

INTRODUCTION

INTRODUCTION

***WHERE THE MIND IS WITHOUT
FEAR AND THE HEAD
IS HELD HIGH
WHERE KNOWLEDGE IS FREE
WHERE THE WORLD HAS NOT BEEN
BROKEN UP INTO FRAGMENTS
BY NARROW DOMESTIC
WALLS***

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A. STATEMENT OF PROBLEMS:

Corruption emerges due to rigid rules, lack of flexibility, artificial scarcity of goods, absolute discretionary power, lack of transparency of decision making and prolong trial before different courts.

There is code of conduct for public servants but no such code exists for political leaders. Similarly minimum educational qualification is required for entering in to government services and such provision has not been made for political leaders.

It is to be stated in this connection that United Nation General Assembly passed resolution in 2003 adopting the United Nation Convention

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against corruption, India the largest democracy in the World is the signatory to United Nation Convention against corruption but it is surprising to note that Government of India has not ratified United Nation Convention against corruption till date. Government of India has ignored some of the provisions contained in Art 6 , 30 & 36 of United Nation Convention against corruption. Apex Court in Vineet Narain Case highlighted the same anticorruption initiative as United Nation Convention against corruption. Moreover, Central Vigilance Commission Act 2003 conflicts with Art 30 of United Nation Convention against corruption.

Corruption usually emanates from higher level of administrative set up and it is a global phenomenon. With the advancement of science and technology, the complexities of life have multiplied with the result that the persons think it profitable to earn money by dishonest way. Corruption has entered into all sphere of society. It has become menace to the society and has created attention to legal thinker, students and people in general in the society. It is like a virus which has permeated in educational institution, high ranking official like IAS, IPS, and other cadre of Central Government Offices, Doctor, Engineer and who not. Corruption of bureaucratic system is rampant. Due to red tapism, corruption has been spread in administrative set up in government departments. It is not always true that person becomes corrupt due to necessity but from greed.

It is very difficult to expect society free from corruption due to the reasons that the persons who are to curb corruption are not at all serious in establishing reforms due to red tapism. Corruption has been spread in administrative set up and government's widespread corruption is almost all field of life is one of the cases of heavy deals of tainted money because human greed is the potential cause of corruption. The nation as a whole is passing through a kind of moral crisis. In officials circle, corruption is rampant to such extent that it is very difficult to get work done in government office without giving speed money.

Government of India constituted high power committee consisting of 30 members from both the houses of Parliament to prove the role of bank, financial institution, and stock exchange and fix number of persons at fault. The above actions on the part of government show that person becomes corrupt due to greed but not for need. The virus of corruption is not only confined to capitalistic society and it has been extended to socialistic.

There are so many persons in the society who are in extreme poverty but they maintain high degree of honesty and even they refuse to accept any kind of reward or do any work for extraneous consideration for their honest work. They are basically guided by moral standard and ethical value rather than financial condition. It is not vice to be poor person and it is vice to be dishonest or corrupt person. Poverty is not the disqualification but dishonesty is the disqualification.

It must, however, be said that crime and poverty are endemic to any society. Whatever be its form whether it is capitalistic or socialistic. Corruption is the violation of human rights. It flourishes where there is tolerance on corruption.

It is to be mentioned in this connection that corruption in India has become nationwide problem and it is being generally resorted to in a routine manner to get work done easily in order to get speedy result. It can be said that corruption in Government, Semi-Government and Public Sector Undertaking is not secret. It is openly practiced in spite of the fact that both the giver and taker of bribe know that it is the illegal act punishable under the law. The provision of Prevention of Corruption Act. 1998 fails to remove it, if not eradicated, this menace probably because of its peculiar nature that it is most beneficial to both the parties. So, it is evident that crimes of corruption

have no relation with the economic and financial condition. It evolves from greed and temptation for earning more money at the cost of others.

It has been observed that members of the community themselves contribute to the commission of various white collar crimes willingly or unwillingly. For example, illegal gratification or bribery to public servant to get work done is one of the common examples where victims themselves are to be indicated for involvement of corruption related cases. Such type of crime cannot be committed unless there is a demand for illegal favour from people and they are involved in this deal. Law Commission of India by its 29th report during 1966 submitted that scientific and technological progress in business world has led to the birth of white collar crime. The reason for colossal increase in white collar crime in recent time is to be observed in developing economy and technological growth in developing country.

The complexity of tax laws in India has opened door for tax evasion to avoid tax. Such type of practice is prevalent with influential persons like traders, businessmen, lawyers, doctors, engineers etc. It is alleged that they conceal their real income and also show fraction of income and as a result undisclosed source of income has led to the birth of black money. Bribery is an offence under Prevention of Corruption Act, 1988 and both bribe giver and bribe taker are equally punishable. It is stated that public officials indulge in illegal gratification for their personal gain. Corrupt officials are so skilful that they do not leave any evidence behind which they can be caught. They have expertise by their nefarious activities, pollute the national fabric and create atmosphere congenial for corruption. It has been observed that law breakers are cleverer than law makers. Due to such nefarious activities, corruption has enlarged growth of black money rather parallel economy is running throughout India which is equivalent to 35% of gross domestic product. A committee headed by V.S.Malimath, former Chief Justice Of Kerala High

Court appointed by Government of India few years back suggested reforms in criminal justice system and the said committee submitted his report sometimes in 2003. Main recommendation of such committee are that criminal justice system should aim at finding truth but not just shift through evidence to see whether the prosecution has established the guilt beyond reasonable doubt. The committee recommended that the concept of proof beyond reasonable doubt which is gateway rout for offenders be done away with. Committee recommended that judges could ask question to the accused on every aspects which the accused could be bound to answer. Failure or refusal would permit drawing of adverse inference. The law makers should seriously examine the Malimoth report and enact laws on the line suggested with great urgency lest citizen be put to shame again and again.

Corruption is low risk and high profit business because no investment is required. Data & Research showing harmful effect on growth have been mounting. Corrupt Countries appear to spend less on education which may cause illiteracy. Since corruption impedes foreign investment, World Bank has showed reluctance for granting loan. In corruption scenario, there are two parties such as one is bribe giver and another is bribe taker. Suitable attention has not been given against bribe giver since both stand on same footing in the eye of law.

Causes of corruption depend upon socio-economy factor and disparity of income amongst different classes of people. Lack of awareness amongst different classes of people and fear has led to the birth of corruption. The problem area of research study is that the right of people in dealing with Government Offices has not been adequately dealt with although there is strong Government machinery. The people should be conscious of their right while dealing with various departments of the Government. Since Prevention of Corruption Act, 1947 was not adequate to curb corruption, new Prevention

of Corruption Act, 1988 has been enacted by the legislature by repealing the old act. There was no special provision in Prevention of Corruption Act, 1947 in respect of power of appeal, revision and now under the new Act, i.e. Prevention of Corruption Act, 1988, the above provision have been enacted in order to make statute more effective with the view to combat corruption. The present study will take into account the development of law in respect of corruption related cases in the international and national field as well as part played by the Judiciary so far right of the general people is concerned. It is observed how corruption is sustained by ill defined boundaries between political and private business activities and how the role of state facilitates rather than hinders corruptions. From aforesaid discussion, it is evident that despite strong investigating agencies like CVC, CBI and other State Level Investigating Agencies, corruption has entered in all sphere of Administration right from the higher level to lower level and this system has led to the birth of different types of corruption. Prevention of Corruption Act is social welfare legislation which has been framed to remove corruption in Government Organization. Corruption is opposed to democracy and social order. It affects national economy and cultural heritage of India. So heartfelt attempt would be made through this study to bring out appropriate suggestions and remedy.

Judges have certain role in the society. But they cannot be silent spectator to the destruction of legislative supremacy. Some critics are of view that this is Judicial activism but in common people, it is Judicial dependence on the part of common people and such type of Judicial dependence has created a salutary impact and it has provided a safety valve to general people against arbitrary action on the part of executive and legislature. With the help of Judiciary, Corruption related cases such as various scams, scandals of political executive and bureaucrats have been exposed and offenders have been booked which has created faith amongst ordinary people.. It is surprising that both legislature and executive often tend to forget that all organs of state are under obligation to provide Justice to people in general. Due to non functioning or malfunctioning on the part of executive, judicial

dependence has been increased though it is termed as judicial activism. It is indispensable that nation must have Judges who are independent and constructive. The framers of Art.32,226 & 141 of Constitution of India provides power to higher Judiciary for dispensing justice to widest since and not to limit itself to review circle otherwise independent Judges have never hesitative to perform in the interest of Justice what may be called as act of Judicial Engineering.

Corruption is identified with any person or Institution who misuses the power and discretion conferred on the same. Ordinary citizens face unnecessary problems in their routine interaction with Government agencies. Practices such as acceptance of favour or misappropriation of public fund have actually come to be described as perks of holding public office and employment. Admittedly, the extent of Corruption may have a link with the increasing disparity between pay scales offered in the public and private sectors. However, the pervasive culture of graft provokes pessimism about the quality of governance. In the words of former United Nations Secretary General Kofi Annan “Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of Law, leads to violations of human rights, distorts market, erodes the quality of life, and allows organized crime, terrorism and other threats to human security to flourish”. In the discourse of International Law, the prevalence of Corruption is now considered to be violation of basic human rights. This means that the act of demanding or accepting bribes in lieu of performing routine governmental function is being equated with unjust restraints on personal liberty such as suppression of civil liberties and arbitrary detention. If these understanding are adopted in India, then there will be a case for the Judiciary to grant constitutional remedies in respect of instances of Corruption, over and above statutory remedies envisaged under the Prevention of Corruption Act.

Civil servants by a large always want to please their political bosses. In democratic set up, neutrality and fearlessness are indispensable for Civil and Police officials. Those who are honest and impartial are being shunted and side lined instead of being rewarded. It is surprising to note that even senior Civil servant including Director General of Police and Chief Secretary cannot restrain their temptation with a view to get handsome employment after retirement. Bureaucrats know very well that neutrality is no longer prized and hence subservience is a premium. In addition to above, neither politician nor Civil servants being free from prevailing rampant corruption because majority of officers know that easiest way of promotion and lucrative posting is to appease political bosses. In most of the cases, efforts of political masters succeeded because they know weakness of bureaucrats.

Some Political leaders seem to be the greatest threat to the integrity and ambitious rise of India. Rishi Aurobinda said that the leaders as petty and prisoner of dwarf humanity. In different context Winston Churchill aptly remarked “I cannot leave India to men of straw”. It is unfortunate that instead of taking stringent action against erring officials, they themselves are dependent on the support of corrupt bureaucrats who are looting national wealth. In the International scenario, United Nations is to be called as toothless tiger since it is fully controlled by USA both financially and politically.

Despite the fact that successive Administrative Reforms Commission including first one in 1966 have recommended to Central Government that State Lok Yukta be given suo moto powers in proceeding on complain or allegation of corruption. Government of Karnataka and Madhya Pradesh are only two States have given their Lok Yukta's such power. Uttar Pradesh is the highest incidence of corruption in the Country. Latest report of

Transparency International places Uttar Pradesh in the fourth spot in the index of most corrupted States. The report says that State Government is reluctant to review power of Lok Yukta and even State Government has not placed Lok Yukta's annual report before Assembly since 1998. No action appears to have been taken, on the contrary it is stated that they are waiting to Lok Pal Act to come through Parliament. Lok Pal Bill has been pending in the Parliament for the last four decades. So Ombudsman remains a paper tiger.

It is a matter of shame that in the last Lok Sabha i.e. 14th Lok Sabha, 125 MPs had criminal background and all tainted MPs are enjoining all facilities at the cost of public exchequer. Corruption has been increased at all levels and black money earned by the unscrupulous politician is being deposited in the Swiss Bank. Against 125 MPs, there are several charges including murder, rape, extortion, dacoity, kidnapping and corruption. About 10 of them were in Union Ministry. Some MPs had price tags attached to their asking questions in Parliament. Television footage showed bundles of currency notes being exhibited as bribe in the vote on no trust motion. They are all honorable members of the August body who took bribe and who displayed it to the world as an enjoyable circus show. One Public Interest Litigation has been filed by eminent lawyer Mr.Ram Jeth Malini and Mr. K.P.S.Gill former police chief of Punjab before Apex Court. The petitioner prayed before Apex Court seeking direction for bringing back India's money from foreign bank. It is reportedly informed that about 45 Lakhs Crores rupees have been deposited in Swiss Bank by one Mr.Hashan Ali Khan who has high political connection with the ruling party as highest tax evader. Recently there has been a strong verdict against corruption, bad Governance and religious intolerance. It does not mean that all ills of India's political system will be rooted out. It is reported that there are criminal's cases against number of MPs. But it is clear that common voter is becoming conscious of this evil and trying to punish those who consider political eminence as a license to plunder. This gives hope that criminalization of politics will gradually go down.

Transparency International surveyed during 2007 & 2008 in 180 Countries. The index showed from zero level to optimum level of corruption. As per index, Denmark is reported to have been placed as least corrupt country whereas Somalia is marked as most corrupt country. Perception index showed that least corrupt countries are Newzeland, Denmark, Singapore, Sweden & Switzerland whereas most corrupt countries are Iraq, Sudan, Myanmar, Afghanistan & Somalia. There is little consolation on the part of India that our country has not been placed under heading of “most corrupt countries”.

Right to Information Act 2005 has been passed by Parliament which has provided ample opportunities to the Citizen of India to know the various schemes of different departments of Governments. But proper implementation of above Act has not been made by the Executive. Besides, there is lack of awareness on the part of Citizen regarding the utility of above Act.

Being corrupt may be easiest way or indeed the only way to get what they want. At times, a bribe may provide a convenient means of avoiding punishment. Many who observe that politician, policemen and judges seem to ignore corruption or even practice it themselves merely follow their example. As corruption snowballs, it becomes more acceptable until it is finally a way of life. People with pitifully low wages come to feel that they have no option. They have to demand bribes if they want to make a decent living. And when those who extort or pay them to gain unfair advantage go unpunished, few are prepared to swim against the tide. “Because sentence against a bad work has not been executed speedily, that is why the heart of the sons of man has become fully set in them to do badly” observed King Solomon. Two powerful forces keep stoking the fires of corruption. One is selfishness and other is greed. Because of selfishness, corrupt people turn a blind eye to the suffering

that their corruption inflicts on others, and they justify bribery simply because they benefit from it. The more material benefits they amass, the greedier those practitioners of corruption become. “A mere lover of silver will not be satisfied with silver “observed Solomon. Greed may be good for making money, but it invariably winks at corruption and illegality.

To deal with corruption amongst public servant, Parliament enacted Prevention of Corruption Act 1988 by repealing Prevention of Corruption Act 1947. It is quadruplicate legislation as it contains provision of Prevention of Corruption Act 1947, Sec. 161 to 165A IPC, Criminal Law Amendment Act 1944, and Criminal Law Amendment Act 1952. The new Act aimed to consolidate and amend this Law relating to prevention of corruption and for matters connected therewith. Corruption is opposed to democracy and social order being not only anti people but aimed and targeted against democratic structure. It affects national economy and destroy cultural heritage. Unless it is nipped in the bud at the earliest, it is likely to cause turbulence shaking of social economic political system. Corruption has entered in every sphere of society. It affects social, economic, political structure of State but also destroys democratic value. It has been observed that special emphasis has not been given by the executive to deal with corruption. Due to prolong trial of cases, Justice has become costly affairs for general people because litigants have to move from lower court to higher court in order to get Justice after several years. Due to such attitude, litigants are being frustrated. They are of view that it is better to bear the burden of injustice than to move in the court.

Lokpal Bill so pending for several years, has been approved by Union Cabinet on 28.07.2011. The main feature of Lokpal Bill is to set up the institution of Lokpal to prove allegation against Union Minister and Group A Officer’s without having to obtain any sanction. The said Bill is to be introduced in the Parliament very shortly. The above Bill has not included

Prime Minister, Judiciary, conduct of Member of Parliament in Parliament and officials below the level of Group A.

B. OBJECTIVE OF STUDY:

Despite passing so many legislations to deal with corruption such as Prevention of Corruption Act 1947, Representative of People Act 1951, Prevention of Corruption Act 1988, Smugglers and Foreign Exchange Manipulators Act 1997, Central Vigilance Commission Act 2003 Right to Information Act 2005 & Right to Education Act 2009. Corruption prevails in vicious circle. So question may come as to why such corruption dominates as a whole? It is to be noted that United Nation General Assembly passed resolution in 2003 adopting United Nation Convention against Corruption. Government of India is the signatory to the above convention but surprisingly Government of India has not ratified the above convention. Because it is the lack of will on the part of Government of India to ratify the above convention. Supreme Court of India while passing judgment in Vineet Narain Case accepted some of the principle of United Nation Convention against Corruption. It is to be noted in this connection that present Lok Pal Bill suffers from many infirmities. Under the existing Lok Pal Bill, Lok Pal is merely an advisory body and Lok Pal is only competent to recommend. His recommendation is not binding in nature. In order to remove corruption from the society, new Lok Pal Bill is to be enacted by the Parliament. Mr. Anna Hazara civil activist started fast unto death campaign and due his agitation, Ministry of Law & Justice, Government of India by notification dated 09.04.2011 constituted ten member of committee to draft Jana Lok Pal Bill. Prime Minister, Cabinet Minister including Member of Parliament and judges

of High Courts & Supreme Court should come under the purview of Jana Lok Pal Bill. Besides, there is lack of will on the part of executive to implement the existing provision of law and there is also lackadaisical attitude of judiciary to deal with corruption cases effectively.

C. RESEARCH QUESTIONS:

The present research study involves following few basic questions:-

1. Whether existing laws on corruption is adequate?
2. Whether international instruments are implemented?
3. What is the present position in curbing corruption?
4. What is the role of judiciary in curbing corruption?
5. What is the role of legislature in curbing corruption?
6. What is the role of executive in curbing corruption?
7. What are the roles of investigating agencies like CBI and CVC in curbing corruption?
8. What is the legal weakness in curbing corruption?

D. HYPOTHESIS:

There is need to protect the general people of the Country from vices of corruption. Therefore in order to protect the interest of general people who are victims of corruption need to be intensively studied. With this agony, the researcher has been inspired to go ahead with the present research work on ‘Legal Control of Corruption in Government Offices : A Study of Supreme Court Cases under The Prevention of Corruption Act 1988’ on the hypothesis that in the fast changing social order, where human rights of each individual is the priority, the existing legislative policy that aim at securing and protecting the rights of general people which are insufficient, and particularly in curbing the menace of corruption in Indian society is inadequate to address present situation and there is urgent need to modify and amend the same.

E. LITERATURE REVIEW:

Necessary study of literature is done under two heads such as primary and secondary. As primary source, Constitution of India, Prevention of Corruption Act, Indian Penal Code, Representative of People Act, Right to Information Act, other statutes, International Instruments as well as reports both national and international shall be highlighted. Various books, Journals, periodicals, Articles & Un-published Work of law researches are to be taken as secondary sources. Under these laws, several rules, regulations, notification, by laws and orders have been framed by the executive authority of state. All these will come under the purview of delegated legislation. Besides, there are certain legislations and laws which are connected with anticorruption. The

laws which have got wider scope and application shall be taken into account. Previous statutes have been mentioned whenever it is felt necessary. The present research work is mainly confined to corruption related cases pertaining to India but brief description as well as provision of law in other Countries and at international level shall be made as and when necessary. In the present research work, the researcher has focused all major international instruments as well as laws relating to anti corruption. Corruption scenario of major nations such as Mexico, Bangladesh, China, Pakistan, other foreign countries including United Nation and World Bank have been highlighted. In addition to above, sphere of investigation is limited to the analysis of critical study of sentencing in corruption cases of Apex Court.

F. RESEARCH METHODOLOGY:

The object of this research study is to find out attitude of legislature, executive and judiciary towards corruption in the entire society and its effect on general people who are the victim of corruption. That is why, it is a fact finding investigation of law of corruption in India and decision of Apex Court. The present research study may be termed as doctrinal as well as non-doctrinal. The methodology of this research study is mainly analytical as the present study extends to examine the efficacy of existing laws and analyze them to make a critical evaluation of corruption related cases under Prevention of Corruption Act. So, this research study may also be designated as action research. In order to analyze the corruption related cases, the present study has been based upon codified laws (as primary source) law reports, journals and periodicals (as secondary sources) in respect of corruption related laws. After interpreting various judgments of Apex Court, the researcher has analyzed the view and trend of Apex Court in victimological perspective. Last but not the least, on the basis of study of existing laws and case laws on corruption matter, the researcher has made a critical analysis of present scenario with special

emphasis on remedial steps keeping in view of the development in international perspective.

G. SIGNIFICANCE OF STUDY:

Prevention of Corruption Act is social welfare legislation which has been framed to remove corruption in Government Organization. Corruption is opposed to democracy and social order. It affects national economy and cultural heritage of India. The legislative measures in this respect have not been remarkable which required further improvement. The present research work would examine the problems not only from legal point of view but would also include economic, political, sociological, anthropological, psychological and judicial approach. The deprivation and lack of proper implementation of laws and rules of all classes of people has attracted the attention of legislature, jurist, academician, administrator, intellectual and media person. The present study requires comprehensive research in this field. The present study is therefore likely to extend relief to the citizen from vices of corruption in the society. For the benefit of general people of the country who are the victim of global corruption, present research study shall be useful for common people of the Country. Due to lack of will on the part of political leaders, corruption has been flourished in vicious circle. That is why, present research study is to highlight the problems of corruption being faced by the common people. In the estimation of the researcher, this work shall be useful to the executive, legislature, social activist, judiciary, academician, government official, investigating agencies as well as Non Government Organization.

H. CHAPTERISATION:

The present research study has been discussed into six chapters:

Corruption in changing society: concept and magnitude in Indian and International perspective (Chapter-1). Development of Law of corruption in India (Chapter-2). Role of Indian executive and legislature in curbing corruption (Chapter-3). Role of Supreme Court in curbing corruption (Chapter-4). Critical study of sentencing in corruption cases (Chopter-5). Conclusion of Suggestion (Chapter-6).

Under the heading corruption in changing society : Concept and magnitude in Indian and International perspective in Chapter-1, the emphasis has been given on historical and conceptual aspect of corruption, corrupt behavior of public servant, quantum of corruption, modus operendi of corrupt official and statistical overview. Besides, focus is on the corruption in international scenario such as corruption in Mexico, Bangladesh, China, Pakistan ,World Bank , United Nation and foreign countries.

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Chapter-2 deals with evolution law of corruption in India such as law of corruption in India before independence and after independence, report of Tekchand Committee, object of passing Prevention of Corruption Act, modification and historical evolution of Sec. 161 Indian Penal Code in framing Sec. 7 of Prevention of Corruption Act in 1988, historical evolution and development of Sec. 162 Indian Penal Code & Sec.8 of Prevention of Corruption Act, historical evolution and development of Sec.163 of Indian

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Penal Code & Sec.9 of Prevention of Corruption Act, modification made in the definition of criminal misconduct under Prevention of Corruption Act 1988, amendment of Sec. 5 of Prevention of Corruption Act 1947, justification for retention of Sec.5 of Prevention of Corruption Act 1947, misconduct of public servant, presumption of guilt, nature of rebuttal of presumption, existence of black money and its confiscation under Prevention of Corruption Act, constitution of special court and Bill to protect whistle blower.

Chapter-3 provides the report of Santhanam Committee, Railway Corruption Inquiry Committee, report of law commission, election commission, role of Central Government, Indian Film Industry, Transparency International, report of Hyderabad economy committee, Malimath Committee, report of various other committees and commissions. In Chapter-3 a role of legislature has been highlighted in various statutes such as Right to Information Act 2005, Prevention of Corruption Act 1947, Prevention of Corruption Act 1988, Right to Education Act 2009, Judges Inquiry Bill & Code of Conduct of Judges, Representative of people Act 1951, Role of United Nation, Indian Penal Code 1860, Delhi Special Police Establishment Act 1946, Service law of corruption and Smugglers and Foreign Exchange Manipulators Act 1997.

Chapter-4 deals with code of conduct of judges, establishment of special courts, corruption in higher judiciary, view of Supreme Court on corruption, direction of Supreme Court on Election Commission, direction of Delhi High Court on RTI Act 2005 and view of different judges of Supreme Court.

Chapter-5 deals with critical study of sentencing in corruption cases. Apex court has delivered different judgments on different aspect of

corruption and case wise detailed view of researcher has been made at the end of each case.

Finally in Chapter-6, emphasis has been made on entire corruption scenario of the whole country. The detail executive, legislative and judicial approaches as well as trend of three organs of the country have been highlighted. Appropriate remedies by way of suggestion and reformative measures have been highlighted in this last chapter. Entire discussion has been rounded off.