

A REALM OF AN IDEA - CORRUPTION IN INDIA



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“Corruption free India “was constant election manifesto in India for many years. This affirmation reflects the position and importance of anti-corruption pursuit in our country. It spread in all private, governmental and non-governmental organisations in the form of bribe, black money and scandals both in legislative and bureaucracy. Now Companies in India have started taking a more pro-active and conscious approach in dealing with corruption within and outside their organisations. Bribery and corruption have become key concerns for companies, especially for those engaging in business globally.¹

If once had an eye on history from Turkish to British, they bait Indian rulers by offering parganas, small kingdoms, services in their courts, protection from neighbour kings to stretch their power in India. Hence corruption was deeply rooted in political, economic, social and legal systems.

We cannot deny the role of policy makers for this outrage, excessive regulations, complicated taxes, involvement of numerous government departments in licensing system, monopoly control of government by business institutions and finally lack of transparency in laws and delay in court procedures. Anyhow India has powerful missiles to fight against malice practices.

Indian Penal Code, 1860:

Section 169 pertains to a public servant unlawfully buying or bidding for property. The public servant shall be punished with imprisonment of up to two years or with fine or both. If the property is purchased, it shall be confiscated. criminal breach of trust by a public servant was ascertain in the section 409, The public servant shall be punished with life imprisonment or with imprisonment of up to 10 years and a fine. Section 161 of the IPC to Section 165A of the IPC, were repealed by the POCA. A war-time ordinance called the Criminal Law (Amendment) Ordinance, 1944 was enacted to prevent the disposal or concealment of property procured as a result of certain specified offences. Thereafter the Prevention of Corruption Act of 1947 was enacted immediately after independence

¹ www.transperency.org

Prevention of corruption Act, 1988

Prevention of corruption Act, 1988² was foremost one which came into force on 9th September, 1988. POCA was enacted to consolidate all laws relating to offences by public servants. the scope of “public servant”³ expanded office bearers of cooperative societies receiving financial aid from the government, employees of universities, Public Service Commission and banks⁴ are included in the definition. The act stress more on gratification other than legal remuneration by public servants, punishable with not less than three years which may extended to seven years and includes punishment not less than six months and may extended to five years for abetment of offence, further it is fixed at minimum 1 year also obtaining valuable things without consideration was penalised under this act. The Act castigate Public servants one year to seven years’ punishment and two to seven years for committing criminal misconduct and habitual committing offences respectively. It creates provision for appointment of special judges for the trial of corruption cases. special powers were given to the judges while trial summary in punishable offences and can pass any sentence authorised which was followed by provisions of criminal procedure code, which in between three to seven years’ conviction shall also be liable to fine and exercising discretion while passing sentence based on specific facts of each case.⁵ to hold the trial on day to day basis. Prosecution of public servants under POCA requires prior sanction of a competent authority⁶ investigation dynamism was given to the police officers not below the rank of sp.⁷ However, POCA prosecuted and criminalised only bribe taking and not bribe-giving. The POCA Amendment Act has now extended the scope of POCA to prosecute bribe givers.

Amendment Act, 2018

2018, (amendment) the Prevention of Corruption Act only took into consideration and criminalised bribe-taking by public servant’s bribe giving, thereby excluding bribes given by private entities. The prevention of corruption (amendment) Act, 2018 was emerging, with the influence of United nations⁸ convention against corruption 2005, which was ratified by india 2011. by way in line with of the Prevention of bribe which sought to prospectively include, within its scope⁹, commercial organisations (which includes companies) and its employees who are involved in the payment of bribes to public servants in order to (a) obtain or retain business for such a commercial organisation; or (b) obtain or retain an advantage in the conduct of business for the commercial organisation. Especially enhance the abetment of offence to 3 years, mis-appropriate assets attachment and forfeiture of property

² “Prevention of corruption Act, 1988”

³ public servant’. For instance, in Central Bureau of Investigation, Bank Securities & Fraud Cell v. Ramesh Gelli & Ors.

⁴ 46A Banking Act - Every chairman who is appointed on a whole-time basis, managing director, director, auditor, liquidator, manager and any other employee of a banking company shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code (45 of 1860).

⁵ Gian Singh v. State of Punjab (2012) 10 SCC 303.

⁶ Section 17A of POCA Amendment Act

⁷ Umesh Kumar Choubey vs state of Madhya Pradesh

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acquired by public servant during trail. This context applicable the provisions of the Criminal Law Amendment Ordinance, 1944

The Benami Transactions (Prohibition) Act, 1988

The Act prohibits any Benami transaction (purchase of property in false name of another person who does not pay for the property¹⁰ according to this act benami transaction shall be punishable with imprisonment of upto three years and/or a fine. All properties that are held to be benami can be acquired by a prescribed authority and no money shall be paid for such acquisition

The Prevention of Money Laundering Act, 2002

Legislations like The Prevention of Money Laundering Act, 2002 aims to prevent instances of money laundering and prohibits use of the 'proceeds of crime' in India prescribes strict punishment, including imprisonment of up to 10 years and the attachment of property of accused persons (even at a preliminary stage of investigation and not necessarily after conviction). The term 'fraud' has been given a broad definition and is a criminal offence under the Companies Act.2013, Prior registration or prior approval of the Ministry of Home Affairs is required for receipt of foreign contributions and in the absence of such registration or approval, receipt of foreign contributions may be considered illegal, according TO to The Foreign Contribution (Regulation) Act, 2010.

The RTI act,2005.

Highlights of RTI act empowers the citizen were containing corruption, Improving transferability, making public servants accountable. **some of the major scams and anomalies exposed by the Right To Information A** Aarsh Society Scam, 2G Scam, Commonwealth Games Scam, Demonetisation announced without RBI nod, Indian Red Cross Society Scam, A billionaire's dream university in Odisha.

All India Services Act, 1951 ('Services Act')

All India Services Act, 1951 ('Services Act'). The Services Act empowers the Central Government to make rules regarding terms of service of employees belonging to the All India Services¹¹ accepting gifts are provided for in the All India Services (Conduct) Rules, 1968 ('Services Rules'). Restrictions in the Services Rules includes restrictions of a member of family. accepting employment with an NGO or a private undertaking having official dealings with the Government. if the value of " gift" ¹² exceeds Rs. 5,000 disclosure will have to be made to the Government. Central Civil Services (Conduct) Rules 1964 ('Central Services Rules') are applicable to Government Servants, who are persons appointed by Government. central Services Rules also have restrictions on Government Servants accepting gifts from foreign dignitaries. There are restrictions with respect to the monetary value of such gifts and these are regulated by the Government from time to time. similar rules apply in respect of employees of State Governments and Statement Government owned entities

Comptroller and Auditor General.

The CAG is a constitutional authority created under Article 148 of Constitution of India, 1950 CAG Reports have been subject matter of scrutiny by courts and have been at the heart of public interest litigations in relation to government contracts. The Delhi High Court and Supreme Court have

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¹¹ All India Service includes services mentioned in Section 2 and Section 2A of the Services Act.

¹² Rule 13 of Central Services Rules.

held that even private companies may be subject to CAG audit in certain circumstances.¹³ Parliament enacted the Comptroller Auditor-General's (Duties, Powers and Conditions of Services) Act, 1971 ('CAG Act'). CAG shall be responsible for compiling accounts and keeping accounts in relation to the Union and the States in respect of expenditure, transactions, trading, manufacturing, profit and loss account and balance sheet and subsidiary accounts maintained by departments of Union or of the State. CAG has similar duties with respect to public companies and bodies/authorities substantially financed by the Government the Competition Act, 2002, The Competition Act prohibits anti-competitive behaviour including abuse of dominance by an entity that enjoys dominance in a relevant market.¹⁴

Companies Act 2013.

The Companies Act also provides for a vigil mechanism and an audit committee. Companies Act itself seeks to set higher standards of corporate governance for companies.¹⁵

Constitution of India provide provisions to erect agencies like Central Bureau of Investigation (CBI), a premier investigating agency in India headed by a director appointment committee of members lead by prime minister in 2013¹⁶ Supreme court stayed with Gowhati High court order CBI ins unconstitutional until the government formulate special law for CBI. Central Vigilance Commission (CVC), Central Vigilance Commission Act, 2003, certain categories of public servants of the Central Government, corporations established under any Central Act, Government companies, as well as societies or local authorities owned or substantially controlled by the Government. Chief Vigilance Officers (CVO s) in various ministries and organizations. Civil service conduct rules to fight against corruption in India the Lokpal and Lokayuktas Act, 2013 provides for an establishment of an ombudsman for the central and state governments (Lokpal and Lokayuktas, respectively). These bodies are required to act independently from the government and have been empowered to investigate allegations of corruption against public servants, which include the prime minister and other ministers.

Though the country put whistle blowing efforts in battle with corruption falls to 86th rank in corruption among 180 countries according to corruption perception index 2020¹⁶. As a 2nd highest populated country in the world with GDP - 2.72 trillion total eradication of corruption became hardship in India. Yet attainable via improving implementation of code of conduct, ethics and propagate anti-corruption laws, transparency in the financial affairs, disclosing day to day activities in the appropriate websites and speed up the trails by courts.

¹³ See Nishith Desai Associates Regulatory Hotline, Direction for CAG audit of DISCOMs quashed; private companies can be subject to CAG audit, November 2015. See also Nishith Desai Associates Dispute Resolution Hotline, Supreme Court: Private Telecom Service Providers under CAG Scanner, April 2014.

¹⁴ Section 4(1) of Competition Act.

¹⁵ committee. Companies Act itself seeks to set higher standards of corporate governance for companies.

¹⁶ "Economics Index, 2021"

'public servant'. For instance, in Central Bureau of Investigation, Bank Securities & Fraud Ce