CHAPTER VII
CORRUPTION

Anthony remarked in the Lok Sabha debate on the Anti Corruption Law (amendment) Bill, that corruption in Public services was the greatest single threat to Democracy in India.¹

This remark proved beyond doubt the comprehensiveness of corruption in Public administration. It is all the more in P.W.D.

What Corruption is: Corruption may assume several forms. It may merely mean the exertion of some undue influence, political or otherwise on the public functionary or it may be consequence of some invisible family or caste bonds or it may be the result of some financial inducements. Whatever the shape it takes, the essential element is the attempt to influence from outside the operations of the due process, it being of little consequence whether that influence is towards correction, expedition or deprivation.² Whatever the purpose may be, all these forms of undue influence can be regarded as corruption.

Forms of corruption: Corruption may be of several forms. It may be sociological, economic, administrative, juristic and political.

About the magnitude of corruption in public servants in our state, although it is not possible to give any exact figures yet the reports of the Santhananan Committee, on the prevent-

ior of corruption early in 1964, made it quite clear that corruption is not confined to lower ranks of public servants only. The number of gazetted officers whose cases had to be investigated were disturbingly large.3

Causes of corruption: It is very much difficult to explore the causes of corruption. Because corruption is a very complex phenomenon in the public services. However, the causes of corruption can be attributed to five aspects, viz.: (i) Sociological, (ii) Economic, (iii) Administrative, (iv) Juristic and (v) Political.

(i) Sociological: Corruption, in public services, is a natural consequence of the way of life in our society. In our society people are judged by what they have rather than by what they are. The possession of wealth has become the sine-qua-non of so-called good life or what is called rather valuable life which has encouraged people in the society for the acquisition of wealth, irrespective of the means adopted. Some people, in our society, living a very luxurious life beyond their means by resorting to unsocial modes of acquiring wealth. Society does not look down upon them. Very often, we find in our society at the time of negotiation of matrimonial alliances, the bride's representatives besides enquiring the official salary of the prospective bridegroom or his father, frequently ask the supplementary but necessary question, "but how much from above?" In socialistic countries, no one would dare to ask such a

question nor any one would care to answer it. Because both would be ashamed of asking or answering such a question. Thus in our society, lack of strong public opinion against corruption is the main cause of corruption.

(ii) Economic: Besides the sociological bases, corruption has some economic bases also. In early days of the East India Company, its servants in India were notoriously corrupt. Because, the company was much more concerned in making profit in India rather than looking after their servants. The servants were given very low salaries which were quite insufficient to earn their livelihood. So, these servants resorted to corruption to earn their livelihood. It was the reforms of Lord Cornwallis which by giving the civil personnel attractive salaries, ultimately succeeded in weaning them away from the corrupt modes of acquiring wealth. But after Independence it is found that corruption is committed not only due to the necessities but also to cater to the luxuries of public servants. The corruption in the higher official hierarchy can be said due to luxuries. This fact had been revealed in the report of the Santhananan Committee for prevention of corruption. However, in most cases corruption was to be found in the lower strata of official hierarchy. These public servants take recourse to corruption to meet the basic needs of their life. Thus general poverty and low salary are the causes of corruption.

---

4. Corruption in the public services in India by P.S. Muhar, M.A., Ph.D., Head of the Department of Political Science, Kurukshetra University, |9 64
(iii) Administrative: There is a saying that inefficient administration and corruption go hand in hand. The classical illustrations of this were the Chinese Imperial and Czarist Government. A corrupt officer himself may be efficient but his fishes in the inefficient and slow processes of the Government around him. If we examine we will find that most of the corrupt inducements aimed not so much to alter administrative decisions in their favour rather to expedite them. In a majority 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 corrupt practices particularly in matters relating to the award of contracts etc. Thus undue delay in the transaction of official business is the cause of "speed money".

Another cause of corruption in administration, is the undue secrecy in the transaction of business in the department. This undue secrecy induced the public servant in the lower strata to the "sale on information" and in case of public to the "purchase of information."

The most fundamental cause of corruption, in the administration, is the growth of discretion vested in officials in consequence of the induction of the welfare state. From the time of Plato and Aristotle, political philosophers had discussed the perennial question as to whether there should be a Government of laws or a Government of knowledge. At bottom there is no need of the sovereignty of knowledge. But at upper
level there is a administrative discretion which has become the fundamental cause of administrative corruption.

(iv) Juristic: The most important aspects of corruption is the juristic aspect. It may be taken as axiomatic that greater the gap between public opinion and legislations the greater will be infractions of law and hence resorts to corruption. It is a matter of general belief that the principal source of corruption lies in the regulation of public morals. The administration of legislation against prostitution, gambling and liquor traffic etc. has offered opportunities to the politically controlled police to levy tribute upon the so-called under world. Another important cause of corruption is that in the eye of law the accused is always supposed to be honest. Naturally, the burden of proof is on the prosecution side. Some events or some incidents although known to all to be true may be very difficult to prove in the court. The corrupted officials always take this opportunity without any fear or favour to the law or to the court.

(v) Political: The most important aspect of corruption is political. One of the peculiarities of the problem of corruption in our country particularly in Assam is that it has penetrated even to the politicians and members of the legislatures. Very often, the Chief Engineer, the Superintending Engineer or the Officer-in-charge of particular project are given some personal but confidential letter or even asked over telephone by some minister to give a particular contract to a particular
firm without any regard to merit or to appoint some one to some particular post without any consideration of merit. This behaviour on the part of the minister or the legislature induce the officers of administration to take recourse to corruption. According to the law of social imitation the lower classes always imitate the higher. So, if we are to control corruption of the lower classes we must first be able to eliminate it from the higher classes. Walter Bagehot pointed out over a hundred years ago in his book "Physics and Politics" that we cannot control corruption in the lower strata of official unless and until we mitigate it in the higher.

Public Works Department is nick named as "Plunder without Danger". A generalist has no say as the so-called technocrats, through the jugglery of their technical knowledge, hoodwink the Government and easily escape with their booty. They prepare ambitions estimates, provide funds and make sufficient provisions under different heads with an intention to get a huge sum for their remuneration. In execution of works, they connive with the contractors right from the moment tenders are called and finalised. At different stages, they are supposed to inspect the work to see that the work is being executed as per approved plan and estimate, and good building materials as per approved specification and proportion is being used. But despite that, in majority cases, the works are never executed as per the specification and hence the Engineers-in-charge of supervision, exhibit their in fulfilling only the paper requirement and divide the spoils according to the deter-
mined percentage among various officers from top to bottom. As a result, the contractor performs his works using sub-standard materials, deviates from the approved specification, uses of steel, cement, chips in lesser proportion and sells the scarce materials in black market, gets his full bill and pays the percentage to the officials. False claims of dishonest contractors are entertained, huge amount is paid to them out of which a sizeable percentage is deducted from the bills at the time of payment and divide among the officials for sharing such illegal favour. Sometimes, funds are allotted on the works which are already of good condition and the contractor does little patch work here and there and appropriates the entire money. Under the maintenance and repairs head, with or without a work, the contractor and the Engineer appropriate huge amounts. Fifty percent of the building materials, like steel, cement, asbestos sheets, corrugated sheets, paints and other valuable things supplied from the store, find their way into the black market before the eyes of the supervising officers. Thousands of roads, buildings and other projects are now found damaged, with cracks, poorly done, left half-done and completely abandoned due to heart-throbbing sabotages from within. In order to hide the bad-workmanship, they immediately provide huge sums for their maintenance and repairs.

Bribing of the Engineering staff has become a convention. Several enquiries, investigations have been conducted but because of its peculiar nature of work, it becomes difficult to pin-point and establish the charges, unless the lapses are
extremely glaring. The bad workmanship is covered by good painting, colouring and white-washing. Few months' delay makes it difficult to find a trace of the bad workmanship. Since works of all nature do not show up defects immediately, the executors complete the guarantee period safely. Further, there is no organisation equipped with scientific machinery to cross-check the works immediately after execution. The officers-in-charge of supervision are the departmental officers, who, as stated earlier, are the worst guardians.

Measures for the prevention of corruption in Assam:

Before the passage of the prevention of corruption Act, 1947, there was no special legislation against corruption either in the state Assembly or in the Parliament. The cases of corruption were dealt with under sections 161 to 165 (A) of the Indian Penal code.

The section 161 of the I.P.C. provides that the public servant taking gratification other than legal remuneration in respect of an official act is to be punished with imprisonment for a term which may be extend to three years or with fine or with both. The section read as "whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in
the exercise of his official functions, favour or disfavour
to any person, or for rendering or attempting to render any
service or disservice to any person, with the central or any
state Government or Parliament or the legislature of any state
or with any public servant, as such, shall be punished with
imprisonment of either description for a term which may be
extend to three year or with fine or with both."

Illustration:

Supposing - A, a public servant of the P.W.D. induces Z,
a contractor, erroneously to believe that - A's influence in
the P.W.L. has obtained a contract for Z and thus induces Z to
give A money as a reward for this service. Thus A has committed
the offence define in the section.

Section 165 of the I.P.C. deals with public servant
obtaining valuable thing with consideration, from person con­
cerned in proceeding of business transacted by such public
servant. Under this section whoever, being a public servant,
accepts or obtain or agrees to accept or attempts to obtain
for himself, or for any other person, any valuable thing with­
out 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 busi­
ness 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
persons 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.

Section 165-(A) deals with punishment for abetment of offences defined in section 161 or section 165. Whoever abets any offence punishable under section 161 or section 165, whether or not that offence is committed in consequence of the abetment shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

But these three sections of the I.P.C. are not sufficient for the prevention of corruption of the public servants for the reasons given below:

1. The I.P.C. which is regarded as the great classics on law, is the handiwork of Lord Macaulay and Sir Henry Maine, was enacted in 1860. It is dominated by the notion that almost all major crimes consists of offences against person, property and state. Therefore, it does not deal in any satisfactory manner with, what the Santhanam Committee turns "Social offences" such as misuse of their position by public servants in awarding contract, disposal of public property, misappropriation of public property and funds etc.

2. Under this sections the corruption cases of the Government servant can be tried in the court. But court itself will not take the initiative for the trial of those Government servants who committed corruption. When somebody will take the
initiative and complain in the court against the Government servants then only the court can deal with such corruption cases.

3. In the eye of law the accused are always supposed to be honest. So, if anybody complaint in the court against any Government servant for committing corruption the complainant is to take all the burden of proof which is very much difficult and complicated.

4. In dealing with the cases the court adopt a very lengthy procedure for which there is unnecessary delay in the delivery of judgement. There is saying that justice delayed is justice denied. Thus the very purpose of these section of I.P.C. failed.

5. Prosecution in the court is a very expensive business for which people of lower income group do not dare to take recourse in the court.

In 1947, an Act was passed for the more effective prevention of bribery and corruption. This Act was called the prevention of corruption Act, 1947. The jurisdiction of the Act was the whole of India and it applies also to all citizens of India outside India. Section 5 of the said Act deal with corruption of public servant. The section read as follows:

Criminal misconduct in discharge of official duty --
(1) A public servant is said to commit the offence of criminal misconduct- (a) if he habitually accepts or obtains or agree to
accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in section 161 of the Indian Penal Code, or

(b) If he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servants to whom he is subordinate, or any person whom he knows to be interested in or related to the person so concerned, or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do, or

(d) if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or

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

(2) Any public servant who commit misconduct is punishable with imprisonment for a term which is not less than one year but which may be extended to seven years and is liable to fine.

Investigation of corruption cases: notwithstanding any procedure contained in the court of criminal procedure, no police officer below the rank of a Deputy Superintendent of Police can investigate any offence punishable under sections 161, 165, 165(A) of the I.P.C. or under section 5 of the prevention of corruption Act, 1947 without the order of the 1st class Magistrate and can make arrest without warrant.

However, if a police officer not below the rank of a Inspector of Police is authorised by the State Government by general or special order, he can investigate any such offence without the order of the 1st class Magistrate or could make arrest without a warrant. 6

Beside these Acts as early as in 1937 Government of Assam made certain rules for prevention of corruption and to regulate the conduct of the Government servants. These rules were called the Assam Government servants conduct rules, 1937 which were made under the Government Act 1935.

Under rule 3 of the Government Servants Conduct Rules 1937, the Government servants were, without the previous sanction of the provincial Government, debarred from accepting directly or indirectly on his own behalf or on behalf of any other person or permitting any member of his family to accept, any gift or reward from any person who was not related to him. But in case of a wedding ceremony the Government servant or any member of his family could accept from a personal friend a wedding gift not exceeding 200/- This rule was made to prevent Government servant from taking indirect bribe.

Under rule 2 of the Government Servants Conduct Rules, 1937, every Government servant or candidate for Government service had to make to the Government through the usual channel a declaration of all movable property in India from time to time held or acquired by him or by his wife or by any member of his family living with, or in any way dependent upon him. The declaration had to state the district or the state in India within which the property is situated and had contain such further information as the provincial Government may by general or special order required. Thus, this rule was made to prevent the Government's servants from acquiring immovable property by corruption. But no restriction was imposed so far as movable property was concerned.

7. The Assam Gazette 1938, Part-II. A Notification No. 216-H.
In 1952, with the adoption of the new constitution the Government of Assam, under the provision to Article 309 of the constitution, made an amendment to rule 2 of the Assam Government Servant's Conduct Rule 1937. Under this amended rule, the Government servant had to make a declaration of immovable as well as movable property held or acquired by him or his wife or by any member of his family depending on him. Any Government servant concealing any of his assets which he was liable to declare was considered liable to such disciplinary action as the Government may deem proper.

Further, if any Government servant was found in possession of pecuniary property which appeared to the Government to be disproportionate to his known sources of income, the Government could presume, unless the contrary was proved, that the Government servant acquired such property by dishonest means and the Government could take such action as it deems necessary.  

Anti corruption machinery : Over and above these general measures the Government of Assam, by an executive order in 1946, created an Anti corruption Branch of the Assam Police (C.I.D.) to fight against corruption of public servants.  
The jurisdiction, powers and authority entrusted to this branch were modified in 1959 by a new executive order.

According to the new executive order of 1957, the officers of the Anti-corruption Branch of the Assam Police (C.I.D.), had jurisdiction over the whole of Assam. The officers of the said Branch who were above the rank of an officer-in-charge of a police station were by reason of section 551 Cr.P.C. 1898 competent to exercise the powers of an officer-in-charge of a police station within their local area which was extended to the whole of Assam. The officers below the rank of an officer-in-charge of a police station could exercise the powers under section 157, 161, 165 of the criminal procedure court (Act V of 1898) only when deputed for investigation into a cognizable offence by an officer-in-charge of a police station or by a superior officer.\(^\text{10}\)

In spite of the existence of all these measures corruption of public servants could not be prevented. Rather it increased beyond all proportion which became a threat to democracy. With the ever-increasing corruption, parliament got alarmed and a committee was constituted in 1962 consisting of seven members with K. Santhanam as Chairman. It was authorised to review existing instruments for combating corruption and advising on practical steps to make anti-corruption measures more vigorous in centre as well as in states.

The Committee produced a very elaborate report which was published in 1964. The following were the important suggestions of the Committee.

\(^{10}\) The Assam Gazette 1959, Part-IIA. Notification No. C.431/59/2.
(a) Article 311 of the constitution may be amended in order to make the judicial process in corruption cases easy and speedy.

(b) Vigilance Commission should be created with autonomous powers.

(c) The Government servant's conduct rules may be amended so as to restrict the re-employment of retired Government employees by private businessman.

(d) Public opinion should be mobilised against corruption. People in the society should be saturated with the idea that those who offer and take bribes were committing a sin both against society and God. Sin should be defined as an offence not only against God but also against society. This would help the essential building up of a strong public opinion against accumulation of wealth through unsocial means. However, people in the society are to be encouraged for simple living instead of luxurious living.

(e) The officials who exercise discretionary powers in matters relating to award of contracts, issue of valuable permits and licenses, or otherwise deal with matters which require a high degree of integrity. These officials should be given special attention regarding status and emoluments and adequate medical, educational and housing facilities. The provision of housing in colonies, wherever possible, would be a valuable aid in the promotion of integrity.
(f) The transaction of Government business should be open and in accordance declared principles and procedures and that there should not be any undue secrecy. In matters of giving contracts for construction and supplies, the decision, should be taken by a committee or board and not by individuals if the amount involved is large.

(g) A code of conduct for legislators be framed by a special committee of the parliament and the state legislatures nominated by speakers and chairman. In suggesting the code of conduct for the politicians it was said that the acceptance of hospitality by the ministers or the legislators is not conducive to the maintenance of political virgity which should be debarred by the code of conduct.11

As per suggestion of the committee the following measures were adopted for the eradication of corruption.

(1) The Government of Assam constituted a state vigilance commission in 1964. This commission was headed by a state vigilance commissioner who was given the status of a High Court Judge. The commission had to submit an annual report to the State Government about its findings which was to be laid before the state legislature. But, it remained defunct up to 1981.12


At the district and sub-divisional level the Government of Assam constitute in 1964, committees which were initially called complaint committees. But their designation was later on changed to "Public Relations Committees". At the district level the Chairman of the Committee was the Deputy Commissioner while the sub-divisional officer was the chairman of the committee for independent sub-division. The district or the sub-divisional public relations officer was the Secretary of the committee concerned. In the plains district the other members of the committee were members of the parliament, members of the state legislature, chairman of Municipal Board, chairman of Town Committees and President of Anchalik Panchayats and in the Hill districts the members were members of the parliament members of state legislature Chief Executive member and members of district and Regional council.

The object of these Committees was to provide a forum for district relations of the public with the Government machinery and to focus attention of Government on public grievances regarding its general defects. The Committees deal with (1) all suggestions for improvement of the Administrative Machinery, (2) Any complaint of general nature against the Administrative machinery and (3) any defect in the Administration pointed out in any complaint against any Government office or Government servants. The Secretary of the Committee receives complaints against Government officers or individual
Government servants and forward them to superior officers concerned for disposal. An abstract regarding their disposal was placed before the committee for information and the committee could discuss defects in the Administrative Machinery spot lighted in the complaints. The suggestions and recommendations of the committee were submitted to Government in the respective department.

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 our state nothing has yet been done in this regard which is very urgent if the corruption of the politicians is to be prevented. So far Government servant's conduct rules were concerned, in modification of the earlier rules, the Government of Assam made the following rules which were called the Assam Civil Services (Conduct) Rules 1965. Under these rules the Government servants or any member of his family or any person acting on his behalf were forbidden to accept any gift with some exceptions which include free transport, boarding, lodging or other services or any other pecuniary advantages provided by any person other than a near relative or personal friend having no official dealings with the Government servant.

Further, under these rules, every Government servant had to, on his first appointment to any service or post, submit a return of his assets and liabilities, in such form as was prescribed by the Government, giving the full particulars regarding the movable and immovable property held or acquired by him or on his behalf or any member of his family dependent on him.

If any Government servant or any other person on his behalf or any member of his family is found in possession of pecuniary resources or property which appear to the Government to be disproportionate to his known sources of income, the Government may presume, unless the contrary is proved, that the servant concerned has acquired such property by dishonest means and the Government may take such action against that servant as it deems necessary.14

In 1964, a joint conference of the Bharat Sadhu Samaj and Bharat Sevak Samaj organised by the Samyakta Sadachar Samiti was held in New Delhi. In that joint conference, Dr. Radha Krishnan remarked "corruption is an evil which is to be fought on all fronts and at all levels." In other words corruption has penetrated at all levels including politicians and ministers. Thus, if corruption can be eradicated in political level then only it will be possible to eradicate it at the official level.

Accordingly, in 1966, the Administrative Reforms Commission recommended a two-tier machinery of Lokpal and Lokayukta, Lokpal to deal with complaints against Ministers and Secretaries to Government at the centre and the states and Lokayukta to deal with complaints against officials. The Commission stated that these institutions must have certain characteristics.

(1) They should be demonstrably independent and impartial.
(2) Their investigations and proceedings should be conducted in private and should be informal.
(3) Their appointment should, as far as possible, be non-political.
(4) Their status should be compared with the highest judicial functioning in the country.
(5) They should deal with matters in the discretionary field involving acts of injustice, corruption and favoritism.
(6) Their proceedings should not be subject to judicial interference and they should have maximum powers in obtaining information relevant to their duties.
(7) They should not look forward to any benefit on pecuniary advantage from the executive Government.

Appointment: Lokpal should be appointed by the President on the advice of the Prime Minister after consultation with the Chief Justice of India and the leader of the opposition. Lokayukta should be appointed by the President in consultation with Lokpal.
Lokpal will have the power to investigate an administrative act done by or with approval of a Minister or a Secretary to Government at the centre or in the States. Lokayukta will have jurisdiction over actions of public servants other than those within the purview of Lokpal.

But nothing has yet been done for the appointment of Lokpal and Lokayukta either in the centre or into states.

We have so far studied the corruption in Assam particularly in P.W.D. and the measures adopted from time to time for its prevention. The present state of affairs on the P.W.D. induced us to conclude that all the measures adopted so far failed. The society itself has become corrupted. If we are to get rid of this problem, besides the legal measures some social measures should also be taken as suggested by Santhman Committee. People, in the society, should be educated with the idea that corruption is sin both against society and God which would help the building up of a strong public opinion against corruption.