measures to make anti-corruption measures more effective is a very important step. It was asked to consider and suggest steps to be taken to emphasise the responsibilities of each department for checking corruption. It was also to suggest changes in the Government servants' conduct rules, ensure speedy trial of cases of bribery, corruption and criminal misconduct and such steps as to secure public support for the various anti-corruption measures in order to create a climate conducive to the improvement of public morals. Accordingly the Committee recommended a lot of changes in the anti-corruption laws and other measures. But, it is a matter of great discontent that, the Government of India excluded from the Santhanam Committee investigation of corruption among Ministers. If there is corruption in the administration, the Ministers are primarily and ultimately responsible for it. The corrupt Ministers definitely are not willing to take action against their corrupt colleagues and subordinates. If Ministers are above board, they can prevent corruption among the services. At
At present the code of conduct for Ministers, I.P.'s and M.L.A.'s is of imperative necessity to deal with corruption in a realistic approach. Amendment of anti-corruption laws and other steps as per recommendation of the Santhanam Committee alone is not sufficient to deal with corruption effectively. Each and every corrupt people must bring to the legal net irrespective of their status and position.

With the increase of population and cost of living, things become more complicated and alongwith such complications, corruption is also mounting day by day. People become selfish and they are busy to manage individual interest rather than to think for the nation, to preserve morality or to think for others equally. Officials become more and more corrupt to improve their livelihood and to meet their material need. Public in general willing to corrupt to move the file in his favour, to obtain contract, to obtain supply order, to obtain job, and whatever else. In most of the cases politicians are working as initiator of corruption. So far the preparation of the code of conduct for legislators and Ministers was concerned the Central Government had responded by adopting a code of conduct for Ministers. But in States except a few, nothing has yet been done in this regard which is very urgent if the
corruption of the politicians and in turn corruption in public life is to be prevented. As per recommendation of the Administrative Reform Commission, 1966, two tier machinery of Lokpal and Lokayukta are to be instituted. In Assam, The Assam Lokayukta and Uplo-kayukta Act, 1985 has enacted and received the assent of the President of India on 12th December, 1986. The Act made provisions for appointment and functions of Lokayukta and Up-lo-kayukta in Assam. Accordingly a Lokayukta has been appointed for Assam for the investigation of grievances and allegations against Ministers, Legislators and other public servants in certain cases and for matters connected therewith. If the Lokayukta is functioning as per objectives without fear and strict to the provisions, the rampant corruption practices of Ministers and Legislators in particular can be reduced, if not abolished. The above analysis leaves us in no doubt about our failure to equip ourselves with a high powered, impartial machinery to tackle corruption in high places. We should have a permanent machinery to probe into the present rot and to act as a deterrent against future abuse of power by men in high position.

It is difficult to be precise about the dimensions of corruption. Yet the ugly facts and figures are formidable. Huge number of cases of complaints
pending for disposal at all levels in different stages like vigilance establishments, special court, C. T., Special Police Establishments etc. Delay in deciding cases for indiscriminant period may cause ventilation of corruption. So, speedier decision of such cases are needed as a part of effective measures to combat corruption.

Coupled with importance of knowing the anatomy of corruption is the causes of the disease so that a correct diagnosis can equip us for devising both preventive and corrective measures. So, our anti-corruption drives must be to prevent and rectify the primary causes of corruption such as - stark inefficiency, inordinate delays, undeserved patronage, raw nepotism, donating to election funds, judicious regulation of public morals, abject poverty, lax leadership, unhinged controls, black market, speed money, cloistered security, worship of the filthy lucre, liaison between business houses and politicians, lack of popular vigilance, lack of willingness to tackle corruption, corruption amongst anti-corruption officials. The Santhanam Committee's suggestions for tightening disciplinary procedures against civil servants and plugging loopholes in the existing laws and anti-corruption drives are by and large very well thought out and expect good results.
if implemented faithfully. In the twenty-ninth report of The Law Commission of India it was cemented that if anti-corruption activities are to be successful, it must be recognised that it is as important to fight these unscrupulous agencies of corruption as to eliminate corruption in the public services. In fact they go together.

Law enforcement agencies without morality cannot yield objective results, since the fabric of civilised law might be blended with morality and justice. Morality amongst all groups of people including officials should be harmonised for a clean public life. On the basis of the prevailing situations and environment the following recommendations may be suggested for eradication of corruption in public life.

(1) Harmonising morality amongst people of elite class.
(2) Training people to be laborious or economic upliftment.
(3) To have only the minimum needs of property irrespective of earning.
(4) Appointment of efficient and honest personnel in Anti-Corruption Departments.
(5) Computerisation of informations and investigation system.
(6) Stoppage of migration for minimising demands of needs and resources.
(7) Increasing administrative efficiency of Government machinery to render quick and effective services.
(8) Prompt action against corrupt public servants.
(9) Officers responsible for failing to take action or delaying action against delinquents should be suitably punished.

For such measures the amendment to relevant provisions in the existing statutes are to be completed on priority basis. The hydra-headed demon of corruption must not be allowed to stay a moment longer. The irrational resignation that corruption is the order of the day and has assumed international recognition must be uprooted. Both law and morality must be pressed into service to do the needful to restore the glow and glory of clean and honest public life.

Public vigilance is the basis of any anti-corruption strategy. 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. It will therefore be very difficult to tackle this growing evil unless we mobilize the best elements in society to fight it.