

**PREVENTION OF CORPORATE CORRUPTION IN INDIA:
JUDICIAL RESPONSE AND THE RULE OF LAW-
A CRITICAL ANALYSIS**

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I. Introduction

Corporate corruption is a global phenomenon and it is omnipresent.³ Throughout the world the news related with scams, financial scandals and embezzlements in millions and billions by the corporate sectors and industrial houses have been getting space routinely in both print and electronic media. In infamous Neera Radia tape case the Hon'ble Supreme Court of India expressed its deep anguish about the rising graph of corruption cases in following words, "not only are we talking about pollution of the Ganga for the past 28-30 years... this pollution (corruption) is mind-boggling."⁴ Despite many conclusive findings of enormous corporate corruption we should not forget the corporate sector's contribution in the economic growth. The corporate sector provides employment, infrastructure and upgrading physical connectivity and provides better roads, basic amenities and ensures standard facilities to the people. It plays a key role in nation's economic growth but due to the numerous instances of scams and financial scandals, the progress and growth forced to stall. It is well known fact that corporate corruption has permeated in every sphere of activity. It poses dire threats to the social, economic and political fabric of the economy.⁵ It is an insidious plague that has a wide range of corrosive effects on society. It undermines economic interest and the rule of law of the country, also leads to violation of human rights, distorts markets, erodes the quality of life and it allow organized crime, terrorism and other threats to human security to flourish.⁶ In *Delhi Development Authority v. Skipper*

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³ Prafulla Kumar Nayak, "Combating Corruption in India- The Role of Civil Society", *Criminal Law Journal*, Vol-118, Part 1355, Nov, 2012, p. 305.

⁴ *Center for Public Interest Litigation v. Union of India*, AIR 2010 SC 415

⁵ Malathy Duraisamy and P. Duraisamy, "Causes and Consequences of Corruption in India" in Dr. A. Ranga Reddy (Ed.), *Dimensions of Crime and Corruption in India*, Serial Publication, New Delhi, 1st Edn., 2005, p. 401.

⁶ Dr. Subodh K. Singh, "Corruption: A Menace in India", *Criminal Law Journal*, Vol-118 Part 1348 April, 2012, p. 103.

Construction (Pvt.) Ltd.,⁷ the Hon'ble Supreme Court has said that the major source of agony in the society is unaccounted wealth amassed by the public officials through uncontrollable corruption. The apex court also expressed its strong displeasure over the slow prosecution of corrupt officials and the nexus between corporate people and top bureaucrats.

In a primitive sense the term "corruption" comes from the Latin word *corruptio* which means "moral decay, wicked behavior, putridity or rottenness".⁸ According to Oxford Dictionary, corruption means "dishonest or fraudulent conduct by those in power, typically involving bribery. The Black's Law Dictionary (2nd Edition) define corruption as a kind of illegality, and in a more explicit definition corruption is a vicious and fraudulent intention to evade the prohibitions of the law. The basic characteristics of the corruption whether it's a government or corporate have been largely the same viz giving bribery to government officials, putting political influence, indulging in peddling activities, patronage, cronyism, different sort of financial embezzlement, kickbacks to officials in lieu of awarding the contract etc. Therefore, it is not difficult to formulate a comprehensive definition of corruption, as in a simple term the corruption means illicit and unlawful activities gaining for financial benefits.⁹ The most apt and finest definition of corruption as per the World Bank is that "corruption is the abuse of public power for private benefit".¹⁰ From this definition it should not be presumed that corruption does not exist in the corporate sector rather prevailed in large scale, but hardly noticed easily.

II. Corruption in India: A Historical Overview

Historically corruption existed from the very beginning of human society albeit it has been decried by the ethical norms. The shades and contours of corruption have varied according to socio-economic, cultural and political disposition. The nexus between corporate houses, government officials and criminals has developed a set of unholy alliance. Moreover, the list of corruption in the corporate houses has continuously being increased and is still getting longer day by day. The historical perspective of corruption in a different period is given below:

⁷ AIR 1996 SC 2005

⁸ The Random House Dictionary, College Edn. 2012.

⁹ Dr. J. J. Mozika, "Corruption and Human Rights: The Right Based Approach towards Corruption", *Indian Human Rights Law Review*, Vol-4 No. 2, Dec, 2013, p. 185.

¹⁰ D Kaufmann, "Corruption, Governance and Security: Challenges for the Rich Countries and the World", *World Bank Global Competitiveness Report*, 2004-05, p. 32.

(i) Corruption in Early Period of Indian History: There are numerous references of prevalence of corruption in ancient India. But the most elaborate reference source seems to be Kautilya's "Arthashastra". Kautilya believes that despite greatest care taken in recruiting officials, there would be some who turn out to be corrupt. He further elaborate, "just as it is impossible not to taste honey that finds itself at the tip of the tongue, so it is impossible for the government officials not to eat up at least a bit of the king's revenue". Hence, strict discipline is prerequisite to curbing corruption and consequently severest punishment must be meted out to corrupt officials.¹¹ The *Arthashastra's* texts stresses to build an effective spying system that could help to detect corrupt officials and malpractices in the corridors of power.¹² But beside this, Indian ruler keep inherited the legacy of corruption from its ancient rulers who always expected some gifts (in the form of Nazrana) from their subjects.¹³

(ii) Corruptions during British Period: The corruption was prevailed during the reign of East India Company. In 1765 Lord Clive, the Governor General of the East India Company described the servants of the company as corrupt and railed against the "set of men whose sense of honour and duty to their employers had been estranged by the too eager pursuit of their own intermediate advantage." It was toward the end of the 18th Century that the concern for integrity was shown by the leadership of the East India Company and slowly but firmly, the civil service was cured of this weakness and was transformed into a body of integrity, professionalism and efficiency.¹⁴ But in the long period of scarcities during the World War II, the virus of bribery and corporate corruption had spread among all rank of the civil services.

(iii) Corruptions in Independent India: After India's independence, the first high profile scandal was the jeep scam of 1948¹⁵, in which the jeeps for defence personnel were required for the army operation in Kashmir. The series of other notable scandals like the Mudgal case

¹¹ Naresh Gupta "Corruption: An Inside Enemy of Indian Legacy" in Dr. A. Ranga Reddy (Ed.), *Dimensions of Crime and Corruption in India*, Serials Publications, New Delhi, 1st Edn., 2005, p.4.

¹² *Id.* at p. 5.

¹³ S. Sri Krishna and S. Anil Kumar, "Corruption in India: Overview" in Dr. A. Ranga Reddy (Ed.), *Dimensions of Crime and Corruption in India*, Serials Publications, New Delhi, 1st Edn., 2005, p.493.

¹⁴ *Supra* note 9 at p. 5.

¹⁵ The first corporate scam surfaced after India's independence during the premiership of Pt. Nehru, which was related to the purchase of army jeeps in 1948. In this scam V. K. Krishna Menon's role was questioned but no evidence was found against him, later on, he joined Nehru's cabinet as Defence Minister.

(1951), Mundra case (1957-58), Malviya-Sirajuddin Scandal (1963)¹⁶ had beleaguered the Indian governance system. The Indian Parliament had mounted the demand for drastic action against corruption in public life and for this the K. Santhanam Committees on Corruption was set up in 1962. The reports of the Committees confirmed the existence of widespread corruption in India. The report also says that the corruption was politico-administrative in nature, organized and had deep roots. It demanded firm, strong action to curb it. The upshot was the appointment of the Central Vigilance Commission as an anti-corruption authority against the members of the bureaucracy.¹⁷ Legislation to this effect was passed as Prevention of Corruption Act, 1988.¹⁸ Despite of this, the corruption gradually spread throughout India both in public and private sector. The government sector corruption can be detected and corrupt official can be booked but what about the private sector, whose official can't be nabbed as most of the corrupt practices done with mutual understanding and such type of corruption hardly come into the limelight. The Lokpal Bill which specifically addresses the issues of public and private sector corruption finally gone through but some of its provisions are highly unrealistic. Thus, it can safely be stated that the current form of the Lokpal (The Ombudsman Authority) is a weak anti-corruption watchdog. The earlier final draft of the Jan Lokpal had a mandate to investigate and punish the perpetrators of all sort of corruption whether public or private but this Lokpal is a toothless tiger. It happened due to the acute pressure from the corporate houses and certain political class of the country.¹⁹ It is pertinent to mention herein that in majority of corporate scams some government officials had been involved either directly or indirectly. These scams and scandals suggested that corruption has now become a pervasive aspect of Indian political and bureaucratic system. Some of the major scams in relation to corporate corruption are as follow:²⁰

- a) Coal Allotment Scam (Cost- 186000 Crores approx.)
- b) 2G Spectrum Allocation Scam (Cost- 176000 Crores approx.)
- c) Delhi Commonwealth Games 2010 (CWG) Scam (Cost- 70000 Crores approx.)
- d) Black Money Stashed by Indian Corporate Houses (Cost- 70000 Crores approx.)

¹⁶ Jeevan Singh Rajak, "Corruption in India: Nature, Causes, Consequences and Cure", For details, Please see, <http://iosrjournals.org/iosr-jhss/papers/Vol18-issue5/C01852024.pdf?id=8650> (Last visited on 03.02.2016 at 5PM).

¹⁷ *Supra* note 9 at pp. 5-6.

¹⁸ The Prevention of Corruption Act 1988, (Act No. 49 of 1988 dated 9th Sept, 1988).

¹⁹ *Supra* note 14.

²⁰ *Ibid.*

- e) Hawala Scam (Cost- 8000 Crores approx).
- f) Satyam Scam (Cost- 14000 Crores approx).
- g) Stock Market Scam (Cost- 3500 Crores approx).
- h) Kingfisher Revival Scam 2012-2016 (Cost 9000 Crores approx).

The above stated scams had already caused loss to the nation's exchequer to the tune of millions and billions of rupees.

III. Magnitude of the Corporate Corruption: Causes and Growth

With the initialization of economic liberalization in 1991, the India has seen remarkable changes in the governance through elimination of license and permit raj and minimizing the role of the bureaucracy, supported the transition towards a market economy and transformed the economy with high growth rate.²¹ In 1990-1999 the country has witnessed an escalation of corporate scams involving crores of rupees. It must be admitted that despite the government liberal economic policies there had been many instances wherein some of the policy and schemes (particularly the banking rules) of the government were heavily misused by the corporate houses.²² The Stock Market Scam of 1990 is finest example how Harshad Mehta misused the certain loopholes in Indian Banking Sector.²³ The core theme of the New Economic Policy of 1991 launched by the Prime Minister P V Narsimha Rao was the investment and reforms in banking sector thereby country had seen mushrooming of financial and banking companies. These small time companies had attracted the innocent people through their massive publicity for investment in Ponzi schemes and promised lucrative profits. The SEBI and other investigation agencies enquiry revealed prima facie evidence of the said private company having raised investments by issuing bogus allotment letters to induce investors. A Ponzi scheme is “an investment fraud that involves payment of purported returns to existing investors from funds contributed by new investors”.²⁴ A nexus of big corporate houses, politicians and bureaucrats has matured under the neoliberal regime and made our system more vulnerable to cronyism and criminality. We have good example of Sahara India Financial Company fraud case how its

²¹ Sudhir Dawra, “Policies of WTO Related to India” *World Trade Organisation-Organisation, Functions and Activities*, Radha Pub. New Delhi, 1st Edn., 2001, p. 427.

²² *Ibid*

²³ The Stock Market scam (1991) caused the loss to the exchequer to the tune of five thousands crores and the main accused were Harshad Mehta and Ketan Parikh.

²⁴ Madhura Karnik and Manu Balachandran, “Yet Another Ponzi Scheme Goes Pop in India” in <http://www.scroll.in> (Last visited on 20.02.2016 at 6:30 PM).

founder Mr. Subrato Roy developed proximity with all political leaders in order to nurture his corporate interests. This is also why economic growth has such an iniquitous impact, allowing a few corporate entities and rich individuals to reach the top of the global wealth lists, even as the bulk of the population suffers from stagnant and insecure living standards. Since the full-fledged implementation of neoliberal reforms in 1991, we have seen a motley of rise in the magnitude and sophistication of corruption and financial crimes — from the Stock Market scam, Hawala and Telecom scams of the Narasimha Rao era, to the murky Defence Deals wherein ruling party president was caught red handed in a sting operation conducted by Tehelka.com, the news portal. The UTI scam and the disinvestment of Centaur Hotel Mumbai raised serious doubts of corruption in the whole process.²⁵

III.I. Types of Corporate Scams

(i) Falsification of Accounts: In this case the companies falsify the accounts and several international accounting and audit firms have been found to indulge in falsification of account as a result, the accounts and financial statement do not present a true and fair picture of the Company's financial health. In this process, the Shareholders, bankers and other stake holders are also misled. As a result, in some cases, the company (eg. satyam) and audit firm (As thus Anderson) both ultimately lose their identity and existence. Some of the methods usually adopted to falsify account are:²⁶

- a) Showing fake and excessive expenses in the books of account.
- b) Making bogus entries in the books of account with some ultimate motive.
- c) Undervaluation or over valuation of stock.
- d) Charging excessively low or high depreciation in order to inflate or reduce projects.
- e) Over valuation or under valuation of assets.
- f) Over valuation or under valuation of liabilities.
- g) Making fictitious entries of loans from promoters or directors to route black money.

(ii) Under Invoicing and Over Invoicing: Generally, the importers are required to pay custom duty on the imported goods or according to the

²⁵ *Ibid.*

²⁶ K. Sowmya, "Corporate Scandals in India", *Cauvery Research Journal*, Vol-3 Issue 1 & 2, Jul. 2009 - Jan. 2010, For detail, please see <http://www.cauverycollege.ac.in/is307.pdf> (Last visited on 3.2.2016 at 9PM).

value of imports. But in under invoicing the importers ask the exporters to show low prices of goods in the invoice so as to minimize custom duty payment. The difference between actual prices and prices shown in invoice is remitted to exporters through illegal means. In such cases, custom officials are also bribed to get clearance of imported goods.²⁷ Similarly in case of over invoicing the exporters get cash and other incentives from the Government as mean of export promotion. Some exporters overcharge in the invoice to claim greater amounts of incentives. They compensate foreign buyers for difference in prices by illegal means. Therefore, under invoicing and over invoicing are the types of corporate scams adopted by companies engaged in international trade.²⁸

(iii) Tax Evasion by the Companies: Many business firms suppress their sales turnover and net profits so as to reduce their tax liability. Bribes are paid to tax officials for assessing lower turnover and projects. Tax evasion is more common in case of income tax, sales tax, excise duty and stamp duty.²⁹

III.II. The Corporate Scams that Shook India

Since independence, we have faced a number of scams in India. In recent past there is unbelievable increase in such incidents. There are number of reasons for this, but the all-round denigration in public morality is one of the basic reasons. Both print and electronic media have exposed corporate corruption at the higher places of authority and power. Right to information has become a potential weapon to expose corporate corruption. Some of the major corporate corruption is as under:³⁰

(i) Harshad Mehta and Ketan Parikh Stock Market Scam (1990): In this scam the shareholder were cheated. Harshad Mehta security and banking scam involving Rs 5000 crore in it.³¹

(ii) 2G Spectrum Allocation Scam (2011): The 2G spectrum allocation scam is the biggest scam unearthed in recent times. The former Telecom Minister A. Raja disbursed 122 2G licenses and spectrum in January 2008. Rather than auctioning these licenses and spectrum, they were allocated on a totally arbitrary first-come-first-served basis, at prices that were fixed in 2001. As per the CAG report, the total loss to the central

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ K.C. Joshi, "Redressal of Public Grievances by Combating Corruption: International and National Measure to Combat it with Special Reference to India", *All India Reporter Journal*, Edited by V R Manohar, Pub by All India Reporter Pvt. Ltd. Nagpur, Vol-99 Part-1188, Dec.2012, p.211.

³¹ *Ibid.*

revenue exchequer was 176,379 crores.³² The CAG has calculated the loss of government revenue on account of the allocation of under-priced spectrum to be in the range of Rs. 57666 crore (on the basis of the value of equity sold by Swan to Etisalat) to Rs. 176645 (on the basis of spectrum price discovered through the 3G auction in 2010).³³

(iii) Another Telecom Scam: Another Minister of the UPA government from the DMK, Dayanidhi Maran, has recently resigned from the cabinet. It is noteworthy that the CPI (M) had vehemently opposed the policy decision to raise the FDI limit in the telecom sector to 74%, when Maran was the Telecom Minister (from 2004 to 2007). CBI is now investigating allegations that Maran forced the former owner of Aircel to sell his company to another Malaysia based company, Maxis, owned by a business tycoon of Indian origin. After Maxis acquired Aircel, it was granted 14 licenses to operate in various parts of the country.³⁴ It is alleged that the Maxis owner in return invested Rs. 800 crore in Sun TV, which is owned by Dayanidhi Maran's brother. The Sun TV network has emerged as the largest media conglomerate in the country today and Sun Direct (in which the Maxis owner invested money) has become the largest DTH service provider. This is a classic example of how crony capitalism works.³⁵

(iv) Delhi Common Wealth Games Scam (2010): A huge amount of public money were looted and squandered in organising the Common Wealth Games in the year 2010, the games were to be held in Delhi. It is widely reported that massive money were spent and highly overpriced contract were awarded to some choiced firm. According to the media reports and finding of the commission of enquiry some of the firms set up just few days back before awarding the contract. Almost every items were procured in exorbitant price. The main beneficiary of the CWG scam are top members of the organising committee namely its president Suresh Kalmadi and Lalit Bhanot and certain top bureaucrats of Delhi Government. The Shunglu Committee has also indicted the then Prasar Bharati chief and Doordarshan DG for improperly awarding broadcasting rights of CWG to a UK based company SIS Live causing a loss to the exchequer of Rs. 135 crore.³⁶

(v) Krishna Godavari Gas Basin Scam: The other big scam which is presently unfolding relates to the Production Sharing Contract between

³² MA Shewan and Uday Veer, "Major Scandals in India", *Corruption and Money Laundering and Law-Part I*, Mittal Pub. New Delhi, 2011, p. 173

³³ For details, please see, *Booklet Brought out on the Occasion of the Left Parties Campaign against Corruption*, July 2011, also available at: <http://www.cpimwb.org.in> (Last visited on 03.02.2016 at 11:30 AM).

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

the central government and the Reliance Industries on natural gas extracted from the Krishna-Godavari (KG) basin in the Bay of Bengal. A draft Performance Audit report of the CAG has already questioned the way the RIL was allowed to artificially inflate its development cost from \$2.5 billion in the initial contract to \$8.8 billion. As per the CAG Report, it has been observed that Director General of Hydrocarbons (DGH) and the Petroleum Ministry of conniving with the RIL, indulging in “irregularities and bending rules” to “oblige” RIL in the KG basin gas fields, leading to a massive and as yet “unquantifiable” loss to the national exchequer, says the detailed CAG Report on KG Basin controversy. Independent estimates suggest that total loss to the government would be to the tune of \$10 billion or around Rs. 45000 crore.³⁷

(vi) Coal Blocks Allocation Scam (2012): It pertains to allotment of fields in which there is an allegation of causing a loss of more than ten lakh crore of rupees to the nation exchequer. On 31st may, 2012, Central Vigilance Commission has directed the CBI to investigate it.³⁸

(vii) Satyam Computer Scam (2009): The biggest corporate scam in India has come from Satyam Computer Services. Ramalinga Raju founder of Satyam has resigned as its chairman after admitting to cooking up the account books. With a fraud involving about Rs. 14,000 crores, Satyam was heading for more troubles. The company had a huge hole in its Balance Sheet consisting of nonexistent assets and cash reserves that have been recorded and liabilities that are unrecorded.³⁹

(viii) Other Scams: Several other scams have occurred in the recent period, which follow the similar pattern of ministries bending the rules to favour corporate entities against kickbacks. At the central level, there was the IPL scam where the MoS External Affairs had to resign following the exposure of his wife being given ‘sweat equity’ in Kochi IPL, on whose behalf he was openly canvassing. There was also the controversial deal between ISRO’s Antrix Corporation (which comes under the PMO) and Devas Multimedia, for S-band spectrum which was subsequently annulled, following exposures of huge losses to the exchequer owing to the deal. Allegations of wrongdoings have been made in the import and export of items like wheat, rice, sugar and onions in the past few years.⁴⁰ In addition to the cases given above there have been several other scandals that caused loss to the central revenue of the government.

³⁷ *Ibid.*

³⁸ *Supra* note 28 at p. 212.

³⁹ *Supra* note 24.

⁴⁰ *Supra* note 31.

IV. State Response towards Corporate Corruption

All over the world, the countries have faced the horrors of the corruption. For e.g. Hong Kong was under the United Kingdom till 1997, had rampant corruption. But after 1997, the Chinese government initiated key structural programme aiming to root-out the all sorts of corruption. Now the corruption in Hong Kong is a matter of past. On the same footing, the Singapore and Malaysia, where corruption was the way of life, but due to constant and steadfast political will of the government, the corruption has been completely wiped out from their soil. All these suggest that state response and political will is pre-requisite condition for elimination of corruption and other evil things form the state. In this context it is pertinent to mention herein that Malaysia and Singapore had provided huge power to their anti-corruption watchdog and stern punishment provisions incorporated in the law books with regard to corruption cases whether it is prevailed in public or private sector.

In Indian context, the story altogether different towards corruption, herein the role of the state in preventing corporate corruption and punishing the corrupt corporate houses has always been questionable. Moreover, in majority of corporate corruption and scandals that had occurred during last six decades there had been direct involvement of politicians, bureaucrats and criminals and hardly anyone punished.⁴¹ As stated earlier the role of the State and its intuitional framework towards the menace of corruption has always been in question as State owned institutions are failed to contain the illicit activities of the corporate houses. The need of the hour is to dismantling the growing nexus between corporate, bureaucracy and criminal. The existing legal provisions are competent but hardly availed by the State against any corporate houses. The chief reasons of the growth of the corporate scams and rampant of financial embezzlement is the laxity from the State and its instrumentalities. Amongst them the following factors are responsible for the uncontrollable corporate scams:-

- (i) No independent anti-corruption wing in the country
- (ii) Weak anti-corruption laws
- (iii) Limited powers given to the SEBI, CBI and DRI
- (iv) Financial support given to the all Political Parties by the Corporate Houses
- (v) Lokpal Bill enacted but it's a weak Lokpal as it has no control over CBI, another drawback is the punishment provisions for whistle blower

⁴¹ Abidulla I. Hadimani, "Corruption: A Curse and its Cure" *Criminal Law Journal*, Vol-119 Part 1357, Jan, 2013, p. 9.

India has been ranked 76 out of 168 in Transparency International's Corruption Perception Index (CPI) 2015.⁴² The chief reason of this state of affairs is incompetent anti-corruption agencies like Central Vigilance Commission, SEBI, Enforcement Directorate and Central Bureau of Investigation. The autonomy issue for the CBI has been a longstanding demand but the government had not paid any heed on this. The apex court has recently termed the agency in harshest words as "caged parrot" in the custody of the government.⁴³ It is pertinent to mention herein that India still struggling to have an effective Lokpal to tackle the menace of corruption both in public and private sector. The slow prosecution of corruption cases by the police under the Prevention of Corruption Act 1988 is another reason of uncontrollable corruption in both public and private sectors.

V. Law, Policy and Judicial Response towards Corporate Corruption

The role of the judiciary is highly remarkable on growing menace of corruption. From Neera Radia case to 2G Spectrum allocation case to Coal Blocks allocation case, the apex court has shown extra-ordinary initiative and passed several significant orders and judgment. It was the Hon'ble Supreme Court that allowed constituting of Special Investigation Team in 2G Spectrum Allocation scam who will directly report to the apex court. Such landmark initiatives of the Supreme Court are really admirable. In *Dr .Subramanian Swamy v. Dr. Manmohan Singh*,⁴⁴ the Hon'ble Justice Ganguly observed that "Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular, democratic and republic. Similarly in *State of Madhya Pradesh v. Ram Singh*,⁴⁵ the Hon'ble Supreme Court expressed its deep concern over the magnitude of corruption and slow prosecution of errant officials and termed the corruption in a civilized country is a disease like cancer. In *Vineet Narain v. Union of India*,⁴⁶ the apex court ruled that the central agencies like CBI and Revenue Officers attached to the Enforcement Directorate etc. had not perform their duties and legal obligation as per the rule of law. It was asserted that "all government agencies entrusted with the

⁴² For details, please see <http://www.transparency.org/cpi2015#results-table> (Last visited on 24.2.2016 at 4PM).

⁴³ See, "CBI a Caged Parrot by Heart Says Apex Court", *The Times of India*, New Delhi Dt. 08.05.2013, Later on the Union Govt. sets up GOM on CBI autonomy, also see *The Times of India* Dt. 15.05.2013

⁴⁴ (2012) 3 SCC 64

⁴⁵ AIR 2000 SC 870

⁴⁶ *Vineet Narain v. Union of India* (1998) SCC 226

duty to discharge their functions and obligations accordance to the rule of law”.

The rule of law means the government must fulfill its primary duty of governance and ensure the law must be obeyed. Wherever rule of law weaken the bigotry, injustice and corruption will flourish.⁴⁷ The weak legal system tends to undercut the legitimacy of the State and make mockery of law. Today the widespread corruption in the whole system not because of corrupt mindset of the people but people knows that no law can harm them. Due to weak law and inefficient institutional framework of the country, the magnitude of the corruption in our public and corporate has crossed all limits. It is interesting to note that India too ratified the UN Convention against Corruption, 2003⁴⁸ in the year 2011 but never implemented some of its key provisions like to prevent corruption in the private sector⁴⁹ and to prevent taking bribery in the private sector⁵⁰ in The Prevention of Corruption Act Bill 2013.⁵¹ The contentious Bill has been still pending in Rajya Sabha for assent.

In the earlier period, the corruption cases are mostly dealt under the Indian Penal Code 1860. The relevant provisions under Sec 161 to 165A of Indian Penal Code 1860 dealt with offences relating to public servant which is now repealed by the Prevention of Corruption Act 1988⁵². The offences relating to criminal breach of trust and criminal conspiracy has been defined u/s 409, 420 and 120B etc. of Indian Penal Code 1860 and the same are main provisions against the Public Servant and Private Individuals or organization in corruption cases.⁵³ The Prevention of Corruption Act 1988 consolidates the Prevention of Corruption Act 1947 and Criminal Law (Amendment) Act 2013 aiming to provide a single statute for the offence relating to corruption and misuse of official position by the public servant.⁵⁴

The Prevention of Money Laundering Act 2002, considered a significant law containing the un-regulating monetary transactions by the

⁴⁷ N Vittal, “Corruption and the Rule of Law”, *Rule of Law in a Free Society*, N R Madhava Menon (Ed.), Oxford Pub. New Delhi, 2008, p. 131

⁴⁸ The General Assembly Resolution No. 58/4 of 31 October 2003.

⁴⁹ Article 12 of the United Nations Convention Against Corruption, 2003 (General Assembly Resolution No. 58/4 of 31 October 2003.

⁵⁰ Article 21 of the United Nations Convention Against Corruption, 2003 (General Assembly Resolution No. 58/4 of 31 October 2003.

⁵¹ For details, please see; The Prevention of Corruption (Amendment) Bill 2013

⁵² Section 31 of The Prevention of Corruption Act, 1988 (Act No. 49 of 1988), w.e.f. 9.9.1988

⁵³ See, Indian Penal Code 1860 (As amended 2013), *Criminal Manual*, Universal Law Pub. House, New Delhi, 2015, p. 565-569

⁵⁴ Dr. Rathin Bandyopadhyay and Dr. Alok Chakraborty, “*Legal Control of Corruption in India*”, Paragon Pub., New Delhi, 1st Edn., 2012, p. 146.

corporate houses and private individuals. The Act states that an offence of money laundering has been committed if a person is a party to any process connected with the proceeds of crime and projects such proceeds as untainted property. "Proceeds of crime" means any property obtained by a person as a result of criminal activity related to certain offences listed in the schedule to the Act. A person can be charged with the offence of money laundering only if he has been charged with committing a scheduled offence. Improper accounting has a host of implications under Indian law, leading to violation of PMLA 2002. There is an obligation under the Companies Act 2013 to state 'true and fair accounts', which could be violated in these cases, entailing personal criminal liability for officers of the company. Payments with an illegal purpose cannot be deducted as expenses under Indian Tax laws. Therefore, recording such payments as expenses, and recording fictitious expenses, could be construed as tax evasion

At presently, India has the following anti-corruption legislation in force:

- i. The Indian Penal Code, 1860
- ii. The Prevention of Corruption Act, 1988.
- iii. The Benami Transactions (Prohibition) Act, 1988.
- iv. Foreign Exchange Management Act, 1999.
- v. The Prevention of Money Laundering Act, 2002.
- vi. The Right to Information Act, 2005.
- vii. The Companies Act 1955 (As amended in 2013).
- viii. The Banking Companies (Regulations) Act 1947
- ix. Security and Exchange Board of India Act 1991

V. Concluding Remarks

Corporate corruption can be termed "economic terrorism" because it undermines the stability of the government and cause huge economic losses to the nation. Due to the corruption state forced to take certain anti-people decisions that caused price rising of essential commodities and certain basic services. The corporate corruption also obstacles the economic growth as few individual got benefited and become richer while honest industrialists forced to be eliminated through a well-planned conspiracy of the big corporate houses. The implementation of institutional reforms can benefit significantly from the participatory process that is being developed for anti-corruption activities. Equally important, any participatory process, however sophisticated, ought to lead to concrete results beyond enhanced participation and heightened awareness. Thus, identifying key institutional

reforms in India, and mobilizing support for such reforms, needs to be fully integrated into the participatory process from very early on. Such early convergence is likely to promote a better balance between prevention and enforcement measures in addressing corruption. Until recently, the pendulum was firmly in the “enforcement” corner. The gradual swing towards the middle ground has taken place due to recognition of the limitations to expose legalistic enforcement measures, since the law institutions themselves are currently part of the corruption problem in India. Lastly, it would be unfair to paint the entire corporate houses as corrupt and dishonest industrial houses; yes fortunately there are some excellent leaders like Ratan Tata, Azim Premji and Narayan Murthy who uphold ethical values in their business activities. These are people who can act as the conscience of the corporate sector, leads a corporate introspection drive and evolve a code of behavior to cleanse the entire corporate sector.