CHAPTER 8
CONCLUSION AND SUGGESTIONS
After having studied the problem of corruption, its genesis, its formidable complexity, its multifarious spread and its cure within the constraints of human endeavours on the social scale, an attempt is being made here to state in brief the subject matter of the research for the convenience of the readers, although the interpretation of facts, conclusions drawn thereby and suggestions arrived at thereof have been taken up and discussed wherever deemed fit with the sole purpose of clarity and logical necessity.

Despite the fact that the word corruption carries the connotations which are inextricably related to the moral, spiritual and social notions of an individual, the thesis, being a legal study, has predominantly focused on the problem as understood in the field of public governance.

All those agencies which have been vested with this onus to combat corruption, first of all must be armed with required legal powers. That brings us to the first requisite of putting in place a proper framework of laws, which has envisaged all the stages of the process set in motion to nab the guilty, right from investigation to trial, prosecution and sentencing.

So, in this context, while taking up numerous case studies, suggestions have been put forth where ambiguities in laws have been found to be working to the advantage of the wrong-doer or where bad laws have helped them escape the net or where they are simply having a field day just because no law exists to tackle the problem therein. This includes the issue of transparency in form of right to information, in absence of which justice can not only be inordinately delayed or, in some cases, may be virtually denied.

The second aspect of the problem deals with administrative bottlenecks being encountered in dispensing justice. While on one hand, this problem involves overworked courts in face of ever mounting piles of pending cases, on the other hand, there are issues of inefficiency and competence of the staff involved and issues of proper training and lacuna in systems and management. And third issue is that of availability of proper infrastructure and the funds needed to help the judicial system. Law must be provided with
whereithal to be alive and effective. This of course calls for necessary budgetary provisions.

And last but not the least is the fact that corruption can not be fought just with legal weapons. Given the nature of the problem, it calls for across-the-board assault. An all out campaign is what is the need of the hour in all departments of human activities, be it political, moral, cultural and personal or social. Nobody can overlook the fact that in efficient functioning of our democratic governance, we all have equal stakes and the cost to be paid for ensuring a vibrant and responsive systems, is eternal vigilance. Though the magnitude of the threat is forbidding and the tools to fight it may not be perfect at this stage, but we shouldn't be lagging behind for lack of a serious intent.

Today the corruption scene in India is highly depressing. Payments by the private sector to bureaucrats or politicians are a common feature at all levels of the bureaucratic or political system. Firms offer rewards for speedy licences or contracts or to evade taxes and tariffs. Some small companies pay bribes simply to survive. Over-regulation of private activity as well as weakened public scrutiny often breeds corruption. In any form, "kickback" corruption runs counter to the notions of distributive justice and administrative and political accountability. Institutions that incur high costs in bribes to state officials have tended to cut down on their tax payments, resulting in substantial loss of revenue to Government. The society may make up for the short fall by paying higher taxes and receiving fewer social benefits.

Street-level corruption involves ordinary citizens and petty officials. Money is exchanged in return for legal services or to overlook illegal activities.

Although individual transactions tend to be small, widespread street-level corruption has been found to obstruct economic efficiency in the long term and prevent access to services, especially by excluding the poor who cannot pay bribes. By tolerating criminal activities, street-level corruption has also encouraged various social ills that lead to social disintegration.

In a reply to a Parliament on May 7, 2003, the then Deputy Prime Minister L K Advani said that out of the 186 cases pending against IAS and IPS officers,
the "overwhelming majority related to corruption charges". This number, four years later, now must be much more!

Corruption is one of the greatest challenges of today and is eating into the vitals of society making good governance almost impossible, thwarting economic progress and hurting the interests of the poor and the underprivileged. It is a cancer of our society growing all the time and ultimately it will destroy political, financial and social fibre of our society.

Corruption destroys society by three ways. It is anti-poor, anti-economic development and anti-national. In fact, it is anti-life. Corruption is nothing but financial terrorism. The terrorist attacks in New York\(^1\) reminded many of us about the Mumbai blasts of 1993 in which three hundred people died. That was not only an act of terrorism but also a case of financial terrorism. The RDX used to kill the innocent people was smuggled by bribing certain customs officials to the tune of Rs 20 lakhs. Corruption, a financial terrorism, can have the same disastrous impact on human lives. Terrorism is based on an intense sense of hatred. In the case of corruption, greed is the driving force and it is taken to such an extent that corruption virtually becomes a way of life.

To arrive to certain conclusions relating to corruption, U S Misra, Director, CBI, cited three examples which he observed at his nearly three decades of experience in tackling corruption.\(^2\) To quote: First, there was this corrupt civil servant who retired with all benefits. He also enjoyed a reputation for efficiency and honesty. He never faced a single vigilance inquiry through out his fruitful career. Second, there was this corrupt bureaucrat who faced a case of disproportionate assets (possessing assets beyond his known/declared sources of income). The case was investigated and the person was charge-sheeted in two years. The trial dragged on for nearly two decades. He retired from service and died before the end of the trial. The fruits of this corruption accrued to his family. Third, a very famous tycoon started his life as an

\(^1\) The terrorist attack on the twin towers of the World Trade Centre in New York on 11th September, 2001.
\(^2\) US Misra, *India empowered to me is National Clean-up starting with our bureaucracy: The Indian Express*, Chandigarh, Friday, October 28, 2005 p-1.
ordinary dealer, but rose up through systematic serial bribery of public servants in almost every sector to become one of the most successful industrialists in about twenty years.

Here may be added a few more examples of 2005, reported by Tavleen Singh\(^3\): In Hyderabad, an Assistant Commissioner of Income Tax, P Ananta Ramula, was found to have Rs 2.70 crore in various bank accounts whose papers he concealed in clocks, cupboards and wood panels in the family home. This crorepati had begun his career as a stenographer. In Gorakhpur, the CBI found a railway medical officer called Asim Kumar who had Rs 1.58 crore worth of unexplained assets that included a flat in Delhi and a "palatial house" in Gorakhpur. What would a railway medical officer make money out of? In Delhi, they caught an Income Tax man called, Promod Kumar Gupta, who had Rs 26 lakh in cash and was building himself a many storied house in Ghaziabad. In Maharashtra, they caught two excise officers with flats in Pune and Mumbai, and in Chandigarh, an Assistant Provident Fund Commissioner called Manoj Kumar Pandey from whom they recovered Rs 44.5 lakh of unexplained assets. Out of our provident fund money \(^4\)

To cite another news item, when the eighty odd Delhi sales tax officials were caught on the video camera by a TV news channel while allegedly demanding or accepting bribe, the Delhi Administration suspended them. Ingenious excuses were forwarded. Some of them said that they were only receiving back the money that they had lent to someone. In a reaction to this episode, the editorial published in a newspaper\(^5\):

> The government could as well convert the sales tax offices to lending banks in that case. Given the way even bigger sharks have escaped the judicial, net it will be no surprise if they too come back with their honour intact. And learning from the

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4. Ibid.

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Tehelka example, it will not be too far-fetched to think that the TV journalists may be hauled over coals.

The Government may deny any corruption and the guilty may even escape punishment, but the fact remains that certain departments are notorious for corruption. Postings at certain lucrative police stations, sales-tax and excise offices and airports literally go to the highest bidder. Nothing moves there unless it gets wheels of currency notes. That is why India ranks so high in the list of most corrupt nations of the world.\textsuperscript{6}

From the above episodes happening in the country, the following popularly common conclusions may be drawn regarding corruption:

- It is a low-risk high gain activity;
- It is not restricted to a single institution, region area, or country. It is a global pandemic;
- It benefits both, the giver and taker, so it does not come to the notice of public;
- Corruption is extensively prevalent in the private sector as in the public sector, although the latter is better known because there is greater visibility and accountability there;
- Everyone rails against corruption, governments pass laws against corruption but corruption neither fades nor dies, it remains, although it may change its forms and regions of infestation;
- Most people are actually opposed to corruption only so long as they do not stand to benefit by it;
- There’s negligible social stigma attached to the archetypal upper-world ‘suite crime’ of corruption like ‘contract-fixing’, ‘policy-fixing’, ‘legislation-fixing’, etc., than to archetypal underworld ‘street-crimes like ‘contract-killing’, ‘theft’ etc.;

\textsuperscript{6} as per the Transparency International 2006 Report, India stands at the 74\textsuperscript{th} rank [the least corrupt being at rank 1st out of 163 countries of the world. [Annexure-XVI at p-695].
- Corruption is acquiring rather it has already acquired respectability in the society;

- Corruption in India has assumed such proportions that the very survival of our nation is threatened. Only a strong and assertive public opinion can save the nation from further ruin.

Unfortunately, the public at large has become cynical and tend to accept this evil as natural. That corruption has acquired respectability in society is a very unfortunate social development. Human memory is very short. And the person with a bag full of money acquires respectability in the society with the power of money by occupying important plump positions.

- The network of dishonest and corrupt public servants is more extensive and more formidable than that of the honest public servants;

- Efficiency is valued more than ethics; or in other words, ends justify the means;

- There are no formulas or quick-fix solutions for curbing corruption, least of all the laws and one may do well to bear in mind the experience of Imperial Rome which had so many laws against corruption but was finally ruined only by corruption;

- It remains the sworn enemy of integrity, which is imperative for the survival of a country in the long term for as that grand patriarch of democracy, Edmond Burke, once wrote, "in a State long corrupt, liberty cannot survive";

- Investigating and prosecuting corruption is more difficult than being honest in public service;

- It is almost an ineradicable phenomenon that can best be controlled following a cumulative convergence of individual, social and political interests/inclinations.

- It is not by making laws that we can make a dent in it. A law is as good as the person who enforces it.

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Corruption is regarded as one of the most difficult crimes to investigate. There is often no crime scene, no fingerprints, and no eye-witnesses to follow-up. It is by nature a very secret crime and can involve just two interested parties, so there is no incentive to divulge the truth. Even if there are witnesses, they are often parties to the corruption themselves, hence tainted with doubtful credibility when they become prosecution witnesses in court. The offenders can be equally as professional as the investigators, prosecutors and trial holders and they very well know how to cover-up their corrupt activities. The offenders, especially in high profile cases, can also be very powerful and ruthless in enforcing a code of silence amongst related persons through intimidation, violence and money power to abort any investigation, prosecution and trial. In this modern age, the powerful and sophisticated corrupt offenders will take full advantage of the loopholes in cross jurisdictions and acquire the assistance of other professionals, such as lawyers, accountants and computer experts in their clandestine operations to help them launder their corrupt proceeds.

Investigation and prosecution of corruption is particularly an intricate endeavor and successes in this field are too rare. Keeping this in view, the present research is an endeavour in its ultimate goal of combating corruption, to find different ways and methods of rendering investigation and prosecution of the corrupt more effectively. If these two stages dealing with the corruption offence are tackled successfully, the ultimate sentence can be very fruitful as every step in the investigation, prosecution, sanction and trial has ultimately its bearing on the end result - sentence. The focus of this present research is the effective sentencing in corruption cases which alone can be the biggest and most effective measure in controlling corruption.

To reach at concrete conclusions, a focused study has been conducted in regard to various obstacles that hamper a successful prosecution in this particular field of crime. Special was the focus on to the areas which throw challenges to the prosecution agencies and specialized investigation units. Some of these areas are -- investigating high profile cases; ensuring
cooperation between law enforcement agencies; reporting corruption within public administration; and obtaining international legal assistance.

Myriad number of cases related to corruption, both in the high courts and the Supreme Court, were studied and conclusions drawn. Conclusions are drawn on the basis of study of cases related to various aspects of investigation and trial in cases involving corruption. All the three aspects, i.e., the Investigation, sanction for prosecution and trial – ultimately have a bearing on final sentencing. Punishment loses its potency when it is uncertain and delayed. To have quick and prompt sentencing in corruption cases, the ultimate goal of the legislative measures, a critical analysis has to be made of all the bottlenecks that cause delay and uncertainty in the prosecution of corruption cases. As the disease has transgressed the barrier of prevention, it is to be properly diagnosed and measures for its treatment are to be culled out that would help combat this cancerous disease. The goal can be reached if every level of its growth is tackled with a strong legal hand. As corruption percolates from top to bottom, the immediate need is to cleanse the system at the top. For this, there has to be a very competent, fair and effective investigating and trial mechanism.

Today, we cannot shut our eyes from the fact that because of the mad race of becoming rich and acquiring properties overnight, because of the ostentatious or vulgar show of wealth by a few or because of change of environment in society by adoption of a materialistic approach, the cancerous growth of corruption and illegal gains or profits has affected the moral standards of the people and all forms of governmental administration.7

The Prevention of Corruption Act, 1947 followed and replaced by The Prevention of Corruption Act, 1988, were enacted to tackle the propensity for being corrupt. The phenomenal growth of corruption has to a great extent frustrated the purpose for which the Act was enacted, and both the Act of 1947 and its successor Act of 1988, do not appear to have curbed this growing menace or achieve the intended results.

7. per Justice B N Kripal in Shobha Suresh Jumani v. Appellate Tribunal, Forfeited Property, and Another, 2001 CrLJ (107) 2583 SC.
There are two possible approaches to the whole issue of corruption. One approach which may be considered as pragmatic, realistic and worldly wise, is to accept that corruption is as universal as human nature and it is only the degree of corruption that can perhaps be controlled and brought down to the tolerance level or below tolerance level of the civilized society. The other approach is that corruption can be controlled and countries, which were once notorious for corruption, have been able to bring in greater probity in public life, thanks to committed and visionary leadership and changes in rules, systems and procedures.

Corruption is a pandemic disease invading society. The World Bank estimates that the cost of corruption represents about seven per cent of the annual world economy, $1 trillion\(^8\) [August 1, 2004]. Contrary to common perception, corruption is rampant not only in developing but also in developed countries, with more than one trillion dollars being paid in bribes each year across the globe, according to the World Bank. This is a staggering amount...a figure that is large compared to the entire federal budget of the United States Government ($2.2 trillion)\(^9\) [US Federal Budget, 2004—$2.2 trillion (submitted 2003 by President Bush)]. In the words of Transparency International's Founder, Peter Eigen, *There are no short cuts and no easy answers of how we can eradicate the disease. To eradicate any global disease we must use a clinical approach: diagnosis leading to therapy and cure through patient education and treatment.*\(^10\)

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They suggest the following:
First, society’s system need through examination and diagnosis to ensure a proper diagnosis. If the diagnosis is wrong, the therapy or medicine will be wrong. We could kill the patient which is us and our society. Examine each organ of your own society. What is the cause of corruption? Why does it take hold so tenaciously and spread? What agents are infecting society with this scourge? Dishonest government civil servants, politicians and lobbyists businessmen and women, citizen sector organizations, complicit citizens others? And are the whistle-blowers who alert us to corruption sufficiently protected when they shed light on the malfeasance of their superiors or other colleagues

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On the basis of case study, imperial studies, interviews, following conclusions and suggestions have been formulated. These suggestions may help in knitting the judicial net tighter so that the guilty may not escape. These conclusions/suggestions can be broadly divided into two:

1. Statutory provisions
2. Sentencing at different levels by Courts.

Way back in 1952, two main reasons attributed to the failure to uproot corruption were: “Firstly, the provisions of the Act are not sufficiently drastic. They ought to be more drastic so that corruption may be uprooted with a cruel hand ... There should be no mercy for a man who is found to be corrupt. There is no need to go through the formalities of the law to the extent that you do in the case of other offences. In this Act, you should have the power to uproot corruption even at the cost of setting aside the formalities [example: the formality of sanction provision – the biggest barrier in the Act] of law.”

Secondly, it was felt that the Act was not utilized sufficiently for the purpose of removing corruption. Like the Government never tried to find out whether the accumulations or possessions of a man were disproportionate to his income. It is a known fact that there are big officers getting high salaries but their bank balances and properties accumulated would be found to be disproportionate to their earnings. The Government fails to carry out this investigation. Shiv Charan Lal in 1952 had suggested that the proper thing would be to examine every government servant’s possessions to find out whether it is not due to any misconduct that he has accumulated all that.

Another weaker provision pointed out at that time, in 1952, was in regard to the police officers. Shri Shiv Charan Lal had expressed that anti-corruption departments opened in various States were mostly run by police officers who, he said, were corrupt and had amassed much wealth on account of bribery.

“They are just making money there also. I am not saying this loosely, for I can prove it. Some people are caught. The Anti-
Corruption department catches hold of some people, but after sometime the cases against them are dropped, why? Because the Anti-corruption Officers there are bribed."

A suggestion made in 1952 can be of great utility in today's context in the mechanism to control /combat corruption. The suggestion made by Shri Shiv Charan was "If you want the Department of Anti-corruption to be more effective, you should place the department under charge of judicial officers or high executive officers whose character throughout has been unblemished or other public men."13

Today in the year 2007, all the aforementioned weaknesses of the Prevention of Corruption Act, 1988, the insufficiently drastic provisions, the formalities of law, and the corrupt police officers heading the anti-corruption departments, all abound. The result is- the evil of corruption is still ever growing. The weaknesses pointed out fifty-five years ago have not been removed and the suggestions have not been followed.

The pattern of combating corruption in India combines in it the anti-corruption legislation with several agencies. The PC Act, 1988, is implemented by the CBI, the CVC, the Anti-Corruption Bureaus and Vigilance Commissions at the State level.

But despite such a set up of measures for combating corruption, the machinery has not been successful. India is still falling amongst the most corrupt nations and the conviction rate in corruption cases falling abysmally low reflects the insufficiency of various anti-corruption measures.

Fighting corruption in this country is a tricky affair. First, there is the issue of the law keeping an unhealthy distance from those who make it their business to make a quick buck by virtue of the political topi they wear. Second, there is the all-pervasive belief that when it comes to moral shortcomings, corruption is a small fry by virtue of it being practiced by all and sundry. So we stand at a double disadvantage when it comes to cleaning up the mess - not only is corruption hardly perceived to be a crime, it also seems to be hardly a sin.

13. Id., at p-136.
Corruption percolates from top to bottom. The immediate need is to cleanse the system at the top and for cleansing the system. There has to be very competent, fair and effective investigating and trial mechanism. Similar view was taken twenty years back when Shri Amal Datta commented on the eve of passing of the Prevention of Corruption Bill, 1988:

If the very top people of administration are corrupt there is no possibility of having a cleaning up of corruption from the other levels of administration.\textsuperscript{14}

Again, Corruption is an age old phenomenon and there is hardly any society which has not suffered from it some time or other. It has become rampant in India after the attainment of freedom because of increasing opportunities provided by the complexities of economic life. Secondly, corruption has increased because of the ever widening sphere of the government’s activities and authority. Thirdly, there is increasing temptation to acquire wealth by misuse of power and fourthly. There is tremendous growth of population which has sharpened the struggle for existence. There are millions of educated people who are unemployed and even to get a clerical job people have paid Rs 10,000.\textsuperscript{15}

Such was the view on corruption twenty years ago. It is still the same, rather worse. Today, the struggle for existence has become so acute that people are prepared to bribe those who have the power to select candidates for mere clerical jobs. A public servant selected through corrupt means will not only be inefficient but also do his best to make up the loss he has suffered and further multiply his earning by corruption for material gains and also to help his progeny to achieve a status through the same kind of methods. If sixty years after Independence, we have made no progress to effectively control corruption, it is because our politicians and their cohorts in the bureaucracy and the corporate world have no will to eliminate or control corruption. They are the beneficiaries of the corrupt system and pay only lip service to probity in public life. Is it not a matter of shame that the Lok Pal Bill (to have an

\begin{footnotesize}
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\item[14.] Parliamentary Debates May 7, 1987, p-376.
\item[15.] Shri Y S Mahajan, Parliamentary Debates, May 7, 1987, p-380.
\end{enumerate}
\end{footnotesize}
Ombudsman to investigate complaints of corruption) has been pending for over thirty years?

Weaknesses of the criminal law system are not wholly unfounded. We cannot shy away from the reality of poor conviction rate in cases of corruption involving high and mighty. The reasons for poor performance of the criminal justice apparatus are well known. The loopholes in the law concerning protection in the form of mandatory sanction, rules of evidence and gratuitous stress on mercy, more often than not misplaced mercy, in the matter of punishment may be cited as some of the areas that ail the system.

The anti-corruption law was enacted to ensure that offenders do not escape legal punishment and that corruption does not pay. But are these laws adequate in meting out sufficient punishment to deter corruption? Is the organization charged with the investigation of corruption given a free hand to act against the corrupt irrespective of their social status, political affiliation, colour or creed? Has the Indian judiciary adopted a stern and prompt sentencing policy against offenders to serve as deterrence?

8.1 TACKLING SHORTCOMINGS IN THE INVESTIGATION AREA

Investigation encompasses police search, arrest and detention, checking of bank accounts, requiring witnesses to answer questions on oath, retaining of properties suspected to be derived from corruption, holding the suspects travel documents to prevent them from fleeing from jurisdiction. An investigation can only be effective if it is truly independent and free from undue interference. This depends very much on whether there is a top political will to fight corruption in the country and whether the head of the anti-corruption agency has the moral courage to stand against any interference.16

A corruption investigation can be politically sensitive and embarrassing to the Government. Two, as corruption is so difficult to investigate, an adequate investigative power is required.\textsuperscript{17}

\subsection*{8.1.1 The ailing CBI and suggestions to tackle it}

A word may be said about our very important, crucial investigating agency, the CBI. This agency which looks into, amongst other big crimes, the more serious crimes related to corruption, involving the political bigwigs or others involved in big scams involving huge amount of money need urgent look into. Hailed as the country’s premier probing agency, the CBI suffers a severe erosion of credibility, especially on account of politically sensitive cases. Its failure to prosecute the guilty has completely undermined its capability to deter corruption in the higher echelons of governance. Instead, every year the agency trots out “impressive” figures of cases prosecuted against lower level functionaries and conducts routine raids against faceless junior bureaucrats. If the recent flip-flop on the Bofors case is any indication, it has once again proved that the goal posts for the agency get shifted by every government that comes to power. The governments habitually probe into the CBI affairs and mostly triumph in torpedoing cases against political bigwigs. One may recall the pressure the agency faced when the Congress-led UPA came to power in mid-2004. “Efforts were mounted to transfer the officers investigating the Bihar Fodder Scam because Laloo Prasad Yadav, (a key accused) has been appointed a Cabinet Minister”.\textsuperscript{18} Knowing the CBI’s inability to probe with ‘credibility and impartiality’ due to its ‘dependence on the State’, the Standing Committee recommended that the Government must examine “the possibility of promulgating a separate Act for CBI in tune with the requirement of the time.”

\textsuperscript{17} Chapter 4 of the present thesis has dealt in details the lay out, powers, and working of the law enforcement agencies and the investigating agencies.

\textsuperscript{18} Spoke a senior CBI official familiar with the case: Outlook 6\textsuperscript{th} Feb, 2006.
This recommendation should immediately be taken note of and implemented. The committee, chaired by a Rajya Sabha member, E M S Nachiappan, thought of granting the CBI, a status at par with the Election Commission which would give it the desperately needed ‘impartiality and credibility’.

Another point ailing the CBI which needs to be reflected is the fact that even though the appointment and removal of officers of the rank of SP and above are subject to the recommendations of the committee, all other administrative matters continue to be with the government. This to a great extent compromises the autonomy and independence of the CBI. The Director of this premier investigating agency does not enjoy the same amount of powers, “financial and otherwise as head of the department unlike other heads of central police organizations.” This too needs urgent peep into.

Ministries have been attempting to stonewall the requests for raids for months on end. This has been possible due to return of the Single Directive in the CVC Act. However, in recent times, there have been rare instances like, the Finance Minister P Chidambaram quickly sanctioning permission to the agency to raid and prosecute guilty officials. The arrest of P K Ajwani19, the Central Excise Commissioner from Mumbai, was in that sense a major victory for the CBI. Such kind of understanding between the CBI and the Government is the need of the hour.

Already grappling with its existential problems, the CBI is also facing a massive manpower crunch. The prevailing vacancy position in the CBI is quite disturbing and adequate steps must be taken at the Central Government’s level to overcome this persistent problem. The CBI, when it comes to arguing a case in court investigated by it, lacks the financial powers to appoint its own lawyers. Perhaps granting such powers to the CBI will see a better and a clearer disposal of the corruption cases. Guilty officials should not escape from the in-depth investigation of the CBI. The CBI is the agency of the investigation department. It has a reputation to unearth matters where others fail or would fail. Instead of being seen as the instrument in the hands of

political masters, it must be a swift acting body, waiting for no orders but acting only on information, always ready to embark upon an investigation whether it may involve a political bigwig or a low-level public official. Truth and only truth to be brought out must be its goal!

8.1.2 Corruption investigations must be conducted confidentially

Another requisite for an effective investigation is that it is crucial that all investigations relating to corruption should be conducted covertly and confidentially, at least before arrest action is ready, so as to reduce the opportunities for compromises or interference. On the other hand, many targets under investigation may prove to be innocent and it is only fair to preserve their reputation before there is clear evidence of their corrupt deeds. Here, it may be suggested that there must be a law prohibiting anyone, including the media, from disclosing any details of the CBI investigations until overt action such as arrests and searches have been taken.

8.1.3 International mutual assistance

Many corruption cases are now cross-jurisdictional and it is important that international assistance must be obtained in these areas such as locating witnesses and suspects, money trails, surveillance, exchange of intelligence, arrest, search and extradition, and even joint investigation and operation.

8.1.4 Professionalism in the investigating agency

All the investigators must be properly trained and professional in their investigation. An example of professionalism in the true sense can be seen in the Hong Kong ICAC. An idea of its working may be borrowed to improve our own agency. The HK ICAC strives to be one of the most professional law enforcement agencies in the world. The ICAC was one of the first agencies in the world to interview all suspects under video, because professional

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20. The Hong Kong ICAC is popularly regarded as a successful model in fighting corruption, turning a very corrupt city under colonial government into one of the relatively corruption free places in the world.
interview technique and the need to protect the integrity of the interview evidence are crucial in any successful corruption prosecution.  

The investigators must be persons of high integrity. They must adhere strictly to the rule of confidentiality, act fairly and just in the discharge of their duties, respect the right of others, including the suspects and should never abuse their power. As corruption is so difficult to investigate, they need to be vigilant, innovative and be prepared to spend long hours to complete their investigation. The single most important ingredient of the success of the investigating agency is that the officers must possess a sense of mission in them.

8.1.5 An effective complaint system

No anti-corruption agency is in a position to discover all corrupt dealings in the society by itself. It has to rely heavily on an effective complaint system. The system must be able to encourage quality complaints from members of the public or institutions, and at the same time, deter frivolous or malicious complaints. It should provide assurance to the complainants on the confidentiality of their reports and if necessary, offer them protection. Since the strategy is to welcome complaints, customer service should be offered, making convenient to report corruption.

8.1.6 24-hours hot line

A 24 hours reporting hot line should be established and there should be a quick response system to deal with any complaints that require prompt action. All complaints, as long as there is substance in them, should be investigated, irrespective of how minor the corruption allegation is.

8.1.7 Investigation must include the probe into the past conduct of the accused

While 94% of the corruption prosecutions emanate from trap cases, the investigating authorities have been consistently overlooking the fact that from

the point of view of the law and public interest, the background of the accused relating particularly to the following two very important factors need investigation:-

a) as to whether the accused has been habitually committing these illegalities and,

b) what are the assets disproportionate to known sources of income that the accused possesses either personally or through various benami and clandestine holdings?22

This vital aspect of investigation has been lacking in every single one of the corruption prosecutions in our country. The maxim that is current is that you make money through corrupt means and you use that ill-gotten wealth to buy your way out of trouble. Here it would be appropriate to quote an illustration:

In a case where a revenue official is trapped for having demanded a bribe of Rs. 3000/- and where in fact, that official has amassed crores of rupees tampering with land records and aiding real estate rackets running into hundreds of crores, the entire complexion of the case gets altered if proper incisive research is undertaken along these lines and the true facts came before the trial court.

Thus it is suggested that the past conduct of the accused and more importantly, the assets disproportionate to known source of income that have been accumulated must be taken into account during investigation in corruption cases. Mandatory investigation of cases under Section 13(e) of the PC Act, 1988 must be conducted even in all trap cases. This will definitely have a chilling effect on all other like-minded persons who will also ensure that the failure rate in these cases comes down to zero.

8.1.8 Encourage corrupt offenders to give evidence against their accomplices

One unique feature of corruption investigation is that the investigators must not be content with obtaining evidence against one single offender. Corruption

is always linked and in most of the cases syndicated. Every effort should be exposed to ascertain if the individual offender is prepared to implicate other accomplices or the master minds.23

It is seen that a lot depends on how the investigation is conducted. Ultimately, investigation has a deep impact on the sentencing aspect in corruption cases. Any unplugged loopholes, flaws, laxity, non-seriousness, political or financial influence, lack of political will, makes the investigation weak and the culprit would easily slip out of the judicial net leading to failure in sentencing him. It is obvious that corruption is getting more and more difficult to investigate. The offenders have taken full advantage of the high technology and cross jurisdiction loopholes. The conventional investigation method and the current legal system may not be adequate to win the battle against the corrupt. A more proactive approach in investigation, such as, the wider use of undercover operations and the use of telephone interception should be adopted. In addition there is also need to strengthen the legislation to provide a better balance between human rights and effective law enforcement. It is suggested the following two proposals may be considered:

(a) Right to Silence

Corruption is a secret crime and there is a need to break the secrecy if we want to find out the truth. Many countries follow the old British system of allowing the suspect to exercise his right of silence when questioned by the investigators. If he have a lawyer, the first thing the lawyer will advise him it to maintain his right of silence. However, when the case comes to court, the offender will have ample time to concoct a story, which does not allow the prosecution sufficient time to verify its truthfulness. In the end, it defeats the objective of the criminal justice system in enabling full facts to be presented to the Court so as to arrive at a fair verdict. Under the British cautioning system,

23. In Hong Kong there is a directive to allow a reduction of 2/3 of the sentence of those corrupt offenders who are prepared to provide full/complete information to the ICAC and give evidence against their accomplices in court. The ICAC provides special facilities to enable such “resident informants” to be detained in ICAC premises for the purpose of de-briefing and protection. This “resident informant’s” system has proved to be very effective in dealing with syndicated or high level corruption.
the suspects are now warned that any delayed response to question may prejudice their defence in subsequent legal proceedings. This cautioning system may be considered as it strikes a better balance between the human rights of the suspects and the public interest to investigate crime.

Alternatively, adopting the Continental system may also be considered, where the suspect can be interviewed by an examining Magistrate where he cannot exercise any right of silence.

(b) Telephone Intercept

It is no longer a secret to the criminal world that most law enforcement agencies have access to telephone intercept in their investigation. Experience over the world has proven that telephone intercept is an extremely useful tool in investigating high-level organized crime and corruption and its production in court often forms the crucial evidence against the offenders. Use of telephone intercept evidence in court should be allowed. Otherwise, if disallowed, it would hamper the effective investigation and prosecution of major corrupt offenders which ultimately is directly going to result in sentencing failure.

8.2 SANCTION FOR PROSECUTION: A PROVISION BESET WITH DIFFICULTIES NEEDS TO BE EXAMINED AND REFORMED

The law against corruption is so designed that while charges of corruption may be freely made in the popular discourse and mass media, no action by way of legal proceedings in special courts may begin without prior sanction of competent authority.

In 1955, during the debate on the Amendment Bill24 Shri Tek Chand commented:

One is surprised as to whether the PCA really hinders corruption or helps corruption.

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24 Prevention of Corruption 22 November Amendment Bill, [p-208].
The provisions regarding sanction were thought to be such that under certain stated circumstances, they are apt to be an impediment in the way of prosecution in laying its hands on the corrupt officer.\(^{25}\)

Shri Tek Chand had expressed the fear that sanctions, very often given with the best of motives, are given in a slip-shod manner and also not in a precise language. He said it was distressing in extreme that a man admittedly corrupt may be able to escape by saying –

\[
\text{Yes, I am corrupt, but you cannot hurt me because the language of your sanction is not precise or the power of the officer granting sanction is not clear or is shrouded in certain doubts.}^{26}\]

Even today ‘sanction’ provision is beset with practical difficulties and flaws as regards its implementation. One, the competent governmental authority is under no duty to accord sanction, even when the prima facie cause is shown; two, the competent governmental authority is under no duty to hear the complainant in case there is a private prosecution; three, there is no time schedule for arriving at a sanction decision either way; four, the governmental competent authority need not give any reasons for refusal to sanction prosecution.

8.2.1 The ominous prerogative

There is no more embarrassing thing for a public servant or a high public dignitary than to face a prosecution for corruption or fraud. The stigma that it carries should serve as an effective deterrent. But the prosecutions under the PC Act, 1988 vide Section 19; can be set in motion only after a green signal of higher authority or at the behest of public officials. The Courts are more or less mute spectators. Only mandamus in case of failure of duty to consider and take decision on the question may lie, but not a direction to vie sanction because, as held in \textit{Mansukkhilal Chauchan Vs State of Gujrat}\(^{27}\), a sanction

\(^{25}\) Ibid.
\(^{26}\) Id., at p-210.
issued by an authority on the directions of the High Court would be invalid as it takes away the discretion of the authority not to grant sanction.

The authority which decides whether a person should be prosecuted or not, can be an incessant source of corruption. It is suggested that investing the power to grant sanction for prosecution in an independent body headed by an experienced judicial mind can strengthen the drive against corruption. The requirement to grant sanction for the prosecution of public servant amounts to conferring a prerogative by which the authority empowered to sanction the prosecution can say that it alone is the one who can decide whether the criminal law should be enforced in these cases or not. **Should the sanctioning authority be allowed to have such a prerogative to suspend the dispensing laws?** If it does not give sanction to the prosecution of the public servant, who during investigation or enquiry appears to be guilty of corruption, it should be made possible for anyone of the public at large, who is adversely effected, to come to the court and ask that the law be enforced. Thomas Fuller’s words uttered more than 300 years ago still rend the air **be you ever so high, the law is above you.** The criminal justice system will effectively control corruption **if the Court is allowed its due role of being the ultimate arbiter for deciding whether prosecution should be launched by the public official empowered to decide and file the complaint.**

Our is a democratic country, it is high time that we should wake up to our responsibility and take lessons from other countries which have been able to purify the administration from corrupt elements. As a matter of fact, it should not be forgotten that when the British administration enacted Section 197 of the Criminal Procedure Code, the object of this section was to provide safeguard against vexatious proceedings against Judges, Magistrates and public servants and to secure the opinion of a superior authority whether it was desirable that there should be a prosecution. It was not part of the British policy to set an official above the law of the country, or above the common law. This sanctioning procedure to a large extent nullifies the salutary object of securing conviction of corrupt officials. This “sanction” business has been a
great impediment and measures must be taken to simplify it. The famous notorious case of Gokuldas Dwarkadas Moraka\(^{28}\) shows that sanction is a will-o’- the wisp and that sanction is a handy tool for dishonest officials. As a matter of fact, public servants have got to deal with citizens and unless the citizens are corrupt, they cannot be corrupt either. Therefore, corruption works at both ends. As the State is becoming a Socialist State and as more and more powers are being given to the executive to mould to a large extent the industrial life of the country and the commercial life of the nation, the executive has got to be trusted with extended authority. Therefore, they have got to give a licence or refuse a licence; they have got to give permits or refuse permits, they have to pass discretionary orders and thereby they are likely to reject many applications and to disappoint many. Therefore, some safeguards are necessary. But at the same time the sanctioning procedure must be simple, not rigid, must not be inelastic, and should not be allowed to be utilized from the bureaucratic point of view for the purpose of making it difficult for the citizen to get at a corrupt official.

This sanction business has a deleterious effect on getting justice against corrupt officials. Such an effect can be seen in the recent example of the sanction issue in Ms. Mayawati’s case. There is no surprise in Uttar Pradesh Governor T V Rajeswar’s denial of sanction to the CBI to prosecute the Chief Minister Mayawati in the Taj Heritage Corridor case.\(^{29}\) It is obvious that the decision is based on political considerations. It is strange that after the Central Vigilance Commission concluded that there was sufficient evidence to prosecute Mayawati, the Governor could assume the role of a Judge and categorically state that there was no prima facie case against the CM. It is quite natural for any leader who has secured a huge mandate in the elections to bargain for his or her pound of flesh when his/her support becomes crucial for a government. It was not expected of a constitutional authority to cave in to such a pressure.

\(^{28}\) Gokulchand Dwarkadas Morarka v The King, AIR (35) 1948 Privy Council, 82.
The denial of sanction in cases that pertain to political victimization or rivalry is understandable, but not in cases of corruption. Worse, it has been done despite the Supreme Court's efforts to keep the case alive. In 1955, it was realized\textsuperscript{30} that the whole problem was psychological. \textit{How can we expect our people to honestly believe that our Government and our Parliament are serious when we find that on the "jeep scandal" the Public Accounts Committee has repeatedly been saying that there should be an enquiry, and our Ministers are doing their best to nullify the enquiry? Minister after Minister is coming here and saying that there is no prima facie case. They are stifling, they are putting their foot down and the gentleman responsible is being assigned important allocations.}\textsuperscript{31}

So is the attitude today. Such an attitude of the political functionaries and the leaders of the nation demoralize the people. This encourages the officials or the corrupt elements in the country as this would make them think that if the big men can escape, they too can escape.

\textbf{8.2.2 Suggesting modifications in regard to sanction provision}

Sanction to prosecute political functionaries who are in occupation of a constitutional position as a Chief Minister, a minister etc. is a grey area and a big hurdle in prosecuting such political functionaries. \textit{When a person under a vigilance scam or inquiry is in occupation of a political position in the State, in that case, sanction may be obtained from the President of India and not from the Government of the State. In case if the person is in occupation of Central Government, then sanction may be obtained from the Chief Justice of India. In view of this, a modification may be made in the PCA, 1988 in the provision relating to Sanction for Prosecution under Section 19.}

In view of the uncertain position on account of grant of sanction, unnecessary litigation is generated that ultimately delays the trial in the case and the delay in the trial provides an opportunity to the affected party to tinker with the

\textsuperscript{30} As per Shri N C Chatterjee, Parliamentary Debates; Prevention of Corruption 22 November 1955 Amendment Bill p-212-213.

\textsuperscript{31} \textit{ibid.}
evidence either by winning over by money power or terrorizing by threats. Thus it is strongly suggested that a proviso may be introduced in Section 19 of the PCA, 1988 to the effect that if no refusal for grant of sanction comes in six months from the appropriate sanctioning authority, it must be deemed to be taken as having granted the sanction for prosecution.

8.3 STRENGTHENING THE ANTI-CORRUPTION LAW

8.3.1 Minimum Statutory Punishment under Section 7 and Section 13 of the Prevention of Corruption Act, 1988 must be enhanced

Corruption is a crime which deserves no sympathy. In such cases the minimum punishment to be awarded should be so high that judicial discretion is cut short in this regard. Even if a person is caught taking bribe of Rs 50, it would only be an instance, and should not be the basis for deciding the quantum of sentence. It is the corrupt mind affecting public life which is the consideration for awarding sentences in such cases.

In the case of punishment to be awarded for the respective offences under the Act, the present minimum punishment under Section 7 being of six months imprisonment under the PC Act, 1988 and under Section 13, of one year, is too less and not deterrent. In cases where magnitude of corruption is too high there must be a mandatory minimum sentence of seven to ten years and fine up to from Rs 25 lakhs to Rs 1 crore. The maximum punishment in such cases should be life imprisonment.

8.3.2 Final sentence has no deterrent effect

Before proper conviction, the accused, by way of imprisonment, goes through a punishment, but the form of which is simple imprisonment. The PC Act 1988 speaks only of rigorous imprisonment. When conviction is awarded to the accused, the period already spent in imprisonment is taken into account and the final sentence of imprisonment is accordingly reduced. The whole effect of punishment is mitigated as after reducing the punishment for the period

32. Cases relating to corruption charges against Ms. Bhattal, Prakash Singh Badal, Jayalalitha, Lalu Prasad Yadav were dragged to the Supreme Court on question relating to sanction.
already undergone very less period is left for final sentence, which is in the form of rigorous imprisonment. Hence less period of incarceration has no deterrent effect. Thus, the trial should be taken up on very fast basis so that if conviction takes place, then the sentence awarded must be in form of rigorous imprisonment for a considerable period.

8.3.3 Corrupt senior officials and politicians must be punished strongly

Corruption is institutionalized in most of the departments and it operates in a very systematic manner. Protection of senior serves as insulation for the subordinates and thus encourages them to continue their corrupt operations without any fear. It is to be remembered that it is the senior officials and politicians who indulge in corruption of this scale. These people are in charge of the affairs of the country. It is not correct to treat them at par with corruption at lower levels.

In fact, corruption at lower level exists as their superiors are partners in it. Since the superiors are themselves indulging in corruption, they have no interest in curbing it at lower ends. Such acts of corruption must be treated as crimes against the poor, and must be punished.

Provisions must be made in legislations dealing with the MPs and Ministers. Expulsion from the House is a very light reprimand. The MPs should be treated at par with the common people. Expulsion is only a punishment for lowering the dignity of the House and breach of confidence of the people whom they represent. The crime of corruption should be strongly dealt by imposing severe punishment in all such cases. To deter such occurrences in future, Parliament should pass a law that would terminate the membership of corrupt MPs, secure a refund of the perks and allowances they received during their tenure, and restrict their pension.

Let the Speaker be authorized to constitute a inquiry committee in such cases with a provision of severe punishment in all such cases where MPs or MLAs etc. accept money for participating in the proceedings of the House.
8.3.4 Special Courts to deal with corruption cases exclusively

It is strongly suggested that Special Courts be set up exclusively to deal with corruption cases. Such should be the dealing of these cases that the Courts do not take more than two hundred corruption files. This would speed up the disposal of such cases. Setting up of such Special Courts will do away with the extra burden cast on the existing courts which are conferred Special Court powers to deal with corruption cases. **Fast track courts alone, with day-to-day hearing, may be the right answer for curbing corruption at the highest level.**

8.3.5 Regular review of the anti-corruption law is required

The anti-corruption law needs to be reviewed regularly every five years to ensure that the offenders do not escape legal punishment and that corruption does not pay. Whatever loopholes are found by experience is plugged affectively.

8.3.6 Significant amendments to the PCA, 1988 proposed

A set of significant amendments to the PC Act, 1988 is on the anvil presently being discussed by a Group of Ministers (GoM) headed by Home Minister Shiv Raj Patil. The list of proposed PCA amendments, available with the Indian Express\(^{33}\) is:

- Amendment of Section 19 (1) of the Prevention of Corruption Act to **prescribe a “competent authority”** to grant sanction for prosecution of MPs, MLAs and local bodies.

- **Deletion of section 13 (1) (d) (ii)** of the Act, which deals with public servants being booked for decisions taken where a loss to the national exchequer has been made out. The view is that this provision restricts public servants and bureaucrats from taking decisions on a file where a financial transaction has been made out and that the existing provisions are sufficient as a deterrent in the event of a case under PCA.

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• For protecting retired public servants, bringing under Section 19 of the
PC Act at par with Section 197 Criminal Procedure Code. As of
now, the CBI is not required to seek sanction before booking retired
public servants under the PCA. Several retired bureaucrats have
complained to the Government about the “overzealousness” of the
CBI.

• Amendment to provide for forfeiture of property of corrupt public
servants, even during the trial period, with in the scope of PCA. This
will be a new clause and will also require a consequent amendment in
the Criminal Law (Amendment) Ordinance, 1944.

These above mentioned proposed amendments can have far reaching
implications.

8.3.7 Other amendments to the PCA, 1988 proposed

Following are some other amendments to the law that may be considered:

- empowering investigators with wider powers;
- empowering investigators to order public officers under investigation to
furnish sworn statements specifying properties belonging to them, their
spouses and children;
- empowering the public prosecutor to obtain information from the
Commissioner of income-tax;
- empowering the Court to admit wealth disproportionate to income as
corroborative evidence;
- empowering the removal of accomplice rule which views evidence of
accomplice as unworthy of credit unless corroborated;
- rendering it a legal obligation to provide information required by
investigators of the CBI;
- the principle that corruption does not pay may be further fortified by
the enactment of a new Act, The Corruption (Confiscation of Benefits)
Act34 or by including in the category of persons under Section 2(2) of

SAFEMA\textsuperscript{35} persons who are convicted of the corruption offence under the Prevention of Corruption Act, 1988, even though, illegally acquired property is given exhaustive meaning under clause (c) of Section 3(1) of the SAFEMA 1976;

- attaching questionable properties, both movable or immovable, amassed by a person beyond his known sources of income (disproportionate assets), during prosecution will have serious repercussions for those facing disproportionate assets cases.\textsuperscript{36}

8.4 **ILLEGALLY ACQUIRED PROPERTIES MUST BE FORFEITED**

For controlling the cancerous growth of corruption, apart from deterrent provisions, illegally acquired properties by means of corrupt practices, could be forfeited under the provisions by suitable amendment in the Act. The question whether the time is ripe for such amendment or not is to be decided by the Legislature. Even the Supreme Court had expressed regret at the deletion of Section 61 and 62 from the Indian Penal Code which provided for sentence of forfeiture of property. It expressed the desire for the re-introduction of these sections so as to have deterrent effect on those who are bent upon accumulating wealth at the cost of society by misusing their post or power.\textsuperscript{37} The Apex Court pointed at the deleterious effect on the national economy caused by the ill-gotten gains accruing to the smugglers and foreign exchange manipulators. Finding it very difficult to comprehend the reason for not including a person convicted under the PC Act, 1988\textsuperscript{38} in the definition of

\begin{itemize}
  \item Supra Note 13.
  \item The Criminal Law Amendment Ordinance 1944 which initially extended to offences under the IPC, through an amendment was extended to offences punishable under the PC Act 1988 also. The main objective of the Ordinance was to prevent the disposal or concealment of money or other property procured by means of certain offences punishable under IPC. But this Ordinance though the most important remains unfortunately the least resorted to, the object is therefore defeated, namely, to neutralize the effective use of money power accumulated by unwarranted means for financing the defence as well as conversion of using the same for otherwise legitimate investments.
  \item Shoba Suresh Jumani v. Appellate Tribunal, Forfeited Property and another 2001 CrLJ 2583 SC.
  \item Justice B.N. Kirpal, Justice MB Shah and Justice Ruma Pal observed: It is difficult to comprehend the reason for not including a person who is convicted under the
\end{itemize}
Section 2(c) of SAFEMA Act, the Supreme Court expressed a strong desire and necessity of a provision relating to forfeiture of property acquired by illegal means by a public servant and hence convicted under the PC Act, 1988. A suitable amendment to the statute can certainly make a difference to the battle against corruption. The suggested amendment apart, it is necessary that the assets of those, charged with corrupt practices are instantly kept under watch so that they do not use their ill-gotten money for buying favourable “response” from the powers that be.

The Law Commission in its 167th Report suggested enactment of a law for forfeiture of property of Corrupt Public Servants and a Bill titled ‘The Corrupt Public Servants (Forfeiture of Property)’ is annexed with the report. The report is pending consideration by the Government since February, 1999.39

The provisions of the proposed Act regarding confiscation are in addition to the provision relating to conviction for a minimum period of seven years, which may extend up to fourteen years. The provisions of the proposed Act apply not only to the public servant but also to every person who is a “relative” of the public servant or an “associate” of such person or the holder of any property which was at any time previously held by the public servant, unless such holder proves that he was a transferee in good faith for adequate consideration. The provisions also apply to any person who has deposited any amount or other moveable properties in any bank or any other concern outside the territory of India, or has acquired any properties outside the territory of India without the requisite permission of the appropriate authority. The proposed Act also contains the definition of ‘relative’ referring to various

39. Prevention of Corruption Act, 1988 in the definition of Section 2(c) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. The Bill states that as from the date of the commencement of the Act, it shall not be lawful for any person to whom the Act applied, to hold any illegally acquired property either by himself or through any other person on his behalf. The Bill further provides as follows:

"where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of the Act".

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relations of the public servant and also a definition of ‘associate’ referring to various types of persons associated with the public servant.

The Bill making the above provisions has not yet become law. Once it becomes law, without doubts, it will substantially put an end to corruption.

Here it may be added by way of suggestion that forfeiture of property as a measure of punishment may be imposed on the corrupt public servant to the extent of forfeiting 75% for his property which such corrupt servant is having at the time of conviction.

8.5 BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988, AND ACQUISITION OF HELD BENAMI PROPERTIES

The Benami Transactions (Prohibition) Act, 1988 was the result of the 57th report and the 130th report of the Law Commission and precludes the person who acquired the property in the name of another person from claiming it as his own. Section 3 of the Act prohibits ‘Benami transactions’ while section 4 prohibits the acquirer from recovering the property from the benamidar.

Section 5 of the Act is important and permits acquisition of property held benami.40

Unfortunately, in last more than 13 years, rules have not been prescribed by the government for the purposes of sub-section (1) of section, 5 and the result is that it has not been possible for the government to confiscate properties acquired by the real owner in the name of his benamidars.

8.6 DECLARATION OF ASSETS MUST BE COMPULSORY

Simultaneously, as a deterrent, the State Government should be advised to ensure that all its employees irrespective of what rank they belong to are

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40 Section 5 of the Benami Transactions Prohibition Act, 1988 provides that (1) All properties held benami shall be subject to acquisition by such authority, in such manner and after following such procedure as may be prescribed.
(2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under subsection (1)’.
required to file a statement of assets on affidavit which covers the employees and the family and which will include assets both movable and immovable standing in other names. Such a statement must be made compulsory on an annual basis. This rule should be made compulsory for the Government as also to all public institutions such as the public corporations. More important is that the statements be scrutinized and verified by the Vigilance Department on a selective basis so that the impression is not created that false statements can be submitted with impunity. This procedure if properly enforced would act as a check on corrupt practices which generates huge amounts of black money which in turn is converted into assets. These returns will be of immense assistance in the investigation of corruption prosecutions. It will, however, be necessary that these declarations be verified and appropriate disciplinary action and prosecutions be ordered in every case where a false declaration has been filed. The declarations should also be open to public scrutiny. False declarations must attract stringent punishments, including disqualification to hold elective office. Failure to file the declarations by the stipulated dates MUST result in disqualification to continue in office, with no power at any level to condone the disqualification.

The task ahead is surely gigantic. But there is no reason why the Union Law Ministry cannot take a cue and make a suitable amendment to the statute making specific provisions for forfeiture of corrupt officers' property. Apt is an opinion expressed by the honourable Justice Jawaharlal Gupta41 –

> The law should provide that on the charge of corruption being proved the entire property of the family shall belong to the State. The fear of losing all the family assets should discourage many a die hard. This should be in addition to the usual punishment of imprisonment and fine, which the law lays down. It is doubtful that it will be able to stand the test of law.

That the property of the entire family of the convicted person should belong to
the State is a welcome idea and in tune with the fact that it is the whole family
and its branches to whom this ill-gotten money percolates. Thus it is
suggested that it should be restricted to property of those family members
who fail to account for it.

On April 21, 2007,\textsuperscript{42} the declaration that the process of selection to the posts
of PCS (Judicial) adopted by the Punjab Public Service Commission (PPSC)
under the chairmanship of Ravinderpal Singh Sidhu was “virtually a fraud” and
“deserves to be set aside”, exposed another fact which came to light during
the cross examination of a prosecution witness. The fact was in regard to the
assets case against Ravi Sidhu. The currency notes recovered from the bank
locker of Sidhu’s brother, on counting, amounted to Rs 8 crore. Indeed, the
corrupt ought to be made to realize that he cannot get away with ill-gotten
wealth. Public money must not be diverted towards private gains.

8.7 TACKLING CORRUPT BEHAVIOUR OF THE
POLITICIANS

As commonly observed, certain allegations of corrupt behaviour amongst our
politicians and ministers have come up, of late, which have remained
allegations for they were not pursued to any logical conclusion. And even if
charges are framed against the politicians for possessing unauthorized
assets, action against them can be taken only after charges are proved which
in their case is not easy due to many loopholes in the judicial net through
which they escape easily.\textsuperscript{43} Thus nailing them for their behaviour may not be
easy in that background and the position is like putting cart before the horse.\textsuperscript{44}

\textsuperscript{42} PCS (Judicial) recruitments fraud, Hindustan Times, April 21, 2007.

\textsuperscript{43} Recent allegation is on the politician turned Chief Minister Ms. Mayawati. A PIL
petition was filed on June 29, 2007, by one Manzoor Ali Khan in the wake of
Governor T V Rajeswar refusing sanction to the CBI for prosecuting Ms. Mayawati in
the Taj Corridor scam case. The PIL petition has questioned the validity of the
declaration made by Ms. Mayawati while filing papers for a Legislative Council poll,
that she had assets worth Rs. 52 crore. In an earlier declaration while filing for her
2004 Lok Sabha election she had declared her assets to be worth Rs 11 crore.

\textsuperscript{44} In a raid undertaken by the CBI to probe the assets owned by Om Prakash Chautala,
the Ex-Chief Minister of Haryana and his family, reported in May 2006 that it was
estimated that the Ex-CM possessed assets worth Rs 1.467 crore. Sources said that
It would be eminently sensible if an independent and autonomous body is set up to try cases against politicians and bureaucrats. At present, the CBI seems unable to act as an independent body. As it consists of IPS officers, they kow tow to the wishes of the political exclusive and top IAS officers in anticipation of rewards and, in the process, do injustice to work.

In this context, the suggestion for a Director of Public Prosecution (DPP) completely independent of political and bureaucratic control merits attention. The DPP would be answerable only to the Chief Justice of India as is the Procurator- General in France. In many countries, this institution has worked successfully. Why not follow the same in India to protect the rule of law and break the politician-criminal-bureaucratic nexus?

All corruption cases involving high-profile politicians and bureaucrats must be dealt with only by multi-member courts, with judges drawn from other States. Can one expect a fair trial in corruption charges framed against the Tamil Nadu minister, Ms Jayalalitha or the reigning Chief Minister of Punjab, Prakash Singh Badal? A convicted politician or bureaucrat must be kept in a prison away from his/her home state. Besides criminal prosecution, if proof is forthcoming, accumulated wealth and the property acquired from unauthorized wealth in excess of wealth earned from known sources of income should be forfeited. If criminal prosecution is not proceeded with, they should be debarred from contesting elections.

- Social boycott of the aforesaid politicians is the best way to condemn them for their behaviour
- In a republican democracy people repose their confidence in politicians to run on their behalf the affairs of governance efficiently, make laws, fulfill their aspirations, and represent them and raise their voice in appropriate forum. If they fail to perform their duty, and indulge in corruption, the act is no less than cheating the people of the Republic which is again no less heinous a crime inviting severest punishment. The punishment should therefore be ruthless as to teach
a lesson for the posterity of dishonest politicians. A ‘harsher’ treatment than what would be meted out to any other criminal charged with a similar offencemust be faced by every guilty politician; ‘harsher’ because the politician has looted the state treasury in total breach of trust which the people reposed in him.

- Where the politicians are found to have earned assets disproportionate to their known sources of income, a police report should be called for, and if a prima facie case is established the court should freeze all movable and immovable assets standing in the name of the politician or in the fake names of the politician.

- The arraigned politician should be immediately taken into custody and should not be released on bail or else he will move heaven and earth to manipulate records, threaten witnesses not to depose against him and engage the most expensive lawyers to defend him with the money that he has amassed through unfair practices. His funds pushed elsewhere must be found out and frozen.

- In no case, should the government appoint a Commission of Inquiry for establishing a prima facie case. Such Commissions have been the graveyards of many a serious cases of breach of public trust and of corruption. Unless stringent criminal action is promptly taken, the corrupt officials will continue to loot public and private funds. Any corrupt person deserves severe punishment because such a person not only clandestinely accumulates unaccountable wealth and property but also eats the vitals of the nation. Obviously, a politician need not be excluded in this respect nor should he be absolved because of some constitutional status he enjoys. As soon as the allegations of accumulating unauthorized assets are made, supported by prima facie evidence, against any person, he should be stripped of all positions, powers and privileges till the allegations are investigated and disproved. A case should be registered immediately.
- The onus of proving his honesty should also lie on such a politician himself and he should come out clean before his electorate and people of the Nation by filing affidavits about his wealth and assets and accounting for their disclosing the source.

- Public hearing in the Courts should be held, and if such official is acquitted, the complainants, even if it is the media, should also be strongly punished for their irresponsible behaviour and damaging the prestige of such politician. But in cases where such politicians are convicted, they should not even be bailed out and severest punishment, equivalent to treason be imposed on them to be enforced with immediate effect.

- For people who occupy high public positions, a separate kind of legislation should be drafted and implemented for conducting investigation and trial in corruption cases. The legislation should favour speedy disposal of cases where such public functionaries are involved. This will help both the law as well as the arraigned public servant, otherwise the sword of uncertainty will continue to hang on the heads of persons targeted. Speedy disposal of corruption cases is in the interest of our polity and its cleanliness. Delays in the courts are to be minimized. Our whole system of court hearing should be changed. Every adjournment that is granted everyday in the Court by the Magistrate on the representation of our good lawyer friends should be restricted and there should be a computer to record adjournments so that the Magistrates and the judges have a feeling that somebody is watching their progress of work.

- Also it should be mandatory to transfer the cases outside the home state or to another investigating agency concerning political functionaries who come into power during the pendency of prosecution. Thus the cases relating to corruption, involving the political bigwigs may be handed over to the CBI or be transferred to
any other state, not being governed by the same political party to which such person belongs.\textsuperscript{45}

8.8 TRANSPARENCY OF THE SYSTEM

People at large need to be sensitized about the evil effects of corruption and how corruption comes in the way of fulfilling the genuine demands of the public like drinking water, better roads, better power supply etc. Sensitivity to the evil effects of corruption will grow if the true facts are presented to the public. This makes transparency of the system very desirable to make all relevant information available to the public. The culture of secrecy fosters corruption. Accountability is necessary for good governance. This is possible through transparency in operations.

Long term measures must be undertaken. Mere booking of cases of corruption against public servants, sporadic arrest of officials, would remain a scratch on the epidermis, that too superficial, though the malice is skin deep. The level of turpitude to which the country has sunk, calls for sharpening of vigilance in public life. Such a behemoth of corruption cannot be curbed by pious platitudes and quibbling but only by unleashing a countrywide crusade for transparency in public life.

In following a three-pronged strategy to tackle bureaucratic corruption, the CVC has utilized strongly the power of the web. This is to bring transparency to the entire political system. It publishes on its website (http://cvc.nic.in) the names of officers charged with corruption. Some of the people whose names appeared on the web occupied sensitive public positions.

In principle, if an official is facing a vigilance inquiry, he should not be placed on 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 immediately highlighted by the website. It is suggested that a public servant facing such an inquiry must be suspended from the post he had been occupying with immediate effect.

\textsuperscript{45} A very obvious twist in the corruption cases involving the present Punjab CM, Shri Prakash Singh Badal was noticed to be taken by the Public Prosecutor on the eve of the announcement of the Punjab election results.
The CVC website is generally perceived as a rogue’s gallery which it is not. Despite the fact that 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. Some people theorize that the fear of having one’s name published on the website affects the behaviour of potentially corrupt public officials. A poll taken by the Economic Times showed that 83% of the respondents believe that the publications of the names of the charged officers on the CVC website can have a deterrent effect.

8.9 REWARDING THE VIGILANCE OFFICERS

The experience of the Vigilance department shows that complaints received by them are myriad. Most of the complaints are based on personal rivalry, family feuds, professional jealousy etc. It is very rare to find a complaint received by post, most of which are anonymous or pseudonymous, having led to registration of a case and its being challenged in the court of law. Therefore, emphasis has to be on quality and reliability of information generated by the officers of the Vigilance department. Simultaneously, the machinery to sift the grain from the chaff out of complaints received must be finely tuned. For this, it is suggested, that officers of the department or outsiders providing reliable information leading to unearthing of cases of corruption must be handsomely rewarded.

8.10 CERTAIN ACTIVITIES OF VIGILANCE DEPARTMENT MUST BE MADE TIME-BOUND

As an instance, a secret enquiry should not take more than two weeks and a joint surprise check not more that two months. Each investigator also must be set with a reasonable work target.

Based on the records of the Vigilance department and also channels, a watch list of most corrupt officers must be compiled. Dossiers on public servants on the watch list can be maintained and at appropriate time decision must be taken on legal grounds or departmental action must be taken against them.
8.11 AWARENESS AGAINST CORRUPTION IN THE FORM OF A MOVEMENT

Corruption has attained the form of a vicious circle. The question is how to break this vicious circle. It will not be possible merely by the efforts of the government or enforcement agencies or by passing new laws. The Government can only give a solid direction and the enforcement agencies can create a scare in the minds of tainted public servants. Ultimately, the cleaning will have to be done by the society. The society will have to work towards breaking the vicious circle.

It is very important to create awareness against corruption. This awareness has to be in the form of a movement which can be brought about by the social service organizations. Presently newspapers have given wide coverage to articles and cartoons on the subject of eradication of corruption, and they must continue doing that. This awareness the society will have to take forward. There is a need for a movement to change the attitude/outlook of the public towards corruption. The movement has to acquire the momentum of another struggle for freedom. Efforts at all levels, media, both electronic and print, socially committed personalities, non-government organizations, (NGOs) and the most powerful force, the students and the younger generation are to be involved to make a visible change in the public outlook towards the crime of corruption. The anti-corruption campaign, a movement, has to be high handed. The present Communist Party of China (CPC) proposes to fight corruption and believes that now there will be fierce bites rather than barks. Such is the approach required in India.

8.12 MINIMUM CONTACT BETWEEN PRIVATE BUSINESSMAN AND PUBLIC SERVANTS

In Government purchases and developmental works, the contact between the public servants and the contractor/businessman must be brought to a bare minimum. Tenders should reach the contractors through website and
competition in these works and purchase be carried out in a transparent manner.

8.13 INTERNAL VIGILANCE SYSTEM OF GOVERNMENT DEPARTMENT MUST BE STRENGTHENED

Every Government department must strengthen its existing system of inspections, supervision, command and control. The internal vigilance system within each department will help curb corruption and avoid delays.

The citizens must exhaust departmental channels for grievances redresses rather than to overburden the enforcement agencies. The enforcement agencies cannot be an alternative to the grievances redress mechanism of each department.

8.14 COOPERATION AT INTERNATIONAL LEVEL TO CONTROL CORRUPTION

Corruption is not a national issue. It has become international. Money laundering and transfer of huge amounts in foreign countries for investment in property and deposits in banks have provided a protective umbrella to all corrupt persons. There must be some kind of international convention where consensus should be evolved to device modalities to handle this way of cover up of corrupt gains.

Corruption has become a major problem confronting developing countries today. It is endemic in poor countries and developed countries cannot be entirely absolved of the blame. To tackle this problem, the Eleventh International Anti-Corruption Conference held at Seoul\footnote{25-28 May, 2003, Seoul, Republic of Korea.} resolved that corruption should be designated as a crime against humanity.

But the basic question on how to fight this monster still remains untouched. There is a need to evolve systems and create a mechanism at the international level for effective cooperation in this fight as vested interests will not leave any stone unturned to frustrate efforts to dismantle their empires. So are vested interests in countries like Switzerland which gain a lot at the cost of others. Swiss Banks and their likes have a very prominent role in facilitating
and perpetuating corruption. They encourage corruption and make it possible by guaranteeing secrecy.

8.15 CORRUPT GAINS INVESTED IN PROPERTY MUST BE CHECKED

Investments in real estate are the largest dumping grounds of investing corruption gains, for example: The Real Estate. Properties are purchased at $\frac{1}{3}$rd or sometimes $\frac{1}{4}$th of the market value. There has to be some kind of check in the investment in real estates like:

(i) ban on transfer of property on power of attorney;

(ii) Person purchasing the property must mention the sources for the investment.

(iii) In case of investment in real estate – above a certain value, a clear-cut notice of that has to be given to the Income Tax authorities so that in case of doubt they can examine the matter thoroughly.

8.16 RECRUITMENT OF VIGILANCE STAFF AND THEIR TRAINING QUALIFICATIONS

A degree in LL.B must be minimum qualification for the Vigilance Officers. Also special pre-service training and in-service training must be imparted to these officers to keep them abreast of the latest legal development, especially the case laws and the implications of the judgments of the high court and Supreme Court in corruption cases. They should be trained to be fully aware of the new scientific methods of investigation.

8.17 CONVICTED SHOULD NOT HOLD OFFICE AND MUST BE GIVEN PUBLICITY. PUBLIC CENSURE BE MADE ADDITIONAL PUNISHMENT

Proliferation of corrupt public servants could “garner momentum to cripple the social order if such men were allowed to continue to manage and operate
When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. **Mere entertainment of an appeal by an appellate court against conviction should not even temporarily absolve the convicted public servant of the findings of the trial court.**

Once a person is convicted and appeal has been disposed off, widest possible publicity to the conviction and details of the crime must be made through the print and electronic media. It will also be desirable to have a 'Rogues' Gallery' in each State where particulars about corrupt persons convicted can be permanently exhibited. Public censure as an additional punishment must be introduced in the existing Act.

It will indeed have a telling effect if a former Minister/Chief Minister or senior bureaucrat, convicted of corruption, after all appeals are over, is forced to indulge in 'hard labour' in the prison and then this is video graphed and shown on national television channels. This may appear to be shocking but such measures are to be resorted even at the cost of being branded as 'violators of human rights'. Seeing the enormity of crimes committed by some of them, calls for such stringent measures. China recently executed a high-ranking official for corruption, after a speedy trial. That China is still among the most corrupt countries is another matter.

**8.18 CONVICTED PUBLIC SERVANTS MUST BE DISMISSED FROM SERVICE**

Public office is a sacred trust held by the public servant and anyone who betrays that trust by indulging in corruption must not be spared. **It is strongly suggested that the public servants convicted in corruption or misappropriation cases by a Court should be dismissed from services unless the conviction has been stayed by a superior Court.** Such an action is necessary to boost the morale of an honest employee. This was suggested by the Chief Minister of Orrisa, Naveen Patnaik, who announced

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47. SC-2007 "Convicted officials can't hold office", timesofindia.indiatimes.com/articleshow/795611866.cmf.42k
for such an action to be taken against the convicted corrupt officials of his State.  

8.19 CORRUPTION: DEFENCE-RELATED CONTRACTS/KICK BACKS

Any corruption or kickbacks in defence-related contracts must be treated as offence similar to the offence of treason. In the context of Kargil and continued threats from across the border, it will not be difficult to appreciate the need for this.

8.20 CORRUPTION IN AWARDING CONTRACTS

Bulk of corruption is in the matter of purchase of stores and award of contracts. If all tender committee proceedings are made available to all the parties bidding for the contract before the contract is finalised, much of the corruption can be eliminated. It is a fact that because of the confidential nature of tender proceedings, a lot of incorrect statements goes into the records to twist the decision in favour of favourites.

This calls for no fresh legislation, only an executive order by the government or by the Chief Vigilance Commissioner.

8.21 DEPARTMENTAL DISCIPLINARY PROCEEDINGS SHOULD BE PERMITTED TO CONTINUE WHEN THE CRIMINAL CASE IS ON

Only when the prosecution fails to prove the case, the departmental proceedings are to be questioned. If the acquittal is on benefit of doubt, then the departmental proceedings should not come to an end automatically on such acquittal, but proceedings must be examined independently to find out the culpability of the delinquent employee.

48. Stated by the Chief Minister at the 11th Annual Vigilance Conference on Wednesday July 25, 2007 at Bhuvneshwar.  
8.22 COURT’S ROLE IN COMBATING CORRUPTION

Under the scheme of checks and balances adopted to ensure that the authorities function within their constitutional limits, the Courts have an important role to play and are armed with wide powers to ensure that any decision of a public authority that is founded on corrupt practice or is a fraud on exercise of power is set at naught, and the guilty punished. For the Courts, combating corruption is a task of high importance and brooks no casual or lenient approach. There is no room for compunction in dealing with a corrupt official or authority and only a swift decisive and deterrent approach is warranted by the Courts while dealing with the delinquents.

8.22.1 Instances of corruption brought before the court are just a tip of the ice-berg: need for vigilant eye of the court

The power of judicial review of quasi-judicial functions of the departmental authorities and service tribunals is often pressed into service at various levels and stages. The Court system is designed to uphold and implement the law. Therefore, while on one hand it is the duty of the Court to protect violation of individual rights by arbitrary or malafide action of the Public authorities, it is equally or even more important to see that the judicial process is not abused by the crafty and the undeserving. The easiest cover for a delinquent offender, who is detected, is to run to the Court for an order to pre-empt departmental or punitive action against him. Amidst the hush-hush and well-oiled illegality of the underworld of the corrupt, rarely the incidents are detected. When it is a loss to the State exchequer, it is by conspiracy of corruption between the beneficiary citizen and the obliging authority and no one would know about it unless it is detected by some vigilant eye that may occasionally open. When, however, it comes to a conflict of interest generated by adoption of a corrupt practice, it is more likely to come to light. Thus, the instances brought before the Court are just a tip of the ice-berg. This by itself merits a vigilant attitude of the Court to ensure that its processes are not abused by securing cover of interim relief against the proceedings, and thwarting the prosecutions under the guise of matter being sub-judice.
8.22.2 The existing loopholes in the Court system must be removed to ensure proper sentencing

The system of inquiring into the conduct of officials and functionaries adopted by our legal system should be allowed to function and the Courts must resist any attempt to halt such proceedings, as it is done in election matters, where, once the election process commences, all disputes are to await adjudication till the election results are announced. This self-restraint requires knowledge of the role of the office that is abused, the impact on Society of the wrong that is perpetrated and the relevant provisions of law that govern the case. Lack of minimum necessary expertise, though it gets camouflaged under the cover of power, is an area where the Court system needs to be strengthened to prevent system errors that will answer the cases wrongly and protect the guilty when the law intends it otherwise.

8.22.3 Court must exercise power of Judicial Review to protect the innocent

By virtue of all-pervading principles of natural justice, the delinquent officer has sufficient safeguards during the inquiry proceedings and trials, and the State has opportunity to place on record the material reflecting the corrupt malpractices alleged against the delinquent. The administrative authorities who are in the relevant field are closer to the ground realities of the set-up in which corruption was practiced, for deciding to take action. There are departmental appeals against the adverse orders and in most cases Tribunals are to look into any alleged flaws. The superior Court’s main function should be to ensure that they follow the mandatory procedure and make orders in accordance with the law. It has not to re-appreciate material for reviewing the departmental decisions like an appellate authority. So long the orders of punishment of the delinquents are made by an authority duly empowered and can be supported on the material considered by the competent authority to be sufficient, there should not be any attempt to substitute the Court’s opinion for providing an escape route to the culprit. When not to exercise power of judicial review, is as important for preventing damage to the judicial system as is the need to exercise it to protect the innocent for upholding the system.
8.22.4 Multiple liabilities of the Corrupt

Undue Indulgence shown in dealing with them must be avoided. A corrupt official is basically a criminal with multiple liabilities that he incurs. Any undue indulgence shown in dealing with his liabilities for such misconduct is bound to have impact on his treatment by the Court where he is tried. Often the decision to lodge a criminal complaint is deferred till the outcome of the departmental proceedings is known. Though criminal liability is based on the evidence led during the trial which is an independent proceeding, an efficient court system is concerned with both, as it will be incongruous to have a person found guilty of corruption and therefore liable to be dismissed, to move freely due to failure of his prosecution for the same misconduct which also amounts to an offence. The situation may turn out to be a financial viable one to such delinquent who may lose the job but remains sufficiently secured. Therefore, though the standards of proof may differ, there is a case of a unified approach to gathering data or material that can form the basis of the multiple liabilities arising from such misconduct which is also an offence. Until there is brought about a statutory change which will enable one set of material reflecting on the same conduct being gathered and assessed for multiple liabilities, the Courts should be vigilant of the deleterious effect that an interim interference with the proceedings or its outcome will have on his criminal liability which is of greater significance, because if convicted, the departmental removal would just be a matter of routine.

8.23 RULE OF LAW NEEDS TO BE PROTECTED FROM THE RULE OF MOBOCRACY

On December 8, 2006, the Supreme Court in Prakash Singh Badal's case had opened a new chapter in arresting the declining values of our political class. If only it can find some way of reducing the enormous time delays in prosecution and the pronouncement of judgment, meaningful verdicts and convictions will automatically follow.

Currently in the States, as can be seen in case of Punjab\(^50\), what is happening is that the rule of law under which the public servants ought to be hauled up is taking a beating from the rule of mobocracy, which brings about a change in government through polls. **While polls are the bedrock of democratic functioning, they should not be allowed to short shrift the rule of law, especially when misuse of public funds has been proved.**

### 8.24 Supreme Court's Directive to the Election Commission, on May 2, 2002

A good beginning has been made in the Supreme Court judgment of May 2\(^{nd}\) 2002\(^51\) directing the Election Commission of India to ask candidates contesting parliamentary or assembly elections to compulsory furnish details of their criminal antecedents, if any, to others to think before they make their choice. This will give the voters an opportunity to judge the candidates. However, the political class, in a rare unanimity, watered down the provisions of the judgment. The legislation finally passed only stipulates that after election, the legislators must file statement of assets with the Presiding officers.

### 8.25 Whistle Blowers

Whistleblowers can also play a very important role in providing information about corruption and mal-administration. Public servants working in the same department know better as to who is corrupt in their department but unfortunately, they are not bold enough to convey the said information to the public.

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50. Where the State Government’s prosecution case depends entirely on the party in power in the State.

51. The Supreme Court asked that the candidates would have to furnish following details on five counts. These are:

- Whether the candidate has been convicted or acquitted or discharged of any criminal offence in the past. If convicted, whether he was punished with imprisonment or fine.
- Whether the candidate was accused, anytime within six months prior to filing of his nomination, in any pending case of any offence punishable with imprisonment for 2 years or more, and in which charges were framed or cognizance was taken by a court of law, and if so, the details thereof.
- The assets (immovable, movable, bank balances, etc) of a candidate and of his/her dependants.
- Liabilities if any, particularly whether there are any dues to any public financial institution or government body.
- The candidate’s educational qualifications.
higher authorities for fear of reprisals by those against whom complaints are made. If adequate statutory protection is granted, there can be no doubt, that the government will be able to get more information regarding corruption and maladministration. Such provisions exist in England, Australia, and New Zealand and in the United States of America.

Good faith whistleblowers represent the highest ideals of public service and challenge abuses of power. They test loyalty with the highest moral principles but place the country above loyalties to persons, parties or Governments. There is a close connection between whistleblower’s protection and the right of employees to disclose corruption or maladministration. Protection of whistle blowing vindicates important interests supporting the enforcement of criminal and civil laws. This aspect may be called the ‘rule of law’ concept implied in whistle blowing. Again, whistle blowing can be seen as supporting public interests by encouraging disclosure of certain types of information. This aspect may be called the ‘public information’ or ‘public interest’ concepts implied in whistle blowing. Further, whistle blowing challenges institutional authority, prerogative and discretion. It also enables and protects employee participation in the decision-making process of public institutions. This aspect may be called ‘institutional’ or the ‘democratic reform’ concept implied in whistle blowing laws. Protection of whistle blowers can however be seen as creating a number of risks, such as disruption of the work place, rending of employment relationship, possibility of blackmail and harassment, etc.52

8.26 LACK OF COMPUTERIZATION IN INDIAN BANKING SECTOR

The fact that computerization is not fully advanced in the Indian Banking Sector leads to a time delay before accounts are reconciled, which provide significant opportunities for fraud. Thus it is necessary that the banking sector makes extensive use of information technology to ensure improvement in the quality of service. Advancement of computerization in banking sector will check this significant source of corruption.

8.27 SPREADING AWARENESS THROUGH EDUCATION

Though corruption is rampant in our system, the results of elections where corrupt candidates are elected again and again raise the question whether the removal of corruption or improving probity in public life is considered relevant by the people at large.

Education is an important factor. According to a study made by the India Today in 1997, Kerala emerged as the least corrupt state. Probably this can be directly related to the increased literacy in that state and also the corresponding awareness in the people of Kerala about exercising their rights.

If democracy has to survive, the middle class value of probity in public life will also have to be sustained. Today, the voter is not bothered much about the high level corruption but is more directly and visibly affected by the corruption at the cutting edge level of administration which he experiences everyday. The red tape ridden elaborate systems leading to enormous delays in many public offices too make the common man consider that paying a bribe as speed money is part of the system. Thus all this builds up the tolerance levels of corruption by the public. In turn, corruption grows.

8.28 RIGHT TO INFORMATION ACT, 2005 AN ANTI-CORRUPTION TOOL

In the past, it was observed that there prevailed a culture of secrecy in the public domain. An imbalance existed between what the State ‘knows’ and what the citizens ‘know’. This culture of secrecy favours the growth of deep-rooted corrupt practices. It is understood that accountability is necessary for good governance. This is possible through transparency in operations. Transparency in government is possible if there is freedom of information and the citizens have access to information. The newly recognized right to access to public information through the Right to Information Act (RTI) 2005, is an attempt to unveil the secret curtain and make the public administration transparent.
Corruption flourishes in darkness and so any progress towards opening governments and intergovernmental organizations to public scrutiny is likely to advance anti-corruption efforts.

Following are some suggestions to further strengthen this anti-corruption tool:

- **Administrative reforms must be anticipated:** The law relating to right to information must take into consideration the public administration’s capacity for the new legislation. Otherwise a law may be created that is excellent for citizens but leaves the administration incapable of providing proper services and with a considerable reduced capacity to deliver. A few provisions in the law which require, for example, standardizing the classification of internal documents and the proactive publication of certain classes of information such as budgets and annual reports, can greatly help in preparing the administration for answering the most common information requests.

- **Sanctions for secretive institutions:** Sanctions should penalize the institutions that fail to respond to requests for information, along with the heads of these agencies, to avoid the possibility of individual, lower rank civil servants being penalized. The burden of responsibility should rest with those with the power to make change.

- **Retrospective Action:** Any new access to RTI should include a clause in the RTI Act that entitles requestors to obtain access to copies of information contained in official documents which originated before the adoption of the access to information law.

- **Private entities concerned must be specified:** Some freedom of information law also oblige private entities to provide information, particularly where these private bodies receive public funds and/or perform a public function and/or hold information that is necessary for the defence of other rights, such as the right to education or health or participation in public life. To ensure clarity on which bodies are bound to respond to requests for information, they should either be named within the law or the law should specify the criteria to be applied when
determining when a public body has an obligation to respond and which of the information it holds must be made public.

- **Proactive Transparency:** Making information available proactively, such as by posting the information on websites and/or having printed reports available in the reception of the institution can be very important information for anti-corruption activists. Such measures are needed to overcome traditions of keeping business-related information secret, even where the so-called “business secrecy” relates to the spending of the tax-payers money as part of public-private partnerships and contracts.

- **Appeals and Litigation:** Refusal to release information demanded or simply ignoring the request for information should not only be met with being legally challenged but must be publicly condemned in media. Although an administrative appeal can result in a reversal of a decision and release of the required information, experience has shown that is relatively unusual. Essentially, this means asking the body that ejected the request to review its own decision. Indeed sometimes the very same person who made that initial decision (such as the head of the institution) will be the person who conducts the review. The next question is their appeal to the Information Commissioner, which process is usually rapid, low-cost and does not require the services of a processional lawyer.

    Going to Court to litigate against the offending public institution which has failed to comply with the access to information law may seem the most effective option

    - Litigation can help to develop specific interpretations of the law, which is important where the law is poorly drafted or ambiguous.

**8.29 SUGGESTED STRATEGY**

Our country is corrupt and corruption flourishes because there are people in power who benefit from the present system. Unfortunately those who benefit from power are also those who have to initiate the change to check
corruption. Under these circumstances, citizens and their organizations can get change initiated only by adopting the following strategy:

Judicial activism has been responsible for bringing about some of the well-needed changes. The PIL, public Interest litigation, is one channel by which courts are approached and thereby influence the administration in changing its policies or initiate action to check corruption. Vineet Narain’s case is an outstanding example of citizen moving the court’s attention through a PIL to the slow process of investigation in a corruption case. Such approach to the judiciary must be the effort of every citizen and not let corruption carry on unchecked or unpunished in this country.

8.30 LEGAL PROVISION TO DEAL WITH PUBLIC SERVANTS ACTING AS POWER BROKERS MUST BE FRAMED

The political scenario in India now shows persons acquiring large assets through means which are ethically questionable and kept in great secrecy and acting as brokers of political power who can make or break Governments. There is no legal provision now to deal with such power brokers. Assets for such persons during a short interval multiply several folds. They have no ostensible sources of income except some minor positions in the offices of political parties. The assets acquired by them are prima facie ill-gotten. As they hold no office either in the Government or in the Legislature or in any other instrumentality, there is no law in India which can deal with such persons. Lawmakers must consider how to bring in a law to deal with such persons.

8.31 CONGENIAL ENVIRONMENT REQUIRED

A new Act is needed to tackle new challenges. The need is of a congenial environment wherein the police can function strictly in accordance with law, deliver justice to the people and match their increasing expectations. The CBI can handle cases of national importance and inter-state crime. Besides, it should be authorized to

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take up cases against officers belonging to the All-India Services under the PC Act regardless of their State cadres.

- The response of the public to the CVCs initiative in displaying the names of the charged officers on the CVC’s website showed that even now, in these cynical times, there is a sense of shame. Perhaps even today public opinion can be mobilized. We must be able to make the best use of media, both print and electronic, to convey the message about the need for checking corruption.

- It is good that corruption issue has today become a global issue. The Global Forum Against Corruption is a pointer to this fact. At this programme a valuable comment was made by Shri T N Ninan, the Editor of Business Standard: “The wisecrack goes that everyone complains about weather but no one does anything about it. I suppose the same thing could be said about corruption.”

Today, conferences are being held in quick succession to discuss the issue. Corrective action on this issue is urgently required. Like the human rights movement which has gone from the agenda item to action item in a short period, this must become true of corruption now.

Alexis De Toqueville said: The inevitable became intolerable the moment it was perceived to be no more inevitable. Today most of us in different capacities as voters, businessmen, or citizens are coming to accept corruption as inevitable. The day is not far when it will become intolerable.

8.32 WORLD EXAMPLES ACHIEVING ELIMINATION OF CORRUPTION

We can peep into other democratic countries and see how this inevitable became intolerable and the outcome of that. These countries adopted and implemented with courage and determination a carefully conceived programme involving fundamental changes in the electoral system as well as in governmental administration, especially in the public services. To name a

few, the United Kingdom who was public notoriously corrupt in the 18th century made a transition across barely fifty years to a regime of extraordinary public probity. This was achieved primarily because of the visionary leadership of the liberal party under W E Gladstone.55

In the twentieth century, the Independent Commission against Corruption (ICAC) was set up in 1974 in Hong Kong which was successful (at least till 1977 before handover to China) in bringing greater cleanliness in public life.

Botswana is another example which has vastly improved its probity in public life. Another outstanding example is that of Singapore where under the leadership of Lee Kwan Yew, who was Prime Minister for a long time, Singapore enjoyed its reputation as a clean free country over three decades.

Many anti-corruption reforms don’t require ten years and $10 billion loans from the World Bank or IMF to implement. They require political will and leadership. It’s inspiring to see the reform efforts in a country like Liberia, which is just barely coming out of a horrible conflict. There political leaders took the tough decisions to push for reforms and it’s working, although there’s plenty of work to do. And, in Washington, one is surprised to see how suddenly the lawmakers voted for lobbying reforms after the November 2006 elections. After 20 years, it took only a few months to get it right.

One can learn by a look at the efforts made by an extremely corrupt, Bangladesh (156th rank on TI 2006). It has a poor economy to support, yet it does not flinch in making an attempt to punish the corrupt top politicians of the country. A news item flashed in the ‘The Hindu’56 reads that the Government backed by the country’s armed forces, detained 25 top politicians from both the immediate past ruling Bangladesh National Party and the Awami League in a move to ‘purge politics of criminals’. The overwhelming majority of those detained were former Ministers and ranking leaders of the former government.

55. He first in his capacity of Chancellor of the Exchequer in 1850s and later as Prime Minister, four times during the period 1868 to 1894 initiated a string of reform measures. The purpose of these measures was to abolish practices with payment of commissions in the army, to define and outlaw corrupt practices by state officials, to introduce competitive examination for admission to a non-partisan civil service, to replace fees by salaries in public offices and to setup systems of financial scrutiny by Parliament.

56. Dhaka to seize assets of corrupt politicians; The Hindu, Friday, February 9, 2007.
led by Begum Khaleda Zia and a few from Sheikh Hasina’s cabinet and party. 
The attitude in dealing with the corrupt is quite appreciable.

We are thinking of confiscating the properties of those politicians who have 
become extremely wealthy by corrupt means......No one will be spared if his 
corruption is proved” said the Communication adviser - M A Matin

In the 16th Biennial Conference of the CBI on anti-corruption in November 
2006, President A PJ Abdul Kalam and the Prime Minister Manmohan Singh 
made strong arguments in support of the need and urgency for taking efforts 
to fight corruption in India. It is notable that the Prime Minister has been 
working hard to impress upon the members of his own cabinet the need to 
ensure good governance. The President has made clear his keen desire to 
see a corruption-free India. He even suggested that an Independent 
Commission familiar to the one in Hong Kong could help India eliminate 
corruption.

Sure enough, such keen desires of eliminating corruption from the society are 
not the desires only of the President and the Prime Minister but of every 
citizen of this country who believes in respect of rule of law and protection of 
human rights. Never before have the implications of corruption been linked 
with the protection of human rights and preservation of the rule of law.

The Prevention of Corruption Act, 1988, is an attempt on the part of the 
Government to stem the tide of corruption from public life and is likely to bear 
fruit provided there is a determination to enforce the Act ruthlessly 
without any fear or favour. Provided further that we all strive to the best of 
our ability to create a social climate of honesty, probity and integrity, a climate 
in which a corrupt person would be looked down with disdain by other 
members of the society. John Stuart Mill said that a drunkard person should 
be looked down upon with contempt and disdain by the society, similarly, a 
corrupt person should be looked upon by society in this manner. Unless we 
create such an atmosphere, mere legislation will not be rooting out corruption.
In 1987 Shri Narayan Chobey had remarked “if you really want to fight corruption, fight the system also. However, you may put soap on charcoal, charcoal will never change its colour.”57

But then the whole system is becoming such that in Bengali, there is a proverb-

Swang ghir chhe dade

Ki kaurwe Man Ashirvade

When there is ringworm throughout the body, where shall we put the bomb?

The JMM bribery case, followed by scandals like Tehelka operations, exposing our MPs accepting bribes in defence deals, buying and selling the security of our country, and then the ‘cash-for-query’ scams, the MPLADS scam, only show that the state of corruption with well excused sentencing has reached the worst point in India’s parliamentary history. It is said that things have to hit the nadir before they start improving. Are we waiting for more to happen? Is there anything lower than the lowest?

As far as effective steps are concerned, our law seems to be rather impotent, rather helpless in bringing to book the people who are fouling public life, people who are besmirching the name of good and clean administration. The Government should take pains and make special efforts to see that the large number of holes through which public money is being drained, so much of leakage, so much of sweepage going on day in and day out, should be effectively plugged and sealed. Corruption is such a disease which does not admit of palliatives. Some sort of incision is necessary, mere probe would not do. It is so deep-rooted that it calls for a relentless surgeon’s knife to cure the ailing limbs of this malady and ruthless measures to root it out completely. There is conspicuous draft towards evil deeds and degeneration in public life. There is no yardstick to measure it.

The conclusion of this thesis would be incomplete without the mention of the recent impassionate remark on 6th March 2007, by Justices S.B. Sinha and Markandeya Katju. They vented their anguish in open court thus: The only

way to rid the country of corruption is to hang a few of you from the lamppost. Thus the “observation” made the Justice reflect in essence the dominant “vanguard” sentiment that, one, corruption is the number one national malady, and two, that its sources are located exclusively in the party/political apparatus of Indian democracy. Such a chastisement administered by the honourable judges needs to be understood in a wider social/ideological context. Soon after independence from the colonial rule, it was Nehru who recommended the “hanging by lamppost” remedy for corruption. The difference however is that the object of his particular anguish at that point was the hoarder and the black marketer. Now at a time, when the same in corporate avatar pretty much have the reins of state in their hands, it is the political class that has come to replace the same as objects of contempt.

In Maoist times in China, the Red Guard phase was meant precisely to decimate corruption more or less by the “lamppost” means articulated by honourable Justices Sinha and Katju. Yet alas, today China is as high as number three on the list of corrupt nations.

Indeed, was the “lamppost” route the most effective antidote to corruption, the dictatorial regimes that used to proliferate Latin America or South East Asia, or the monarchial ones that still rule the roost in much of the Middle East Asia, should have been the world’s most pristine and pure. Not so. In the meanwhile, there is a real enough danger that accompanies the anguished pronouncement of the two honourable Judges. Only some months ago in an Indian city a whole congregation of deeply-anguished women took upon themselves the task of chastising a ruffian who had for years caused no end less misery to the women of the town. Possessed by a sense of righteousness, they surrounded the fellow being in the court premises and beat him to death. To this day a debate carries on whether the said women deserve punishment or reward. Given the great, and no doubt, justified regard in which the people of India hold the Supreme Court, it is not inconceivable that the ‘lamppost’ observation may well double as inspiration to victims of corruption. And if and when that happens, not many would remember that
If we don't, then perhaps we never will! Abraham Lincoln anticipated this mood when he said:

*I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country......an era of corruption in high places will follow, and the money power of the country will endeavour to prolong its reign by working upon the prejudices of the people until the wealth is aggregated in a few hands and the Republic is destroyed.*

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