

## Chapter II

# *Corruption : Nature and Definition*

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### CORRUPTION : NATURE AND DEFINITION

#### AN OVERVIEW

Corruption is a deviation from normal human behaviour in a geo-political setting whereby causing the derailment of individual and institutional accountability, transparency and natural justice. Corruption is a barometer of a nations' development and decline which determines its stanching stature and estimation among the country of nation-states. But of late, corruption has become a way of national life and has already been institutionalized beyond the comprehension of ordinary human imagination.

Although, no statistical data can possibly be compiled to assess the extent of corruption amongst our political leaders yet in view of the experience many of us have had with the working of our bureaucracy, it is hardly necessary to convince ourselves of the pervasiveness of this phenomenon. Eradication of this civil form our society is perhaps inconceivable at the present juncture of our developmental process and all. We can hope for its prevention or control to the possible extent within the parameters of our socio-political and economic environment.

Even this, it is needless to say that it involves behavioural change and law is only one of the instruments for such a change. Fortunately, however, corruption in the form of giving and taking of illegal gratification has not yet become a customary behaviour in this country. It is therefore, conceivable that law can still play an effective role in bringing about a

change is not too distant in future provided that necessary political will along with a strong and viable implementation machinery supported by a judiciary responsive to the purpose or objects of the law, exists side by side.

The definition is essential to circumscribe the boundaries of a field of inquiry. It helps in making a coherent estimation of a particular phenomenon and arising at specific conclusion. The definition is all the more significant to avoid vague generalisations.

Corruption is a value loaded term and in a general sense may include a wide range of activities within its ambit. However, for various reasons, which are not relevant to be recorded for the purposes of the present study, all such activities and behaviours of the individuals may not be included within the boundaries of the definition of 'corruption'. Suffices is to mention here that from moral, ethical or religious standards, a particular act may be a 'corrupt act' but it may not be so from sociological, criminological or legal standards. Moreover, a particular behaviour may be an act of corruption in a specified time frame, whereas the same behaviour might not be an act of corruption in another specified time frame.

Therefore, for the purpose of present study, the term 'Corruption' may be defined and discussed nature of corruption, definition of corruption, the sociological, criminological and legal standards only. Again, it is pertinent to point out here that a particular act may be an act of 'corruption' from sociological point of view, but it may not be so from the legal point of view. However, an act which is legally defined as an act of

corruption may also be so from the sociological view point. Thus, such niceties may not be overlooked while defining the phenomenon of corruption.

Webster's<sup>1</sup> Universal Dictionary (1961) provides the meaning of the word 'corrupt' as (1) to make or become evil or morally bad, (2) to take or become impure

The word 'corruption' means, according to Webster's as the act of corrupting or state of being corrupt. Such meanings of the word 'corruption' as given in Webster's Dictionary have religious-historic reasons.

Webster's Third New International Dictionary (1961) defines 'corruption' in an entirely different context. It defines 'corruption' as 'inducement by means of improper considerations to commit a violation of duty'<sup>2</sup> interlinked and are inseparable. However, 'corruption is a wider term and has wider connotations than the term 'bribery'.

#### A. CORRUPTION: NATURE

Like that of several other socio-economic offences, corruption stands out as an offence which affects the community as a whole. It is not just an offence between the perpetrator of a traditional crime like murder, theft or rape and an innocent victim. In fact and reality the bribe-giver and the bribe-taker are equally guilty.<sup>3</sup> Although, corruption undoubtedly

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1. Webster's Second New International Dictionary of English Language (Unabridged) U.S.A., Second Edition (1934).
  2. Webster's Third New International Dictionary of English Language (Unabridged), U.S.A. (1961)
  3. Howard E. Freeman and W.C. Jones, "Social Problems", 2nd Ed. 1973, p. 245.

affects the morality of the people in general, but its overwhelming impact is on the economic health of a nation and accordingly corruption will have to be classified as an 'economic offence'. It goes without saying that the poor strata of our society, which has limited paying capacity, suffers the most due to administrative corruption and besides this, the economy of a country beset with the evil of corruption is affected due to the generation of unaccounted or 'black money' which is a major factor responsible for unbridled inflation. The offence of corruption appears to have been regarded more as an economic evil rather than immoral hazard and accordingly corruption deserves to be classified as an economic offence.<sup>4</sup>

It is difficult to apportion the blame for corruption as between officers at the highest level and their subordinates. It is true that economic deprivation in the middle and lower class officials in the past may have led to a large number of corrupt practices but this, in itself, does not absolve the superiors whose lust for higher and higher standard of living is never satiated. Then again, corruption like sacrifices, starts at the top and percolates down to the bottom.<sup>5</sup>

One more distinguishing feature of the offence of corruption is that the victim as also the beneficiary of the offence are equally interested in

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4. See, Gazette of India, 23d November 1946, part V, Statements of objects and reasons, which says:

"The scope for bribery and corruption of public servants increased enormously by war conditions and though the war is now over, opportunities for corrupt practices will remain for considerable time to come. Contracts are being terminated; Large amounts of the Government surplus stores are being disposed of; there will for years be shortages of various kinds requiring imposition of controls, and extensive schemes of postwar reconstruction, involving the disbursement of very large sums of Government money. All these activities of its continuance or extension in figure are such as to justify immediate and drastic action to stamp it out".

5. Singh, Surendra, "An Anatomy of Corruption in India", *The Journal of Correctional Work*, Vol. 19, 1973, p. 50.

maintaining utmost secrecy about their transactions. This aggravates the difficulty on the part of the enforcement staff in obtaining vital evidence which will help the prosecutor to secure conviction in deserving cases.

## **B. CORRUPTION : DEFINITION**

The simplest definition of corruption is improper or selfish exercise of power and influence attached to a public office or to a special position in public life. In the legalistic jargon of the Indian Penal Code, a corrupt person is one who "being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State, or with any public servant as such".<sup>6</sup>

In other words, any act of commission or omission by a public servant for securing pecuniary or other material advantage directly or indirectly for himself or his family or friends is corruption.

According to Peter H. Odegard<sup>7</sup>, corruption is in a sense a product of the way of life of an acquisitive society where 'money talks', where what 'works' is justified, and where people are judged by what they have

6. Dwivedy, Surendranath and Bhargava, G.S. "Political Corruption in India", Popular Book Services (1967), New Delhi, p. 1.

7. Peter H. Odegard, "Political Corruption - United States, quoted by John B. Monterco in his "Corruption : Control of Maladministration, Maharashtra, Bombay, p. 112.

rather than what they are. The over-emphasis on the general cultural *milieu* may suggest that spiritual values as distinct from material pursuits are an antidote to corruption.

This is not to say, however, that a public servant always accepts or obtains illegal gratification for conferring a benefit to some one immediately. At times gratification to a public servant is given by a person for securing a future advantage. Further, a public servant may not always be acting by himself to solicit illegal gratification. He may secure the same gratification through an intricate network of intermediaries and the gratification again may take various forms. It is obvious, therefore, that a precise and perfect definition of corruption is difficult to formulate.

A broad definition is that "corruption is the betrayal of public trust for individual or group gain."<sup>8</sup> This definition, it is needless to say, does not define the content of 'public trust' and accordingly it has a tendency to indicate that it speaks of or it presupposes some sources of wealth which a public servant can take or use to his private advantage. Accordingly, therefore, the definition appears to be more suited to cases of misappropriation of public funds by a public servant, which represents only a category of corruption. From this angle, the position will not be very much different if corruption is defined as misappropriation of government properties or funds through criminal breach of trust".<sup>9</sup>

There are other definitions which have sought to be more precise. Thus, it has been said that "a public official is corrupt if he accepts money

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8. B.A. Lkorwak, "Public Officials and Corruption in Nigeria". *Indian Journal of Public Administration*, 1987, p. 62.

9. A. Kakworthy, *Shorter Oxford English Dictionary*, Vol. I, p. 432.

or money's worth for doing some thing that he is under a duty to do any way, or that he is under duty not to do, or to exercise a legitimate discretion for improper reason".<sup>10</sup> Obviously, as per this definition, the act of using one's official position to deliberately advance one's personal goals, will be corruption. However, it appears to emphasize more on two categories of corrupt practices by public servants namely, accepting or obtaining of illegal gratification and the abuse of official position for securing pecuniary advantage. This definition also fails to take within its fold such categories of corruption as misappropriation of government property or funds through criminal breach of trust or otherwise.

A definition, which is commendable for it's comprehensiveness, if not precision, is that of Joseph G. who has rightly pointed out that there may exist a whole range of definitions of official corruption but basically it means the use of public office with its prestige, influence and power in order to make private gains. This gain need not necessarily be monetary but it amounts to breach of laws and regulations in force, based on and supported by established attitudes shared in varying degrees by all members of society including public servants.<sup>11</sup>

### C. THE PHENOMENON OF CORRUPTION

The phenomenon of corruption might have a close correlation to the ethos of developmental activities<sup>12</sup> that followed on the heels of the second

10. Macmillan, M., "A theory of Corruption" *Sociological Review*, 1961, p. 183-84, cited in Literature on "Police Corruption" by A.K. Simpson, 1st Ed. 1977, p. 8.

11. Joseph G. Jabbru, "Bureaucratic Corruption in Third World: Causes and Remedy". *Indian Journal of Public Administration*, Vol. 22, 1976, p. 674.

12. Arnold J. Heidenheimer, "Political Corruption - Reading in Comparative Analysis" (Holt, Reinhart and Winston, 1970).

world war. Massive injection of money for reconstruction of a shattered economy coupled with unusual discretionary powers in the hands of higher and middle executives of licensing, spending, controlling distribution of essential commodities etc. led to greater and greater corruption.<sup>13</sup>

Indeed, there are thinkers who feel that corruption in administration has certain positive aspects too since it helps in speeding up the administrative process. This may be partly true only in the context of speed money<sup>14</sup>, but that is only a part of the story. It is now widely known that a large portion of public funds are being siphoned off by responsible public servants and even bank officials entrusted with the task of advancing loans to lowest category of farmers and entrepreneurs are deducting a sizeable portion of the loan in the name of commission.<sup>15</sup>

#### **D. SIGNIFICANCE OF CORRUPTION**

Irrespective of what our legislators may have in their mind while enacting the Prevention of Corruption Act, the overall impact of corruption in developing countries like India is growing demoralization of our people. We are presently in the midst of a war against poverty, malnourishment and economic disparities of our people. To wage a war of any kind whatsoever what is really important is the morale of the people. It is needless to say, that such morale is presently lacking. What has happened in the past is that a minority of the people have been enriched at the cost of vast majority. There is again another adverse effect of corruption which is by far the worst. It is a common belief today that much of the corruption in

13. Santhanam Committee - A Report, p. 8-13.

14. The words "speed Money" are used to denote small amounts paid to the public servant to speed up the issue of permits, Licences or other Administrative.

15. Agarwala, S.K., Public Servant's Offence of Corruption and Sentencing by Supreme Court of India, *The Indian Journal of public Administration*, vol. 26 (1980), p. 93B.

public servants has begun from the highest level. Unprecedented wealth has been accumulated not only by some of the political leaders but even by a large number of top and middle executives.<sup>16</sup>

The disenchanted masses today can not be expected to rise to the occasion and extend their willing hands to the leadership and the executive staff so as to enhance the momentum of development. People of India, it has been very aptly pointed out, can tolerate poverty and deprivation for quite sometime, but not their corrupt rulers.<sup>17</sup>

#### E. CAUSES OF CORRUPTION

Corruption is an offence like that of many other offences punishable under the criminal law of our country. Basically, therefore, it is the sociologists and the criminologists who can delve deep into causes of corruption. For that matter, the causes of crime, in general, equally applied to the offence of corruption. However, it can perhaps be suggested that certain special socio-economic and political factors do accentuate the tendency to commit these offences which could be bracketed together under the title of corruption. The aforesaid factors can be summarised in the following works.

The aftermath of the second World War accompanied by scarcities, controls and the flush of easy money was perhaps one of the factors responsible for corruption.<sup>18</sup>

16. From some of the decided cases, this fact becomes sett evident. Thus see *Rao Shiv Bahadur Vs. State of Vindhya Pradesh*, 1954 Cr.L.J. 910 (S.C.), *S.A. Venkataraman V. The State* 1958 Cr.L.J. 131 (S.C.) *State of Gujarat V. Raghunath Vamanroo Baxi*, A.I.R. 1985 SC 1092.

17. Singh, L.P., "Morality in Public Affairs", *Administrative Change*, Vol. II, No. 2, 1984, p. 163.

18. Santharam Committee Report, 1964, p. 8-9.

The second factor was the fall in real income of the various categories of public servants.<sup>19</sup>

According to Myrdal, the extent of corruption has a direct bearing on the stability of the government of a state.<sup>20</sup> He thinks that the main factors responsible for increasing corruption in the developing countries are :

1. Little loyalty to the community as a whole, whether on the local or the national level. This, according to Myrdal, implies stronger loyalty to less inclusive groups family, cast, ethnic religious or linguistic community.
2. The state of transition from colonial to self government.
3. Wide discretionary powers and low level of real wages.
4. Cumulative effects working within the system of corruption itself.<sup>21</sup>

Some of the major factors that have been regarded to be responsible for corruption by different scholar are also worth taking into account :

- (i) A defective electoral system which had led to an unholy alliance between the politicians and big businessmen. The parties raise funds for the election expenses from business houses in exchange for favours done or to be done in future. The problem aggravates alongwith the increase in the cost of election.<sup>22</sup>

19. Santhanam Committee Report, 1964, pp. 43-45.

20. Gunnar Myrdal, "The Asian Drama". Kalyani Publishers, New Delhi, 1982, p. 938.

21. Ibid, pp. 937-958

22. Diaz, S.M. , Purvading Corruption in Contemporary Society, *JL of Criminology*, July 1965, p. 152.

Unscrupulous industrialists, businessmen, contractors, tax-evaders and smugglers are too ready to provide the finance for successive elections. Where ministers collect funds for their party, executive officers naturally get involved and are compelled to protect the said erring persons.<sup>23</sup> Obviously, therefore, some officials of the administration secure the protection of politicians and such favoured officials get the best positions and promotions. In their turn these officials use corrupt means and nepotism to please their political masters.

- (ii) Administrative delays and red-tapism is another major cause of corruption and this has led to the dishonest practice of giving speed money.<sup>24</sup>
- (iii) Rapid industrialization and consequent urbanization has changed our values in such a way as to enhance the importance of status through possession of money.<sup>25</sup>
- (iv) The emergence of a class of white-collar criminals indulging in tax evasion, under-invoicing, over-invoicing of export and import, sub-standard performance of contracts, hoarding, profiteering and blackmarketing etc. have afforded unprecedented opportunities for corruption to public servants.<sup>26</sup>
- (v) In an economy of expanding money circulation, moral and ethical values have considerably slackened resulting again in corruption.

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23. Singh, L.P., *Administrative Change*, Vol. II, No. 2, 1984, pp. 169-170.

24. Santhanam Committee Report 1964, 8-9.

25. *Ibid*

26. *Ibid*, p. 11

- (vi) **Misplaced sympathy for corruption public servants is another factor for encouraging corruption.**<sup>27</sup>
- (vii) **It is also said that existing anti-corruption law agencies are totally inadequate to prevent higher-level corruption.**
- (viii) **Inadequate financial resources by way of monthly salary resulting in economic deprivation coupled with the increase of consumerism and commercialism in the environment is another factor for corruption.**<sup>28</sup>
- (ix) **Social obligation towards the members of one's family, the customary practice of giving dowry for a daughter's marriage and the hankering for social status have been responsible for corruption to a certain extent. It is true that no person is corrupt at his birth but the environment in which he lies including the various institutions and associations around him make him learn the techniques and methods of corruption. The Santhanam Committee had aptly pointed out that corruption can exist only if there is some one willing to corrupt and capable of corrupting.**<sup>29</sup>

## **F. BRIBERY AND CORRUPTION**

A colloquial word associated with corruption is that of 'Bribery' and hence, it becomes appropriate to clarify the meaning of the latter. Although the words 'bribery' and 'corruption' seem to have been used synonymously in the past but the former seems to have narrower connotation. It is bribery to give a public servant money or property of any value in exchange for an

27. Santhanam committee Report, 1964, p. 10-11.

28. Singh, N.K., "Bureaucracy and Corruption Administrative Changes", Vol. II, 1974, p. 152.

29. Santhanam Committee Report, 1964, pp. 11-12.

agreement by the public official to do or refrain from doing something that is against his official duty. At the same time it is bribery for a public official to agree to do or not to do something in derogation of his duty in exchange for money or property.<sup>30</sup>

Broadly speaking, corruption refers to all sorts of dishonest dealings including bribery.<sup>31</sup> It comprehends all "improper or selfish exercise of power and influence attached to a public office or to the special position one occupies in public life".<sup>32</sup> This is obviously a comprehensive meaning of corruption and it is in this sense that the word 'corruption' has been used in this work. It is needless to say, that the inchoate offences of attempt and abetment in relation to the aforesaid conducts will be naturally included in this study.

## G. SOCIOLOGICAL BASIS OF CORRUPTION

There is a thin dividing line between approaches adopted by sociologists and criminologists while viewing the phenomenon of corruption. In fact, sociological approach complements and supplements the criminological approach towards the phenomenon of corruption. However, the fact remains that sociological approach towards 'corruption' being essentially normative, has a wider scope and larger dimensions.

Sociologists view the phenomenon of corruption in relation to the group interest in a specified social system. While perceiving the culture

30. Neil C. Chanein Kenneth R. Evans. "Criminal Law for Policemen", 2nd Ed. C. 1976, 1971, p. 204.

31. Webster's New World Dictionary, 2nd College Ed. p. 319.

32. Government of India (Ministry of Home Affairs) Report of Committee on Prevention of Corruption, New Delhi 1964 (Santhanam Committee, 1964, p. 5).

milieu of a social system, the customs, beliefs and artifacts which form the culture elements of a social system: sociologists concern is to view the interaction between these elements and social system. These cultural elements, which form the basis of conduct norms in a society, pave the way for understanding a particular phenomenon from sociological point of view.

Thus, sociologically speaking, the term 'corruption' has been defined in relation to the norms of common interest.

A bribe is defined as a "price, reward, gift or favour bestowed or promised with a view to pervert the Judgment or corrupt the conduct especially of a person in a position of trust, as an official or voter."<sup>33</sup>

Encyclopaedia of Social Sciences provides that "Bribery is the practice of tendering and accepting private advantage as a reward for the violation of duty. To bribe is to control by means of tangible inducements rather than by persuasion or coercion... Bribery also involves an intention to influence and to be influenced in a sense incompatible with good faith, and passes by degree to the offering and receiving of favours in which the offering shows but a vague desire to keep on good terms and the receiving entails no more than perfunctory thanks. The concept likewise implies that the nature of the duty involved is distantly understood. As the vagueness of obligation increases, acts of bribery merge into bargaining, price setting and term making in general".<sup>34</sup>

33. Rex V. Whitaker, 3 K.B. 1283 (1914).

34. Lasswell Harold D. 'Bribery' "Encyclopaedia of the Social Science", Vol. 1, Seligman, Edwin R.D. et al. The Macmillan Company, New York (1962), p. 690.

The term 'bribery' and 'corruption' are used as synonyms to each other. In fact both the terms are of a social group in a particular social system. Any violation of these norms by placing the special interest of an individual over the common interest of a social group in a social organisation has been termed as 'corruption'.

The authors maintain that bribery is an instance of expected or realized value gain in a corrupt act. Some corruption proceeds, not by inducement, but by creating an expectation or realization of avoided losses. "All values may be at stake, since, corruption may be engaged in to avoid foreclosure of mortgage (wealth), to prevent a political loss from blocking renomination (power), to preclude blackmail (respect and rectitude), to avoid being beaten up (well being), to prevent exclusion from inside information (enlightenment), to prevent his qualification as a candidate for further training and competition (skill) or to forestall loss of friends (affection). The various participations in a sequence of corrupt conduct may have very similar or very different perspectives in regard to their own goal values".<sup>35</sup>

The term 'corruption' has very wide social ramifications. Therefore, different sociologists have expressed their articulations on the subject in different ways. Moreover, with the establishment and development of various social institution in a social organization and the perspectives on the functioning of such institutions in a social organization and the

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35. Rogow and Lasswell, op.cit., The Functional definition of Corruption as brought out of Rogow and Lasswell as discussed above finds expression in Indian Laws of Corruption, See note "Indian Legal System".

perspective on the functioning of such institutions becoming clear, the approach to the study of phenomenon of corruption becomes divergent.

H.A. Brasz defines 'corruption' with relation to power. According to Brasz :

" I propose to interpret corruption in the sociological sense as meaning the corrupt exercise of derived power, or the stealthy exercise of derived power, or the stealthy exercise of power on the basis of the authority inherent in that power or on the basis of a formal competence to the detriment of the objectives of the original power and to the advantage of outsiders under the pretence of a legitimate exercise of power".<sup>36</sup>

It is clear that sociologists' concern is the safeguard of community and common interest in a social system. A sociologist views the phenomenon of corruption as the exploitation of institutions rooted in a social system for the welfare and amelioration of common men for one's own individual benefits. Robert C. Brooks considers corruption as the "intentional misperformance or neglect of a recognised duty, or the unwarranted exercise of power, with the motive of gaining some advantage more or less personal."<sup>37</sup> Brooks does not consider corruption and bribery as synonymous to each other. According to him, 'bribery' is narrow, more direct, less subtle. On the other hand, 'corruption' is of wider import and may include bribery also.

36. Brasz, H.A., "Some notes on the sociology of corruption" *Sociological Mearlandica*, 1:2 (Autumn, 1963) cited in, Heidenenheimer, Arnold J. (edited) "Political Corruption" Holt Reinhart and Winston, New York (1970), p. 41-45.

37. Brooks, Robert C., "Corruption in American Politics and Life", Dodd, Mead, New York (1910), p. 49.

W.F. Wertheim extends the scope of corruption to other social institutions as well. According to him, "the concept also implies bribery of person other than public servants, e.g. politicians, Trade Union leaders, Journalists, members of the liberal professions, electors and most important, employees of private industry."<sup>38</sup>

With the emergence of new socio-political order, sociologists have frequently referred to the political systems and institutions related by a political system. Thus, the phenomenon of corruption was sought to be analysed in relation to 'power', 'politics' and 'public offices'. The political power being the fountain-head of all power and with the control of State administrative apparatus by the political bosses, sociologists' circumspection of defining and analyzing the phenomenon of political corruption grew more. Such an analysis became more relevant for the democracies where power flowed through the boxes of ballot. The behaviour of politicians who in the words of H.A. Brasz had: "the pretence of being absolutely loyal to the principal whilst in actual act being intent on benefiting oneself and/or third parties"<sup>39</sup> became the subject of greater sociological inquiry. Since the politicians, in order to place their special interest paramount, established a nexus with other public officials and public servants who also made hay while sun of political power shown over their heads, the phenomenon of 'political corruption' had to be defined with all its contours and ramifications.<sup>40</sup>

38. Wertheim, W.F., "Sociological Aspects of Corruption in Southeast Asia", quoted in "Political Corruption", Heidenheimer, Artold, J. op.cit. p. 196.

39. Brasz H.A., op.cit, p. 8.

40. For the role of politicians and their Abuse and misuse of power, and their nexus with public servants in generating the phenomenon of corruption.

Joseph J. Senturia defines political corruption as "the misuse of public power for private profit."<sup>41</sup> According to him, an act should be regarded as corrupt when the "best opinion and political morality of the time, after an investigation of the intentions and circumstances of the act, reach the conclusion that in this act the public interest is being sacrificed for the benefit of personal interest."<sup>42</sup>

The term 'Political Corruption' has now acquired a technical scintillation. Thus, Charles P. Taft views the phenomenon of corruption as follows : "*Political Corruption in a technical sense is a willful exploitation of political office or opportunity for personal gain. Corruption involves an unlawful act (or failure to act) and a tangible or in-tangible benefit. The corrupt individual defines the situation in term of personal aggradizement, rather than community service. The machinery of Government is manipulated in the interests of predatory groups. Politicians, criminals and businessmen employ the resources of the community for their own ends, rather than for those of the general welfare.*"<sup>43</sup>

In view of the foregoing, it may be concluded that the sociologists' take a broader view of the phenomenon of corruption. However, by and large, all of them are in agreement that corruption is :

- (a) Violation of conduct norm of a social group;
- (b) Placing special or personal interest above the common interest;

41. Senturia, Joseph, J. "Political Corruption" (Edited), in Seligman [Edwin, R.A. et al "Encyclopaedia of Social Science", op.cit., p. 448.

42. op.cit

43. Taft, Charles. P., "What is the civic conscience" Annals of the American Academy of political and social Science, 280: 142-148 (March 1952), quoted in Elliott, Mabel A. et al. "Social Disorganization" (Fourth Edition) Harper and Row, New York (1961), p. 520.

- (c) Stealthy exercise of derived power;
- (d) Exploitation of public or political office for personal gains;
- (e) Giving the pretence of loyalty to the principal whilst in actual practice being intent in benefiting oneself and/or third party;
- (f) The phenomenon may occur in governmental or private institutions or agencies.

In more modern context, corruption may be "seen as a concomitant phenomenon accompanying the politico-administrative process."<sup>44</sup> However, as pointed out by John Waterbury, "normatively, a public functionary may be considered corrupt whether or not law is being violated."<sup>45</sup> On the other hand, in the legal sense, corruption is self-regarding behaviour on the part of public functionaries that directly violates legal restrictions on such behaviour.

## H. CRIMINOLOGICAL BASIS OF CORRUPTION

The foregoing discussion reveals that sociological analysis emphasize that an act which laces common interest of a social group subordinate to special or the individual interest is an act of 'corruption'. Therefore a social group may endeavour towards a strict adherence of the conduct of its members to place special interests subordinate to the common interest. Any violation of this conduct will be a social deviation and hence a 'crime'. It is, however, important to note that sociological definition of 'corruption' which encompasses multitude of deviations may

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44. Waterbury, John, "Endemic and Planned Corruption in a Monarchical Regime", *World Politics*, July 1973, p. 534.

45. *Ibid.*

not find place in the criminological definition in to. No doubt, criminological definition of 'corruption' may be based upon normative orientation. In fact, both the approaches towards the phenomenon of corruption "recognize the notion of the abuse of power and influence for private ends."<sup>46</sup> However, Criminology and Criminal Law do not recognize the multitude of activities as falling within the arena as sociological approach does. Since 'Corruption' has been recognised as a threat to social system and acts of corruption as a violation of the norm of placing special interest over common interest, it has found place in the criminal law. Thorsten Sellin remarkably analyzes the issue in these words. "Among the various instrumentalities which social groups have evolved to secure conformity in the conduct of their members, the Criminal Law occupies an important place, for its norms are binding upon all who lie within the political boundaries of a state and are enforced through the coercive power of that state."<sup>47</sup> According to Sellin, "the criminal law may be regarded as in part a body of rules which prohibit specific forms of conduct and indicate forms of conduct and indicate punishments for violations. The character of these rules, the kind of type of conduct they prohibit, the nature of the sanction attached to their violation, etc. depend upon the character and interests of those groups in the population which influence legislation. In some states these groups may comprise the majority, in others a minority, *but the social values which receive the protection of the criminal law are ultimately those which are treasured by dominant interest groups.*"<sup>48</sup>

46 . Waterbury. Jhon, op.cit., p. 535.

47 . Sellin, Thorsten, A Sociological Approach "The Sociological of Crime and Delinquency", Second Edition, Wolfgang, Marvin E. et al. Edited, Jhon Wiley and Sons Inc, U.S.A. (1962), p. 5.

48 . Ibid., p. 5.

Sellin rightly maintain that dominant interest groups shape the criminal law of state. But, at the same time, as he points out with exactitude, that in some cases, even in democracies the importance of strong minority groups can be seen shaping some part of the criminal law.<sup>49</sup> Therefore, consequently one comes across the terms like 'deviation from the norms', 'violation of duty' or 'betrayal of trust' in the definitions of corruption.

In order to fix up the proper perimeters of the definition, criminal law specifically relates the acts of 'violation of a duty' or 'deviation from the norms' in relation to a particular office – by and large, a 'public office' or a 'governmental office'.

It is relevant to record some of the definitions in this behalf.

According to Samuel P. Huntington, "Corruption is behaviour of public officials which deviates from accepted norms in order to serve private ends."<sup>50</sup>

John T. Noonan Jr. defines bribery as "the act or practice of benefiting a person in order to betray a trust or to perform a duty meant to be performed freely. Bribe occurs in relation to public official and, derivatively in private transactions."<sup>51</sup>

Jacob Van Klaveran observes that "in everyday life corruption is taken to mean that a public servant abuses his official power in order to procure for himself an extra income from the public."<sup>52</sup>

49. Sellin, Thorsten, *op.cit.*, p. 5.

50. Huntington, Samuel, P., "Political order in changing societies", New Haven (1968), p. 60.

51. Noonan, Jr. John T. *Encyclopaedia of Crime and Justice*, Vol. 1, Kadish, Sanford H. et al. (Edited) (The Free Press, New York) (1983), p. 19.

52. Klaveran, Jacobvan, quoted in "Political corruption" Heidenheimer, Arnold, *op.cit.*, p. 193.

Committee on Prevention of Corruption maintains, "In its widest connotation, corruption includes improper or selfish exercise of power and influence attached to a public office or to the special position one occupies in public life."<sup>53</sup>

It is evident from all these definitions as cited above that they have a sociological stratum. It is obvious that the choice of variables, contrary to sociological ethos, is somewhat limited. Nevertheless, the normative orientation of these definitions may not be under-estimated.

In fact, any criminal law definition of 'Corruption' may not be and should not be devoid of sociological orientation. "The state of the criminal law", asserts W. Friedmann, and rightly so, "continues to be as it should a decisive reflection of the social consciousness of society. What kind of conduct an organised community considers, impairing the life, liberty or property of the offender, is a barometer of the moral and social thinking of a community. Hence, the criminal law is particularly sensitive to changes in social structure and social thinking."<sup>54</sup> And factually, criminal law has, by and large remained a decisive reflection of the social consciousness of society.<sup>55</sup>

Criminal law has attempted to grapple with the new realities which are the product of new socio-economic changes taking place in different socio-economic systems world over. The changes had to be affected in

53. Report of the Commission on Prevention of Corruption, Government of India, Ministry of Home Affairs, (1963), p. 5.

54. Friedman, W. "Law in a changing society", Stevens and Sons Limited, London (1959), p. 165.

55. Enactment of Prevention of Corruption Act, 1947 and subsequent amendment to the act, amendment of section 21 Indian Penal Code are an illustration to the point. For Full discussion see Note "Indian Legal System", infra.

view of the transition of society from one pattern to another pattern. In the words of W. Friedmann, "Social changes affect criminal law in many, through development in Science, especially in biology and medicine; through changes in the moral and social philosophy, through changes in the structure of the society especially in its transition from a rural, self contained and relatively sparsely populated, to a highly urbanized and industrialized pattern."<sup>56</sup> However, criminal law howsoever sensitive to the social change, has not always been able to keep pace with social transformation or social metamorphosis to cope up with the new challenges. Even though a plethora of enactments on 'Socio-economic offences' have sprung up, yet all the new and ever increasing criminogenic areas do not seem to have been covered by these enactments and laws.

In a special reference to corruption, Amitab Kundu rightly remarks that, "It is therefore, not possible to work out on the basis of the definition, permanent criterion for identifying corrupt activities in the dynamic world of ours where ethical values change over time and space".<sup>57</sup>

#### (a) LEGAL DEFINITION OF CORRUPTION

The offence of corruption and bribery has been defined under various statutes of Indian Legal system by using different expressions.

The Indian Penal Code, 1860, employs the expression "accepting gratification other than legal remuneration". It also includes "accepting

56. Friedman, W., op.cit., p. 166.

57. Kundu, Amitab, "Anatomy of Corruption", *Southern Economic Review*, Annamali University Tamil Nadu, April (1973), p. 1.

valuable things" under certain circumstances within the definition of 'bribery'.

The Prevention of Corruption Act, 1947, uses the term 'Criminal Misconduct'.

(The) Representation of People Act, 1951, strikes with the term 'bribery'. However, under this Act, the term 'bribery' is not used for the same purposes, as in other two statutes viz., Indian Penal Code and Prevention of Corruption Act.

All these definitions of corruption may be discussed separately as under:

#### (i) ILLEGAL GRATIFICATION

Section 161 of I.P.C. defines the offence of 'illegal gratification'. According to Section 161, the offence of accepting or obtaining illegal gratification is committed when :

- I. A public servant or a person who expects to be a public servant;
- II. Obtains or agrees to accept or attempts to obtain, for himself or for any other person;
- III. Any gratification other than legal remuneration;
- IV. Such gratification was accepted as a motive or reward, for doing or forbearing to do an official act; showing or forbearing to show favour or disfavour to someone in the exercise of his official functions.

The Section 161 is further extended by an explanation which provides that the expression 'illegal gratification' is not restricted to pecuniary gratification or to the gratification estimate in money only.

Thus, 'gratification' forms the basis of liability under Penal Code. It is the term used for accepting a bribe by the public servant. It is, therefore, desirable to consider this concept in all its ramifications.

Webster's Dictionary gives the meaning of the word 'gratification' as pleasure or satisfaction. It appears that it is in this sense that the expression has been used in this section of I.P.C. such meaning is quite comprehensive taking within its fold various forms and modes of bribes.

The courts have taken the view that 'gratification' is a very wide term. It was held in *State V. Pundlik Bhikaji Ahire and Another*<sup>58</sup>, that: "gratification' is inclusive of all satisfaction of desire or appetite". However, the expression 'gratification' has been, by and large, estimated in terms of money.<sup>59</sup> Since money is one important source of affording pleasure, in as much as it implies command over things which afford pleasure. Though, the objects of pleasure should form the part of gratification, but courts insist that it should be of some value.

In *Trilochan Singh V. Karnail Singh*<sup>60</sup>, the court held that gratification must be of some value, though it need not be something estimable in terms of money (only).

58. A.I.R. 1959, Bomb. 543.

59. A survey of Reported cases has disclosed the total absence of any case where the prosecution as launched for gratification other than money.

60. A.I.R. 1968 Punjab, 416 (F.B.)

Thus, the modern forms of corrupting the public officials, such as entertaining them or their family members are excluded from the purview of the definition of illegal gratification. Since it has been insisted upon that illegal gratification should be of some value.

**Mens-rea :** The two important elements which constitute a crime viz. (i) *Mens-rea*, and (ii) *actus reus* do not find place in the law of corruption and bribery.

Thus, Supreme Court in *Shiv Raj Singh V. Delhi Administration*<sup>61</sup> held that it is immaterial for the courts to consider whether or not the accused public servant was capable of doing or intended to do such an act. It is sufficient if he has taken the illegal gratification other than legal remuneration.

A mere demand or solicitation of gratification by a public servant amounts to an offence under Section 161 of Indian Penal Code.<sup>62</sup> Thus, a person shall be guilty even if the act of taking gratification has not been completed. There may be a situation where the receiver of money may not be, in fact, in a position to render any assistance to the giver of the illegal gratification and he receiver may be well aware of it. He might not have even intended to do what the receiver holds himself out as capable of doing. The courts, under such circumstances, have held the receiver guilty of the offence of cheating as well as under section 161 of Indian Penal Code i.e., accepting illegal gratification.

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61. A.I.R. 1968, S.C. 1419.

62. Mubarak Ali v. State, A.I.R. 1958 M.P. 157.

The institutionalized forms of bribes have received due attention of the courts. It appears that courts have in mind the different modes of offering bribes in our socio-political system. Thus offering of something as Bakhshish, Donations or some other forms have been held within the purview of 'illegal gratifications'.

The Supreme Court appears to be fully conscious of changing socio-cultural milieu of the country. In an under noted case, court observed that 'bribes are paid not only to get unlawful things done promptly since time means money, bribes are paid to expedite the matters which a public servant would otherwise also do. Thus, where gate passes and proformas are to be signed by the excise Inspector, the signatures can carry a price.'<sup>63</sup>

#### **(b) VALUABLE THINGS**

Section 165 of I.P.C. makes the acceptance of a gift or a present without consideration an offence. Section 165 prohibits the acceptance or obtaining of valuable things like presents or gifts by a public servant from the persons with whom the public servant is officially connected. The principle underlying this provision is to prevent public servants from circumventing the law which prohibits accepting illegal gratification (under section 161) by accepting valuable gifts and presents.

This section appears to be in additional provision of law which makes the legal position all the more clear. It may be pointed out that, otherwise also valuable gifts and presents would necessarily fall under the definition of 'illegal gratification' which has been held to mean anything

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63. Crown Prosecutor v. R.K. Pillai, A.I.R. 1948, Mad. 281.

estimable in money. However, the legislature, by way of extra caution has enacted Section 165 which prohibits the acceptance of a valuable thing or applicant with whom he has no other connection. Therefore, the intention of the legislature is to make an act of accepting a present, which is traceable to a corrupt motive, as punishable.

With regard to accepting a valuable thing by a sub-ordinate official before whose superior officer the matter is pending, it is not necessary that a person should be subordinate in respect of the matter in question, in the sense that the matter must belong to the sphere of duties which is common to both the subordinate and superior officer, but subordinate would include a general administrative subordinate also.<sup>64</sup> Such a provision would not only apprehend the corrupt public servants but their touts and agents as well.

Thus, it is clear from the foregoing discussion that the framers of I.P.C. in their own wisdom, have endeavoured through these provisions to curb the phenomenon of corruption among public servants by bringing in two common modes of corruption viz., 'accepting illegal gratification' and 'obtaining valuable things' within the arena of criminal law.

The phenomenon of corruption and bribery is a complex problem. The methods to indulge in this type of criminality are so dubious and ways to obtain bribes are so mysterious, that it is not always possible for the law makers to comprehend the new and novel situations which arise in this behalf in a society. Hence, laws are repeated and amended, and new

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64. In re R.G. Jacob, A.I.R. 1961, Mad. 482.

enactments are passed to cope up with the new situations to meet the new challenges of crime and criminal behaviour.

Therefore, to meet the new challenges, it was found that the provisions of I.P.C. were not adequate enough to cover the new forms of corruption which were the result of new socio-economic developments of the country. This realization led to the enactment of prevention of Corruption Act, 1947. Under P.C. Act, a new and comprehensive form of corruption was recognised which was defined as 'Criminal Misconduct'.

#### (c) CRIMINAL MISCONDUCT

Section 5 of P.C. Act, creates a new offence which has been termed as 'criminal misconduct by public servants in the discharge of their official duties.

The substantive law of corruption is laid down in Section 5 of the P.A. Act. However, it appears that these provisions supplement the I.P.C. provisions from Sections 161 to 165, although the offence under Section 5 of P.C. Act is wider than the offence defined under Section 161 of I.P.C.<sup>65</sup>

The Supreme Court while drawing a comparison between the offence of 'Criminal Misconduct' under P.C. Act and 'accepting illegal gratification, under I.P.C. has held that Sections 5(1)(a) and (b) of P.C. Act are the aggravated forms of Section 161 and 162 of I.P.C. and the intention cannot be to abrogate the earlier offence by the creation of new offence.

65. Duneswar Narain Saxena v. Delhi Administration, A.I.R. 1962 S.C. 195.

These two offences can co-exist and the one will be considered as overlapping the other.<sup>66</sup>

The introduction of offence of 'Criminal Misconduct' is of far reaching consequences under Indian Criminal Law system.<sup>67</sup> The crimes of misconduct, attributed to a public servant, according to Section 5 consist of the following :

(i) **Habitually accepting of obtaining or agreeing to accept or attempting to obtain** by public servant, from any person for himself or for any other person, any gratification (not legal remuneration as motive or reward as mentioned in Section 161 of I.P.C.

(ii) **Habitually accepting or obtaining or agreeing to accept or attempting to obtain for himself or for any other person any valuable thing** without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been or to be likely concerned in any proceeding or business in any proceeding or business transacted or about to be transacted by him or having any connection with the official function of himself or of any public servant to whom he is subordinate or from any person whom he knows to be interested in or related to the person so concerned.

66. *Om Prakash Gupta v. State of U.P.*, A.I.R. 1957 S.C. 453.

67. Section 5 of P.C. Act, which was a temporary provision and was extended from time to time was made a permanent provision of P.C. Act by virtue of Prevention of Corruption (Amendment) Bill, 1957. According to Statement of Objects and Reasons, "this Section (i.e. Section 5) had provided a valuable weapon in the attempt to eliminate corruption from public services" (quoted in Mathur's A.P. "Commentaries on the Prevention of Corruption Act, 1917 and The Criminal Law (Amendment) Act, 1952" Revised and Enlarged by K.C. Mehrotra, Second Edition, Eastern book Company, Lucknow (1976), p. 130.

(iii) Dishonesty or fraudulently misappropriating or otherwise converting for his use any property entrusted to him or under his control as a public servant or allowing any other person to do so or attempting to do any such act.

(iv) By corrupt or illegal means or by otherwise abusing his position as public servant obtaining for himself for any other person any valuable or pecuniary advantage or attempting to do any such act.

(v) Possessing or allowing any person on his behalf to possess or to have at any time during the period of his office for which the public servant cannot satisfactorily account, of pecuniary resources or property dis-proportionate to his known sources of income.

It is evident that Section 5 of the Prevention of Corruption Act is a conglomerate of many offences spread over I.P.C. However, it may be pointed out that before attracting the provision of this clause the requirement of Section 161 of I.P.C. has to be satisfied.<sup>68</sup>

(a) **Habitually accepting gratification** : The new and wide ranging expression used under Section 5(1)(a) is accepting illegal gratification "habitually" by a public servant. Supreme Court has rightly held that the offence under section 5(1)(a) does not consist of individual acts of bribe-taking as in section 161 of the I.P.C. but is of a general character. Individual instances may be useful to prove the general averment in particular cases but it is by all means necessary because of the presumption which Section 5(3) required the Court to draw.<sup>69</sup>

68. Dattu Singh v. State of Rajasthan, A.I.R. 1968 S.C. 29.

69. Vishwabhusan Naik v. State of Orissa, A.I.R. 1954, S.C. 359; C.R. Bansi v. State of Maharashtra, 1971 Cr.L.J. 662.

Thus it is the expression of *habitually* accepting or obtaining of illegal gratification which enlarges the scope of the offence of 'Criminal Misconduct'. The establishment of proof of habitual corruption and habitual bribery required under clauses (a) and (b) of Section 5(1) is the crux of the offence under these clauses of Section 5. However, neither the P.C. Act nor any other legal provision defines or lays down any guidelines which would be held to constitute the proof of the habitual commission of an offence. However, Halsbury *'Laws of England'* provides as follows : "There is, however, no exhaustive definition of a habitual criminal and the question whether an offender is or is not a habitual criminal is always one of fact for jury. The mere fact that he has on a previous occasion been provided to be a habitual criminal and has subsequently relapsed into crime is not of itself conclusive. The accused is always entitled to call evidence to show that at material time he is not a habitual criminal."<sup>70</sup>

In ordinary sense the word "habitually" implies a tendency on the part of a person to frequently repeat the same Act. Thus, in law, the habit is to be proved by aggregate of facts. In connection with Section (1) (a) and (b) of P.C. Act, it seems to be necessary to make out a number of instances of bribery spread over a reasonable period of time. Though, the Legislation does not impose any limitation of instances in this behalf. Still, in order to the handicaps of the Prosecution, Supreme Court has held<sup>71</sup> that there is no illegality in the charge of habitually accepting bribe if particular instances have not been mentioned therein.

70. Halsbury, *Laws of England*, 2nd Edition, Vol. 1X, p. 237.

71. C.R. Bansi v. State of Maharashtra, *op.cit.*, p. 662.

**(b) Misappropriation of Property :** Section 5(1) brings within its ambit the dishonest or fraudulent misappropriation or use of any property by a public servant or being allowed by a public servant or being allowed by a public servant to do so. In order to make out the offences, the property must be entrusted to or under the control of a person as a public servant.

It is relevant to point out here that Section 405 of the Indian Penal Code makes the dishonest misappropriation of property a penal offence. The two sections, in essence, are not identical. In this behalf sub-section (4) of Section 5 makes the position clear by laying down that provisions under this section (i.e. Section 5) are "in addition to, and not in derogation of any other law for the time being in force. "In this regard, Supreme Court has ruled that other law does not mean identical law in which case the word "other" will have no meaning. There can, therefore, be no doubt, whatever, the Section 5(1) (c) of the Prevention of Corruption Act, creates a new offence called Criminal Misconduct and can not be implication displace the offence under Section 405 of Indian Penal Code.<sup>72</sup>

There has been a good deal of controversy among different High Courts regarding the overriding effect of Section 5(1) (c) of P.C. Act on Section 409 of I.P.C., i.e. Criminal Breach of Trust. The Punjab High Court had held that Section 5(1)(c) of the Prevention of Corruption Act repeals Section 409 of Indian Penal Code.<sup>73</sup> However, other Courts viz. Allahabad<sup>74</sup>, Madras<sup>75</sup>, Bombay<sup>76</sup>, Hyderabad<sup>77</sup>, Calcutta<sup>78</sup> and Himachal

72. *Om Prakash Gupta v. State of U.P.*, A.I.R. 1957 S.C. 458.

73. *State v. Gurucharan Singh*, A.I.R. 1952 Punj. 89.

74. *Bupnarayan Saxena v. State*, A.I.R. 1952 all. 35.

75. *Inre Satyanarayanamurthy*, AIR 1953 Mad. 137.

Pradesh<sup>79</sup> had held that it did not do so. The Supreme Court set at rest the controversy by holding that sections 5(1) (c) and 409 of I.P.C. created two distinct and separate offences and hence Section 5(1) (c) does not repeal section 409 of Indian Penal Code.<sup>80</sup>

The essential ingredients under Section 5(1)(c) are: (a) that the accused must be a public servant at the time of the commission of the offence; (b) that he dishonestly or fraudulently misappropriates or otherwise converts to his own use any property entrusted to him or under his control (c) or allow any other person to do so.

The Act does not define the terms "dishonestly" or fraudulently. These terms have been defined under I.P.C. Though the terms "dishonestly" do not mean exactly the same thing. However, in both the cases it is intense degree of *mens rea* which make the offence grave. In such cases the existence of criminal *animus frendi* is essential. In a case, where a booking clerk was under an obligation to hand over the cash collected from vehicles to the cashier of the transport yard, did not do so for many days and retained money for such period, handed it over only when he was suspended, it was held that it was a case of dishonest misappropriation.<sup>81</sup>

**(c) Abuse of Position and Pecuniary Advantages :** Section 5(1) (d) of P.C. Act, has a wider scope and covers the activities of corrupt public

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76 State v. Sahebrao Govindrao Jadhav, AIR 1954 Bombay 549.

77 K. Jayarama Iyer v. State of Hyderabad A I R. 1954 Hyd 56.

78 . Amarendra Nath Ray v. State AIR 1955 Cal. 236.

79 . Giachand Madhok v. State AIR 1954 Himachal Pradesh, 76.

80 . Om Prakash Gupta v. State of U.P., AIR 1957, 458.

81 . Liladhar v. State of Himachal Pradesh AIR, 1959.

officials which otherwise would not fall under any law to deal with corruption and bribery. Section 161 of I.P.C. has a narrower scope than Section 5(1)(d) of P.C. Act. Section 161 of I.P.C. narrows down the scope of offence by emphasizing that obtaining of 'illegal gratification' should be as a motive or reward for doing or not doing an official act. According to Supreme Court, Section 5(1) (d) punishes a public servant if he abuses his position as a public servant and obtains for himself any pecuniary advantage irrespective of motive or reward.<sup>82</sup>

The Supreme Court expression "in the discharge of his duties" under Section 5 as being merely descriptive of the offence and not forming as an (essential) ingredient of the offence.<sup>83</sup>

The Supreme Court in *Dhaneshwar Narain Saxena V. The Delhi Administration*<sup>84</sup> has widened the scope of this clause by holding that it is not necessary that the public servant must do something in connection with his own duty, and thereby obtain any valuable thing or pecuniary advantage in order to attract the provision under this clause of Section 5. The court further held that it would be equally wrong to say that in case a public servant were to take money from a third person by corrupt or illegal means, or otherwise abusing his official position in order to corrupt some other public servant, without there being any question of misconducting himself in the discharge of his own duty; he has not committed an offence under section 5(1) (d) of the P.C. Act. According to court, it is erroneous to

82. Public Prosecutor v. T.K. Vishwanathan, 1970(2) MLJ 43.

83. Narayan v. State of Kerala, A.E.R. 1962 S.C. 1161.

84. A.I.R. 1962 SC 195.

hold that the essence of an offence under Section 5(2) read with Section 5(1)(d) is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage.

In *Nambiar V. State of Kerala*<sup>85</sup> Supreme Court held that the gist of the offence under this clause, is, that a public officer, abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. According to court, the juxtaposition of the word 'otherwise' with the words 'corrupt or illegal means' and the 'dishonestly implicit in the word 'abuse indicate the necessity for a dishonest intention on his (one's) part to bring him within the meaning of the clause. The court observed that whether he abused his position or not depends upon the facts of each case.

**(d) Abuse of Official position :** In *Nambiar V. State of Kerala*<sup>86</sup> while examining the scope of this clause 5, court observed that, "Abuse means misuse, i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means.... The juxtaposition of the word 'otherwise' with the words 'corrupt or illegal means' and the 'dishonesty' implicit in the word 'abuse' indicate the necessity for a dishonest intention on his part to bring him within the meaning of the clause. Whether he abused his position or not depends upon the facts of each case."

The offence of abuse of official position is a new and a wider offence apart from, and in addition to the offence under 161 of I.P.C. The

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85 . AIR 1963 SC 1116.

86 . AIR 1963 SC 1116.

offence under this clause is not confined to the abuse of the official position with regard to a particular transaction, but abuse of official position in general.

**(e) Possession of Disproportionate Assets :** Section 5(1)(e) of the Act makes the possession of property disproportionate to the known sources of income on the part of a public servant during the period he held the office, an offence. The clause does not refer to a particular act of an accused but refers to the cumulative result of his multifarious acts in connection with his pecuniary position in contrast with his known sources of income.

This clause covers the cases where there is no direct evidence of obtaining or accepting illegal gratification or an act of bribery, but the extent of property a particular public servant owns without satisfactorily accounting for such property. The rationale of this clause is to raise a presumption of indulging in the acts of corruption and bribery against those public servants who have a reputation of earning money through dubious methods and indulging in corruption without getting caught in certain specific instances.

In order to raise a presumption of offence under this clause, the accused should be in possession of the property disproportionate to the 'known sources' or for which the accused can not give a 'satisfactory account'.

The Supreme Court has held, and reaffirmed in later decisions, that the expression "known sources of income" must have reference to sources known to the prosecution on a thorough investigation of the case. It was

not, and it could not be contended that "known sources of income" means sources known to the accused. The court further held that the source of income of a particular individual will depend upon his position in life with particular reference to his occupation or avocation in view. In case the prosecution has failed to disclose all the sources of income of an accused person, it is always open to him to prove those other sources of income which have not been taken in account or brought into evidence by the prosecution.<sup>87</sup>

The elucidation is important from the view point that prosecution might abuse the provision of law and innocent victims may be harassed. As in the case quoted above, court did not allow travelling allowance to be included, as contended by the prosecution, as a source of income.

The Supreme Court, in the case quoted above, held that Legislature has used the expression "can not satisfactorily account" deliberately, casting a burden on the accused not only to offer a plausible explanation was worthy of acceptance.

The court viewed that the Legislature had not chosen to indicate what proportion would be considered disproportionate and the court should take a liberal view of the excess of the assets over the receipts from the known sources of income.

Thus, the clause (c) of Section 5(f) read with sub-section 3 provides an insight into the process of social control providing in built

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87. C.D.S. Swamy v. State, AIR 1960 S.C.7 Also Sajjan Singh v. State of Punjab AIR 1964 S.C. 464.

mechanism of application of control methods without any misuse. This clause amply lays bare the fact that the aim is to prevent the menace of corruption and cleanse the public service and not to create fear and terror among public servants. It may be assumed that the clause serves merely as a warning to individuals in a social system, who by employing dubious methods, would circumvent the legal provisions and get away with ill gotten wealth.

The courts, in their zeal to deal with this type of criminality, would not smell a rat in every corridor of a public office. Thus, in a case where the assets possessed by the appellant were in excess of the surplus income available to him and the excess was comparatively small, less than ten percent of the total income, the court held that it would not be right to hold that the assets found in the possession of the appellant were disproportionate to his known source of income so as to justify the raising of the presumption under sub-section (3) of Section 5.