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Corruption in Public Services with Special Reference to the Prevention of Corruption Act in Contemporary Scenario

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Corruption in Public Services with Special Reference to the Prevention of Corruption Act in Contemporary Scenario

By: Dr. Niranjan Parida

The impact of corruption in India and the existing laws in India to tackle corruption for good governance with special reference to prevention of corruption act in contemporary scenario.

ABSTRACT

Corruption is found to be one of the most damaging consequences of poor governance and poverty, classified by lack of efficiency, transparency and accountability. Corruption diminishes investment and suppresses economic growth and development and also reduces the effectiveness of public administration. It diverts the public resources towards corrupt politicians and officials and away from the needy and poor people. Corruption can be considered anti-poor and anti-development. Though there are adequate laws in India to fight corruption, they have been made ineffective. Corruption is still one of the biggest impediments to extending the benefits of development and progress to the poorest of the poor. The Indian criminal justice system is facing many problems and challenges in its fight against corruption. Corruption is considered a 'high profit-low risk' activity by corrupt public servants. Recoveries of assets, which are proceeds of crime, remain a big challenge. Such assets are often held offshore and getting them back is a Herculean task, especially in the absence of desired international co-operation. Many people think that only the government has responsibility for eliminating corruption and we often blame the government; however, in view of the level of corruption and the existing framework that we have in India, it is very clear that the government alone cannot stop corruption. Civil society institutions have a responsibility and duty to fight against corruption and take some actions to promote honesty and integrity. Furthermore, fighting corruption requires more than government policy, laws, tools and legal systems; it requires awareness of our social responsibility, moral values, excellence in our daily work, etc. We need role models, campaigns, debates, and many different approaches to educate our people, to inspire our young generations, to change the mindset of corrupt people and to tackle every cause. Moreover it needs willingness, commitment and active participation of media, civic associations, voluntary groups, teachers, students, social workers, etc. In

addition to the ongoing initiatives such as Citizens' Charters, RTI Act, Social Audit, E-governance, The Lokayukta, The Lokpal, Money Laundering and Benami Transactions and to target those in possession of undisclosed income and accused persons absconding from prosecution. Currently, Public Servants (such as government employees, judges, armed forces, police) can be prosecuted for corruption under the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988. However, the Code of Criminal Procedure and the Act require the investigating agency (such as CBI) to get prior sanction of the central or state government before it can initiate the prosecution process in a court. In India, apart from the investigating agencies and the prosecution machinery, there is also the Comptroller and Auditor General ('CAG') and the Central Vigilance Commission ('CVC') which play an important role due to Public Interest Litigations ('PILs') in India. For instance, courts have directed that the CAG should audit public-private-partnership contracts in the infrastructure sector on the basis of allegations of revenue loss to the exchequer. Apart from the risk of criminal prosecution under POCA, there is also the risk of being blacklisted and subject to investigation for anti-competitive practices. In this paper, researchers examine the regulatory framework and law in relation to anti-corruption laws and risks associated with noncompliance, in particular reference to possibility of a change in the anti-corruption landscape with the passing of the Prevention of Corruption Amendment Act. Like any other anti-corruption scheme previously launched, the success of the amended Prevention of Corruption Act would eventually lie in its effective implementation and vigorous enforcement. While the new regulations still need to clarify certain ambiguities, the revised act has the potential to become a powerful tool in the fight against bribery and corruption in public life.

KEYWORDS-Corruption, Prevention, Accountability, Good Governance, Transparency International, Rule of Law, Benami Transaction, Lokpal and Lokayuktas, CVC, CBI,CAG,RTI,E-Governance, Whistle Blower Protection, Citizen Charter, Money Laundering, Foreign Exchange Management Act, 1999, Foreign Contribution (regulation) act, 2010, India and UNCAC -2003

[A] INTRODUCTION

Corruption has been seen as an immoral and unethical practice, it has a devastating and crippling effect. Corruption in India is a serious problem that has implications for both protecting the rule of law and ensuring access of justice. Corruption is pervasive in the system of governance in India, undermining the effectiveness of all institutions of governance. Since independence, successive governments have attempted to take numerous measures to reduce the levels of corruption in the country, including legislative and institutional measures. However, absence of the political will and sincerity in taking concrete steps to eliminate corruption has resulted in most of these measures not achieving the results that were intended. Corruption in India is not merely a law enforcement issue where the existing laws of the state are violated and can be remedied merely by more stringent law enforcement. Rather, corruption in India is a much more fundamental problem that undermines the very social fabric, and political and bureaucratic structure of the Indian society. Thus, while it is necessary for the law enforcement machinery to be empowered. Corruption in India violates the constitutional foundations of Indian democracy, on the basis of which a rule of law society in India was meant to be established. However, the promises made by the writers of the Indian Constitution have been broken over the years by a scourge of corruption in every institution, which has led to a blot in the governance apparatus from top to bottom. The existing anti-corruption framework in India places far too much emphasis on the criminal justice system for dealing with corruption — a system that in itself is facing a crisis due to corruption and other problems. Thus, fighting corruption is also essential for restoring the people's faith in the Indian criminal justice system. That said however, legal controls relating to corruption should focus more on the promotion of transparency and accountability in governance. Empowerment of the citizenry needs to be the foundation for legal and institutional reforms to address corruption. Generally, the initiatives that have been undertaken so far in this regard have not been successful. However, the development of the right to information in India with the objectives of empowering the citizens of India and ensuring transparency is worth mentioning, given its positive outcomes with the power to create transparency and accountability. Although India has fairly stringent anti-corruption laws, there was a belief in some quarters that corruption is a widely accepted practice. In fact, the political and social climate in India in recent years has been pervaded by a strong public sentiment against corruption in government, with growing awareness among Indians of the cost of corruption. Following a public outcry in the discovery of certain high-profile instances of corruption, there has been heightened public interest and a media spotlight

on the issue of corruption. However, the need of the hour is to establish an independent commission against corruption in India in order to provide a stronger and effective legal and institutional framework for fighting corruption. There does not appear to be a precise legal definition of corruption applicable to all countries. The simplest definition is: Corruption is the misuse of public power (by elected politician or appointed civil servant) for private gain. The Concise Oxford Dictionary's simple, straightforward and fairly comprehensive definition of corruption, as 'a dishonest act in return for money or personal gain'. The definition advanced by Transparency International (TI) in constructing its Corruption Perceptions Index (CPI) speaks of corruption as 'abuse of public office for private gain'. According to the Transparency International Corruption Perception Index, India is ranked 78 out of 180 nations[1]. The annual Kroll Global Fraud Report notes that India has among the highest national incidences of corruption (25%). The same study also notes that India reports the highest proportion reporting procurement fraud (77%) as well as corruption and bribery (73%) [2]. In a developing country like India, corruption has a greater impact by acting as an impediment to both industrial growth as well as socioeconomic growth of the low-income strata of society. In the recent People and Corruption: Asia Pacific – Global Corruption Barometer survey,[3] India is perceived to have the highest bribery rate of 69%, which means about 7 out of 10 persons have to pay a bribe to get their work done. In India, the law relating to corruption is broadly governed by the Indian Penal Code, 1860 ('IPC') and the Prevention of Corruption Act, 1988. The new 'POCA Amendment Act 'which provides for supply-side prosecution, among other key changes was passed by both houses of Parliament and received the assent of the President on July 26, 2018.[4]

[B] MEANING AND DEFINITION

Corruption is widely defined as the abuse of public office for private gain. This definition has encouraged anti-corruption reformers to design strategies in line with principal-agent solutions that usually target government officials of this framework—and the massive transparency and accountability anti-corruption campaigns that have followed—corruption continues to afflict governments and societies globally. This is because corruption presents something more complex than a principal-agent problem. Unlike many other kinds of illegal or immoral acts, it carries steep collective political costs that have the ability to derail typical principal-agent reform efforts. Corruption should therefore be redefined as an event that occurs when an actor seeks an unauthorized benefit from an organization in a manner that could compromise the public's trust in that organization. By focusing on the effects of the corrupt act

on trust in organizations, this new definition encourages anti-corruption strategies that take account of broader considerations beyond simply punishing the 'agent'.

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[C] OBJECTIVES OF THE STUDY OF RESEARCH

Corruption lacks integrity, favours certain advantages and remains inconsistent with official duty and other's rights. Thus, the act of corruption is not confined to bribery, but the abuse of power while making a decision also counts. The laws are plenty to tackle corruption in India. It appears that Corruption is the result of an unholy alliance between Netas (Politicians), Babus (Bureaucrats), Dada's (People with muscle power), and Lalas (Businessmen), Jholas (fraud Baba) and of course the corrupt citizens. In today's globalized, democratized, and informed the world, incorruptible governments can be constructed only using incorruptible citizens as their bricks and mortar. The present study impact of corruption in India and the existing laws in India to tackle corruption for good governance with special reference to contemporary scenarios clearly indicates that the existing legislative measures to combat corruption arms the State machinery sufficiently to prevent corruption in public life.

[D] HYPOTHESIS

1. What are the conditions that facilitate corruption,
2. What are its costs and what are the most effective ways to combat it?
3. Under what political, social and economic conditions is corruption likely to thrive?
4. What are the costs of corruption to the poor and to the state? a. Financial costs; b. Non-financial effects/impact;
5. What anti-corruption interventions are effective and why?

[E] METHODOLOGICAL APPROACH

The study is a literature review with systematic principles of secondary data. This approach is designed to produce a review strategy that adheres to the core concepts of systematic reviews. A Research method is developed for this study, which details the doctrinal methodological steps for each of these tracks, including the different search strings that were identified and tested. Research parameters including type of study (e.g. academic case studies, both small and large and impact evaluations, conceptual frameworks, policy documents, etc.);

study design, variations in effect (on governance dynamics, costs borne by different groups and organisations, etc.); and anti-corruption initiatives etc.

[F] SIGNIFICANCE OF CORRUPTION IN INDIA

The high level of corruption in India has been widely perceived as a major obstacle in improving the quality of governance. While human greed is obviously a driver of corruption, it is the structural incentives and poor enforcement system to punish the corrupt that have contributed to the rising curve of graft in India. The complex and nontransparent system of command and control, monopoly of the government as a service provider, underdeveloped legal framework, and lack of information and weak notion of citizens' rights have provided incentives for corruption in India. A conscious programme for strengthening public awareness and also empowering the existing anti-corruption agencies would be required. The statutory right to information has been one of the most significant reforms in public administration. The Right to Information Act provides a strong national framework within which public awareness programmes could take place. Corruption takes place within a frame. Accordingly, basic reforms in file management, government rules and regulations, provision of public expenditure review

could provide the concerned citizens the relevant knowledge to hold service providers accountable. This would ensure that the resources that belong to people are used in the right way.

[G] EXISTING LAWS IN INDIA TO TACKLE CORRUPTION AND THE RECENT LEGISLATIVE AND REGULATORY MECHANISM FOR ANTI-CORRUPTION

The Indian Penal Code and the Prevention of Corruption Act (including the Amendment Act):

(A). BACKGROUND – 1860 to 1988 India's legislation relating to corruption and corrupt practices includes a web of legislations and Government regulations. The IPC defines "public servant"[5]as a government employee, officers in the military, navy or air force; police, judges, officers of Court of Justice, and any local authority established by a central or state Act. The IPC criminalized various activities including taking bribes[6], influencing a public servant through corrupt and illegal means,[7] and public servants accepting valuables from accepting

gifts.[8] All these provisions (Section 161 of the IPC to Section 165A of the IPC) were repealed by the POCA. Section 169 pertains to a public servant unlawfully buying or bidding for property. The public servant shall be punished with imprisonment of upto two years or with fine or both. If the property is purchased, it shall be confiscated. Section 409 pertains to criminal breach of trust by a public servant. The public servant shall be punished with life imprisonment or with imprisonment of upto 10 years and a fine. A war-time ordinance called the Criminal Law (Amendment) Ordinance, 1944 (Ordinance No. XXXVIII of 1944) ('enacted immediately after independence.

(B). FREEZING, SEIZURE AND CONFISCATION OF PROPERTIES – THE CRIMINAL LAW (AMENDMENT) ORDINANCE, 1944 (ARTICLE 31 OF UNCAC) - AND PREVENTION OF CORRUPTION ACT – SINCE 1988 TO JULY, 2018

In 1988 POCA was enacted to consolidate all laws relating to offences by public servants. However, POCA prosecuted 1944 Ordinance'), was enacted to prevent the disposal or concealment of property procured as a result of certain specified offences. This is an important law on freezing, seizure and confiscation of properties which are proceeds of crime, including offences under the Corruption Act. Such properties identified during investigation can be frozen under this law. Properties can remain frozen till disposal of the case by the court after completion of the investigation. If the alleged offence is proved in the court of law and the property is proved to be the proceeds of crime, the court will order its confiscation.(x) Criminal Procedure Code 1973 together with Mutual Legal Assistance Treaties (MLAT) in Criminal Matters and Extradition Treaties Sec. 166 A and 166 B of the above code empower the crime investigation agencies of India to make requests to other countries as well as to entertain requests from other countries to render assistance in the investigation of crime registered in the respective countries. Such letters of request are popularly known as Letters Rogatory. Such Letters Rogatory is executed on the basis of Mutual Legal Assistance Treaties and Extradition Treaties India has signed with other countries. To date India has Mutual Legal Assistance Treaties in Criminal Matters with 20 countries and Extradition Treaties with 25 countries. The Mutual Legal Assistance Treaties invariably have a chapter on asset recovery and sharing the same. With other countries, international cooperation is sought on the basis of guarantee of reciprocity. Thereafter the Prevention of Corruption Act of 1947 was and criminalised only bribe taking and not bribe-giving. The erstwhile Section 7, Section 8, Section 9, Section 10 and Section 11 of POCA criminalised various corrupt acts of public servants and middlemen

seeking to influence public servants per se while excluding the bribe giver as well as private entities -taking bribes.[9]

Although the application of POCA was limited to public servants, courts have given an expansive interpretation to the expression 'public servant'. For instance, The Supreme Court of India held that the chairman and directors of a private bank [10]would also be 'public servants' for the purpose of POCA. The POCA Amendment Act has now extended the scope of POCA to prosecute bribe givers, commercial organizations and its officials. However, the POCA Amendment Act has failed to bring within its ambit, corrupt practices among private entities inter se and illegal gratification to foreign officials As regards bribe-giving, POCA Amendment Act has only now taken away the clear immunity given to the bribe-giver.[11]Given the very limited scope of POCA until the enactment of the POCA Amendment Act, instances of prosecuting bribe givers has been fairly limited and unless a bribe giver was shown to be a co-conspirator, giving bribes in itself, has not been subjected to prosecution.[12] While the 1944 Ordinance provided for attachment of tainted property, POCA itself made no provision for attachment of tainted property. While the POCA Amendment Act has only now granted the power to attach property, confiscate money or property and administrate property tainted by corrupt activities, the process of investigation and trial empowered the investigation agency, in appropriate cases, to attach tainted property, in the past as well. Another important aspect about POCA was that it prosecuted only offences related to corruption in the public sector and involving public servants. Therefore, payments made beyond a contract, or payments made to fraudulently secure contracts in the private sector, were not covered by POCA. Such offences could be prosecuted only under IPC.[13] Unlike laws in some other jurisdictions; POCA makes no distinction between an illegal gratification and a facilitation payment.

A payment is legal or illegal. This treatment applies to other laws and regulations in India as well. POCA Amendment Act now stipulates that trial of offences covered under POCA should take place on a day to day basis and that endeavour shall be made to conclude such trials within two years.[14] POCA also does not provide compounding of an offence, however, courts have been exercising discretion while passing sentence based on specific facts of each case.[15] Prosecution of public servants under POCA requires prior sanction of a competent authority.[16] Obtaining such sanction itself in the past has been a hurdle to effective enforcement of the law. The Supreme Court noted the submissions of the Attorney General[17] that out of 319 requests, sanction was awaited in respect of 126. POCA does not have extra-territorial operation unlike certain other laws and its application is restricted to the territory of India. Unlike anti-

corruption laws in other jurisdictions, POCA does not recognise illegal gratification paid to foreign government officials or officials of a public international organisation. Interestingly, POCA does not define the expressions 'bribe', 'corruption' or 'corrupt practices'. While the Standing Committee on Personnel, Public Grievances, Law and Justice in August 2013 ('Standing Committee') that looked into the pending amendment bill at the time had recommended that these key provisions be defined, POCA Amendment Act has left these terms undefined. The ambiguity brought about as a result of the absence of key definitions and expansive meanings given to certain expressions by courts is certainly contrary to India's commitment under the United Nations Convention against Corruption ('UNCAC'). In August 2013, the POCA Amendment Act was introduced in Parliament, thereafter passed by both houses of Parliament and assented to by the President in July, 2018 which provided for substantial changes to POCA. These changes are discussed in the relevant section below

(C). PREVENTION OF CORRUPTION AMENDMENT ACT

Since its introduction in Parliament on August 19, 2013, the POCA Bill underwent changes based on the Law Commission Report. After five long years since its introduction, the POC Bill was passed by the upper house on June 19, 2018, followed by the lower house on June 24, 2018. The POCA Bill finally received the assent of the President on July 26, 2018 and the POCA Amendment Act came to be enacted. The following key changes have been introduced to POCA by way of the POCA Amendment Act:

I. Bribe-giver is liable to be prosecuted

Conceding to the recommendations of the Law Commission of India, the scope of POCA has now been extended to cover to those who give or promise to give 'undue advantage' to a person with an intent to induce or reward a public servant to perform their 'public duty' 'improperly', as per Section 8. The immunity granted in terms of the erstwhile section 24 has now been deleted. Such offence would be punishable with the maximum imprisonment for a period of seven years and / or fine. An immunity from prosecution has also been granted in favour of those who are compelled to give such undue advantage provided such persons report the matter to law enforcement authorities within seven days from the date of giving the undue advantage.[18] In a departure from the recommendations of the Law Commission of India, the term 'improperly' is undefined, and no distinction has yet been made between facilitation payments and other forms of bribery. Supply side prosecution was imperative to bring our anti-corruption laws in consonance with international standards and act as a deterrent for private persons who bribed with impunity. However, the ambiguity on the aspect of 'improper

discharge of public duty', could pose more concerns and abuse of the process and cause for concern leading to protracted litigation. Given that recently the Supreme Court of India has expanded the scope of 'public official', [19] clarifications in respect of these key expressions would have provided much needed certainty.

This is particularly important considering non-compliance or a violation attracts criminal prosecution. Therefore, it is imperative to have objective standards for the expression 'improperly'. The expression 'public official', although defined in POCA, required clarification in light of the Supreme Court's ruling and to negate the possibility of expansion of private entities which are in collaborative projects with government / state owned enterprises.

II. Commercial Organizations Liable to be Prosecuted

The POCA Amendment Act has largely retained the edict of the POCA Bill and grants the power to prosecute commercial organizations, 'if any person associated with such commercial organizations gives or promises to give any undue advantage to a public servant' [20]. In addition, if any director, manager, secretary or other officer of the concerned commercial organization is proven to have consented and / or connived to commit the said offence, such officer would be punishable with imprisonment for a term not less than three years and extendable to seven years and also liable to fine. Same as the POCA Bill, the POCA Amendment Act too states that it would be a valid defence for the commercial organization to prove that it had 'adequate procedures' in place. The POCA Amendment Act failed to prescribe guidelines to determine what would be seen as 'adequate procedures', as was recommended by the Law Commission of India. India, unlike other jurisdictions has faced severe criticisms for abuse of process despite laws being in place, therefore such provisions could lead to harassment for individuals within companies even if not responsible/involved in the illegal act. It also potentially defeats the principle of 'corporate veil' and hence requires safeguards to be put in place before implementation of these provisions to avoid harassment of professionals.. While the provision contemplates prosecution of an individual if the offence under the Bill is 'proved in the court to have been committed with the consent or connivance' of any director, as a matter of practice, investigating authorities ordinarily do not prosecute companies without making a director a party as well. Consequently, innocent directors / officers could be prosecuted and subject to investigation. Companies need to introduce compliance programs, manuals and guidance notes to ensure that employees and consultants are adequately educated about obligations under POCA.

III. Prior permission to be sought before initiating investigation

Considering the sensitive nature of a public servant's role, POCA Amendment Act makes it mandatory for police officers to seek prior approval before conducting an enquiry into any offence committed by incumbent and retired public servants. The approval would have to be sought from the relevant union or state government in whose employment the accused 'public servant' committed the offence in discharge of his official functions and duties. The introduction of such provisions are in accordance with other jurisdictions which require prior sanction for all offences and for all persons. While POCA Amendment Act binds such approving authority to pass its decision within three months, further extendable by a month, this may dilute the power of investigating authorities from effectively prosecuting guilty officials. However, such prior sanction would not be required in the cases of arrest of officials caught 'red-handed' accepting or attempting to accept any undue advantage for himself or for any other person. With a view to protect honest public servants, the POCA Amendment Act has sought to restrict the scope of offences proposed to be covered under the POCA by identifying 'criminal misconduct'. This restricted definition no longer takes into account, previously covered grounds such as disregarding public interest, abusing his / her position, using illegal means, etc. The element of criminal intent is added to lend more objectivity to enforcement. Requirement of prior sanction for retired public officials and change of scope of 'criminal misconduct' would encourage retiring bureaucrats to make faster decisions and the checks and balances introduced in the amendment should protect such public officials.

IV. Attachment of tainted property

POCA Amendment Act has added a new chapter - Chapter IV A to POCA, which grants the power to attach property, confiscate money or property and administrate property tainted by corrupt activities. Adhering in spirit to LCI's recommendations, the provisions of the Criminal Law Amendment Ordinance, 1944 is now applicable to such attachment proceedings. Earlier, tainted property could be attached through measures under anti money laundering laws. It was important to streamline proceedings and avoid multiple enforcement mechanisms. POCA Amendment Act has introduced the new chapter to help authorities recover proceeds of crime expeditiously. It may also be possible that victims of such crimes can seek restorative justice.

V. Time limit for trial

The Bill now requires trial of offences to be held on a day to day basis and endeavours to conclude it within two years. A time bound trial would certainly help expedite the process of effective prosecution and would act as a powerful deterrent for habitual offenders.

(D). OTHER IMPORTANT PRINCIPLES UNDER POCA

I. Public duty and Public Servant

Public duty is defined as 'a duty in the discharge of which the State, the public or the community at large has an interest'.[21] the expression 'state' also has an inclusive definition. The significance of the definition accorded to 'public duty' is that persons who are remunerated by Government for public duties [22] or otherwise perform public duties ,[23] may also be public servants for POCA. POCA defines public servants in a wide and expansive manner. The expression is not restricted to instances set out in the definition clause and courts have also adopted an interpretation which enables more persons to be included within its ambit. [24] The definition of public duty and public servant was examined in P.V. Narasimha Rao v. State.[25] Although the case related to a Member of Parliament, the Supreme Court's ruling made it clear that both public duty and public servant would be given a wide interpretation. Applying these principles in Ram Gelli's case, even though the concerned individuals were not employees of State or its instrumentalities, in view of the public duty element and nature of work performed by bank managers, the Supreme Court came to the conclusion that for the purpose of POCA, such officers would be public servants. In Bhupinder Singh Sikka v. CBI [26] the Delhi High Court ruled that an employee of an insurance company that was created by an act of Parliament was automatically a public servant and further, no evidence was required to be led in respect of the same. The expansive definitions being adopted by the Supreme Court can lead to a state of unpredictability and uncertainty in the law. In Ram Gelli's case, Section 46A of the Banking Regulation Act, 1949 ('Banking Act') that provided that certain officers[27] would be deemed public servants for IPC, was held also applicable in respect of POCA. However, it leaves open the question of the role of directors and key managerial personnel in infrastructure projects and other projects of a public nature, or of national importance.

II. Taking Gratification, Influencing Public Servant and Acceptance of Gifts

Section 7, Section 8, Section 9 and Section 11 of POCA, as substantially amended by way of the POCA Amendment Act, provide for instances of taking gratification, influencing public servants or accepting gifts. These sections are amended substantially keeping in mind

India's obligations under the UNCAC. In respect of offences under Sections 7, 11 and 13, the court has held these to be an abuse of office by the relevant public servant. Transactions which contravene provisions of POCA necessarily contemplate a public servant and illegal gratification in connection with securing a favour from the public servant or as an incentive or reward to the public servant. It is equally important that there should be a demand of such sum made by the public servant and the mere fact that the individual has a valuable thing, in the absence of proof of such demand, may not result in a conviction under Section 7 of POCA.[28] It has also been held that an offence under Section 7 is an abuse of office[29] and that the acts of the concerned individuals have the colour of authority.

(E). INVESTIGATION, TRIAL AND SETTLEMENT

Investigation of offences under POCA takes place as per the procedure set out in the Code of Criminal Procedure, 1973 ('Criminal Code'). POCA does not provide for a settlement or compounding mechanism.[30] The Criminal Code provides for cases in respect of which compounding is possible.[31] However, even though offences under POCA are not mentioned in Section 320 of the Criminal Code, the Supreme Court has held that in certain cases which do not involve moral turpitude and are more commercial in nature, it would be permissible for parties to settle the dispute. Supreme Court has observed: In respect of serious offences, including those under IPC or offences of moral turpitude under special statutes, like POCA, offences committed by public servants while working in that capacity may not be sanctioned for settlement between offender and victim.32

The revised Indian act now makes it vital for every domestic Indian concern to implement a similar design. Further, with several investors heading towards India, corporations really need to initiate some serious measures to build robust and workable anti-bribery and corruption procedures which make them attractive from not just the valuation perspective but also the compliance perspective to avoid any embarrassing regulatory actions in future.

[H](I). THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

The Act prohibits any benami transaction (purchase of property in the false name of another person who does not pay for the property) except when a person purchases property in his wife's or unmarried daughter's name. Any person who enters into a 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.

[H] (II). BENAMI TRANSACTIONS (PROHIBITION) AMENDMENT ACT, 2015

In India's long war against corruption, the loudest expression of unaccounted-for, tax-evaded money has been through property, particularly by buying it in one person's name while being financed by another, who controls it. This is known as "benami" practice. While most of it is to avoid paying taxes and to [33] defraud creditors, the Law Commission's 57th report in 1973 pointed to political and social risks as motives behind benami [34] properties as well. The Benami Property Transactions Act of 1988 attempted to prohibit such transactions and the right to recover benami property. This Act defined 'benami' as a property that has been transferred to or held by one person while being paid for by [35] other people, for the latter's benefit. Enacted on 10 August 2016 and in force since 1 November 2016, the Benami Transactions (Prohibition). Amendment Act has ironed out this wrinkles 36.The new law and its administrative enabler, the 25 October 2016 Prohibition of [37] Benami Property In India's fight against corruption, this Act, as well as other [38] announcements about a crackdown on benami properties, has become a loud political rhetoric with little on-ground action against leaders who have allegedly purchased properties in the names of [39] their "drivers and cooks".

[I]. FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Once the political climate changed and liberalisation was ushered in, the Foreign Exchange Regulation Act of 1973 [40] became incompatible with the direction the country had taken. "As we progress towards a more open economy with greater trade and investment linkages with the rest of the world, the regulations governing foreign exchange transactions also need to be modernised," Finance Minister P. [41] Chidambaram said in his 1997–98 Budget speech while laying the new foundations of foreign-exchange management. Four months later, S.S. Tarapore submitted his report on CAC, strengthening the [42] policy base for a law that would facilitate sequencing of CAC. On 29 December 1999, Parliament repealed FERA and enacted a more [43] liberal Foreign Exchange Management Act to "consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign-exchange market in India".

[J]. FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

Although the first controls on accepting foreign contributions came through the Foreign Contribution [44] (Regulation) Act (FCRA), enacted on 31 March 1976 during Prime Minister Indira Gandhi's Emergency months (June 1975 to March 1977), the law became a burning

public issue only four decades later, when it was executed. Resonating with the overall atmosphere of control, the 1976 law provided for regulating foreign contribution and hospitality On 26 September 2010, Parliament enacted a new FCRA[45] law, Foreign Contribution (Regulation) Act, 2010, which further tightened the rules and consolidated the law on foreign contribution and foreign hospitality. In the very first year of its coming into force, notices were issued to 21,000 associations (10,343 associations in 2014) for not filing annual returns continuously for three years; 4,138 registrations were cancelled in July 2012 and 10,117 in March 2015; 15 cases were referred to the CBI and 10 to state police for further investigation and prosecution; and accounts of 23 557 associations were frozen.

[K]. THE PREVENTION OF MONEY LAUNDERING ACT, 2002

Money-laundering is the process by which illegal money, known as 'dirty money', is made to appear legitimate. This is a threat to the financial systems of nations. To prevent an illegal activity originating in one country from being legitimised in another, the world got together and signed up to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic [46] Substances in 1988 to fight drugs. Parliament enacted the Prevention of Money- [47] Laundering Act on 17 January 2003, which came into force from 1 July 2005 and laid the foundations of India's legal framework to fight money-laundering. The law defines "money-laundering" as any process or activity connected with the proceeds of a crime, including its concealment, possession, acquisition or use and projecting or [48] claiming it as untainted property. Penalties for such crimes include rigorous imprisonment for three to seven years, fines and attachment of properties. The responsibility of enforcing the law was placed on the Directorate of Enforcement in the Ministry of [49] Finance. The law was amended in 2009 to expand its ambit and bring full-fledged moneychangers and money transfer service providers such as Western Union, as well as international payment gateways such as VISA and MasterCard, within the reporting regime [50] of the law. Again, with a 2012 amendment, the law widened the expanse to include concealment, acquisition, possession and use of the proceeds of crime. Under the law, the RBI created KYC (know [51] your customer) guidelines for banks and financial services companies, under which the institution needs to undertake a due diligence process and verify every customer.

[L]. INDIA AND THE UNITED NATIONS CONVENTION AGAINST CORRUPTION 2003 (UNCAC)

India has welcomed the UNCAC, which provides for international co-operation and mutual legal assistance in investigating cases of corruption and recovery of assets. India signed the UNCAC in December 2005. By signing the Convention India has reiterated its resolve to strengthen international co-operation as envisaged in the Convention. It is in the process of enactment of requisite enabling legislations by the concerned Ministries or Departments before ratifying the Convention. Once ratified, the Convention will boost India's effort and commitment to fight corruption at both domestic and international level. There is the United Nations Convention against Corruption (UNCAC), entered into force on 14 December 2005. It is the first global legally binding anti-corruption instrument that urges State Parties to create legal and policy frameworks in accordance with globally accepted standards, international regime to tackle corruption more effectively[52.]

[M]. RIGHT TO INFORMATION ACT FOR FIGHT AGAINST CORRUPTION

There is also another legal mechanism which pertains to the Right to Information (RTI) Act[53] that is useful in the fight against corruption. As per the provision of this Act, any citizen may place a request for information from a "public authority", where the concerned authority needs to reply within 30 days. Thus, this act has armed citizens to get the complete information on public spending. Many[54] anti-corruption activists have been using this Act effectively for exposing corruption. The lacuna of this act is that there is lack of legal protection for whistle-blowers which put them in a risky situation and some RTI activists have lost their lives as well[55.]It comes into force on the 12th October 2005 (120th day of its enactment on 15th June 2005). Some provisions have come into force with immediate effect viz. obligations of public authorities, designation of Public Information Officers and Assistant Public Information Officers and constitution of Central Information Commission, constitution of State Information Commission, non-applicability of the Act to Intelligence and Security Organizations and power to make rules to carry out the provisions of the Act. The Act extends to the whole of India except the State of Jammu and Kashmir. Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. It includes the right to: inspect works, documents,

records; take notes, extracts or certified copies of documents or records; take certified samples of material; obtain information in the form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts[56] . Right to Information Act 2005 ensures timely involvement to requests of a citizen for government information. Department of Personnel and Training, Ministry of Personnel

(a) Objective

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. This Act is a big step towards making the citizens informed about the activities of the Government [58].

(b) Filing of Appeal

An applicant could lodge an appeal to the first appellate authority, if the information doesn't reach him within the prescribed time, i.e. either 30 days or 48 hours, as the case may be, or in case he is not content with the information. This kind of appeal needs to be filed within a stipulated time of thirty days from the date on which the period of 30 days of providing information expires or from the date on which the information or decision of Public Information Officer is received. The public appellate authority shall dispose of the appeal within a period of thirty days or in certain exceptional cases; it requires 45 days of the receipt of the appeal. In case the appellate authority doesn't comply to pass an order on the appeal within the stipulated period or if the appellant feels that the order is not satisfied with the order of the first appellate authority, he has the option of going for second appeal with the Information Commission for which the time period is ninety days within which the first appellate authority might have made decision by the appellant[59] .

(c) Right to Public Services

Every Citizen is entitled to hassle-free public services and redressal of his grievances. Accordingly, the Right to Services Act represents the commitment of the particular state towards a standard, quality and time frame of service delivery, grievance redressal mechanism, transparency and accountability. Based on the anticipated

expectations and aspirations of the public, standard, quality and time frame are to be drawn-up with care and concern for the concerned service users. In this regard, there is Right to Public Services Legislation in India comprises statutory laws which guarantee time-bound delivery of various public services rendered to citizens and provides a mechanism for punishing the errant public servant if they are deficient in providing the stipulated services. Hence, Right to Service legislation ensures delivery of time-bound services to the public. If the concerned officer fails to provide the service in time, he will have to pay a fine. Thus, it is aimed to reduce corruption among the government officials and to increase transparency and public accountability [60]

The Right to Information Act 2005 is a well-known fact that too much secrecy in public administration breeds corruption. The Right to Information Act aims at ensuring efficiency, transparency and accountability in public life. This Act requires all public authorities, except the ones that handle work relating to national security, to publish all information about their functioning at regular intervals through various means of communication, including the Internet. Now any person can seek any information from the concerned public authority just by filing an application at almost at no cost. The public authority has to reply to the application compulsorily within 30 days. If the information sought is denied, the applicant has a right to agitate further before the appellate authorities under this Act. This can indeed be described as a revolutionary step towards the eradication of corruption from public life.

[N]. CENTRAL VIGILANCE COMMISSION

The CVC was set up in February 1964 on the recommendations of the Santhanam Committee on the prevention of corruption to advise and guide the Central Government agencies on the issue of vigilance.[61] on 25th August, 1998; it received statutory status by the promulgation of an Ordinance by the President. Perhaps not ironically, legislative actions were precipitated after a PIL was filed seeking the intervention of the Supreme Court due to inaction by the Central Bureau of Investigation ('CBI') in relation to certain corruption cases.[62] The CVC is only an investigating agency and does not have power to formulate or make policy. The Central Vigilance Commission Bill was introduced in Parliament and was passed in 2003. The statement of objects and reasons in the Central Vigilance Commission Act, 2003 ('CVC Act') states that it is an act to inquire or cause inquiries to be conducted into offences alleged to have been committed under POCA by 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. Section 3(2) of the CVC Act lays out the constitution of the CVC as consisting of a Central Vigilance Commissioner who is the Chairperson, as well as two Vigilance Commissioners that act as Members. These three persons are appointed from persons who have either been in the All India Service or similar service with background on administration, including policy administration, banking, finance, law, vigilance and investigation.[63] A Committee of the Prime Minister, the Home Minister, and the Leader of the Opposition are tasked with making appointments to the CVC under Section 4(1) of CVC Act. Section 8 of CVC Act lays out the powers and functions of the CVC which include exercising superintendence over the Delhi Special Police Establishment for the examination of offences under POCA, inquire or cause an investigation to be made on the recommendation of the Central Government for offences under POCA, review the progress of investigations conducted by the Delhi Special Police Establishment, etc.CVC will have the same powers as a civil court to summon and enforce attendance, receive evidence on affidavits, etc. Section 12 clarifies that the proceedings before the Commission are deemed to be judicial proceedings. At the close of the year 2014, a total of 13,659 complaints were pending with the Central Vigilance Officers concerned for investigation, out of which 6,499 complaints were pending beyond a period of six months.[64]

[O]. COMPTROLLER AND AUDITOR GENERAL

The CAG is a constitutional authority created under Article 148 of Constitution of India, 1950. The role of CAG has assumed a lot of significance in the past few years since 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 held that even private companies may be subject to CAG audit in certain circumstances [65]As per Article 149 of the Constitution, CAG is to perform functions and duties as specified by Parliament and for this purpose, Parliament enacted the Comptroller Auditor-General's (Duties, Powers and Conditions of Services) Act, 1971.Section 10 of the CAG Act provides that the CAG shall be responsible for compiling accounts and keeping accounts in relation to the Union and the States and that these accounts are to be tabled before the President or the Governor. Section 18 empowers CAG to make necessary enquiries in connection with such audits. These include powers of inspection of premises, questioning persons etc. CAG has the power and duty to carry out audits 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 the power to audit grants or loans given to

authorities and bodies. As per Article 151 of the Constitution, such reports are to be tabled before each House of Parliament/ Legislature of State as the case may be. Therefore, the powers of CAG with respect to audit of receipts, expenditure and transaction of Government Departments and bodies are fairly significant. Although the Constitution and CAG Act empower CAG to carry out transaction related audits, neither the Constitution nor CAG Act makes it mandatory for Parliament to implement or accept the recommendations of the CAG. Under the present law, no report of CAG can per se be enforced. Parliament cannot be compelled to act on the recommendations of CAG.

Enforceability of CAG Audit Reports and judicial scrutiny

A report of CAG is tabled before Parliament and proceedings before Parliament, including debates, are not open to judicial scrutiny. However, the Supreme Court has often relied on CAG reports while issuing directions to Government Departments. In the case relating to implementation of NREGA[66] reliance was placed on CAG reports to issue directions for investigation. In Centre for Public Interest Litigation and Ors. v. Union of India and Ors.[67] reliance on the CAG report was contested and the Supreme Court did not look into the CAG report as the same was pending before a Joint Parliamentary Committee. Therefore, even though under law the CAG reports cannot be enforced, the same can be used in PILs while seeking relief and a court has power to appropriately mould relief in terms of the report of CAG. It is interesting to note that the National Commission to Review the Working of the Constitution ('NCRWC') made recommendations to provide more teeth to CAG and that findings of CAG should be better enforceable.[68]

[P]. THE LOKPAL AND LOKAYUKTAS ACT, 2013

The Lokpal and Lokayuktas Act, 2013 which came into force from 16thJanuary, 2014. Lokpal is the observer on the functioning of Ministers and Members of Parliament. Lokpal is like an ombudsman as an independent body to enquire into cases of corruption against public bodies. The origin of the Lokpal (anti-corruption ombudsman) will have police powers. It will be able to register FIRs, proceed with criminal investigations and launch prosecution. Lokayuktas have no power to punish anyone, they can only recommend punishments, and their recommendations are rarely acted upon. Constitutional Safeguards be given to such agencies which are expected to be a watchdog against wrongdoings by high public authorities. Before a year, Shri.Anna Hazare, Social Activist has also observed fast up to death to introduce the 'Jan Lokpal Bill' which has the same concept of ombudsman, even the Jan Lokpal will have great power and

freedom to act against corruption. In this the Lokpal will be called 'Jan Lokpal' means representative of the people. Due to social pressure of Anna Hazare and work of the drafting committee on Jan Lokpal Bill will be started. This Jan Lokpal Bill is based on a proposal which was made in the year 1967 by the Administrative Reform Commission. Three major features of the Jan Lokpal Bill are1. Jan Lokpal will be an independent body, similar to the Election Commission. Appointments will be made by judges, prominent civil society personalities, and constitutional authorities and by politicians, through a completely transparent and participatory process. So, the government cannot influence its activities. 2. The anti-corruption wing of the CBI will be under it and not under government control. In fact, the CVC and departmental vigilance is also proposed to be under Lokpal so that there is just one body to deal with all corruption complaints. So, politicians, MPs and ministers will not be able to influence the investigation or protect the guilty. Lokpal will have complete powers and machinery to independently investigate and prosecute any officer, judge or politician. 3. Time bound investigation and trial. Investigation in any case will have to be completed within six months and the trial is within another year. So, the corrupt office holder or politician will be in jail within a year..

INSTITUTIONAL MECHANISM OF THE LOKPAL ACT

The Lokpal and Lokayuktas Act 2013[69] was passed in response to deafening demands for a legal framework committed to identify and address corruption. Birthed in a widespread movement which engaged both civil society and socio-political stakeholders, the institutions of the Lokpal and Lokayukta were supposed to be institutions of the highest integrity that would provide effective structural mechanisms to tackle corruption at every level of government. Unfortunately, the shape that the final Act took was inadequate in ensuring that the Lokpal and Lokayukta could realize their intended status as the defenders of democracy and accountability in the Indian state. Two critical issues that have not been adequately addressed and prevent the Act from having any meaningful impact in the fight against corruption must be understood.

A. Selection Process of the Lokpal and Role of its Members

There have been many institutions involved in the fight against corruption in India. Laws and institutions have not made any impact whatsoever in dealing with corruption, leading to widespread and institutionalized forms of corruption across all institutions of governance in India. Under the 2014 Corruption Perceptions Index rankings published by Transparency International, India is ranked 85, clearly a country which is facing high levels of corruption.[70]

Interestingly, in the TI report in 2011 India was ranked 95, and in 2009 it was ranked 84. One of the reasons for these stagnating corruption levels is the lack of adequate legal framework and the weaknesses in the design of our institutions to effectively fight corruption. The most important aspect of any institution to be effective is the process of selecting its members, which constitutes the institution. This assumes significance in light of the fact that social expectations have been generated by the civil society movement leading to a higher level of citizens' consciousness in the fight against corruption. If Lokpal is to be effective, it needs to be independent from the government. The Act in its final form failed to adequately address the question of independence of the institution in relation to the selection of its members. One would think that after the recent experience of the Supreme Court of India invalidating the appointment of the Central Vigilance Commissioner,[71] there would be greater circumspection on the part of the government in relation to the selection process of the Lokpal. Our past experience that mere representation of the leader of opposition in the Selection Committee may not be sufficient to ensure independence of the institution. The Act requires half of its eight members to have some prior judicial experience while the other half will be someone who meets the criteria of "a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management." The process of selection is vested with a Selection Committee that is chaired by the Prime Minister along with the Speaker of the Lok Sabha, the Chief Justice of India, or another Judge of the Supreme Court appointed by him and an "eminent jurist." Though conceptually there is room for a person who does not have a background in public service to sit on the committee, the Lokpal remains an institution composed of persons who have exercised some form of public power, and who therefore represent the class of people under the Lokpal's scrutiny. Unfortunately, our thinking has rarely moved beyond the persons involved in the three wings of the government. If Lokpal is to be effective in the fight against corruption, and a large part of that fight will inevitably be in relation to the persons who exercise public power, then the Selection Committee should have persons who do not necessarily exercise such power. It is in this context that greater involvement of members from the civil society, media, and academia in the Selection Committee is critical for maintaining the legitimacy and credibility of the anti-corruption institution.

B. Lokpal's Power to Investigate Corruption

The Lokpal and Lokayuktas Act as finally enacted as an independent institution to fight against corruption is dependent upon the CBI or the CVC for fulfilling its statutory obligations to fight corruption especially at the stage of preliminary investigation. This is a fundamental flaw in the design of the Lokpal. Experience has demonstrated that political parties have misused the police and investigative agencies. A number of independent commissions have come to the same conclusion that we need to provide greater independence to the institutions that are involved in the fight against corruption. The Act specifies that the Lokpal will have supervision over any investigative agency discharging investigative functions under the Act, which in most instances would be the CBI or the CVC. This essentially means that the Lokpal and Lokayukta become an additional master to an institution which is under great scrutiny for its structural incoherence. The Lokpal and Lokayuktas Act is ostensibly an institution to fight corruption. However, for this institution to be effective in the fight against corruption, it has to be significantly empowered, otherwise we run the risk of creating one more institution, which not only will fail but also will hugely give us a setback in our larger effort to create transparency and accountability in governance. Despite the fact that the Act was passed in 2014, the concerned bodies under the Act are yet to be constituted, and complaints for the forum are left in limbo. Corruption continues to be a major challenge that has affected all aspects of governance in India. The ability to influence and seek illegal benefits through corrupt practices is widely spread across all sectors. The making of India should focus on infusing integrity and rectitude in governance. There is an urgent need for creating independent institutions focusing on fighting corruption. While the right to information and efforts to seek greater transparency in the functioning of government has made a positive impact, the country has a long way to go in ensuring that basic public services, which citizens are entitled to receive, are free from corruption. It is unfortunate that even after the law relating to Lokpal has passed in the Parliament, there is no consensus to ensure that it begins to function independently and effectively. It reflects poorly on our democratic institutions that we have not been able to constitute the Lokpal and support its effective functioning even after a law was passed to this effect. Corruption-free administration and accountability in administrators ought to be the central tenet for promoting good governance in India.

[Q]. THE WHISTLEBLOWER PROTECTION ACT, 2014

The Whistle-blowers Protection Act, 2011 came w.e.f. 9 th May, 2014. Whistle-blowers play a crucial and powerful role in keeping a corruption free atmosphere in administration. take place, The Whistle-blowers Protection Act, 2014 ('Whistle-blowers Act') seeks to establish a mechanism to receive complaints relating to corruption or wilful misuse of power or discretion by public servants, to inquire into those complaints, and prevent the victimization of the complainants.[72] The definition of public servant is the same as the definition provided under POCA.[73] Disclosure has been defined under Whistle-blowers Act as a complaint relating to an attempt/commission of an offence under POCA, the wilful misuse of power or discretion causing loss to the Government, or an attempt to commit, or a commission of, a criminal offence by a public servant, that made in writing or electronic mail against a public servant before a Competent Authority.[74] The complainant may be any public servant, or any person, and may include an NGO.[75] The Whistle-blowers Act makes it mandatory for the identity of the complainant to be disclosed to the Competent Authority and stipulates that no action will be taken if the identity of the complainant proves to be false.[76] However, the Competent Authority shall conceal the identity of the complainant except in the narrow circumstance that disclosure to a Head of Department is necessary while making an inquiry. Even when this is so, written consent from the complainant is mandatory, and the Head of Department shall be directed not to disclose the identity of the complainant.[77] The Whistle-blowers Act also makes it mandatory for the disclosure to be accompanied by full particulars and supporting documents.[78] The Whistle-blowers Act provides for certain classes of complaints which the Competent Authority need not take cognizance of, since another authority under law (a court or other authority) may be seized of the matter.[79] Upon receipt of a complaint, the Competent Authority will decide if the matter is one which needs investigation. If it determines it does, it shall conduct a discreet inquiry to ascertain if there is a basis to proceed. If this is so, it shall seek an explanation or a report from the concerned Head of Department. If, on receipt of the concerned Head of Department's comments, explanation, or inquiry, it finds that there has been a wilful misuse of power or discretion, or an act of corruption, it will recommend taking measures including, the imitation of proceedings or taking corrective measures against the public servant to the concerned public authority.[80] The public authority then takes a decision, within three months of receiving the recommendation, on whether a given course of action should be pursued. If it decides in the negative, it will record its reasons for electing not to take action. To safeguard the inquiry process, Whistle-blowers Act prescribes a host of penalties. Making mala fide or false disclosures can warrant imprisonment for up to two years and a fine

of INR 30,000 under the Whistle-blowers Act.[81] If reports are not furnished to the Competent Authority during an inquiry, the person may face a fine of INR 250/- per day till the reports are submitted, up to a sum of INR 50,000.[82] The penalty for revealing the identity of a complainant has been prescribed as imprisonment for a period of up to three years accompanied by a fine of INR 50,000[83] and knowingly providing false or incomplete information to a Competent Authority can sanction a penalty of INR 50,000.[84] .The Whistle-blowers Act also provides for safeguards against complainants making disclosures, as well as people making disclosures during the inquiry process. Section 11 provides that a person shall not be victimized or proceeded against merely on the ground that he has made a disclosure or rendered assistance to an inquiry. If a person is being victimized, he may make an application to the Competent Authority which will take action following a hearing with the public authority and the victim. This action can include restoring the victim to its original position, and imposing a fine of INR 30,000 in the event of non- compliance with any orders issued by the Competent Authority.[85] Moreover, if the Competent Authority is under the impression that the complainant needs to be protected, it may issue directions to the concerned government authorities to protect such persons.[86] The Whistle-blowers Protection (Amendment) Bill, 2015 has seemingly diluted the Whistle-blowers Act and has introduced ten categories of information in respect of which there is a prohibition on reporting or making disclosures. These are the sovereignty, strategic, scientific, or economic interests of India, records of deliberations of the Council of Ministers, anything that is forbidden to be published by a court, anything relayed in a fiduciary capacity, personal or private matters, information received by a foreign government, breach of legislative privilege, anything that could impede an investigation, commercial confidence/trade secrets/intellectual property, as well as anything that could endanger a person's safety.[87] Further, with respect to the above-mentioned prohibited categories of information, any order passed by an authority of the state or central government in this respect would be binding. The proposed amendments include, inter alia, removing immunity given to the whistle-blowers from being prosecuted under the Official Secrets Act of 1923. Detailed analysis of the shortcomings of the amendment have been dealt with our article published with the Financial Express.[88] Despite the global move towards legislating for increased obstacles for a whistle-blower citing national security reasons, countries, including India have seen an increase in whistleblowing reports particularly bringing to light corporate frauds.[89]

[R]. CITIZEN CHARTERS IS THE PRESENT METHOD TO CONTROL CORRUPTION

The concept of Citizen Charters has been introduced to improve the quality of public services[90]. It ensures accountability, transparency and quality of services provided by various government organizations. It enables citizens to avail of services with minimum hassle, in reasonable time, and at a minimum cost. Effective implementation of Citizens Charters will go a long way in controlling corruption. The Government of India has launched an ambitious programmer for formulation and implementation of Citizens Charters in all government departments. For smooth and efficient administration, the Central and State Governments have adopted several methods out of which Citizen Charter is the most effective method. This tool or technique makes sound functioning and increases efficiency and controls the corruption and delay in the administrative process. Every public authority or government department has to publish a citizen's charter listing all services rendered by that department along with a grievance redressal mechanism for non-compliance with the Citizen's Charter. [91]To improve the quality of public services the concept of citizen charters has been introduced to ensure accountability, transparency and quality of services provided by various government organizations. It enables citizens to avail services with minimum cast and in reasonable time. Effective implementation of citizen charters will control the corruption[92]

[S]. CORRUPTION IS STILL THRIVING IN MODI'S GOVT. IN INDIA

Indian people gave Narendra Modi a chance to realize his big promise: clean up the corruption in India. Today, Modi's promise remains a promise. Corruption is still thriving in India, in all the usual places. That's evidenced by a string of high profile scandals that shook his administration. Like a murky 7.8 billion euro weapons contract to purchase 36 Rafale fighter planes from France and a $2 billion bank fraud uncovered at India's state-owned Punjab National Bank. Corruption in Modi's India is also evidenced by a string of reports from Transparency International, ranking India 78 in corruption out of 175 countries in 2018 and 80 in 2019. While this is a slight improvement from last year's ranking, the recent ranking is still worse than the 2015 ranking. These findings must have surprised Indian observers. Prime Minister Modi and his Bharatiya Janata Party came to office with a promise to free India from the vice of corruption.[93]Corruption Remains Strong under Modi and they made good on this promise by launching unconventional measures like getting rid of "black money," ie the 500 and 1000 rupee notes. Apparently, Modi's government has been fighting corruption in the wrong places, among the country's poor and it has left corruption thriving in the high places,

among the country's rich. Meanwhile, India has also been ranked among the "worst offenders" in terms of graft and press freedom in the Asia Pacific region. In the last six years, 15 journalists working on corruption stories in these countries were murdered.[94] .Persistent corruption is usually a big impediment to spreading the benefits of economic growth from narrow elite to the masses and that could explain a big decline in the percentage of Indians who rate their lives positively enough to score it as "thriving" since Modi's party assumed office. India's situation is neither new nor unique in the emerging market world and it has been nicely rationalized.[95] In most global emerging markets, the "state" the political institutions that set up the rules of the economic game -- represents a few economic elites rather than the masses, according to the authors of the book. That's a breeding ground for the rise of crony capitalism and corruption. Populist governments of all kinds and sorts come to the office with the promise to change this situation. But all too often it is the existing situation they embrace once in office. As has been the case in India.

[T]. DEVELOPMENTAL APPROACH TO COMBATING CORRUPTION

The empire of corruption has done seminal damage to good governance and the rule of law in India. This has resulted in lack of access to justice. Corruption is discriminatory, contagious, an assault and should be regarded as more than merely a criminal offense. It hinders the process of achieving access to justice and undermines the efforts to ensure human development. We need to view corruption from the perspective of access to justice that public institutions can be held accountable for abuse of power. There are various ways for the judiciary to eliminate corruption even as the legislative and executive branches dawdle and dissemble. Corruption within the judiciary, mainly at the lower levels, ought to be a target for elimination. Anti-corruption work must involve grassroots civil society organizations along the lines of the Mazdoor Kisan Shakti Sangathan ("MKSS") in India, which succeeded in getting a law enacted for protecting and promoting the peoples' right to information. Since corruption is a disempowering force, the most effective way to root it out is through the empowerment of citizens both through popular grassroots peoples' initiatives and through institutional mechanisms that exist in the legal system. A holistic approach to fight corruption through legal and social action has been long overdue in India. Until such a movement comes about, corruption will continue to eat into the socio-economic development of India and exact a heavy human toll. Sovereignty exercised as an untrammeled power with irresponsible government institutions exploiting and disempowering the citizens, results in the lack of accountability. Sovereignty exercised as the responsibility of governing with human development as the

desired end is the wave of the future that sadly has not yet gained prevalence in India. The way forward is to spread the notion of responsibility and accountability as imperatives for strengthening sovereignty, simultaneous to large-scale efforts of increasing the presence and participation of civil society in governance issues. A corruption-free state enhances its chances of perpetuation, reduces possibilities of unwarranted external interference, and attracts foreign talent and investments by raising its international stature. A population that is content, well-governed, and not discriminated against confers internal stability — a key requisite for projecting power externally. Roping local civil society into this endeavor, in tandem with non-politicized international interventions, will produce tangible results. It is possible for India to succeed in the fight against corruption and ensure that transparency in governance becomes the basis for the development of the country. But for this to happen, there is a need, as discussed in this work, for a wide variety of actors playing important roles towards eliminating corruption from society.

The following **specific suggestions** are made to ensure that the problem of corruption receives the highest priority and attention for ensuring access to justice and promotion of development policies:

[U]. SUGGESTION AND RECOMMENDATIONS.

1. Implementation of Strong and Stringent Laws -The legal framework for fighting corruption needs to be strengthened as a facet of both legal and judicial reforms. The existing legislative framework for fighting corruption in India needs to be thoroughly examined. Efforts ought to be taken to ensure that the laws, rules and regulations for fighting corruption are in place. But it is important to note that anti-corruption laws will not be effective if the law enforcement machinery and the rule of law culture in a society is weak. Hence, there is a need for taking efforts to protect the rule of law and empower the law enforcement machinery, including the police, prosecution and other agencies that may be involved in the fight against corruption. Revising the act for its better implementation. Strong and stringent laws need to be implemented which gives no room for the guilty to escape.

2. Empowering Institutions should be made with providing more Powers -The legal framework for fighting corruption should be supplemented by establishing and empowering institutions. A number of institutions are involved in varying capacities in the fight against corruption. Since corruption is inextricably connected to creating obstacles to access to justice and a lack of effective development policies, appropriate institutions should be in place to deal

with it. The judiciary and human rights commissions are best suited to deal with corruption as a violation of human rights that inhibits access to justice. But the consequences of corruption on development are profound. It is here that anti-corruption machinery needs to be strengthened and the need for independent commissions against corruption becomes necessary. Independent anti-corruption institutions, like the ICAC proposed in this article, have the potential to act as the watchdog for ensuring that corruption does not become a hindrance to development and the resources of the state are distributed in a fair and equitable manner.

3. Important Role of Judiciary and Adjudicative Mechanisms for fight against corruption-The judiciary and its adjudicative mechanisms have an important role to play in the fight against corruption. The judiciary is far more effective when it comes to empowering other institutions than it is when taking upon itself the responsibility of fighting corruption. Corruption of the kind that prevails in India hugely disempowers individuals and institutions .It is important that there are independent democratic institutions that function effectively in ensuring that the governance system adheres to the principle of rule of law and the Constitution. Constitutionalism should be understood as encompassing all such institutions. It is a principle that encompasses a variety of political theory ideals, demonstrating a framework of governance .When acts of corruption are brought for adjudication to the judiciary, it is important for the judiciary as an institution to take all legislative and constitutionally available mechanisms for upholding the right to corruption-free governance. The credibility of the judiciary as an institution needs to be effectively used notwithstanding the fact that there have been recent issues of corruption within the judiciary that have undermined its reputation.

4. Judicial Governance -The term "judicial governance" in itself is subject to challenge as the judiciary is not supposed to be involved in "governance". However, the effort of the Indian judiciary to infuse accountability in the functioning of government institutions, and the growth and development has demonstrated the central importance of judicial governance. This has posed critical challenges to parliamentary accountability and executive powers and, more importantly, reinforced the need for improving efficiency and effectiveness of governmental institutions. The need for social reform preceded the Constituent Assembly bestowing on the judiciary the role of guardian of individual rights.. The Supreme Court perceived itself to be an institutional guardian of individual liberties against political aggression. In that process, it went beyond the framers' vision of achieving an immediate social revolution. It took upon itself a role similar to that of the United States Supreme Court as defined by Chief Justice Marshall in Marbury v. Madison This perception led the court to develop implied limitations on the powers of the political branch that is analogous to the U.S. judiciary's approach to the

separation of powers. The best known of these implied limitations, the "basic features limitation," precludes the Indian Parliament from amending the Constitution in such a way as to displace its basic features.

5. Civil Society Expectations- Civil society seeks to enforce good governance so that the exercise of all powers is subject to accountability. Undoubtedly, the wider civil society has embraced the notion of judicial governance, given the fact that it provides certain social expectations for creating accountability. The relaxation of the rules of locus standi, recognition under the "right to life" provision of the Constitution, and the development of public interest litigation are important milestones in meeting civil society's expectations on the working of the judiciary. However, given the range of injustices in our society, institutional responses, including those of the judiciary, need to be further expanded. The Indian experience has demonstrated that the initial judicial recognition which guarantees the fundamental right to education. If democracy is to become meaningful in India, it should be based on two important factors: the enforcement of the rule of law and the reform of the political system — each dwelling upon the other. The judiciary is well suited to support both these initiatives.

6. E-governance and Right to Information

One of the most effective tools for reducing corruption in the functioning of governments has been the effective use of the right to information. While there are bottlenecks in the right to information framework, this approach has great potential for throwing open the institutions of government to public accountability. The right to information underlines the importance of transparency and accountability in governmental functioning. It ensures that the powers exercised by the state and its instrumentalities are subject to public scrutiny and, more importantly, serious accountability. Accordingly, a wide range of possibilities are available for using the information to create an accountable and transparent framework of governance. We can reduce corruption by increasing direct contact between government and the governed. E-governance could help a lot towards this direction. Sivraj Patil said that the Right to information can ensure transparency. We have legal rights to know any information. According to this act, (Right to Information Act, 2005), generally people should follow the procedure of law given to them when there is no transparency and accountability in the working of public authority. This act would be of great help in order to control corruption

7. Role of the Media-The role of the media in the fight against corruption is critical. Worldwide, the media has played an important role in bringing to the public domain the instances of violations of access to justice. The media has played a dominant role in raising issues of development and how corruption has contributed to it. This role needs to be further

improved and the media needs to take more responsible steps to act as a custodian of India's democracy and rule of law. There is a need for promoting the role of media as the availability and dissemination of information becomes complex. In many cases, there is a need for experts in different fields to understand the nature of investments made and the financial transactions involved in allegations of corruption. The media has the necessary human and other resources to seek this information, analyze it and make it available for the public to understand. This role of media is critical for raising awareness and contributing to the empowerment of the wider civil society.

8. Role of Civil Society -The role of civil society is central to the fight against corruption. Corruption and the lack of access to justice are symptomatic of a larger problem within societies. The only way to reduce corruption and provide for mechanisms that create greater access to justice is to empower the civil society. The role of domestic and international civil society is important as it is best placed to situate the problem of corruption from an access to justice standpoint. Once recognized in this manner, the strategies that may be adopted for fighting corruption may include a variety of democratic measures that will put pressure on governments to deal with the problem of corruption.

9. **Training of Legal Officers** -While the proposed ICAC will be engaged in the prosecution of persons against whom it has initiated proceedings, there needs to be an emphasis on the training of legal officers. In the past, many of the anticorruption proceedings initiated in India have not resulted in convictions. There are numerous reasons for this, many of which may be beyond the proposed ICAC's powers and mandate to investigate or rectify. But one of the reasons could be the lack of sufficient expertise and experience of its legal officers in handling such cases. There is a need to provide for a regular, substantive and sustained training of its legal officers by both domestic and international experts with a view to enhancing the substantive and procedural knowledge relating to the legal framework and advocacy skills that may be useful to pursuing these cases in the courts. The training programs should become an ongoing feature and should become institutionalized within the working of the ICAC.

10. Training of Judges

There is a need to emphasize the training and sensitization of judges to deal with corruption cases. The judiciary is a very important organ wing of the government and is entrusted with the responsibility to ensure that the other wings of the government act in accordance with the constitution. Thus, the judiciary becomes a custodian of the constitution. Corruption violates the spirit of the constitution besides undermining the democratic ideals and principles of the constitution. The judiciary has to play a very important role in India to ensure corruption-free

governance. In this context, the proposed ICAC may have to work with the judicial training academy and other members of the judicial fraternity, including senior members of the judiciary, to impress upon the need for training judges to deal with cases relating to corruption. The exact modus operandi of the training, including who will be responsible for the actual training, are details that will have to be decided by the judiciary itself, and independence of judiciary should not be undermined in any way in this process.

11. Creating Increased Citizen Awareness

Creating increased awareness among citizens about corruption and its effects is another important element in combating corruption — particularly when this group awareness is accompanied by the public's ability to act as a group against corruption. The need for creating awareness through a wide range of mechanisms is critical for fighting corruption. The awareness should be focused on all aspects of the problem of corruption including its causes and consequences, and the government's efforts to eliminate corruption and information relating to the institutional mechanisms that are put in place in investigating allegations of corruption. The purpose of the awareness should be both to inform and to empower citizenry.

12. Education-The first tool is education. We can minimize corruption with the help of education. According to a survey conducted by India today the least corrupt state is Kerala, the reason being that in Kerala literacy rate is highest in India.

13. Change the Government Processes and Administrative Policies

We need to change the government processes. In India there is a rule that no person as a criminal shall be allowed as the MP or MLA. Unfortunately, a fairly large number of them are a part of it. Therefore a major shift in the government processes and administrative policies can make them more public oriented.

14. Individual efforts and honest to ourselves

Individual effort. We should be honest to ourselves. Until and unless we will not be honest, we cannot control corruption.

[V]. CONCLUSION

Corruption is a major obstacle in improving the quality of governance. While human greed is obviously a driver of corruption, it is the structural incentives and poor enforcement system to punish the corrupt that have contributed to the rising curve of graft in India. There are adequate laws in India to fight corruption. Despite all these measures and laws, the country is still not free from the scourge of corruption. Corruption is still one of the biggest

impediments to extending the benefits of development and progress to the poorest of the poor. The Indian criminal justice system is facing many problems and challenges in its fight against corruption. Corruption is considered a 'high profit-low risk' activity by corrupt public servants. Recoveries of assets, which are proceeds of crime, remain a big challenge. Such assets are often held offshore and getting them back is a Herculean task, especially in the absence of desired international co-operation. The fight against corruption is, therefore, not an easy one. We need to join forces against this enemy, with all resources at our disposal to achieve better and more effective results. The corruption issue produces an entirely new and indeed an important approach to ensure that good governance remains the goal of public administration in India. There is a need for the empowerment of the people of India to fight against corruption on the basis of developing certain rights against corruption. The human rights approach to a corruption control mechanism makes the people of India central players in the corruption resistance movement. The law enforcement work of the government to ensure corruption-free governance ought to be perceived as a part of the rights of the people of India to seek a corruption-free government. Concomitantly, it then becomes the duty of the government to ensure that all of its affairs are conducted in a manner that promotes transparency, accountability, and integrity in public administration. Constitutional governance is an important dimension to the rule of law framework that needs to be established in India. If this framework needs to work in the context of various social, economic and political transitions that occur in India, the anti-corruption initiatives should be integrated with the human rights discourse to ensure good governance in countries that have successfully managed to curb the menace of corruption to a large extent. Corruption is a significant impediment to achieve good governance in India. While it has been noted that criminal law and public policy approaches to the problem have been met with mixed results, there has not been any serious effort to develop a human rights approach to corruption. The Right to Information in India needs to be integrated with the right to transparency and the right to corruption-free governance. This integral approach of handling corruption will ensure that the political and bureaucratic machinery in India is accountable to its people. Accountability is infused by building legal and institutional mechanisms so that official corruption is not tolerated at any level of the decision-making process. The change of political culture in India is possible only if the right to corruption-free governance is guaranteed through the empowerment of the Indian citizenry. It is in this context that the role of the media and other members of civil society become important. The media should expose the corrupt actions of politicians and bureaucrats. Strengthening of the judiciary should be accompanied by passing laws, rules, and regulations that are intended to punish acts of corruption. The

problem of corruption has the potential to affect democratic decision-making, and has threatened the rule of law in India. While the foundations of democracy are deeply rooted in India, corruption has undoubtedly sowed the seeds of civic and political discontent. Furthermore, the lack of political and bureaucratic transparency and accountability culminate in a sense of callous indifference among the people. Indeed, these discouraging trends in Indian society must be thwarted by the rights-based approaches to fighting corruption, which is one way to extend accountability mechanisms for the promotion of good governance. As civil society in India increases its involvement in political discourse, India has the unique opportunity to address corruption and put in place empowered institutions of integrity that are able to ensure procedural fairness which is ideally the right of every citizen in a democracy. It is time for every element in the Indian political system to adopt a dynamic and result-oriented approach to tackle corruption at a structural level and ensure that the rule of law finds articulation in the life of every Indian citizen.

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29. Parkash Singh Badal, above

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Drug is a poison, it provides short term enjoyment with long term pain. So be aware, be safe.
