

A Critical Analysis of the Prevention of Corruption Act, 1988¹

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1. Background

To avoid a crime or any offence in future, there is a requirement of preventing the same from happening in the future. "Corruption free country is the aim of all the countries around the world²" so that there is good economic social development. Prevention is one of the key steps and it is like a pillar to reduce crime in this world. India also wants a corruption free country and India has been fighting to have such a country³. One of the main steps for achieving the aim of Corruption free country was found by the Supreme Court and High Courts in various cases that there are many loopholes in the law which is one of the main reasons for corruption existing in the country still⁴. The Courts have also mentioned that there are many loopholes and defects in the parent Act to combat corruption which is the Prevention of Corruption Act, 1988.

The CBI, CVC etc are investigating agencies who are been interfered by the politicians and are always motivated by politics⁵. Hence the main problem is that the functioning of the same will be badly compromised. There is no independence for the same agencies as there is interference from the politicians always⁶. These appointments are on deputation by the politicians. There are many civil servants and public servants who work in good faith and who are honest. There is no question of whether special protection is required for the public servants⁷. Of course, there is a necessity for special protection of public servants but not for public servants who are corrupt and do professional misconduct⁸.

There is equality to every one of the general populations under the steady gaze of law⁹. Each individual has equality under the watchful eye of law and all have measure up to insurance under the law. This law is sanctioned in the Constitution of India¹⁰. Certain provisions in the Prevention of Corruption Act, 1988 abuse the arrangement of the Constitution of India.

There is a difference between a layman and a public official. If a normal citizen, a layman is corrupt then there are provisions to arrest him immediately but in case of a public servant prior sanction for the same is required¹¹. To initiate any case against a public servant there is a requirement for sanction to conduct an investigation against him from higher authorities¹². For instance, if any doubt on one of the Judges in the Supreme Court, then there is a requirement for sanctioning the same from the Chief Justice of India¹³. These special provisions are nothing but discrimination of process of law.

There are so many situations which are discriminatory to the citizens in the public or government offices. In order for a work to complete faster and to have a proper quality work there is a necessity for these citizens to give bribe by way of money or assets etc¹⁴. It is not easy or feasible to get back the wealth which is accumulated through corruption as there are many loopholes and defects in the present enactment like Section 13 of the Act does not mention anything about the confiscation of ill-gotten property¹⁵. One more important point which is to be noted is that the sentence for offence for taking gratification other than legal remuneration under Prevention of Corruption Act, 1988 is minimum six months and maximum five years which are not severe and negligible¹⁶.

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² Press Trust of India, Government working hard on its goal of corruption-free India (May 22, 2015), <http://indianexpress.com/article/india/india-others/government-working-hard-on-its-goal-of-corruption-free-india-union-energy-minister-piyush-goyal/>.

³*Id*

⁴Devadatt Kamat, Permission to Prosecute (Jan 18, 2017), <http://indianexpress.com/article/opinion/columns/supreme-court-permission-to-prosecute-public-servants-pc-act-4479185/>.

⁵A.S.RAMACHANDRA RAO, COMMENTARY ON PREVENTION OF CORRUPTION ACT 489,(Universal Law Publishing Co.Pvt.Ltd. 2004).

⁶ Central Vigilance Commissioner, *supra* note 134.

⁷Sanjeev Sirohi, Should Article 311 of our Constitution be Amended?(Jun. 8, 2010), http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=18523.

⁸*Id*

⁹ Constitution of India, § 14.

¹⁰ INDIA CONST, art 14.

¹¹ PREVENTION OF CORRUPTION ACT, 1988, § 19

¹²*Id*

¹³Central Vigilance Commissioner, A report on Combating Corruption: Role of Accountability Institutions, Investigating Agencies, Civil Society and Media (Feb 12, 2014), http://cvc.nic.in/cvcbook_30092014.pdf.

¹⁴T R Raghunandan, Ten reasons why people pay bribe, and more (Jan 8, 2014), <http://bangalore.citizenmatters.in/articles/ten-reasons-why-people-pay-bribe-and-more>.

¹⁵ Loophole in the PREVENTION OF CORRUPTION ACT, 1988, §13.

¹⁶ PREVENTION OF CORRUPTION ACT, 1988, § 8.

There has been a need for amendment in the Prevention of Corruption Act, 1988 and the same was mentioned in the sixty ninth report on Prevention of Corruption (Amendment) Bill, 2013 in front of the Lok Sabha and Rajya Sabha¹⁷.

2. The Lacunas and Loopholes in the Prevention of Corruption Act, 1988

The main loophole is the penalty or punishment for corruption. The penalty for committing an offence under Section 15¹⁸ of the Prevention of Corruption is an important defect. Bribery and corruption involves more amount of money which deteriorates the Indian economy and which is a threat to the security and economy of the Country¹⁹.

In case of *Shanto Lal Meena v. State (NCT of Delhi)* held that “the Court has held that as far as punishment for offence under the Prevention of Corruption Act, 1988 is concerned, there is no serious scope for reforming the convicted public servant. Therefore, it shall depend upon the nature of crime, the manner in which it is committed, the propensity shown and the brutality reflected”²⁰

The prevention of corruption Act, 1988 has stated in Section 19²¹ that the court will not take cognizance of offences mentioned under few sections expect before the prior sanction of the competent authority²². The best example for the said loophole is that Mr. Subramaniya Swamy waited for the sanction from the then Governor of Tamil Nadu to lodge a complaint against Madam J. Jailalitha for misappropriating assets and indulging in corruption practices²³.

There is a strong requirement of law to check corruption in the private sector as well. The existing Prevention of Corruption Act, 1988 is to check corruption in the public sector and administrative forum. It is true that much of corruption arises in these sectors but it is not valid to neglect totally that corruption do occur even in the private sector also²⁴.

There is no specific provision or section which deals with corruption in the private sector²⁵.

There is a prerequisite to indict all general society workers or public servants who are in the post and misconducts. There was an Amendment bill in the year 2013 for the change of Prevention of Corruption Act . One such change asked for was to stretch out indictment authorize to even the resigned government authorities or resigned public servants. The reality of the matter is that once a public servant resigns deliberately or after the lapse of time of his administration the association with the organization wraps up. That is the employer employee relationship. This has now turned into a proviso or favorable position for the resigning public servants who entertain themselves with degenerate practices.

In today’s world the investigating agencies try both the petty corruption cases as well as big scams done or committed by the corrupt public officials²⁶. Hence there is a drag back. It is difficult for them to give time to study about the new methods of crimes committed by these officials. Thus, there is need to draw a distinction in going about the on two forms of corruption. There is again a need to amendment to Section 13(2)²⁷ is required because the word Criminal Misconduct is not defined anywhere in the Act. This way the corrupt public officials take advantage over the same.

¹⁷ Report of the Select Committee of Rajya Sabha on the Prevention of Corruption(Amendment) Bill, 2013 (Aug 12,2016), [http://164.100.47.5/newcommittee/reports/EnglishCommittees/Select%20Committee%20on%20the%20Prevention%20of%20Corruption%20\(Amendment\)%20Bill,%202013/1.pdf](http://164.100.47.5/newcommittee/reports/EnglishCommittees/Select%20Committee%20on%20the%20Prevention%20of%20Corruption%20(Amendment)%20Bill,%202013/1.pdf).

¹⁸ Section 15: Punishment for attempt.—Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

¹⁹ Central Vigilance Commissioner, A report on Combating Corruption: Role of Accountability Institutions, Investigating Agencies, Civil Society and Media (Feb 12, 2014), http://cvc.nic.in/cvcbook_30092014.pdf.

²⁰ (2015) 6 SCC 185.

²¹ Section 19: Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

²² PREVENTION OF CORRUPTION ACT, 1988, § 19.

²³ *State of Karnataka V. Jailalitha and others*, 2017 (2) TMI 926.

²⁴ Parliamentary Committee, Private Sector Bribery under proposed Anti-Corruption Law (Aug 12, 2016), <http://economictimes.indiatimes.com/news/politics-and-nation/private-sector-bribery-under-proposed-anti-corruption-law-parliamentary-committee/articleshow/53672937.cms>.

²⁵ *Id*

²⁶ Central Vigilance Commissioner, A report on Combating Corruption: Role of Accountability Institutions, Investigating Agencies, Civil Society and Media (Feb 12, 2014), http://cvc.nic.in/cvcbook_30092014.pdf.

²⁷ Section 13(2); Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

In case of *Rajinder Dass Gupta v. C.B.I* it was held that “public servant will fall within the purview of criminal misconduct under Section 13 if he or nay person on his behalf is in possession at any time during is office as public servant satisfactorily account for the property disproportionate to his known source of income”²⁸. It only covers misappropriation of property and possession of disproportionate assets²⁹. There is also a requirement of some sort of compensation to the honest public servant who goes through harassment.

3. Conclusion

In India there are many legal as well as other legislative provisions to eradicate corruption in India. Even though there are many provisions, yet corruption isn't eradicated from the society. Battling corruption has unavoidably turned into the most earnest requirement for tending to every single real test to governance in India. It is vital to build up a more centered approach around fighting debasement in India. The primary requirement for the hour is the foundation of Independent Commission against Corruption. There can be few suggestions given for the same through the researcher's point of view.

- The Punishment should be severe. Life imprisonment sentences ought be given for indulging in corruption practices. There won't be any wrong in even giving capital punishment to accused who indulge in big scams and playing with large amount of money by pulverizing the lives of so many people.
- The central issue which emerges is that why shouldn't there be any special court for dealing such cases which are a threat to human dignity and life. When there are special courts for labour law matters and industrial disputes cases, family matters, there should be a court to handle these corruption cases also. It is acceptable that there are Special Judges appointed for the hearing and giving judgments for the same but the fact that those Special Judges are no one other than the Sessions Judge is the fact. Hence there should be Judges with special knowledge about the cases and also there should be fast track courts to conduct and finish trials faster.
- The functioning of LOKPAL and LOKAYUKTA should be more transparent and the most important suggestion will be that there should deal with all the cases involving any economic offence in the State or the Centre. There are still certain states like Tamil Nadu which doesn't have Lokayuktha which should be addressed immediately.
- There should not be any interference of Politics with the investigation or the method or investigation of these investigating agencies in India. Moreover, the prominent step would be that the investigating agencies must go more prominent on online sources than in these documents.
- The highest levels of Government should have committed political backing. The political opposition also should also have political consensus and not just the ruling party. Ruling parties should make sure that there is a strong enforcement of ICAC so that there is almost transparency and accountability.
- The ICAC should be able to access other legal and judicial institutions so that its enforcement regime for fighting against corruptions.
- Police and law authorization agencies are themselves seen to be to be corrupt in India. Any anti-corruption strategy, including the establishment of a separate specialized institution to investigate and prosecute crimes relating to corruption, ought to focus on the nature of the institutional framework that needs to be created. Corruption in police at all levels of their collaboration with the general public has left the last with little confidence in this foundation, which should to be the defender and the guardian of the security of the population.

If a question is asked as to whether corruption will be totally eradicated from the society or not, the answer will be that dreaming of Corruption Free India should ideally be the one but practically not possible. India can become one of the least corrupt countries which itself will increase the economy of India and also the other developments. Thus all these suggestions are aimed at reducing the corrupt practices to the minimum rather than totally eradicating it.

²⁸*Rajinder Dass Gupta V. C.B.I*, 90 (2001) DLT 527

²⁹ Prevention of Corruption (Amendment) Bill, 2013