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An Analysis Of Sentencing In Corruption Cases In India.

Dr Sidhartha Sekhar Dash[1]*

[1*]Associate Professor, KIIT School of Law, KIIT Deemed to be University, Patia, BBSR, 751024.

Abstract: Corruption is a social and economic evil. It destroys the national economy by encouraging black money. Laws are made by the legislature to address this menace. Prevention of Corruption of Act 1988 is key legislation in India to address these challenges. However, its efficiency largely depends upon the judicial precedents on this legislation. Here the author has made a doctrinal research of various judgements of the judiciary to understand the working of this legislation through the prism of the observations of the court while convict or acquitting an accused person. The author concludes with the observation that the courts are using not only considering the establishment of case through proper evidence and procedure but also the human factors in the sentencing practise bereft of uniformity but with good sense of reasoning in each peculiar case.

Introduction: Corruption weakens the fabric of a Nation. It is a challenge for the good governance and equitable distribution of resources of a nation. Government of India has passed a special statue, the Prevention of Corruption Act to fight this pervasive problem, criminalising the act of taking and giving bribery, possession of disproportionate assets and the use of official power in a manner which is not just along including giving more teeth by incorporating mandatory minimum punishment and reverse burden of proof, in the line of observation of the law commission. However among other challenges of the law, sentencing pattern and their variance eluding uniformity are the key challenges in the implementation of the law leading to the distrust of the public in the judicial system, which requires a research in the domain of the mitigating and aggravating factors in sentencing, which is the scope of the present research.

Research Objectives: The research objective is to examine the working of the legislation considering the conviction and acquittal of the accused person with a view to understand the sentencing of the court and need for uniformity if any in prevention of corruption cases

Research Questions: 1. What are the factors influencing the outcome of the case apart from the evidence on record? 2. What are the evidentiary and procedural factors taken into account? 3. What is the legal position of acceptance of bribe without demand? 4, Can a practically a uniform in sentencing be achieved?:
Methodologies: The researcher has employed the *Doctrinal Analysis* methodology, which focuses on the systematic examination of legal principles and the judicial interpretations on the statutory provisions.

I: Case Discussion
A: The court considers various *factors* for the *conviction and acquittal* of an accused person. Here are few cases.
In *K.C. Sareen vs C.B.I.*[1], the appellant was a public servant working as an officer at the Punjab National Bank. He was convicted under section 13(2) of the Prevention of Corruption Act, 1988 and section 120B, 201 and 420 of Indian penal code for defrauding the bank of approximately ₹2,00,000. The Central Bureau of Investigation under took the investigation process and filed the charge sheet against the current appellant in addition to other co-accused.
The trial court convicted him under the framed charges and imposed a find of ₹500 and sentenced him to rigorous imprisonment for one year. The appellant filed an appeal in the High court against the order of the trial judge. The high court suspended the sentence during the pendency of the appeal but refused to stay the conviction order. High court acknowledge that the court under section 389(1) of the CRPC has the power to put a stay on the operation of conviction but however the appellant's case is not deemed fit to invoke this power and to put a stay on the conviction order. The High court made it apparent that corruption has reached a monstrous level, which posed a significant danger to the working of the Republic, if strict legislative, executive and judicial actions are not taken then, it might further broaden the effect of corruption. *Allowing the convicted officials to hold the office during the pendency of appeal would undermine the public trust and would also affect the institutional integrity by de-moralizing the honest employees*, hence the Courts should refrain from letting the convicted officer to hold the office. Additionally, as the appellant was already dismissed from the service, the high court was in the opinion that any damage done to his service could be restituted, if he is acquitted from the charges. In order to challenge the judgment of high court the appellant appealed in the Supreme Court.

Supreme Court upheld the High Court's decision and also refused to put a stay on the conviction order. Supreme Court also reiterated the high court's reasoning and said that power to suspend the order of conviction is well vested in the

[1] Associate Professor, KIIT School of Law, KIIT Deemed to be University, Patia, BBSR, 751024.

courts by the virtue of section 389(1) of Cr.P.C, however the exercise of this power must be limited to very exceptional cases. Supreme Court referred to the case of *Rama Narang vs Ramesh Narang*[2], in which it was clarified that under the power of section 389(1) of the code the execution of sentence order or any other order capable of being executed, can be suspended. The Supreme Court opined that an order of conviction merely is not capable of being executed under the code it is the order of sentence for award imposing fine or awarding compensation which are capable of being executed. However, the court also recognized some of the situations where the order of conviction can acquire the nature of executable orders, in those situations the court can very well invoke the power under section 389(1) of the code to suspend such order. The court is not exempted from using this power to put a stay upon orders of conviction but this power can only be exercised in very exceptional circumstances.

Supreme Court dismissed the appeal by reiterating the stance given by High Court that the petitioner *was already dismissed from his service and if there is any damage or loss suffered by him, it could be reversed in case of acquittal.* The Supreme Court also suggested that the appellant may move to the High Court for early hearing and if the court is satisfied that there exist reasonable and good prospects of being exonerated, then the court may expedite the process.
In *Union of India v. Purnandu Biswas*[3], the respondent was accused of demanding Rs. 50,000 as bribe for the issuance of the clearing certificate of a vessel namely, M.V. Lily. It was also alleged by the complainant that the accused threatened to detain other vessels if the bribe was not paid. A trap was laid by the Central Bureau of Investigation. Complainant went to the house of the respondent and handed over the money to him which was allegedly kept in a suitcase by the respondent. Upon the signal from the over-hearing witness, the trap party entered the house of the respondent and recovered the said money. The phenolphthalein test was also conducted on the hands of the respondaet and it yielded positive results.

The trial court convicted the respondent under section 13(1)(d) r/w section 13(2) of the prevention of corruption act and sentenced him to undergo rigorous imprisonment of 5 years and imposed Rs. 50,000 fine. Upon appeal, the high court reversed the order of the trial court and acquitted the respondent citing *that there is no proof of demand*, *the presence of material contradiction in the prosecution witnesses, hostility of the complaint towards the respondent and lastly non seizure of key evidences such as handbag*, in which the money was carried to the respondent's house, and the suitcase, in which it was allege that the defendant kept the money.
This decision of high court was also reiterated by the Supreme Court. Supreme Court held *that there is no proof of demand,* as there was *no prior appointment taken by the complainant to meet the accused* and *accused was also not expecting any visitors*. The Supreme Court also took into consideration that the witness given by the complainant mentioned that accused accepted the money with both the hands, however the accompanying witness stated that the accused took the money using his right hand only. 'Concern was also expressed about the unnatural conduct of the investigational team as many of the exculpatory documents were not tested. It was also highlighted by the Supreme Court that the vessel M. V. Lily was released before the trap, hence there was no motive to obtain the brief and at the same time another vessel named M.V. Villa Ali was not docked in the harbour on the alleged threat date, hence the allegation that that the respondent would detain this vessel, in case of non-payment, was frivolous. After consideration of all these factors the Supreme Court dismissed the appeal.
In the case of *Ganapati Sanya Naik vs the State of Karnataka*[4], it was alleged that the appellant demand Rs. 1000 as total bribe, out of which Rs. 500(which was reduced to Rs. 450) to be paid as advance, from the complainant in order to effect the mutation entry in his name and to issue the requisite document that would facilitate the rights of the complainant over the agricultural land that he purchased. The complainant approached the Loka Yukta and lodged a complaint with the police. A trap was laid against the appellant and subsequently the money was recovered.

The trial court acquitted the appellant, as it found that the witness of the complainant and the accompanying *witnesses regarding the recovery of money were unreliable*. The trial court considered the version of defence that the money was kept on his table, covered under the files, *without the knowledge of the appellate* as more plausible explanation and worthy of acceptance. State moved to the high court appealing against this decision.

The High Court of Judiciary set aside the decision of trial court and convicted the accused as it held that the recovery of money was well corroborated by the evidence of accompanying witnesses and it is not necessary for the accused to touch the money in order to bring home the charges. High court also rejected the defence put forward, that there was no demand of money as the as the documents were prepared before the acceptance of the bribe, citing that the documents could have been prepared in anticipation of the bribe.
The appellant preferred an appeal in the Supreme Court. The order of the high court was set aside and the appellant was acquitted. The court highlighted that the high court was not justified in overturning the decision of the trial court as the explanation provided by the trial court was more plausible in nature. The trial court was right in acquitting the appellant as the *prosecution had failed to establish that the appellant was guilty under the attracted provisions beyond a reasonable doubt*. The apex court observed that the high court was wrong in appreciating the findings of the trial code that there existed previous animosity, among the complainant and the appellant, and that there was no evidence

regarding the demand of the bribe as the documents were prepared beforehand and handed over to the complaint immediately after the money had been put on the table.
In *Baliram vs State of Maharashtra*[5], the complainant alleged that the appellant had demanded Rs. 100 as bribe, in order not to take action against the complainant for not maintaining the register of servants, which was the mandate under the minimum wage act. Subsequently after this event the demand for bribe was also reiterated by the appellant. Anti-corruption bureau laid a trap in which anthracene powder treated currency notes were given to the appellant. Upon the acceptance of the money by the appellant, which he kept in his right pant pocket, the signal was given and the raiding team caught hold of him. The ultra-violate lamp test confirmed the presence of anthracene powder on the appellant's hand, currency notes and the pant pocket.

The trial court found the appellant guilty under section 7 and section 13(1)(d) read with section 13(2) of the prevention of corruption act and sentenced him to undergo one year of rigorous imprisonment and imposed Rs. 1000 fine. Upon appeal, the high court held the conviction as valid, as the demand was established through the complainant's testimony which was further corroborated by anthracene powder test.

The Supreme Court also upheld the conviction of the appellant as the prosecution had successfully proved demand, acceptance and the recovery of bribe money, beyond reasonable doubt, which was further corroborated by the anthracene powder test and constant testimonies of the witnesses. The court also found the defence that *the money was thrusted upon him* as unreliable. The court also rejected the defence that *there was no scope of making demand* as the case against the complainant was closed; as the exhibit 18 made it clear that the case was still going on, hence rebutting the defence taken by the appellant.
In *R.P.S. Yadav vs CBI*[6], The complainant and a tailoring shop and he applied for a license from the Municipal Corporation of the district. When the complainant furnished all the necessary documents in order to obtain the license he got no responses and thus he approached the appellant. The appellant demanded rupees 1500 for processing of the license. The CBI organized the trap. When the complainant approached the appellant to pay the bribe, he was asked to hand over the money to one Janakraj, co accused. When the trap team got hold of them, tainted money was recovered from the co-accused and also corroborated by the chemical test. However, *nothing was recovered from the appellant nor the chemical test was* administered to him.

The trial court, while acquitting the co-accused, convicted the appellant under section 7 and section 13(1)(d) r/w section 13(2) of the prevention of corruption act and sentenced him to undergo 2 years of rigorous imprisonment and imposed rs. 3000 fine, and 2.5 years of rigorous imprisonment and rs. 1000 fine, respectively. The high court also took the same stance and upheld the conviction by reiterating that the demand was proved via the witnesses given by the complainant and the shadow i.e. over-hearing witness. Aggrieved by this decision the appellant moved to the Supreme Court.

The Supreme Court while *examining the chain of demand and acceptance,* held that *demand could not be proven as there was no legal evidence linking the accused to the party from whom the money was recovered.* The inconsistent testimony given by the complainant and the over-hearing witness cannot form the sole basis for conviction. The complainant stated that the money was recovered from the right side pant pocket of the co-accused but subsequently, he contradicted himself by stating that the money was recovered from the appellate itself , later he again changed his stance by stating that he could not remember from whom the money was recovered. The evidence by the over-hearing witness, although devoid of any contradiction, failed to support that the bribe money eventually reached the appellant, hence *not proving any direct linkage between the co-accused and the present appellant*. The court also highlighted the act of not administering the appellant with sodium carbonate test as a significant procedural lapse. Given that there was no proof of demand neither any direct linkage between the person who accepted the money and the current appellant, and the trap was characterized by significant procedural lapses, the Supreme Court over-ruled the decision of High Court and trial court, and set aside the conviction.
B: The court also acts liberally in some of the cases apart from the evidence on record. Here are following cases.
In *Somabhai Gopalbhai Patel vs State Of Gujarat*[7], the appellant was working as a revenue officer. The complainant was in the need of some documents in order to upgrade his borewell motor from 10HP to 15HP for agricultural purposes. When the complainant approached the appellant for the production of the necessary documents, the appellant demanded bribe *without specifying any amount.* The complainant lodged a complaint with the anti-corruption bureau and subsequently a trap was set. Upon receiving the tainted money, the appellant was caught red handed.

The trial court convicted the appeal at under section 7 and section 13(1)(d) r/w section 13(2) of the prevention of Corruption Act. Under section 7, he was sentenced to 1 year of rigorous imprisonment and liable for ₹1,000 fine and under the section 13(1)(d) r/w section 13(2), he was sentenced to 2 years of rigorous imprisonment and was imposed Rs. 1500 fine. Upon appeal, the high court also upheld the conviction. The aggrieved appellant preferred an appeal in the Supreme Court.

Citing the well *corroborated evidences which established the demand and acceptance chain*, the Supreme Court also upheld the conviction, but however the sentence under section 7 was reduced to six months of rigorous imprisonment and the sentence under section 13(2) was decreased to one year of rigorous imprisonment. The Supreme Court awarded the minimum prescribed sentences by keeping in consideration that the appellant was 60 years old and his medical conditions, which were supported by the medical reports filed by the appellant.
In *State(Govt. of NCT of Delhi) vs Prem Raj*[8], respondent was convicted under section 7 and section 13(1)(d) read with section 13(2) of the Prevention of Corruption Act. The trial court convicted the respondent under section 7 and section 13(2) and imposed a fine of rupees 500 and rupees 1000, respectively and sentence the respondent to undergo rigorous imprisonment of 2 years and 3.5 years, respectively, to run concurrently. The respondent of this case appealed in the high court, seeking for reduction in sentence and did not challenge the conviction itself. *The respondent cited the 11 year' duration of trial, approaching of retirement date in order to seek the reduction of the sentence awarded*. High court enhanced the fine to ₹15,000 and directed the government to consider commutation of imprisonment to fine in accordance with the section 433(c) of Cr.PC.

Aggrieved by the decision of the High Court the state preferred an appeal in the Supreme Court of India. Supreme Court, allowing the state's appeal, set aside the high court's direction to the government to consider the commutation of sentence into fine. It was highlighted that *commutation of sentence under section 433 of Cr.P.C. is exclusively vested in the executive and judiciary* cannot exercise this power. The precedents set in the case of Delhi Administration vs *Madan Lal and State of Punjab vs Kesar Singh* were cited in order to reiterate that the right to exercise this power is vested solely in the government and must be exercised by the government in accordance to the rules, procedures and principle established. The Supreme Court set aside the high court's order *in order to prevent judicial overreach* as High Court's direction violated the *principle of separation of power* by intruding upon the domain which is specifically vested with the executive. It was also recognised that the courts may recommend for the commutation of sentences but however these recommendations cannot substitute the judgement of the executive.
In *Surain Singh vs State of Punjab*[9], The appellant was a patwari and was accused of demanding Rs. 400(fixed at Rs. 300, after negotiation) in order to process the mutation entries in the name of the complainant's sons based on a sale deed. This complainant approached the vigilance bureau and subsequently a trap was laid. Notes smeared in phenolphthalein was given to the appellant and upon receiving the same the signal was given to the raiding team. The tainted money was recovered from the appellant and the test of sodium carbonate solution was also administered which yielded positive results.

Basing upon the trap evidence i.e. the recovered money plus the hand-wash test, while rejecting the defence of enmity, the trial court convicted the appellant and sentenced him to two years of rigorous imprisonment and imposed ₹1000 fine. This stance was also upheld by the high court.

Upon appeal in the Supreme Court, upholding the conviction, the Supreme Court rejected the defence of enmity as the DDR (Daily Diary Report) entries, as presented by the appellant in order to establish the proof of grudge of the complainant against him, were considered irrelevant. The court observed that the Land demarcation disputes occurred prior to one year of this event. Moreover, it was also observed that the entries were of self-serving nature and there were no independent evidences that could corroborate the defence of enmity. However, the Supreme *Court reduced the sentence to one year of rigorous imprisonment by taking into consideration that 19 years had passed since the occurrence*, hence imposition of minimum sentence is justified.
In *K. L. Bakolia vs State thr. CBI*[10], The appellant was working as an official at the Indian agricultural Research Institute. When the complainant, the proprietor of M/s. Colonel's security services, approached the appellant for the renewal of security contract, he demanded a payment of ₹50,000 as bribe, which was later reduced to ₹20,000 after negotiation, in order to renew the security contract. The Central Bureau of Investigation let the trap. The complaint end was provided *mic, transmitter and the money was treated with phenolphthalein*. When the complainant approached the appellant, the appellant said "*laye ho?"(*Have you brought it?). Subsequently, the appellant instructed the complainant to place the money under the sofa cushion, however the complainant insisted on handing over the money by hand before placing it in the place, where the appellant had instructed. When the complainant handed over the money, the CBI entered into the appellant's house and caught him red handed.

The trial court, basing upon the well *corroborated evidences* which substantiated *that there was a presence of demand as well as acceptance* , convicted the appellant under section 7 and section 13(1)(d) r/w section 13(2) of the Prevention of Corruption Act, imposing 4 years of rigorous imprisonment and ₹500 of time for each of the charges. When an appeal was preferred in the High Court, the conviction and the sentence were upheld. Against this the appellant moved to the supreme court.

The Supreme Court, partly allowing the appeal, also upheld the conviction, given the constant testimony of the *complainant and witnesses, the audio recording evidences, the recovery of tempted money and positive chemical test*

results. However, the sentenced was reduced to one year of rigorous imprisonment *as about 19 years had lapsed from the occurrence of this incident, the appellant was of 74 years of age and the appellant had to undergo the agony of criminal proceedings for all these years*.
C: Here are few cases which seek for uniformity in the sentencing of the accused persons.
In the case of *Jagjeevan Prasad v. State of M.P*[11], The Appellant was working as a Patwari. He demanded rupees 500 from the complainant as a bribe to do his work and subsequently a trap was laid by the ACS (Anti-Corruption Squad) and the appendant was caught red handed. He was charged under section 5(2) of the Prevention of Corruption Act, 1947 and section 161 of Indian Penal Code.

The trial court initially acquitted the appellant and when the judgment was challenged in the high court by the state, the high court set aside the acquittal and convicted him under both the charges. High court imposed fine of rupees 500 under both the Charges and imprisonment till the rising of court under section 5(2) of the Prevention of Corruption Act, 1947. The appellant aggrieved by this decision appealed in the Supreme Court.

The Supreme Court upheld conviction of the appellant and also noted that under section 5(2) of the Prevention of Corruption Act, 1947, the minimum prescribed sentence is one year although the proviso allows imposition of a lesser sentence for any special reasons that has to be recorded in writing. The Supreme Court held that "*superannuation" is not a special reason* for the reduction of minimum sentence, and the Supreme Court enhanced the imprisonment to one year and directed the additional session judge to ensure that appellant serves the sentence.
In the case of State of *A.P. vs K. Punardana Rao*[12], The respondent i.e. the accused, was a commercial tax officer posted at Naidupet. Complainant was a proprietor of two firms namely Sri Lakhmi oil mills and company and Sri Bharatha Lakhmi Traders. The complainant alleged that the accused demanded 25,000 Rupees initially, however later it was reduced to 20,000 rupees, as a bribe to extend the deadline for submitting of the tax documents. A trap was laid against the respondent and ₹20,000 was recovered from the accused. The phenolphthalein Test corroborated the receiving of bribe money, as when the accused's hand, pyjama and bed sheet were dipped in the sodium carbonate solution, they turned pink.

The trial court convicted the respondent under section 13(1)(d) read with section 13(2) of prevention of corruption act. Challenging this, the respondent moved to the high court. The high court acquitted the respondent as it found that *it is highly improbable* that the complainant would have agreed to pay a sum of ₹20,000 as bribe, *as the turnover of the complaint's business was roughly around ₹1,55,750*. The high court held that the prosecution evidences are unreliable hence acquitting the respondent. Aggrieved by this decision the state filed an appeal in the Supreme Court.

Supreme Court reversed the acquittal and restored the conviction, sentencing the accused to one year of rigorous imprisonment on each count of charges, to run concurrently. The Supreme Court held that the high court *was wrong in appreciation of the evidences* that were put forward by the prosecution. Supreme Court pointed out that the high court was wrong in concluding that the total turnover is approximately ₹1.5 lakh, despite the evidences the presence of evidences suggesting that the turnover was somewhere between 30 to 40 lakhs. Additionally, the Supreme Court also rejected the defence that were put forward by the respond as unreliable and highly improbable. The Court also negated the plea of alibi taken by the respondent as there were no clear records to support the same. It was emphasised that the *appellate court should not emphasise on the minor flows in the prosecution*, when there is presence of strong incriminating materials suggesting guilt of the accused. In this case, the evidence from PW1 i.e. the compliment, corroborated by the phenolphthalein test made it very evident that the respondent was guilty.
In *Vasant Tukaram Pawar vs State of Maharashtra*[13], the appellant was prosecuted for the charges under section 13(1)(e) read with section 13(2) two of the prevention of corruption act, 1988. It was alleged that the appellant was in position of assets worth ₹4,12,297 disproportionate to the known income sources. The trial court convicted him for having in his possession assets of Rs. 3,10,784, disproportionate to his known income. He was sentenced 7 years of rigorous imprisonment and was imposed a fine of Rs. 1,00,000.

The high court rejected the bail petition as well as the prayer for suspension of the conviction and sentence during the pendency of appeal. The non-payment of the fine amount imposed by the trial court and the evidences, i.e. calculation of the disproportionate assets which were present on the record, became the ground for the reject of prayer of bail as well the prayer for the suspension of both conviction and sentence order.

The appellant appealed in the Supreme court against this decision of High court. The Supreme Court found that the fine amount, which was one of the reasons for the rejection, was subsequently deposited. It was also observed at the high court failed to consider the relevance of the fact that *the attached properties were forfeited*. The appellant put forward the argument that conviction in other cases cannot be considered as one of the factors while rejecting prayer, to this the Supreme Court held that under section 389 of the CrPC, the appellate court has to record the reasons in writing for ordering the suspension of execution of sentence or releasing the convict on bail, hence indicating that there has to be

careful considerations of the relevant aspects while exercising the power, vested by the virtue of this section and *orders directing the suspension of sentence or grant of bail cannot be passed as a matter of routine*. The Supreme Court, not deciding the case on the merit, directed the high court to reconsider the bail application and the suspension of sentence while taking into consideration the relevant facts like the forfeiture of property and the effect of the other convictions.
In the case of *V. Radhakrishna Reddy vs State of Andhra Pradesh*[14], the appellant was working as a general manager in the district industry centres. It was alleged that he demanded ₹200 for the issuing of small scale industry registration certificate, which was reduced to Rs. 150. It was also alleged that an attendant from the same office demanded Rs. 20, which was reduced from Rs. 30, in order to process the certificate. Complainant approached the anti-corruption bureau and a trap was laid in lieu of the complainant's complaint. After the trap, the tainted money was recovered from accused i.e. the appellant of this case.

The trial court convicted the appellant under the charges of section 7, imposing Rs. 500 fine and rigorous imprisonment of 1 year, and section 13(1)(d) read with section 13(2), imposing fine of Rs.500 and rigorous imprisonment of 1.5 years, of the Prevention of Corruption Act and *acquitting the co-accused*. Aggrieved by this decision the accused appealed in the high court. The high court upheld the conviction but reduced the sentence under imposed under section 13(1)(d) r/w Section 13(2) to 1 year of rigorous imprisonment.

Thee accused filed an appeal in the Supreme Court. Supreme Court dismissed the appeal and upheld the conviction and the sentences imposed upon the appellant. The *absence of any valid reason for accepting the cash* and *the defence that the cash was paid in lieu of certification fees* formed the primary ground for the rejection of the appeal. It was highlighted by the Supreme Court that the motive is immaterial, *once demand and recovery were proved, and the burden of proof shifts on the accused to prove that it was not illegal gratification*. The acceptance of cash in place of treasure challan maid the appellants defence unconvincing and unreliable.
In *Billa Nagul Sharief vs state of Andhra Pradesh*[15], the appellant was working as a junior assistant in the District supply office. The complainant, a businessman seeking for composite license, alleged that the appellant had demanded Rs. 3000(later reduced to Rs. 2500) as bribe for the issuance of composite licence to the plaintiff. In view of the complaint a trap was laid by the Anti-corruption bureau. The tainted money was handed over to the appellant, which was kept in his pocket. Subsequently, when the raiding team got hold of the appellate, the tinted money was recovered and chemical test was administered over him which confirmed the presence of phenolphthalein powder on his hands and pocket.

The trial court convicted the appellant under section 7 and Section 13(1)(d) r/w section 13(2) of the Prevention of Corruption act, sentencing him to undergo one year of rigorous imprisonment and imposed Rs. 1000 fine for each count of charge. In lieu of the credible testimony given by the complainant, the recovery of the tainted money and the positive chemical test results became the basis for the conviction. The trial court also *rejected the plea of alibi*, the defense of grudge and plantation of money theory put forward by the appellant in his defense. On the same footing the High Court also upheld the conviction stating that the *defense witnesses were unreliable, there was no material contradiction in the trap witnesses* and the prosecution witness were consistent to each other.

When the appellant appealed in the Supreme Court, the conviction of the appellant was upheld by the court. The Supreme Court rejected the defense of alibi stating that the Treasury duty that was assigned to the appellant did not require him to be present throughout the whole day. It also observed that the failure of complainant to complain to the higher officials cannot be used as a defense to support the appellant's case, given the possibility that corruption may flow from the top to bottom, it is not reasonable to expect a person to complain to the higher authority first. *The court also laid emphasis on the point that even though there is enmity or grudge between the appellant and the complainant, it cannot be taken into consideration given the established demand and acceptance chain by the prosecution*. The consistency in the prosecution witnesses also ruled out the defense that the money was thrusted upon the appellant.

II Analysis of the Cases on research questions:
1. What are the factors influencing the outcome of the case apart from the evidence on record?: The adjudication and the sentencing in the cases regarding corruption are influenced by interplay of various factors. Through the examination of multiple cases many of the factors have been identified which subtly and decisively affect the outcome of a proceeding. These factors are as follows:
a) Age: Age is one of the most decisive factor for the imposition of minimum sentences under section 7 as well as section 13(2) of the prevention of corruption act. As seen in the case of *Somabhai Gopalbhai Patel vs State of Gujarat and K.L. Bakolia vs State thr. CBI*, even though there was well corroborated evidence in order to establish the chain of demand and acceptance, which resulted in the affirmation of the conviction, but the sentence which was imposed was reduced to the minimum sentence prescribed. In both the cases the Supreme Court took this decision by keeping in consideration the age, medical conditions of the appellants.
The above stated cases makes it apparent how judiciary balances the Scale of public policy against corruption and humanitarian grounds. The public interest demands stricter imposition of punishment in order to ensure the eradication

of corruption, but however rigid adjudication, without considering the circumstances of the accused, undermines the end of justice. The judgments given by the Supreme Court upholds that there is a requirement to reconcile the punishment imposed and the circumstances of that individual, without compromising the Deterrent poppers of the prevention of corruption act.

b) Superannuation: In the case of *Jagjeevan Prasad vs State of Madhya Pradesh*, The Supreme Court set aside the decision of high court in which the court sentenced then appellant to imprisonment till the riseing of the court under section 5(2) of Prevention of Corruption Act, 1947. While upholding the conviction, the Supreme Court held that "superannuation" is not a special reason for the reduction of imprisonment. It was clarified that the factum of superannuation of the convict does not qualify as a factor justifying the leniency in imposing of the sentence.

c) Conviction order vs. Sentencing order: It is a basic practice of suspending the sentencing order till the hearing of the appeal in the appellant court, however in the case of *KC Sareen vs CBI,* The Apparent prayed for the stay of the conviction order. The Supreme Court, rejecting this prayer, held that the power of staying the Conviction order is not alien to section 389 (1) of the criminal code of procedure, however this power should be exercised in very rare and exceptional matters. In the cases regarding prevention of corruption act, more focus has to be given while granting the relief by suspending the conviction order. The Supreme Court demoralized the use of power to stay the conviction order, primarily in corruption cases, by putting forward:

"Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person."[16]

Hence it is evident that under normal circumstances the judiciary would not put a stay on the conviction order, though stay on the suspense sentencing order may be put upon till the hearing of the appeal. The loss or damage suffered by the appellant due to his dismissal from the service toss not qualify as an exceptional circumstance for the granting of stay of conviction order, as such loss or damages could be reversed in case of acquittal of the appellant.

d) Parallel Conviction: In the case of *Vasant Tukaram Pawar vs State of Maharashtra*, when the appellant tried to put forward the argument that parallel convictions cannot be ground for the rejection of relief under section 389(1) of CRPC, Supreme Court, while rejecting the argument, held that Section 389 of the criminal code of procedure mandates that an appellate court has to record the reasons for the suspension of sentence or if it releases the convicted person on bail, during the pendency of an appeal. The mandate of recording the reasons in writing indicates that there is to be careful consideration of the relevant aspects of the case and such relief should not be granted as a matter of routine. Consequently, parallel conviction. being a relevant aspect, cannot be said to have no effect on the granting of relief under section 389 of CrPC.

e) Enmity between the Public servant and Complainant: The fact that there is a hostile relation between the Public Servant and the complainant could be used to corroborate the fact that the complainant lodged the complaint out of grudge, weakening the weightage of his testimony in absence of any strong corroboration of prosecution evidence.

f) Significant passage of time: Significant passage of time can also attach an important factor in the reduction of sentence, as seen in the case of *Surain Singh vs State of Punjab*, The Supreme Court imposed the minimum sentence as it was justified due to the prolonged exposure of the appellant to the agony of criminal proceeding.

g) Not complaining to the higher Authority: In the case of *Billa Nagul Sharief vs State of AP*, The Supreme Court rejected to consider the act of complainant of not complaining or seeking assistance of an authority higher to that of public servant who is demanding the bribe, as a factor to show leniency towards sentencing as in the opinion of the court:

"The contention that grievance can remedied by the superior officer in the hierarchy of the system of the department concerned, if accepted, perhaps there shall be no case in which the demand for bribe can be made. The feeling of a common man that when the work is enshrined to different persons bribe is demanded by one of them, when all are invariably in collusion, cannot be lost sight of. If Senior Officers ensure that the works of the citizens are done without payment of bribe, Junior Officers and employee may abandon the demand and this country would not have prominently

figured as one of the most corrupt nations of the World, as it is widely accepted that the corruption flows from the top. Here de facto-complainant, was entitled to have the composite licence but he was not willing to pay the bribe demanded, accordingly he had approached the Anti Corruption Bureau and we do not find anything unnatural in the conduct of the de facto-complainant."[17]

2. What are the evidentiary and procedural factors taken into account?

a) In absence of well corroborated prosecution evidence: As seen in the case of *Ganpati Sanya Naik versus the State of Karnataka*, when the prosecution witnesses fail to establish the chain of demand and acceptance and there exists establish fact of enmity then the court will be highly inclined towards declaring the judgment in favor of the accused, as without the proof of demand and acceptance chain charges under Prevention of Corruption Act cannot be attracted.

b) In presence of well corroborated evidences: In *Surain singh vs State of Punjab*, Prosecution *Witnesses were well established and the appellant also failed to corroborate his defense of* presence of enmity hence resulting in the affirmation of conviction.

In *Billa Nagul Shrief vs State of AP*, the Supreme Court highlighted that even though there is enmity or grudge between the appellant and the complainant it cannot be taken into consideration if there exist a well-established chain of demand and acceptance, by the prosecution. It can be concluded that the factum of enmity can only be used in the cases where there is weak corroboration of prosecution witness and the chain of demand and acceptance, is not strongly proved.

c) No Motive for Bribe. The motive for brave is one of the most important factor, which can be used to prove or disprove the factum of demand. In the case of *UoI vs Purnandu Biswas*, the fact that the appellant was not expecting any visitors and at the same time he had no motive to obtain the bribe, as the ship(it was alleged that he would detain the ship, if bribe not paid) was cleared and at the same time the other ship(also alleged that he would detain the other ship) was not docked in the dockyard. As there was no motive, the prosecution failed to establish the demand leading to the acquittal of the accused. Similarly, in the case of *Ganpati Sanya Nayak versus state of Maharashtra*, Supreme Court set aside the judgment of high court, convicting the appellant, since the documents, for whose processing the bribe was allegedly demanded, were prepared before the receiving the said bribe. As there was no motive for demanding the brave it cannot be said that the factum of demand is well established, if there exists no strong evidence to substantiate the demand.

In the case of *Baliram vs State of Maharashtra*, there existed a motive to obtain the bribe as the proceeding (for which the bribe was demand) against the complainant under the Minimum Wages Act was still continuing. It further strengthened the well corroborated chain of demand and acceptance, hence resulting in the affirmation of conviction of the appellant.

d) Procedural Integrity: The procedural integrity during the trap operation is one of the most important aspect when it comes to the adjudication of a matter related to Prevention of Corruption Act. As seen in the case of *UoI vs Purnandu Biswas*, the high court as well as the Supreme Court acquitted the appellant as there were severe procedural lapses in the seizure and testing of key evidences. The raiding team failed to seize and administer the chemical test upon the handbag, in which the money was carried to the appellant's house, and the suitcase, in which the money was allegedly kept by the appellant.

Similarly, in the case of *RPS Yadav vs CBI*, the raiding team failed to seize any evidences and to administer the chemical test upon appellant, thus failing to establish the linkage between the accused, i.e. appellant, and the co-accused, who received the money. Hence, resulting in the setting aside of conviction of appellant.

e) Nexus among Accused: When it is alleged that more than one accused is involved in the act of obtaining the bribe, a clear connection has to be established between such accused and the other co accused. In case the prosecution fails to establish a nexus among the accused, as in case of *RPS Yadav vs CBI*, a Public servant cannot be implicated of an offence.in order to bring home the charges, the prosecution has to establish that the bribe money eventually reached the public servant.

3. What is the legal position of acceptance of bribe without demand? The jurisprudence of demand and acceptance cycle has undergone a significant change and development, shaped by the interpretation of the judiciary. In order to bring home charges under the Prevention of Corruption Act, it is pre-requisite that there must be established factum of demand and acceptance.

From time to time it has been reiterated by the Supreme Court, as seen in the cases of *N. Sunkanna vs State of AP*[18] and *Selvaraj vs State of Karnataka*[19], that mere possession and recovery of the tainted money from the accused is not sufficient to get him convicted, unless there is acceptable and well corroborated proof of demand.

The judgement of *P. Satyanarayana Murthy v. District Inspector of Police*[20] fortified the principle that the establishment of demand and acceptance is a sin-qua-non in order to attract the offenses under section 7 and section 13 of the prevention of corruption act.

However, the judiciary also recognized the acceptance in case where there is no demand but the money has been accepted with the full knowledge that the accepted money constitutes illegal gratification. As opined in the case of *B. Jayaraj vs State of AP*[21], "In so far as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily

accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court."22

In *Subash Parvat Sonvane vs State of Gujarat*[23], the Court observed: "mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d). In Sections 7 and 13(1)(a) and (b) of the Act, the legislature has specifically used the word "accepts" or "obtains". As against this, there is departure in the language used in sub-section (1)(d) of Section 13 and it has omitted the word "accepts" and has emphasized on the word "obtains". In sub-clauses (i), (ii) and (iii) of Section 13(1)(d), the emphasis is on the word "obtains". Therefore, there must be evidence on record that the accused "obtains" for himself or for any other person, any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or that he obtained for any person any valuable thing or pecuniary advantage without any public interest."

Hence it can be concluded that when there is an acceptance, with the knowledge that such money is bribe, then section 7 of the Prevention of corruption act can be attracted, but, however, by the virtue of legislative intent, acceptance in absence of demand cannot be attract section 13 of the PC act, even though the Public servant accepts the money knowing it to be bribe.

4. Can a practically a uniform in sentencing be achieved ?: As seen in the above mentioned cases it is evident that the adjudication process is influenced by interplay of many factors, having both aggravating and mitigating effects. Each of the facts is characterized by the presence of different number of factors. Forming the uniform sentencing code means discovering a new science, having a uniform effect. However, it is imperative to understand that the presence and the degree of different factors in a particular case cannot be described in terms of uniform values or numbers. Sentencing is an art, not a mathematics formula or theory of science. A judge has to carefully balance all the factors, public policy, laws as well as the effect of sentence while imposing sentence. A uniform sentencing code is not practical as it is not possible for the legislature and even the judiciary to foresee all the factors and to attach an effect, to those factors, on sentencing.

Conclusion: The above discussion show that while the not only is considering the traditional establishment of evidence and procedural aspects to convict or acquit an accused persons but also other humane factors are taken into consideration such as age, superannuation, length of trial and the public dimension of the damage caused. Though it is always sought a sentencing guidelines to fight against corruption and to check the abuse of the discretion, however with the doctrinal analysis it is observed that such a standard inherently possesses the risk of ignoring the distinguishing realities, when dealing with offences of corruption, alongside the scale of moral and legal culpability.

[1] (2001) 6 SCC 584
[2] (1995) 2 SCC 513
[3] (2005) 12 SCC 576
[4] (2007) 8 SCC 309
[5] (2008) 14 SCC 779
[6] (2015) 11 SCC 642
[7] (2014) 15 SCC 103
[8] (2003) 7 SCC 121
[9] (2009) 4 SCC 331
[10] (2015) 8 SCC 395
[11] (2000) 8 SCC 22
[12] (2004) 10 SCC 500
[13] (2005) 5 SCC 281
[14] (2005) 10 SCC 417
[15] (2010) 11 SCC 575
[16] *K.C. Sareen v. Central Bureau of Investigation*, (2001) 6 SCC 584, ¶ 12.
[17] *Billa Nagul Sharief v. State of Andhra Pradesh*, (2010) 11 SCC 575, ¶ 19.
[18] (2016) 1 SCC 713
[19] (2015) 10 SCC 230
[20] (2015) 10 SCC 152
[21] 2014 INSC 220
[22] *B. Jayaraj v. State of Andhra Pradesh*, (2014) INSC 220, ¶ 7.
[23] (2002) 5 SCC 86