

A Study on the Menace of Corruption in India and Its Legal Combat Machinery

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Abstract

Corruption has been in a menace in India today. It is an unethical practice leading the subjects of the state to frustration and the only recourse available to provide justice to the citizens of India is a strong legal combat mechanism. This paper shall discuss the available anti-corruption laws in India to 'fight against corruption' which include enactments like, the Indian Penal Code 1860, the Prevention of Corruption Act 1988, All India Services Act 1951 on civil servants, Central Civil Services (Conduct) Rules 1964 on government servants, the Competition Act 2002, the Companies Act 2013 and the Whistle Blowers Protection Act 2014. The researchers shall look into the study of the amendment bills that await enactment by the Parliament like, Prevention of Corruption Bill (Amendment undertook from 2011 to 2016) and The Disclosures of Lobbying Activities Bill 2015 along with analysis of relevant judicial decisions. The paper shall also highlight the suggestions provided by Law Commission on corruption and the role performed by regulatory bodies such as Central Vigilance Commission and Comptroller and Auditor General of India. This paper shall be an attempt by its researchers to analyze the anti-corruption laws available in India and make suggestive measures for strengthening of the same through stringent legislation and dynamic vigilance approach by the government.

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Introduction

If we try to understand the literal meaning of the term ‘corruption’, it means ‘a dishonest or illegal behavior especially by powerful people’ or ‘the abuse of entrusted power for private gain’. India has been subjected to corruption since time immemorial. Corruption can be defined as a wrongdoing that diverts funds which are meant for public welfare and consumption to the hands of private consumption thereby creating a wider gap between the rich and the poor of the society and generate social inequality. This practice of corruption primarily leads the poor of this country in a state of double jeopardy as they don’t have enough means to afford private services and hence they rely on public services where they fail to meet the exorbitant demand of public service officials in way of bribery, fraudulence and misappropriation of financial benefits that are offered to the poor. India is in dire need of good governance for maintaining sustainable development but it seems to be impossible to separate them both. It has been publicly opined that most corruption takes place in the small form of investment.

There has been several scams of corruption that India has witnessed, such as, 2G spectrum scam of INR 1.76 lakh crore, commonwealth games scam of INR 70,000 crore, Telgi scam of INR 20,000 crore, Satyam scam of INR 14,000 crore, Bofors scam of INR 4,000 crore, the Fodder scam of INR 950 crore, the Hawala scandal of US\$18 million, Indian Premium League scam, Harshad Mehta and Ketan Parekh Stock Market Scam of INR 4,000 crore and others.³ And much recently the diamond merchant, NiravModi scam with Punjab National Bank, where fake Letters of Undertaking had been issued to borrow loans causing a scam of net worth 11,500 crore. It is alarming to find through the annual Kroll Global Fraud Report that India counts in that highest form of corrupted countries, with an overall corruption at 25%, out of which fraud cases are 77% and bribery cases are 73%. India is also ranked in the 76th position out of 167 countries when it comes to corruption by the Transparency International Corruption Perception Index. Such alarming statistics and figures degrade the reputation of India in the global spectrum and detriments its economy as foreign investors refrain from making any investment in India, fearing the authenticity and validity of government contracts.

In India, the laws that combat corruption at large are primarily the Indian Penal Code, 1860 (IPC), The Prevention of Corruption Act, 1988 (POCA) and some of the proposed bills that await amendment to the POCA. The agencies and bodies that operate in India and act as

³SudhirYadav, *Anti-Corruption Movements & Measures in India*, 4(2)INTERNATIONAL JOURNAL OF TRADE AND COMMERCE 411, 412 (2015).

‘watchdog’ or monitoring authority apart from common prosecution by state and investigating agencies are the Comptroller and Auditor General of India (CAG) and Central Vigilance Commission (CVC) which become operational on the basis of Public Interest Litigation (PIL) that arise. The Apex Court which is the Hon’ble Supreme Court of India, when it deems fit and proper to put control on losses that are suffered by the government exchequer because of corrupt practices within the system, it orders the CAG to probe in public-private contracts and the CVC to cause necessary investigations in government functioning and address corruption matters. Both such agencies have the mandate of carrying out their respective investigation with necessary diligence and also to submit reports within a stipulated time. According to the anti-corruption laws available in India, one not only faces criminal prosecution for any wrongdoing but also can get blacklisted on corruption charges. The public procurement law is pending for approval from the Parliament of India, the laws of such public procurement vary government department wise and an anomaly in the same is suomoto taken cognizance and adjudicated by the Competition Commission of India (CCI). Another aspect of corrupt practices is ‘lobbying’. Though there is no such specific law to combat lobbying, the regulatory authorities such as CCI take necessary action against individuals and corporations that are engaged in lobbying creating a volatile market with monopolistic mindset. In countries at the European Union (EU) and the United States of America (USA) lobbying is treated as an institution unlike in India, making CCI act on its own discretion making rules and regulations thereof, without taking into account the contentions of the affected personnel. However, this is often considered as a serious impediment which should be removed in order to frame better laws. In 2013, with the outbreak of the NiraRadia controversy, where NiraRadia a corporate lobbyist, who lobbied against the reappointment of Former Information Technology and Communication Minister, DayanidhiMaran and also lobbied for some companies during the 2G spectrum scam. During this controversy, a bill named The Disclosure of Lobbying Activities Bill, 2013 was introduced in order to regulate lobbying but the same never got enacted by the Parliament.⁴ This article shall discuss the available laws in India against corruption and how the legal machinery functions to address corruption.

Legal and Regulatory Scenario in India to Combat Corruption

The Indian Penal Code and the Prevention of Corruption Act (Including Amendments)

⁴ Naman Shah, *NiraRadia Tapes: Controversy Explained*, WTDNEWS(Feb. 15 2018; 10:47 PM), <http://wtdnews.com/niira-radia-tapes-controversy-explained/>.

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India has some of her own legislation and regulations in order to curb corruption. The most important of which is the IPC, which has criminalized various acts like bribery under Section 161, instigating a public servant through illicit means under Section 162, and acceptance of any gift by a personnel holding a public office under Section 165. However, in course of time, all these provisions under Sections 161 to 165A got repealed after the enactment of the Prevention of Corruption Act, 1988 (POCA). In 1988 POCA was enacted, as an initiative to bring consolidated laws related to anti-corruption in respect of public servants exclusively. POCA prosecuted the offense of only the acceptance of bribe but not the remittance of bribe. However, Sections 7 to 11 of POCA criminalized the offense of influencing any public servant on duty to take bribe by any middleman or any other person.

POCA views Public duty as 'a duty in the discharge of which the state, the public or the community at large has an interest'. POCA has provided an inclusive definition of the expression 'state'. Another significant person that has been attributed to POCA is all such personnel who are under the payroll of government and are engaged in public service causing welfare to the citizens of the state, are brought under the purview of 'public servants'. The definition of public duty and public servant was elaborately discussed in the case of *P.V. Narasimha Rao v. State*,⁵ the case related to the appointment of Member of Parliament but the Apex Court observed that both public duty and public servant shall be provided a wide interpretation. Furthermore, it was decided in the case of *Bhupinder Singh Sikka v. CBI*,⁶ that an employee of an insurance company, which has been constituted under any statute made by the Parliament of India, shall also be termed as a public servant and no evidence shall be needed to establish the same.

According to Sections 7 to 13 of POCA, any sort of gratification or receipt of any kind of emolument that influences any public servant to advance or conduct any undue favour under the scope of his public office shall make liable such public servant get prosecuted. However, these provisions have been presently considered for amendment in order to maintain parity with the guidelines provided under the United Nations Convention against Corruption (UNCAC). Section 7 of POCA provides that any public servant is prohibited not to receive any gratification, pecuniary or otherwise save and except his legal remuneration remitted as his salary by the government.⁷ However, the conviction of Section 7 shall only be applicable if such demand for any gratification is sought by the concerned public servant himself to a

⁵(1998) 4 SCC 626.

⁶Criminal Appeal No. 124 of 2001, Delhi High Court, March 25 2011.

⁷Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1.

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term of imprisonment not less than three years and extending up to a term of seven years together with fine. A defense of any valuable item for which a person maybe corresponding with the public servant and for such expensive item, gratification by such person has been voluntarily paid to the public servant cannot be acceptable without establishing that demand from the public servant for gratification exists⁸. Further, an offense under Section 7 of POCA is considered to be abuse of the public office held by the public servant. Section 8 of POCA provides that, any public servant who is found guilty to accept any gratification, whatsoever in nature, for engaging in any undue service beyond the scope of his public office or abstain from performing any service, which in normal prudence he is expected to perform, shall be punished with imprisonment for not less than a term of three years, extending up to seven years and fine.

Section 11 of POCA provides that any public servant who receives for himself or on behalf of any other person, any valuable thing from someone who has some interested in the official work performed by the public servant under the scope of his office, without providing sufficient consecrations against such valuable thing shall be held liable for prosecution under this provision and shall been sentenced to imprisonment for a minimum period of six months, which may extend to a term of five years along with fine. In the case of *State of Andhra Pradesh v. Venkateswarulu*,⁹ the Apex Court was of the opinion that in cases of bribery, the prosecution shall be liable to prove the burden of proof beyond all reasonable doubt that bribe was asked by a public servant and remitted voluntarily by the bribe giver. Again, in the case of *P. Satyanarayana Murthy v. The District Inspector of Police*,¹⁰ the Supreme Court held that mere possession of currency notes or any other form of gratification found in the custody of any public servant under probe but without any burden of proof shall not make him liable for prosecution under Section 7 or Section 13(1)(d) of POCA. Section 20 of POCA provides that if any person who is brought to investigation is found to be in possession of any valuable item or thing, then it shall be presumed to be bribe that he has obtained under the pretext of his public office and failure to come up with necessary evidence to substantiate the purpose of such possession to be otherwise than mere receipt of any bribe shall make such person in government office prosecuted under Section 7 and 20 of POCA.¹¹ An alarming part of POCA is Section 20 in which provides that any person who remits bribe shall have immunity and any statement made by such person shall not make him liable to get prosecuted. This is

⁸P. SatyanarayanaMurthyv.The District Inspector of Police, (2015) 10 SCC 152.

⁹(2015) 7 SCC 283.

¹⁰*Supra Note*8.

¹¹M. NarsingaRao v. State of Andhra Pradesh, (2001) I SCC 691.

considered to be a serious flaw in the said statute and requires amendment being not in consonance with UNCAC.

Prevention of Corruption Amendment Bill, 2013 (Amendments Undertook From 2011 to 2016)

Post India ratifying that UNCAC, the central proposed to amend some measures in POCA in terms of the international anti-corruption laws as enshrined under UNCAC, the same are as follows:

1. Private person offering a bribe to government servant also brought under the purview of POCA.
2. Stipulating time frames for anti-corruption cases sent for trial.
3. Attachment of tainted property acquires through unfair means.
4. The mere act of offering bribe also considered for prosecution u/s 7 of POCA.

The Amendment Bill of 2013 was sent for the recommendation of the standing committee of the Parliament, who submitted its recommended report on February 2014. Such report by the standing committee was further sent to the Law Commission of India (LCI) who then submitted its report on February 2015, which included substantial amendments and also the removal of certain previously determined amendments.

POCA Amendment Bill and Law Commission Report

The POCA Amendment Bill has proposed to adopt certain provisions available under the UK Bribery Act, 2010 (UK Act) and also prosecuting remittance of bribes to public servants and also to bring companies under prosecution for offenses committed by them under POCA. The Bill recommended replacement of Sections 7, 8 and 9 of POCA by including new provisions in respect thereof but the LCI recommended to further amend such proposed new provisions in lieu of the said replaced sections under POCA. The Amendment Bill suggested the inclusion of 'undue financial or other advantage', which the LCI recommended to replace by the term 'undue advantage'. This was because the LCI considered the term 'undue financial or other advantage' to be ambiguous as there seems to be lack of definite expression of what amounts to the same. LCI also observed this view that 'sexual gratification' cannot be brought under the purview of other advantage and there should be a distinct illustration on what are the circumstances which shall amount to 'other advantage'. The amendment bill proposed u/s 7 of the Act to include any financial or other advantage that may be acquired by any public servant in course of executing any 'relevant public function' under the power of his office. This was however declared to be redundant provision by the LCI as it expressed the view that, all actions taken by any public servant shall be deemed to be taken under the

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scope of public function therefore, nothing can be categorized separately as ‘relevant public function’.

Section 8 of the proposed amendment bill has expressed the term ‘improperly’ while in the performance of any public duty. The LCI has opined that this expression does not take into account those circumstances when illegal gratifications are advanced to public servants in course of their performance of routine public duty or function. However, the LCI provided a rider to their recommendations that any person offering any sort of gratification to any public servant shall be provided immunity provided he gives a prior intimation to any enforcement authority about the same. Section 9 of the amendment bill has also brought commercial organizations that include companies, partnership firm, proprietorship, limited liability partnership, etc. under the purview of prosecution if they offer any gratifications to any public servant unless they provide the defense that they have to abide by the adequate procedural guidelines. This has been rightly severely criticized by the LCI as it contended that unlike the UK Act from which majority of the amendments of POCA has been adopted, India does not provide a procedural guideline to commercial organizations with regard to the offering of gratifications. Again, Section 10(1) of the proposed amendment bill suggests that if any commercial organizations is found to be guilty u/s 9 of POCA, all the people who are known to be as ‘person-in-charge’ of the organization will also be held guilty and face prosecution provided they can establish the alibi that they had knowledge of their actions and in spite of taking necessary due diligence they could not prevent the offense. However, u/s 10(2), the bill suggests that if it is found beyond all reasonable doubt that any director, manager, secretary or any official acting as the representative of the commercial organization fails or neglects to take necessary cognizance to prevent the offense, then such person cannot take the protection provided u/s 10(1). However, the LCI has found both Sections 9 and 10 to be faulty as the denial of necessary due diligence or indulging in connivance or negligence seems to be unreasonable and they can be misused by perpetrators of the offense. Hence, such provisions are to be kept in suspension for the time being.

The LCI further suggested to amend the provisions regarding attachment proceedings against offenders by adopting the laws already available under the prevention of Money Laundering Act, 2002, the Ordinance of 1944, the Lokpal and Lokayukta Act, 2013 as that will serve as a uniform enforcement mechanism of law to support attachment proceedings.

Investigation, Trial And Resolution Of Disputes Under POCA

All offenses under POCA are investigated as per the provisions of the Code of Criminal Procedure, 1973 (CrPC). No settlement of compounding mechanism is practiced under

POCA. It is only the CrPC which provides the compounding provision for out of Court settlement by parties. Though, Section 320 of the CrPC does not provide for offenses committed under POCA, the Supreme Court has held in the case of *Gian Singh v. State of Punjab*¹² that cases which do not involve moral turpitude but are more of commercial in nature, the parties concerned may resort to compound and resolve the disputes.

All India Services Act, 1951 on Civil Servants

The Central Government employs civil servants and such employment is governed under the provisions of All India Services Act, 1951 (AISA), which determines all terms and conditions with regard to service of all civil servants. The terms of conduct, standards of duty related to integrity and other conditions or restrictions for the performance of service by civil servants including the extent of their scope beyond their routine function, involving in acceptance of gratuitous gifts or gratifications are governed under the All India Services (Conduct) Rules, 1968 (AISCR). The AISCR restricts the employment of any family member of a civil servant with any private organization or NGO that are engaged in official dealings with the central government. The said rules further put the mandate on civil servants to perform their service with the highest integrity, valor and honor in course of their employment, being the representative of the government.

Central Civil Services (Conduct) Rules, 1964 on Government Servants

Persons who are appointed directly by the government in any civil service under the Union of India, including a civilian in the defense services are controlled under the Central Civil Services (Conduct) Rules, 1964 (CCSCR). The CCSCR are wider in its application in comparison to the AISCR but apply on equal measure as the latter and creates a substantial binding effect on government servants. The CCSCR provides similar kind of rules as AISCR while dealing with cases of gratification in respect to Government servants and also frame rules in order to maintain their general integrity towards their service. However, in CCSCR, the monetary limits of such gratification vary on basis of a hierarchy of the government officials. The CCSCR further provides that no government servant can own either wholly or partially any media house or newspaper, engaged in broadcast or publication of news. Such rules also bar any government servant receiving any gift from foreign diplomats or officials. Such restrictions are primarily based on the monetary value of such gifts accepted but they are changed from time to time by the central government.

The Disclosures of Lobbying Activities Bill, 2015

¹²(2012) 10 SCC 303.

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At the outbreak of the NiraRadia controversy,¹³ a private member bill named The Disclosures of Lobbying Activities Bill, 2013 (DLA Bill) was first introduced before the Upper house of the Parliament, the Lok Sabha in 2013 and then further amended and further introduced as Bill No. 208 of 2015 in the year 2015 superseding the former bill. However, the said bill is still pending before the standing committee of the Parliament. The DLA Bill proposed to monitor all lobbying activities and the lobbyist in person too. But a shortcoming of the proposed bill was it provided lobbying regulations with regard to the supply parameter which fails to address transparency and uphold constitutional ethics. Lobbying can be regarded as an art of nepotism facilitated through the transfer of confidential information to a specific group because of vested interest of parties attached to such transfer. In Lobbying, the relationship is built through constant communication and persuasive measure in order to attain illegal benefits through non-transparent measures.

Central Vigilance Commission

The Santhanam Committee recommended setting up the CVC in February, 1964 for the purpose of preventing corruption and acting as an adviser to the central government on the issue of vigilance. The then President of India, Late K.R. Narayanan promulgated an ordinance and gave a statutory status to CVC on August 25, 1998. A PIL was filed, *VineetNarain&Ors. v. Union of India*,¹⁴ before the Apex Court seeking intervention as the Central Bureau of Investigation (CBI) had been inactive to address major corruption issues handled by the CVC. Subsequent to the said PIL, the central enacted the Central Vigilance Commission Act, 2003 (CVC Act) to investigate, inquire, adjudicate and bring to trial cases of corruption under POCA in respect to offenses committed by public servants employed by the central government, public enterprises established under any Central statute, public companies and local authorities functioning as a state government body. At the end of 2016, CVC received 51,207 cases, out of which an impressive figure of 48,764 cases was disposed of by CVC. The CVC comprises of a Commissioner u/s 3(2) of the CVC Act, who functions as a chairperson and there are two more vigilance commissioners, who act as members. The Chief Vigilance Officers have reported that in 2016 itself 18,541 penalties were imposed all categories of public servants as punitive actions against corruption. Where 5,716 officers were charged for offenses with major penalties and 12,285 officers were charged for offenses with minor penalties.

Comptroller and Auditor General

¹³R.N. Tata v Union of India, (2014) 1 SCC 93.

¹⁴(1998) 1 SCC 226.

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CAG is a constitutional body constituted under Article 148 of the Constitution of India, 1950. A significant importance has emerged out of CAG reports with regard to government contracts which are investigated by the court when tried upon and based on such reports a lot of PILs' have been filed where the interest of public had been put at stake. As per a ruling by the Delhi High Court, even private organizations have been brought under the scrutiny of CAG in some cases. The Indian Parliament under Article 149 of the Constitution enacted the Comptroller Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 (CAG Act) to act upon certain specific functions and duties as directed by the Parliament. Section 10 of the CAG Act puts the mandate of compiling and maintaining all accounts of the central as well as of states and furnishing them before the President and Governor respectively, for assent. Section 18 of the CAG Act empowers the body to cause a necessary audit, as it may deem fit for safeguarding the national treasury and in this regard it may cause inspection of properties and call for interrogation of persons as may be necessary. CAG has also been empowered under the statute to advance loans and grants to various bodies incorporated under the central government. Article 151 mandates the CAG to submit their reports before the Parliament or respective state legislature, as may be required. However, it is pertinent to mention here that the reports by CAG has no binding effect on the Parliament which therefore creates no compulsion to act on basis of any CAG report and the parliament always exercises its own discretion.

Competition Act

All anti-competitive practices are governed by the Competition Act, 2002 which hinders the growth of any monopolistic market in the economy. Here, the CCI takes suo motu cognizance of a case and conducts a necessary probe in anti-competitive matters. The CCI further prevents the dominance of any major entity creating an anti-competitive market. CCI has the responsibility of maintaining a laissez faire economy. CCI also ensure that no entity conducts any unfair trade practice in the market, by offering for sale or purchase of any goods or service thereby making an effort to outcast other competitors in the market. CCI can also rely on the reports furnished by CAG, where in one instance there had been a case where the CAG had submitted a report of corrupt practices in form of cartels while bidding was active of a defense contract. As per the CAG report, certain employees of certain ordinance factories were involved in creating these cartels for unfair gains, the CCI intervened on the basis on the CAG report. The most important factor that got established was probe by one government agency can lead to the probe conducted by another government agency, where in this case

both CAG and CCI correspondingly inquired and probed into the cartels that were mishandled for monopolistic gain.

Companies Act

Section 182(1) of the Companies Act, 2013 provides that neither government companies nor any other company which is yet to complete three years of its incorporation can make any donation or contribution to any political party. Moreover, any expense borne by a company on behalf of a political party for the publication of any its promotional content in any literature, newsletters, newspapers or any other form shall be considered as a contribution. However, companies which have completed three years of its existence can make contributions to political parties subject to a limit of 7.5% of their average net profits for the last three preceding financial years. Furthermore, Section 179(9) of the Companies Act, 2013 provides that there shall exercise vigilance structure for the Directors and employees of any company to report any misdoings. Section 179(1) of the said Act protects such complainants who report, unfair practices in the organization.

The Whistle Blowers Protection Act, 2014

The primary objective of the statute, The Whistle Blowers Protection Act 2014 (WBP Act), passed by the parliament on February 21, 2014 was to establish a mechanism where all corrupt practices, wrongdoings and misuse of power that are practiced by the public servants are brought to notice and on the other hand it shall protect the complainants from getting victimized. The definition of a public servant is similar in WBP Act to that in POCA. Disclosure has been defined under the WBP Act as an action taken to enlighten the Government or any other concerned authority regarding an unfair practice that is caused by a public servant, taking undue advantage of his public office and causing loss to the government, whether in pecuniary means or otherwise. The complainant can be anybody like a public servant or any civilian. The WBP Act provides the mandate that the identity of the complainant shall be disclosed to the competent authority, as and when required but in case the identity is found to be false in due course, no adverse action against the complainant shall be taken. Once a complaint is lodged, the competent authority is of the opinion that there is some foul play involved, and then it shall recommend the matter to the head of the concerned department, which will then take cognizance of the case by causing thorough probe into the dispute by prosecuting the public servant at fault. The said Act provides punishment for false disclosures made, if any, with any vested interest, which may include imprisonment for a term that may extend to two years and a fine of INR 30,000. Finally, if the competent

authority is of the opinion to provide safety and security in favour of the complainant thereby providing substantial evidence then the government officials shall provide for necessary directions to ensure the protection of such service.

Suggestive Measure to Reduce Corruption

1. Education and promoting literacy is the most important factor. Kerala has been found in a survey to be the least corrupt state because of its high literacy rate.
2. The selection of public representatives like MPs' and MLAs' need to get stricter and minimum qualification benchmark for graduation, under any discipline should be brought.
3. E-Governance should expand in much higher scale as that brings the government and the citizens on a one-to-one basis correspondence, eliminating any intermediary.
4. The amendment bill of POCA needs to get enacted.

Conclusion

The anti-corruption laws that exist in India, can be referred as 'work-in-progress' laws, as most of them need major amendments based on the changing dynamic and characteristics of corruption in India. There are several faulty provisions in the POCA and other allied laws which need immediate intervention and replacement. Given the prevalent state of affairs, where scams and fraudulent practices are arising constantly, all the government bodies like CVC, CCI, central and state government should act in a consolidated manner to ensure close monitoring and vigilance to drive out corruption from the country. If the anti-corruption laws that exist in India are seen from an international perspective, then it shall be considered to be incomplete and the same fails to address several aspects attached to the serious issue of corruption. The law should place the burden of integrity at all public offices, who should unite to make India a better nation. There are certain shortcomings in the anti-corruption laws of India, such as the law does not provide any safeguard or compensation towards any aggrieved party who is a victim of any corrupt government contract. The POCA Amendment bill puts the burden of proof on commercial organizations which will enable corporate officials to maintain the standard of good governance and address issues of unfair means or unethical practices. India is considered to be the newly industrialized country by the International Monetary Fund, where foreign investors are banking on to operate business, which is good news as the more trade and commerce increases, so will our GDP and economy. But, the nation should unite to fight against corruption with framing the most

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stringent of laws in order to combat unethical corrupt practices that act as an impediment to national growth and welfare of mass.