CHAPTER 4

CORRUPTION: IT’S CONTROL MECHANISM THROUGH ANTI-CORRUPTION AGENCIES
You [should] not examine legislation in the light of the benefits it will convey if properly administered, but in the light of the wrongs it would do and the harm it would cause if improperly administered.

Lyndon B. Johnson, former President of the U.S.*

Corruption has penetrated all the departments both at the national level as well as at the State level. An effective control of corruption would be possible only if it is tackled at all levels. For dealing with any problem, large or small, there has to be an organized system with clear cut policy planning and necessary infrastructure.

The problem of how best to control corruption has challenged policy makers from the dawn of civilization. Strategies and institutional responses have varied, but, in recent decades, the approach of choice has increasingly become: establish an anti-corruption agency. This ostensibly straightforward nostrum actually poses a lot of difficulties. How much authority and which specific powers to give it? How large should the agency – and its jurisdiction – be? What are the expectations from such an agency, and how can it be known whether it has been successful?

To deal with this pervasive phenomenon, corruption, and to make errant officials accountable for their omissions and commissions, several institutional arrangements – both legal and administrative – have been historically established by the Centre. The purpose of this anti-corruption machinery is to advance one or more of the following:

- The investigation/prosecution of bribery and other crimes;
- The prevention of corrupt acts through such actions as the simplification of procedures and the policing of conflicts of interest;
- The education of the public, the media and Government officials on what constitutes corruption and why it must be combated; and

* http://catb.org/~esr/fortunes/liberty

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- The coordination of the activities of different Government agencies responsible for one or more of these actions.

4.1 MISSION OF THIS ANTI-CORRUPTION MACHINERY

The mission of these anti-corruption agencies can usually be described as one of preventing and deterring corruption through several types of activities. Typically, the activities fall into the following categories:

- Receive and respond to complaints;
- Intelligence, monitoring and investigation;
- Preventive research, analysis and technical assistance;
- Ethics, policy guidance, compliance review, and scrutiny of asset declarations;
- Public information, education and outreach.

4.2 EVOLUTION OF ANTI-CORRUPTION SET UP

The history of Anti-Corruption Agencies appear not to be known in much detail in the international community of anti-corruption specialists, particularly, those working in developing and transition countries. This history is frequently presented as starting with the establishment of the Commission in Singapore in the 1930s, its restructuring in the early 1950s, or even the Hong Kong Bureau founded in the 1970s. In fact, a quite similar model began operations in New York City in the 1870s. The relatively late arrival of such institutions derives in part from the wide recognition of corruption as an important dysfunction of public administration only in the 19th century.

Prior to the outbreak of the Second World War, corruption among public servants in India was not felt as a social or national problem, though it was moderately confined to the lower ranks of the civil service. In particular, corruption was prevalent in considerable measures amongst revenue, police, excise and public works department officials in the lower grades. The higher ranks were comparatively free from this evil.
The immense war efforts of 1939, which involved annual expenditure of hundreds of crores of rupees over all kinds of supplies and contracts created unprecedented opportunities for acquisition of wealth by doubtful means. Controls and scarcities generated by war provided ample opportunities for bribery, corruption, nepotism, etc. In the face of the threats faced by the country, all out efforts were concentrated on war. Prompt attention was not paid towards the looming social danger that was destined to grow to gigantic dimensions and persist as a permanent problem in the decades ahead.

However, the Government for long could not ignore the emerging virus in the administration. To arrest the spreading cancer of corruption among its servants, the then Government, by an executive order created the Special Police Establishment in the year 1941 under the War Department. As the exercise of investigative powers of the SPE, was challenged before courts, Government to remedy the situation promulgated Ordinance XXII of 1943 to confer legal status and authority to the SPE. When this Ordinance lapsed, a new Ordinance (Ordinance 22 of 46) took its place. Finally Government in 1946 passed the Delhi Special Police Establishment Act. Today, the DSPE has become a part of a bigger organization, the Central Bureau of Investigation, (CBI).

As a further measure for the effective prevention of bribery and corruption, the Prevention of Corruption Act, 1947, was enacted. The Act narrowed the requirements to prove the motives behind corruption. The First Five Year Plan in 1952 emphasized integrity in public life, but it undermines the structure of administration and the confidence of the public in administration. There must, therefore, be a continuous war against every species of corruption within the administration as well as in public life.

Perhaps the most important development in this context was the 1964 Report of the Committee on Prevention of Corruption, otherwise known as the

1. Act No. 25 of 1946: An Act to make provision for the constitution of a special police force in Delhi for investigation of certain offences in the Union Territories, for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences
2. First Five Year Plan, p-115.
Santhanam Committee.³ This Committee, following the logic that an executive body impartially inquiring into its own conduct is more or less an anomaly, recommended the creation of a Commission, headed by a Commissioner. This was the Central Vigilance Commission the origin of which can be traced to the Mundhra financial scandal in the late 1950s. It was in response to this scandal, that the Government appointed the Santhanam Committee which recommended setting up of the Commission having jurisdiction over only Indian Government officials. Established in February 1964, and headed by Shri K. Santhanam, the Central Vigilance Commission, CVC, was set up to advise and guide the Central Government agencies in the field of vigilance.

4.3 THE SET UP OF THE CENTRAL VIGILANCE COMMISSION (CVC), THE CENTRAL VIGILANCE COMMISION ACT, 2003

CVC is conceived to be the apex vigilance institution free of control from any executive, monitoring all vigilance activity under the Central Government and advising various authorities in Central Government organizations in planning, executing, reviewing and reforming their vigilance work. Stating in his article that the process of combating the epidemic of corruption in India “has been slow in coming”, Nagarajan Vittal explains – the CVC as the culmination of half a century of momentum to address the issue of corruption.⁴ The Indian Government commissioned the CVC to ensure the effective implementation of the PCA, which focuses on the leaking of public funds via India’s extensive bureaucratic system. The number of public servants in the central government is four million but the CVC has jurisdiction only over the highest ranking officials.⁵

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³ The Santhanam Committee was appointed in June 1962, to review the existing instruments for combating corruption and to advise on practical measures to make anti-corruption measures more effective, submitted its report on 31st March 1964. Besides Santhanam the committee had five members of Parliament and two senior officers.


⁵ Ibid.
4.3.1 The Central Vigilance Commission Act

The CVC set up in 1964 acts as the apex body for exercising general superintendence and control over vigilance matters in administration and probity in public life. It is governed by the Central Vigilance Act, enacted on 11th September, 2003. It is an Act to provide for the constitution of a CVC to inquire or cause inquiries to be conducted into offences alleged to have been committed under the PCA 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto. The Commission consists of a Central Vigilance Commissioner\(^6\) and two Vigilance Commissioners. The Commission can undertake an inquiry into any transaction in which a public servant is suspected or alleged to have acted for an improper or corrupt purpose; or cause such an inquiry or investigation to be made into any complaint of corruption, gross negligence, misconduct, recklessness, lack of integrity or other kinds of malpractices or misdemeanors on the part of a public servant. The Commission tenders appropriate advice to the concerned disciplinary authority in all such matters. It also exercises superintendence over the vigilance administration over various ministries and corporations of the Central Government. Proceedings before the Commission are deemed to be judicial proceedings.

4.3.2 CVC adopting strategies to tackle bureaucratic corruption

Over the past few years, the CVC has tried to adopt effective strategies to tackle the issue of corruption. It is desired to utilize the CVC as an instrument for organizing all the disparate anti-corruption forces in India to fight corruption in this large country.

Unfortunately, the CVC’s direct jurisdiction is restricted to the governmental bureaucracy.\(^7\) The continuation of such corruption comes from the cushion of legal safety, which contends that every person is innocent until proven guilty.

\(^{6}\) In terms of Section 4 of the CVC Act 2003, Sh. Pratypsh Sinha, IAS 1969 BH (Retd.) has joined as Central Vigilance Commissioner in the Central Vigilance Commission on September 2006.

\(^{7}\) Bureaucratic corruption is able to persist because of a scarcity of goods and services, red tape and administrative delay, and a lack of transparency.
and a basic notion of tribalism in which corrupt individuals keep each other in power to further their own interests.

4.3.2.1 Three-pronged strategy to tackle bureaucratic corruption: Central Vigilance Commission browses corruption areas

The CVC is following a three pronged strategy to tackle bureaucratic corruption:

First - Element of the CVC’s Strategy- The simplification of rules and procedures so that the scope of corruption is reduced

The CVC has the power to govern over the vigilance administration of the Central Government’s various Ministries, over Corporations established by or under any Central Act, over Government Companies, and over societies or local authorities owned or controlled by the Central Government. This position of superintendence empowers the CVC to give directives on policy matters and procedures. The CVC therefore focuses on procedures that are likely to lead to corruption and then tries to modify them.8

Second - Element of the CVC Strategy - Bringing Greater Transparency in the Political System

In an effort to bring greater transparency to the entire political system, the CVC (perhaps something done by a government agency for the first time in the world) has published on the internet, the names of officers charged with corruption. The center of this initiative, to bring greater transparency to the entire political system, has come from the CVC’s public face on the internet (http://cvc.nic.in). Officers who were facing departmental inquiries and who have been proven guilty after due inquiry under the PCA have been cited on the web site. This action by the CVC was motivated by a desire to display the process of justice against allegedly corrupt public servants. The official web site has helped in combating the general public perception that only middle-level or junior officials have been held accountable in the legal system and

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8. One example is the corruption in Government procedures: in November 1998, the CVC ordered that once tenders have been opened, there must be no post tenders negotiations except with the lowest bidder. This reform has created a lot of transparency, placing a check on corruption in Government purchase operations.
despite the lack of media coverage, action is taken against senior bureaucrats as well.

The Impact of publishing names on the website

Some of the people whose names appeared on the website occupied sensitive public positions. In principle, if an official is facing a vigilance inquiry, he should not be placed in sensitive posts, of course in practice, this is not followed. The continued presence of indicted officials in our public system is an important reason why corruption flourishes, and this fact was highlighted immediately by the website.

In fact, in criminal cases, when a person is accused, he is legally innocent until proved guilty, but as far as court proceedings are concerned, the name of the accused is in the public domain. This is so also in serious offences having moral turpitude like murder, rape. There is no protest from the accused that his reputation has been damaged. But the publication on the CVC website of the names of officers was met with protests, was generally perceived as rouge's gallery, and was even criticized by a newspaper which accused the CVC website as "Icondemnyou.com" website. The protest was that the CVC was condemning innocent public servants whereas, all that the CVC had done was that it had publicized the departmental inquiries which were taking place, and had done it with the extraordinary speed of the internet. But despite the fact that the Indian society has become very insensitive and cynical with respect to the issue of corruption, the website publication seems to have stirred the public conscience. Without doubt it may be mentioned here that, the fear of having one's name published on such a website will have a marked deterrent effect on the potentially corrupt public officials.

Third - Element of the CVC's Strategy: Implementing Effective Punishment

The corrupt public servant can be prosecuted only if the evidence against him is strong enough and can be proven in a court of law. While the standard of proof required is "beyond a reasonable doubt", such cases take a long time with remarkably low conviction rates. The other option is to take a
Corruption plagues Government agencies and CVC intends eliminating it. As regards the action taken in Government departments, much depends on the advice sought and tendered by the CVC. One, the advice of the CVC is sought when a department sends to the CVC all the data it has on a particular case. This advice is on whether there should be prosecution or departmental action. If the decision is that departmental action and not prosecution, is to be pursued, then further advice of the CVC is tendered as to the severity of penalty. This is followed by an inquiry conducted either by the CVC or the department. Further, and the second advice sought by the department is in regard to the type of punishment to be given to the corrupt person.

4.3.3 Present position of the Central Vigilance Commission

The CVC has existed now for more than forty three years. Nevertheless, till 1998, there was not much general awareness of the functioning of the CVC. This was because the approach adopted by the CVC was that it was a body to give advice to the government departments which consults them. There was no need for an activist or high profile approach.

The CVC became an organization attracting national attention because of the judgment of the Supreme Court in Vineet Narain case\textsuperscript{10} which was connected with a famous scandal known as the "Hawala Scam"

4.3.4 The objectionable feature of the Central Vigilance Commission Act

The Central Vigilance Act having a magnetic quality of attracting public notice is momentously significant to the relentless struggle against the menace of corruption in public life. The Act is a reverse march of a campaign in favour of greater probity in public life, and instead, blows the victorious trumpet of tremendous success to those who wield influence and who would do anything and everything possible to attenuate enforcement agencies. Such a law which strikes at the root of the CBI’s autonomy and freedom of action (by virtue of

\textsuperscript{10} AIR 1998 SC 889 : 1998 CrLJ 1208 SC.
inserting a new section, Section 6-A in the DSPE 1946)\textsuperscript{11} is an outcome of a country which desires to lead the democratic world and aspires for a very high growth rate.

The revival of the infamous Single Directive which was so vehemently struck down by the apex court in its celebrated order of 1997 during the Hawala case hearings, as violative of Article 14 of the Constitution of India, is the most objectionable feature of the CVC Act. It smacks of imperiousness and authoritarianism. When first introduced, it had the unmistakable focus on reining in the CBI, and its designs were therefore, questionable, if not wholly dishonorable. It came about in the late 1980’s under Rajiv Gandhi to throttle a CBI that was showing signs of independence and had taken several initiatives to go after people in high places.

4.3.5 Single Directive features and its implications

The Single Directive forbids the CBI to embark on an inquiry or investigation or even file a FIR against any public servant of and above the rank of Joint Secretary to the Government of India, without the approval of the Central Government. Even a decision to register a Preliminary Enquiry (PE) has to go through this tortuous process.\textsuperscript{12} The apex court in 1997 during the Hawala case hearings could not find any justification in the implementation of the Single Directive issued by the Enforcement Directorate as it was beyond the reasoning of the Court to grant more protection to a Joint Secretary from the alleged bias and arbitrariness of the CBI. The apex court’s order had come against a backdrop of suspicion that in the crucial investigation against the

\textsuperscript{11} Section 6-A: The DSPE shall not conduct any inquiry or investigation into any offence alleged to have been committed under the PCA 1988 except with the previous approval of the Central Government where such allegation relates to-
(a) the employees of the Central Government of the level of Joint Secretary and above; and
(b) such officers as are appointed by the Central Government in Corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

\textsuperscript{12} Notwithstanding anything contained in sub-section(1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the explanation to Section 7 of the Prevention of Corruption Act, 1988.

Under the Criminal Procedure Code 1973, no such permission is required and a decision to go in for an FIR or a PE is the sole prerogative of the investigating agency.
Jain Brothers, the CBI was dragging its feet because it was being intimated and distracted from its duty to probe the role of people in high places. The apex court, realizing the need to insulate the CBI from political caprice and wrongful influential decisions, struck down the Single Directive as unconstitutional.

4.3.6 Central Vigilance Commission Act 2003 reduces the position of CBI: The CBI Then and the CBI Today

It goes without doubt that the CBI had swung into action after gathering the huge energy from the apex court’s order of striking down the Single Directive in 1997. Its performance was sterling as it unearthed many skeletons from several cupboards. But the CVC Act enacted in 2003 has reduced the CBI to the position of an appendage of the CVC. This obnoxious move effectively took out the sting out of the CBI’s operational swiftness in two ways. First, it shifted the initiative from tackling corruption in the higher echelons of Government from a specialized and focused enforcement agency, the CBI, to an amorphous entity that the Government is, where decision making is procedure-ridden ritual and the premium is on procrastination rather than quick conclusion. Secondly, a law enforcement agency’s main strength is derived from the confidentiality of the information collected on the basis of skilful field enquiries over a period of time. Now the requirement of the Single Directive to require the CBI to furnish to the Government inputs based on such sensitive information to enable the Ministry involved to make up its mind on whether or not to approve of the commencement of any enquiry, only robs the CBI operations of their element of surprise, compromises confidentiality, both so vital to striking effectively at a corrupt public servant. By incorporating the Single Directive provisions in the Act, there is no confidentiality and insulation of the investigative agency, the CBI, from political and bureaucratic control and influence because approval of the Central Government would involve leaks and disclosures at every stage. The criminal – bureaucratic-politician nexus, which subverts the whole Indian polity, would be taken into account in granting or refusing prior approval before an enquiry or investigation could take place. Former Director of the CBI, New Delhi, writes about the changed role of the investigating agency, The CBI: A supervisory
role vested in the CVC coupled with the mischievously-conceived Single Directive could transform the latter from a mentor into an overlord, especially if Ministries choose to consult the CVC before giving green signal to the CBI for proceeding further against a senior official. This could lead to the CVC’s gross interference in the CBI’s day to day investigative functions.

4.3.7 Conclusions on Central Vigilance Commission’s Role
The CVC will no doubt continue to exercise only broad powers of ‘superintendence’ over the CBI, an expression that is difficult to define and could be distorted depending on the personality of the ‘Superintendent’. The general impression created is one of subordination of the CBI to the CVC.

4.4 THE CENTRAL BUREAU OF INVESTIGATION (CBI)
The CBI is India’s premier investigative agency, responsible for a wide variety of criminal and national security matters. It was established on 1st April, 1963 and evolved from the SPE founded in 1941. The CBI is controlled by the Department of Personnel of the Union Government headed by a Minister of a State who reports to the Prime Minister, although it is administratively part of the Union Ministry of Home Affairs headed by a Cabinet Minister. It is analogous in structure to the FBI of USA. The CBI is the official Interpol unit for India. The current Director of the CBI is Vijay Shankar (since December 10, 2005). The motto of the CBI is Industry, Impartiality and Integrity.

4.4.1 Genesis of the Central Bureau of Investigation
The CBI traces its origin to the SPE which was set up in 1941 by the Government of India. The functions of the SPE then were to investigate cases of bribery and corruption in transactions with the War and Supply Department of India during the World War II. Superintendence of the SPE was vested with the War Department. Even after the end of war, the need for a Central

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14. The safety clause that the CVC cannot give directions to the CBI on the nature of final disposal of an investigation may not be sufficient to halt a determined CVC from transgressing its limits.
Government agency to investigate cases of bribery and corruption by Central Government employees was felt. The DSPE Act was therefore brought into force and its functions were enlarged to cover all departments of the Government of India. The jurisdiction of the DSPE extended to all the Union Territories and could be extended also to the States with the consent of the State Government concerned.

4.4.2 The Central Bureau of Investigation takes shape

As the CBI, over the years, established a reputation of being the only investigative agency with adequate resources to deal with complicated cases, demands were made on it to take up investigation of more cases of conventional crime such as murder, kidnapping, terrorist crime etc. Apart from this, even the Supreme Court and the various High Courts of the country also started entrusting such cases for investigation to the CBI on petitions filed by aggrieved parties. Taking into account the fact that several cases falling under this category were being taken up for investigation by the CBI, it was found expedient to entrust such cases to the branches having local jurisdiction.

It was therefore decided in 1987 to constitute two investigation divisions in the CBI, namely, Anti-Corruption Division and Special Crimes Division, the latter dealing with the cases of conventional crime, besides economic offences. The CBI is a Central subject under the Constitution of India and thus reports to the Indian Government and not to the individual states.

4.4.3 Powers of the Central Bureau of Investigation

The CBI derives its investigating powers from the DSPE Act and can exercise them within the limits of Union Territories and centrally administered areas only. Law and order is a state subject and the basic jurisdiction to investigate crime lies with the State police. Besides, due to limited resources, the CBI would not be able to investigate crimes of all kind. The investigating powers are limited to the specific offences that are notified by the Central Government under Section 3 of the DSPE Act. The Central Government may empower the CBI to investigate the notified offences even in the limits of any State, but such empowerment can be ordered only with the consent of the Government of that State.
Thus, a legal stipulation arises from the fact that the DSPE Act creates a police agency and ‘police’ is in the Union List, which not only prohibits the extension of the powers of the police in one State to another State but also prohibits such extension without the consent of the second State. In the first few years after independence, there was no practical difficulty in the functioning of the CBI within the limits of the States also, because the same political party was in power in the States as well as at the Centre.

The situation changed when different political parties got into power in the States. Some of them started withdrawing the consent given by the earlier State Governments whenever they felt that an investigation taken up by the CBI was politically embarrassing or uncomfortable for them.

The CBI’s status as an investigating agency within a State continues to be unstable and dependent on the State Government’s mercy. This is a serious handicap in planning any nation-wide network of investigating units for anti-corruption inquiries.

4.4.4 Suggestions to improve the working of Central Bureau of Investigation

The above mentioned difficulty can be overcome if the Central Government legislates a separate law to put the CBI on a statutory basis. In fact, the name ‘CBI’ figures in item 8 of the Union List in the Seventh Schedule and, therefore, Parliament can enact a law separately for the CBI. The new law has to project the CBI as an investigating agency only and not a police agency as otherwise it will be hit by item 2 of the State List, which refers to ‘police’.

In fact, there is no need to project the CBI as a ‘police unit’. It has no role or responsibility regarding maintenance of public order or peace, regulation of traffic or a host of such ‘law and order’ duties of the regular police. The CBI is solely concerned with investigations of specific cases assigned to it under law. Therefore, it would be sufficient if a new law spells out specifically the powers of arrest, search and seizure, summoning and examining witnesses which are presently available to the police when they investigate a cognizable offence and centers these powers on the CBI to facilitate their investigations.
The Customs Act confers on custom officers the powers to arrest, search, and seize in certain circumstances relating to smuggling. Likewise, a comprehensive CBI Act can take care of all the requirements of investigation work of the CBI.

An independent statutory basis for the CBI is very necessary for any effective anti-corruption scheme to cover the nation as a whole.

The Estimates Committee of the fourth Lok Sabha in its 78th Report had observed that it is necessary to give a statutory basis to the CBI in order to place it on a sounder footing. In the follow up action, a draft CBI Bill was prepared in 1990 but no progress could be made because it impinged on Centre-State relations. The Estimate Committee of the Tenth Lok Sabha noticed the impasse and recommended strongly in its 13th Report (1991-92) that this legislation should be taken up without further delay.

The deadlock on the Centre-State aspect of the matter can be removed if, as recommended, the CBI is projected as an investigating agency and not as a police agency. This matter must be pursued urgently in the interest of effective anti-corruption work.

4.4.5 The controversies engulfing the Central Bureau of Investigation

From being derided as the “rubber stamp” and “handmaiden” of the Government of the day to being hailed as a “professional” agency, the CBI has seen it all in the four decades (and four years) of its existence. If it has conjured up successes on many fronts, it has also landed itself in some exceptional mix-ups. The recent issues involving investigations by the CBI have unfolded the fact that the CBI has mastered the art of scoring own goals and conducting sabotage in criminal law investigations. It behaves particularly so if the accused are politically powerful and connected with the party in power.

It is the political antennae of the CBI that direct the course of its investigations. If the government of the day wants the CBI to
bend, it is willing to crawl. If the government wants it to harass a political opponent, the CBI readies for over skill.\textsuperscript{15}

It is evident from various investigations conducted by the CBI, that common tactics/methodologies are employed by it for scuttling its own case against ruling party favourites. These methodologies, going slow on the investigation, are thus eroding the public curiosity in the investigation [Bofors], allowing the investigation to reach a dead end, so that a closure report may be filed, [Taj Corridor case] asking for and having it refused, the State sanction for filing of a charge-sheet, thus having the case killed [Satish Sharma’s petrol pump allotment case] making feeble attempts when arguing the case, like changing of an effective public prosecutor and enabling the court to pass an order on a technicality favouring the accused, asking for opinions of Government Law Officer who would inevitably proffer advice not favouring the challenging of the case before a higher forum, in cases a Public Interest Litigation (PIL) challenges the order favouring the accused, arguing against the and PIL favouring the accused.

\textit{Two Questions arise for consideration: One, is the premier investigating agency autonomous? Two, will the Central Bureau of Investigation be guided by the law of the land or by the government of the day?}

A look at some of the cases handled by the CBI could provide answers.

Starting from the earliest, the Kissa Kursi Ka (1977) and the Jeep Scandal (1977) were probed and ultimately withdrawn by the government of the day. “The former Prime Minister, Indira Gandhi, figured as accused number one in the case regarding the alleged misuse of official position and deriving pecuniary benefit in connection with the procurement of a large fleet of jeeps for election purposes.”\textsuperscript{16} The officer N.K. Singh who was entrusted with the

\textsuperscript{15}. Most eye-witnesses of December 6, 1992, had given statement to the CBI that Bhartiya Janta Party leader Sh. L.K. Advani repeatedly appealed to the crowd not to damage the disputed structure. And yet, arguing against Advani’s discharge, the CBI tried to play down such sentiments. Again, an FIR has been registered against Sh. George Fernandes in some case arising from the ‘Tehelka’ tapes even though a former Supreme Court Judge has opined that there is no case against Fernandes.

job of arresting Indira Gandhi on October 3, 1977 was also the Chief Investigating Officer in the Kissa Kursi ka case, in which the trial Court convicted Sanjay Gandhi and Vidhya Charan Shukla. They were acquitted by the Supreme Court. In January 1980, after Indira Gandhi returned to power, Mr. Singh was arrested by the Haryana police on charges of conspiracy and wrongful confinement, and abduction of a former driver in Maruti Limited. Mr. Singh has cited several other instances of political interference in the CBI’s functioning; the abrupt removal of the then Director, C.V. Narasimhan, his repatriation to his parent cadre, and his being shunted out of the CBI when the probe in the St. Kitts case was getting too hot.

The Jain Diaries Hawala case, probed during the Narasimha Rao regime, fell by the wayside when the apex court upheld a Delhi High Court ruling that diaries needed to be accompanied by corroborative evidence. The case had shaken the political establishment to its foundations and heralded an era of judicial activism, which resulted in the close monitoring of the CBI probe by the High Courts and the Supreme Court. The Patna High Court took up the task of monitoring the CBI’s investigation in the Rs 900 crore fodder scam case, involving the then Bihar Chief Minister and Rashtriya Janta Dal Supremo, Laloo Prasad Yadav. In July 1993, four Jharkhand Mukti Morcha (JMM) Members of Parliament along with seven members of a breakaway faction of the Janta Dal (A) were allegedly paid at least Rs 8.7 crore to ensure the survival of the P.V. Narasimha Rao Government. That case put the former Prime Minister in the dock. The CBI swung into action, investigated the case, experiences during his years of service in the CBI and the State CID. NK Singh gives an eye-witness account of the murkier side of the politics of crime and corruption in the post independence India. He in his book, makes no bones about the fact that criminalization of politics and corruption in high places are responsible for the deplorable conditions prevalent in the country today.


18. On August 13, 2004, the Supreme Court pulled up the Centre for not taking a firm stand on the grant of pardon to fodder scam accused Dipesh Chandak, made an approver and key witness by the Central Bureau of Investigation saying the government seemed to have been “changing its colours to protect an important person.” Laloo Prasad Yadav who faces 6 cases in the Rs 900 crores fodder scam after Chandak’s counsel alleged that it was being done under pressure from the Railway minister. Chandak was the main supplier of the Bihar Animal Husbandry Department and he had confessed to the CBI that he had been claiming payments on fake bills from the department.
charge-sheeted the former Prime Minister as well as other accused in May 1997. The investigators discovered not only the cash that the JMM MPs could not account for from their bank accounts, but also evidence that they had forged party donation receipts in an attempt to cover up the discovery. But the Supreme Court's April 17, 1997 order, upholding the immunity of MPs from legal proceedings for their speeches or votes in Parliament marked in effect the demise of one of India's most sordid political corruption scandals.\textsuperscript{19}

The two judgments of the Delhi High Court in the Bofors case\textsuperscript{20}, one, holding that no case was made out against a public servant and the other holding that copies of documents filed by the CBI were not properly authenticated – were allowed to stand and not challenged further. The case was given a judicial burial.

The defreezing of the Italian businessman Ottavio Quattrocchi's (prime accused in the Bofors scandal) London account in 2005, was based on a CBI concession. A State law officer opined that there was no case against Quattrocchi.

The closure report filed by the CBI on the Rs175 crores Taj Corridor case in January 2005, which left the citizens baffled, is a clear reflection of political expediency. Attempts had been made to stall the investigations against Mayawati (the present Chief Minister of UP) on the ground that the Attorney General had given the opinion that no case against her had been made out. The CBI by this report had effectively ruled out ever establishing, to the satisfaction of the law, that criminal irregularities were at stake. This left citizens wondering exactly what Mayawati's government was up to in sanctioning the project. Timely the Supreme Court intervened and took the CBI to task for recommending the closure of the case. The bench noted: \textit{When all the members of the investigation team opined it was a fit case for prosecution, it is nothing but a charade performance by the CBI Director to seek closure of the case.}\textsuperscript{21}

\end{flushleft}
The Supreme Court thus directed the filing of a charge-sheet. It will not be out of place to mention here that despite the urgency expressed by the Supreme Court to file a charge-sheet against Ms. Mayawati in the Taj Corridor case before a competent court, the CBI took more than three months to implement the Supreme Court direction. When asked the reason for such delay, the CBI Director Vijay Shanker could only reply: We will be doing it soon. There were some gaps that needed to be filled in another case against Ms Mayawati for possessing assets disproportionate to her known sources of income.22

Close on the heels comes, in contrast from the same State – The CBI under the Congress-led UPA Government, launching an investigation into Mulayam Singh Yadav’s allegedly disproportionate assets on Uttar Pradesh poll-eve, whereas it is held back from pursuing a similar case against his political rival, (Ms. Mayawati).

Does the CBI go–slow on Mayawati have to do with the Congress’s post–poll calculus in Uttar Pradesh?23 Today, probably we have the answer. Ms Mayawati has bagged the coveted post of Chief Ministership in UP.24 Soon on attaining this position came the news that- the CBI has failed to produce the governor’s sanction required to prosecute public servants in the case- something the court had asked for in February.25 The fate of the Taj-Corridor case is well expected!

In response to another query (queries of the newpersons during an informal interaction with the CBI Director, Vijay Shanker at New Delhi, February 9, 2007) involving former Chhatisgarh Chief Minister Ajit Jogi in the cash-for-MLAs case, Mr. Shanker said the agency was yet to take a decision on it. There are some technical difficulties which are being sorted out with the prosecution wing.26 One may ask whether at all these “technical difficulties” be

24. Ms Mayawati was sworn as the Chief Minister of the UP State for the fourth time on May 13 2007.
26. The CBI had registered a case against Mr. Jogi in December 2003 and had also questioned him. The former Chief Minister allegedly bribed some BJP leaders in Chhattisgarh, including MPs and MLAs to prevent that party from forming the government in the State.
ever sorted out? It has taken nearly four years for the CBI to take a decision in regard to the prosecution of the case. Arun Jaitley believes on a pessimistic note, that as happened in the case of disproportionate assets against RJD Lalu Yadav, which was weakened by changing the public prosecutor and on the basis of collusive income-tax proceedings, "news reports have now indicated that the same fate will be met in the case of the alleged "procurement of MLAs against Ajit Jogi."^27

A website published the news – on January 8, 2007, CBI investigators want to file charge-sheet against Ajit Jogi. It begins writing – The opinion against prosecuting former Chattisgarh Chief Minister Ajit Jogi in the cash for MLA scam has yet again brought to fore the differences between the Government’s legal wing and the CBI whose investigators wanted to file a charge-sheet against him in the 2003 case.^28

As mentioned earlier, the case of disproportionate assets against RJD supreme Laloo Prasad Yadav had been weakened and the law officers of the present Government advised against challenging the somewhat questionable orders of the Income Tax Appellate Tribunal and the Special Judge in Patna. The CBI’s lack of drive in pursuing the disproportionate assets case against Lalu Prasad by appealing against his acquittal in a lower court^29 speaks of the same political string pulling.^30

Another step of the CBI cannot be overlooked. That is when the CBI recommended the filing of a criminal case against Satish Sharma for nepotism in petrol pump allotments.^31 The CBI had, after investigating the case against

29. Lalu Prasad was acquitted by the Special CBI Court on Monday, December 18, 2006.
30. The disproportionate assets case was an offshoot of the fodder scam and the CBI had at that time even raided the Chief Minister’s residence. The CBI had accused them of amassing over Rs.46 Lakhs in excess of their known sources of income during Mr. Prasad’s tenure as Chief Minister from March 1990 to June 1997. Deputy Chief Minister S.K. Modi demanded that the CBI must appeal against the verdict charging that there had been allegations against the Judge and that the CBI had sufficient evidence. *The Hindu*, Tuesday, 19 December 2006, p-1.
Captain Satish Sharma\textsuperscript{32} regarding allotment of petrol pumps and Liquefied Petroleum Gas (LPG) dealerships, found prima facie evidence against him in the case under the PCA and the IPC, and filed a charge-sheet in the court. But in May 2005, the CBI had to file a closure report before a Special Judge in the case against Captain Satish Sharma, as the Home Ministry refused sanction for his prosecution.

Needless to say, these scandalous developments have unwrapped for the umpteenth time India’s best known secret: The CBI is a hand-maiden of our polity. Worse, it has again raised serious doubts about its honesty and integrity of purpose to weed out the corrupt. A toothless tiger that is used by its political maibaaps to help their friends and settle scores with opponents makes a mockery of autonomy and independence.

4.4.6 Reasons which make Central Bureau of Investigation a hand-maiden of our polity

One, the agency administratively comes directly under the Prime Minister. Two, under Section 389 of the CrPC, only the executive has the power to decide whether the CBI will go in appeal against any case. Three, officers are dependent on their political bosses for their careers.....postings, transfers and seniority. If they perform well, they are adequately rewarded in various ways, including extension and even berths in prestigious and statutory bodies. Over the last decade, we have examples of pliant officers being rewarded handsomely. As for the hype surrounding the CBI - of its being independent, autonomous and free from Government pressure and influence— it should be borne in mind that, for all practical purposes, the agency depends heavily on Government funds.

The Supreme Court judgment of December 18, 1997\textsuperscript{33} had set the tone for the smooth functioning of the CBI and led to steps to protect the agency from extraneous influences- Quoting Lord Nolan’s recommendations (1995) on “Standards in Public life” — which laid down seven principles of selflessness,
integrity, objectivity, accountability, openness, honesty and leadership— the ruling called for a code of conduct incorporating them for all public bodies.

While directing the Centre to take all necessary measures to ensure that the CBI functioned effectively and efficiently, and was viewed as a non-partisan agency, the Court laid down minimum two-year tenure for the Director of the CBI, regardless of the date of his retirement. It wanted the CVC to be given a statutory status and superintendence over the CBI’s functioning with a view to introducing visible objectivity.

The Court hoped that “the personnel of the enforcement agencies should not now lack the courage and independence to go about their task as they should, even where those to be investigated are prominent and powerful persons.”

But in spite of such support from the Supreme Court, the post-Vineet Narain phases of the CBI and the CVC have not been free from hiccups. The introduction of the Single Directive from the back door in the CVC Act 2003 reflects the tendency of the political class to unitedly bring in such a provision. No government till date has done anything to implement the Supreme Court order. In fact by enacting the CVC Act 2003 and inserting in its Section 26 relating to DSPE, a new subsection 6-A undid the Supreme Court’s order of striking down the Single Directive. The Government has by this action assured its interference and of holding tightly on to the reins of the CBI.

The latest issue, which was like a thunderbolt out of the blue and has shaken the CBI’s feet off from the Indian soil and made it fly beyond the territorial boundaries of this country, is the Bofors ghost, spanning over 27 years. It has once again in 2007 come to haunt and taunt the Congress-led UPA Government. The arrest in Argentina of Italian businessman Ottavio Quattrocchi, prime accused in the Bofors scandal based on an Interpol Red Corner notice, on 6 February, opens up a buried case in which this gentleman stands accused of receiving $7 million in bribes as a middleman in the $1.2 billion purchase of the artillery gun from Swedish arms maker Bofors AB. The Quattrocchi scandal has once again raised a question that needs to be urgently answered: Will the CBI be guided by the law of the land or by the government of the day?
One won’t be surprised if the CBI turns into a ‘Congress Bureau of Investigation’ against the former Uttar Pradesh Chief Minister in the case of disproportionate assets, after the Congress received a poll eve judgment from the Supreme Court.\footnote{34. Supra note 27.}

Why has the CBI credibility suffered and suffered so greatly? The CBI’s fatal attraction for political cover ups and clean chits has earned it two ignominious nicknames: ‘the Central Bureau of Convenience, Connivance and Corruption’; and ‘the Congress Bureau of Investigation’ with the devil taking the hindmost.\footnote{35. Bofors Ghost Rises Again, Central Chronicle Wednesday, March 7, 2007. http://www.central chronicle.com/index.htm}

Common questions arise in many minds. Is the CBI more sinned against than sinning? Are politicians the main culprit? Is the pot calling the kettle black? The truth is midway. Both work in tandem in furthering their own interest. Consequently, the system becomes self-perpetuating. The CBI has put itself into such a position that the shadow of the political partiality hovers over whatever it does. Cases are filed and withdrawn, pursued or put away in ways that too comfortably align with changes in Government. The CBI will have to do more to dispel the notion that the zeal with which it pursues evidence had nothing to do with changing political scenarios.

Left to itself, the CBI has successfully investigated cases much more complicated than those involving politicians. So, the question is not about the agency but about its political masters.\footnote{36. Supra note 23.}

We may conclude with Arun Jaitley’s words, “When the State investigation loses credibility, we turn to the CBI. When the CBI loses norms of fair practice, whom do we trust?”\footnote{37. Supra note 27.}
4.4.7 The following is a glance at the performance of the CBI by its anti-corruption division in the period from January 2006-March 2007

**CBI PERFORMANCE—INVESTIGATION**

**JAN 2006-MAR 2007**

<table>
<thead>
<tr>
<th>MONTHS</th>
<th>NO. OF CASES REGISTERED</th>
<th>NO. OF CASES DISPOSED OFF FROM INVESTIGATION</th>
<th>NO. OF CASES PENDING INVESTIGATION</th>
<th>NO. OF CASES CHARGESHEETED</th>
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<tr>
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<td>42</td>
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<tr>
<td>FEB</td>
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<td>58</td>
<td>1482</td>
<td>39</td>
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<td>MARCH</td>
<td>139</td>
<td>128</td>
<td>1494</td>
<td>88</td>
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<tr>
<td>APRIL</td>
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<td>40</td>
<td>1522</td>
<td>32</td>
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<tr>
<td>MAY</td>
<td>73</td>
<td>62</td>
<td>1535</td>
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<tr>
<td>JUNE</td>
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<td>126</td>
<td>1519</td>
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</table>

Source: CBI website

## CBI PERFORMANCE - TRIAL
### JAN 2006-MARCH 2007

<table>
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<tr>
<th>Months</th>
<th>Disposal from Trial</th>
<th>Cases Pending Trial</th>
<th>No. of Convictions</th>
<th>No. of Acquittals/otherwise Discharged</th>
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Source: CBI website
CBI PERFORMANCE - CASES PENDING FOR PROSECUTION SANCTION JAN 2006 - MAR 2007

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<tr>
<th>Months</th>
<th>With The Central Govt. For More Than 3 Months</th>
<th>With The Central Govt. For Less Than 3 Months</th>
<th>With The St. Govt. For More Than 3 Months</th>
<th>With The St. Govt. For LESS Than 3 Months</th>
<th>With The Central As Well As The State Government</th>
<th>Total No. Of Cases Pending Sanction</th>
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<td>191</td>
<td>188</td>
<td>88</td>
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</table>

Source: CBI website

4.5 ANTI-CORRUPTION SET-UP IN THE STATES

Vigilance and Anti-Corruption Bureaus are established in all State Governments. The State Vigilance Bureau is the main agency of the State to deal with cases involving corruption. The Bureau conducts investigation/enquiries into the following types of allegations involving public
officials, including those working in the public sector undertakings of the State Government:

(i) Criminal Misconduct of public servants as defined in the Prevention of Corruption Act, 1988;

(ii) Dishonest or improper conduct or abuse of power by public servants;

(iii) Gross dereliction of duty or negligence;

(iv) Misappropriation of public funds;

(v) Amassing of wealth disproportionate to known sources of income;

(vi) Misuse of public money or property.

Besides conducting investigations into vigilance cases, the Bureau also conducts vigilance enquiries, confidential verifications and surprise checks. The Bureau also collects intelligence about corrupt officials and maintains dossiers on them. Generally, the Bureau is headed by a Director who is of the rank of Director General of Police. The Director is assisted by Inspector General of Police and other police officers. The field formations are at division level and district level. Besides executive staff, the Bureau has legal and technical staff to assist them in the investigation of cases. The CBI and State Vigilance Bureaus of various State Governments register cases and arrest persons under the PCA.

4.6 COMMISSIONS OF INQUIRY IN INDIA - A REVIEW

Invented in England after the Marconi Scandal in the First World War, an Inquiry Commission, supposed to get at the truth so that action should follow as an objective consequence, today is the most popular device to inquire into the misconduct of the ministers. In India, appointed under the Commissions of Inquiry Act, 1952, which embodies provisions for appointment of special Inquiry Commissions to deal with inquiries into “definite matters of public importance”, a Commission can be appointed only when the Central Government or the State Government so desires.
Whenever there is a public pressure for an enquiry into the misconduct of a minister, the Central or the State Government usually resorts to the Commission of Inquiry Act to set up a Commission to inquire into specific allegations made against the minister. A Commission of Inquiry is normally headed by a Supreme Court or High Court Judge, either serving or retired.

After the downfall of the Congress Party in the Fourth General Elections of 1967, various State Governments appointed different Inquiry Commissions to check corruption and misuse of power. Following is a review of some of the Inquiry Commissions set up by the Government of India and the State Governments to probe into the allegations of corruption leveled against some of the former Ministers of the Union Government as well as the State Governments of different times in order to highlight the nature and dimensions of political corruption. Also an attempt is made to brief the findings of different Inquiry Commission and the subsequent actions thereof.

The review of these inquiry commissions is split into two parts. The first part deals with the pre-1977 and the second part deals with post 1977 Commissions of Inquiry. In the pre-1977 period no action was taken on the basis of the Inquiry Commissions’ reports, rather these reports remained in the desks of libraries only. But in the post-1977 period follow-up actions were taken on the basis of Commissions reports.

After the downfall of the Congress party in the Fourth General Election of 1967, various State Governments appointed different Inquiry Commissions to check corruption and misuse of power. Following is an attempt to review some of the Inquiry Commissions which were set up by the Government of India and the State Governments to probe into the allegations of corruptions levelled against some of the former ministers of the Union Government as well as the State Governments of different times in order to highlight the nature and dimensions of political corruption. Further an attempt is made to brief the findings of different inquiry commissions and the subsequent actions thereof.

38. In the pre-1977 period, the follow up actions were taken through the normal judicial machinery and in the post 1977 era, follow up actions were taken; avoiding tedious and cumbersome judicial process, through special courts.
4.6.1 Pre-1977 Commissions of Inquiry

Here is brief review of few Commissions of Inquiry in order to highlight the nature and dimensions of political corruption.

4.6.1.1 The Das Commission of Inquiry

A one-man Commission of Inquiry, consisted of Sudhi Ranjan Das, a former Chief Justice of the Supreme Court of India, appointed by the Government of India on 1st November, 1963 to go into the charges framed against Pratap Singh Kairon.\textsuperscript{39} When G L Nanda, the former Home Minister of the Government of India, started his crusade against corruption, the case of the late Partap Singh Kairon was making front-page news. The charges against Kairon were that he as head of the State Government rendered his support to his sons and other members of family for acquiring wealth. There were twenty allegations made against him in the form of a memorandum which was presented to the President of India on 13\textsuperscript{th} July 1963. The memorandum complained against the partial treatment by the Prime Minister, Jawaharlal Nehru, and urgently sought for a public inquiry into the allegations. As a result Inquiry Commission was appointed. This, possibly, stems out of the advice given by the former President of India, Sarvapalli Radhakrishan, to investigate the charges thoroughly and meticulously.\textsuperscript{40}

Reviewing the entire evidence adduced before it, the Commission said “those several charges thus brought home to the Chief Minister cannot but be regarded as unbecoming of a person holding the high and responsible office of Chief Minister of a State”. Kairon’s case was that the alleged misconduct and misdeeds of his sons had not been brought to his notice; else he would have warned them. This was patent absurdity. Kairon knew at least from 1958 onwards that allegations, right or wrong were being made against him, his


\textsuperscript{40} G.S. Bhargava, India’s Watergate-A Study of Political Corruption In India, Arnold Heinemann Publishers (India) Private Limited, New Delhi, 1974, p-165.
sons, and the government officials. In the premises he cannot now be heard to say that he had no knowledge of any wrongful conduct on the part of his sons, relatives or the officers under him. The allegations stared him in the face; he paid no heed to them. He cannot now plead ignorance of facts. In view of his inaction in the face of the circumstances here in before alluded to, he must be held to have connived at the doings of his sons and relatives, his colleagues and the government officers. This is the true position as the Commission apprehends.

The Das Commission found Kairon guilty. The Commission held that other ministers of the Punjab Government showed undue favours to his sons and relatives at his bidding, direct or indirect.

Kairon was assassinated on 7th February, 1965, and that silenced the Das Commission report.

4.6.1.2 The Ayyangar Commission of Inquiry

When Shiekh Mohammed Abdullah was the Prime Minister of the State, Bakshi Ghulam Mohammad, the Deputy Prime Minister, earned notoriety for corruption and oppression. But when Sheikh Abdulla was arrested after the coup, Bakshi assumed the office of the Prime Minister of Jammu and Kashmir and became all in all in the State in 1953.

A Commission of Inquiry headed by Justice N. Rajagopalam Ayyangar, a Judge of the Supreme Court was appointed on 30th January, 1965 to conduct an inquiry into the corrupt practices of Ghulam Mohammed. In the words of A.G. Noorani: “The Commissions of Inquiry was appointed by the Jammu and Kashmir Government not to bring a public offender to book and keep a powerful political opponent out of the way”. Bakshi was arrested on 22

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42. *Id.* at p-61.

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174
September 1964, in order to prevent him from moving a motion of no-confidence against the State Government headed by G.M. Sadiq. The motion was signed by majority of members of the State Legislative Assembly. Bakshi was released in December 1964 by which time the State Government had prepared its case against him to be put forth before the Commission of Inquiry which was appointed the following month.45

The terms of reference of Ayyangar Commission were in two parts. One was concerned with the nature and extent of the assets of Bakshi Ghulam Mohammad and his family members and relatives between October 1947 and October 1963. The second part of the terms of reference directed the commission to inquire whether, during the same period, Bakshi and his family members and relatives "obtained any assets, pecuniary resources or advantages or other benefits by abusing the various official positions held by him or by the aforesaid family members and other relatives and persons exploiting his office with his consent, knowledge or connivance."46

The commission found Bakshi Ghulam Mohammed guilty and it submitted its report on 30th June, 1967.47 Ayyangar ruled that from October 1947 to 1956 Bakshi was not proved to have abused the office. From 1957 till 1960 Ayyangar found there was proof of abuse of power and that his official position was exercised mainly to assist Bakshi Bashir Ahmed. The largest number of charges proved pertained to the period from 1961 to 1963 when Bakshi lost power. During this period Bakshi freely helped his son, his brothers, and cousin. Among the charges which were not proved were instances in which Ayyangar found that the members of the Bakshi family had obtained undue financial advantages at the expense of the Government. As we have seen in the case of Sardar Partap Singh Kairon, in a climate of corruption, the officials do not always need to be told to exercise their

45. Supra note 41.
46. Id. at p-66.
discretion in favour of the interest of the Chief Minister even if it meant dereliction of duty.\textsuperscript{48}

The total amount of improper benefit or undue financial advantage obtained by Bakshi Ghulam Mohammed and the members of his family was estimated at Rs.54 lakhs by the State Government. But he was able to prove that only about Rs.33 lakhs were directly traceable to abuse of power on his part. However it was also proved that the members of his family had improperly gained Rs.22 lakhs more, but abuse of power had not proved in this regard.\textsuperscript{49}

Referring to this, the Report remarked\textsuperscript{50}:

This would mean that the members exploited their relationship, but the Government has not been able to prove that this explanation had been with his (Bakshi's) knowledge or connivance. These sums are by no means insignificant, though they look small compared to the total of over Rs. one and half crores by which the family has improved its finances since 1957.

Bakshi had to quit his office following the submission of the report: After the submission of the report by the Ayyangar commission, the Government of Jammu and Kashmir amended the representation of the peoples Act, 1951 disqualifying the persons found guilty by the inquiry commissions from seeking elections to the Assembly.\textsuperscript{51} But no such amendment had been made by the Government of India. As a result Bakshi contested the election of Lok Sabha in 1971 from Srinagar constituency on a Congress ticket but he was defeated by Shamim Ahmed Shamim.\textsuperscript{52} Bakshi was debarred from contesting

\textsuperscript{48} Supra note 41, at p-89.
\textsuperscript{49} Supra note 8, p>-89.
\textsuperscript{50} Id. at p-90.
\textsuperscript{52} Ibid, at p-63.
the elections to the legislative Assembly of Jammu and Kashmir after the submission of the Commission report.

4.6.1.3 The Aiyar Commission of Inquiry

In Bihar, United Front Ministry was formed on 5 March 1967 headed by Matamaya Prasad Sinha after the fourth General Election. One main Commission headed by T.L. Venkataraman Aiyar, a retired judge of the Supreme Court was appointed by the Sinha Government to probe into number of charges against six Congress leaders who had held office in the former Governments. Former Chief Minister, Krishna Ballava Sahay, was one of them against whom charges were framed. The Aiyar Commission was asked to find out the extent to which the accused Congress leaders minted money and acquired property by virtue of their being in office and also to investigate whether pecuniary benefits were the result of direct or indirect misuse of their official positions. The Aiyar commission submitted its report on 5 Feb 1970.53

The Aiyar commission found all the ministers guilty of exploiting their positions and misusing their powers. But no follow-up action was taken on the basis of the Aiyar commission report. The change of Government took the sail out of the storm.54

4.6.1.4 The Mudholkar Commission of Inquiry

J R Mudholkar, a former Justice of the Supreme Court, was appointed on 10th September, 1968, to probe into the charges against the former Chief Minister Mahamaya Prasad Sinha and 13 Ministers of the United Front Government of Bihar who held office from April 1967 to Jan 1968. The Commission found Chief Minister guilty of several charges. Now it is to be seen that Aiyar Commission was appointed when United Front Government came into power in 1967 and Mudholkar Commission was appointed to probe into allegations against United Front Government, when Congress came to power.

54. The Prajatantra, Cuttack, 12 September, 1968.
A G Noorani has observed,\textsuperscript{55} “Aiyar performed his job with all the thoroughness and impartiality befitting a former judge of the Supreme Court of India, but it is unfortunate that his appointment should have been left to non-Congress regime which succeeded the Congress ministry and was not made, as a matter of course, by the center.

The Aiyar and Mudholkar reports make sorry reading, though it must be added that the charges which Mudholkar found to be proved against the united front ministers were not half as grave as those of which Aiyar found the Congress ministers guilty. Only a few of the misdemeanors are cited but these are the ones illustrative of the shabby manner in which the ministers betrayed the public trust.\textsuperscript{56} The two were erstwhile rivals and if they were now working together in the ministry it was on the tacit understanding that each would leave the other alone,\textsuperscript{57} observes A.G. Noorani.

\textbf{4.6.1.5 The Mitter Commission of Inquiry}

The Government of Orissa appointed the Mitter Commissions of Inquiry on 22\textsuperscript{nd} Feb, 1973, to inquire into the charges framed against former Chief Minister R.N. Singh Deo and other Ministers of the State.\textsuperscript{58} The commission found the Chief Minister guilty in the matter of renewal of agreements in favour of Kendu leaf agents and purchasers for the year 1972 and in the matter of grant of rebate, concessions or exemptions, the orders undoubtedly affected the revenues of the State detrimentally causing a loss of over Rs.40 lakhs to the State of Orissa. The said orders were neither proper nor justified and were irregular and unlawful. Other ministers were also held guilty in abusing their official positions.\textsuperscript{59} But this report has found its place in the cold storage.

\begin{itemize}
\item \textsuperscript{55} \textit{Supra} note 41, p-122.
\item \textsuperscript{56} \textit{Supra} note 41, p-123.
\item \textsuperscript{57} \textit{Ibid}.
\item \textsuperscript{58} The Ministers were Harprasad Mohapatro and Ainthu Sahu.
\end{itemize}
4.6.1.6 The Sarkaria Commission of Inquiry

The Government of India on the recommendations of the Governor K.K. Shah on 3rd February 1976 appointed a one man commission, headed by justice R.S. Sarkaria of the Supreme Court to probe into charges of corruption, favoritism, administrative and financial improprieties and abuse of official position against the former Tamil Nadu Chief Minister M. Karunanidhi and some of his cabinet colleagues after the dismissal of the Karunanidhi ministry.

The commission placed its first report on the table of the Rajya Sabha on 1 March 1977. The commission established seven charges of corruption out of 28 allegations on the basis of oral, documentary and circumstantial, convincing and reliable evidence, against M. Karunanidhi and Ambil Dharamlingam, former agriculture minister. According to the report, both of them received illegal gratifications to the tune of Rs.5,30,019 for granting contracts during the years 1970-71 and 1971-72. The Commission also found education Minister, V.R. Neduchezhiyan and S. Madhavan, the then Minister for Industries guilty of misconduct.

The Commission presented its final report to Parliament on 10th May 1978. The Commission indicated that, “M. Karunanidhi as Chief Minister, has misused his official position in awarding the contract for the Veeranam Project to Satyanarayan Brothers. The commission remarked:

“There is no doubt that M. Karunanidhi was interested in the contract being given to Messrs Satya Narayan Brothers for some extraneous conditions. And it is a major administrative blunder.” As per the report, the public money to the tune of Rs 6 crore was squandered over this project. The commission also held M Karunanidhi guilty of receiving Rs.13,21,296 by way of illegal gratification from nine sugar mills in 1970 along with P.V. Shanmugham, Minister for food. It was established by the Commission that O.P. Raman,

Minister for Electricity, received Rs.1.30 lakhs as illegal gratification from purchasers of the plan and machinery of the Samayanallur Thermal Power station.

The Commission dropped fourteen out of the twenty eight allegations, yet it held him and his erstwhile cabinet colleagues guilty of misuse of official machinery to further the ends of their Dravida Munnetra Khazagham Party.64

4.6.1.7 The Khanna Commission of Inquiry

R.N. Singh Deo formed coalition ministry in Orissa in 1967. It was only after that the Government of Orissa appointed a Commission of Inquiry headed by Justice H.R. Khanna, a sitting Judge of Delhi High Court on 26 Oct 196765 to inquire into and report on charges against Patnaik, former Chief Minister Biren Mitra and thirteen other Ministers. Mr. Justice H.R. Khanna submitted his report on 15th January 1969. The Commission found Patnail and Biren Mitra guilty of some grave improprieties.66

Justice Khanna found Biju Pattanaik and Biren Mitra guilty of acts of administrative improprieties and abusing their official power in the administration of the State.67

4.6.2 Post-1977 Commissions of Inquiry

It may be mentioned here that in post-1977 (emergency) period, after the submission of the reports by different Commissions of Inquiry set up by Janata Government, follow-up actions were taken and on 30 May, 1979, the Union Government set up two special courts in Delhi to try the former Ministers and officials of Government of India who were found guilty by the Commission of misconduct and misuse of power by committing certain excesses during the emergency. So in pre-1977 period follow-up, actions

64. Link, Vol. 20, No. 10, New Delhi, 8 February 1976, p-12.
66. Supra note 41, p-101.
were taken in ordinary judicial courts but in post-1977 period, follow-up actions were taken in special courts.

4.6.2.1 The Shah Commission of Inquiry

On 16 May 1977 the Central Government appointed Justice Jayantilal Chhoteylal Shah, a retired Chief Justice of India, as Chairman of one-man Commission of Inquiry to inquire into emergency excesses.68 The Commission was asked to probe69:

1. The excess and malpractices committed during emergency declared on 25th June, 1975 under Article 352 of the Constitution.
2. Instances of abuse of authority
3. Misuse of powers of arrests or issue of detention.
4. Specific instances of maltreatment of and atrocities on persons arrested under DISIR or (Defence of India Rules) detained and their relatives and close associates during the aforesaid period.
5. Instances of compulsion and use of force in the implementation of the family planning programme.
6. Demolition and destruction of property in the name of slum clearance or enforcement of town planning.
7. To recommend measures which may be adopted for preventing the recurrence of such abuse of authority, misuse of powers and excesses and malpractices.

Forty-eight Thousand70 complaints were received by the Commission out of which it investigated two thousand, three hundred and forty two (2,342) cases and rest were sent to either the Union Government or State Government for consideration and consequent action. The Commission submitted three reports, two interim on 13 March 1978 and one final on 29 August 1978.

Mrs. Indira Gandhi was held guilty of gross misuse of power in as many as in eleven cases.71

1. Reversion of Justice R.N. Aggarwal, High Court, Delhi.

2. Re-appointment of Justice V.R. Lalit, an additional Judge of Bombay High Court.

3. Institution of CBI cases against R. Krishnaswamy, Deputy Secretary, Deputy Secretary Heavy Industry, A.S. Rajan Development officer DGT and D.L.R. Cavle, Chief Marketing Manager STC.


5. Appointment of K.R. Puri as Governor of Reserve Bank.

6. Deviation from the established procedure and irregularities in the reconstitution of the Air India and Indian Airlines corporation.

7. Detention of Bhim Sen Sachar and seven others under MISA


9. Requisitioning of the Vishwa Yuvak Kendra, Chanakyapuri, New Delhi, under the DISIR.

10. Alleged improprieties committed in regard to Managal Behari, IAS, Rajasthan cadre and termination of the services of Chandravati Sharma, assistant teacher in a Jaipur school.

11. (a) Events between June 12 and 22, 1975 (b) events between June 23 and 25, 1975 (c) MISA detentions and other assets on the night of June 25 and 26, 1975 and thereafter.72

We can conclude that Shah Commission is an instance of political corruption committed by Mrs. Indira Gandhi to remain in power by proclamation of emergency.


4.6.2.2 The Gupta Commission of Inquiry

The Government of India (Janta Dal Govt.) on 29th May 1977 after the defeat of Mrs. Gandhi in 1977 appointed Justice Dhatri Saran Mathur, a retired Chief Justice of Allahabad High Court as one-man Commission of Inquiry to probe into the affairs of the Maruti concern of Sanjay Gandhi. The inquiry was to investigate how the licence had been obtained, how the land for the factory had been obtained, the company’s foreign exchange transactions and evidence of any bribes or kickbacks. The Commission reported on May 31, 1979, and it revealed numerous improprieties committed by the company during its history.

The report concluded by saying that the way in which Maruti had achieved its ends and the way in which it had received favourable treatment from politicians and Government officials displayed evidence of the close interest of Mrs. Gandhi in the company. Mr. Sanjay Gandhi exercised only a derivative power; its source was the authority of the Prime Minister.”

On Oct. 14, 1980 the Government nationalized Maruti in order to prevent the completion of the bankruptcy proceedings and on July 28, 1981, the cabinet formally rejected the findings of the Commission report.

4.6.2.3 The Reddy Commission of Inquiry

Home Minister of India, Charan Singh in the Lok Sabha on 16 June 1977, announced the appointment of Commission of Inquiry headed by P. Jaganmohan Reddy, a retired Judge of the Supreme Court. This Commission was appointed on 14 June 1977 in order to inquire into twelve specific charges of corruption and misuse of power by Bansi Lal and also to see whether these irregularities were committed by Bansi Lal in his capacity as the Chief Minister of Haryana or in his capacity as former Union Defence

73. Ibid, at p-123.
74. Ibid.
Minister or with his connivance, by any other person in authority or a high official or a public servant.75

1. The Reddy Commission held Bansi Lal guilty of favouring a West German firm but it did not find any fault with him in respect of a proposal to purchase of Boeing planes for the use of VIPs.

2. The Commission found that Bansi Lal had shown great interest76 in an agreement signed between the Ministry of Defence and Machines Augshurg Nurenberg (M.A.N.) in August 1976 to make purchase of fifty heavy duty recovery vehicles.77

3. The Commission further states that he abused his position in facilitating M.A.N. in entering into an agreement with Maruti but there was no evidence to establish that Bansi Lal obtained any unlawful gain for himself.

4. The Reddy Commission in its interim report found that former Defence Minister abused his official position and had the properties demolished at Bhiwani through R.S. Verma, Deputy Commissioner of Bhiwani, who along with Surender Singh directed the demolition illegally and without any justification.78 The Commission79 described the demolition as “a sad story” in which a citizen has been humiliated and his properties were demolished80 and aggrieved party was even prevented by the Deputy Commissioner from sending a telegram to the President of India. “The right of a citizen and democracy itself, can be said to be buried, when the right of citizen to address his President was denied.”

5. Bansi Lal was also accused of similar misuse of authority in regard to the purchase of land from Munia Devi by his daughters and pointed out

75. The Times of India, New Delhi, 31 August, 1978.
76. Ibid.
77. The Samaj, Cuttack, 6 December, 1977.
78. The Times of India, New Delhi, 8 December, 1977.
79. The Interim Report was laid on the table of the Lok Sabha on 6, February 1977.
80. The Times of India, New Delhi, 8 December, 1977.
now the latter had been forced to part with it for a throwaway prices
and a tar road was constructed mainly to benefit his daughters.81 The
Commission also found that immediately after when Bansi Lal became
the Chief Minister another land was purchased by him through coercions.

The Reddy commission concluded that there is no direct evidence of
any corrupt motive being established either against the then Defence
Minister or any one else.

4.6.2.4 The Grover Commission of Inquiry

A Commission of Inquiry was appointed by the Government of India on 23
May 1977 headed by Justice A.N. Grover to probe into the allegations of
corruption, nepotism and misuse of power against the Chief Minister of
Karnataka, Deoraj Urs, and some of his cabinet colleagues.82 The
Commission submitted its first report on 13th January, 1978, dealing with
seven out of sixty-seven allegations.83 The Chief Minister and some of his
ministers were found guilty. In that report, five allegations were related to
undue favours shown to private firms and it found the Chief Minister guilty of
four charges. The commission found Chief Minister guilty of “impropriety”,
favouritism and nepotism” in the appointment of his own brother as Director of
the Karnataka State Film Industries Development Corporation.

The Commission found “conclusive” proof to establish the allegations that
Devraj Urs went out of this way and misused his powers and authority in
placing Government orders to many companies and also found guilty of many
irregularities committed during office.84

The commission submitted its report to the Home Ministry Government of
India on 13th January 1978 and the Union Government decided on 18th

83. Before the Central Govt. appointed the Grover Commission the Karnataka Govt. Had
itself appointed a commission under the Chairmanship of Justice Iqbal Hussain of the
Karnataka High Court (Link., Vol. 20, No. 10, New Delhi, 16, October, 1977, p-12).
January 1978 to take follow-up action against Devraj Urs. However, no follow up action was taken.

4.6.3 Post-2000 Inquiry Commissions

4.6.3.1 The Tehelka/ Phukan Commission

Tehelka, a sting operation, which has made its way into the dictionaries and annals of journalism as an exceptional form of investigative journalism, revealed corruption in defence deals. After an officer accepted his guilt, the then Prime Minister Shri Atal Bihari Vajpayee was surely right in describing Tehelka as a "wake up call to the nation". But it fell on deaf ears. Instead of the Government investigating defence deals, it turned its wrath on Tehelka. A Commission of Inquiry was set up on March, 24, 2002. As soon as it started getting to the root of startling truths, Justice Venkataswami, the sole Commissioner, resigned in November 2003 to pave the way for the appointment of Justice S.N. Phukan in January 2004. The Phukan Commission sought to re-invent the wheel. Inquiries into the authenticity of the Tehelka tapes were re-ordered on scanty evidence.

On October 4, 2004, the Phukan Commission was wound up and the Central Bureau of Investigation-led probe of the defence issues was taken up in greater earnest. Two and a half valuable years had been lost.

Comment

The Tehelka episode is a nail in the coffin of the reputation of Commissions as effective tools of governance. The Tehelka Commission was "not a genuine investigation Commission". It was both a cover-up and a punitive Commission. While it was in place, a ‘wait and see mentality’ thwarted discussion and action. In fact, Tehelka seemed to dominate the Commission’s work.\(^\text{85}\) Despite Justice Venkataswami’s finding of January 16, 2002 that the tapes were genuine and Justice Sarin holding in the Delhi High Court on July 3, 2003, that the tapes need not suffer forensic examination, a relentless battle ensued. After Justice Phukan took over on May 9, 2004, the Commission ordered a forensic examination, which confirmed in a belatedly

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\(^{85}\) The Tehelka Commission by Rajeev Dhawan: The Hindu, Friday, October 15, 2004; Opinion.
4.6.3.2 One-Man Inquiry Commission of Justice Sidheswar Narain

The Taj Express Way Project set up by the then Mayawati Government in 2003, envisaged construction of 182 kms Expressway along the eastern bank of the Yamuna river connecting Agra with Noida with an objective of easing the traffic on the National Highway and the contract was awarded to one JP industries. There were allegations of irregularities in the land acquisition and the award of the contract. An Inquiry Commission was set up by the Mulayam Singh Government, which took over in August 2003, soon after the project was awarded. The Commission headed by Justice A. P. Mishra gave a clean chit to Mayawati but its report was quashed by the Allahabad High Court after which the State Government constituted another Commission of Inquiry under Justice Sidheswar Narain which also absolved Mayawati in the case. The Cabinet, while accepting the findings of Narain Commission has again awarded the contract to the JP group.\(^{86}\)

4.6.4 The functioning of the Inquiry Commissions

The Commissions of Inquiry Act, 1952, does not envisage a permanent Commission of Inquiry in office. It merely enables the Central and State Governments to appoint such a commission, as and when required. The Act itself does not provide for a permanent body to function as the investigating arm of the Commission. Under Section 5-A of the Act, the Commission usually secures the services of Investigating Officers from the CBI or the State Police for a short term of deputation to assist the Commission in identifying the relevant witnesses and getting their preliminary statements recorded before the Commission itself starts formally examining them in open judicial proceedings.

These investigating officers have ultimately to get back to their parent agencies under the Central or State Government after the Commission’s work.

is completed. This circumstance makes it difficult for them to function with complete independence and objectivity while making inquiries under the Commission.

They are naturally inhibited by the prospect of victimization on their return to the government fold, if their inquiries result in the exposure of misdeeds of a powerful person in the political establishment. This is an important factor which detracts from the ultimate quality of a Commission’s inquiry when the accused happens to be a politically Very Important Person (VIP).\textsuperscript{87}

4.6.5 Conclusion

In the Nehru era, the Commissions acted swiftly to effect the resignation of Finance Minister T.T. Krishnamachari at the Centre and the Chief Minister Pratap Singh Kairon in Punjab. In present times, the Commission has become a defensive weapon to diffuse, stall and frustrate decision-making. The transition of Commissions of Inquiry from instruments for effective inquiry to tools for cover-ups and oppression seems complete. After Tehelka, this is where the logic of using Commissions seems to be taking us.

Indian Democracy has much to learn from Tehelka episode. Indian governance is wrapped in corruption which has not spared even issues relating to national security. But the more stinging truth is that it is virtually impossible to discover the real state of affairs through any normal methods of investigation.

A researcher is therefore, confronted with a number of questions with regard to the working and justification of these commissions.

1. Is it justified to have inquiry Commission?

2. Can a poor country like India, where forty-two per cent of the people live below the poverty line, afford to incur great expenditure on such a luxury?

3. Have they contributed anything substantial to the political culture of the society?

\textsuperscript{87} Naunihal Singh, \textit{The World of Bribery and Corruption}, Mittal Publications New Delhi, 1998.
4. Has political corruption been checked or prevented?

5. Have the commission reports been taken seriously by the Government or the voters?

6. Should the commission exist in present form?

A researcher naturally evinces keen interest to find out answers to these questions, besides unraveling the dimensions of political corruption.

After the present study following conclusions can be drawn.

(1) Power tends to corrupt and absolute power tends to corrupt absolutely.
(2) Setting up of the commissions of inquiry tends to be malafide and politically-motivated.
(3) They tend to be least effective in preventing corruption.
(4) They tend to be a fraud on the state exchequer.
(5) Follow-up action is hardly taken on the basis of the commission report.
(6) Corrupt ministers tend to escape from the clutches of law without being punished.
(7) Commissions must be vested with the power to recommend registration of cases against the person found guilty and this recommendation should be mandatory.

Commissions are expensive and archaic—lacking the ability and credibility to serve a useful function. India’s reliance on Commissions of Inquiry is misplaced. Commissions should be strategically used and confined to policy questions. Issues of corruption and criminality should be dealt with by strong criminal investigations. Today India’s Commissions of Inquiry are not just evasive but subversive, increasingly instruments of intimidation.

4.7 MEDIA’S ROLE IN EXPOSING CORRUPTION

A very important and significant role is played by the public and private institutions that report news including print (newspapers, magazines), broadcast (radio-stations, television station, television networks) and internet
based media. For brevity, these institutions are collectively referred to as “the media.”

Corruption-free governance is a basic human right and the media has a big role to play in helping citizens enforce this right. The media is a vital, essential and central player in the fight against corruption. Without a free, effective and independent media, it’s hard to imagine any country making sustainable, long term progress in fighting corruption. A free and independent media is one of the principle vehicles for informing the public about corrupt activity. By investigating and reporting on corruption, the media provides an important counter point to the abuse of entrusted power for private gain, shedding light on the wrongdoings of public office holders.

Late Zulficar Ali Bhutto said in his book ‘If I AM Assassinated’, that India is a united country, it is because of its boisterous democracy. The boisterousness of the democracy is significantly contributed by the media. The media has a crucial role to play in strengthening the edifice of democracy and in ensuring good governance, which holds the key to the development of the nation. It speaks volumes for our democracy that the press is playing a significant role in ensuring transparency and accountability in decision-making process.

While expressing that the media has a very significant role to play, Justice J S Verma, former Chief Justice of India, while delivering the inaugural address at an International Conference on media and governance, stated – the “seven principles of conduct” enumerated by the Lord Nolan Committee in England were applicable to anyone in public life, “whether they belong to the First, Second, Third, or Fourth Estate.”

The media has a role to communicate information. It has been said that bad news makes good copy. Corruption is bad news and definitely it makes a good copy. Our media must be thanked for vigorously exposing corruption in different sectors at different levels practically since Independence.

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89. The Hindu, Sunday February 18, 2007 p-10.
A functioning, independent media is also related to effective civil society action against corruption. The impact of civil society is dependent not only on reliable information but also on the existence of means to disseminate its opinions and raise issues of public concern. Moreover, the media has the editorial capacity to promote the anti-corruption positions of civil society groups. In countering corruption, the media therefore, plays a dual role: its spotlight directly revealing corruption while, at the same time, illuminating the anti-corruption efforts of other actors.

4.7.1 Investigative journalism exposing corruption through sting operations

Almost everything in India assumes gargantuan proportions, not least corruption. A fiercely independent media, civil society and judiciary, the three features of Indian democracy, are positive indicators for the nurturing of a culture of probity in public life. The result of this approach has been the exposing of corrupt activities of some high placed officials through the newly invented mechanism called ‘sting operations’. These sting operations are supposed to serve two functions, viz. informational (i.e. the investigatory function of identifying individuals engaged or likely to engage in criminal activity) and behavioral (i.e. deterring individuals from engaging in criminal activity where the threat of being caught in a sting operation scares them away from a criminal opportunity which would otherwise have been alluring). The Government’s and the CBI’s conduct over the recent episodes has rendered both rationales ineffective and redundant. These recent episodes are excellent illustrations of investigative journalism, the use of the internet and whistle blowing, working in concert to expose corruption. One needs look no further than the website of Tehelka.com, a website meaning ‘sensation’ which became sensational in 2001. International media darlings when its investigations of India’s defence establishments led to the resignation of the President of the then ruling Bhartiya Janta Party (BJP), Bangaru Laxman and Defence Minister George Fernandes. Transactions with those politicians were caught on video— one caught shoveling wads of cash into a desk drawer and the four and a half hour documentary was shown at a press conference. The reaction was immediate— Tehelka was praised by the public and media for exposing corruption in the highest places of Indian administration. While the
investigative reports were immensely popular and supported by the public, it provoked a defensive and vengeful reaction from public officials. In the Bangaru episode, ignoring the message, shooting the messenger syndrome was perfected to a fine art. In the Judeo episode, non-filing of any FIR for over three weeks and ensuring selective leaks about who organized the ‘sting’ has completely eroded the CBI’s credibility. The ‘investigative’ function has thus degenerated into ‘the messenger targeting’ function while the ‘behavioral function’ has been transformed into deterring the sting organizer from future exposes.

4.7.2 Media exposes misdeeds of world national leaders

One of the most dramatic ways in which the media contributes to the fight against corruption is when news reports exposing misdeeds lead to the forced resignation of public office holders. In Latin America alone, the media has in recent years played a central role in exposing corruption resulting in the ousting of four national leaders: President Bucaram of Ecuador; President Perez of Venezuela, President Collor of Brazil, the President Fujimori of Peru.90 In Philippines meanwhile, the investigation of journalists into the unexplained wealth of President Joseph Estrada played a crucial role in his eventual downfall.91

In addition to its direct role in countering corruption, the very existence of an independent media can have an indirect impact on the instance of corruption in a particular society. A tradition of hard-hitting investigative journalism may, for instance, place an indirect check on corruption that might otherwise take place in the absence of informed public debate. In the United States, it is often argued that coverage of the Watergate scandal solidified the role of investigative reporting in uncovering political misdeeds.92

91. Moller and Jackson, Journalistic Legwork that Tumbled a President, 2002.
Similarly when the media fosters debate in a way that encourages members of the public to become politically active, it serves as an indirect counterweight to the lack of mass participation in politics after associated with high levels of corruption. In India, the significance of how transparency can bring the issue of corruption into short focus and hopefully have beneficial effect was evident when the CVC took the initiative of publishing on the website of the CVC the names of the charged officers who were found guilty after departmental inquiry and against whom major penalty had been recommended. Along with this the list of public servants who were to be prosecuted in the court of Law was also included. This exercise was an exercise in serendipity. The CVC has had an expression in serendipity after it launched on its website (cvc.nic.in) the names of the charged officers who were either facing prosecution under the PCA or departmental action for a major penalty like dismissal. The display of the names of the senior officials of the Government of India including IAS and IPS officers in the website of CVC in January 2000 proved to be a classic example of serendipity.

4.7.2.1 Media exposes Andhra Pradesh Chief Minister’s misdeeds

Recently, the Andhra Pradesh Chief Minister V.S. Rajasekhar Reddy (YSR) was in a thick soup. Against him stand the allegations of his involvement into three scams - the massive siphoning of funds from the Sarva Siksha Abhiyan (SSA) and two land scams. The media has not shirked in aggressively investigating and exposing the scandals and the Government’s misdeeds through the Ramoji Rao’s Eenadu, India’s third largest-read daily newspaper. By doing this it even faced the wrath of the State Government which attacked the media baron’s financial base in an unprecedented way. Today the Chief Minister is compelled to offer to institute judicial enquiries into the three alleged scams and for this the media deserves a pat.

4.7.3 Challenges and dangers associated with media

Investigative journalism fosters anti-corruption attitudes and mobilizes political will for reform. In exposing corrupt acts, investigative reporting elicits popular

indignation about corruption and puts pressure on the government to change. It is precisely this risk of exposure that motivates governments to censor the press and jail journalists.

The press enjoys considerable power in playing the role of a watchdog over government in influencing decisions and setting trends, in transmitting ideas and information; in giving voice to the poor and the deprived. At the same time the press has to see that it exercises its power for the ultimate good of society and not out of any personal vendetta. We want our press to be fearless and unbiased and at the same time, abjure sensationalism and projections based on its own predilections.94

The need of the hour is to have more journalists who are courageous, public spirited and ready to take on the most powerful by exposing corruption, official insensitivity and apathy and mis-governance.

In order for the press to perform its role as a watchdog of those in power, it must rely on government to create the conditions in which an independent press can thrive. But there is resistance. Even if government officials support the concept of a free press in principle, the free press in practice can make their lives difficult. A free and independent media is one of the principal vehicles for informing the public about corrupt activity. By investigating and reporting on corruption, the media provides an important counter point to the abuse of entrusted power for private gain shedding light on the wrongdoings of public office holders. Nobody, not even honest politicians, likes to see their errors played across the front page.

Nevertheless the benefits of free press are obvious, be it is exposing corruption or abuse of the power, uncovering public policy failures or simply informing the public about the issues they need to know to practice their civic responsibilities.

94. Media have a key role in isolating divisive forces - an excerpt from the Lok Sabha Speaker Somnath Chatterjee’s December 7, address at the IPI-Indian Award for Excellence in Journalism 2006 function in New Delhi. The Hindu, Monday, December 11, 2006.
These benefits have been quantified by Transparency International, which in 1999 study showed a direct correlation between the level of press freedom and the level of corruption. The more press freedom, the less corruption.

4.8. LOKPAL –THE INDIAN OMBUDSMAN

4.8.1 Introduction

A watch dog empowered to conduct rigorous investigation into allegations of corruption against public servants; a mechanism that would adopt very simple, independent, speedy and cheaper means of delivering justice by redressing the grievances of the people; an institution which has the potential to successfully fight against corruption and unscrupulous administrative decisions by public servants; a guardian of democracy and civil rights— is the functionary which is called by different names in different countries, the most popular being the title of Ombudsman (as it is called in Sweden, Finland, Norway, Denmark- the Scandinavian countries) and in India by the name of Lokpal— if ever it is born! The siblings of this unborn entity have sprouted as 'Lokayuktas' in various states of India.

4.8.2 The Indian Ombudsman

The Indian Lokpal is synonymous to the institution of Ombudsman existing in the Scandinavian countries. The office of the Ombudsman originated in Sweden in 1809 A.D., and adopted eventually by many nations 'as a bulwark of democratic government against the tyranny of officialdom'. Ombudsman is a Swedish word that stands for "an officer appointed by the legislature to handle complaints against administrative and judicial action. Traditionally the Ombudsman is appointed based on unanimity among all political parties supporting the proposal. The incumbent, though appointed by the legislature, is an independent functionary- independent of all the three organs of the State, but reports to the legislature. The Ombudsman can act both on the basis of the complaints made by citizens or suo-moto. He can look into allegations of corruption as well as mal-administration.
What Michael Meacher, Labour Party's social security spokesman, said of the British system on May 26, 1992, applies to the Indian system with greater force. The Prime Minister, he said, now had more untrammeled power than the King before the Revolution of 1988. Meacher said “the corrupt proliferation of patronage, the opium of the elite; the rise of unelected confidants in the No.10 office who can be more powerful and less accountable than elected Ministers; the all-pervading blanket of secrecy around most sensitive decisions, which excludes even Cabinet Ministers- all these should be reduced or ended.”

In June 1969, a UN Seminar held in Stockholm on Ways of Safeguarding the Rights of Individuals Against the Abuse of Administrative Power discussed five principals means of ensuring such protection:

- Parliamentary Commission of Inquiry;
- Procuracy of the Soviet Type;
- Judicial Remedies of the English Legal System;
- The French Counsel-D'Etat; and
- The Ombudsman of Scandinavia

By then, the Ombudsman had already acquired a reputation in India. Addressing the AICC at Jaipur, on November 3, 1963, Prime Minister Jawahar Lal Nehru said he was fascinated by the idea of an “Ombudsman” who should have the authority to deal with the charges against the Prime Minister and command respect and confidence from all.

4.8.3 Rationale for the institution

In the regular dispensation of Government there are implicit and explicit ways that citizens can voice their grievances and demand change. But these are often difficult. Within administrative departments, for example, any decision of one official can be appealed to a higher official, all the way up to the head of a department. However, this mechanism has inherent flaws. Higher officers

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enjoy departmental fraternity with those against whom complaints are made and both sail the same boat. Therefore, their impartiality in judging appeals is always doubted. On the legislative side, an individual can approach the member, representing his constituency for his demands. But given the absence of easy access of an ordinary citizen to his representative, this has more remained a myth than reality. Among the organs of the State, the Judiciary has proved itself to have highest credibility in protecting individual rights. However, due to procedural complexities involved in court cases - right from filing a case to the delivery of final verdict - there are inevitable delays of justice which often are also denial of justice.

The existing devices for checks on elected and administrative officials have not been effective, as the growing instances of corruption cases suggest. The CVC is designed to inquire into allegations of corruption by administrative officials only. The CBI has been castigated by the Supreme Court often in recent times. All have necessitated the creation of Lokpal with its own investigating team in earliest possible occasion.

4.8.4 The Lokpal - its lineage

In early 1960s, mounting corruption in public administration set the minds blowing in favour of an Ombudsman in India too. The Administrative Reforms Commission ARC set up in 1966 recommended the constitution of two-tier machinery - of a Lokapal at the Centre and Lokayukta(s) in the States. The ARC while recommending the constitution of Lokpal was convinced that such an institution was justified not only for removing the sense of injustice from the minds of adversely affected citizens but also necessary to instill public confidence in the efficiency of administrative machinery. Following this, the Lokpal Bill was for the first time presented during the Fourth Lok Sabha in 1968 and was passed there in 1969.

However, while it was pending in the Rajya Sabha, the Lok Sabha was dissolved resulting in the first death of the Bill. The Bill was revived in 1971, 1977, 1985, 1989, 1996, 1998 and last in 2001. Each time after the bill was introduced to the House, it was referred to some committee for improvements – a Joint Committee of Parliament or a departmental standing committee of
the Home Ministry—and before the government could take a final stand on this issue the House was dissolved.

The Lokpal was visualized as the watchdog institution on ministerial probity. Broadly the provisions of different bills empowered the Lokpal to investigate corruption cases against political persons at the Central Level. Some important features of the Lokpal Bill have varied over the years; in its most recent avatar, the bill contains the following:

- **Objective**: is to provide speedy, cheaper form of justice to people.

- **Members**: Lokpal is to be a three member body with a Chairperson who is or has been a Chief Justice or Judge of the Supreme Court; and its two other members who are or have been Judges or Chief Justices of High Courts around the country.

- **Appointment**: The Chairperson and members shall be appointed by the President by warrant under his hand and seal on the recommendation of a committee consisting of the following persons. (It is not clear whether the committee has to make a unanimous decision or a majority decision will do). (a) the Vice-President (Chairman) (b) the Prime Minister (c) the Speaker of Lok Sabha (d) Home Minister (e) Leader of the House other than the House in which the Prime Minister is a member (f) Leader of the Opposition of both the Houses.

**Independence of the Office**:

In order to ensure the independence of functioning of the august office, the following provisions have been incorporated:

- Appointment is to be made on the recommendation of a committee

- The Lokpal is ineligible to hold any office of profit under the Government of India or of an State or similar such post after retirement.

- Lokpal will have its own administrative machinery for conducting investigations.

- Salary of Lokpal is to be charged on the Consolidated Fund of India.
**Jurisdiction of Lokpal**

- The central level political functionaries like the Council of Ministers including the Prime Minister, the Members of Parliament etc.

- He cannot inquire into any allegation against the Prime Minister in relation to latter’s functions of national security and public order.

- Complaints of offence committed within 10 years from the date of complaint can be taken up for investigation, not beyond this period.

- Any person other than a public servant can make a complaint. The Lokpal is supposed to complete the inquiry within a period of six months. The Lokpal has the power of a Civil Court to summon any person or authority. After investigation, the Ombudsman can only recommend actions to be taken by the competent authority. A number of safeguards have been taken to discourage false complaints or complaints of malafide intent.

- The Lokpal orders search and seizure operations.

- The Lokpal shall annually present to the President the reports of investigation and the latter with the action taken report has to be put it before the both Houses of Parliament.

**Acts/ ‘Offences’ to be probed by the Lokpal**

Till 1985, all the LokPal Bills— the one in 1966 of the ARC headed by Morarji Desai, of Indira Gandhi’s Government in 1968 and 1971 and of Moraji Desai’s Government in 1977—covered acts which might not constitute offences in law but were, nonetheless, improper and actionable. The law, however, did not provide any remedy for such administrative wrongs. Hence the necessity for a Lok Pal which would probe into such ‘maladministration’ at the instance of any aggrieved citizen.

This was the raison d’etre of the Scandinavian Ombudsman. That is also the remit of his British counterpart, the Parliamentary Commissioner for Administration as defined in section 5(1)(a) of the Parliamentary Commissioner Act, 1967. The Commissioner investigates into a complaint that “a member of the public” had sustained injustice in consequence of
maladministration by any government department or authority. Like the Ombudsman, the Commissioner acts on behalf of Parliament. He has no power to punish. The Lokpal Bills retained this fundamental feature of the office.

But the 1985 Bill, piloted by Union Law Minister, A.K. Sen, departed from a feature that lies at the heart of the scheme-namely, exposure of an administrative wrong even if it did not amount to an offence in law. This bill confined the Lokpal’s inquiry into “any offence punishable under Chapter IX of the IPC or under the PCA 1947.” In 1988, the 1947 Act was repealed by the PCA 1988 which also deleted the provisions of the IPC and incorporated them. All successive bills—of 1989, 1996, 1998 and 2001 restrict the Lokpal’s remit to “any offence punishable under the PCA 1988.”

But then why would anyone move the Lokpal for such an offence when he can institute a prosecution in a court of law for it and secure the punishment of the public servant involved? Why set up a parallel and impotent office from enforcing the 1988 law? All that the Lokpal can do is to report his findings to “the competent authority.” In relation to an MP, it means the House to which he belongs. If it concerns a Minister, it is the Prime Minister who will decide what action to take on the Lokpal’s report. And, if it concerns the Prime Minister himself, it will be left to the Lok Sabha, where he commands a majority.

The 1985 Bill robbed the Lokpal of its very raison d’etre and rendered it worthless. It was deliberate and inexplicable. Its emulation in as many as four later bills reveals a lot. The deformity is in the glaring contrast to the fundamentals of the office of the Ombudsman, now a feature of all democratic countries, and, indeed, of the three bills before 1985.

The Bill appended to the ARC’s report followed the norm. The Lokpal was to investigate any action taken by or with the approval of a Minister or Secretary in the exercise of his administrative function. The complainant had to be a person “who claims to have sustained injustice in consequence of maladministration in connection with such action or who alleged that the
action has resulted in favour being unduly shown to any person or in accrual of personal benefit or gain to the Minister or Secretary as the case may be”.

Following this report, the 1968 and 1971 Bills empowered the Lok Sabha to inquire into both a “grievance” as well as an “allegation”. These terms are of crucial importance, for it is they which make the Lokpal worthwhile. A ‘grievance’ was defined in clause 2(d) as a clause by a person that he had “sustained injustice or under hardship in consequences of maladministration.” The term “allegation” was defined in clause 2(b) to cover not only corruption in law or lack of integrity, but also abuse of public office to secure again or to cause harm or hardship to another. It included action motivated by ‘improper’ motives even if it did not constitute a criminal offence.

The 1977 Bill omitted from its scope ‘grievances’ about act of ‘maladministration’ only because separate machinery was contemplated to entertain such complaints. However, it widened the area of the Lokpal’s jurisdiction in respect of charges of improper behavior by defining ‘misconduct’ in the widest terms possible, going far beyond criminal offences.

4.8.5 Current moves to set up a Lokpal

Gala kapi ne pagdi pinao (Slit the throat and crown the man with a turban). This expressive Gujrati saying to describe a cover-up of skulduggery is rather apt description of current moves to set up a Lokpal, the Indian Ombudsman.97 The Lokpal Bill supposed to come in to drive a stake through the ‘Chalta hai’ culture, has the potential of bringing in an anti-corruption law whose ambit would have extended to the highest levels of every institution. Not only would there be accountability but there would also be less reluctance to take action against the accused.

But unfortunately, the Lokpal Bill is facing many hurdles in the way of its implementation. This is due to indecisiveness of the Government which is swaying like a pendulum in deciding whether the President, the Prime Minister, the Presiding Officers of the two Houses of Parliament and the Chief

Justice of India should/should not be brought under the purview of the Lokpal considering the ‘dignity’ attached to the Constitutional posts they hold.

The Second ARC has recommended that the Lokpal be given Constitutional Status and renamed “Rashtriya Lokayukta”. But it wanted the Prime Minister kept out of the Ombudsman’s jurisdiction. The justification given by ARC was: “The Prime Minister is accountable to Parliament and on his survival depends the survival of the Government. If the Prime Minister’s conduct is open to formal scrutiny by extra-Parliamentary authorities, then the Government’s viability is eroded and Parliament’s supremacy is in jeopardy.”

Giving reasons for keeping the Prime Minister out of the Ombudsman’s jurisdiction, it said: Any enquiry into a Prime Minister’s official conduct by any authority other than Parliament would severely undermine the Prime Minister’s capacity to lead the Government. Such weakening of the Prime Minister’s authority would surely lead to serious failure of governance and lack of harmony and coordination, and would severely undermine public interest.

The idea of bringing the Prime Minister within the Lokpal’s ambit was specifically introduced in the Lokpal Bill in 1998. This idea is swinging like a pendulum and now in 2007, more than eight years later, the clock has stopped ticking, the pendulum is again stuck on a very unreal, almost juvenile debate on whether or not the Ombudsman’s arms should reach the Prime Minister. This frustration is well expressed by A.G. Noorani in the following words- “How does it matter who falls within his remit when the LokPal himself has been castrated in the embryo even before he is born? That surgery was performed 20 years ago.”

In January, 2005, the UPA Government proposed to bring the Judiciary, the Executive and the Legislature under the purview of the Lok Pal. A Group of

99. Id.
100. Id.
101. Supra note 97.
102. The Tribune, Saturday, January 8, 2005, p-1.
Ministers (GoM) was set up under the leadership of the then Defence Minister Pranab Mukherjee to examine the Lok Pal bill. It was expressed, in 2005, that the provision of impeachment of a Judge has ‘failed’ and the existing provision or prior sanction of the Chief Justice of India as laid down in ‘Veerawasmi’s case’ by the Supreme Court for the prosecution of a sitting Judge for ‘any corruption charges or misconduct’, had not been found to be so effective. Thus the law regarding the prosecution of a sitting Judge ‘is a grey area’. Therefore the proposal was expressed for a comprehensive examination of the Bill to bring within its ambit all the three organs of the State. More than two years have gone by. Is the Bill still under the examination of the GoM without any outcome? Why is it failing to be adopted and being given a stamp of law? We have seen that the attempt to set up such an agency has had an extended and tortuous legislative history; since 1968, Lokpal Bills have been introduced in Parliament on as many as eight occasions, but failed to mature into an Act primarily because of a continuing disagreement over whether the Prime Minister should be within the purview of the Lokpal. In recommending that the Prime Minister be kept out, the ARC – just as the National Commission to Review the Working of the Constitution (NCRWC) did in 2002 – seems to have been influenced by the view that permitting the Lokpal to inquire into charges against the head of government will weaken the office and paralyze the administration. However, leaving the Prime Minister out will only serve to weaken the legislation and fail to send out the message that no one — irrespective of the office he holds – is above the law.

“Be you ever so high, the law is higher than you”. According to this maxim of the supremacy of the law, there is no reason why the PM should be given special treatment over other functionaries. The misdeeds committed during the Emergency remind us of the necessity of including the PM within the purview of the Lokpal. The Prime Minister is the example-setter for political life; the inclusion of his office strengthens the cause of probity in public life,

105. Ibid.
whereas his exclusion would create suspicion in the public's mind about the honesty and integrity of the highest political executive of the country.106

Like Judges, the Legislators or an Administrator do not come from another planet – they come from the same stock as the rest of society, and actions of some of them do bring shame to us.

But suggesting to include the Judiciary in the purview of the LokPal is a brazen faced tactic with the idea to bury the Lokpal Bill worked out by the UPA Government [if the press statements made by the Law Minister H.R. Bahrdwaj on January 7, 2005 in New Delhi represents the view of the government]. That the Judges of the High Courts and the Supreme Court should be included in the purview of the Lokpal is an “outrageous proposal”, which has never been put forward since 1968 when this topic is being discussed in Parliament even by the extreme critics of the judiciary. When the Constitution of a National Judicial Commission is on the anvil and the Bill is ready to be introduced in the Parliament, such a suggestion by the Law Minister if carried out would mean that the Constitution will have to be amended and approval obtained from a majority of the State Legislatures. Such a time consuming process will necessarily take decades. This, of course, is not a deterrence to the Law Minister, because the real and sole motive behind this dangerous suggestion (which trespasses on the independence of the judiciary) is to find an excuse to avoid passing the Lok Pal Bill and to give relief to 100 tainted MPs, including some of the powerful Cabinet Ministers.107

History is replete with examples of high dignitaries charged for corruption and misconduct. Who can overlook the recent example of the Pakistan Chief Justice Iftikhar Muhammad Chaudhry who was charged of corruption and nepotism.


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Following is a list of some corrupt dignitaries which includes the Prime Ministers and Presidents of some countries of the world who have either been charged of corruption or have faced trials for corruption or are facing trials on corruption charges.

1. **Argentina** - Former President Carlos Menem (1989–1999) - He was alleged to have taken a bribe of $10 million from Iran for covering up an alleged Iranian role in the 1994 bombing of a Jewish centre in Buenos Aires.108

2. **Bangladesh** - Former President Hossain Mohammad Ershad (1982-1990) - He was arrested years ago for squandering state funds in a deal to buy patrol boats from Japan while he was President from 1982 to 1990. A court confirmed a two-year jail sentence against him on corruption charges.109

3. **Bangladesh** - Former Prime Minister Sheikh Hasina (1996-2001) - She was charged with corruption linked to the purchase of eight MIG-29 fighter jets for Bangladesh Air force from Russia. She has forty charges of corruption against her. These are alleged to have been committed by her during her tenure as Prime Minister.110

4. **BULGARIA** - Former Prime Minister Saxe-Coburg - He is alleged to have been involved in corruption along with Victor Emmanuel, and Italian businessman Pierpaolo Cerani.111

5. **Costa Rica** - Ex President Miguel Angel Rodriguez (1998-2002) – He is alleged to have indulged in corruption by accepting payments from government contractor. In total, he is said to have received some us$4.400.000 in bribes and payoffs during and after his presidency.112

6. **Costa Rica** - President José Maria Figueres - He was forced to step down from his senior position at the World Economic Forum in Geneva

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108. www.ex.ac.uk/~RDavies/arian/scandals/political.html - 93k
111. www.sofiaecho.com/.../id_16067/catid_5  - 47k 09:00 Mon 26 Jun 2006 - Polina Slavcheva
112. insidecostarica.com/dailynews/2004/october/02/nac.htm
in October 2004 following allegations that he had received a US $900,000 bribe from Alcatel during his years of public office.113

7. **Costa Rica** - President Rafael Angel Calderon (1990 -1994). He was involved in a corruption scandal.114

8. **Costa Rica** - President Abel Pacheco (2002-2006) - It was alleged that he has received US $100,000 donation by Alcatel to his presidential campaign.115

9. **France** - Former Prime Minister Alain Juppé (1995-1997) – He was found guilty of corruption and barred from holding public office for a decade.116

10. **Ireland** - Former Prime Minister Charles Haughey (1987-1992) - He is alleged to have received more than €11.5 million in secret payments and lied about his knowledge of the funds, according to an investigation into Ireland's biggest political scandal.117

11. **Ireland** - Prime Minister Bertie Ahern (1997-2007) – He was castigated for his alleged corruption and his disdain for the press he had received between €50,000 and €100,000 for giving political favours.118

12. **Israel** - Prime Minister Binyamin Netanyahu (1996-1999) - Corruption charges were filed against him but later on were dropped because there was insufficient evidence to bring him to court.119

13. **Israel** - Former Prime Minsiter Ariel Sharon (2001-2006) - Several investigations produced evidence of enormous corruption in Sharon's

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113. /id.
114. insidecostarica.com/dailynews/2004/decem  ber/30/nac0.htm
115. www.latinamericanstudies.org/costarica/point.htm
118. www.eurotopics.net/en/presseschau/arch/article/Aarticle 10582

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political and business dealings and those of his sons, including bribes of hundreds of thousands of dollars.  

14. **Italy** - Former Socialist Prime Minister Bettino Craxi (1983-1987) – He was convicted on multiple corruption charges and sentenced to a total of nearly 10 years in prison.

15. **Italy** - Former Prime Minister Silvio Berlusconi (2001-2006) - Accused of bribing a Judge with $85,000 to bar the sale of the state-owned food giant SME to Carlo de Benedetti.

16. **Japan** - Prime Minister Morihiro Hosokawa (1993-1994) - Alleged to have accepted an illicit US$952,000 payment from a firm linked to organized crime. He is the fourth of the last five prime ministers to resign due to scandal.

17. **Japan** - Former Prime Minister Tanaka (1972-1974) - Found guilty of accepting bribes in his long running court case. He was sentenced for 4 years in prison and a 500 million yen fine.

18. **Japan** - Prime Minister Takeshita (1987-1989) - He had to resign from the post of Prime Minister after it was proved that he had received bribes from the Recruit Company.

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120. [www.mideastweb.org/bio-sharon.htm](http://www.mideastweb.org/bio-sharon.htm) - 29k
121. [www.iht.com/article/2000/01/20/obit.2_t_32.php](http://www.iht.com/article/2000/01/20/obit.2_t_32.php)
122. [http://www.guardian.co.uk/international/story/0,3604,950040,00.html](http://www.guardian.co.uk/international/story/0,3604,950040,00.html)
124. [www.shikokuhenrotrail.com/japanhistory/taishohistory.html](http://www.shikokuhenrotrail.com/japanhistory/taishohistory.html) - 9k
125. *Id.*
19. **Kenya** - Ex-president Daniel Arap Moi (1978-2002) - involved in gold and diamond re-export plan in which Kenya lost up to $600m between 1990 and 1993.126

20. **Malaysia** - Deputy Prime Minister Anwar Ibrahim (1993-1998) - He was sacked as found guilty of four corruption charges and sentenced to six years in jail.127

21. **Nepal** - Former Prime Minister Sher Bahadur Deuba (1995-1997; 2001-2002; 2004-2005) - An anti-corruption panel, Royal Commission for Corruption Control in Nepal has sentenced him to two years in jail after convicting him of embezzlement. He was also fined more than $1m for wrongdoing over a contract to build an access road for a controversial multi-million dollar water project. Later on he was released after 7-8 months in jail as the orders of the Royal Commission for Corruption Control were declared invalid.128

22. **Nicaragua** - Former President Arnoldo Alemán (1996-2002) - He was officially charged on 7.8.2002 on suspicion of planning and participating in a 100 million dollar fraud during his reign as President of the Republic.129

23. **Nigeria** - According to post-Abacha governmental sources, some $3 or $4 billion USD in foreign assets have been traced to Abacha, his family and their representatives. He was listed as the world’s fourth most corrupt leader in recent history by Transparency International in 2004.130

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126. en.wikipedia.org/wiki/Daniel_arap_Moi - 39k
128. news.bbc.co.uk/1/hi/world/south_asia/4717605.stm - 41k
129. www.ms.dk/sw4260.asp - 17k
24. **Nigeria** - Vice-President Atiku Abubakar- He was accused of diverting more than $100m (£51m) in public funds to private interests.\(^{131}\)

25. **Nigeria** - President Olusegun Obasanjo (1976-1979)- He was charged for corrupt practices with regard to funds allocated for petroleum technology development.\(^{132}\)

26. **Palestine** - President Yasser Arafat (1993-2004)- An audit of the Palestinian Authority revealed that President Yasser Arafat diverted $900 million in public funds to a special bank account he controlled, an International Monetary Fund official said.\(^{133}\)

27. **Pakistan** - Former Prime Minister Benazir Bhutto (1993-1996)- Convicted of charges of corruption and abuse of power. The court sentenced her and her jailed husband, Sen. Asif Zardari, to five years in prison and fined them $8.6 million. The court also stripped them of their parliamentary rights and ordered their property confiscated.\(^{134}\)

28. **Pakistan** - Former Prime Minister Nawaz Shariff-(1996-1999)- He was charged for amassing millions of dollars of wealth by using his political influence.\(^{135}\)

29. **Paraguay** - Former President Luis Gonzalez Macchi (1999-2003). He was charged for illicit enrichment.\(^{136}\)

30. **Peru** - Ex Prime Minister Victor Joy Way (January 1999-October 1999) He gets 4 years in jail for corruption. He has been sentenced for the

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\(^{131}\) [www.guardian.co.uk/international/story/0,,2023419,00.html - 42k - 12 Apr 2007]

\(^{132}\) [chippla.blogspot.com/2006/09/defining-corruption-transcorp-nigeria.html - 42k]


\(^{134}\) [http://www.cnn.com/WORLD/asiapcf/9904/17/pakistan/index.html 17 April 1999]


\(^{136}\) [en.epochtimes.com/news/6-11-20/48358.htmI - 11k]
second time with a jail term of four years on charges of corruption, according to court. In February, he was sentenced to eight years in prison for tax fraud and illicit enrichment. He was also fined 10 million Nuevo soles (3 million US dollars).

31. **Philippines** - Joseph Ejercito Estrada (1988-2001) - He is now in detention, facing trial for economic plunder—defined by a 1994 law as large-scale corruption. He is the first head of state in Southeast Asia to be imprisoned while on trial for corruption. He was the first Philippine President to be impeached.¹³⁷

32. Philippines’s former President General Fidel V. Ramos (1992 to 1998). He was accused of giving government approval to extravagant projects so he could raise money for his party.¹³⁸

33. **Senegal** - Former Prime Minister Mr. Idrissa Seck (2002-2004) - He was sacked from his post and jailed for over six months after he was accused of being corrupt and threatening state security.¹³⁹

34. **Sudan** - Prime Minister Sadiq al-Mahdi (1986-1989)- He is facing trial on corruption charges and possible execution.¹⁴⁰

35. **Syria** - Former Prime Minister Mahmoud al-Zu’bi- He was ousted on March 7, 2000 and was indicted on charges of corruption and "harming the national economy" during his 13-year tenure in office and scheduled to go on trial before the economic security court, which hears cases of government corruption and regularly imposes sentences of over 20 years in prison with hard labor. He committed

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¹³⁸. Id.
¹³⁹. [www.afrol.com/articles/23997 - 19k](http://www.afrol.com/articles/23997 - 19k)
suicide after police arrived to arrest him at his home in the Damascus suburb of Dumer.141

36. **Taiwan** - President Chen Shui-bian (2000-2007) - Taiwanese prosecutors claim to have enough evidence against President Chen Shui-bian to charge him with corruption, but they cannot do so because he is protected by presidential immunity. They have filed charges against his wife, Wu Shu-chen.142

37. **Thailand** - Former Prime Minister Thaksin Shinawatra (2001-2006) - Charges of Corruption have been framed against him.

38. **Trinidad and Tobago** - Basdeo Panday - Court of Appeal quashed his conviction in a corruption case.143

39. **Turkey** - Prime Minister Mesut Yilmaz (1991-1996; 1997-1999) - He has been accused of tampering with the $600m sale of a state bank, and of links with the Turkish mafia.144

40. **Ukraine** - Former Prime Minister Lazarenko (1996 to 1997) - He is accused of stealing US$2 million in state assets before being forced from his position in July 1997. He faces separate charges in Switzerland related to money that he is alleged to have hidden in banks there; Swiss authorities freeze over US$20 million in some 40 accounts. A U.S. federal district court in California decided that he made that money through corruption and found him guilty on 29 charges, including conspiracy to launder money, money laundering, and fraud, as well as transportation of stolen property. He, still incarcerated in the United States, is given an 18-month suspended sentence in Switzerland for laundering US$9 million through Swiss

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141. www.meib.org/article/0006_s1.htm
142. BBC, 3 November 2006
143. www.ex.ac.uk/~RDavies/arian/scandals/political.html - 93k
144. http://www.nerve.in/tags.corruption+case
145. news.bbc.co.uk/onthisday/hi/dates/stories/november/25/newsid_4141000/4141566.stm - 31k
banks. In addition, the Swiss government confiscates nearly US$6.6 million from his bank accounts. He was tried in the U.S. because money that was earned from the abovesaid activities was laundered through American banks.

41. **Ukraine** - Former Prime Minister Yefim Zviahilsky - He escaped abroad following accusations that he stole tens of millions of dollars' worth of government funds by illegally exporting oil.

These examples are a pointer to the fact that even high dignitaries are human beings quite capable of being tempted to wear the cloak of corruption. When our own present Prime Minister admits that 'No one is above law', then why any exceptions? Lokpal is not anything but only a watchdog, a reminder to every public official to contain his temptations lest.....

Let there be a Lokpal with real teeth, an ombudsman like the Finnish (ombudsman of Finland) model. Article 116 of the Finland’s Constitution makes a minister liable to prosecution if he has “through gross negligence essentially contravened his or her duties as a minister.” Precisely, we need to impose a similar liability on our minister at the Centre and for the States. The iron is hot, the time is ripe. The Lokpal Act must be enacted immediately. That is going to strengthen the drive to ensure a clean, responsible and accountable administration. Just as the RTI Act has done, this would also make the people of India active participants in our democracy.

4.8.6 **Lokayuktas in the States**

Apart from the setting up of a Rashtriya Lokayukta the ARC has proposed that it be made obligatory for all States to set up Lok Ayuktas and that their structure, power and functions be governed by common principles.

Currently, there are as many as 17 States where the institution of Lokayukta has been constituted, beginning with Orissa in 1971. However the power, function and jurisdiction of Lokayuktas are not uniform in the country. In some states, it has been applicable to all the elected representatives including the Chief Minister. In some other states legislators have been deliberately kept out of his purview. Often, lacunae have been left in legislation creating the

office apparently to keep the elected representatives outside meaningful jurisdiction of the Lokayukta, even when the laws appear to include them. Lokayuktas have not been provided with their independent investigative machinery making them dependent on the government agencies, which leaves enough scope for the politicians and the bureaucrats to tinker with the processes of investigation.

Despite provisions that have rendered the Lokayuktas toothless, competent office-holders have tried to use the office for the public good. In Karnataka, especially, the Lokayukta, despite small budgets and limited authority, has emerged as a figure of some respect, visiting government offices regularly and proactively examining corrupt practices. Here too, however, MLAs remain beyond his jurisdiction.

4.9 CONCLUSION

4.9.1 Failure of the anti-corruption agencies/ commissions to control corruption

Corruption is a symptom of deeper problems as to how a political leadership administers the key financial function of State. A range of policies can be identified to improve public administration including reforms of public expenditure management, procurement procedures, auditing functions and rules governing conflicts of interest. The development of anti-corruption agencies, commissions, despite a mounting body of evidence, fails to reduce corruption. This is a strategy adopted by the Governments.

4.9.2 Anti-Corruption agencies: whether a panacea or not

Despite the existence of stringent laws, despite the adoption and development of anti-corruption agencies and Commissions, corruption is growing in public life. Why have these investigating agencies failed to perform their role of combating corruption? A few reasons which can be attributed to the failure of these agencies are:

1. There is inability as well as lack of commitment and impartiality on the part the investigating agencies. The agencies have not shown the
desired degree of honesty, and instead been pliant to their political masters.

2. Investigations are made, but there are numerous examples where completed investigations have lain dormant in prosecutors' offices or held up by court delays. Prosecutors reply that files have been poorly prepared. There is suspicion that the delays are politically motivated.

3. Budgets of the agencies are deliberately restricted or staffing is hamstrung by rules and de-motivating pay scales.

4. Too frequently, agencies choose to investigate minor offenders rather pursue the politically well connected, and that they risk lapsing into tokenism like other watchdog agencies.

5. Agencies have not adopted an explicit risk management strategy to fight corruption – identifying high risk areas in public – private sector interactions, and initiating investigations. Instead they have been reactive, responding mostly to complaints of petty corruption, politically of safe nature.

6. There is little evidence that agencies have had any impact on country scores in the Transparency International Corruption Perception Index, or improved citizen trust levels as measured by domestic surveys of public institutions.

Thus when the failure of these agencies in combating corruption is clear writing on the wall, then what is it that drives the policy makers to invest a portion of scarce resources in a Commission/agency that has such a doubtful impact, that is so expensive to maintain and still likely to fail? Why do policy makers adopt a set of these institutional agencies that have worked in another country and allocate scare revenues to establish them in their own, that institution that consumes resources and undermines the credibility of their commitment to reforms?

Then how and what should we conclude? Does the data provided justify the popular suspicion of anti-corruption agencies revealed by those first corruption perception surveys, which rated them the least effective of all bodies in fighting corruption? Or is it still too early for a verdict, recalling that
even Hong Kong's ICAC took many years to build public trust and confidence? Alternatively, if there is little to show after five or more years, will there ever be anything? Or are we unfairly blaming the agencies which owe their creation to political masters? Only time will tell!