PRIVILEGED CLASS DEVIANCE

LLM First Year – Second Semester

Syllabus

PAPER - III : PRIVILEGED CLASS DEVIANCE

1. Introduction

1.1. Conceptions of white collar crimes

1.2. Indian approaches to socio-economic offences

1.3. Notions of privileged class deviance as providing a wider categorization of understanding Indian development

1.4. Typical forms of such deviance

1.4.1. Official deviance (deviance by legislators, judges, bureaucrats)

1.4.2. Professional deviance: journalists, teachers, doctors, lawyers, engineers, architects and publishers

1.4.3. Trade union deviance (including teachers, lawyers/urban property owners)

1.4.4. Landlord deviance (class/caste based deviance)

1.4.5. Police deviance

1.4.6. Deviance on electoral process (rigging, booth capturing, impersonation, corrupt practices)

1.4.7. Gender-based aggression by socially, economically and politically powerful

NOTE: Depending on specialist interest by the teacher and the taught any three areas of deviance of privileged class may be explored. What follows is only illustrative of one model of doing the course.

2. Official Deviance

2.1. Conception of official deviance - permissible limit of discretionary powers.

2.2. The Chambal valley dacoit Vinoba Mission and Jai Prakash Narain Mission – in 1959 and 1971

2.3. The Chagla Commission Report on LIC-Mundhra Affair

2.4. The Das Commission Report on Pratap Singh Kairon

2.5. The Grover Commission Report on Dev Raj Urs

2.6. The Maruti Commission Report

2.7. The Ibakkar-Natarajan Commission Report on Fairfax.

3. Police Deviance

3.1. Structures of legal restraint on police powers in India

3.2. Unconstitutionality of "third-degree" methods and use of fatal force by police

3.3. "Encounter" killings

3.4. Police atrocities

3.5. The plea of superior orders

3.6. Rape and related forms of gender-based aggression by police and para-military forces

3.7. Reform suggestions especially by the National Police Commissions

4. Professional Deviance

4.1. Unethical practices at the Indian bar

4.2. The Lentin Commission Report

4.3. The Press Council on unprofessional and unethical journalism

4.4. Medical malpractice

5. **Response of Indian Legal Order to the Deviance of Privileged Classes**

5.1. Vigilance Commission

5.2. Public Accounts Committee

5.3. Ombudsman

5.4. Commissions of Enquiry

5.5. Prevention of Corruption Act, 1947

The Antulay Case

Select Bibliography

Upendra Baxi, The Crisis of the Indian Legal System (1982) Vikas Publishing House, New Delhi.

Upendra Baxi (ed.), Law and Poverty: Essays (1988)

Upendra Baxi, Liberty and Corruption: The Antulay Case and Beyond (1989)

Surendranath Dwevedi and G.S. Bbargava, Political Corruption in India (1967)

A.R. Desai (ed.) Violation of democratic Rights in India (1986)

A.G. Noorani, Minister's Misconduct (1974)

B.B. Pande, 'The Nature and Dimensions of Privileged Class Deviance" in The Other Side of Development 136 (1987; K.S. Shukla ed.).

Indira Rotherm und, "Patterns of Trade Union Leadership in Dhanbad Coal fields" 23 J.I.L.I 522(1981)

- Course Objectives:
- This course is to make the students aware about
- the White Collar Crime,
- Socio – Economic Offences,
- Forms of deviance with various Commission Report and Commission Inquiry.
- It also gives the knowledge and information about the related case laws of Privileged Class Deviance.
- The subject has following main objectives.
- 1. To understand and know the concepts of "Criminality of the 'Privileged classes" and the relation between privilege power and deviant behaviour.

- 2. This course focuses on the Criminality of the “Privileged Classes” and Critical Analysis of legal system responses.
- 3. To Develop understanding of students regarding Construction of model so understanding the reality of middle and upper; middleclass deviance criminality in India.
- 4. In designing lessons materials for this course, recent developments in deviance, as reflected in newspapers/journals, law reports and legislative proceedings should be highlighted.

- Course Outcomes: Having completed this course, the learnerwill be able to :
- 1.To understand the meaning and basic concept of Privileged Class Deviance especially in the form of White-Collar Crime.
- 2. To understand the various forms of deviance with example and case laws.
- 3. To understand the concept of Prevention of Corruption Act with Lokpal, Lokayukta and Ombudsman.
- 4. To know and understand about the various Response of Indian Legal Order to the Deviance.

Introduction

Meaning of Privileged Class –

- The advantages and immunities enjoyed by a small usually powerful group or class, esp. to the disadvantage of others.
- One of the obstacles to social harmony is privilege.
- An advantage that only one person or group of people has, usually because of their position or because they are rich.
- The way in which rich people or people from a high social class have most of the advantages in society.
- The special right that some people in authority have that allows them to do or say things that other people are not allowed to.
- eg - *diplomatic/parliamentary privilege.*
  Security provided to ministers and leaders.
  Privileges to Government officers/Judicial officers/Company Executives, etc.

Meaning of Deviance

- The fact of diverging from usual or accepted standards, esp. in social behaviour. An unacceptable behaviour.
- A deviant is someone whose behaviour falls far out of society's norms.
- The quality of not being usual, and of being generally considered to be unacceptable

Examples of formal deviance include robbery, theft, rape, murder, and assault. Informal deviance refers to violations of informal social norms, which are norms that have not been codified into law.

The factors that affect whether an act is deviance act.

- CIRCUMSTANCE : The circumstances decide whether a particular act is deviance act or not.

eg: Taking the life of a person may be considered as murder in normal circumstances and is a deviant act. Whereas taking the life of an enemy soldier during a war is not a deviant act but perfectly a legal act.

Age : age may also be a determining factor in some cases, like an act committed by a child may not be considered as deviant act but if the same act committed by an adult may be considered as a deviant act.

PRIVILEGED CLASS DEVIANCE :

A deviance behaviour if done by a person belonging to the privileged class of the society then it is called as privileged class deviance.

- This privileged class is part of the society who are respectable , affluent and have high social standing. They are capable of affecting the lives of others due to special privileges available to them due to their position , authority, status money etc. This class naturally has a higher edge over others because of these privileges.
- When these people choose to deviate from the accepted norms and act in different manner , it will be called as privileged class deviance. The factor which ignites such behaviour may be because of the privileges available to them and the thinking that they may be easily get away with it.

- CONCEPTION OF WHITE COLLAR CRIME :

WHITE collar crime , defined by Professor Edwin Sutherland in 1939 , as a crime

Committed by a person of respectability and high social status in the course of their occupation

Eg: Bank embezzlement.

- White collar crimes are on the rise in the society and there is need for strict action and control by the government authorities.
- Even though there are stringent laws in place, the white collar crimes are on the rise.
- Because of lack of proper implementation of these laws and other factors.

OTHER REASONS :

The trend is leniency towards these offences

Both w.c.criminals and investigative authorities belong to same class.

Indirect and delayed impact on victims

Not much media coverage because of alleged manipulation etc.

- WHITE COLLAR CRIMINAL : eg :
- Cash embezzlement by cashier/ accountant , belonging to the employer.
- Selling of medicines of government hospitals in the market by doctors/ staff.
- Prosecutor accepting gratification for dropping criminal charges against the accused.
- Insider trading.
- Destruction of computer data by an employee removed from services due to wrong practices in employment.
- Hacking of computer system /accounts and stealing of money.
- Hacking and stealing of business data of organisations.
- Unethical practice by various professionals (doctors, Lawyers,engineers, architects etc)
- Political scams.
- Corruption by govt. officials

The main reason behind white collar crime is greed for more and more money.

- Remedial measures :
- In India where there is large scale illiteracy and ignorance among citizens, white collar crime is bound to multiply in large numbers.
- controlling these crimes may be a challenge before the criminal justice administration in India.
- SOME OF THE REMEDIAL MEASURES :

- Creating awareness among people through visual and print media about these crimes.
- Educating people about the remedial measures available to them.
- Stringent regulatory laws should be enacted and strictly implemented.
- Fast track courts should be established for speedy trials.
- There should be provision for stringent punishment to White collar criminals which should act as deterrent to likely criminals.
- Public vigilance system should be created so that they can keep a watch on such activities and report to the concerned authorities.

APPROACHES TO SOCIOECONOMIC OFFENCES IN INDIA

The policy of Laissez-faire or non-interference of state in material pursuits of individuals must have surely led to socio economic offences.

But gradual introduction of policy of welfare state in governance has put some brakes in such kind of socio economic offences through state interference through various enactments and their implementation.

Being a welfare state, today the government controls various activities of production and distribution of goods and services.

Welfare state increased the responsibility of the state and workload also resulting in less effectiveness in implementation and overall administration.

In addition to that some incompetent, corrupt ,dishonest and unscrupulous people in the government machinery added to the misery.

Both the factors contributed towards growth of socioeconomic offences.

- Socio economic offences like corruption, favouritism and nepotism in appointment to public office and authorities.
- Irregularities in issue of licenses ,permits and quotas. Misappropriation ,frauds and scams relating to public property.
- Other socioeconomic offences like smuggling, violation of foreign exchange regulation, under invoicing, black marketing , hoarding ,tax evasion , adultration of food and drug, narcotic drug peddling , Money laundering and unethical practices in various profession also increased. Which had an adverse effect on the society as a whole.

- Though India is known for its rich culture and heritage and its belief in honesty, values and trust, the British invasion and their influence on innocent minds of people of India had an adverse effect. The same culture of corrupted minds continued after Independence.

- The business tactics used by East India company and grabbing of power and ultimately ruling India for so many years had a direct effect on mentality of Indians which till then was of high moral standards. British culture had an effect on Indians and ultimately graduated into socio economic offences.
- British culture was clearly visible in the working of governmental officials, Businessman ,Landlords and people at high places, even after Independence.
- There is also a theory that the misery caused by the division of India into two countries and its aftermath had a direct impact on growth of socio economic offences.
- Now the new phase of development of socioeconomic offences was seen because of rapid industrial growth and urbanisation . Development of technology and its misuse contributed towards rapid growth of such offences . Everyone wanted to grow richer within a short span no matter what mode was followed to achieve that.

- Nirav modi, Vijay Mallya,Mehul Choksi, jatin Mehta are some names amongst thirty odd other names who were till now considered as highly reputed people but now absconding after committing socio economic offences to the tune of crores of rupees.

- Though India has an extradition treaty with UK , the extradition procedure has been very slow and we could not bring these offenders back to the country and to justice. Such delay in justice in fact encourages others to commit such kind of offences because they think that they can get away by running away to other countries.

- Therefore we need strong relations with friendly countries in this regard.

The Santhanam committee studied these kinds of offences in detail and categorized these offences and suggested some remedies.

1) Offences calculated to prevent or obstruct the economic development of the country and endanger its economic health.

2) Evasion and avoidance of taxes lawfully imposed.

3) Misuse of position by Public Servants in making of contracts and disposal of public property, issue of licenses and permits and similar other matters.

4) Delivery by individuals and industrials and commercials undertakings of goods not in accordance with the agreed specifications in fulfilment of contracts entered into with public authorities.

5) Profiteering, Black-Marketing, and Hoarding.

6) Adulteration of food stuff and drugs.

7) Theft and misappropriation public property and funds.
8) Trafficking in licenses and permits.

Besides the above offenses, there are many other **examples** – Smuggling, Violation Foreign Exchange Regulation, Bank Frauds, Offenses in Medical and Legal Profession, Money Laundering, And Corruption in Politics, etc. These are socio – economic offenses, having a major impact on the society at large.

The Indian Penal Code is the *First* Law containing some provisions for curbing, socio – economic offenses, however **Santhanam Committee** declared *that* **IPC** in a day – to – day context *cannot* operate in any satisfactory manner. Some other special enactments are *required* to deal with this menace.

On the basis of the recommendation of **Santhanam Committee** and **Law Commission Of India**, enacted *several* laws from time – to – time to deal with socio – economic offenses, such as –

1) The Foreign Exchange Regulation Act – 1973.
2) The Smuggling And Foreign Exchange Manipulators Act – 1976.
3) The Control Of Foreign Exchange And Prevention Of Smuggling Act – 1974.
4) Criminal Procedure Code – 1973.
5) The Prevention Of Corruption Act – 1988.
6) The Prevention Of Food Adulteration Act.1954
7) The Prevention Of Immoral Traffic (Amendment) Act – 1986.
8) The Drugs And Cosmetics Art.1940
9) The Essential Commodities (Amendment) Act.1955

10) The Dowry Prohibition Act. 1961
11) The Narcotic Drugs Psychotropic Substances Act – 1985.
12) The Standard Of Weights And Measures Act.1976
13) The Customs Act.1962
14) The Drug (Control) Act.1950
15) The Income Tax Act – 1961.

These enactments were able to contain the menace of socio – economic offenses to a great extent.

- COMMISSION :
- The central vigilance commission (CVC) was set up in 1964 in pursuance of Santhanam committee for prevention of corruption . In 2003 , the parliament enacted a law conferring statutory status on the CVC. It has the status of an autonomous body , free of control from any executive authority. Has the authority of monitoring all vigilance activity under the central Government of India.
- CONCLUSION :
- The socio economic offence is a hindrance to economic and overall development of a country. Whenever the laws are weak or insufficient , new laws are to be enacted . They should be properly implemented . Authorities under various acts should take their duties seriously and take preventive measures as per the provisions of law. Offenders should be brought to justice without any delay.

TYPICAL FORMS OF SUCH DEVIANCE

- OFFICIAL DEVIANCE : (Deviance by Legislatures , judges, bureaucrats)
- There is no internationally accepted definition for “corruption” . It is basically the misuse of public office in order to get some personal gain.

Corruption done in offices and deviant actions of the officers in these power positions are known as official deviance. Post independence, the administration wing and its works have increased many fold. To tackle this work load, many departments were created and lot of powers were delegated to them.

Under the policy of welfare state, many schemes were launched for the benefit of the citizens and money was provided by the government for the implantation of such schemes.

This led to huge corruption in various departments as various officials are involved in implementing the schemes and money was easily available.

Official deviants not only involves the officials of the administrative work but also covers Legislatures and Judiciary. The Politicians involved in big scams involving huge amount of money and misappropriation of large amount of funds. Although they are elected representative of people elected for the benefit of the common people.

Deviance By Legislators

Although in Principle, Legislators should only serve the interests of the electorate, certain groups often try to influence Legislators through Gratification for their own interests, in exchange of Policy favours. Thus, by obeying a particular lobby pressures, the Legislators no longer serve the interest of their constituents and at this juncture, an official deviance takes place.

Ministers and Legislators also are unwilling to eliminate any kind of deviances in the administrative setup since they themselves are party to it.

A number of scams are exposed on a regular basis where Ministers and Politicians are involved, putting a 'Question Mark' on their integrity.

Deviance By Judges

The Judiciary in India is independent and meant to be totally away from bias and corruption, the Judge is considered a person of high morality and integrity. The position of a Judge is considered to be of high sanctity.

But, nowadays there has been disturbing news of corruption esp. in Higher Judiciary. Although, there were allegations against various Judges, in 2011 **Soumitra Sen**, a former Judge of Kolkata High Court against whom an impeachment proceedings was passed in the Rajya Sabha for misappropriation of funds but was not impeached because he resigned immediately before the proceedings went to Rajya sabha.

Deviance By Bureaucrats: The Executive

The Deviance by Administrative Executives is the most common problem in the present Administrative System in India. Administrative Executives have to carry out various Administration Works on a day – to – day basis for the smooth running of the country. While doing that, they have to carry out various functions like implementation of laws, implementation of government policies and maintenance of law and order, collection of revenue and other activities. It has been observed that there is a rampant corruption at various stages of Administration.

Arbitrary use of discretionary powers, biased actions, misuse of their powers, actions against the legal code of conduct, inaction, delay in action causes official deviance and which results in inconvenience to the General Public and Loss to the Government treasury effecting the country as a whole. Corruption is one of the greatest aspects which has an adverse effect on the economy and overall development of the country.

PROFESSIONAL DEVIANCE (Deviance by Journalist , Teacher, Doctors, Lawyers ,Engineers, architects and publishers)

These are the people who are professionly trained to carry out a particular skill in the society to provide as specific service to people. such professionals empowered with the knowledge and skill tend to misuse this power and position.

JOURNALIST : media is considered as the fourth pillar of a democracy and has a very important role in nation building . It is supposed to follow the work ethics of journalism.

The journalism is a noble profession and a mass communication media, professional journalists are found involved in corruption like extracting money from rich and influential persons by blackmailing them to expose them through their publications.

- The main victims of journalists are politicians and public servants , involved in various scandals.
- Publication of Paid news. -- individuals , politicians, governments, actors, industries etc.
- TRP scams
- These are deviant behaviour and not acceptable to the society.

- TEACHERS : In India we have a tradition of highest respect to the teachers and gurus.
- Majority of the teachers are decent and law abiding citizens and fully aware of their responsibility towards the students.
- But there are some exception to this in this field also.
- Like not carrying their duties as teachers where they are employed as teachers but encouraging their students to join their private tuitions where they charge hefty fees.
- It is also alleged that there is bribery , nepotism and fovouritism in admission , teacher appointments, licencing of institutions.
- Corruptions in procurement of books and other equipments.
- Granting of fake degrees and diplomas.
- Corruption in prefered postings and promotions.
- Awarding of Doctorates, diversion of funds etc are also alleged.
- There are allegations of corruption in mid day meals in schools.

- DOCTORS :
- The medical profession is considered as on of the noble profession , because it relieves the people of their pain and suffering and many a time giving a new lease of life.
- People have great faith and respect for this noble profession.
- But few people (doctors) who are there in the profession for all wrong reasons and follow unethical practice.
- Basically humanitarian approach is expected in this profession.
- Some of the wrong practices in medical profession are,

Illegal abortion , issue of false medical certificates, deposing of false expert evidence.

selling of sample medicines, selling of medicines and surgical equipments in govt . hospitals

Referring patients to various doctors and labs, without any necessity.

Procurement medical machineries and other equipments.

Life expectancy of a patient depends on his financial background , whether in government hospital or private.

Adultrated drugs which are made available in government hospitals because of corruption.

It is also alleged that doctors are not available at their work place though they draw salary from govt. because they provide their service elsewhere.

issue of licenses to service providers and manufacturers who are incapable but willing to pay high bribes.

unnecessary prescribing of drugs, to increase the sale of drug companies in return of gratification.

inflation of treatment bills to procure more reimbursement from insurance companies.

- Corruption, favourtism, nepotism , in promotional matters resulting in incompetent people occupying important posts.

Due to corruption in health care system the mortality rate in India is quite High.

LAWYERS : Legal profession

An advocates profession is also known as a noble profession . He helps the court in administration of justice.

Lawyers must also maintain the highest standard of honesty , integrity and fairness towards a client, the court, the lawyers and members of the public.

some of corrupt practices are,

Not being faithful towards clients.

Prosecution not charging the accused properly and failing to get conviction because of lack of evidence (not leading evidence).

- Fabricating false evidence.
- Engaging professional witness.

These are some of the deviance committed by Lawyers.

ENGINEERS AND ARCHITECTS : The public works/ Engineering/ construction work is considered to be the most corrupt sector in the world.

- Our roads and bridges, railroads, transit systems, airports, and ports move people to and from their houses and jobs, and move goods from producers to consumers. The buildings we produce provide houses, stores, manufacturing, energy (refineries, power plants), education (schools), and health care (hospitals). Life as we know it would not exist without engineers, constructors, material suppliers, equipment suppliers, lenders, and owners who plan, design, construct, operate and maintain our built environment.
- Yet, despite all of the good that the engineering/construction industry has done, our industry still receives notoriety for corruption

- It is alleged that in these areas substandard materials are used . Substandard work is certified as standard work all because of corruption in the system.
- The public safety which is most important in these works, is almost ignored in almost every case.
- TRADE UNION DEVIANCES :
- Trade unions were made for the benefit of the labourers and workers to safeguard their rights and to provide them a platform to voice their complaints and greivances.
- Sometimes these powers are misused and false accusations were made on the employer and who were forced to fulfill even irrational demands of the employees.
- The labour unions like , workers union, doctors union , teachers union are some of the unions involved in such activities.

- LANDLORD DEVIANCE :

The poor and uneducated people in the rural area fall prey to the malpractices and suffer.

Poor farmers are provided with loans at high rates during their difficult times by the landlords. When the poor farmers are not able to repay the principle amount and also the interest , the debts keep on accumulating.

Whatever amount is repaid is deposited against never ending interest and the principle remains unpaid and the debt becomes never ending , resulting in bonded labour and land grabbing of poor farmers.

POLICE DEVIANCE :

The main duty of police department is to maintain law and order and to bring the criminals into justice.

- Police deviance occurs when law enforcement officers behave in a manner that is “inconsistent with the officer’s legal authority, organizational authority ,and standards of ethical conduct” .
- Police deviance includes but is not limited to discrimination, misconduct, intimidation ,sexual harassment, corruption ,excessive force, use of restricted weapon and illegal surveillance.
- Police deviance is a much broader term than corruption. It includes all activities which are inconsistent with norms, values, or ethics. Police deviance and abuse of police power have emerged a major issue of human Rights concern.
- Torture caused police violence has devastating effects on physical and mental health as well as social functioning of the individuals, their children, families, communities and society at large. The victims remain in a state of perpetual fear and horror whenever they remember their custodial agony, hatred, trauma and probably never able to lead a normal life in many parts of the world.

- The cases of police deviance has increased today. Generally, the victims are poor, women, children and disadvantaged people those who belong to the weaker sections of society.
- The Supreme Court and High Courts in their several landmark judgments upheld that police personnel do indulge in custodial crimes. Through creative interpretation, the higher judiciary has evolved mechanisms for protection of the rights of the victims of torture and their entitlements for compensation. In leading cases of Nilabati Behera V State of Orrisa and D.K. Basu vs. State of West Bengal , the Apex court held that the claim of sovereign immunity arising out the State discharging sovereign functions is held to be no defence at all against the acts of violation of the constitutionally guaranteed Fundamental Human rights.
- The Court further held that "there is a great responsibility on the police authority of ensures that the citizen in its custody is not deprived of his right to life.

- DEVIANCE IN ELCTORAL PROCESS
- Election process in India is no exception to corrupt practice. The sanctity of election is breached due to corruptive and unethical practices during elections.
- Some of the deviance in electoral practice are :
- Booth capturing
- Fraudulent voting by impersonation.

Use of muscle power to intimidate voters to vote in favour of a particular candidate or not vote at all.

Involvent of officials and local administration in subverting the electoral process.

Buying of votes through various means

Allowing people with criminal records to contest the election.

- GENDER BASED AGGRESSION BY SOCIALLY , ECONOICALLY AND POLITICALLY POWERFUL :

- Gender based violence (GBV) is violence targeted at individuals or groups on the basis of their gender. While research suggests that a significant proportion of women worldwide will at some point in their lives experience GBV, the extent to which men and boys are affected is unknown. An associated form of violence is Violence against Women and Girls (VAWG), which is directed specifically at females.
- Gender-based violence negatively impacts the world of work. It is described by many as the most prevalent human rights violation in the world, with at least one in three women globally estimated to have been coerced into sex, physically beaten, or otherwise abused in her lifetime

- In 1993 the United Nations Declaration on the Elimination of Violence against Women defined such violence as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.
- This included marital rape, sexual harassment, sexual abuse, trafficking, and forced prostitution. This definition has since been broadened to include, among other things, systematic rape in armed conflicts, female infanticide and prenatal sex selection, as well as the economic exploitation of women.
- However, males can also be victims of such violence, especially those who do not conform to traditional societal expectations about “masculine” behaviour. And some women perpetuate violence against other females in order to assert their authority and dominance, such as a

- Some other forms of gender based violence :
- Domestic violence
- Early marriage , dowry killings, honour killings
- Female foeticide and infanticide
- Trafficking and prostitution by luring or threatening.
- Gender based violence may result in physical, psychological and social harm . Survivors of gender based violence may experience deep psyhological trauma , depression , terror, guilt, shame and loss of esteem.
- violence against women is a serious problem all over the world and needs urgent remedies and drastic steps and gender sensitization.
- **Some of the measures taken at a global level.**
- **Convention on the elimination of discrimination against women 1979**
- **UN declaration on the elimination of violence against women1993**

SEXUAL HARASSMENT AT WORKPLACE :

- Sexual harassment at a workplace is considered violation of women's right to equality, life and liberty.
- It creates an insecure and hostile work environment, which discourage women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth.
- With this idea the legislature formulated the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.
- The need for such legislation was observed first time by the Supreme Court, in Vishaka v State of Rajasthan. 1997.
- In the absence of any law at that time providing measures to check the evil of sexual harassment of working women, the Supreme Court, in exercise of power available under Article 32 of the Constitution, framed guidelines to be followed at all workplaces or institutions, until a legislation is enacted for the purpose.

- The Supreme Court incorporated basic principles of human rights enshrined in Constitution of India under Article 14, 15, 19(1)(g) and 21, and provisions of Convention on Elimination of All Forms of Discrimination against Women (CEDAW), which has been ratified in 1993 by the Government of India. The guidelines laid down by the Supreme Court were to be treated as the law declared under Article 141 of the Constitution.
- After 16 years of *Vishaka,* The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 ("the Act") was enacted with the objective to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matter connected therewith or incidental thereto.

- The Act defines sexual harassment as unwelcome acts or behavior (whether directly or by implication) namely, physical contact and advances, a demand or request for sexual favors, making sexually colored remarks, showing pornography, any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Any act of unwelcome and sexual nature shall be considered as sexual harassment.
- The important feature of the Act is that it envisages the setting up of Internal Complaints Committee at every office of the organisation or institution, having more than 10 employees, to hear and redress complaints pertaining to sexual harassment. Where the number of employees are less than 10, the Act provide for setting up of Local Committee in every district by the District Officer.

- On receiving the complaint the committee, before initiating an inquiry, may take steps to settle the matter between her and the respondent through conciliation and when a settlement is arrived no further inquiry is conducted. If the conciliation fails or any term of the settlement arrived at has not been complied with by the respondent, the committee shall proceed further with the inquiry.
- Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

- The criminal Law (Amendment) Act 2013 introduces changes Indian Penal Code, making sexual harassment an expressed offence under section 354A, which is punishable upto three years of rigorous imprisonment and/or with fine .

CHAPTER TWO

OFFICIAL DEVIANCE

CONCEPTION OF OFFICIAL DEVIANCE : PERMISSIBLE LIMIT OF DISCRETIONARY POWERS.

IN modern period , Bureaucrats misuse their powers, act against code of conduct, while discharging their duty as public servants and act for their personal benefit.

Indulge in maladministration, inaction, delay in action and abuse and misuse of power. And thus commit official deviance.

- In Independent India , with the concept of welfare state government and its numerous agencies give vast funds for the welfare activities of a state for the benefit of its citizens. These funds opened the gates for corruption in various stages of administration hierarchy.
- welfare operations require a large number or regulations , control mechanisms, licences and permits and these involved inviting tenders , etc resulting in corresponding increase in administrative work and spurt in economic activities which gave way to increase in corruption and deviance.
- Each official works in a mechanical manner and is not ready to help the common man who gets trapped in this formal official system and RED TAPISM . OUT OF NECESSITY AND FRUSTRATION and to speed up things he becomes ready to pay bribe demanded by the officials . Thus the official becomes habituated to this practice.
- Corruption is rampant in matters like assessments and collection areas like assessment of income, sales and collection of taxes and other revenues.

- Granting of licences , awarding contracts , quotas, approval of work, acceptance of supplies ,are some of the areas where the economic activities gave rise to corruption.
- According to Santhanam committee report there are departments where corruption is reported to be more severe. These are public works departments, revenue, forest , custom , income and sales tax, excise, police and railways etc. Another important reason for such deviance has been patronage and influence of political powers.
- The relationship between deviant bureaucrats and corrupt politicians is very common phenomenon in modern democracy. It is certain that no administration can successfully perform its duties without any political interference but, deviant officers have no objections against such increased influence and interference of politicians in administrative work because in return politicians fulfil desires of such bureaucrats.

- Both the bureaucrats and the politicians together work in tandem for personal gain where the the sufferer is public and the country.

PERMISSIBLE LIMIT OF DISCRETIONARY POWER

DISCRETIONARY POWER.

- 'Discretion' in this sense means choosing from amongst the various available alternatives but with reference to the rules of reason and justice and not according to personal whims. Such exercise is not to be arbitrary, vague and fanciful, but legal and regular.
- The problem of administrative discretion is complex.
- It is true that in any intensive form of government, the government cannot function without the exercise of some discretion by the officials.

- It is necessary not only for the individualization of the administrative power but also because it is humanly impossible to lay down a rule for every conceivable eventually in the complex art of modern government. But it is equally true that absolute discretion is a ruthless master.
- It is more destructive of freedom than any of man's other inventions.
- Therefore, there has been a constant conflict between the claims of the administration to an absolute discretion and the claims of subjects to a reasonable exercise of it.
- Discretionary power by itself is not pure evil but gives much room for misuse. Therefore, remedy lies in tightening the procedure and not in abolishing the power itself.

Discretionary powers exercised by administrative and legal authorities are permissive, and not binding. These powers are granted to these officials by statute or delegation. Discretionary powers do not impose an obligation on a decision-maker to exercise them or to exercise them in a particular manner.

Administrative agencies must exercise discretionary powers in accordance to legal requirements. Discretionary power must be used reasonably, impartially and avoiding oppression or unnecessary injury.

There is a need for administrative law because the interest of public could be at risk if various agencies were not following laws and regulations. Administrative law is important because without it, it could lead to arbitrary and unreasonable use of such discretion, which may lead to destruction of basic principles of administrative law

- Administrative discretion allows agencies to use professional expertise and judgment when making decisions or performing official duties, as opposed to only adhering to strict regulations or statuses. For example, a public official has administrative discretion when he or she has the freedom to make a choice among potential courses of action. The failure to exercise reasonable judgment or discretion is abuse of discretion.
- Discretionary power must be used reasonably, impartially and avoiding oppression or unnecessary injury.
- ADMINISTRATIVE DISCRETION AND JUDICIAL CONTROL
- The control exercised by the Courts over the administration is called judicial control, that is, to the power of the court to keep the administrative acts within the limits of law. It also implies the right aggrieved citizen to challenge the wrongful act of administration in court of law. The primary purpose of judicial control over the protection of the rights and liberty of citizens by ensuring the of administrative acts.

- In India, the judiciary occupies an important place. The constitution visualizes an independent judiciary to safeguard the rights of citizens. In a democratic polity, the independent judiciary is a sine qua non to the effective functioning of the system. Administration has to function according to the law and the Constitution. The judiciary has an important role to play in protecting the citizen against the arbitrary exercise of power by administration.
- **Basis of judicial Control: Rule of Law**
- The term 'rule of law' is originated from England and India has taken this concept. The concept of rule of law further requires that no person should be subjected to harsh or arbitrary treatment. The word 'law' in rule of law means that whether he is a man or a society, he must not be governed by a man or ruler but by law.

- Generally judicial intervention in administrative activities is confined to the following cases:
- **a) Lack of Jurisdiction**: If any public official or administrative agency acts without or beyond his/her or its authority or jurisdiction the courts can declare such acts as ultra vires. For instance, according to administrative rules and procedures, in all organizations, the competent authority is identified for taking decisions and actions. If any authority or person other than the competent authority takes action, the court's intervention can be sought under the provisions of lack of jurisdiction.
- **b) Error of Law:** This category of cases arises when the official misconstrues the law and imposes upon the citizen obligations, which are absent in law. This is called misfeasance in legal terminology. The courts are empowered to set right such cases.

- **c) Error of Fact**: this category of cases is a result of error in discovering cases and actions taken on basis of wrong assumptions. Any citizen adversely affected by error of judgment of public official can approach courts for redressal.
- **d) Error of Procedure**: "due procedure" is the basis of governmental action in a democracy. Responsible government means a government by procedure. Procedure in administration ensures accountability, openness and justice. Public officials must act in accordance with the procedure laid down by law in the performance of the administrative activities. If the prescribed procedure is not followed the intervention of the courts can be sought and legality of administrative actions can be questioned.
- **e) Abuse of authority**: if a public official exercises his/her authority vindictively to harm a person or use authority for personal gain, court's

- **Judicial Review:** The judicial review implies the power of the courts to examine the legality and constitutionality of administrative acts of officials and also the executive orders and the legislative enactments. This is very important method of judicial control. This doctrine prevails in countries where Constitution is held supreme, for example, in U.S.A. India, Australia, etc.
- **Statutory Appeal:** The statutes made by Parliament and State Assemblies itself provide that in a particular type of administrative action, the aggrieved party will have a right of appeal to the courts Judicial Administration or to a higher administrative tribunal. Sometimes, legislative enactment itself may provide for judicial intervention in certain matters.

- **Extraordinary Remedies**: Apart from the methods of judicial control already discussed, there are the extraordinary remedies in the nature of writs of Habeas Corpus, Mandamus., Prohibition, Certiorari and Quo-Warranto. These are called extraordinary remedies because the courts grant these writs except the writ of Habeas Corpus, in their discretion and as a matter of right and that too when no other adequate remedy is available. A writ is an order of the court enforcing compliance on the part of those against whom the writ is issued. In India, these writs are available under the provisions of the Constitution. While the Supreme Court is empowered to issue these writs or orders or directives only for the enforcement of Fundamental Rights, the High Courts are empowered to issue these writs not only for the enforcement of Fundamental Rights but also for other rights. in Britain, these are called Prerogative Writs issued in the name of the King as 'the fountain of

- **a) Habeas Corpus:** Habeas Corpus literally means to have the body of. This writ is an order issued by the court against a person who has detained another to produce the latter before the court and submit to its orders. If it is found that the person in unlawfully or illegally detained, he will be set free. A friend or a relation of the detained person may also apply for this writ on his/her behalf. This writ is a great bulwark of individual freedom and can be described as the cornerstone of personal liberty. This writ is granted as a matter of a right of prima-facie, if it is established that the person is unlawfully detained. Its utility is, however restricted in India in view of the provision of Preventive Detention Act.

- **b) Mandamus:** Mandamus literally means command. If a public official fails to perform an act which is a part of his public duty and thereby violates the right of an individual, he /she will be commanded to perform the act through this writ. From the standpoint of judicial control over administrative lapses, it is an effective writ. In India, this can also be issued to compel a court or judicial tribunal to exercise its jurisdiction.
- **c) Prohibition:** It is a judicial writ issued by a superior court to an inferior court, preventing it from usurping jurisdiction, which is not vested with it. While Mandamus commands activity, Prohibition commands inactivity. This writ can be issued only against judicial or quasi-judicial authorities to prevent exercise of excess of jurisdiction by a subordinate court. As such its significance as a method of judicial control over administration is limited.

- **d) Certiorari:** While Prohibition is preventive, Certiorari is both preventive and curative. It is a writ issued by a superior court for transferring the records of proceedings of a case from an inferior court or quasi-judicial authority to the superior court for determining the legality of the proceedings.
- **e) Quo-Warranto:** Literally, Quo-Warranto means 'on what authority'. When any person acts in a ‘public office’ in which he/she is not entitled to act, the court by the issue of this writ, will enquire into the legality of the claim of the person to that office. If the said claim is not well founded, he/she will be ousted from that office. It is, thus, a powerful instrument against the usurpation of ‘public offices’.

- From time to time the administrative discretion is reviewed by the courts on the following grounds :
- ABUSE OF DISCRETION
- 1. USE FOR IMPROPER PURPOSE :
- The discretionary power has to be used for the purpose for which it has been given.
- IN Hukumchand vs union of india, 1976, the telephone connection of the petitioner was disconnected on the allegation that it was used for illegal purpose, but the discretionary power of disconnection to the general Manager was given only to be used during public emergency and public safety. Hence in the given case the power is used for a purpose for which it was not given. The SC ordered for the restoration of telephone connections.

- MALAFIDE OR BAD FAITH.
- IF the discretionary power is exercised by the authority with bad intention ,the action is quashed by the court. Malafide exercise of discretionary power is always considered as abuse of discretionary power. Such exercise is always associated with dishonest intension and corrupt motive.
- In another case of PRATHAP SINGH VS STATE OF PUNJAB SC 1964, A civil surgeon appointed in government hospital by state government was sent on leave pending enquiry on charges of corruption. The surgeon contended that the matter was pursuaded on behalf of the chief minister to avenge some enemity with the surgeon . The court observed that there was abuse of power with malafide intention and quashed the order of government.
- IRRELEVENT CONSIDERATION :
- State of UP vs Rajaram Jaiswal . SC AIR 1985

- Refusal to grant permission under cinematography Rules for the exhibition of movies after giving permission for building of cinema theater after following proper procedures . The authority refused permission on flimsy grounds of consideration of against public interest when this aspect was already taken into consideration before issue of construction license . The hon'ble SC termed the order as without any valid consideration and ordered for issue of license.
- LEAVING OUT RELEVANT CONSIDERATIONS;
- The administrative authority exercising the discretionary power is required to take into account all the relevant facts. If it leaves out any relevant considerations

the actions will be invalid.

A. SHANMUGAM VS SKVS LTD –SC 1963. It was held for giving a permit to ply transport vehicles certain points which are to be considered are not considered before refusing the application and hence the order is void.

- UNREASONABLENESS :
- The discretionary power is required to be exercised by the authority reasonably. If it is exercised unreasonably it will be declared invalid by the courts. The unreasonableness or arbitrariness shall be decided by the by the court.
- COLOURABLE EXERCISE OF POWER :

Colourable exercise of power.– At times, the courts use the idiom "colourable exercise of power" to denounce an abuse of discretion. Colourable exercise means that under the "colour" or "guise" of power conferred for one purpose, the authority is seeking to achieve something else which it is not authorized to do under the law in question then the action of the authority shall be invalid and illegal.

Viewed in this light, “colourable exercise of power” would not appear to be a distinct ground of judicial review of administrative action but would be covered by the grounds already noticed, improper purpose or irrelevant considerations. The same appears to be the conclusion when reference is made to cases where the ground of “colourable exercise of power” has been invoked.

. In the Somawanti v. State of Punjab, the Supreme Court stated as the follows with reference to acquisition of land under the Land Acquisition Act: “Now whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about subject to one exception.

The exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. If it appears that what the Government is satisfied about is not a public but a private purpose or no purpose at all action on the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity.”

The above quotation would show that the term “colourable exercise of power” is used in the sense of using a power for a purpose not authorized by the Act conferring the power on the authority concerned.

. Colourable exercise and improper purpose appear to converge and the two phrases can be used inter-changeably.

NON COMPLIANCE WITH PROCEDURAL REQUIREMENTS AND PRINCIPLES OF NATURAL JUSTICE :

If the mandatory procedural requirement laid down in the statute is not complied with then the exercise of power will be misuse of power.

Principles of NATURAL JUSTICE HAS TO BE COMPULSORILY OBSERVED.

FAILURE TO EXERCISE DISCRETION.

The authority having such power is expected to use his intelligence and application of mind while exercising these discretionary powers. He is not expected to be careless and needs to be cautious as to the consequences of his actions.

- NON APPLICATION OF MIND

Non application of mind while using the discretion power by an administrative authority may lead to dangerous consequences . Therefore it is essential that a person occupying a public office takes his decisions by applying proper laws and also due diligence.

ACTING UNDER DICTATION :

Sometimes the authority acts under the instruction and dictation of superior authority although he has been delegated with discretionary powers. The authority entrusted with the powers does not take action on its own judgement but always looks upto the order from superior authority.

Purtabpore company Ltd. Vs Cane commissioner of Bihar SC

Cane commissioner has the authority to reserve sugarcane areas to a particular sugar factory . The cane commissioner excluded 99 villages reserved for the appellent to another factory on the orders of chief minister.

Held the use of discretionary power was bad and the authority has not used his authority at all.

ADMINISTATIVE DISCRETION AND FUNDAMENTAL RIGHTS

The administrative action and discretion are controlled by the judiciary. Most importantly when ever the administrative actions are arbitrary and infringed the fundamental rights of people, the judiciary has always come to the rescue of people and restored their fundamental rights.

MANEKA GANDHI VS UNION OF INDIA

- ***Case Summary – Maneka Gandhi (Petitioners) V Union of India (Respondents)***
- The landmark ruling in Maneka Gandhi versus Union of India, which stands as a bulwark of the Right of Personal Liberty granted by Article

- Constitution, started when the passport of the petitioner in this case, was impounded by the authorities under the provisions of the Passport Act. This arbitrary act of impounding the passport eventually led to the pronouncement of a unanimous decision by a seven-judge bench of the apex court
- ***Brief Facts***
- The petitioner Maneka Gandhi's passport was issued on 1st June 1976 as per the Passport Act of 1967. On 2nd July 1977, the Regional Passport Office (New Delhi) ordered her to surrender her passport. The petitioner was also not given any reason for this arbitrary and unilateral decision of the External Affairs Ministry, citing public interest.
- The petitioner approached the Supreme Court by invoking its writ jurisdiction and contending that the State's act of impounding her passport was a direct assault on her Right of Personal Liberty as

- It is pertinent to mention that the Supreme Court in Satwant Singh Sawhney v. Ramarathnam held that right to travel abroad is well within the ambit of Article 21, although the extent to which the Passport Act diluted this particular right was unclear.
- **Issues Before the Court**

- Are the provisions under Articles 21, 14 and 19 connected with each other or are they mutually exclusive?
- Should the procedure established by law be tested for reasonability which in this case was the procedure laid down by the Passport Act of 1967?
- If the right to travel outside the country is a part of Article 21 or not?
- Is a legislative law that snatches away the right to life reasonable?

- ***Arguments of the petitioners:***

- Through the administrative order that seized the passport on 4th July 1977, the State has infringed upon the Petitioner's Fundamental Rights of freedom of speech & expression, right to life & personal liberty, right to travel abroad and the right to freedom of movement.
- The provisions given in Articles 14, 19 & 21 should be read together and aren't mutually exclusive. Only a cumulative reading and subsequent interpretation will lead to the observance of principles of natural justice and the true spirit of constitutionalism.
- India might not have adopted the American concept of the "due process of law", nevertheless, the procedure established by law should be fair and just, reasonable, and not be arbitrary.
- Section 10(3)(c) of the Passport Act violates Article 21 insofar as it violates the right to life & personal liberty guaranteed by this Article.
- Audi Altrem Partem i.e. the opportunity of being heard is invariably acknowledged as a vital component of the principles of natural justice. Even if these principles of natural justice are not expressly mentioned in any of the provisions of the Constitution, the idea behind the spirit of Fundamental Rights embodies the very crux of these principles.

Contentions of the respondents:

- The respondent stated before the court that the passport was confiscated since the petitioner had to appear before a government committee for a hearing.
- The respondent asserted that the word ‘law’ under Article 21 can’t be understood as reflected in the fundamental rules of natural justice, emphasising the principle laid down in the A K Gopalan case.
- Article 21 contains the phrase “procedure established by law” & such procedure does not have to pass the test of reasonability and need not necessarily be in consonance with the Articles 14 & 19.
- The framers of our Constitution had long debates on the American “due process of law” versus the British “procedure established by law”. The marked absence of the due process of law from the provisions of the Indian Constitution clearly indicates the constitution-makers’ intentions.

- Maneka Gandhi Case Judgement
- This immensely important judgment was delivered on 25th January 1978 and it altered the landscape of the Indian Constitution. This judgment widened Article 21's scope immensely and it realized the goal of making India a welfare state, as assured in the Preamble. The unanimous judgement was given by a 7-judge bench.
- ***Conclusion***
- The judgment's most important feature was the interlinking it laid down between the provisions of Articles 19, 14 and 21. Through this link, the supreme court made these provisions inseparable and into a single entity. Now, any procedure has to meet all the requirements mentioned under these three articles to be held valid. As a result, this judgement enlarged the scope of personal liberty significantly and preserved the fundamental & constitutional right to life.

- The judgement paved the way for the Apex Court to bring into the ambit of Article 21 other important rights like Right to Clean Water, Right to clean Air, Right to freedom from Noise Pollution, Standard Education, Speedy Trial, Fair Trial, Right to Livelihood, Legal Aid, Right to Food, Right to Clean Environment, Right to Medical Care, etc.
- DUE PROCESS AND PROCEDURE ESTABLISHED BY LAW : CLARIFICATION WAS MADE.

In the case of *RD Shetty v. International Airport Authority of India*, it was held that another limitation on the discretion of the government's power is that they do not have any unrestricted discretion.

The government is not as free as an ordinary individual and it cannot choose any person it pleases and acts it's absolute and unfettered discretion on them.

Even if it is a well-established fact in the law the government does not deal with anyone but whenever it does so it should make sure that it exercises its powers without discrimination and any unfair procedure.

The law also ensures that the authorities having powers, while dealing with the public, in any field i.e. while providing them jobs or entering into a contract with them or providing them with any kind of lease must not act arbitrarily.

- During the time of taking actions, the government must not be arbitrary or capricious, instead, the actions must be based on certain principles that pass the test of relevance and reasonableness. This particular rule was mentioned as a rule of administrative law and originated from the doctrine of equality embodied in Article 14. Arbitrariness
- An arbitrary decision is one that is based on whim or purely subjective dislikes and likes. An arbitrary decision always lacks objectivity and predictability. There is no law made that gives directly the power to act arbitrarily. The result of arbitrariness can also be discrimination. Whenever any decision is taken without applying mind for taking into consideration some relevant facts it results in arbitrariness. But when a decision lacks malafide intention given an arbitrary decision can be accepted provided that such decision is a result of an honest person with the best of his intention.

- VIOLATION OF FUNDAMENTAL RIGHTS UNDER ART 19 .
- Article 19 guarantees certain freedom to the citizens of India, but they are not absolute. Reasonable restrictions can be imposed on these freedoms Art 19 (2). But these reasonable restrictions can be imposed by a law passed by the parliament and not by administrative rules and regulations . The reasonableness is subject to judicial review. Whenever there is a restriction through administrative action the same can struck down as void ab initio, because of ultra vires action.
- PRABHU DATTA VS UNION OF INDIA
- The Supreme Court has held that the right to know the news and information regarding administration of the government is included in the freedom of press, they can obtain information from an individual when he voluntarily agrees to give such information.

- In the instant case, the court directed the superintendent of the Tihar jail to permit the chief reporter of Hindustan Times Newspaper to interview, Ranga and Billa, the 2 death sentence convicts, under Article 19 (1)(a) as they were willing to be interviewed. The Jail Authorities had refused permission to the Newspaper to interview the convicts.
- SHEELA BARSE Vs. STATE OF MAHARASTRA(Refusal to interview the jail inmates)
- BIJOE EMMANUEL Vs. STATE OF KERALA(National Anthem Case – Freedom of Speech includes Freedom of Silence)

The Chambal Valley Dacoits, Vinoba Bhave Mission, and Jai Prakash Narayan Mission in 1959 and 1971

- The dacoity have had a large impact in the Morena and Chambal regions in Madhya Pradesh, Rajasthan, Haryana and Uttar Pradesh in north-central India.[2] The exact reasons for the emergence of dacoity in the Chambal valley has been disputed. Most explanations have simply suggested feudal exploitation as the cause that provoked many people of this region to take to arms. The area was also underdeveloped and poor, so that banditry posed great economic incentives.

- Acharya Vinoba Bhave was a Nationalist and Social Reformer who inherited Gandhi's spiritual thought pattern. He was highly inspired by BHAGVAT GITA at a young age.
- In 1940, he became the first individual Satyagrahi against the British. He started Sarvodaya Moment(Universal Uplift or Progress of All) under the leadership of Mahatma Gandhij.
- THE CHAMBAL VALLEY DACOITS MISSION :
- India's Chambal Valley south of New Delhi has for nearly 1,000 years been a homeland to the feared dacoits —professional bandits for whom murder and robbery are a tradition as well as a way of life.
- Conventional police methods have persistently failed to control the dacoits, but a saintly follower of Mahatma Gandhi —Acharya Vinoba Bhave—gently persuaded some of the bandits to give themselves up. Another Gandhi disciple named Jayaprakash Narayan arranged for a much larger group of dacoits to surrender voluntarily.

Vinoba bhave mission (1959-60)

- He went to valley an met various bandits and addressed public meetings and requested:
  - Bandits to repudiate the evil path and pursue a decent life.
  - He visited most of the entire region of Chambal and appealed the dacoits to lay down their arms and adopt peaceful life.
  - He argued "No one is a born dacoit, this is a natural outcome of exploitation, mercilessness, cruelty and callousness.
- The mission was successful.
- Govt also agreed to implement all rehabilaltive schemes if dacoits voluntarily surrender.
- In 1960 some 20 dacoits surrendered.

- But after that there were no surrenders.
- Vinoba Bhave's experiments proved to be failure.
- Police withdrew their co-operation.
- This also led to a controversy over the matter between the mission and the Govt. due to political reasons.
- Failure in this mission resulted in the increase in the illegal activities in the valley.

- India's notorious dacoits committed 285 murders, 352 kidnapings and 213 robberies, all within a small area .
  - Police operations have sometimes been massive—at one point more than 2,000 policemen were searching for a bandit named Man Singh—but never very successful. The campaigns were frustrated as much by the local people, who regard the bandits as baghis (rebels) rather than thieves, as by the cunning of the dacoit gangs. The bandits, many of whom like to take from the rich and give to the poor in Robin Hood tradition, carefully cultivate local good will, rewarding villagers with presents at weddings. But they are also ruthless in eliminating suspected informers.
  - During Jayaprakash Narain mission, before a crowd of 10,000, Madho Singh mounted the raised public platform, placed his weapon at the feet of Narayan and asked the crowd for forgiveness. His mustache was gone and so was the police uniform. Then he touched the feet of the police chief, and surrendered. At the end of the day, 167 dacoits were in jail. Said Narayan: "They are all like children."

Jai Prakash Narayan

8. JAYPRAKASH NARAYAN

Jayaprakash Narayan born on 11 October 1902, Popularly known as JP Narayan, Jayaprakash, or Loknayak, Was an Freedom Fighter, a gandhian and a socialist, Who actively participated in freedom Fighting, And in the Sarvodya Andolan with Vinoba Bhave.
He is Popular for his Struggle during the Emergency. He had also been awarded with Bharat Ratna (The Highest Civilian Award in India).

In 1971 through Protected Negotiation Mission the dacoits and the Govt. finally agreed to take effective steps as a solution of the problem.

- On this occasion the work of Jay Prakash Narayan is a landmark.
- Jay Prakash Narayan made way for the mass surrender as a result of which 503 dacoits out of which 393 from Chambal area surrenderd along with their arms and property.
- Jay Prakash Narayan then worked for their rehabilation and upliftment in industries and factories.
- The surrendered dacoits were kept in open prison especially constituted for the purpose of self-reformation and treatment.
- They were kept in open prison at Mungoli (District Guma) and Laxmipur (District Panna).

- THE CHAGLA COMMISSION REPORT ON LIC – MUNDRA AFFAIR :
- The *Mundhra scandal* exposed the nexus between the Bureaucracy, stock market speculators and small rogue businessmen. It also brought to light rifts between the then Prime Minister Jawaharlal Nehru and his son-in-law Feroze Gandhi, and also led to the resignation of India's then finance minister T. T. Krishnamachari.
- , Mundhra started life as a light-bulb salesman, and pyramided his holdings by "fast deals and stock juggling", buying shares of small companies and hiking their prices up through circular trading and rumour mongering into a Rs. 40 million (US$10 million) empire.[2] However, by the mid-50s, his business empire was unravelling, and he came to be known for his somewhat questionable ethics. In 1956, he was indicted by the Bombay Stock Exchange for selling forged shares.[1]

- In 1957, Mundhra got the government-owned Life Insurance Corporation (LIC) to invest Rs. 12.4 million (about US$3.2 million at the time) in the shares of six troubled companies of whom Mundhra held a large number of shares which he was trying to boost by rigging the market:
- The investment was done under governmental pressure and bypassed the LIC's investment committee, which was informed of this decision only after the deal had gone through. In the event, LIC lost most of the money.
- The irregularity was highlighted in 1958 by Feroze Gandhi of the Indian National Congress party, who represented the Rae Bareli seat in the Parliament of India. Jawaharlal Nehru was Prime Minister at the time, and Feroze was married to his daughter Indira Gandhi. Nehru, as the leader of the ruling Congress party, wished to have the LIC matter handled quietly since it might show the government in a poor light.[

- Feroze Gandhi raised the Mundhra question on the floor of the parliament. Standing from the treasury benches, he asked the government whether the newly formed Life Insurance Corporation had used premiums from 5.5 million life-insurance policyholders to buy up shares at above-market prices in the companies controlled by a notorious stock speculator named Haridas Mundhra.
- Thus the prime minister was confronted by his own son-in-law. The fierce Finance minister(T.T.KRISHNAMACHARI), himself a noted industrialist, initially snapped "That is not the fact, but had to admit later that this in fact was the case.
- **Commission of Enquiry: M.C. Chagla**
- Given the public spotlight, the government was forced to appoint a committee to examine the matter. The retired Bombay High Court Justice M. C. Chagla was appointed as a one-man committee.

- Chagla held that a transparent and public enquiry was a "very important safeguard for ensuring that the decision will be fair and impartial. The public is entitled to know on what evidence the decision is based.".
- Consequently, large crowds would attend the hearings which were concluded in just 24 days.
- Several leading stockbrokers who were on the LIC Investment Committee testified that the investment could not have been made for the purpose of propping up the market, as was claimed by the Finance Ministry, and that had the LIC consulted the Investment Committee, they would have pointed out Mundhra's forged shares episode from 1956.
- Among those who gave evidence was HT Parekh, then the Deputy general manager of Industrial Credit & Investment Corporation of India, now ICICI Bank, who was also a member of LIC's Investment Committee

- Justice Chagla determined that the Finance Secretary, Haribhai M. Patel, along with two LIC officials, L S Vaidyanathan, may have colluded on the payment, and should be investigated.
- Subsequent inquiry committee headed by Retired Justice Vivian Bose cleared the names of two civil servants but passed strictures against finance minister for "lying".
- The Finance Minister T. T. Krishnamachari, in his testimony tried to distance himself from the LIC decision, implying that it may have been taken by the Finance Secretary, but Justice Chagla held that the Minister is constitutionally responsible for the action taken by his secretary and he disown his actions.
- Eventually, Krishanamachari had to resign. The Nehru government suffered considerable loss of prestige in the incident.

- Haridas Mundhra was arrested from his luxury suite at the Claridge's Hotel in Delhi, and sent to prison.

- THE DAS COMMISSION REPORT ON PRATAP SINGH KAIRON.

- **Pratap Singh Kairon** (1 October 1901 – 6 February 1965)was the Chief Minister of the Punjab province (then comprising Punjab, Haryana and Himachal Pradesh), and is widely acknowledged as the architect of post-Independence Punjab Province (or Punjab, Haryana and Himachal as of today).

- Moreover, he was an Indian independence movement leader. He was jailed twice by the British Empire, once for five years for organizing protests against British rule. His political influence and views are still considered to dominate politics in Punjab.

- He was the chief Minister of Punjab for eight consecutive years.
- Though there was no direct evidence yet , he had many illegal properties and the benefits were being provided to his sons which was unconstitutional. He and his family members were accused of corruption.
- THE public inquiry made into the allegations against Sardar Pratap Singh Kairon by an ex-Chief Justice of the Supreme Court, Shri S R Das offers an interesting case study of the utility and limitations of an inquiry set up under the Commissions of Inquiry Act, 1952.
- The inquiry by the Das Commission into allegations of corruption and misuse of power by the ex-Chief Minister of Punjab has once again focussed attention on the limitations of investigations conducted under the Commissions of Inquiry Act.
- First, the initiative in the appointment of a commission of inquiry rests entirely with the executive. It is not an unwarranted presumption that the executive will not institute an inquiry into its own actions—that is what most inquiries are—unless forced to do so by strong outside pressure.
- Second, it is open to the executive to define the terms of reference of a Commission in such a manner as to defeat, to the maximum extent possible, the purpose of the inquiry.

- Further, under the Commissions of Inquiry Act the executive is not obliged to make public the findings of Inquiry Commissions. Nor are the findings binding on the executive. The executive's response may vary from outright rejection of an inquiry report to slack corrective action—taking advantage of the shortness of public memory.
- It was the first inquiry into the charges of corruption , set up against a chief minister , in office by the government of India.
- The commission concluded that 'There is no getting away from the fact that S. Pratap Singh Kairon knew or had an ample reason to suspect that his sons' and relatives were allegedly exploiting his influence and powers.'
- In view of his inaction, in the face of the circumstances, he must be held to have connived at the doings of his sons' and relatives, his colleagues and Government officers.

- The Inaction on the part Pratap Singh Kairon against the corruption being done under his nose, he was accused of corruption by the Commission.
- Mr. Kairon's first reaction was to deny all charges and stick to his office inspite of the adverse verdict, the civil surgeon who had complained was amply troubled by the use of power of the CM's office.
- But when Lal Bahadur Shastri got the report published, Kairon had no option but to quit.
- The inquiry by the Das Commission into allegation of Corruption and misuse of power by the Ex – CM of Punjab has again focused attention on the limitations of investigations conducted under the commissions under the inquiry act.

The Grover Commission Report On Dev Raj Urs
May 23, 1977.

- Among the cases to be specifically considered by the Commission are the grant of eight hectares of land to the Chief Minister's son-in-law M.D. Nataraj.

- The allotment of building sites in Bangalore's posh Raj Mahal Vilas Extension (The Chief Minister and his family members being among the main allottees).
- Alleged irregularities in the administration of the Film Development Corporation of which Urs's brother Kemparaj Urs is the director in-charge, excess payment to Nirmala Engineering Construction Company and a number of other concerns for lift irrigation and other water supply schemes during the construction of the Hemavathi (river) Project.

- As if offering the first testimony before the Commission even before it was officially launched, Urs made it known that all decisions taken by him in most of the cases now pending investigation were decisions of the various statutory bodies involved. He said he was only guided by the decisions of the officials concerned. The implication is very clear.

- The bureaucracy will have to bear the brunt of allegations, as Urs seems bent on discounting ministerial involvement in these highly controversial transactions. By the same token, Urs has also ruled out the demand for his stepping down from office during the pendency of the Commission of Inquiry. "Unless we are proved guilty, we are innocent", he declares.

- Despite two years of work put in by the Grover Commission, the Karnataka Chief Minister Devraj Urs, it appears, has got away.
- The commission in its final report has indicted Urs on charges of favouritism and abuse of power.
- The Union government has accepted the findings of the Grover Commission, but finds itself helpless in taking action against Urs, who was the main target of the inquiry by the former Supreme Court judge.
- After studying the Grover Commission report for two months, the Union government has merely passed it on to the government of Karnataka for what it describes as “follow-up action”.
- This has led to the peculiar situation when the Centre expects that the state government will take action against the chief minister and two of his former colleagues. Early last year, the Grover Commission submitted its first report indicting Urs on four charges relating to nepotism, favouritism and misuse of official position.

Just a report: Urs

- Devraj Urs appeared unperturbed over the findings of the Grover Commission. In reply to a question if he would oblige the Opposition by conceding their demand for his immediate resignation, he said that it was only a report not a judgment.

- THE MARUTI COMMISSION REPORT : (JUSTICE A. C GUPTA)
- *The commission headed by Justice A.C. Gupta has documented in all its sordid details the story of Sanjay Gandhi's dream of building an automobile empire gone awry. While an unrepentant Mrs Gandhi and her son Sanjay rudely brush it aside as inconsequential, the report is not merely an indictment of the Gandhis and their citadel of power, but also of the society that surrounds it.*

- Janata Party President Chandra Shekhar's tantalising threats to expose it chapter by chapter precipitated the Government's decision to hurriedly release the whole thing, and at long last Sanjay Gandhi's seamy story of building an automobile empire spilled out in sordid detail.
- The rise and fall of Sanjay's infamous car, astutely investigated by Justice Alak Chand Gupta between December 16, 1977 and February 1979 - the report was officially submitted on May 31-took 111 public sittings during which 268 witnesses, 712 affidavits filed by people concerned and nearly 2,000 files of Central and state governments as well as other institutions were examined Justice Gupta's concluding words vindicated Mrs Gandhi's unruffled lack of penitence over the long years of wheeling - dealing that resulted in Sanjay's mammoth Maruti disaster.
- "The affairs of the Maruti concern," said Justice Gupta in his report. "appear to have brought about a decline in the integrity of public life and sullied the purity of public administration."

- **Sanjay Gandhi** (14 December 1946 – 23 June 1980) was an Indian politician and the son of Indira Gandhi. He was a member of the Nehru–Gandhi family.
- During his lifetime, he was widely expected to succeed his mother as head of the Indian National Congress, but following his early death in a plane crash his elder brother Rajiv became their mother's political heir, and succeeded her as Prime Minister of India after her assassination.
- His wife Maneka Gandhi and son Varun Gandhi are politicians in the Bharatiya Janata Party.
- Maruti Limited controversy.
- In 1971, Prime Minister Indira Gandhi's Cabinet proposed the production of a "People's car": an efficient indigenous car that middle-class Indians could afford. In June 1971, a company known as Maruti Motors Limited (now Maruti Suzuki) was incorporated under the Companies Act and Sanjay Gandhi became its Managing Director.
- While Sanjay had no previous experience, design proposals or links with any corporation, he was awarded the contract to build the car and the exclusive production licence.

- The company did not produce any vehicles during his lifetime. A test model put out as a showpiece to demonstrate progress was criticised.
- Public perception turned against Sanjay, and many began to speculate growing corruption. Sanjay then contacted Volkswagen AG from West Germany for a possible collaboration, transfer of technology and joint production of the Indian version of the "People's Car", to emulate Volkswagen's worldwide success with the Beetle.
- During the Emergency, Sanjay became active in politics and the Maruti project went on a back burner. There were accusations of nepotism and corruption. Finally, the Janata Government came to power in 1977 and "Maruti Limited" was liquidated.
- A commission was set up by the new government headed by Justice Alak Chandra Gupta which gave very critical report of the Maruti affair.

- A year after his death in 1980, and at the behest of Indira, the Union government salvaged Maruti Limited and started looking for an active collaborator for a new company.
- Maruti Udyog Ltd. was incorporated in the same year through the efforts of Nehru Gandhi family friend and industrial doyen V.Krishnamurthy.
- The Japanese company Suzuki was also contacted to present the design and feasibility of their car to be manufactured in India. When Suzuki learned that the Government of India had contacted Volkswagen as well, it did everything to pip the German company in the race to produce India's first People's Car (Maruti 800).
- Sanjay Gandhi's car project.
- Bankers and investors were threatened and blackmailed. Rules were bent. Sycophancy hit a new low. All this was done to fulfil the whims of one man, while his mother, who had not so long ago been likened to Durga by a political rival, acquiesced meekly.

- Sanjay apprenticed with Rolls Royce in England. He was always fascinated with cars, and this stint was some sort of a natural choice.
- The government issued a letter of intent in September 1970, which allowed Sanjay to produce up to 50,000 cars in a year. Bansi Lal, the chief minister of Haryana, just to be in the good books of Indira Gandhi, the prime minister, sent his officers to help Sanjay choose a site for the factory.
- They offered him land at Sonepat, but he wanted it closer to Delhi. Sanjay's eyes were on a parcel in Gurgaon, except it was farmland and there was an ammunition dump close by.
- But that was hardly an obstacle. Land was acquired at throwaway prices from the farmers by the Haryana government and handed over to a company called Maruti Ltd that Sanjay had floated in August 1971.
- The ammunition dump was removed. Banks gave concessional loans. When charges of nepotism began to fly thick and fast, it was decided to get a feasibility test done on Maruti by the Vehicle Research & Development Establishment, Ahmednagar.

- Willing dealers were asked to deposit advances with the company. Maruti was liquidated in 1977. A commission of inquiry, headed by Justice AP Gupta, came out with a damning report on the whole episode. A year after Sanjay's death in June 1980, the government, at Indira's behest, salvaged Maruti and began to look for an overseas partner. Finally, it settled for Suzuki of Japan.

- POLICE DEVIANCE
- Who is police? What are powers & duties of police?
- Police is the first body whom we approach in case any crime or wrong is done against us. Police is the one who registers First Information Report and police officers are responsible for the maintenance of public order and peace.
- There are many Acts like The Police Act, 1861, The Delhi Special Police Administration Act, 1946, The Model Police Act, etc which make provisions for the administration and functions of police force. But people are not aware of the duties and powers upto which the police can exercise their functions.

- Police is the function of that branch of the administrative machinery of government which is charged with the preservation of public order and tranquility, the promotion of the public health, safety, and morals, and the prevention, detection, and punishment of crimes.
- The police Act, 1861 is an important statute which highlights the functions and powers of police officers. The preamble to this Act states, “it is expedient to reorganize the police and to make it a more efficient instrument for the prevention and detection of crime”.
- Therefore, another definition of ‘Police’ can be construed from the preamble which is Police is an instrument whose objective is the prevention and detection of crime.

- **The role and functions of the police shall broadly be:**

- To uphold and enforce the law impartially, and to protect life, liberty, property, human rights, and dignity of the members of the public;
- To promote and preserve public order;
- To protect internal security, to prevent and control terrorist activities, breaches of communal harmony, militant activities and other situations affecting Internal Security;
- To protect public properties including roads, railways, bridges, vital installations and establishments etc. against acts of vandalism, violence or any kind of attack;
- To prevent crimes, and reduce the opportunities for the commission of crimes through their own preventive action and measures as well as by aiding and cooperating with other relevant agencies in implementing due measures for prevention of crimes;

- To accurately register all complaints brought to them by a complainant or his representative, in person or received by post, e-mail or other means, and take prompt follow-up action thereon, after duly acknowledging the receipt of the complaint;
- To register and investigate all cognizable offences coming to their notice through such complaints or otherwise, duly supplying a copy of the First Information Report to the complainant, and where appropriate, to apprehend the offenders, and extend requisite assistance in the prosecution of offenders;
- To create and maintain a feeling of security in the community, and as far as possible prevent conflicts and promote amity;
- To provide, as first responders, all possible help to people in situations arising out of natural or man-made disasters, and to provide active assistance to other agencies in relief and rehabilitation measures; to aid individual, who are in danger of physical harm to their person or property , and to provide necessary help and afford relief to people in distress situations;
- To facilitate orderly movement of people and vehicles, and to control and regulate traffic on roads and highways;

- To collect intelligence relating to matters affecting public peace, and all kind of crimes including social the same to all concerned agencies, besides acting, as appropriate on it themselves. offences, communalism, extremism, terrorism and other matters relating to national security, and disseminate

- To take charge, as a police officer on duty, of all unclaimed property and take action for their safe custody and disposal in accordance with the procedure prescribed."

- **Social Responsibilities of the police as mentioned under Section 58 of Model Police Act, 2006 are as follows.**
- "Every police officer shall:
- Behave with the members of the public with due courtesy and decorum, particularly so in dealing with senior citizens, women, and children;
- Guide and assist members of the public, particularly senior citizens, women, children, the poor and indigent and the physically or mentally challenged individuals, who are found in helpless condition on the streets or other public places or otherwise need help and protection;

- Provide all requisite assistance to victims of crime and of road accidents, and in particular ensure that they are given prompt medical aid, irrespective of medico-legal formalities, and facilitate their compensation and other legal claims;
- Ensure that in all situations, especially during conflict between communities, classes, castes and political groups, the conduct of the police is always governed by the principles of impartiality and human rights norms, with special attention to protection of weaker sections including minorities;
- Prevent harassment of women and children in public places and public transport, including stalking, making objectionable gestures, signs, remarks or harassment caused in any way;
- Render all requisite assistance to the members of the public, particularly women, children, and the poor and indigent persons, against criminal exploitation by any person or organised group; and
- Arrange for legally permissible sustenance and shelter to every person in custody and making known to all such persons provisions of legal aid schemes available from the Government and also inform the authorities concerned in this regard."

- Powers of Police
- The Code of Criminal Procedure, 1973 confers important powers on police officers. Power to investigate, search and arrest are some of the powers.
- Registering FIR- Police has power to lodge FIR. Section 154 of the Code of Criminal Procedure, 1973 says that police has to record the information related to any cognizable offence.
- Power to investigate and procedure of investigation- Section 156 gives the power to police officer to investigate any cognizable offence without the order of a Magistrate and the proceedings of the police cannot be called in question on the ground that this section does not empower police officer to investigate.

- Power to investigate and procedure of investigation- Section 156 gives the power to police officer to investigate any cognizable offence without the order of a Magistrate and the proceedings of the police cannot be called in question on the ground that this section does not empower police officer to investigate.
- Human Right violations
- Police deals with number of people, accused and innocent both and use of force by police to a certain extent is necessary to perform their duties but in this process the human rights and Fundamental Rights of the citizens should not be violated.
- Universal Declaration of Human Rights has given several important human rights to the people such as Article 3 states, “Everyone has the right to life, liberty and personal security.” Further, Article 5 says that, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
- Also, many Fundamental Rights like Article 19 and 21 give freedom and right to life to everyone. Police is criticised for mistreating the prison inmates or people under custody very often. Human rights are violated in many forms such as illegal detention or arrest, use of force which sometimes lead to death, false implications, etc.

- Following are some guidelines laid down under the Constitution and various cases for the rights of prison inmates and people in custody:
- Right to remain silent- Right to remain silent a is right of the persons in custody. Article 20(3) of the Constitution of India also protects persons to witness against himself.
- Right to fair investigation- This right can be interpreted from the Articles 20 and 21 of the Constitution. In Babubhai v. State of Gujarat & Ors., it was laid down that right to fair investigation forms the part of Articles 20 and 21.
- Handcuffing- Handcuffing is not a necessity in case of arrest. In Prem Shankar v. Delhi Administration, it was held that handcuffing is unreasonable and inhumane and it is acceptable only in some exceptional circumstances.
- Arrest- In cases of arrest, Article 22 provides that the person who is to be arrested has a right to know the reasons of his/ her arrest.

- Police is an important instrument who is responsible for maintaining peace and order in the country.
- A country is able to live peacefully, without insecurities if the police performs its functions and duties efficiently and effectively.
- Police Act 1861 and Model Police Act, 2006 specifies the administration, role, duties and powers of Police Department.
- Further, The Code of Criminal Procedure, 1973 empowers police officers to conduct investigation, make arrest including preventive arrest.

- MEANING OF OF POLICE DEVIANCE
- Police deviance occurs when law enforcement officers behave in a manner that is "inconsistent with the officer's legal authority, organizational authority ,and standards of ethical conduct"
- Police deviance includes but is not limited to discrimination, misconduct, intimidation ,sexual harassment, corruption ,excessive force, use of restricted weapon and illegal surveillance Police deviance is a much broader term than corruption.
- It includes all activities which are inconsistent with norms, values, or ethics. Police deviance and abuse of police power have emerged a major issue of human Rights concern and one of the root obstacles to democracy and development of human Well being in contemporary societies.
- Torture caused police violence has devastating effects on physical and mental health as well as social functioning of the individuals, their children, families, communities and society at large.
- The victims remain in a state of perpetual fear and horror whenever they remember their custodial agony, hatred, trauma and probably never able to lead a normal life in many parts of the world . Even developed countries are no exception to it.

- ***How George Floyd Died, and What Happened Next (united state of America)***
- Mr. Floyd died after being handcuffed and pinned to the ground by an officer's knee in an episode that was captured on video, touching off nationwide protests.
- The death of George Floyd, a 46-year-old Black man, drew widespread outrage in May 2020 after a video circulated online showing Officer Derek Chauvin holding his knee on Mr. Floyd's neck on a Minneapolis street corner as he gasped for breath.


EAPOLIS

- Torture, in order to extract confession was so endemic in India that the British colonial rulers, when enacting criminal laws for the country, decided to make all confessions to police officers inadmissible as evidence in court of law.
- After Independence, the Constitutional and statutory provisions safeguarding life and liberty of an individual in custody including rights against self-incriminate, incidences of custodial crimes have become a disturbing factor in society .
- The Supreme Court and High Courts in their several landmark judgments upheld that police personnel do indulge in custodial crimes.
- Through creative interpretation, the higher judiciary has evolved mechanisms for protection of the rights of the victims of torture and their entitlements for compensation. In leading cases of Nilabati Behera V State of Orrisa and D.K. Basu vs. State of West Bengal , Arnesh kumar vs state of Bihar . Joginder kumar vs state of UP
- The Apex court held that the claim of sovereign immunity arising out the State discharging sovereign functions is held to be NO defence at all against the acts of violation of the constitutionally guaranteed Fundamental Human rights.

- . The Court further held that “there is a great responsibility on the police authority of ensures that the citizen in its custody is not deprived of his right to life.
- Time and again, the higher judiciary has taken serious view on the issue of custodial crimes and issued guidelines as preventive measures and has also evolved custodial jurisprudence to control the menace of custodial crimes in police custody

- TYPES OF POLICE DEVIANCE
- POLICE GRATUITY :
- A gratuity is the receipt of free meals, services, or discounts.
- These are considered fringe benefits of the job. Nevertheless, they violate the Code of Ethics because they involve financial reward or gain, and they are corruption because the officer has been placed in a compromising position where favours (a "fix") can be reasonably expected in the future.

- POLICE SHAKEDOWNS :
- A shakedown is when the police extort a business owner for protection money.
- Officers threaten bar owners who violates the rules, if they do not make payoffs, and promise to intercept any other violation reports processed through department channels.
- Shakedowns are also common in drug dealing, illegal gambling, and even construction projects. In each case, the approach and modus operandi are somewhat variable, because each officer subjects the business operator and/or patrons to the shakedown differently.

- POLICE PERJURY :
- This is usually a means to effect an act of corruption, leaving out certain pertinent pieces of information in order to "fix" a criminal prosecution. where the officer testifies untruthfully.

- POLICE BRUTALITY :
- Police brutality has been defined as excessive force, name calling (abusive language), sarcasm, ridicule, and disrespect.
- The actual use of physical force.("more than excessive force".), while in their custody or illegal detention.
- . One common belief is that it's necessary to come down hard on those who resist arrest and to extract truth during investigation . Torture is also one of the methods to extract money.

- **POLICE DRINKING & ABUSING DRUGS ON OR OFF DUTY :**
- There are endless opportunities to drink or take drugs while on duty (e.g., victim interviews, shakedowns, contraband disposal), and the reasons for it are many: to get high, addiction, stress, burnout, **etc.**

- . It sets a bad example for public relations. Alcohol and drug use tends to become a systemic problem.
- More intriguing is when the police become sellers or dealers of drugs.
- **POLICE MISUSE OF CONFIDENTIAL INFORMATION :**
- This normally involves jeopardizing an ongoing investigations by “leaking” information to friends, relatives, the public, the press, or in some cases, directly to the criminal suspects or members of their gang.
- **Vikas Dubey killed 8 police personnel in Kanpur UP when they raided him because he was provided with the information allegedly by one of the police personnel.**
- **Nexus between underworld and the department has always a**

- In other cases, department resources, such as computer systems, may be used to produce criminal history reports for "friends" of the department such as private detectives, consulting firms etc.
- Passwords can also slip out, granting access to computer network information.
- In rare cases, police resources are put to use in blackmailing political figures.

- FAKE ENCOUNTERS:
- Many a times it is alleged that when the police could not arrest the real culprits , they arrest innocent people and kill them in fake encounters to pacify the public under political pressure.
- **New Delhi:** Uttar Pradesh gangster Vikas Dubey, the main accused in the killing of eight policemen in Kanpur, was shot dead in an alleged encounter Friday morning. According to the UP Police, the special task force was bringing him back from Ujjain to Kanpur when the vehicle he was in toppled, and Dubey attempted to flee. According to the police, Dubey also fired at the police as he was fleeing.
- Apart from Dubey, five of his associates have also been killed by the police in reported encounters over the last week.

- These encounters under mysterious circumstances have raised many questions on the authenticity of the Uttar Pradesh police's claims, as Dubey was said to have a nexus with politicians and the police.

- In December 2019, the Telangana police shot dead four men accused of gang-raping and burning to death a veterinarian doctor in Hyderabad. Calling their actions an "encounter", the police said they had to open fire in self-defence as the four men tried to escape and began pelting stones.
- The police had taken the four accused to an underpass on the Hyderabad-Bengaluru highway next to Chatanpally village to reconstruct the crime scene when the four tried to escape, the police claimed.

- **Bhopal jail encounter, 2016**
- In October 2016, eight people associated with the Students' Islamic Movement of India (SIMI) allegedly escaped from the Bhopal Central Jail and were subsequently shot dead by the state police.
- The probe report stated that the deceased persons were asked to surrender, but, instead, began firing at the police and public. Therefore, the police had to open fire and even after that they showed no intention to surrender, sustained injuries and died on the spot.
- At the time, many videos surfaced suggest the encounter was staged. Many questions remained unanswered — such as how the escapees got weapons and firearms, how they escaped the prison, and who gave them clothes and food when they escaped.

- The Batla House encounter took place in Delhi in 2008, becoming a national sensation—Bollywood even made a film on it.
- On 19 September 2008, a Delhi Police special team carried out an encounter in Batla House in Jamia Nagar, where two suspected Indian Mujahideen terrorists were killed along with inspector Mohan Chand Sharma.
- The operation led by Sharma, an encounter specialist, was supposed to only gather information from residents of the area after the 2008 September blasts in Delhi. However, it escalated into a 20-minute shootout.
- Many questioned the veracity of the encounter, and claimed it was staged. The National Human Rights Commission also conducted an investigation into the encounter, on a plea filed by People's Union for Democratic Rights, and eventually gave a clean chit to the Delhi Police.
- However, the post-mortem report of the victims of the shootout, which raised several flags and questions, was not included in the NHRC report. What's more, the report was dated two days before the body was even asked to investigate the matter by the high court.

- **Sohrabuddin Sheikh, 2006**
- According to the CBI, Sheikh was a wanted criminal who extorted money from marble traders in Gujarat and Rajasthan. However, the Gujarat Police claimed he was a Lashkar-e-Taiba operative.
- In November 2006, Sheikh and his wife Kausar Bi were travelling from Hyderabad to Sangli in Maharashtra when the Gujarat Police Anti-Terror Squad intercepted them and took them to a farmhouse on the outskirts of Ahmedabad. It has been reported that three days later, then-ATS chief D.G. Vanzara took Sheikh away and killed him, claiming he was a terrorist with a plan to attack Narendra Modi.

- **Ishrat Jahan, 2004**
- On 15 June 2004, the Gujarat Police killed 19-year-old Ishrat Jahan and three others on the outskirts of Ahmedabad in an alleged encounter. According to the police, all four were operatives of the Lashkar-e-Taiba who had a plan to kill then-Gujarat CM Narendra Modi.
- However an investigation by the special investigation team formed by the Gujarat High Court said the encounter was staged. The case was then transferred to the Supreme Court, which handed it over to the CBI, which, in turn, filed a charge sheet against many Gujarat police officers for their involvement in the alleged encounter.
- Jahan was the second of seven siblings and a second-year student at Mumbai's Guru Nanak Khalsa College. In 2017, terrorist David Headley told a Mumbai court that Jahan was an operative of the LeT.

- **Veerappan, 2004**
- In October 2004, the notorious Veerappan, infamous for kidnapping, elephant poaching and sandalwood smuggling, was shot dead in an encounter by the Tamil Nadu Special Task Force. He had been on the run for a decade was tricked into getting into an ambulance as he needed to visit a hospital in Salem for his eye.
- The STF fired 338 bullets at the ambulance, out of which three hit Veerappan. However, it was questioned at the time whether his encounter was staged and actually a cover-up job, as according to reports, Veerappan had no bullet wounds in his body and was only shot in his eye and forehead.

GUWAHATI, JUNE 27, 2020 06:20 IST

- CUSTODIAL DEATHS :
- Five custodial deaths in India daily, says report (The Hindu)
- A total of 1,731 people **died in custody** in India during 2019. This works out to almost five such deaths daily, according to a report by a rights group .
- Timed with the International Day in Support of Victims of Torture, 'India: Annual Report on Torture 2019' said 1,606 of the deaths happened in judicial custody and 125 in police custody.
- "Out of the 125 deaths in police custody, Uttar Pradesh topped with 14 deaths, followed by Tamil Nadu and Punjab with 11 deaths each and Bihar with 10 deaths," said the report published by the National Campaign Against Torture

- Torture in police custody is “routine” in India, experts say, and is mostly used to coerce suspects to give up information and build evidence during an investigation.
- It is also used by jail officials to settle scores with suspects they consider “troublesome”. The absence of laws against custodial torture, lack of reforms in police governance and accountability, underdeveloped interrogation and forensic techniques, and limited options for the prosecution of erring officials are to blame, experts say.
- 60% custodial deaths within 24 hrs of arrest; most in Maharashtra, Gujarat
- Just three states--Maharashtra, Andhra Pradesh and Gujarat--accounted for almost half of deaths in police custody over the past 10 years

- Tracing the history of custodial rape
- In the late 1970s and 1980s, incidents of police torture in the form of custodial rape of women came to light.
- Rape has been used as an instrument of opression for centuries. Such incidents of rape in police custody also highlighted the persecution of women at the hands of uniformed officials.
- They would exercise their State powers and authority in a gruesome and inhumane manner. After the declaration of the National Emergency in 1975-77, the State would arbitrarily exercise their powers by doing away with public accountability for its actions and clamping down on the liberties of citizens.
- This period exemplified how the State power could be used to violate personal liberty and it awakened the conscience of society and the judiciary. In this environment of National Emergency, several cases of custodial rape emerged:

1. Mathura Case (1972): Mathura (aged 14-16), an Adivasi girl, was called to the police station in Maharashtra for general investigation and asked to stay back while her family members left. She was then raped by two policemen.
2. Rameeza Bee Case (1978): Rameeza Bee (aged 26) along with her husband was arrested by police in Andhra Pradesh. She was raped by 3 police officers and her husband who tried to protest was mercilessly beaten up and murdered by the policemen.
3. Maya Tyagi Case (1980): Maya, a six-month pregnant lady was beaten up, stripped naked by the policemen in Baghpat, and gang-raped in police custody.

- These incidents fueled the women's movement.
- Anti-rape campaigns were launched by women associations. Law reforms around the issue of custodial rape were challenged and they demanded recognition of custodial rape as a separate offence and other changes in law that would serve justice to these affected women. These reformative movements had the prime focus of creating women-friendly institutions, dedicated courts, and safer spaces.

The Long Awaited Call For Police Reforms in India

- In India, public perception of the police is not very positive. They to be citizen friendly – and there are obvious reasons for this .
- As a result, people are scared of going to the police.

- We get scared when the police visits us, or when we get a call from the station – even if it's for a simple official enquiry. This fear, can be traced to the foundation of the police force.
- The police force in India was formed during the colonial period as an instrument of oppression – Britishers wanted to enforce their laws on Indians by hook or by crook.
- Our colonial masters would exploit their power to inflict extreme brutal measures on citizens through the police.
- One horrifying example of police atrocity in the British Raj was the infamous Jallianwala Bagh massacre in which thousands of unarmed people were brutally killed on the directions of General Reginald Dyer.

- India desperately need police reforms.
- It isn’t just a present-day demand but a long-standing necessity.
- Various commissions and committees have submitted their reports, but their recommendations were never implemented.
- Some of the prominent committees formed for the police reforms are Gore Committee on Police Training, the National Police Commission, the Ribeiro Committee on Police Reforms, the Padmanabhaiah Committee on Police Reforms and the Soli Sohrabjee Committee.
- All the recommendations have largely been left to gather dust.

- The police in India comes under the state list and its structure, in almost all the states, is based on the same archaic colonial legislation i.e. the Police Act of 1861 with a few modifications.
- In the year 1996, Prakash Singh, who was a retired and a well-known police officer, filed a petition in the Supreme Court seeking a replacement of the present police act by the new model Police Act as was proposed by the National Police Commission.
- The petitioners explained the fallacies and the shortcomings of the present Act and advocated a need for a change in the same.
- However, the most important element for any criminal justice system is the faith of the common man.
- As long as this trust is not eroded, the foundations of justice remains intact. The rule of law and the equal protection of law is to be secured to all the citizens, so as to not defeat the goals envisaged by the makers of our constitution.
- Thus we must realise the significance of police reforms as a measure to improve access to justice for every citizen of this country.

- Supreme Court judgment on 22.9.2006 on Police Reforms and the follow up action:
- . The Supreme Court of India has passed a judgement on September 22, 2006 in Writ Petition (Civil) No.310 of 1996 – Prakash Singh and others vs UOI and others on several issues concerning Police reforms.
- The Court in the said judgement directed the Union Government and State Governments to set up mechanisms as directed by December 31, 2006 and file affidavits of compliance by January 3, 2007. The directions inter-alia were:
- (i) Constitute a State Security Commission on any of the models recommended by the National Human Right Commission, the Reberio Committee or the Sorabjee Committee.
- (ii) Select the Director General of Police of the State from amongst three senior-most officers of the Department empanelled for promotion to that rank by the Union Public Service Commission and once selected, provide him a minimum tenure of at least two years irrespective of his date of superannuation.

- (iii) Separate investigating police from law & order police, starting with towns/ urban areas having population of ten lakhs or more, and gradually extend to smaller towns/urban areas .
- (iv) Set up a Police Establishment Board at the state level for inter alia deciding all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police,
- (v) Constitute Police Complaints Authorities at the State and District level for looking into complaints against police officers.
- (vi) The Supreme Court also directed the Central Government to set up a National Security Commission at the Union Level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations.

- **Directions of the Supreme Court in Prakash Singh vs Union of India**
- In 1996, a petition was filed before the Supreme Court that raised various instances of abuse of power by the police, and alleged that police personnel perform their duties in a politically partisan manner.
- The Supreme Court issued its judgement in 2006, ordering the centre and states to set up authorities to lay down guidelines for police functioning, evaluate police performance, decide postings and transfers, and receive complaints of police misconduct.
- The court also required that minimum tenure of service be guaranteed to key police officers to protect them from arbitrary transfers and postings.

ThePrint

- **There can be no modern India without an improved police force — think tank urges for reforms**
- Indian Police Foundation says neither Centre nor state governments have shown interest in police reforms, and therefore Supreme Court should monitor its implementation.
- 23 September, 2020 8:40 pm IST
- **New Delhi:** Discussing how police reforms still remain a distant dream even after the 2006 Supreme Court judgment on it, members of the Indian Police Foundation (IPF), a multi-disciplinary think tank, Tuesday made an appeal to implement these reforms at the earliest.
- "There were great expectations that changes would usher in a new era for the police and make it people-friendly. The Rulers' Police would metamorphose into People's Police," the Foundation said in an appeal during an online event on its fifth anniversary.

- Fourteen years have passed since the judgment was delivered and the transformational changes are not to be seen yet. The Supreme Court has been monitoring the implementation of its directions, but obviously, these have not been effective," it said.
- **'Trust deficit in police'**
- Delivering the IPF Foundation Day lecture on how reforms in police and criminal justice are crucial to safeguarding democratic rights of citizens, Justice Madan B. Lokur, former Supreme Court judge, said that unless the police is reformed in line with the top court directions, there will be instances wherein FIRs (First Information Report) are not lodged, investigations carried out are shoddy and justice is delayed.
- Justice Lokur also said that often there are instances of shoddy investigation by the police, or complaints of non-registration of FIR. These complaints, he said, are because the police are overworked. He, however, added that "this cannot be used as an excuse".

- “On an average, each police station is handling 1,500 cases excluding backlog. With this kind of pressure, the police are bound to make mistakes and carry out a shoddy investigation. But something must be done to fix it and the answer is police reforms. Else you will end up with hundreds of cases with shoddy investigation and hence an unfair trial,” he said.
- Justice Lokur pointed out that according to the United Nations suggestions, there should be 222 police officers per one lakh people, but in India, there are 144 policemen for every one lakh people.
- He further stated that there is a massive “trust deficit” in policemen. “There are reports suggesting that 29 per cent of respondents trust police, 55 per cent believe they are corrupt and custodial deaths are a concern which needs to be dealt with,” he said.

- **‘Police reforms linked to country’s progress’**
- The appeal by the foundation stated that it was “very unfortunate” that none of the major political parties of the country have shown interest in police reforms.
- “It seems they all find it convenient to use this instrument to subserve their political agenda,” the appeal said.
- The appeal also said that police reforms are directly linked with the progress of the country.
- “We cannot have a modern Indian state unless the police, which is the kingpin of the criminal justice system, is reorganized and restructured,” it said.
- “Good law and order is the sine qua non for economic progress,” the foundation said.
- The appeal further said that neither the Government of India nor the state governments have shown the required degree of interest in police reforms.
- “The Supreme Court of India also needs to seriously and whole-heartedly monitor the implementation of its directions,” the appeal said.
-

- **Loss in GDP due to poor law & order**
- During the discussion, retired IPS officer Prakash Singh, a key architect of police reforms in India, pointed to the "extraneous factors" on the police to bring down crime rate, leading to shoddy investigations and non-registration of cases.
- "When I was in UP, an order came from the home department that crime should be brought down by 50 per cent. Few decades later, one CM said that it should be brought down by 70 per cent. Several IPS officers were suspended for not doing it," he said.
- "Chief ministers tell DGs that the crime should be controlled so that the opposition doesn't raise issues in the assembly. That is the problem," he added.
- During the discussion, Singh also said that the cost of an incompetent police is higher crime rate, bad internal security situation, and increase in incidents of terrorism and insurgency.
- Nine per cent of GDP, Singh said, is lost every year because of poor law and order.
- "The police are the central pillar of the criminal justice system and if that is not improved other organs of the system will not be able to work efficiently. It must be revived, strengthened, restructured, reformed," he said.
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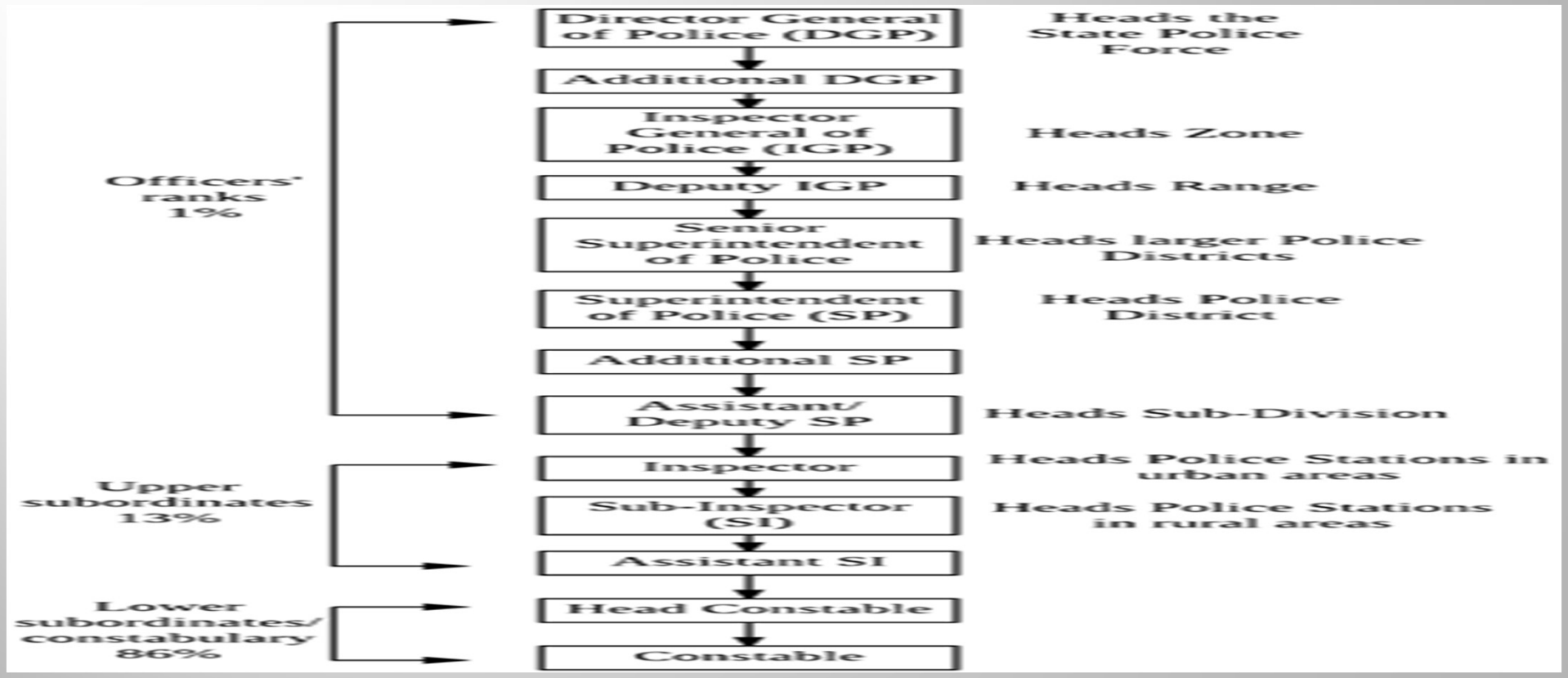
- The primary role of police forces is to uphold and enforce laws, investigate crimes and ensure security for people in the country.
- In a large and populous country like India, police forces need to be well-equipped, in terms of personnel, weaponry, forensic, communication and transport support, to perform their role well.

- Further, they need to have the operational freedom to carry out their responsibilities professionally, and satisfactory working conditions (e.g., regulated working hours and promotion opportunities), while being held accountable for poor performance or misuse of power.

- The responsibilities of the state and central police forces are different.
- State police forces are primarily in charge of local issues such as crime prevention and investigation, and maintaining law and order.
- While they also provide the first response in case of more intense internal security challenges (e.g., terrorist incident or insurgency-related violence), the central forces are specialised in dealing with such conflicts.
- For example, the Central Reserve Police Force is better trained to defuse large-scale riots with least damage to life and property, as compared to local police.
- Further, the central forces assist the defence forces with border protection.
- The centre is responsible for policing in the seven union territories. It also extends intelligence and financial support to the state police forces.


Maintaining public order
Police
Prisons
Protecting states from external and internal disturbances
Deploying central police forces
Institutes for intelligence, investigation and police training

Hierarchy of state police



- PROFESSIONAL DEVIANCE :
- 1. UNETHICAL PRACTICE IN INDIAN BAR
- Ethics are the rules and regulations based on moral grounds. Every profession has its code of conduct which is to be adhered to. Deviation from this code of conduct for vested interests is professional deviance.
- **Professional misconduct of lawyers in India**
- Advocacy is a noble profession and an advocate is the most accountable, privileged and erudite person of the society and his act are role model for the society, which are necessary to be regulated.
- Professional misconduct is the behaviour outside the bounds of what is considered acceptable or worthy of its membership by the governing body of a profession.
- Professional misconduct refers to disgraceful or dishonourable conduct not befitting an advocate.

- Chapter V of the Advocate Act, 1961, deals with the conduct of Advocates. It describes provisions relating to punishment for professional and other misconducts.
- Section 35(1) of the Advocate Act, 1961, says, where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to it disciplinary committee.
- Generally legal profession is not a trade or business, it's a gracious, noble, and decontaminated profession of the society.
- Members belonging to this profession should not encourage deceitfulness and corruption, but they have to strive to secure justice to their clients.
- The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. It's a symbol of healthy relationship between Bar and Bench.

- The Advocates Act, 1961 as well Indian Bar Council are silent in providing exact definition for professional misconduct because of its wide scope, though under Advocates Act, 1961 to take disciplinary action punishments are prescribed when the credibility and reputation on the profession comes under a clout on account of acts of omission and commission by any member of the profession.

- The attributes (feature/ speciality) of a profession as laid down by Dalton E. McFarland are;

  1) The existence of a body of specialized knowledge or techniques

  2) Formalized method of acquiring training and experience

  3) The establishment of representative organization with professionalism as its goal.

  4) The formation of ethical codes for the guidance of conduct.

  5) The charging of fees based on services but with due regards for the priority of service over the desire for monetary rewards.

- A person who carries/undertakes the profession is called a professional.
- Depending on the profession a person undertakes, he/she is identified with a special name relevant to the profession.
- Misconduct, according to Oxford dictionary means a wrongful, improper, or unlawful conduct motivated by premeditated act.
- It is a behavior not conforming to prevailing standards or laws, or dishonest or bad management, especially by persons entrusted or engaged to act on another's behalf.
- The expression professional misconduct in the simple sense means improper conduct. In law profession misconduct means an act done willfully with a wrong intention by the people engaged in the profession.
- It means any activity or behaviour of an advocate in violation of professional ethics for his selfish ends. If an act creates disrespect to his profession and makes him unworthy of being in the profession, it amounts to professional misconduct.
- In other word an act which disqualifies an advocate to continue in legal profession.

- The Supreme Court has opined that the word “misconduct” has no precise meaning, and its scope and ambit has to be construed with reference to the subject matter and context wherein the term occurs.
- In the context of misconduct of an advocate, any conduct that in any way renders an advocate unfit for the exercise of his profession, or is likely to hamper or embarrass the administration of justice may be considered to amount to misconduct, for which disciplinary action may be initiated.
- In state of Punjab v Ram Singh the supreme Court held that the term misconduct may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, willful in character, a forbidden act, a transgression of established and definite rule of action or code of conduct, but not mere error of judgement, carelessness or negligence in performance of duty.
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- In **N.G. Dastane v. Shrikant S. Shind**, where the advocate of one of the parties was asking for continuous adjournments to the immense inconvenience of the opposite party,
- It was held by the Supreme Court that seeking adjournments for postponing the examination of witnesses who were present without making other arrangements for examining such witnesses is a dereliction of the duty that an advocate owed to the Court, amounting to misconduct.
- It may be noted that the scope of “misconduct” is not restricted by technical interpretations of rules of conduct. This was proven conclusively in the case of **Bar Council of Maharashtra v. M.V. Dahbolkar**.
- The facts under consideration involved advocates positioning themselves at the entrance to the Magistrate’s courts and rushing towards potential litigants, often leading to an ugly scrimmage to snatch briefs and undercutting of fees.

- The Disciplinary Committee of the state Bar Council found such behavior to amount to professional misconduct, but on appeal to the Bar Council of India, it was the Bar Council of India absolved them of all charges of professional misconduct on the ground that the conduct did not contravene Rule 36 of the Standards of Professional Conduct and Etiquette as the rule required solicitation of work from a particular person with respect to a particular case, and this case did not meet all the necessary criteria, and such method of solicitation could not amount to misconduct.

- **Provisions in Advocates act 1961**
  The advocates act 1961 is a comprehensive legislation that regulates the legal practice and legal education in India.
- It envisages for the establishment of Bar Council of India and State Bar Councils with various disciplinary committees to deal with misconduct of the advocates.
- It also provides for the provisions relating to the admission and enrolment of advocates and advocates right to practice.
- Chapter V containing sections 35 to 44 deals with the conduct of the advocates.
- It provides for punishment for advocates for professional and other misconduct and disciplinary powers of the Bar council of India.
- In order to attract the application of section 35 of the advocates act the misconduct need not be professional misconduct alone.

- The expression used in the section is Professional or other misconduct.
- So even conduct unconnected with the profession may also amounts to a misconduct as for example, conviction for a crime, though the crime was not commited in the professional capacity.
- At the same time it is to be noted that a mere conviction is not sufficient to find an advocate guilty of misconduct, the court must look in to the nature of the act on which the conviction is based to decide whether the advocate is or is not an unfit person to be removed from or to be allowed to remain in the profession.
- Misconduct is of infinite variety, the expression professional or other misconduct must be understood in their plain and natural meaning and there is no justification in restricting their natural meaning.
- The term misconduct usually implies an act done willfully with a wrong intention and as applied to professional people it includes unprofessional acts even though such acts are not inherently wrongful.

- **The Code of Conduct Prescribed For Advocate**
  Section 49 of the advocates act 1961 empowers the Bar Council of India to frame rules regulating standards of professional conduct. Accordingly various duties are prescribed for the advocates some of them are highlighted below.
- No advertising or soliciting work : It is against an advocate's code of ethics to solicit or advertise work and amounts to a misconduct on the part of the advocate.
- Both direct and indirect advertising is prohibited: An advocate may not advertise his services through circulars, advertisements, touts, personal communication or interviews.
- Similarly, the following forms of indirect advertising are prohibited:

- i) by issuing circulars or election manifestos by a lawyer with his name, profession and address printed on the manifestos, thereby appealing to the members of the profession practising in the lower courts who are in a position to recommend clients to counsel practising in the HC.
- (ii) canvassing for votes by touring in the province or sending out his clerk or agents to the various districts, which must necessarily mean directly approaching advocates practicing in subordinate courts.
- Further, the signboard or nameplate displayed by an advocate should be of reasonable size.
- It should not refer to details of an affiliated by the advocate i.e. that he is or has been president or member of a bar council or of any association, or he has been a Judge or an Advocate-General, or that he specializes in a particular kind of work, or that he is or was associated with any person or organization or with any particular

- Not to enter appearance without consent of the advocate already engaged: An advocate is prohibited from entering appearance in a case where there is already another advocate engaged for a party except with the consent of such advocate.
- However if such consent is not produced, the advocate must state the reasons for not producing it, and may appear subsequently, only with the permission of the court.
- Duties of an advocate towards his client: The relationship between a lawyer and a client is highly fiduciary and it is the duty of an advocate fearlessly to uphold the interests of the client by fair and honourable means without regard to any unpleasant consequences to himself or any other person.

- The above are only few important code of conduct to be observed by an advocate practicing in India.
- According to Justice Abbot Parry, there are seven important qualities that a lawyer should possess, he call these qualities as seven lamps of advocacy,
- They are; Honesty, Courage, Industry, Wit, eloquence, Judgement, and Fellowship.
- Apart from that the panchsheel of the bar are Honesty, Industry, Justice, Service and Philisophy and Panchsheel of the bench according to Sri ram Kishore Ranade are, Impartiality, Independence, Integrity and Industry, Judicial activism .
- Among the various duties of the advocates like, duties to client, court, public, colleagues and self, selected points can be picked up and arranged according to the due and relative importance and are called as ten commandments of advocates they are;

- **a) Duties to client**
  1) Protection of the interest of the client
  2) Proper estimation of the value of legal advices and services

  b) Duties to court
  3) Honesty and respect
  4) Preparation of the case
  c) Duties to Public
  5) Service
  6) Loyalty to law and justice

  d) Duties to colleagues
  7) Fellowship
  8) Fairness
  e) Duties to self
  9) Systematic study
  10) Prudence and deligence

  The rules laid down by the Bar Council of India forms the code of conduct for advocates and in broad sense any violation of such rules or code of conduct can be termed as professional misconduct. The scope of the term has been still widened by the Supreme Court in various decisions.

- **Instances of Misconduct**
  Legal Practioners act 1879 has not defined the word Misconduct.
- The word Unprofessional conduct is used in the act. Even the Advocates Act 1961 has not defined the term misconduct because of the wide scope and application of the term.
- Hence to understand the instances of misconduct we have to rely on decided cases. Some of the instances of Professional misconduct are as follows,
  1) Dereliction of duty
  2) Professional negligence
  3) Misappropriation
  4) Changing sides
  5) Contempt of court and improper behaviour before a magistrate
  .

- 6) Furnishing false information
  7) Giving improper advice
  8) Misleading the clients in court
  9) Non speaking the truth
  10) Disowning allegiance to court
  11) Moving application without informing that a similar application has been rejected by another authority
  12) Suggesting to bribe the court officials
  13) Forcing the prosecution witness not to tell the truth

- **Contempt of Court As Misconduct**
- In the most controversial and leading case of R.K. Ananad v. Registrar of Delhi High Court, On 30th May, 2007 a TV news channel NDTV carried a report relating to a sting operation. The report concerned itself with the role of a defence lawyer and the Special Public Prosecutor in an ongoing Sessions trial in what is commonly called the BMW case (sanjiv Nanda causing death of 6 men among them were Three policemen)
- **Attempt of Murder:**
- In the case of Hikmat Ali khan v. Ishwar prasad arya and ors, Ishwar Prasad Arya, respondent No. 1, was registered as an advocate with the Bar Council of Uttar Pradesh and was practising at Badaun.
- An incident took place on May 18, 1971 during lunch interval at about 1.55 p.m., in which respondent No. 1 assaulted his opponent Radhey Shyam in the Court room of Munsif/Magistrate, Bisauli at Badaun with a knife. A pistol shot is also said to have been fired by him at the time of incident. After investigation he was prosecuted for offences under Section 307 of the Indian Penal Code and Section 25 of the Arms Act.
- .

- **Misbehaviour As Misconduct**
  Vinay chandra mishra, in re; In this case a senior advocate in on being asked a question in the court started to shout at the judge and said that no question could have been put to him. He threatened to get the judge transferred or see that impeachment motion is brought against him in Parliament.
- This act was not only the question of insulting of a Judge of this institution but it is a matter of institution as a whole. In case dignity of Judiciary is not being maintained then where this institution will stand. The concerned judge wrote a letter informing the incident to the chief justice of India. A show cause notice was issued to him.

- Whether the advocate had committed a professional misconduct? Is he guilty of the offence of the criminal contempt of the Court for having interfered with and obstructed the course of justice by trying to threaten, overawe and overbear the Court by using insulting, disrespectful and threatening language, and convict him of the said offence.
- Since the contemner is a senior member of the Bar and also adorns the high offices such as those of the Chairman of the Bar Council of India, the President of the U.P. HC Bar Association, Allahabad and others, his conduct is bound to infect the members of the Bar all over the country.
- We are, therefore, of the view that an exemplary punishment has to be meted out to him. Thus the contemner Vinay Chandra Mishra is hereby sentenced to undergo simple imprisonment for a period of six weeks and he shall stand suspended from practising as an advocate for a period of three years.

- **Strike As Misconduct**
  Ex-capt. Harish uppal V. Union of India, Several Petitions raise the question whether lawyers have a right to strike and/or give a call for boycotts of Court/s.
- The petitioners submitted that strike as a mean for collective bargaining is recognised only in industrial disputes. He submitted that lawyers who are officers of the Court cannot use strikes as a means to blackmail the Courts or the clients.
- He submitted that the Courts must take action against the Committee members for giving such calls on the basis that they have committed contempt of court
- He submitted that the law is that a lawyer who has accepted a Vakalatnama on behalf of a client must attend Court and if he does not attend Court it would amount to professional misconduct and also contempt of court

- The supreme Court held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any color armbands, peaceful protest marches outside and away from court premises, etc.

Hussain v Union of India

- The court had clearly stated that the lawyers strike and suspension of the court is illegal and it is high time that legal fraternity realizes its duty to the society which is foremost.

Advocates are bound to maintain rules on professional conduct and etiquettes which has been laid down in chapter II part IV of the bar council of India Rules. Under this section, the advocates are abide by the certain duties towards the court and their client.

Solicitation of Professional Work

- **Rajendra V. Pai vs Alex Fernandes & Ors**
- It appears that there were large scale land acquisition proceedings in the village to which the appellant belongs. There were about 150 villagers whose lands were involved.
- Some land owned by the family members of the appellant also suffered acquisition. Inasmuch as the appellant was an advocate and also personally interested in defending against the proposed acquisition of land belonging to his family members, the villagers either on their own or on persuasion confided in the appellant, who played a leading role initially in contesting the land acquisition proceedings and later in securing the best feasible quantum of compensation.

- There were around 150 claimants out of whom three only filed complaints against the appellant which were inquired into by the Disciplinary Committee of the State Bar Council and held proved against the appellant. The substance of the allegations found proved is that the appellant solicited professional work from the villagers; that he settled contingent fee depending on the quantum of compensation awarded to the claimant.
- It was submitted that the appellant did not solicit professional work as such and in fact the villagers confided in him because of his being an advocate, also looking after litigation relating to his family land, and the villagers had voluntarily agreed to contribute to a collective fund raised for covering the expenses of litigation as they were likely to make an overall saving in litigation expenses by fighting collectively as a group and it is out of this fund that the appellant incurred expenses including those by himself.

- Supreme court observed, Debarring a person from pursuing his career for his life is an extreme punishment and calls for caution and circumspection before being passed. we strongly feel that the punishment given to the appellant in the totality of facts and circumstances of the case is so disproportionate as to prick the conscience of the Court.
- On the totality of the facts and circumstances of the case, in our opinion, it would meet the ends of justice if the appellant is suspended from practise for a period of seven years. Such sentence would satisfy the need for punishment and also act as deterrent on the appellant and set an example to others so as to prevent recurrence of such like incidents.
- **Breach of Trust By Misappropriating The Asset Of Client Harish Chandra Tiwari v. Baiju** .
- Respondent Baiju engaged the delinquent advocate in a land acquisition case in which the respondent was a claimant for compensation

- . The Disciplinary Committee has described the respondent as “an old, helpless, poor illiterate person.” Compensation of Rs. 8118/- for the acquisition of the land of the said Baiju was deposited by the State in the court.
- Appellant applied for releasing the amount and as per orders of the court he withdrew the said amount on 2.9.1987. But he did not return it to the client to whom it was payable nor did he inform the client about the receipt of the amount.
- Long thereafter, when the client came to know of it and after failing to get the amount returned by the advocate, compliant was lodged by him with the Bar Council of the State for initiating suitable disciplinary action against the appellant.
- Court held that among the different types of misconduct envisaged for a legal practitioner, misappropriation of the client’s money must be regarded as one of the gravest.

- There may be justification to award a lesser punishment in a case where the delinquent advocate returned the money before commencing the disciplinary proceedings.

- **Shambhu Ram Yadav vs Hanum Das Khatry on 26 July, 2001**
- Author: Y.K.Sabharwal
- **Bench: K.T. Thomas, Y.K. Sabharwal**
- Legal profession is not a trade or business. It is a noble profession. Members belonging to this profession have not to encourage dishonesty and corruption but have to strive to secure justice to their clients if it is legally possible. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. There is heavy responsibility on those on whom duty has been vested under the Advocates Act, 1961 to take disciplinary action when the credibility and reputation of the profession comes under a clout on account of acts of omission and commission by any member of the profession.

- In substance, the complaint was that respondent while appearing as a counsel in a suit pending in a civil court wrote a letter to Mahant Rajgiri his client inter alia stating that his another client has told him that the concerned judge accepts bribe and he has obtained several favourable orders from him in his favour; if he can influence the judge through some other gentleman, then it is different thing, otherwise he should send to him a sum of Rs.10,000/- so that through the said client the suit is got decided in his (Mahant Rajgiri) favour. The letter further stated that if Mahant can personally win over the judge on his side then there is no need to send money.
- The State Bar Council noticing that the respondent had admitted the contents of the letter came to the conclusion that it constitutes misconduct. In the order the State Bar Council stated that keeping in view the interest of the litigating public and the legal profession such a practice whenever found has to be dealt with in an appropriate manner. Holding respondent guilty of misconduct under Section 35 of the Advocates Act, State Bar Council suspended him from practice for a period of two years with effect from 15th June, 1997.

- The respondent challenged the aforesaid order before the Disciplinary Committee of Bar Council of India. By order dated 31st July, 1999, the Disciplinary Committee of Bar Council of India comprising of three members enhanced the punishment and directed that the name of the respondent be struck off from the roll of advocates, thus debarring him permanently from the practice. The concluding paragraph of the order dated 31st July, 1999 reads thus:
- In the facts and circumstances of the case, we also heard the appellant as to the punishment since the advocate has considerable standing in the profession. He has served as advocate for 50 years and it was not expected of him to indulge in such a practice of corrupting the judiciary or offering bribe to the judge and he admittedly demanded Rs.10,000/- from his client and he orally stated that subsequently order was passed in his client's favour. This is enough to make him totally unfit to be a lawyer by writing the letter in question.."

- We cannot impose any lesser punishment than debarring him permanently from the practice. His name should be struck off from the roll of advocates maintained by the Bar Council of Rajasthan. Hereafter the appellant will not have any right to appear in any Court of Law, Tribunal or any authority. We also impose a cost of Rs.5,000/- to the appellant which should be paid by the appellant to the Bar Council of India which has to be paid within two months
- **Conclusion**
  The role of the lawyers in the society is of great importance. They being part of the system of delivering justice holds great reverence and respect in the society. Each individual has a well defined code of conduct which needs to be followed by the person living in the society
- . A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself.

- It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so, when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client and the society.
- The advocate, as an officer of the Court, also has the responsibility to render services of sound quality.
- Lapses in services in the nature of absence when the matters are called out, the filing of incomplete and inaccurate pleadings – many times even illegible and without personal check and verification, the non-payment of court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties are not merely professional omission.
- They amount to positive dis-service to the litigants and create embarrassing situation in the court leading to avoidable unpleasantness and delay in the disposal of matters, and detrimentally affects the entire judicial system.

- Furthermore, as the officers of the court the lawyers are required to uphold the dignity of the judicial office and maintain a respectful attitude towards the Court. This is because the Bar and the Bench form a noble and dynamic partnership geared to the great social goal of administration of justice, and the mutual respect of the Bar and the Bench is essential for maintaining cordial relations between the two. It is the duty of an advocate to uphold the dignity and decorum of the Court and must not do anything to bring the Court itself into disrepute, and ensure that at no point of time, he oversteps the limits of propriety.
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▣ Justice Lentin Commission report

Indicts Maharashtra public health administration

Drug purchase malpractice that led to deaths in 1986 has lessons for India's health system today.

In January–February 1986, 14 patients well on the road to recovery in Mumbai's government- run JJ Hospital suddenly died, showing identical symptoms after consuming a routine medicine glycerine (or glycerol), an anti-oedema drug used to combat swelling.

The glycerine was laced with industrial glycol, a chemical which attacks the kidneys and kills quickly.

These deaths may not have come to public notice but for the *Maharashtra Times* story on it, broken by journalist Jagan Phadnis

- . The public furore that followed compelled the Maharashtra government to announce the institution of an enquiry commission, led by a sitting judge of the Bombay High Court, Justice B. Lentin, and presumed that the matter would blow over.
- It did not, and for several years thereafter, the Justice Lentin Commission of Inquiry remained the focus of intense and unprecedented public and media interest.
- In the introduction to the report of the commission, Justice Lentin wrote, ‘Little did the 14 persons who died in the JJ Hospital tragedy know that they would arouse an outcry of public indignation which would lay bare lack of probity in public life, malaise and corruption in high places indulged in contempt of the laws of God and man.
- . It is time to pause and forage into the murky waters of lies, deceit, intrigue, ineptitude and corruption to salvage the truth which led to this ghastly and tragic episode.

- This report, made public in March 1988, after much ***prevarication*** by the state government, is the first official document of its kind providing a rare and detailed insight into the state of our public health system.
- Its pages describe the 'ugly facets of the human mind and human nature, projecting errors of judgement, misuse of ministerial power and authority, apathy towards human life, corruption, nexus and quid pro quo between unscrupulous licence holders, analytical laboratories, elements in the Industries.
- Department controlling the awards of rate contracts; manufacturers, traders, merchants, suppliers, Food and Drugs Administration (FDA) and persons holding ministerial rank.
- None of this will be palatable in the affected quarters. But that cannot be helped'.

- The commission's sittings, which ran on for one-and-a-half years, initially focused on the JJ Hospital staff. Inertia, lack of accountability, and total absence of communication were the hallmark of their functioning.
- It exposed the gross negligence of the top administration in withdrawing the killer drug, which continued to do the rounds in the wards for four days, even after some alert hospital doctors had sounded the 'red alert' on January 25, 1986 and identified the suspect drugs.
- Dwelling at length on the qualities and duties of top hospital administrators who had utterly failed in acting to stop the killer drug even after being informed about it in writing, Justice Lentin observed,
- 'The success of any system must ultimately depend on the integrity and efficiency of those manning it, and if these attributes are found at the top, they must percolate downwards.
- It is here where the system has utterly failed, resulting in the kind of tragedy which struck the JJ Hospital.'

- The commission provided an important understanding of the drug purchase system followed in our public hospitals.
- Kept deliberately obtuse and secretive, its rules left to individual caprice, it facilitated racketeering and money making right down the line, at huge public cost.
- The JJ Hospital tragedy took place because the FDA (Food and Drug Administration) granted an illegal licence to Alpana Pharma, supplier of the killer drug glycerol, without ensuring that basic regulations were complied with.
- During the course of the hearings and even thereafter, one found that the name of Ramanlal Karwa and his brothers, the owners of Alpana Pharma worked like a 'magic wand'—as Justice Lentin put it—in the corridors of power.
- Even after the JJ Hospital tragedy and despite the commission's strong indictment, the Karwa brothers continued to find favour as drug suppliers to public hospitals, using the simple expedient of starting a company with a new name.

- Meanwhile, the members of the hospital's drug purchase committee, which included hospital doctors and government departments, went out of their way to place the hospital's drug supply order with Alpana Pharma, far exceeding the proportion allotted to them by the industries department in their rate contract.
- The quid pro quo was evident with the discovery of money placed by the drug supplier in the private bank account of committee members, as in the case of the hospital's then head of pharmacology department.
- The absence of checks to ensure that quality drugs reached the public was revealed with painful clarity during the commission's investigations.
- At that time there were only four government-owned drug-testing laboratories in the country and in order to cope with the huge workload the government appointed 'government approved' private laboratories that certified the purity of drugs.

- One such was Chem Med Laboratory that certified Alpana Pharma's killer glycerol as being of standard quality.
- This company enjoyed special protection of FDA officials who had been wined and dined by the owners.
- Even after its role in the JJ Hospital tragedy was known to them, the FDA indulged in a massive cover up to shield this company by raising 'red herrings' and leading investigators up the wrong path.
- The trouble, however, was that even large drug companies— including multinationals that had in-house drug-testing laboratories—produced substandard drugs and could not be trusted to voluntarily withdraw them from the market unless caught by the FDA and severely penalized, which the latter was not inclined to do.

- The fact that even ‘reputed’ drug companies were repeat offenders was discovered by Justice Lentin when he visited the FDA headquarters during the commission’s investigations and examined the FDA’s Register of Sub-Standard Drugs, which he dubbed ‘The Murder Book’.
- It revealed the FDA’s failure in prosecuting 582 grossly erring drug manufacturing concerns, whose drugs were found to be substandard, misbranded, or sub- therapeutic, the majority of which were termed as ‘life saving drugs’
- . Many of these ‘merchants of death’ were habitual offenders, having committed as many as 41 offences during the span of five months in 1986, but the FDA turned a blind eye.
- When questioned, FDA joint commissioner S. Dolas told the commission that ‘someone has to die first’, before the FDA could issue prohibitory orders against a firm.

- This pointed to the enormous scale on which the public health system had been reduced to a captive market for profit spinning, where human life was of least concern.
- An examination of this register or ‘murder book’, if monitored today, would clearly provide the clues we need to explain why — despite the JJ Hospital tragedy — no lessons have been learnt and killer drugs continue to stalk patients in both public and private hospitals.
- The commission recommended scrapping of drug procurement through the rate contract system and resevation for backward areas.
- It instead suggested that government hospitals directly purchase their quota from reputed manufacturers and conduct their own tests to ensure standard-quality drugs, amongst other measures.

- Looking beyond the specific JJ Hospital episode, the commission then expanded its scope to a thorough probe into the state of the public health system in Maharashtra.
- Over 10 politicians, which included health ministers past and present, MPs, and MLAs, were forced to reveal after much prevarication and loss of memory and when confronted with documentary evidence— how their interference in the workings of the FDA had harmed public interest by the protection they gave to manufacturers of substandard drugs and destroyed the moral fibre of the FDA, reducing it to a 'lapdog body', according to the judge.
- The Lentin report strongly indicted then health minister Bhai Sawant who was charged with gross ministerial interference, favouritism for extraneous considerations, and misuse of power, while irresistible inference of corruption was also drawn against him.
- It recommended an Anti-Corruption Bureau investigation against him as also former health minister Baliram Hiray, who was similarly indicted.

- The commission found that the ‘government machinery was utilised by these politicians to extort money from the drugs industry to inflate the coffers of private trusts with which the ministers were associated.’
- Dr Hiray was hard-pressed to explain to the commission how the Bhau Saheb Hiray Smarnika Samiti Trust had received a large number of donations from beer bars, distilleries, and liquor vendors from all over Maharashtra as well as several hundred pharma concerns, including multinationals, which fell within his jurisdiction as minister.
- He had also assisted the trust in acquiring government-allotted land in Bandra, measuring 1,927 square metres at a throwaway price of Rs3.49 lakh.
- The findings of the Lentin Commission are important not just for Maharashtra’s public health system but also for other states, as the majority of the drugs produced in India are manufactured in Maharashtra and patients from across the country come here for tertiary treatment.
- The commission found that far from regulating and imposing standards on the drug industry, the FDA had wilfully allowed substandard drugs to be sold in the market.

- The commission undertook a detailed investigation into the manner in which the FDA functioned, both in terms of licensing and controlling the standard of drugs produced.
- The licensing of the then Rs2,000 crore drugs industry in Maharashtra was solely handled by the FDA joint commissioner and licensing authority, who was answerable to none but the health minister.
- This official handled all applications for licences and had the power to refuse or grant them.
- He was also responsible for launching prosecutions against offenders amongst drug manufacturers. These untrammelled powers that he enjoyed could only be challenged in an appeal to the health minister.
- 'In the hands of unscrupulous Joint Commissioners and Licensing Authority, it could be an instrument of harassment and a device to make vast sums of money.
- This added to the inducements of the manufacturer of sub standard, spurious and misbranded drugs and total lack of fear of the consequences provided by the Act and Rules.' the judge stated.

- Dividends came to those FDA officials who said ‘Yes Minister’ promptly enough.
- Their talent lay in wresting donations from the profit-spinning pharma companies which swelled the coffers of the private trusts controlled by ministers.
- It was this talent that enabled officers like S.M. Dolas, the FDA joint commissioner and sole licensing authority in the state to thwart every transfer order, supported as he was by a galaxy of politicians, thereby enabling an uninterrupted 20-year posting in Mumbai.
- Politicians stepped in to cancel every transfer made on Dolas since 1978 and overruled adverse reports made against him by successive FDA commissioners.
- India’s hard-earned reputation as one of the top-ranking global producers of medicines continues to take a beating for its inability to tackle this nexus of corruption as highlighted by the Lentin Commission.

- A policy brief published by The Foundation for Research in Community Health on ‘Accessing Medicines in Africa and South Asia (July 2013) states:
- ‘Its (Indian government) failure to establish a strong drug regulatory mechanism is casting doubt on the safety and quality of Indian drugs. With complaints of sub-standard drugs coming from major international buyers the US, Uganda, South Africa, there is deep concern within the Indian pharmaceutical industry that the ‘black sheep can tar the credibility of the entire industry’.
- The country’s pharmaceutical industry today valued at Rs.1,00,000 crore is seeing a rapid growth at approximately 10 per cent per year. It meets 95 per cent of the domestic needs and has a 10 per cent share by volume in the global market.

- The Lentin Commission of Inquiry had highlighted how the safety and quality of drugs produced in Maharashtra, where 29 per cent of the country's manufacturing and sales units are based, must urgently undergo scrutiny and reform.
- The state commands a 38 per cent share (2008–9) of India's Rs 42,000 crore export market in medicines.
- Some key thinking emerging from the debates of that time is that the government will not be able to stem such tragedies unless it addresses itself to two tasks.
- To begin with in the short term, given Indian conditions—where we contend with an irresponsible pharmaceutical industry and an inadequate vigilance machinery— there is need for stiff penal action against errant manufacturers (which includes FDA confiscation of machinery and property in extreme cases) and prevention of cases from languishing in the courts.
- Evidence shows that even these measures come to nought in the absence of strong political commitment to weed out corruption and disallow the shielding of politician cronies.

- In the long term, many see that the only solution lies in curbing the number of drugs, reducing them to the 270 basic drugs recommended by the WHO (World Health Organization).
- This was also endorsed by the Hathi Committee and former FDA commissioners who agree saying there is a definite advantage in this.
- Several consumer and medical bodies have asserted the need to start by weeding out drugs banned the world over, but continue to be manufactured and sold in India, in some cases even in defiance of the ban order of the Drug Controller of India, under the shield of court-granted stay orders.
- One also found that those indicted by the Lentin Commission continued to flourish and wield favour in the corridors of power while political parties closed ranks to protect their spheres of vested interest.
- Despite the work of the Lentin Commission and several other reports of official expert committees, nothing has changed.
- The nexus of corruption and negligence in our healthcare system is intact but is rarely exposed in the absence of a vigilant media, strong public pressure, and government commitment.

THE PRESS COUNCIL ON UNPROFESSIONAL AND UNETHICAL JOURNALISM.

JOURNALISM :

- **Journalism** is the production and distribution of reports on current events based on facts and supported with proof or evidence.
- The word journalism applies to the occupation, as well as collaborative media who gather and publish information based on facts and supported with proof or evidence. Journalistic media include print, television, radio, Internet, and, in the past, newsreels.
- Concepts of the appropriate role for journalism vary between countries.
- In some nations, the news media are controlled by government intervention and are not fully independent.
- In others, the news media are independent of the government but instead operate as private industry.
- In addition to the varying nature of how media organizations are run and funded, countries may have differing implementations of laws handling the freedom of speech and libel cases.

- The proliferation of the Internet and smartphones has brought significant changes to the media landscape since the turn of the 21st century.
- This has created a shift in the consumption of print media channels, as people increasingly consume news through e-readers, smartphones, and other personal electronic devices, as opposed to the more traditional formats of newspapers, magazines, or television news channels.

भारतीय प्रेस परिषद

PRESS COUNCIL OF INDIA

Central Statutory Authority

- The Press Council of India was first set up in the year 1966 by the Parliament on the recommendations of the First Press Commission with the object of preserving the freedom of the press and of maintaining and improving the standards of press in India.

- Press Council is a mechanism for the Press to regulate itself.
- The raison d'etre of this unique institution is rooted in the concept that in a democratic society the press needs at once to be free and responsible.
- If the Press is to function effectively as the watchdog of public interest, it must have a secure freedom of expression, unfettered and unhindered by any authority, organised bodies or individuals.
- But, this claim to press freedom has legitimacy only if it is exercised with a due sense of responsibility. The Press must, therefore, scrupulously adhere to accepted norms of journalistic ethics and maintian high standards of professional conduct.
- Where the norms are breached and the freedom is defiled by unprofessional conduct, a way must exist to check and control it.

- But, control by Government or official authorities may prove destructive of this freedom. Therefore, the best way is to let the peers of the profession, assisted by a few discerning laymen to regulate it through a properly structured representative impartial machinery. Hence, the Press Council.
- The basic concept of self-regulation in which the Press Councils and similar media bodies world over are founded, was articulated by Mahatma Gandhi, who was an eminent journalist in his own right, thus : “
- The sole aim of journalist should be service. The newspaper press is a great power, but just as unchained torrent of water submerges the whole country side and devastates crops, even so an uncontrolled pen serves but to destroy.
- Control can be profitable only when exercised from within.

- Pandit Jawaharlal Nehru while defending Press freedom, warning of the danger its irresponsible exercise entails stressed :
- If there is no responsibility and no obligation attached to it, freedom gradually whithers away. This is true of a nation's freedom and it applies as much to the Press as to any other group, organisation or individual.
- The First Press Commission (1954) came across in some section of the Press, instances of yellow journalism of one type or another, scurrilous writing-often directed against communities or groups, sensationalism, bias in presentation of news and lack of responsibility in comment, indecency and vulgarity and personal attacks on individuals.

- The Commission, however, pointed out that the well-established newspapers had, on the whole. Maintained a high standard of journalism.
- They had avoided cheap senstationalism and unwarranted intrusion into private lives." But it remarked that whatever the law relating to the Press may be, there would still be a large quantum of objectionable journalism which, though not falling within the purview of the law, would still require to be checked.“
- It was of the view that the best way of maintaining professional standards of journalism would be to bring into existence a body of of people principally connected with the industry whose responsibility it would be to arbitrate on doubtful points and to censure any one guilty of infraction of the code of journalistic ethics.

- The Commission recommended the setting up of a Press Council. Among the objectives visualised for the Council were :
- to safeguard the freedom of the press", " to ensure on the part of the Press the maintenance of High standards of public taste and to foster due sense of both the rights and responsibilities of citizenship" and
- " to encourage the growth of sense of responsibility and public service among all those engaged in the profession of journalism.“
- The Commission, recommended the establishment of the Council on a statutory basis on the ground that the Council should have legal authority to make inquiries as otherwise each member, as well as the Council as a whole, would be subject to the threat of legal action from those whom it sought to punish by exposure.

- The Commission said that the Council should consist of men who would command general confidence and respect of the profession and should have 25 members excluding the Chairman. The Chairman was to be a person who was or had been a Judge of the High Court and was to be nominated by the Chief Justice of India.
- The Press Council of India was first constituted on 4th July, 1966 as an autonomous, statutory, quasi-judicial body, with Shri Justice J R Mudholkar, then a Judge of the Supreme Court, as Chairman.
- The Press Council Act, 1965, listed the following functions of the Council in furtherance of its objects :

- to help newspapers to maintain their independence
- to build up a code of conduct for newspapers and journalists in accordance with high professional standards
- to ensure on the part of newspapers and journalists the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship
- to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism.
- to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance
- to keep under review such cases of assistance received by any newspaper or news agency in India from foreign sources, as are referred to it by the Central Government.

- Provided that nothing in this clause shall preclude the Central Government from dealing with any case of assistance received by a newspaper or news agency in India from foreign sources in any other manner it thinks fit;

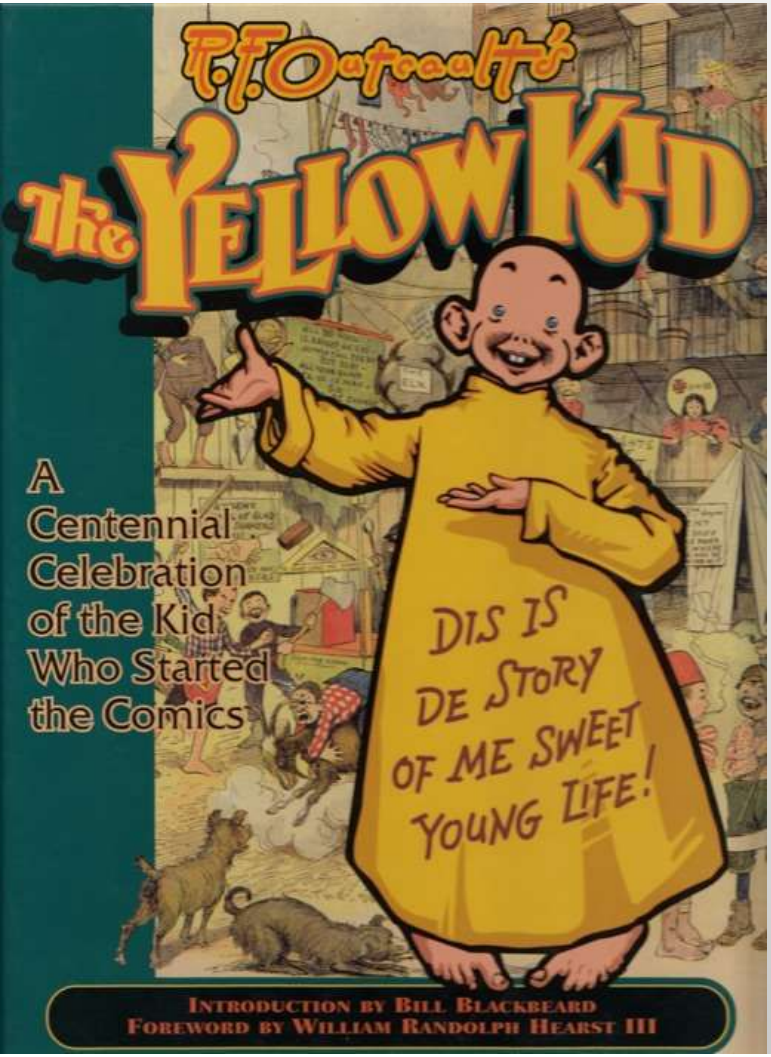
- to promote the establishment of such common service for the supply and dissemination of news to newspapers as may, from time to time, appear to it to be desirable;
- to provide facilities for the proper education and training of persons in the profession of journalism.
- to promote technical or other research.
- to do such other acts as may be incidental or conducive to the discharge of the above functions.

- to promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers.
- to study developments which may tend towards monopoly or concentration of ownership of newspapers, including a study of the ownership or financial structure of newspapers, and if necessary, to suggest remedies therefore.
- The present Council is a body corporate having perpetual succession. It consists of a Chairman and 28 other members. Of the 28 members, 13 represent the working journalists. Of whom 6 are to be editors of newspapers and remaining 7 are to be working journalists other than editors. 6 are to be from among persons who own or carry on the business of management of newspapers.

- One is to be from among the persons who manage news agencies. Three are to be persons having special knowledge or practical experience in respect of education and science, law and literature and culture. The remaining five are to Members of Parliament : three from Lok Sabha, and two from Rajya Sabha.

Yellow Journalism: The Rising concern

Yellow journalism is the use of lurid features and sensationalized news in newspaper publishing to attract readers and increase circulation. The phrase was coined in the 1890s to describe the tactics employed in the furious competition between two New York City newspapers, the World and the



The Yellow Kid comic strip is a possible source for the term "yellow journalism.

Yellow journalism and yellow press are American terms for journalism and associated newspapers that present little or no legitimate, well-researched news while instead using eye-catching headlines for increased sales. Techniques may include exaggerations of news events, scandal-mongering, or sensationalism.

- The yellow journalism period, however, became more or less permanent and widespread, such as banner headlines, coloured comics, and copious illustration.
- In other media, most notably television and the Internet, many of the sensationalist practices of yellow journalism became more commonplace.

- Today yellow journalism has become a big threat for society. Our media is full of yellow journalism. Tabloids, including the National Inquirer and T.V. are full of rumors, and misconceived ideas. It surfaces around the "judging a book by its cover" idea.
- The media creates stories in a way that they will draw emotion from and force a certain way of thinking upon them. This, ultimately, will a good effect on society. In order to beat out competition with other newspapers, journalists are forced to sell their stories using

- The effects of yellow journalism are the emergence of a culture of sensationalism, a change in social, political, and economic life, as well as a distorted mass media.
- Other impacts are gender discrimination, increased violence, and human security issues. We can define it as "**Yellow journalism** and the yellow press are American terms for journalism and associated newspapers that present little or no legitimate well-researched news while instead using eye-catching headlines for increased sales.
- Techniques may include exaggerations of news events, scandal-mongering, or sensationalism. Today, the term "yellow journalism" is used negatively to describe any journalistic style that treats real news either unprofessionally or unethically.

- Actually yellow journalism has grown up due to competition in media industry and the question has become how they would make their newspapers stand out from the competition.
- Yellow Journalism has made an impact on society for hundreds of years.With yellow journalism the truth is usually misrepresented or concealed, and negative point is that people start to believe whatever publishing or broadcasting and it is harmful for society. Due to the yellow journalism problems like Culture of sensationalization, Gender Discrimination, Human security issues, and Violent Behaviors are increasing.
- Yellow Journalism is not the pure form of journalism, rather a pure form of business. Their main objective is profit, critical ***journalism*** is second to their interest. Truth must be the first priority for reporting any event. Media must abide by the responsibilities of the fourth pillar

- A survey conducted by the market research company Mori in February 2003 rated them even lower than government ministers, finding that "75% of adults would not trust a journalist to tell them the truth".
- Little wonder that the press is thus excoriated if people hold it responsible for one of the most harrowing events in recent public life, the death of Diana, princess of Wales, following a traffic accident in 1997.
- Describing it as a 'defining moment in British Journalism', the journalist Ian Hargreaves, in his recent book *Journalism: Truth or Dare?*, notes that her car had been chased through a Paris underpass by freelance photographers working for British and other newspapers, leading the princess's brother at her funeral, to accuse publishers of having 'blood on their hands'. This is the level at which the press can stoop in order to sell a few extra copies of its edition!

- In early times, the law afforded protection only against physical interference with a person or his property.
- As civilization progressed, the personal, intellectual and spiritual facets of the individual personality gained recognition and the scope of law expanded to give protection to these needs including an individual's privacy.
- The term 'privacy' has been defined as "the rightful claim of the individual to determine the extent to which he wishes to share of himself with the others". the concept of privacy is used to describe not only the individuals right to keep things to himself but also defines the limit of the Government authorities or any kind of institution or organizations to intrude in our lives and keep a watch on us through surveillance or telephone tapping.

- For instance, by determining whether a pregnant woman has a right to abortion, or whether an HIV infected person has a right to marry or have children, by government authorities can exercise control over personal choices.
- To top it all if the media decides this to expose this to the world, then the privacy of a common man comes under threat.
- Evolution of the law of privacy has occurred due to development of media in the modern times.
- It is because of the media and the unbridled growth of yellow journalism that the private life of an individual has come in the public domain, thus exposing him to the risk of an invasion of his space.
- Moreover in the Internet age, information has become very accessible and is available with one click of the mouse. This is the reason why law

- But unfortunately, even today in no country does the right to privacy enjoy the status of a specific constitutional right.
- Privacy law has evolved largely through judicial pronouncements. Even as late as 1991, the law in England was found to be inadequate to take actions against yellow journalism.
- In that year, the court of appeal decided Kaye v Robertson. The case concerned a well-known actor who had to be hospitalized after sustaining severe head injuries in a car accident.
- At a time when the actor was in no condition to be interviewed, a reporter and a photographer from the 'Sunday Sport Newspaper' gained unauthorized access and took his photos.
- Because of no proper law, no action was taken against the reporter.

- Despite the lack of specific constitutional recognition, the right to privacy has long held a place in international documents on human rights such as Article 12 of the Universal Declaration of Human Rights, 1948.
- In India, the right to privacy is not a specific fundamental right but has gained constitutional recognition.
- Unfortunately the right to privacy is not one of the reasonable restrictions. In India right to privacy has derived itself from- common law of torts and the Constitutional law.
- In common law, a private action for damages for unlawful invasion of privacy is maintainable. Under the constitutional law, the right to privacy is implicit in the fundamental rights to life and liberty guaranteed by Article 21 of the Constitution.

- Various case laws in the past are evidences, which prove the infringement of privacy by journalists.
- In *Kaleidoscope (India) (P) Ltd. v. Phoolan Devi*, the trial Judge restrained the exhibition of the controversial film *Bandit Queen* both in India and abroad.
- The trial court reached a *prima facie* view that the film infringed the right to privacy of Phoolan Devi, notwithstanding that she had assigned her copyright in her writings to the film producers.
- This was upheld by the Division Bench. The Court observed that even assuming that Phoolan Devi was a public figure whose private life was exposed to the media; the question was to what extent private matters relating to rape or the alleged murders committed by her could be commercially exploited, and not just as news items or matters of public interest.

- Thus, justice was rendered by preventing by intrusion of privacy into the life of the one and only Bandit Queen.
  Yellow journalism has not only affected and victimized the general public and has not even spared the apex court of the nation, the Supreme Court. In the high profile case of the Booker-prize winner Arundhati Roy, blatant and unconstructive criticism of a Supreme Court decision was witnessed.
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  The petitioner, of the case, was a movement or andolan, whose leaders and members were concerned about the alleged adverse environmental impact of the construction of the Sardar Sarovar Reservoir Dam in Gujarat and the far-reaching and tragic consequences of the displacement of hundreds of thousands of people from their ancestral homes that would result from the submerging of vast extents of land, to

- By one of the orders, the Court permitted to increase the height of the dam, which was resented to and protested by the petitioners and others including the respondent herein.
- The respondent Arundhati Roy, who was not a party to the proceedings, published an article entitled "The Greater Common Good" which was published in Outlook Magazine.
- Two judges of this Court, forming the three-judge Bench felt that the comments made by her were, prima facie, a misrepresentation of the proceedings of the court.
- It was observed that judicial process and institution cannot be permitted to be scandalized or subjected to contumacious violation in such a blatant manner, it had been done by her.

- On the basis of the record, and the conduct of the respondent, the court had no doubt in its mind that the respondent had committed the criminal contempt of the Court by scandalizing its authority with malaise intentions.
- The respondent was, therefore, held guilty for the contempt of court punishable under Section 12 of the Contempt of Courts Act.

Regardless of the above mentioned success stories various loopholes are still present in our judiciary as far as Yellow Journalism is concerned. So far the laws of privacy have been relegated to a penumbral status and have never enjoyed the status of a well-defined right. It is time our lawmakers enacted laws to protect privacy rather than laws that license intrusion into private affairs.

- It is not astounding that yellow journalism has created a hue and cry in society and because it is a fact that the media is a very powerful and influential tool, which has, a great reach throughout the country.
- It has the power to either 'make or break' a person. In introspection let's be aware that the common man has the real power to decide what he wants to view and it is in his hands whether he wants to become a puppet in the hands of the star-crazy journalists.
- Moreover, we need to strike a "balance between rights of an individual to be let alone and the fundamental right (of the press) to freedom of speech, expression and information.

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- There are numerous occurrences of sensationalist reporting in India, for instance, the live broad inclusion of Taj Mumbai dread assault (might be at the expense of national security issues),
- Broad inclusion of Aarushi murder issue (might be at the expense of break of protection laws),
- Broad inclusion of Nirbhaya assault issue (might be at the expense of directing a media preliminary and partiality to the charged), and so forth.

- The Media in India has over and over crossed the lakshman-rekha (serious limit) of the security laws.
- In Rajgopal v. State of Tamil Nadu [(1994) 6 SCC 632], the Supreme Court has seen that a resident has a principal option to shield the security of his own, his family, marriage, multiplication, parenthood, kid bearing and instruction.
- None can distribute anything concerning the above issues without his assent. This law is not followed by the media.
- The Media is known as the Fourth Estate. In the event that it has the true option to go about as the Fourth Estate, it should likewise comply with the obligations of being the Fourth Estate.

MEDICAL MALPRACTICE

- **Medical malpractice** is a legal cause of action that occurs when a medical or health care professional, through a negligent act or omission, deviates from standards in their profession, thereby causing injury to a patient. The negligence might arise from errors in diagnosis, treatment, aftercare or health management.
- An act of medical malpractice usually has three characteristics. Firstly, it must be proven that the treatment has not been consistent with the standard of care, which is the standard medical treatment accepted and recognized by the profession. Secondly, it must be proven that the patient has suffered some kind of injury due to the negligence. In other words, an injury without negligence or an act of negligence without causing any injury cannot be considered malpractice

- . Thirdly, it must be proven that the injury resulted in significant damages such as disability, unusual pain, suffering, hardship, loss of income or a significant burden of medical bills.

- The Principal objective of the medical profession is to **render service to humanity** with full respect for the dignity of profession and man. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion.

- : As member of Indian medical Association and as qualified physician, the conduct of a registered Medical Graduate is governed by the Ethics and the regulations pronounced by Indian medical Council Act 1956.

As very important part of society and nation building:

- 1. I have read & agreed to abide by regulations under Indian Medical Council act, especially Professional, Etiquette & Ethics) Regulations 2002 and its subsequent amendments.
- 2. I solemnly pledge myself to consecrate my life to the service of humanity & maintain utmost respect for human life from the time of its conception.
- 3. I shall practice my profession with utmost conscience & dignity.
- 4. I shall extend my teachers & fellow colleagues respect and gratitude legitimately due to them.
- 5. I shall respect the privacy & secrets of my patients that are confided in me for professional reasons.
- 6. I shall honour the autonomy of my patients to make decisions.

- 7. I shall uphold both beneficence & non-malfeasance in treating my patients.
- 8. I shall respect human dignity, esteem, prestige, rights & fundamental freedom of all my patients
- 9. I shall take both informed consent & inform refusal from my patient towards any medical or surgical treatment.
- 10. I shall hold diligent regards to cultural diversity and pluralism.
- 11. I shall protect individual & groups of special vulnerability & respect the personal integrity of such individual and groups as the case may be.
- 12. I am committed to ensure that the selective sex selection is stopped at all levels and by all means.
- 13. I shall faithfully comply with all the Regulatory and Statutory stipulations.

- 14. I shall not accept any gifts, pecuniary benefits or gratification from the pharmaceutical companies, equipment suppliers and diagnostic centers or similar agencies.
- 15. I shall not indulge in any activities that are immoral, unethical or illegal in the eyes of the applicable governing laws and also the prudence.

- A patient approaching a doctor expects medical treatment with all the knowledge and skill that the doctor possesses to bring relief to his medical problem. The relationship takes the shape of a contract retaining the essential elements of tort. A doctor owes certain duties to his patient and a breach of any of these duties gives a cause of action for negligence against the doctor. The doctor has a duty to obtain prior informed consent from the patient before carrying out diagnostic tests and therapeutic management

- . The services of the doctors are covered under the provisions of the Consumer Protection Act, 1986 and a patient can seek redressal of grievances from the Consumer Courts. Case laws are an important source of law in adjudicating various issues of negligence arising out of medical treatment.
- A patient generally approaches a doctor/hospital based on his/its reputation. Expectations of a patient are two-fold: doctors and hospitals are expected to provide medical treatment with all the knowledge and skill at their command and secondly they will not do anything to harm the patient in any manner either because of their negligence, carelessness, or reckless attitude of their staff. Though a doctor may not be in a position to save his patient's life at all times, he is expected to use his special knowledge and skill in the most appropriate manner keeping in mind the interest of the patient who has entrusted his life to him.

- Therefore, it is expected that a doctor carry out necessary investigation or seeks a report from the patient. Furthermore, unless it is an emergency, he obtains informed consent of the patient before proceeding with any major treatment, surgical operation, or even invasive investigation. Failure of a doctor and hospital to discharge this obligation is essentially a tortious liability.
- In the case of Dr. Laxman Balkrishna Joshi *vs*. Dr. Trimbark Babu Godbole and Anr., AIR 1969 SC 128 and A.S.Mittal v. State of U.P., AIR 1989 SC 1570, it was laid down that when a doctor is consulted by a patient, the doctor owes to his patient certain duties which are:
- (a) duty of care in deciding whether to undertake the case,
- (b) duty of care in deciding what treatment to give, and
- (c) duty of care in the administration of that treatment.
- A breach of any of the above duties may give a cause of action for negligence

- **The importance of obtaining informed consent**
- In the case of Samira Kohli *vs*. Dr. Prabha Manchanda and Ors. I (2008) CPJ 56 (SC), the apex court held that consent given for diagnostic and operative laparoscopy and "laporotomy if needed" does not amount to consent for a total hysterectomy with bilateral salpingo opherectomy.
- The appellant was neither a minor nor mentally challenged or incapacitated. As the patient was a competent adult, there was no question of someone else giving consent on her behalf.
- The appellant was temporarily unconscious under anesthesia, and as there was no emergency. The respondent should have waited until the appellant regained consciousness and gave proper consent.
- The question of taking the patient's mother's consent does not arise in the absence of emergency. Consent given by her mother is not a valid or real

- . The question was not about the correctness of the decision to remove reproductive organs but failure to obtain consent for removal of the reproductive organs as performance of surgery without taking consent amounts to an unauthorized invasion and interference with the appellant's body. The respondent was denied the entire fee charged for the surgery and was directed to pay Rs. 25000/- as compensation for the unauthorized surgery.
- **MEDICAL ETHICS AND THE TREATMENT OF ACCIDENT VICTIMS**
- In the case of Pravat Kumar Mukherjee *vs*. Ruby General Hospital and Ors, II(2005)CPJ35(NC), the National Commission delivered a landmark decision concerning treatment of an accident victim by the hospital.
- brief facts of the case are as follows: the complainants are the parents of the deceased boy. They approached the National Commission for compensation and adequate relief. The case involves the unfortunate death of a young boy, Shri Sumanta Mukherjee, a student of second year B. Tech., Electrical Engineering

- on January 14, 2001 a bus from Calcutta Tramway Corporation crashed with the motorcycle driven by the deceased. Sumanta was conscious after the accident and was taken to the hospital about 1 km from the site of the accident. He was insured for Rs. 65,000/- under a Mediclaim Policy issued by the New India Assurance Co. Ltd. When he reached the hospital, the deceased was conscious and showed the Mediclaim certificate he was carrying in his wallet.
- Acting on this promise, the hospital started treatment in its emergency room by giving moist oxygen, starting suction, and by administering injection Driphylline, Injection Lycotinx, and titanous toxoid. The respondents demanded an immediate payment of Rs. 15000/- and discontinued treatment as the amount was not deposited immediately though an assurance to pay the amount was made by the accompanying persons from the general public.

- Actually, the crowd collected Rs. 2000/- and the amount with the motorcycle of the patient and insurance receipt was offered. As the hospital was adamant and discontinued treatment after giving treatment for 45 minutes, the people from the crowd present were forced to take the patient to National Calcutta Medical College, which is about 7-8 km from the current hospital. The patient died on the way and was declared dead upon arrival at the National Calcutta Medical College.
- The National Commission allowed the complaint and the Opponent Ruby Hospital was directed to pay Rs. 10 lakhs to the Complainant for mental pain agony.
- The Commission observed as follows: “This may serve the purpose of bringing about a qualitative change in the attitude of the hospitals of providing service to human beings as human beings.
- A human touch is necessary; that is their code of conduct; that is their duty and

- ". However, it remains to be seen whether the above award has brought in any attitudinal change in the medical fraternity.
- **When It's Probably Not Medical Malpractice**
- These scenarios (on their own) likely won't amount to a viable medical malpractice case.
- **The Patient's Condition Gets Worse**
- A doctor cannot be said to have committed medical malpractice simply because a patient's condition became worse during the course of treatment.
- Sometimes a doctor is unable to treat (let alone cure) an illness, and even when a certain condition is considered treatable, there is no guarantee that every patient will respond to treatment in every situation. As long as the doctor acted with reasonable care and skill in

- **The Patient's Condition Is Untreatable**
- Similarly, since not all illnesses and health problems are treatable, a doctor who correctly diagnoses a health problem—and makes sound decisions in deciding how to proceed with the patient's care—cannot be said to have committed malpractice simply because the patient's condition is not treatable, or is terminal.
- Simply put, medical malpractice laws aren't in place to offer a remedy for unfortunate (but sometimes unavoidable) health care outcomes such as terminal illnesses and deaths. They're in place to provide legal protection when the treatment that a patient is given falls short of acceptable standards of medical care.

- CHAPTER NO.5
- RESPONSE OF INDIAN LEGAL ORDER TO THE DEVIANCE OF PRIVILEGED CLASS.
- VIGILENCE COMMISSION
- **Central Vigilance Commission (CVC)** is an apex Indian governmental body created in 1964 to address governmental corruption.
- In 2003, the Parliament enacted a law conferring statutory status on the CVC.
- It has the status of an autonomous body, free of control from any executive authority, charged with monitoring all vigilance activity under the Central Government of India, advising various authorities in central Government organizations in planning, executing, reviewing and reforming their vigilance work.

- It was set up by the Government of India Resolution on 11 February 1964, on the recommendations of the *Committee on Prevention of Corruption*, headed by Shri K. Santhanam Committee, to advise and guide Central Government agencies in the field of vigilance. Nittoor Srinivasa Rau, was selected as the first Chief Vigilance Commissioner of India.
- **The CVC is not controlled by any Ministry/Department.** It is an independent body which is only **responsible to the Parliament**.
- The Annual Report of the CVC not only gives the details of the work done by it but also brings out the system failures which leads to corruption in various Departments/Organisations, system improvements, various preventive measures and cases in which the commission's advises were ignored etc.
- The Commission shall consist of:
- A Central Vigilance Commissioner – Chairperson;
- Not more than two Vigilance Commissioners – Members.
- **The term of office** of the Central Vigilance Commissioner and the Vigilance Commissioners is **four years** from the date on which they enter their office or **till they attain the age of 65 years, whichever is earlier**.

- **Vigilance** means to ensure clean and prompt administrative action towards achieving efficiency and effectiveness of the employees in particular and the organization in general, as lack of Vigilance leads to waste, losses and economic decline.
- **ROLE OF CVC**
- The CVC is not an investigating agency: the only investigation carried out by the CVC is that of examining Civil Works of the Government.
- Corruption investigations against government officials can proceed only after the government permits order . The CVC publishes a list of cases where permissions are pending, some of which may be more than a year old.
- The Ordinance of 1998 conferred statutory status to the CVC and the powers to exercise superintendence over the functioning of the Delhi Special Police Establishment, and also to review the progress of the investigations on alleged offences under the Prevention of Corruption Act, 1988 conducted by them.
- In 1998 the Government introduced the CVC Bill in the Lok Sabha to replace the

- The Bill was re-introduced in 1999 and remained with the Parliament until September 2003, when it became an Act after being duly passed in both the Houses of Parliament.
- The CVC has also been publishing a list of corrupt government officials against which it has recommended punitive action. In 2004, GoI authorized the CVC as the "Designated Agency" to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action. This report delivers to the president

Appointment

- The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President on recommendation of a Committee consisting of the Prime Minister (Chairperson), the Minister of home

Removal

- The Central Vigilance Commissioner or any Vigilance Commissioner can be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought to be removed.
- The President may, by order, remove from office the Central Vigilance Commissioner or any Vigilance Commissioner if the Central Vigilance Commissioner or such Vigilance Commissioner, as the case may be:
  - is adjudged an insolvent; or
  - has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

- engages during his term of office in any paid employment outside the duties of his office; or
- is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
- has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.

Organisation

- The CVC is headed by a Central Vigilance Commissioner who is assisted by two Vigilance Commissioners. Currently Suresh N patel is central vigilance commissioner

Limitations of CVC

- CVC is only an advisory body. Central Government Departments are free to either accept or reject CVC's advice in corruption cases.
- CVC does not have adequate resources compared with number of complaints that it receives.
- It is a very small set up with a sanctioned staff strength of 299. Whereas, it is supposed to check corruption in more than 1500 central government departments and ministries.
- CVC cannot direct CBI to initiate inquiries against any officer of the level of Joint Secretary and above on its own.
- Such a permission has to be obtained from the concerned department.
- However, this provision is declared unconstitutional by Supreme court in a 2014 judgement in case filed by Subramaniam Swamy

- Hon'ble Supreme Court of India in its judgement stated that merely the post of a person cannot keep him above the law, stating the provision is violative of fundamental right Article 14.
- CVC does not have powers to register criminal case. It deals only with vigilance or disciplinary cases.
- CVC has supervisory powers over CBI. However, CVC does not have the power to call for any file from CBI or to direct CBI to investigate any case in a particular manner.
- CBI is under administrative control of Department of Personnel and Training (DoPT), which means that, the powers to appoint, transfer, suspend CBI officers lie with DoPT.
- Appointments to CVC are indirectly under the control of Govt of India, though the leader of the Opposition (in Lok Sabha) is a member of the committee to select CVC and VCs.

- . But the Committee considers candidates put up before it. These candidates are decided by the Government.

- As a result, although CVC is relatively independent in its functioning, it has neither resources nor powers to inquire and take action on complaints of corruption that may act as an effective deterrence against corruption.

Powers and Functions of CVC

 To exercise superintendence over the functioning of the Delhi Special Police Establishment (DSPE) with respect to investigation under the Prevention of Corruption Act, 1988; or offence under CRPC for certain categories of public servants and to give directions to the DSPE for purpose of discharging this responsibility;

 To undertake an inquiry or cause an inquiry or investigation to be made into any transaction in which a public servant working in any organisation, to which the executive control of the Government of India extends, is suspected or alleged to have acted for an improper purpose or in a corrupt manner;

 To tender independent and impartial advice to the disciplinary and other authorities in disciplinary cases, involving vigilance angle at different stages i.e. investigation, inquiry, appeal, review etc.;

- To exercise a general check and supervision over vigilance and anti-corruption work in Ministries or Departments of the Govt. of India and other organisations to which the executive power of the Union extends; and
- To chair the Committee for selection of Director (CBI), Director (Enforcement Directorate) and officers of the level of SP and above in

- To undertake or cause an inquiry into complaints received under the Public Interest Disclosure and Protection of Informer and recommend appropriate action.
- In 2003, in response to a PIL which was filed in the Supreme Court on account of the murder of Satyendra Dube, the Supreme Court directed the Government to designate a suitable machinery to act on complaints from "whistle blowers" till such time as a suitable legislation was enacted to that effect.
- The Central Government while implementing the directive of the Supreme Court has reposed its faith on the CVC.
- Through a Resolution dated 21 April, 2004, the Government has designated the Central Vigilance Commission as the agency to act on complaints from "whistleblowers" till such time as the Parliament passes a law on the subject.

- According to the GOI Resolution on "Public Interest Disclosure and Protection of Informer", 2004, the Commission has been entrusted with the additional responsibility of keeping the identity of the complainant secret and the power to take action against complainants making motivated or vexatious complaints. There is no restriction on jurisdiction of the Commission in the Government of India Resolution, 2004.
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- **Supreme Court of India**
- **Vineet Narain & Ors vs Union Of India & Anr on 30 January, 1996**

- The gist of the allegations in the writ petition are that Government agencies, like the CBI and the revenue authorities, have failed to perform their duties and legal obligations inasmuch as they have failed to properly investigate matters arising out of the seizure of the so called "Jain Diaries" in certain raids conducted by the CBI.
- This also disclosed a nexus between several important politicians, bureaucrats and criminals, who are all recipients of money from unlawful sources given for unlawful considerations; that the the CBI and other Government agencies have ***failed to*** fully investigate into the matter and take it to the logical and point of the trail and to prosecute all persons who have committed any crime; that this is being done with a view to protect the persons involved, who are very influential and powerful in the present set up.

- That the matter discloses a definite nexus between crime and corruption in public life at high places in the country which poses a serious threat to the integrity, security and economy of the nation;
- That probity in public life, to prevent erosion of the rule of law and the preservation of democracy in the country, requires that the Government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against each and every persons involved, irrespective of the height at which he is placed in the power set up.
- The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all Government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenant of rule of law:

- Be you ever so high, the law is above you". Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously.
- This is imperative to retain public confidence in the impartial working of the Government agencies.
- In this proceeding we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the Government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law.
- In case of persons against whom a prima facie case is made out and a charge sheet is filed in the competent court, it is that court which will then deal with that case on merits, in accordance with law.

- However. if in respect of any such person the final report after full investigation is that no prima facie case is made out to proceed further, so that the case must be closed against him, that report must be promptly submitted to this Court for its satisfaction that the concerned authorities have not failed to perform their legal obligations and have reasonably come to such conclusion.
- No such report having been submitted by the CBI or any other agency till now in this Court, action on such a report by this Court would be considered, if any when that occasion arises. We also direct that no settlement should be arrived at nor any offence compounded by any authority without prior leave of this Court.
- We may add that on account of the great public interest involved in this matter, the CBI and other Government agencies must expedite their action to complete the task and prevent pendency of this matter beyond the period necessary. It is needless to observe that the results achieved so far do not match the available time and opportunity for a full investigation ever since the matter came to light.

Public Accounts Committee (India)

- The **Public Accounts Committee** (**PAC**) is a committee of selected members of parliament, constituted by the Parliament of India, for the purpose of auditing the revenue and the expenditure of the Government of India.
- They check that parliament exercises over the executive stems from the basic principle that parliament embodies the will of the people.
- It serves as a check on the government especially with respect to its expenditure bill and its primary function is to examine the audit report of Comptroller and Auditor General (C&AG) after it is laid in the Parliament. C&AG assists the committee during the course of investigation.

- None of its members are allowed to be ministers in the government. The main function of the committee is to ascertain whether the money granted by parliament has been spent by government within the scope of the demand.
- The Public Accounts Committee consists of not more than twenty-two members, fifteen elected by Lok Sabha, the lower house of the Parliament, and not more than seven members of Rajya Sabha, the upper house of the Parliament.
- The chairperson is appointed by the Lok Sabha speaker. The term of office of the members is one year.

- History
- The committee was first conceived in the year 1921 in the wake of Montagu-Chelmsford Reforms. During the initial days of British colonial government in India, the finance member of the executive council was the chairperson of the committee.
- Post independence, till 1950 the chairperson of the committee was the finance minister. However, in 1950, the country became republic and the committee became a parliamentary committee functioning under the control of the Speaker of Lok Sabha with a non-official chairperson.
- From 1950 to 1967, the chairperson was selected from the ruling party. Since 1967, the chairperson of the committee is selected from the opposition, usually the leader of opposition.

- PAC is one of the parliamentary committees that examine the annual audit reports of CAG which the President lays before the Parliament of India. Those three reports submitted by CAG are:

1. Audit report on appropriation accounts
2. Audit report on finance accounts
3. Audit report on public undertakings

- The Public Accounts Committee examines public expenditure. That public expenditure is not only examined from a legal and formal point of view to discover technical irregularities but also from the point of view of the economy, prudence, wisdom, and propriety. The sole purpose to do this is to bring out cases of waste, loss, corruption, extravagance, inefficiency, and nugatory expenses.

- Who are the members of the Public Accounts Committee?
- The financial committee has 22 members. All the members are taken from the Indian Parliament. Out of 22 members, 15 are elected from Lok Sabha (Lower House) and 7 members are elected from Rajya Sabha (Upper House.)

What are the functions of the Public Accounts Committee?

- This standing committee performs various functions. They are given below:

1. It examines appropriation accounts and finance accounts of the central government which is laid before Lok Sabha.
2. It scrutinizes the audit reports of CAG to satisfy itself that:
   - The money that has been disbursed was legally available for the applied service or purpose
   - The expenditure conforms to the authority that governs it
   - Every re-appropriation has been made in accordance with the related rules
3. It examines the accounts of:
   - State corporations
   - Trading concerns and,
   - Manufacturing projects

Note: The audit report of these bodies are made by the CAG

4. It examines the accounts of:

- Autonomous
- Semi-autonomous bodies

Note: The audit report of these bodies are made by the CAG

5. It keeps a check on the money spent on any service during a financial year. If the money is in excess of the amount granted by the Lok Sabha for that purpose, it goes on to its report.

Note: All the functions performed by the Public Accounts Committee are assisted by Comptroller and Auditor General.

Limitations of the Public Accounts Committee

- Though the committee is empowered to act upon the audit reports of the CAG, and also to keep a tab on the union government's expenses, there are still a few limitations on it which it should adhere to. The limitations of the Public Accounts Committee are given below:

1. Broadly, it cannot intervene in the questions of policy
2. It can keep a tab on the expenses only after they are incurred. It has no power to limit expenses.
3. It cannot intervene in matters of day-to-day administration.
4. Any recommendation that the committee makes is only advisory. They can be ignored by the ministries.
5. It is not vested with the power of disallowance of expenditures by the departments.
6. Being only an executive body; it cannot issue an order. Only the

OMBUDSMAN

- CORRUPTION is deep rooted in INDIA and there is no visible solution to this menace . This is hampering the economy of the country.
- Corruption at the government level is the worst form of corruption and the biggest obstruction in a country's progress. INDIA is suffering from this problem and ombudsman is a positive approach to tackle this problem.

- ***What Is an Ombudsman?***
- An ombudsman is an official, usually appointed by the government, who investigates complaints (usually lodged by private citizens) against businesses, financial institutions, universities, government departments, or other public entities, and attempts to resolve the conflicts or concerns raised, either by mediation or by making recommendations.

An **ombudsman** ,**public advocate** is an official who is usually appointed by the government or by parliament but with a significant degree of independence.

In some countries, an inspector general, citizen advocate or other official may have duties similar to those of a national ombudsman and may also be appointed by a legislature.

Below the national level, an ombudsman may be appointed by a state, local, or municipal government. Unofficial ombudsmen may be appointed by, or even work for, a corporation such as a utility supplier, newspaper, NGO, or professional regulatory body.

- The typical duties of an ombudsman are to investigate complaints and attempt to resolve them, usually through recommendations (binding or not) or mediation. Ombudsmen sometimes also aim to identify systemic issues leading to poor service or breaches of people's rights.
- . At the national level, most ombudsmen have a wide mandate to deal with the entire public sector, and sometimes also elements of the private sector (for example, contracted service providers).
- In some cases, there is a more restricted mandate, for example with particular sectors of society. More recent developments have included the creation of specialized Children's Ombudsman.
- In some jurisdictions an ombudsman charged with handling concerns about national government is more formally referred to as the "Parliamentary Commissioner"

- In many countries where the ombudsman's responsibility includes protecting human rights, the ombudsman is recognized as the national human rights institution.
- In general, an ombudsman is a state official appointed to provide a check on government activity in the interests of the citizen and to oversee the investigation of complaints of improper government activity against the citizen.

Lokpal and Lokayukta

- What are Lokpal and Lokayukta?
- The **Lokpal and Lokayukta Act, 2013** provided for the establishment of Lokpal for the Union and Lokayukta for States.
- These institutions are **statutory bodies** without any constitutional status.
- They perform the function of an "ombudsman" and inquire into

- **Why do we need such institutions?**

- Maladministration is like a termite which slowly erodes the foundation of a nation and hinders administration from completing its task. Corruption is the root cause of this problem.
- Most of the anti-corruption agencies are hardly independent. Even Supreme Court has been termed CBI as a “caged parrot” and “its master’s voice”.
- Many of these agencies are advisory bodies without any effective powers and their advice is rarely followed.
- There is also the problem of internal transparency and accountability. Moreover, there is not any separate and effective mechanism to put checks on these agencies.

- In this context, an independent institution of Lokpal has been a landmark move in the history of Indian polity which offered a solution to the never-ending menace of corruption.
- **In 1966, the First Administrative Reforms Commission recommended the setting up of two independent authorities-** at the central and state level, to look into complaints against public functionaries, including MPs.
- In 1968, Lokpal bill was passed in Lok Sabha but lapsed with the dissolution of Lok Sabha and since then it has lapsed in the Lok Sabha many times.
- Till 2011 eight attempts were made to pass the Bill, but all met with failure.
- In 2002, the Commission to **Review the Working of the Constitution headed by M.N. Venkatachaliah recommended the appointment of the**

- In 2005, the **Second Administrative Reforms Commission chaired by Veerappa Moily** recommended that the office of Lokpal should be established without delay.
- In 2011, the government formed a Group of Ministers, chaired by Pranab Mukherjee to suggest measures to tackle corruption and examine the proposal of a Lokpal Bill.
- India Against Corruption movement" led by Anna Hazare put pressure on the United Progressive Alliance (UPA) government at the Centre and resulted in the passing of the Lokpal and Lokayuktas Bill, 2013, in both the Houses of Parliament.
- It received assent from President on 1 January 2014 and came into force on 16 January 2014.

The Lokpal and Lokayuktas Act, 2013

- **The Lokpal and Lokayuktas Act, 2013**, commonly known as **The Lokpal Act**, is an anti-corruption Act of Indian Parliament in India which "seeks to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain important public functionaries including the Prime Minister, cabinet ministers, members of parliament, Group A officials of the Central Government and for matters connecting them".
- A recent survey estimated that corruption in India had cost billions of dollars and threatened to derail growth. India lost a staggering $462 billion in illicit financial flows due to tax evasion, crime and corruption post-Independence, according to a report released by Washington-based Global Financial Integrity.

- Retired Supreme Court judge Pinaki Chandra Ghose was appointed as the first Lokpal of India by a committee consisting of Prime Minister Narendra Modi and Chief Justice of India Ranjan Gogoi and Loksabha speaker Sumitra Mahajan and Eminent Jurist Mukul Rohatgi on 17 March 2019
- The term *Lokpal* was coined in 1963 by Laxmi Mall Singhvi, a member of parliament during a parliamentary debate about grievance mechanisms. The Administrative Reforms Commission (ARC) headed by Morarji Desai submitted an interim report on "Problems of Redressal of Citizen's Grievances" in 1966.
- In this report, ARC recommended the creation of two special authorities designated as 'Lokpal' and 'Lokayukta' for redress of citizens' grievances. The word was derived from the Sanskrit words *"Lok"* (people) and *"Pala"* (protector/caretaker).

- Maharashtra was the first state to introduce Lokayukta through *The Maharashtra Lokayukta and Upa-Lokayuktas Act in 1971*.[30][31] Presently, there are no Lokayuktas in the states of Andhra Pradesh, Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tamil Nadu, Tripura.
- The Act for each state says "Every State shall establish a body to be known as the Lokayukta for the State, if not so established, constituted or appointed, by a law made by the State Legislature, to deal with complaints relating to corruption against certain public functionaries, within a period of one year from the date of commencement of this Act"

Lokpal and Lokayuktas under the Lokpal and Lokayukta Act, 2013

Maladministration is like a termite that slowly erodes the foundation of a nation. It

- Corruption is the root cause of this problem that our country faces. Though there are many anti-corruption agencies in India, most of these anti-corruption agencies are hardly independent. Even the CBI has been termed as a "caged parrot" and "its master's voice" by the Supreme Court of India.
- Many of these agencies are only advisory bodies with no effective powers to deal with this evil of corruption and their advice is rarely followed. There also exists the problem of internal transparency and accountability. Moreover, there is not any effective and separate mechanism to maintain checks on such agencies.
- n this context, an independent institution of Lokpal and Lokayukta has been a landmark move in the history of Indian polity which offered a solution to the never-ending menace of

- It provides a powerful and effective measure to counter corruption at all levels of the government.
- **What are Lokpal and Lokayuktas?**
- The Lokpal and Lokayukta Act, 2013 mandated for the establishment of Lokpal at the Union level and Lokayukta at the State level.
- Lokpal and Lokayuktas are statutory bodies and these do not have any constitutional status. These institutions perform the function and role of an "Ombudsman" (an official appointed to investigate individuals' complaints against a company or organization, especially a public authority).
- They inquire into allegations of corruption against certain public bodies/organizations and for other related matters.

Lokpal and Lokayukta Amendment Act, 2016

- After the introduction of the Lokpal and Lokayukta Act 2013, a bill was passed by Parliament in July 2016 which amended the Lokpal and Lokayukta Act, 2013. This amendment enabled the leader of the single largest opposition party in the Lok Sabha to become a member of the selection committee in the absence of a recognized Leader of Opposition.
- This bill also amended Section 44 of the Lokpal and Lokayukta Act 2013. Section 44 of the Act dealt with the provisions of furnishing of details of assets and liabilities, within 30 days of joining the government service, of any public servant. This amendment replaced the time limit of 30 days. It stated that the public servants will make a declaration of their assets and liabilities in the form and manner as prescribed by the

- **Structure of the Lokpal**
- Let us try to understand the structure of the Lokpal. Lokpal is a multi-member body consisting of one chairperson and a maximum of 8 members.
- The person to be appointed as the chairperson of the Lokpal must be either:

1. The former Chief Justice of India; or
2. The former Judge of the Supreme Court; or
3. An eminent person with impeccable integrity and outstanding ability, who must possess special knowledge and a minimum experience of 25 years in matters relating to:

1. Anti-corruption policy;
2. Public administration;
3. Vigilance
4. Finance including insurance and banking;
5. Law and management.

- The maximum number of members must not exceed eight.
- These eight members must constitute:
  - Half members to be judicial members;
  - Minimum 50% of the Members should be from SC/ ST/ OBC/ minorities and women.
- The judicial member of the Lokpal must be either:
  - A former Judge of the Supreme Court or;
  - A former Chief Justice of the High Court.

- The non-judicial member of the Lokpal needs to be an eminent person with flawless integrity and outstanding ability. The person must possess special knowledge and an experience of a minimum of 25 years in matters relating to:
- Anti-corruption policy;
- Public administration;
- Vigilance;
- Finance including insurance and banking;
- Law and management.
- **Term and appointment to the office of Lokpal**
- Lokpal Chairman and the Members can hold the office for a term of 5 years or till they attain the age of 70 years, whichever is earlier

- . The members and the chairman of Lokpal are appointed by the president on the recommendation of a selection committee.
- **The selection committee consists of:**

- The Prime Minister of India;
- The Speaker of Lok Sabha;
- The Leader of Opposition in Lok Sabha;
- The Chief Justice of India or any Judge nominated by Chief Justice of India;
- One eminent jurist.
- Prime Minister is the Chairperson of the selection committee. The selection of the chairperson and the members is carried out by a search panel of at least eight persons, constituted by the selection committee.

- **Lokpal search committee**
- As per the Lokpal Act of 2013, the Department of Personnel and Training needs to create a list of candidates who are interested to become the chairperson or members of the Lokpal. The list was then to be presented to the proposed eight-member search committee. The committee on receiving the list shortlists the names and place them before the selection panel, headed by the Prime Minister.

Jurisdiction and powers of Lokpal

- The Jurisdiction of Lokpal extends to:
  - Prime Minister, Ministers,
  - Members of Parliament,
  - Groups A, B, C and D officers,

- Officials of Central Government
- The Jurisdiction of the Lokpal extends to the Prime Minister, except in the cases of allegations of corruption relating to:
- International relations;
- Security;
- The public order;
- Atomic energy and space.
- The jurisdiction of the Lokpal does not include ministers and members of Parliament in the matter relating to:
- Any speeches delivered in the Parliament or;
- For a vote cast in the Parliament.

- Lokpal’s jurisdiction also includes:
- Every person who is or has been in charge (director/ manager/ secretary) of a body or a society set up by the act of central government,
- Any society or body financed or controlled by the central government,
- Any person involved in act of abetting,
- Bribe giving or bribe-taking.
- Lokpal’s jurisdiction also includes:

- The Lokpal and Lokayukta Act states that all public officials need to furnish their assets and liabilities as well as their respective dependents.
- The Lokpal also possesses the powers to superintendence over the CBI. It also has the authority to give direction to CBI. If a case is referred to CBI by the Lokpal, then the investigating officer in such a case cannot be transferred without the prior approval of the Lokpal.
- The powers of a civil court have been vested with the Inquiry Wing of the Lokpal.

- The lokpal also possesses powers regarding the confiscation of assets, proceeds, receipts, and benefits arisen or procured by means of corruption in special circumstances. It also has the power to make recommendations regarding the transfer or suspension of public servants connected with the allegations of corruption.
- Lokpal is capable of giving directions to prevent the destruction of records during the preliminary inquiry.
- **Limitations**
- The institution of Lokpal came up as a much-needed change in the battle against corruption. The Lokpal was a weapon to curtail the corruption that was spreading in the entire administrative structure of India. But at the same time, there are loopholes and lacunae which need to be corrected.

- . The appointing committee of Lokpal consists of members from political parties that put Lokpal under political influence.
- There are no criteria to decide who is an ‘eminent jurist’ or ‘a person of integrity’ which manipulates the method of the appointment of Lokpal.
- The Lokpal and Lokayukta Act 2013 failed to provide any kind of concrete immunity to the whistleblowers.
- The provision related to the initiation of inquiry against the complainant, in cases where the accused is found innocent, leads to discouraging people from making complaints.
- One of the biggest lacunae is the exclusion of the judiciary from the ambit of the Lokpal.

- The Lokpal does not have any constitutional backing.
- Also, there are no adequate provisions for appeal against the actions of Lokpal.
- The states have complete discretion with respect to the specific details in relation to the appointment of Lokayukta.
- The need for functional independence of the CBI has been catered to some extent, by the change brought forth in the selection process of CBI's Director, by the Lokpal and Lokayukta Act.
- The Lokpal and Lokayukta Act also mandates that no complaint against corruption can be registered after a period of seven years from the date on which the mentioned offense is alleged to have been committed.

- **Conclusion**
- In order to tackle the problem of corruption, the institution of the ombudsman should be strengthened both in terms of functional autonomy and the availability of manpower. The appointment of Lokpal in itself is not enough. The government should address the issues based on which people are demanding a Lokpal. Merely adding to the strength of investigative agencies will increase the size of the government but not necessarily improve governance. The slogan adopted by the government of “less government and more governance”, should be followed in letter and spirit.

- Moreover, Lokpal and Lokayukta must be financially, administratively and legally independent of those whom they are called upon to investigate and prosecute.
- Lokpal and Lokayukta appointments must be done transparently so as to minimize the chances of the wrong sorts of people getting in.
- There is a need for a multiplicity of decentralized institutions with appropriate accountability mechanisms, to avoid the concentration of too much power in any one institution or authority.

COMISSIONS OF ENQUIRY.

- To enable the administration to discharge effectively the multifarious functions entrusted to it, it needs to exercise broad powers of conducting the investigations and inquiry into various matters.
- The primary purpose of this technique is to collect information with a view to decide upon a further course of action to meet a given situation, or to find correctives to a given problem.
- The policy maker or the administrator can initiate effective remedial measures to deal with specific problems only when he is in full possession of the relevant information, facts and figures and to collect these, inquiries and investigations become an inevitable tool in the hands of administrators.

- Inquiries and investigations are thus important methods of acquiring information. Such information is needed as feedback for policy making by the government. It is also a source of information for people.
- Parliament enacted the Commissions of Inquiry Act, 1952, which authorises the central and state governments to appoint inquiry commissions to make inquiries in the definite matters of public importance. . This is a central legislation enacted under the constitution, Schedule VII, List I,IIand III.
- The commissions of inquiry act gives powers to the central government to appoint a commission of inquiry, to make inquiry into any matter relatable to any of the entries enumerated in List I and III.
- The Act empowers the state governments to appoint inquiry commissions, to make inquiry into any other matter relatable to any

- The Central government can appoint a commission of inquiry to inquire into a matter falling within the purview of a state government if it falls within its plenary legislative power, but a state government cannot appoint a commission of inquiry, to inquire into matters falling within the purview of the central government.
- Where any commission has been appointed to inquire into a matters by the central government, no state government shall, except with the central government prior approval, appoint another commissioner to inquire into the same matter, so long as the commission appointed by the central government is functioning, or unless the central government is of the opinion that the scope of the inquiry should be extended to two or more states.

Appointment object and scope

- An inquiry commission can be appointed by an appropriate government when it is of the opinion that it is necessary so to do, or if a resolution is passed by the house of people (lok sabha) or a state legislative assembly as the case may be.
- The appointment of the commission is to be made by a notification in the official gazette. Where a resolution of the house of people or of a state legislative assembly is passed asking for the appointment of a commission of inquiry, government is bound to make such appointment.
- In **B. Jaganathan v State of T.N:** However no mandamus can be issued to compel a government to appoint a commission where there is no resolution of legislature.
- It is so because the act uses the word shall appoint(mandatory) where a resolution is passed by the legislature, whereas it uses the word may

- Matters to be inquired into must be definite public importance and must be determinate, distinct, and precise.
- It should not be vague. If the matters (or charges) to be inquires into are vague or speculative, the courts may intervene. On the whole, the courts are extremely liberal in upholding the action of the government.

i. **Scope:**
The purpose of these inquiries has been to ascertain facts so that if any malpractices or problems are revealed, corrective legislative or administrative action, may be taken by the government.

ii. It is necessary to lay down in the statute the circumstances when the administration may initiate an inquiry, but much of the purpose of doing so would be frustrated if ground for initiating inquiries are laid down in broad or vague language.

i. If the statute confers a blanket power on the administration to order an investigation without any restriction or mentioning any ground, then the control of such a power through a court action does not appear to be feasible except on the rare ground of mala fide.

ii. Period of duration of a commission must be stated in the notification. If the notification does not contain it, the defect can be cured by issuing another notification

Siliguri Municipality v Amalendu Das:

- Where a government refuses to extend duration of a commission, courts do not intervene to compel it to do so, on the ground that the investigation entrusted to it is not over.
- Where the term of a commission expires, state government is not bound to extend the duration.

- **State of MP v Arjun Singh:**
- The supreme court made a close scrutiny of government orders regarding determination of the terms of reference of the commission.
- Here, the supreme court states that a governments subjective satisfaction, that it is necessary to appoint a commission, should be based on objective and real material and not merely on some vague allegations or hearsay evidence.
- **Inquiry into definite matters of public importance**
- This phrase is of wide importance and enables the government to launch inquiries practically into any matter.
- Accordingly inquiries into varied subject matters have been undertaken under the act e.g. railway accidents, causes of food contamination, economic irregularities and fraud committed by certain persons managing the affairs of industrial companies, emergency excesses etc

- The most common subjects for appointing inquiry commissions are railway accidents, police firings and the misuse of powers by the ex-ministers.
- **In Ram Krishna Dalmia v Justice Tendolkar:**
- In Ram Krishna Dalmia v Justice Tendolkar:
- The government of India appointed a commission of inquiry to enquire into and report on some affairs of some Dalmia Jain companies, and acts of fraud and irregularities of certain persons who controlled these companies.
- The commission was further required to report the action which should be taken as and by way of securing redress or punishment or to act as a preventive in future cases.
- The appointment of commission was challenged on a number of

- . But the supreme court observed that we se no warrant for the proposition that a definite matter of public importance must necessarily mean only some matter involving the public benefit or advantage in the abstract e.g. public health, sanitation or the like.
- The conduct of an individual person or company(s) may assume such a dangerous proportion and may so prejudicially effect or threaten to affect the public well-being as to make such conduct a definite matter of public importance urgently calling for a full inquiry.

- **Powers of commission**

i. **A commission of inquiry has powers of a civil court are:**

ii. summoning and enforcing attendance of any person from any part of India and examining him/ her on oath.

iii. requiring discovery and production of any document.

i. Receiving evidence on affidavits.

ii. Requisitioning any public record or copy thereof from any court or office.

iii. Issuing commissions for the examinations of witnesses or documents and

iv. Any other matter, which may be prescribed.

v. The commissions powers under Section 4 of the Act to call upon any person to appear as a witness in terms is very wide and is not circumscribed by fetters of state.

vi. A commission has power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as in the opinion of the commission, may be useful for, or relevant

- . A commission has the power to utilize services of certain officers and investigation agencies for conducting investigations pertaining to inquiry. It has also been given powers to appoint persons having special knowledge of any matter connected with inquiry as assessors, to assist and advise it.
- **Quasi judicial functions**

i. Although a commission of inquiry has been given powers of a court for some purposes, it is not a court and its functions is not judicial (Ram Krishna Dalmia v Justice Tendolkar).
ii. it does not decide anything conclusively but merely gives its findings.
iii. there is no appeal against its findings.

- It was held in **Kiran Bedi v Committee of Inquiry that a commissio**n of inquiry was a tribunal for this purpose.

PREVENTION OF CORRUPTION ACT 1947

Finding that bribery and corruption among public servants had considerably increased during and after the Second World War and many unscrupulous officers had amassed huge wealth, and the existing provisions of the IPC and the CrPC were inadequate to tackle this problem, the Prevention of Corruption Act, 1947 was passed.

In the Criminal Procedure Code, offences relating to public servants are not cognisable, but the 1947 Act made it obligatory for the court to make certain presumptions of guilt against the accused. The 1947 Act shifted the burden of proof from the prosecution to the accused. The investigation against the accused was to be made by an officer not below the rank of Deputy Superintendent of Police.

- The 1947 Act declared such corrupt acts offences as taking bribe, misappropriation, obtaining a pecuniary advantage, possessing assets dis-appropriate to income, and abusing official position. However, the authority for prosecution was vested only in the department authorities and not in the Central Bureau of Investigation (CBI).
- IMPORTANT PROVISIONS OF PREVENTION OF CORRUPTION ACT 1947
- SEC-3 : An offence punishable under Section 165 A of the Indian Penal Code shall be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure, 1898 notwithstanding anything to the contrary contained therein.
- SEC-4. : Presumption where public servant accepts gratification other than legal remuneration.- (1) Where in any trial of an offence punishable under section 161 or Section 165 of the Indian Penal Code or

- it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person,
- it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain that gratification or that valuable thing as the case may be, as a motive or reward such as is mentioned in the said Section 161, or 165 as the case may be, without consideration or for a consideration which he knows to be inadequate.
- (2) Where in any trial of an offence punishable under Section 165 A of the Indian Penal Code or
- under clause (ii) of sub-section (3) of Section 5 of this Act, it. is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by

- it shall be presumed unless the contrary is proved that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.
- (3) Notwithstanding anything contained in sub -sections (1) and (2) the Court may decline to draw the presumption referred to in either of the said sub -sections, if the gratification or thing aforesaid is, in its opinion,
- so trivial that no inference of corruption may fairly be drawn
- .
- 5. **Criminal misconduct in discharge of official duty** - (1) A public servant is said to commit the offence of criminal misconduct: —

- (a) if he habitually accepts or obtains on agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code; or
- (b)if he habitually accepts or obtains or agrees to accept or attempts 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, or to be likely to be
- "concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions 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

- (e) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any othe r person so to do, or
- if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or
- (e) if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.
- (2) Any public servant, who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine: Provided that the court may, for any special reasons recorded in

- 5A. **Investigation into cases under this Act.**— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no police officer below the rank :—
- (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police; (b) in the presidency-towns of Calcutta and Madras, of as Assistant Commissioner of Police;
- (c) in the presidency-town of Bombay, of a Superintendent of Police; and
- (d) elsewhere, of a Deputy Superintendent of Police, shall investigate any offence punishable under Section 161, Section 165, or Section 165A. of the Indian Penal Code or under Section 5 of this Act, without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or
- make any arrest therefor without a warrant :

- Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant :
- 6. **Previous sanction necessary for prosecutions**.- (1) No Court shall take cognizance of an offence punishable under Section 161 or Section 164 or Section 165 of the Indian Penal Code or under sub -section (2) or sub-section (3A) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction,-

- PREVENTION OF CORRUPTION ACT 1988
- The 1988 Act enlarged the scope of the term 'public servant' and included a large number of employees within its ambit. Besides the employees of the central government and the union territories, the em-

- , office-bearers of cooperative societies of the central and the state government receiving financial aid, employees of the University Grants Commission (UGC), vice-chancellors, professors, and scientists in institutions receiving financial aid from the central or state governments or even from the local authorities have all been declared as public servants.
- However, MPs and MLAs, even though performing ‘public duties’, have been kept out of the ambit of the Act. The Act covers all the ‘corrupt’ acts as covered by the 1947 Act, (bribe, misappropriation, obtaining pecuniary advantage, possessing assets disproportionate to income, etc.).

- If the offence against the public servant is proved in the courts, it is punishable with imprisonment of not less than six months but extending to a maximum period of five years.
- Six months imprisonment is thus mandatory and the courts have no discretion in this regard. If public servant is found committing offence habitually, he is to be punished with imprisonment of not less than two years but not more than seven years, and also a fine.
- (c) "**public servant**" means— (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) any person in the service or pay of a local authority;
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned

- aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;
- (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by court of justice or by a competent public authority;
- (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

- (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;
- (ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such

- ; (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;
- (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority
- . Explanation 1.—Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.
- Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the

- CHAPTER III OFFENCES AND PENALTIES
- . 7. Public servant taking gratification other than legal remuneration in respect of an official act.—
- shall be punishable with imprisonment which shall be not less than 1 [three years] but which may extend to 2 [seven years] and shall also be liable to fine.
- 8. **Taking gratification, in order, by corrupt or illegal means, to influence public servant.**— Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant,
- , shall be punishable with imprisonment for a term which shall be not less than 1 [three years] but which may extend to 2 [seven years] and shall also be liable to fine.

- 11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.—
- shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.
- 13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,— (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7;
- 19. Previous sanction necessary for prosecution.—(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15

- 27. Appeal and revision.—Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court as if the court of the special Judge were a court of Session trying cases within the local limits of the High Court.
- 30. Repeal and saving.—(1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed. .
- THE PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2018
- Explanation.—For the purposes of this clause,— (a) the word "gratification" is not limited to pecuniary gratifications or to gratifications estimable in money;
- , the trial of an offence shall be held, as far as practicable, on day-to-day

- Provided that where the trial is not concluded within the said period, the special Judge shall record the reasons for not having done so: Provided further that the said period may be extended by such further period, for reasons to be recorded in writing but not exceeding six months at a time;
- however, that the said period together with such extended period shall not exceed ordinarily four years in aggregate.

THE ANTULAY CASE.

Case Analysis: A.R. Antulay v. R.S. Nayak

FACTS

The appellant was the Chief Minister of Maharashtra from June 1980. On 1st September 1981, a person from Bharatiya Janata Party applied to the Governor of the state under Section 197 of the Criminal Procedure Code of, 1973 and Section 6 of the Prevention of Corruption Act, 1947 for the sanction to bring the suit against the appellant.

Subsequently, the respondent filed a complaint in the Additional Metropolitan Magistrate, Bombay opposing the appellant and others for offences under Section 161,165 and also 384 and 420 read with Sections 109 and 120 B of the Indian Penal Code and Section 5 of the Prevention of the Corruption Act.

The Magistrate refused to take the judicial notice for the offences without the sanction for prosecution. After this, a revision was filed in the High Court of

- Thereafter the appellant on 12th January 1982 resigned the position of Chief Minister with respect to the judgment given by the Bombay High Court.
- Then in July 1982 the Governor Sanctioned 3 subject out of five items and refused to sanction all other items. Then a fresh complaint was lodged before the Special judge with many more allegations including the allegation rejected by the Governor.
- The State Government appointed R.B.sule as a Special Judge. The Special judge discharged the appellant stating that a member of the Legislative Assembly is a Public Servant and there was no valid sanction to bring legal proceedings against him.
- On 16th February 1984, an appeal was filed under Article 136 and the constitution bench of the Supreme Court held that the member of the legislative assembly is not a public servant and revoked the order of the

- Instead of returning the case to a Special judge for disposal in accordance with the law, the Supreme Court suo moto withdrew the special case from the court of a Special judge and the transferred to the Bombay high court.

Issues

1. Whether the directions given by the court in February 1984, breach Section 7(1) of the act of 1952?
2. Whether the decision is violative of Articles 14 and 21 of the Constitution?

Contentions of the parties

Arguments on behalf of the appellant

- It was argued that the appellant was treated differently without giving him the opportunity for any pleadings or arguments to submit before the court of law which was violative of his Fundamental Right under Article 14 of the

- Section 7(1) of the Criminal Law Amendment Act, 1952.
- It was argued that the Fundamentals of the administration of justice i.e., no man should suffer because of court, no man should suffer a wrong by the technical procedure of irregularity was violated.
- It was further contended that the appellant has lost two major Rights which were the right of revision to the High Court under Section 9 Criminal Law Amendment Act and the right to move the Supreme Court under Article 136 of the constitution.

Arguments on behalf of Respondent

- It was contended that the arguments for the withdrawal of the case from Special Judge under the Criminal Law Amendment Act by the High Court under Section 407 of the Criminal Procedure Code was possible in appropriate situations

- It was argued that the transfer of the case was issued without giving an opportunity for the appellant to present his arguments or his pleadings is not acceptable. The appellant before the order was signed or after the directions were given could have submitted his allegations through his counsel. Thus it is not illegal or improper and the appellant is the one who did not use the opportunity.
- It was contended that the superior court has jurisdiction to determine its jurisdiction. The superior court cannot be made liable for such allegations unless it has acted ***coram non judice***.
- **Related Provisions**

• Indian Penal Code Section 161 and 165- Prevention of Corruption Act which states that the public servant should not take remuneration more than the government provides or obtain any valuable thing without consideration becomes a Cognizable Non-bailable offence

- Constitution of India Article , 14 21, - violates the Fundamental right to be treated equally in the court of law, Right to trial by a Special Judge under Section 7(1) of the Criminal Law (Amendment) Act, 1952.
- Criminal Law (Amendment) Act, 1952 Section 6 and 7- the State Government has the power to appoint as many Special Judges as required and for all offences specified under sub-section of Section 6 can make the Special Judge liable to try such cases.
- Criminal Procedure Code Section 374,406,407- any person convicted on a trial has a right to appeal to the Supreme Court, Supreme Court and High court has the power to transfer the case under certain circumstances.

- The judgment, in this case, was by a seven-judge bench in the Supreme Court. The judgment was given in the ration of 4:3 favoring the appellant. The court stated that the transfer of criminal cases and the Supreme Court to transfer cases and appeals are given under Section 406 of the Criminal Procedure Code. The law provides that the court may direct any particular case or appeal from one High court to another High court or from a subordinate Criminal court to a High court or a subordinate Criminal court to one High court to another Criminal court of equal or upper-level jurisdiction to another High court. Similarly, Section 407 of the Criminal Procedure Code deals with the power of the High court to transfer cases.

- Section 6 of the Criminal Law (Amendment) Act, 1952 allows the State Government to appoint as many as Special Judges needed for a particular area for a specified offence. Section 7 of the Criminal Law (Amendment)Act, 1952 emphasizes on the triable by Special Judges. The issue here is whether the transfer made by the court is valid or not. Section 7(1) of the Criminal Law (Amendment) Act, 1952 provides a condition for the trial of offenders under Section 6(1) of the Criminal Law (Amendment) Act, 1952. Thus, the offences under Section 6(1) of the Act are punishable under the Indian Penal Code and Prevention of Corruption Act, 1947. Therefore the order of the court transfer cases to the high court was not permitted by law. The Supreme Court through its directions cannot advise the High Court to take cases that are not in its jurisdictions.

- In direct, the Supreme Court clearly does not have jurisdiction to transfer cases to itself. Only the parliament by law has the power to create or increase the jurisdiction and no other Court superior or inferior has that power. In this case, the appellant has been treated differently from other offenders. The appellant has the right not to be separated to use the special court for his purpose all these are included in Article 14 of the constitution – Right to Equality. Further, the appellant has the right under Article 21 of the Constitution to take a trial by a Special Judge under Section 7(1) of the Criminal Law (Amendment) Act, 1952 which is established by law and the appellant has the right not to suffer due to any order passed by the Court in violation of natural justice. Section 374 of the Criminal Procedure Code gives a right to appeal.

- A specific clause of a specific regulation is given for trial by a special judge alone and transfer of such cases can be done by once a judge to another special judge. The High Court does not have the power to transfer such cases under Section 6 of the Criminal Law (Amendment) Act, 1952. Thus it is very clear that the provision under Section 7(2) Criminal Law (Amendment) Act, 1952, and Article 14 and 21 of the constitution is been violated and legally wrong due to the directions given by the court.
- **Conclusion**
- Any person can claim his or her remedy when his or her right has been violated. Any direction or mistake made by the court should not affect the common man of the country. As everybody is equal before the law, everybody should be treated equally before the law. Any decision taken by the court should be for the good. It must ensure that neither of the parties should be biased due to some action or omission made by the court. The Supreme Court also highlighted “Finality is a good thing, but justice is better”. In every case,

THANK YOU.