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POLITICAL AND ELECTORAL REFORMS IN INDIA PREVENTION OF CORRUPTION ACT 1988 (ACRITICAL ANALYSIS)

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ABSTRACT

“Good governance is the bedrock of democratic form of government” .Corruption is global phenomenon and now it is rampant in our society. India being developing country has been always in the clutches and the diabolical jaws of the virus called corruption. Corruption is the misuse of public goods by public officials for private purpose. Corruption in India is the main cause of it's every failure. Many of the development projects are being over shadowed by this social evil called corruption. It has penetrated in to the grass roots of the society and has grown as a banyan tree in all branches of public administration. Corruption hinders social and economic development of the country. It weakens education and health system and also undermines democracy by distorting electoral process which can lead to political instability. There is no doubt that corruption has destroyed the moral foundation of the county. Therefore to bring transparency in all the fields, to enhance accountability of public servant and to put check on corruption the Government of India has enacted various Anti-Corruption Laws. The Prevention of corruption Act 1988 is India's Principal legislation against corruption. Its main thrust is to prohibit public servant from accepting or soliciting illegal gratification in the discharge of their official function. This Act was intended to make effective provisions for Prevention of bribery and corruption amongst the public servant. It is a social legislation which has enacted to curb illegal activity of the public servant. In spite of enactment of Prevention of corruption Act 1988 it is evident from various reports and research findings that, the corruption is continuously and consistently increasing in India. In this context the present paper intended to explore the dimensions of prevention of corruption Act and steps to be taken in order to strengthen good governance of country.

KEYWORDS

Corruption, Causes, Consequences and Laws.

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INTRODUCTION

“Power tends to corrupt and absolute power corrupts absolutely”. According to Lankov “corruption is a morally loaded word and is a social evil that damages state institution plagues societies and reduces economic efficiency”¹. Corruption affects every society in some or the other way. But in developing society like India it has assumed such tendencies that many other problems have become dependent on it. Corruption is an age old

phenomenon and can be seen everywhere now a days. It is like a cancer in public life, which has not spread overnight; but is course of time. Corruption hinders social and economic development of country and also lead to political instability. As far as corruption is concerned India has been ranked 94th out of 176 countries in transparency international 2012 Corruption Perception Index (CPI)². In Indian civilization corruption has caused maximum suffering to the human kind. The great Indian philosopher Kautilya says "Just as it is not possible; not to taste honey or poison put on the surface of he tongue. So it is not possible for the government servant dealing with money not to taste it in however small a quantity." Expressing about difficulties of corruption detection Kautilya further says that "Just as a fish moving under water cannot possible be found out either as drinking or not drinking water, so government servant employed in the government works cannot be found out taking money."

Corruption free India is dream of every citizen, to make it happen the government of India has enacted various Anti-corruption laws. Such as Indian penal code; prevention of corruption Act 1988; prevention of money laundering Act 2002. Right to information Act 2005; central vigilance commission Act; Lok-Ayukta Act etc. inspite of these all statutes we are still failed to combat this cancer called corruption.

DEFINITION OF CORRUPTION

Corruption in simple terms may be described as an act of bribery. Corruption is defined as the use of public office for private gains in a way that constitutes a breach of law"³.

According to James Cameron an eminent journalist defines that "In India corruption public or private venality is sanctified by the oldest traditions it is denied by nobody indeed. The totality and pervasiveness of Indian corruption is almost a mater of national pride"⁴.

According to oxford dictionary "perversion of destruction of integrity in discharge of public duties by bribery or favor is called as corruption."

According to Websters Dictionary "corruption is inducement to wrong by improper or unlawful means as bribery."

The most popular definition of corruption is given by the World Bank according to this definition corruption is "abuse of public power for private benefits"⁵.

Thus the word corruption means nothing but destruction ruining or spoiling a society or nation.

A political scientist Mr. J. Nye in the paper corruption and political development a lost benefit analysis defined. "Corruption as a behavior which deviates from the formal duties of public role because of private regarding wealth or states"⁶.

CAUSES AND CONSEQUENCES

"Corruption in India has wings not wheels." It has far reaching influence on almost all aspects of the society-economic, political; cultural and moral. As nation grows the corruption also grow to invent new method of cheating the public. There are various causes responsible for corruption few of them are

- Emergence of political elite which believes in interest oriented rather than nation oriented programs and policies.
- Economic insecurity
- People's tolerance towards corruption there is lack of strong public forum to oppose corruption.
- Meager salaries of government officials compel them to resort to corruption.
- Illiteracy and poor economic infrastructure lead to endemic corruption in public life.
- Complex and rigid laws and procedures deter common people from seeking help from the government.
- Emergence of new sources of wealth and power.
- Social and economic modernization.

Corruption in political realm undermines democracy it suppresses good governance - corruption among ministers and other political personages is very dangerous than corruption in governmental machinery. Corruption in public administration results in the inefficient provision of services it violates a basic principles of republicanism⁷.

Corruption also suppresses development of country by generating considerable distortions and inefficiency in both private and public sectors. Thus

corruption affects the various components such as health; public safety; education etc⁸.

REMEDIAL MEASURES TO COMBAT CORRUPTION IN INDIA

India's history is filled with countless Anti-corruption measures. In vedic era the Rig-Veda a seared Hindu text described as "The oldest literary monument\of Indo-European races" discusses the prevention of corruption." According to many and Vishnu "taking and giving bribe was punishable but in the pre-independence period the Indian Penal Code (IPC) was the only tool to combat corruption. Section 161 and 165 provides the legal frame work to prosecute corrupt public servant. But after second world war the need for a special law to deal with corruption was felt and drastic legislative measures has been implemented. Hence the prevention of corruption Act 1947 was enacted to fight against evil of bribery and corruption.

The 1947 Act is a social piece of protection that is guaranteed under the constitution of India. India becoming a sovereign democratic republic, the situation of post was condition did not improve the living standard of citizen extensive projects have been undertaken by the central Govt. and the state Govt. under the five year plans involving disbursement of public money in crores where temptation of greed for good fortune gives wide scope for employing corrupt practices blocking rapid progress in the country and therefore the parliament has enacted the prevention of corruption Act 1988 for more effective prevention of corruption⁹.

The prevention of corruption Act came in to force in September 1988. This Act was intended to make effective provision for prevention of corruption. It is a social legislation enacted to curb illegal activities of public servant. Practice of giving and demanding bribe is social evil having deleterious effect of the entire civilized society and has to be condemned by the strong hands of judiciary. Misuse of power while discharging their public duty by demanding and accepting bribe by the public servant it is something illegal and improper. Therefore to put check on such corrupt offices the prevention of corruption Act 1998 was enacted¹⁰.

This Act defines public servant under S. 2(c). It defines any person in the service of pay of Government or remunerated by the Government any person in the service of a local authority; any Judge; including any person empowered by law. To discharge any adjudicatory functions; Person authorized by court of justice; any arbitrator; any person who holds an office to perform public duty; any person who is president; secretary or other office - bearer of a registered co-operative society; which is engaged in agriculture, Industry; trade; banking; any person who is office bearer of employee of an educational scientific, social, cultural or other institution in whatever manner established; receiving or having received any financial assistance from the central Govt. or any state Govt. or local authority.

The term public is defined U.S. 12 of IPC. It includes any class of the people or any community. The High Court held that a body or class of person living in a particular locality may come within the term of public¹¹.

Where as 'servant' means a stipendiary servant, but it is not necessary that a servant in this connection must be a salaried one. A person holding un honorary office is as much a servant as one who is paid for services.

S. 3 of prevention of corruption Act empower the state Government or central Govt. to appoint judges to try any offence under the Act. As per S. 4 of the Act The special judge appointed under S. 3 has exclusive jurisdiction to try the offence specified in S. 3. When trying any case a special judge may also try any offence other than an offence specified in S. 3 with which the accused may under the code of criminal procedure 1973 be charged.

S. 7 → "Public servant taking gratification other than legal remuneration in respect of an official act: A public servant accepts or obtains or agrees to accept or attempt to obtain from any person, any gratification other than legal remuneration as a motive or reward for doing; or for hearing to do any person or for rendering or to render any services; shall be punished with imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine"¹².

Section 12 of the Act provides whoever abets any offence punishable under section 7 or Section 11. Whether or not that offence is committed in consequence of that abetment; shall be punishable with imprisonment for term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Abetment means that "Person abets the doing of a thing if he "instigates any person to do that thing; or engages with one or more other person or persons in any conspiracy for the doing that thing, or intentionally aids by any act or illegal omission the doing of that thing"¹³.

According to sec.13. "Public servant is said to commit the offence of criminal misconduct if he (i) by corrupt or illegal means obtains any valuable thing or pecuniary advantage for himself or for any other person. (ii) If he by abusing his position as public servant obtains any valuable things. Here the term pecuniary advantage means "Though not every kind of gratification is pecuniary advantage or valuable thing. Pecuniary advantage and valuable thing are included in gratification"¹⁴.

S. 17 of the Act clearly provides that no police officer below the rank of Deputy Superintendent of Police or a police officer of an equivalent rank in the present case shall investigate an offence punishable under the Act. Without prior order of the metropolitan magistrate or magistrate of first class. It is further provided that if a police officer not below the rank of an inspector of police is authorized by the Government in this behalf by general or special order he can also investigate in such offences without the order of the concerned magistrate. These are the major provision provided under this Act to fight against corruption. But evidently over the years the desired results could not be achieved. Hence it has become increasingly proactive to monitor anti corruption laws and bribery laws. For instance in 2015 the central vigilance commission opened a Suomoto inquiry against private company.

The Lokpal and Lokayukta (Amendment) Act 2016, The Black money and imposition of tax Act 2015 and while blowers protection (Amendment) Bill 2015. The prevention of corruption (Amendment) Bill 2013 were initiated. In spite of all these

legislative activities the corruption is still growing like mushrooms.

FLAWS IN PREVENTION OF CORRUPTION ACT

Though anti-corruption laws are there since 1947 but still corruption is not curbed which has consequently resulted in economic loss to the nation with so many critical problems. Although anti-corruption laws such as prevention of corruption Act Right to information Act exists to check corruption in various department but still there exists lacuna in laws due to which these laws are not properly utilized to their potential and eventually results in inadequate implementation¹⁵.

As per S. 3 of prevention of corruption Act 1988 trial on corruption cases should be conducted by special Judge but definition of 'Special Judge' is not defined and today there are very less number of judges as compared to number of cases filled in the courts. Considering this present scenario the corruption cases should be conducted before expert judges who have special knowledge.

Prevention of corruption Act consider requirement of obtaining prior sanction of an appropriate authority before any court takes cognizance of an offence by a public servant it may result in long delays.

U./S. 13(2) of prevention of corruption Act 'criminal misconduct' is used but under this entire act what is meant by "Criminal Misconduct" is not defined.

S. 17 of Prevention of corruption Act 1988 prescribe only authority or person who is authorized to investigate offences committed under the Prevention of corruption Act 1988 and not the procedure of investigation; said procedure which is prescribed under the Police manual or by issuing guidelines. But due to defects in the prevention of corruption act Act 1988 evidence collected by investigating authority is not taken into consideration and corrupt public servant are acquitted only on the ground that Anti corruption bureau has not provided or empowered with sophisticated technology or devices.

In the said Act S. 24 gives protection to bribe giver who is one of the abettor of the offences of corruption as per criminal laws abettor is equally

liable for punishment unlike offender. S. 20 of the prevention of corruption Act 1988 prescribed presumptions where public servant accepts gratification other than remuneration as per this section court has to draw presumption. But this Act has not specified any parameter for drawing the presumption. The another major lacuna under the prevention of corruption Act is that there is no single provision mention the constitution of Anti-corruption Bureau, the power, rights responsibilities, duties are not prescribed under the Said Act. Apart from this Prevention of Corruption Act does not contains any provision to deal with the cases where Indian citizen engages in corrupt activities with a foreign public officials. Also the provision regarding confiscation of property is inadequate. Hence we can say that the laws in India to fight corruption are not sufficient and suffers from many loopholes. These enactments restricts the power of investigating agencies to prosecute the public servants. Therefore there is need to strengthen laws.

TOOLS TO CONTROL CORRUPTION

“Corruption makes wealthy people more wealthier and poor people more poorer.” But to save our country from this social evils certain suggestions are to be adopted. Such as

- Government should frame strict action against corrupt officials and there should be regular vigilance.
- All government and non govt. agencies should work in co-ordination with media.
- Effective law enforcement is essential to punish and to break the corruption.
- By promoting transparency and access to information may have positive effect in curbing corruption.
- Strengthening and empowering citizens to hold government accountable will help to build mutual trust between public and government.
- Increase in salary of government servant can minimize the need for bribes these higher salaries should be combined with exemplary punishment, including dismissal from

services and police case if any govt. officer is caught indulging in corrupt practices.

- Adopting E-governance in all states by which End to End linkage can be brought transparency in service delivery system.
- One of the most essential tool to control corruption is building moral values among public. The minds of people should be inculcated with values such as honesty; integrity; selflessness etc.¹⁶.

CONCLUSION

Merely furnishing ideas to combat corruption will not eradicate corruption from society as it has actually corrupted the souls of human beings. Corruption is king of all offences. Neither the law nor the investigating machinery or the public services administration are able to control the corruption in society. The one of the biggest hurdle in preventing corruption is the lack of public awareness. Although various laws are there but adequacy of such laws are questionable.

Constitution of India ensures that dignity of person will be protected accordingly it is the responsibility of the Govt. to combat the corruption in society but considering the kinds/aspects of corruption government alone cannot eradicate corruption but if the people and civil society institution show their activeness then only it is possible to control corruption. Thus corruption being an intractable problem can only be minimize or controlled and this requires strong political will effective Anti corruption laws; effective adjudication; administration. Good governance, strong public support and effective policies by which achieving dream of corruption free India will not be so far.

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CONFLICT OF INTEREST

We declare that we have no conflict of interest.

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