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AGENCIES INVOLVED IN INVESTIGATING AND CONTROLLING CORRUPTION:

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Abstract

The welfare of the society largely depends on the acts of the government servants, who instead of performing their duties in the interest of the society, involve in anti-societal activities including corruption. Corruption is the root cause for any society's decrement, the essence of the word "Corruption" has no specific form attached to it and can be captured through different dimensions and spheres and the consequences and outcomes of one's actions and the impact it has on an individual's character and society as It can be moulded and shaped according to different circumstances. "Corruption" is a well-planned and well-executed offence carried out with sophistication and precision performed in secrecy and requires mutual understanding between the parties involved which in turn benefits both the receiver and giver. As it is carried out with high precision, it becomes the most challenging crime to establish. Author has highlighted the repercussions of corruption on society at large and different institutions set up in India to prevent corruptive practices. The Paper attempts to critically analyses the agencies involved in investigating the crime of corruption Finally, it attempts to shed light on the different Agencies Incorporated by statute by the Indian parliament to control and Investigate corruption related crimes.

Key words: Corruption, crime, Vigilance, Investigation, Government servants, society, social Justice.

Introduction

The word 'Corruption' literally means a lack of integrity or honesty. As discussed earlier, word corruption is flexible and can mean different in different situations, so its definition has always remained a matter of debate. The Oxford Universal dictionary defines "Corruption" as Dishonest or fraudulent conduct by those in power, typically involving bribery. Corruption cannot be a universally defined. As per Justice V. R. Krishna Iyer (Retd). "*Economic offences often are subtle murders practiced on the community or sabotage of the national economy.*" Therefore, this can be construed as "Corruption". Corruption as an offence can be said to be criminal misconduct by a public servant while the discharge of duty as a fraudulent or illicit and illegal means by illegally benefitting from his/her position as a public service only to obtain any valuable thing or pecuniary advantage for him or any other person (Bishambar Lal Dayal vs State of Punjab, AIR 1964 PH 175).

As we already know that Corruption hinders in economic development, it may be construed as against poverty and development. Current law and legal development of corruption in India are not enough to deal with Corruption. It has become a topic of discussion. In local nonprofessional lingual, it is called as "chai – paani".

Corruption is not an aspect of the modern world only. It has been a severe threat to society even from ancient times. The human race has transformed itself as one of the most progressive species of the living creatures in this world. It has achieved the unique distinction of becoming civilized. There have been many developmental movements in this regard. Humanity has transformed itself through many reformative stages. In earlier times, men used to live like a savage. Then he became civilized by passing through many phases and started living in larger groups than a family. He was dependent on his fellows for his daily needs and security. In this way, the institution of society came into existence. It is the inherent nature of every person to live in society for fulfilling his requirements and security purpose. However, because of the greedy nature of some persons of society, there is a degradation of moral values. They take help of unlawful and deceitful means to fulfill their greed. This degradation of moral values for the sake of personal benefit is called corruption.

Our country is facing a severe threat from this evil. There are many factors behind the expanse of this evil. Dr. William Gould has taken reference of Pandit Jawaharlal Nehru to elaborate the expanse of the evil of corruption. Telling homeowners that everyone is corrupt create an atmosphere of corruption. People think they are in a corrupt environment and they have corrupted themselves. These were the words of Jawaharlal Nehru, spoken shortly after India's independence from British rule. According to an observation made by Dr. Gould, these words seem particularly appropriate given the growing crisis of corruption existing in approximately every stratum of society.

Depends on the growth of nation empowerment of weaker sections of the society. Nevertheless, the irony is that the corrupt officials misuse the schemes and benefit of policies, which are meant for the public. They try to misappropriate the benefits, which are meant for poor people. There are many examples of this scenario. In our daily life, we hear several instances of corruption. In addition, the policies and natural resources which are the property of taxpayers, all citizens and of course whole of the nation are made to be exploited by the individual in authority with connivance of segment present in the society. Coal-Blocks Distribution Scam, 2-G Spectrum Scam, Adarsh Housing Society Scam and Commonwealth Games Scam etc. are some of the new examples of present scenario.

The corruption has stalled not only the growth of the nation, but it is also the mother of several other problems. It has also affected the fundamental rights of the ordinary person. The ordinary person is out of the scene because of the malpractices followed by the greedy bureaucrats and politicians. The State does not fully utilize his capabilities by giving him unequal treatment regarding the attainment of suitable jobs as per his qualifications. The adverse effect of the evil of corruption is not restricted only to government jobs, but it has many other serious results as well.

The allotment of tenders and other schemes of the society involved a great undue advantage in favour of the persons who are having their links with the government and other corrupt officials. We score poorly in the survey conducted by the noted organization, Transparency International, collecting data related to corruption. India stood at Rank-76 (Corruption Perception Index: CPI Brochure-2013, (Transparency International, Berlin, Germany, 2013) in CPI (Corruption Perception Index) in the survey conducted by the organization in 2015. This rank is far from severe.

CORRUPTION AND SOCIAL JUSTICE

The concept of social justice is one basic feature of a welfare State. A welfare State cannot do welfare without incorporating the fundamental values of social justice within its Constitution. Here we are concerned with this concept because of the evil of corruption, which is hindering the noble aim of acquiring equality and posing difficulties for the attainment of social justice. The adoption of the concept of social justice is the need of the hour to establish equality and the rule of law.

India being a democracy is a Welfare State, and a Welfare State must provide justice to all sections of the society. The State has responded well to the situation. Still, a lot has to be done for the attainment of social justice in real terms. The Constitution of the country provides a framework that can be used to attain this noble goal. The judiciary has also shown a keen interest in this regard by interpreting the statutes for the welfare of the people. Besides the administration of civil and criminal justice, the higher courts in India have also taken up the task of social justice administration through judicial activism in the exercise of their writ jurisdiction. This trend is discernible from the decisions of the Supreme Court and some of the High Courts the onwards late seventies of the 20th century. The higher judiciary realized that India is a welfare State; it is committed to the cause of social justice, and the courts must respond to this cause keeping in view the felt needs of the Indian society.(N.V. Paranjape, *Studies in Jurisprudence & Legal Theory* (Central Law Agency, Allahabad, 4th ed., (2008). The results are satisfactory, and the higher judiciary has done an excellent job in this regard. A lot has to be achieved as on the one hand still several people are living in poor conditions and struggling for minimal basic needs, on the other hand, corrupt people are living a luxurious and lavish life.

Agencies Instrumental to Control Corruption

It is already discussed, that Corruption is present in every dimension in India. The existing laws are not enough to eradicate corruption if the investigating machinery and the investigating process are not independent. For proper functioning of the machinery, it is essential that it functions independently, free from legislative or governmental control and superintendence.

There is no thumb rule, which we can ensure the eradication of corruption. To make India corruption free, government and citizen will have to reach full cooperation and work together. It is ironical that our Indian Constitution recognizes freedom of the press as a fundamental right but still the press/media exercise this right with certain restrictions other than those mentioned in the Constitution. To curb Corruption, the independence of the press is significant as influential media can help in fighting corruption.

In India, there are laws in place enacted by the Central Government to tackle Corruption. To ensure proper implementation of these anti-corruption laws, the central government has also constituted commissions such as the Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI) and others.

Today, corrupt public officials are fearless and openly demand a bribe to do their jobs prescribed by laws. This indicates the problem under the present bureaucratic mechanism for isolating the corrupted officials to punish their acts renders to be a wasteful activity and does not have a deterrent effect as political parties or ministers back such officials.

There are specific measures to control the rising corruption, which are as under –

The Right to Information Act (RTI) gives a person access to public information, which is generally not disclosed by the government. It is a way to keep a check on activities of government and their functioning.

Every Governmental Department appoints a Public Information Officer, whose duty is to provide the citizen with relevant information wanted by him on payment of a nominal fee. The applicant can complain to the respective information commission, if the PIO refuses the acceptance of the application or if he fails to provide applicant relevant information in time, which is empowered to impose fine on PIO Rs.25, 000.

Another mechanism to keep a check on corruption in the Central Vigilance Commission (CVC), the commission was constituted to provide guidance and advise the government in the area of vigilance. It is also tasked with creating awareness among people regarding corruption and its consequences. Any complaint or reporting of corruption cases is done to CVC.

Application of the principle of natural justice, i.e. Justice delayed is Justice denied is significant to achieve maximum results. Or if there is a considerable time gap between registration of case and delivery of judgment then in such cases justice fails. Therefore, setting up of special courts for speedy justice is of great importance. To create deterrence, the laws enacted should be robust and stringent;

There are instances where people try to justify their act of accepting bribery by blaming it on their living conditions and how monetary crisis forces them to indulge in corruption even though they do not want to.

Agencies Involved In Investigation

India has seen a significant rise in corruption in the last decade, and it is the need of the hour to have some mechanism which solely focuses on the eradication of Corruption. It is crucial to create awareness on this issue as well as to implement anti-corruption policies to tackle corruption effectively. The CVC, ACB, Enforcement Directorate were constituted for this purpose. The agency aims to implement anti-corruption policies and create awareness mainly. These specialized bodies are entrusted with the power to investigate and prosecute offenders who have violated any anti-corruption law.

At the federal level, various bodies are constituted. Out of which key institutions are the Supreme Court (SC), the Central Vigilance Commission (CVC)(Central Vigilance Commission (CVC), Vigilance Manual 1 (6th ed. 2005))the Central Bureau of Investigation (CBI) (CBI manual, 182, Para. 1.6 (“in fact, with the establishment of CBI on 1st April, 1963, the Delhi Special Police Establishment was made one of its divisions, viz. ‘investigation and Anti-Corruption division.’.”)the office of the Comptroller and Auditor General (CAG)(The Hindu, Hyderabad, July 25, 1989. Adopted from Balachandrudu. K., Ph.D. Thesis titled “Politics of Bofors: A study of the Institutional and Functional Realms of Political Corruption in India” 1997) and the Chief Information Commission (CIC), Enforcement Directorate (ED) and at the State level there are the Anti-corruption Bureau (ACB)(Vigilance Manual, 165, p. 1–10.) for each State.

As per the recommendation of Santhanam Committee, Government of India vides

resolution dt.11/2/84 establish Central Vigilance Commission (CVC), the Central Bureau of Investigation (CBI), the office of the Comptroller and Auditor General (CAG) and Anti-corruption Bureau (ACB) which are the central nodal investigating agencies for each State. It is essential to discuss the role these investigating agencies play in Combating Corruption.

Central Vigilance Commission(CVC)

In February 1964, the Central Government addressing the need to combat Corruption, constituted the Central Vigilance Commission on the recommendation of the Committee on Prevention of Corruption, headed by Shri K. Santhanam. Mr Nettoror Srinivasan Raust was selected as first Chief Vigilance Commissioner of India. It was created as an apex autonomous body to control Corruption. The Central Vigilance Commission derives its power from the Central Vigilance Commission Act, 2003. It was tasked with providing advice and guidance to the central government agencies to ensure compliance with the anti-corruption policies. It was empowered to independently conduct inquiries and investigations of complaints disclosing any misconduct or misuse of power by any administrative department or any complaint regarding corruption or any other offence committed under the Prevention of Corruption Act, 1988. The offenders under this Act are not limited to just public servants but also include companies and corporations by or under the authority of any Central Act or local authorities, government companies.

The Government of India has authorized the Central Vigilance Commission as the “Designated Agency” to receive written complaints about disclosure on any allegation of corruption or misuse of office and recommend appropriate action. It acts as a watchdog monitoring all the vigilance. As the Commission is an autonomous body, it is free from any administrative control.

Central Vigilance Commission was the apex anti-corruption body to fight against corruption in Hawala case; the Central Vigilance Commission was given statutory status vide ordinance dt.27/10/1988 and confer power upon Central Vigilance Commission to exercise superintendence over the functioning of DSPE and vide G.R.dt.11/2/1964.(The original Resolution of the Government wide MHA’s No.24/7/64-AVD dated 11th February 1964.)

A. Duties of the Central Vigilance Commission are as under:-

1. To investigate or cause an inquiry into any transaction on which the government of India has administrative control.
2. To Conduct Departmental Enquiry against that public servant who commits criminal misconduct. For this purpose, the Central Vigilance Commission exercises the power of civil courts.
3. To inquire or investigation into any transaction of the public organization under the control and supervision of the government.
4. To organize training courses for the CVO and other vigilance functionaries of central organizations.
5. Central Vigilance Commission has also given additional power to supervise over the function of Delhi Special Police Establishment related to the investigation of offences committed under the Prevention of Corruption Act, 1988.

B. Jurisdiction of Central Vigilance Commission:-

Central Vigilance Commission exercises advisory jurisdiction in the matters related to the Central Government officials and other public servants. However, this list does not include IAS, IPS or IFS officer if they are guilty of any criminal misconduct in connection with the State affairs. The Prevention of Corruption Act, 1988 empowers CVC to conduct an investigation in complaints against any person accused of committing any offence under the said Act.

Central Bureau of Investigation (CBI)

The Government of India established the Central Bureau of Investigation as an investigating agency. Any State can also refer to any sensitive matter to it. The Supreme Court and High Courts can also upon finding any merit in the complaint refer a case to CBI for further inquiry.

The State agencies look up to the Central Bureau of Investigation (Sunil Sondhi, combating Corruption in India: The Role of Civil Society”, XVIII World Congress of International Political Science Association, August 1-5, Quebec City, Canada, 2000.) as an expert agency for guidance in matters relating to investigation and prosecution of corruption cases. The co-operation between the two sets of agencies is highly satisfactory.

Even though CBI is regarded as a Principal anti-corruption investigating agency but it is not an autonomous body and is directly or indirectly under the supervision of the executive body. Politics has a significant influence on CBI, and its officials are subject to transfer. As CBI is under the control of Central Government, it is indirectly controlled by Prime Minister of India. Thus it is essential to make CBI free from any influence for better independent and transparent functioning. Thus it should be brought under the control of Lokpal or Chief Justice of India.

For the investigation of certain offences during the II World War, Central Government issued an ordinance in the year 1943, to constitute a special police force and after the end of the war in the year 1946, the parliament enacted the Delhi Special Police Establishment Act, 1946 (Legislative Assembly Debates, Vol. VIII, No.1, pp.882-883). On the recommendation of Santhanam Committee (Santhanam Committee Report 9.11-9.15) appointed on Prevention of Corruption. Central Bureau of Investigation was merged and recognised as successor Police Organization to the DSPE. Today, the role of an investigation by CBI is not restricted to offences under the Prevention of Corruption Act but also extends to other conventional economic offences and investigation of offences under different Statutes. Due to technological advancement, there has been a substantial increase in cyber crimes and these are also investigated by CBI.

Comptroller and Auditor General (CAG)

Comptroller and Auditor General is a constitutional authority established under Article-148 of the Constitution of India. Any financial transaction of the Central or State government passes through its scanner. Democracy is considered healthy where acts of its government are transparent and not veiled. Thus CAG ensures this transparency by conducting internal as well as statutory audits in every governmental department or governmental organizations. The primary function of the Comptroller and Auditor General is to see that, money sanctioned by parliament must be spent only for that purpose for which it is sanctioned.

Enforcement Directorate(ED)

The Enforcement Directorate was constituted to fight economic crimes and implement economic law. It is headquartered at New Delhi. It comes under the control of Revenue Ministry and generally consists of officials from India Revenue Services, Indian Administrative Services and Indian Police System.

The Enforcement Directorate was established by Central Government on the 1st day of June 2000 with the primary intention to ensure the enforcement of Prevention of Money Laundering Act of 2002 and the Foreign Exchange Management Act of 1999.

The Director of Enforcement heads the ED. There are namely five Regional offices at Mumbai, Chennai, Chandigarh, Kolkata and Delhi headed by Special Directors of Enforcement.

Authorities under Administrative Law

In India Ombudsman are commonly known as Lokayuktas. An Ombudsman is an officer or commissioner with delegated authority. Earlier we have discussed how political influence affects the functioning of investigating agencies and how it benefits our ministers and other public officials. Therefore, to address this problem, many Indian States appointed Ombudsman to investigate into the complaint received against any politician or public servant disclosing Corruption. By performing his duty, Ombudsman protects the interest of citizen against the abuse of power by executives.

It is important to remember that an Ombudsman can be approached by an individual whenever he is dissatisfied with the fair decision of a public official. The Ombudsman has principal object to investigate allegations he receives complaining of maladministration.

As we know that an Ombudsman has a prime goal to investigate the misuse of powers by the administration. Therefore he is entrusted with a wide range of powers so that he could function independently and without any interference. This also ensures speedy and fair proceedings. Ombudsman's powers are not restricted like that of a civil court, and he can take suo-moto actions. The complainant need not prove his case beyond a reasonable doubt or lead any evidence as the Ombudsman has to inquire and investigate the case himself and for this purpose, he even has access to department files and orders.

Generally, a judge or a lawyer or a high officer is appointed as an Ombudsman by the Parliament, and he acts independently; thus he is not subject to the administrative hierarchy. An Ombudsman is directly answerable to Parliament by making a report. He also makes suggestions of his own to combat causes of complaints. As it operates independently, there is no kind of interference in his operations from any department not even from Parliament. Thus, in short, Ombudsman is the 'Watch Dog' or 'Public Safety Valve' against maladministration, and the 'protector of the little man'.

Conclusion

Corruption endangers the democratic set up of a country and a corrupt public servant breaks the trust of a citizen of a country and nothing can be graver than this. Corruption gives birth to other problems like disparity, high crime rate, breach of trust etc. Therefore, it becomes imperative for our political leaders to shift their focus to protect the interest of those who cannot protect their interest.

The Honorable Supreme Court has also held equality as an essential feature of a democratic country in *D.S. Nakara v. Union of India*(1983) 1 SCC 305). In this case, the Hon‘ble Court held that “it should be the prime aim of a socialist State to eradicate inequality in the context of income, status and standards of life. It is the fundamental aim of a socialist State to make available for people an appropriate standard of life and security from the cradle to the grave. In addition to these, it envisioned equality of income and equal distribution of wealth. This noble aim of equality shall be the prime objective of every welfare State providing equal opportunities to all irrespective of their social or economic background” In *Yogendra Kumar Jaiswal v. State of Bihar & Others*(2016) 3 SCC 183), Honorable Justice DipakMisra has evaluated the problem of a corruption case and termed it as a national terror, which should be dealt with the active and strict implementation of the laws. The Court has observed that the evil of corruption is self- infective having resistance to antibiotics. This social calamity warrants a different control, and hence, the legislature comes up with special legislation with stringent provision.

Corruption is omnipresent; there can be a difference in the way it has affected one country as compared to another. However, no country is left untouched. We have discussed its impact in detail in Chapter-IV. These countries have been able to achieve noticeable results by maintaining the balance between the legislation and its execution. The best example here would be the Foreign Corrupt Practices Act of the USA that allows its court to have extraterritorial jurisdiction over the companies operating aboard and Bribery Act of UK. However, results cannot be attained just by enactment, but accomplishment depends on the investigating agencies that ensure the effective implementation of the anti-corruption laws and policies in a country.

Our society is a progressive society, and nothing can remain permanent not even the way a crime is committed. With the passing of time and technological advancement, new techniques are developed to execute a crime effectively. We are now a part of a digital age, where everything is done online. So how can we expect our old law to apply in these circumstances? If we understand this necessary thing, half of the problem will solve. Our laws are incompetent because we fail to amend them by the present situation. We bring amendments based on situations that have already become our past. Therefore, it is essential for us to enact a law that changes with the changing time addressing all the current aspects related to the subject.

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