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ANALYSIS OF PREVENTION OF CORRUPTION ACT 1988

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ABSTRACT

The major problem that exists worldwide is the problem of corruption. Both developed as well as developing countries face corruption. The problem of corruption needs to be solved at the grassroots level. Controlling and eradicating corruption from the system can be achieved through the effective implementation of appropriate legal measures. Essentially, the task of monitoring and eliminating corruption from our system can only be effectively achieved with the assistance of a proper and suitable instrument: the law. There is separate legislation in India to deal with corruption- Prevention of Corruption Act, 1988. It is incumbent upon us to take responsibility and unite in our efforts to establish a corruption-free nation.

KEYWORDS : Corruption, Central government, State government, Central Bureau Investigation, Police, Government employee, Supreme Court.

INTRODUCTION

India is a country with a diverse population along with different religions, castes, races, etc. The sole method to ascertain one's status is through currencies, as the amount of currency directly correlates with the standard of living. Although the adage "Money doesn't buy happiness" is widely known, in reality, it's dismissed by virtually everyone, as each individual strives to augment their wealth and influence, deeming it synonymous with happiness, irrespective of their financial standing. Corruption is a problem prevalent in developing and developed nations.

RESEARCH METHODOLOGY

This paper is descriptive and analytical and uses secondary sources to provide an overview of the Prevention of Corruption Act, of 1988. Newspapers, journals, blogs, and websites are examples of secondary sources of information that are consulted for the study.

REVIEW OF LITERATURE

In a paper titled "Analysis of Importance of Prevention of Corruption Act, 1988" authors B.ovia and R. Jai. Surya provide an analysis of the

Corruption Act, 1988. It discusses the background, amusements, challenges faced, methods, and suggestions. Further, the author emphasizes how the problem of corruption can be tackled.

METHOD

The method employed in this paper involves analyzing literature and contemporary discourse available in books and blogs. The goal of the research is to give a comprehensive viewpoint on the Prevention of Corruption Act, 1988 issue analysis, enhancing it with historical and contemporary trend insights. Moreover, the use of secondary sources makes comparative analysis easier, allowing for the examination of many points of view and the synthesis of complex arguments.

MEANING OF CORRUPTION

There is not an exclusive definition of corruption in the Prevention of Corruption Act. Corruption can be defined as giving or accepting bribes or gifts or under-table transactions, laundering money, and diverting funds.

The Black Law Dictionary defines "Corruption" as "the act of an official or fiduciary person who

unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.”²⁵²³

INDIA’S POSITION IN THE WORLD LIST

In the Corruption Perception Index for 2023, India was positioned at 93 out of 180 countries, with its overall score showing minimal alteration, as stated in the Transparency International Report. This index evaluates countries and territories based on their perceived level of corruption in the public sector, drawing insights from experts and business individuals. It operates on a scale ranging from 0 to 100, where 0 signifies high corruption and 100 represents very clean governance.²⁵²⁴

HISTORY OF CORRUPTION IN INDIA

During the British colonial period, Indian citizens were marginalized from political involvement through the division of the country into districts governed by provincial authorities under the commissioner's control. Additionally, the 1923 Official Secrets Act criminalized the disclosure of state information by officials to citizens, aimed at safeguarding military and governmental data.

Following independence in 1947, the newly established Indian government introduced economic regulations aimed at fostering domestic market growth. For instance, the 1951 Industries Act mandated that all new industrial ventures obtain licenses from the central government. However, this policy restricted foreign investment, stifled competition, and facilitated bribery within business operations. This era, spanning up to 1991, came to be known as the 'License Raj' due to the government's excessive intervention in the economy.

Public Servant under the Prevention of Corruption Act

Section 2(c) defines public servant as

- (i) Any person in the service or pay of the government or remunerated by the government by fees or commission for the performance of any public duty,
- (ii) Any person in the service or pay of a local authority,
- (iii) Any person in the service or pay of a corporation established by or under Central, Provincial, or State, or an authority or a body owned or controlled or aided by the government or a government company,
- (iv) Any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of person, any adjudicatory functions,
- (v) Any person authorized by the Court of Justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver, or commissioner appointed by such Court,
- (vi) Any arbitrator or other person to whom any cause or matter has been referred for decision or report by a Court of Justice or by a competent public authority,
- (vii) Any person who holds an office by which he is empowered to prepare, publish, maintain, or revise an electoral roll or to conduct an election or part of an election,
- (viii) Any person who holds an office by which he is authorized or required to perform any public duty,
- (ix) Any person who is the president, secretary, or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade, or banking, receiving or having received any financial aid from the

²⁵²³ *The Law Dictionary*, <https://thelawdictionary.org/corruption/#:~:text=Illegality%3B%20a%20vi,cious%20and%20fraudulent,and%20the%20rights%20of%20others> (last visited date Apr 11, 2024)

²⁵²⁴ *The Hindu*, <https://www.thehindu.com/news/national/india-ranks-93-out-of-180-countries-in-corruption-perceptions-index-2023/article67793578.ece> (last visited date Apr. 12, 2024)

Central Government or a State Government or any corporation established by or under a Central, Provincial or State, or an authority or a body owned or controlled or aided by the government or a government company,

- (x) Any person who is a chairman, member, or employee of any Service Commission or Board, by whatever name called, or a member of any Selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board,
- (xi) Any person who is Vice-Chancellor or member of any governing body, professor, reader, lecturer, or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority or conducting an examination,
- (xii) Any person who is office-bearer or employee of an educational, scientific, social, cultural, or other institution, in whatever manner established, receiving or having received any financial assistance from Central Government or any State Government, or local or other public authority.²⁵²⁵

In the State of Maharashtra and Anr. v. Prabhakar Rao & Anr.²⁵²⁶, the Supreme Court held that the definition of Public Servant under section 21 of the Indian Penal Code is of no relevance under the Prevention of Corruption Act, 1988.

In Central Bureau Investigation v. Ramesh Gelli²⁵²⁷, the managing director and chairman of a private banking company were held to be

²⁵²⁵ *The Prevention of Corruption Act, 1988, S 2(c), Act of Parliament, 1988 (India)*

²⁵²⁶ State of Maharashtra and Anr. v. Prabhakar Rao & Anr. (2002) 7 SCC 636.

²⁵²⁷ Central Bureau Investigation v. Ramesh Gelli (2016) 3 SCC 788.

“public servants” for prosecution under the Prevention of Corruption Act, 1988.

In *M Karunanidhi v. Union of India*²⁵²⁸, the Supreme Court held that the Chief Minister or a Minister are in the pay of the Government and are, therefore, public servants.

ANALYSIS

Background

Earlier there was the existence of Indian policies which deal with corruption and anti-corruption activities covering a wide range of government activities and guidelines. The Indian Penal Code, of 1860 penalized certain acts this can taking bribes influencing public servants through corrupt means, and public servants accepting valuables in the form of gifts. These provisions i.e. section 161 of IPC to section 165A of IPC were repealed by the Prevention of Corruption Act to make these act more stringent and to impose more heavy penalties.

Prevention of Corruption Act, 1988–2018

Prevention of Corruption Act came into effect in 1988 to curb corruption and govern the offenses committed by public servants. The act criminalizes various acts of public servants as well as acts of middlemen which influence the act of public servants through section 7, section 8, section 9, section 10, and section 11 of the act.

2018 Amendment

This act was amended in 2018 to bring certain changes. These are:

1. Bribe-giver will be prosecuted. The scope of the act was extended as it will also cover one who gives a bribe to a public servant to perform their “public duty” “improperly” as per section 8.
2. Public Servant: After the amendment, section 13 of the act now specifically addresses misconduct related to the misuse of property and unjust enrichment. Before the amendment, section 13 encompassed broader

²⁵²⁸ *M Karunanidhi v. Union of India AIR 1979 SC 898.*

grounds for misconduct, including general tendencies to solicit bribes or engage in corrupt practices.

3. Commercial organizations would be held liable if they are found in contravention of anti-corrupt law. Section 9 deals with the commercial organization and also the person associated with these organizations. It includes all forms of business structure and the phrase 'person associated with the commercial organization' is wide enough to include employees and vendors.
4. Mandatory prior permission before investigation. The amendment outlined in section 19 specifies that for the prosecution of public servants under Sections 7, 11, 13, and 15 of the Act, two key requirements must be met. Firstly, a sanction must be obtained from an authority empowered to dismiss them. Secondly, an investigative authority must file a prosecution application, or else various layers of compliance must be satisfied before the court can acknowledge the offense.
5. Provision of attachment of tainted property has been introduced to enforce the law.
6. Trial of offense to be completed within 2 years. According to section 4(4), courts are no longer mandated to complete trials of offenses under the Act within two years. If this timeframe is not met, judges are required to officially document the need for an extension of time. Extensions can be granted in increments of six months each, with a maximum extension period of four years.
7. Punishment: Following the amendment, section 10 stipulates specific penalties involving imprisonment and fines in cases where directors, officers in default, or individuals with control over a commercial organization have

consented to corrupt acts that breach the provisions of the Act.

Relationship between the Constitution and the Prevention of Corruption Act, 1988

To oversee offenses concerning finances and the economy, the office of the Comptroller and Auditor General is established. In addition, various other authorities operate at both the central and state levels, including the Central Vigilance Commission, the Committee on Parliament Accounts, the Central Bureau of Investigation, and the Anti-Corruption Bureau of each state.

The Constitution of India established the Supreme Court to safeguard the fundamental rights of citizens. In cases of fundamental rights violations, the Supreme Court possesses the authority to issue several types of writs, including the writ of habeas corpus, mandamus, certiorari, prohibition, and quo warranto. These writs hold distinct powers, collectively representing the judiciary's ability to regulate administrative discretion.

The preamble of the constitution mentions "Justice" for citizens of India. There exists a federal government at the Union level and State level. Crime is in the list of state subjects and law and order is in the list of concurrent subjects. Article 311 of the Constitution of India and the judicial reform process aim to eliminate corruption from society.²⁵²⁹

Various investigating agencies constituted under this act:

Agencies such as the Central Vigilance Commission, Central Bureau of Investigation, Enforcement Directorate, Anti Corruption Bureau. The main function of these agencies is to anti-corruption policies and detect corruption. It has the power to investigate and prosecute corrupt persons who have committed offenses under the provision of anti-corruption laws. Also, involved in various

²⁵²⁹ Rajasthan Judicial Academy, <https://rajasthanjudicialacademy.nic.in/docs/studymaterial03092021.pdf> (Apr. 12, 2024)

activities such as awareness campaigns and educating citizens about corruption.

- i) Supreme Court and High Court: Public Interest Litigation can be filed by the citizen before the Supreme Court and High Court, alleging corruption in the public sector. The Supreme Court and High Court refer these cases to the Central Bureau of Investigation for the investigation process.
- ii) Central Vigilance Commission: The body you're referring to is the Central Vigilance Commission (CVC), established in 1962 to combat governmental corruption. It was constituted under the Central Vigilance Commission Act of 2003. As an autonomous entity, the CVC operates under the jurisdiction of the Central government and is tasked with advising and guiding central government agencies. Additionally, the CVC possesses special powers to investigate complaints related to corruption, professional misconduct, and misuse of power within administrative bodies.
The Central Vigilance Commission Act enables the formation of the Central Vigilance Commission, which is tasked with investigating or initiating inquiries into alleged offenses under the Prevention of Corruption Act. These inquiries pertain to public servants falling within specific categories, including those serving the central government, corporations established by or under any Central Act, government companies, societies, and local authorities owned or controlled by the Central Government.
- iii) Central Bureau of Investigation: It is an investigation agency to investigate offenses which are

corruption cases. For, a long time it has become the premier agency in today's time. Even States also refer sensitive matters to the Central Bureau of Investigation for investigating cases.

- iv) Comptroller and Auditor General of India: The entity described here is the Comptroller and Auditor General (CAG), which serves as the oversight authority for financial transactions conducted by both Central and State government departments, including entities like railways and telecommunications. Its primary objective is to combat corruption within government departments by ensuring transparency and accountability in financial matters. Article 148 of the Constitution of India pertains to the establishment and functions of the Comptroller and Auditor General.
- v) Anti-Corruption Bureau: The entity being described is likely the Anti-Corruption Bureau (ACB), which is responsible for investigating corruption cases within a state under the relevant Corruption Act. ACBs are typically focused on detecting, preventing, and investigating corruption-related crimes and are not primarily involved in handling traditional law enforcement duties such as maintaining public order. Upon completing an investigation, the ACB submits its findings to a court of law to initiate prosecution proceedings.

PROBLEMS AND CHALLENGES

No law to control corruption in the private sector: The purpose of the Prevention of Corruption Act was to tackle corruption in the government sector but there is also the possibility of corruption in the private sector which affects the growth of the economy and development of the nation.

Following the liberalization of the Indian economy, the growth of the private sector has been accompanied by an increase in corruption issues. Efforts are being made to introduce legislation to address corruption within the private sector.

One significant challenge is the delays in criminal proceedings. The legal system operates slowly, and punishments are not administered promptly. Section 19 of the Prevention of Corruption Act mandates obtaining prior permission from the competent authority to prosecute a public servant, which often prolongs the prosecution process. Obtaining such permission can be time-consuming, and there's a risk of denial based on political or other factors.

Furthermore, the act specifies the establishment of special courts to handle corruption cases. However, the number of these specialized judges is inadequate compared to the volume of corruption cases filed, leading to overburdened courts and a backlog of cases. Adjournments during trials are common, further delaying proceedings. Additionally, challenges to trial court decisions through petitions in both lower and higher courts contribute to prolonged legal processes. Appeals and revisions filed in higher courts can take years to be resolved, exacerbating the issue of delayed justice.

Hostile witnesses: To secure a conviction against a corrupt public servant, the prosecution must establish its case beyond a reasonable doubt, by the Indian Evidence Act, which governs evidence in the country. This requirement applies universally, even in corruption cases. The prosecution often relies heavily on witness testimony to meet this burden of proof.

However, there are challenges in ensuring witness cooperation. Witnesses may refuse to support the prosecution's case due to influence or intimidation from the opposing side. Unfortunately, India lacks a witness protection program, and there are no provisions for swift and effective action against witnesses who turn

hostile. This lack of protection and accountability for witnesses can significantly undermine the prosecution's efforts to secure convictions in corruption cases. The outcome of this witness becomes uncooperative and affects the case.

Ineffective Asset Recovery: While legal provisions exist for the recovery and seizure of property acquired through proceeds of crime, this process is often challenging. Corrupt public servants frequently transfer assets to the names of friends, relatives, and other associates, making it difficult to prove in court that these properties are indeed proceeds of crime. Moreover, such assets are frequently held offshore, benefiting from stringent privacy laws, which complicates the tracing and recovery process. In the absence of sufficient international cooperation, it becomes even more challenging to locate and reclaim these assets.

THE METHOD ADOPTED BY GOVERNMENT

India's government has constituted a Special Investigation Team (SIT) on black money and also made new legislation such as the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Agencies such as CBI have done extremely well to prevent corruption.

Right to Information Act, 2005: the main aim of the introduction of this act is to promote transparency and accountability in the government sector.

Whistle Blower Protection Act, 2014: A Whistleblower person is a person making public interest disclosure related to an act of corruption, misuse of power, or criminal offense by a public servant. The RTI Act, of 2005 is also called a 'twin sister' of whistleblowing.

The Lokpal and Lokayukta Act, 2013: Lokpal at the Central level and Lokayukta at the State level. It involves in investigation of corruption cases and speedy trial and speedy redressal of public grievances.

SUGGESTIONS

When corruption was a new concept it was for getting the wrong things done but with change in time it is for getting the right things done at the right time. If we need to prevent corruption there is a need to work on reducing the big chasm between rich and poor. There is a need to bring reform in the act to curb corruption. Indeed, strengthening the punishments prescribed in anti-corruption acts is one approach to deter corruption effectively. Additionally, various methods can be employed to address corruption comprehensively. These may include:

1. Increasing the salaries of government employees to reduce the temptation for bribery and corruption.
2. Expanding the workforce to alleviate excessive workloads and pressure, can contribute to corrupt practices.
3. Implementing surveillance measures such as cameras in workplaces to monitor activities and deter corrupt behavior.
4. Maintaining low inflation rates to mitigate economic pressures that could incentivize corruption.

These measures, alongside stricter punishments, can serve as crucial steps towards combating corruption and fostering transparency and accountability within governmental institutions.

CONCLUSION

The primary objective of this act was to curb corruption and shield citizens from being coerced into paying substantial bribes to government officials to facilitate the completion of their official tasks. Bribery is deemed a criminal offense by the Indian government, and this legislation aimed to prevent such illicit practices, thereby promoting transparency and integrity within governmental operations. The problem of corruption needs to be prevented so that economic resources are utilized for the best possible use.