



Graduate School of Development Studies

A Research Paper presented by:

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(India)

In partial fulfilment of the requirements for obtaining the degree of
MASTERS OF ARTS IN DEVELOPMENT STUDIES

Specialization:

**[Public Policy and Management]
(PPM)**

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The Hague, the Netherlands

14-11-2012

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List of Acronyms

- 1. PC Act- Prevention of Corruption Act, 1988**
- 2. DA Case- Disproportionate Assets Case**

Abstract

The Research Paper deals with the effectiveness of an Act, The Bihar special Court Act, 2009 brought out by the State of Bihar in the country of India initiated in the year 2009 and finally taking a shape of an act after getting the assent of the President in the year 2010. The Act was special in the sense that it contained separate provisions for the adjudicating the matters of the ill-gotten property amassed and collected by the corrupt officials of the state diminishing the overall efficiency of the governance of the state and demoralizing the effort for the welfare. It is also special because while it seek to do so separately and independent of his own trial in persona in a different court but in a time bound manner. The state after the implementation of the Act was able to attach the property of the corrupt officials even before his actual trial for punishment could be concluded giving no opportunity to the person to be in enjoyment of the ill-gotten property when his actual trial was still going on in a different court. This made the corruption a highly risky endeavour for the officials top to down. The special Court was able to attach property of the highest officials of the state in the rank of Grade I which was hitherto not possible. Earlier the attachment of property could only be done after the conclusion of the trial and till then the corrupt person kept on enjoying the property but with the activation of this act the trial of his property went on simultaneously while the person was tried in the other parallel court.

Relevance to Development Studies

Corruption is not only an issue, rather a formidable challenge for the governance across the world due to many reasons but the two are the most important one –

One is the siphoning off the great amount that is being spent over development of the country making the task of development difficult as well as fruitless.

Secondly, it helps in amassing of wealth by the few people thus increasing the gap between haves and have-nots.

Thirdly, It will be my objective to find out how the development activities can be avoided to act as coterminous to corruption.

Dedication

The work is dedicated to my Gurudev Baba Shaswat of Kalyaneshwarsthan, Bihar (India) who remained a guiding spirit in the whole journey of the research process. I also dedicate this work to my father Late Vakil Choudhary and to my grandfather Late Deosharan Choudhary and above all my mother Ms. Parvati Devi who lived with me during the whole research project. I also dedicate this work to the premier college of Delhi University, Hindu College and the old hostel boys association AHHA to which I have been a part since its inception.

Acknowledgement

I am grateful to many people who have been supportive in accomplishing this research. First, I am highly indebted to my supervisor Dr. Sunil Tankha for his academic guidance and support and for his endurance during the hardest time. His interactive classroom sessions coupled with his thought provoking ideas was an unique experience. My honour to Dr.A.Venkat Raman, my second reader, Faculty of Management Studies, Delhi University who provided the logistics support apart from his valuable academic comments at back home. My gratitude also goes to my lecturers of Public Policy and Management, especially Ms. Sylvia Berg and Mr. Joop de Wit, who generously shared their knowledge and expertise in my course programme and took the burden of being mentor throughout my stay at The Hague. Highest appreciation goes to my class colleagues for their constructive ideas and support. I also wish to extend my gratefulness to the staff for making the Institute to be conducive and enjoyable place to study.

I am extremely grateful to my wife Mrs. Moni Singh, who did not let me lose my dream of completing the course and the research project even at the hardest time.

I express all regards to Mr. Bijendra Prasad Yadav, Honourable Minister for Energy, Parliamentary Affairs, Registration, excise and Prohibition and Mr. **Pratyaya Amrit, IAS, Bihar** who reposed faith and immense confidence that gave me lasting encouragement in my endeavour to complete this job. I express my deep gratitude to Mr. Prakash Singh, Media Personnel (Timesnow TV Channel) of Bihar who had always been available for any kind of help that was required during my stay at the Hague. I am thankful to Mr. Arbind Singh, my dear friend from NGO Nidan background who even obliged to be my guest at The Hague in the Netherlands and shared and cherished my ideas that provided a fillip to the project. I also like to express my thanks to Mr. Shashi Shankar, Dysp, Vigilance, Mr. Rajesh Kumar, Public prosecutor, Vigilance Special Court who could provide me the basic knowledge about the functioning of the vigilance department which helped me a lot in having clear understanding about the subject. Above all, the academic support that was provided by Mrs. Reena Jain, Lecturer Hindu College and her son Mr. Mayank who were instrumental in crafting the power-point along with her husband Mr. Pradeep Loyalka, my friend whose house at Delhi converted into the research house during my temporary stay in Delhi cannot be forgotten at this moment.

Lastly, thanks to all of you who have made this research possible. Rest assured that your assistance and contribution will remain valued and appreciated forever.

Keywords

Chapter 1

Introduction and Justification to the Research topic

1.1 Introduction

To have the overall perception over the issue I begin with few quotes from ancient times to the modern one-

- (1) *"Whoever is near the official gets honour and whoever is near the kitchen gets the food."*
- (2) *"Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out...."*
- (3) *"The annual total of bribes paid worldwide is US \$ 1 Trillion (US \$ 1000 Billion) by a conservative state."*
- (4) *"More than 55% of Indians had first-hand experience of paying bribes."*
- (5) *"Bihar is the most corrupt state of India"- TI in 2005.*

The Chinese proverb at the first place, the world's oldest historical testimony from India to corruption 'Kautilya's Arthashastra' (300 BC) at the second place, the quotes from the interview of Daniel Kaufmann (World Bank Website) at the third place and the Survey Report 2005 of Transparency International over Corruption in India point out to the phenomenon of corruption as not only deep-seated, historically-rooted, widespread and rampant but also alarming and serious requiring no less attention for its cure than any other issue over the earth.

The corruption is a huge public policy problem because of its multifarious character and forms and also because of its complex interrelationship with the various organs of the phenomenon. Even the very definition of the phenomenon of corruption falls into the area of ambiguity. But there are certain points that are unanimously accepted by the one and all and Fjelstad et al in their Research on Corruption, 2000 has tried to remove such ambiguity over the subject and tries to present a sketchy picture of the corruption as a public policy problem. The Corruption is a public policy problem not only because of the huge economic transaction involved in it but also because it is a state related phenomenon. It is the misuse of power by the public authorities who are supposed to cater to the needs of the public but they start using their authority for the furtherance of their own personal gains. Also, the people involved in the corruption are of varied kind although mostly they are state versus non state actors but sometimes there is evidence of non-state sectors involving in corruption without any interface with the state actors. The state actors vary from the highest public officials to the lowest one. Worst of all the two sides of corruption demand and supplier

side try to conceal it as both are benefitted at the cost of the state. So the detection is also a big and complex problem and that is why unless there is a political will power with strongest intention to curb the phenomenon any half hearted approach may not succeed. But it needs to be controlled because it is also irony of the situation that the poorest countries are the hardest hit by this phenomenon and unless checked it goes on multiplying day by day. The different forms of corruption like fraud, embezzlement, grand and petty corruption etc needs to be tackled differently and thus the policy decision would be crucial in identifying the correct form of corruption. In the light of the above one can say that the corruption is a huge public policy problem.

The phenomenon of corruption in its ugliest form had attracted the attention of the intellectuals from all over the world and dominated the polity of India for a long time concentrating on a single state that was "Bihar"- The State of Indian Republic. The State of hopelessness that marred the state can be best judged in the words of K P Joseph *'it will be wrong to believe that if the politicians, government officials and suppliers responsible for the fodder scam are punished and the money lost recovered, everything will be alright. The fodder scam is but a small symptom of a deep and chronic malady afflicting the Bihar Government* (Joseph, K. 1997:pp 01). Even the Transparency International report of 2005 on India reported that common citizens of the country paid a huge bribe of Rupees 21,068 Crore while availing one or more of the eleven public services in a year. The world bank institute data quoted above that shows that US \$ 1000 Billion of bribe is annually paid shows clearly that the corruption is a huge public policy problem worldwide and needs to be controlled as it acts as an impediment to the development of the country as well as to the equitable distribution of wealth among the countrymen allowing a few to prosper at the cost of the common men. The situation in the country of India is no different as we will further see in the research project that the status of the country is very low in this regard and worse of all instead of any improvement it has shown decline of status. The Transparency International (2005) also reported the status of the state of Bihar as being "the Most Corrupt State of India."(TI,2005), The state suffered a lot on account of corruption which was intrinsically imbued with clientelism and criminalization which further deteriorated the scenario aggravating the situation.

But six years later (by 2011) the quotation became a complete mismatch if read with the latest findings by the economist duo Bibek Debroy and Laveesh Bhandari who have declared after their calculations that the State of Bihar has become the "Least Corrupt State of India."(Debroy, B and L. Bhandari, 2011) Such reference to the state is increasingly becoming a normal feature when we see other writers/Reporters taking the same stand. Sudeep Majumdar puts the words of the above Economist duo for the Foreign Policy – a subsidiary Magazine of Washington Post-....."It [corruption] rules over the country with its stranglehold in every aspects of the state and consequently in all aspects of life of citizens" but perhaps the their most startling conclusion is that Bihar- once the bastion of graft- is now "the least corrupt state" in India.'(Sudeep Majumdar,2012).

The relevance of the topic is located in this romantic journey episode of a state that experiences such great and desirable change amidst lot of hue and cry over the issue elsewhere. It would be of interest for a researcher to compare the methodologies adopted by the two think tanks (Transparency International report 2005 and Economist duo Debroy and Bhandari's report of Dec 2011) situated at the time gap of about 6 years.

Last but not the least, the present Government of Bihar had been taking steps towards bringing down the corruption level by initiating host of policy measures. The novel strategies that we come across are – The Speedy Judicial Trial, the setting up of Fast Track Courts, Attachment of property of the corrupt officers found to be amassed through corrupt method, Right to Service Act, hearing appeals and complaints of the people in the Janta ka Darbar and so on and so forth.

Of special interest draws the attention to the policy maker is the special significance attached to the Special Courts that were established after getting the approval from the President because it contravened with the provisions of the existing laws on corruption making provision for the attachment of the property of the accused person and the six months fixed period of trial provision with regard to the attachment of property in one court while the person's actual trial is done in the other but similar court after the submission of the charge-sheet. But now the accused person's property is attached with the Government and now he cannot make use of his corrupt property to his defence. This fact has made the act very stringent and it really surprised me to know that many of the convicts or accused united approached the court not to appeal against the lower court's order but against the provision of the confiscation of property made out in the Bihar Special Court Act, 2009. It would be interesting to see the court proceedings to find out what actually was contested and under the heading of Research findings.

Thus for the present research topic we need to understand this policy tool in the light of the background of the state in controlling corruption. We are aware that such stray actions have been taken in the state many times but without success. The governments have been changed over the charges of corruption but the net result has not been worth knowing. The the government of Lalu Prasad Yadav came in the background of the Bofors scam but later we know that it indulged itself in the worst kind of corruption. Sanjay Kumar et al in their article on Bihar 'caste dynamics and the political process in Bihar' have mentioned this backdrop of 1990's politics that changed the congress regime of the time at the center, "Added to Mandal-Mandir-Masjid factors that contributed to fast losing popularity of the Congress was the charge of corruption against Rajiv Gandhi, which boiled into famous 'Bofors Scandal'. V.P Singh who had recently drifted away from the Congress made it a poll issue. Though there is no standard literature explaining how far and where Bofors deal played part in the defeat of Congress, it can be reasonably assumed particularly in the context of Bihar that it was a contributory factor." The incumbent government even though ruled for 15 years but was removed on the charges of corruption as well. So it is necessary to see that the Bihar Special Court Act as a policy tool has been of significance in controlling the corruption in the state or just a political

gimmick intended to satisfy the polity of the time. There has been history of the political parties coming to the power in the name of cleaning governance but it has been irony that the government has lacked its will power in the succeeding period of its rule when it comes to its political commitment. The present government of Nitish Kumar came to power in 2005 and have enacted this Act as a policy tool to control corruption. But it needs to be seen whether it is the result of any political will power that really wants to fight the phenomenon of corruption.

1.2 Nature of the Research problem

Temporal, Geographical and Conceptual Boundaries –

Towards the end of the 20th Century and the first decade of the 21st Century, Bihar, then the sick state of India, twice arose to hit the newsstand across the globe in the sphere of governance for diagonally opposite reasons—one, as the place for the biggest scam in the history of India involving US\$ 189.53 Million better known as Fodder Scam* and the second, the state that re-emerged to establish itself as the least corrupt state of India until recently. Such a great transformation in such a small period aroused the world with suspect and surprise and led the academic world ponder over the issue of governance from the eyes of Bihar as not only the test case but also the best case if anyone wanted to study this complex subject in a more accurate manner and this gives me ample reason for me to initiate myself into the field of research out of curiosity and partial fulfilment of MA degree program at ISS.

Delving further deep, there are two paradigms that dominate the judicial dispensation system and the common psyche about them ‘Justice delayed is justice denied’ and ‘Justice hurried is justice buried’ the former serving as the hallmark of the Indian judicial system apart from its strict compliance to the theory of natural justice, the operational advantage of which goes in the favor of the guilty. On the contrary, we now come across the interesting case story in which persons are fighting the case against the speedy judicial dispensation not against the order of the Hon’ble Court but against the State Act (HC, 2011)**.

Here the fuel for judicial activism does not come from the super active judiciary but the executive/legislative body and that makes the case even more interesting, unique and inviting. The Bihar Special Court Act 2009 and The Bihar Special Court Rules Act 2009 became the target of the corrupt officials challenging its letter and spirit when it gave its quick verdict to attach the property of the corrupt official amassed illegally by him, even before the actual trial had begun.

*.Wikipedia ‘Fodder Scam” (Accessed on 19-05-2012
http://en.wikipedia.org/wiki/Fodder_Scam)

** HC, 2011 ‘ Sanjay Kumar vs the State of Bihar and Amp and & others’ 23 February, Patna (India), High Court (Accessed on 19-05-2012 on website
<http://indiankanoon.org/doc/1078909/>

The Disproportionate Assets Case had come to the limelight in the state at the time when RC A 20/96 was lodged in the case of fodder scam (ibid *earlier page) which was disposed off at a much longer time and at the end the verdict going in favour of the corrupt person only. But the new Act in this sense looks more an innovative piece of policy governance and thus creates interest in it about its impact and the effectiveness upon the corrupt behaviour of the bureaucracy of the state.

1.3 Research Question and sub-research questions-

Key Research Questions-

What were the values, meanings, importance and impact of the Bihar Special Courts Act, 2009 and the Bihar Special Court Rules Act, 2009 in the control of corruption in the State of Bihar?

Sub –Questions-

How did the Special Courts fit into the overall framework of impartial justice delivery system?

How did the Act fill the policy gap of governance with regard to corruption?

What lesson, if any, can be drawn from the policy decisions leading to the changes of bureaucratic behaviour?

What were the motivations for the various groups for bringing about the effective solution to such problem?

1.4 Objectives of Research

The objectives of the present research is to carry out the impact assessment of the Bihar Special Court Act, 2009 which is a piece of legislation that was initiated, enacted and is being implemented by the Government of Bihar. The Act has invited the attention of the intelligentsia of the time and has been portrayed to play an important role and a deadly weapon against the draconian evil of corruption. As proposed in the research question it will be our endeavour to know the meaning, values, impact and the importance of this Act in controlling the corruption. The Corruption is not only an issue, rather a formidable challenge for the governance across the world due to many reasons but the two are the most important one –

One is the siphoning off the great amount that is being spent over development of the country making the task of development difficult as well as fruitless.

Secondly, it helps in amassing of wealth by the few people thus increasing the gap between haves and have-nots.

The public policy and management specialization aims to look at such policy tool that has been devised for catering to the needs of the people. The effort of the Government of Bihar towards controlling corruption has led

them to devise new ways to provide teeth to the existing laws and this Act is supposed to act in this direction. Thus the values and the ingredients of the Act need to be verified and investigated to find out its impact upon ongoing anti-corruption efforts. It is necessary to be known how does this Act affects prevailing legal status and dynamics of the anti-corruption efforts. The issue is related not only with the formulation of law which is an act of legislative body in the democratic political system and to the judicial system that awards justice to the petitioners but also to the administrative wing such as vigilance department that has the responsibility to implement the law in such a way that the ideal of prevention of corruption is achieved.

Thus the primary objective of the research work would be to find out the efficacy of the Act in relation to the three pillars of the democratic system and establish whether or not it can be regarded as a genuine step towards good governance. We would be looking at the facts like what were the compulsions behind enactment of this Act, what changes it made to the ongoing anti-corruption efforts, where does Bihar stand in the corruption scenario and what changes it seek to bring by this piece of legislation, has the motto been achieved? These would be the primary motto of my research work.

Chapter 2

Theoretical Connectivity

The issue of Corruption finds place into the academic literature of the 'Good Governance,' indiscernible from each other and increasingly becoming frequent. There is already a very rich literature that deals with the issues of governance and especially about the controlling of the corruption. The World Bank, IMF, OECD and other UN organizations were increasingly devoting time to find out more data on such complex subject with the increasing grant of support to these countries. Fortunately we have today a plethora of information from country specific to the international one suggesting right strategy to deal with based on theories of corruption and its impact upon the existent forms of corruption and their interaction with polity, market economy, sociology and psychology of the behavioural pattern of the various actors and settings. The Corruption theories have revolved around the three elements-

Corrupt opportunities factor

Corruption incentives factor

Deterrence Factor (Penalty/punishment)

Such theories explain the corruption atmosphere in any country such as more corruption opportunities means more conducive environment for corruption and so on and so forth (Andvig et al, 2000).

Another UN Manual prepared by Centre for International Crime Prevention / UNODC literature on anti-corruption policy describes many of the existing facts and assumptions related to the combating of corruption-

"Corrupt transactions are entered into consciously. Profit and opportunity are weighed against the risks of being detected and the likelihood and extent of any punishment. Where risks and punishment are minimal and rewards are greater, corruption is likely to increase. Corruption can be initiated from either side. Those offering bribes may do so either because they want something to which they are not entitled and therefore need the official to "bend the rules," or because they believe the official will not give them their entitlements without some form of inducement. Officials may solicit bribes in order to supplement their salaries or to raise their standards of living. Therefore, both the bribe "giver" and the bribe taker" must be addressed." (UNODC, 2001,pp 04).

Several theories in a bid to understand corruption has tried to look at the various forms of it and have found out specific strategy suitable to hit the corruption target in a direct collision manner. Several toolkits have been formulated to deal with specific situations. (UNODC, 2004).

We come across the Transaction Cost Theory (TCE) in relation to good governance and combating corruption through minimizing transaction cost within the organization and outside it.

The transparency theory gives us insight to explain the organizations with more accessible or open structure are less conducive to corruption.

There is a Demand and Supply Theory of Corruption in which the bribe taker is treated on the former side where as the bribe giver is treated on the latter side and the management of both is considered essential for dealing with the problem.

In this research project, it would be quite benefitting to use the Public Choice Theory which would give insights to understand the phenomenon of corruption in the complex behavioural triangle of public, state and bureaucrat in the market economy setting.

It would be also quite beneficial to apply the Deterrence theory angle that analyzes the Risk perspective and its impact upon the demanding habits of the bureaucrats due to the specificity of this case in the context of the impact of speedy judicial dispensation over corruption as being practised of late in the state of Bihar, in the country of India and try to modestly add up to the literature available over the issue in such wider contexts from the experiences of this research paper.

The study of corruption has been a multi-disciplinary and varied one. From universal theoretical building to the exclusive scam one has invited the attention of the theorists. From defining the corruption to finding the causes of corruption to the solution part –there has been a lot of literature and the experiments in this field of literature. Andvig and Fijelstad in their journal ‘Research on Corruption’ have introduced the topic by first defining the corruption as a phenomenon. He has tried to give a definition of the topic to build up his research work further and finds that the decisive role of the state is the dominant theory that is reflected in the state-society relation. He further says-

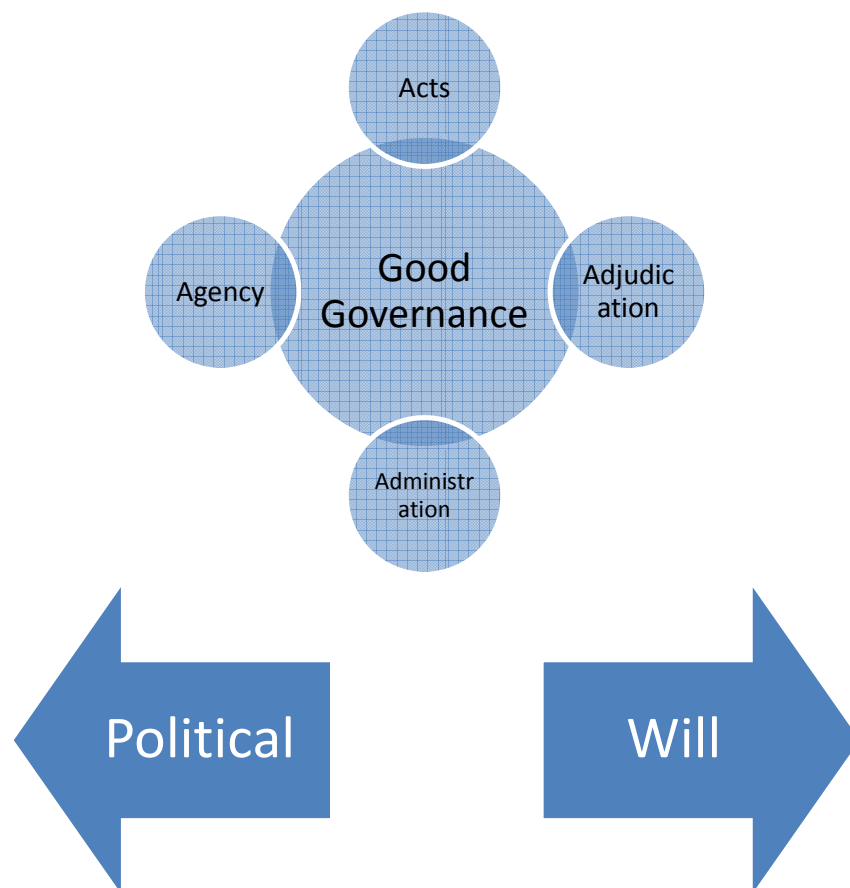
“Corruption is conventionally understood, and referred to, as the private wealth seeking behaviour of someone who represents the state and the public authority. It is the misuse of public resources by public officials, for private gains. The encyclopaedic and working definition used by the World Bank, Transparency International and others is that corruption is the abuse of public power for private benefit (or profit). Another widely used description is that corruption is a transaction between private and public sector actors through which collective goods are illegitimately converted into private-regarding payoffs (Heidenheimer et al. 1989:6). This point is also emphasised by Rose-Ackerman, who says corruption exists at the interface of the public and private sectors (Rose-Ackerman 1978), and stressed by researchers who point to the Weberian distinction between public and private as the foundation of non-corrupt politics and administration (Médard 1986, 1991).”

Koh Teck Hin in his article ‘Corruption control in Singapore’ outlines the theory of control of corruption in which he gives the prime significance to the political will without which one cannot succeed. He says that the political will is the key ingredient in this transformation effort as it forms that all important sub-structure upon which all the super-structures of anti corruption work rest. The political will power provides the soil and the nutrient which is required for the growth of anti-corruption seed. The strong

political will is required to mobilize the public and the entire civil service for fighting against the corruption.

Koh Teck Hin in the above-mentioned article has given the framework of corruption control which is interesting and needs to be observed as it is based upon the experiences of the corruption control in Singapore. He talked about the four pillars of corruption control with political will forming as the foundation. The four pillars has been referred as 4 A's like-

1. Effective anti-corruption Acts (laws)
2. Effective anti-corruption agency
3. Effective adjudication (punishment)
4. Efficient Government Administration



Koh Teck Hin's article Corruption control in Singapore

He further elaborates that the effective laws provides the basis for the fight against corruption. The law must define the corruption offences and their punishment and the powers of enforcement against it. It is necessary that the laws are updated to suit the challenges of the time. Koh Teck Hin in his article 'Corruption control in Singapore' says on laws-

“The law must support law enforcement with a cutting edge. This is vital as corruption offences are particularly difficult offences to deal with. Unlike general crime where there is a victim who tells us everything that happened, in corruption offences, both the giver and the receiver are guilty parties who have the motivation to hide and not tell the truth. This makes investigation and evidence gathering more challenging. To be successful, the law must provide sufficient teeth for law enforcement.”

Upon effective enforcement Koh Teck Hin opines that having tough laws is no guarantee that there is effective enforcement. If there are tough laws but lax enforcement still corruption will persist because the corrupt persons escape detection and investigation. It is desirable that the law enforcing agency should have independence of action.

Coming to the next, the effective adjudication upon which Hin says that the sure detection and effective enforcement of laws must be complemented by the effective adjudication. Detection, prosecution and subsequent court conviction have surely deterrence effect upon the offenders.

The last but not the least is the efficient administration which should be such which values integrity and incorruptibility.

The four pillars of corruption control had been a major success in the country of Singapore where the political will had been the guiding spirit in controlling the corruption and maintaining the required consistency in action. In Singapore, specific mention may be made of PM Lee Kuan Yew’s statement in 1979 as referred by Koh Teck Hin again in the same article-

“.....Singapore can survive only if Ministers and senior officers are incorruptible and efficient [...] Only when we uphold the integrity of the administration can the economy work in a way which enables Singaporeans to clearly see the nexus between hard work and high rewards.”

And again in 1993 the then PM Goh Chok tong reiterated the same tone saying that he will not tolerate corruption in Singapore and warned the Ministers and all the public officials be aware of this message.

This consistency in the political will by the succeeding governments led Singaporeans into a fight against corruption to the winner side strengthening all the pillars of the framework that we have seen just now.

This shows that political will has been an important factor in control of corruption and for the fight to be sustained at all fronts from top to down and in strengthening the organs of the governance and the framework of the corruption.

Chapter 3

Methodological Design and Data Collection

Methodological design – a Case Study Approach

The current research project has been upon the analysis of the piece of law in the form of an Act that has been implemented by the state Government of Bihar and has been able to attract much attention of the intellectuals. The Bihar Special Court Act, 2009 is the special Act that was brought by the Government of Bihar in India with a motto to punish the corrupt officials of the state who had amassed wealth through illegal means. The research question has been to find out the meaning, values, impact and the importance of this Act. There have also been some supplementary research questions that deal with the questions like- How did the Special Courts fit into the overall framework of impartial justice delivery system? How did the Act fill the policy gap of governance with regard to corruption? What lesson, if any, can be drawn from the policy decisions leading to the changes of bureaucratic behaviour? What were the motivations for the various groups for bringing about the effective solution to such problem? To answer these questions one needs to have a proper methodological plan so that following the well structured plan one can reach to the conclusion through the research finding. All sorts of elements would be required for this. In the light of the research question raised above it appears to be a good case for the **Case Study type of research** that is equipped to handle the how and why questions as stated by Yin in his book on 'Case Study Research-Design and Methods' Sage publications, fourth publication. The case study type of research as opposed to the survey, experiments, history or other epistemological research contains the three basic ingredients of the study approach rightly introduced by Robert K. Yin in his abstract of the book 'Case Study Research-Design and Methods'- (a) it looks 'how' and 'why' questions (b) the investigator has no control over the events and (c) the concentration is on contemporary phenomenon of events in a real life time situation. When we look at the proposed research project we find that the research questions mostly revolve around the questions of how and why. As the research is about the knowing the impact of the Bihar Special Court Act, 2009 over the phenomenon of corruption it is obvious that the why question will have the significance over the other questions. We need to know in the research process how has the piece of legislation worked in the state of Bihar to answer the why question of the research that is why the piece of legislation been important if it has been important in control of corruption in the state. The second and the third ingredients need no elaboration because we know that during the process of research the investigator would have no control over the events that is happening in the real life time situation in the contemporary polity. The Bihar Special Court Act is in operation and its impact has to be assessed. This would not be possible without the case study way of research. The qualitative and the quantitative data finding and its

analysis would broadly form the methodological plan of research. We need to find out the data with regard to this Act such as when, how, where and why was this Act proposed. How did it work in the state? If the Special Courts have been created what has been its significance. We need to know the case details that have been handled by the specially constituted courts. We also need to find out what type of persons has been tried under this Act. What were the observations of the courts in their proceedings? We need to interact with the key persons like public prosecutor to know the relevance of this piece of legislation in the overall framework of trial of corrupt persons before and after the enactment of the Act. For this it looks logical to have a methodological plan that is based upon the qualitative perspective with acceptance of the quantitative data because of prevalence of both.

Having seen the research question and the methodological plan it looks plausible to use the methods of Micro-level techniques to collect data through direct methods such as interviews and indirect methods such as exploring the existing documents, database, media reports, journals or literary review and official documents available over website or copy court proceedings and analyze data through qualitative and quantitative explorations or by adopting mixed approaches as a secondary data analysis.

For the achievement of such primary data we need to use the tools of data collection such as questionnaires, observation checklists and interview schedules etc. during the course of data collection we have taken recourse to the interview of the Public Prosecutor apart from visiting offices of the legislative assembly and the legislative council and the most important of all the office of the vigilance department and interacting the officers and the staff thereof.

Secondary data were collected from the website of the Govt. Of Bihar and also information were gathered informally from the vigilance offices by taking help of its officers. The information was also gathered directly by visiting the Speaker's office in Patna about the Act.

The major outcome of the semi-structured interview was that it was possible to know the legal aspects of the Act in operation and the situation before. We could understand the constitutional validity of the Act and how the act supplemented the current legal environment along with the shortcoming of the Act due to which the Act had to adapt itself according to the High Court order? The Act is still pending in the Supreme Court and the order of the Court is awaited on constitutional validity points.

Limitations of the primary data collection are also obvious due to shortage of time and non-availability of the officers for the interview. Some of the limitations are following-

Limited number of interviews

Informal focus Group discussion due to lack of information about the Act which is a new one.

The persons who faced the Court on account of their involvement were not available for discussion.

Chapter 4 Literary Review-

The Literary Review is based upon the information derived from the official website of Government of Bihar, the literary review of the related articles and books appearing in Indian Institute of Public Administration (IIPA) and the book by Mr. Bibek Debroy/Laveesh Bhandari - "Corruption in India- The DNA and RNA" , the examination of the proceedings and the observations of the various cases of corruption during the dispensation of justice, the CMS Transparency survey reports of 2005 and 2010, the study of data collected from the National Crime Control Bureau and its tabular representation by Chhakshu etc.

The summary of the literary review in this regard can be summarized in the following words –

1. The Eco system of the governance that operates in the background of the embeddedness of state, society and market is the most important factor that is responsible for bringing the deformity into the system of governance or at least the phenomenon of corruption reflects the deformity of the Eco-system in which the system of governance cease to act in the well- structured manner for the benefit of those who work for it and for those for which the system stands for. This dysfunctions has been accepted by Ajay Chibber, UN Assistant Secretary in his article named Kautilya Clause, published in the newspaper daily Hindustan Times (13 September 2011, Delhi , Hindustan Times) in which he says that –

"Corruption is a symptom of a dysfunctional interface between the Government and society."

The concluding remarks by the authors of the book "Corruption in India- The DNA and the RNA" in the first paragraph also stresses upon the need to build up a strong ECO- SYSTEM for fighting the corruption (Debroy, B. et al, 2012, pp.143).

2. The history of corruption is not bounded by the boundaries of time, place, form or system of governance and has co- existed with the evolution of the state system under which man was subjected to the rule of men. In case of India we have traces of corruption since the beginning of the features of state as has been rightly shown by P. Mohan Rao and C.G.K Murthy in their article 'Corruption : The Omnipresent Cascading Problem' in the IIPA journal published from New Delhi in the July- September 2011 issue - they have traced in the Indo- Gangetic basin (Bihar) where first feats of state appeared, Kautilya in 321 BC gives an elaborate illustration upon corruption and has discussed 40 ways of embezzlement. In the medieval period Jayachandra

conspiring against Prithviraj and the mighty Mughal emperor Aurangzeb bribing the military officials of Taneesha to conquer the fort of Golconda in Hyderabad and during the early days of Et India company many Indian rulers had approached the company to usurp the throne ex. Siraj-ud- Daula and Mir Qasim in Bengal who had bribed the company to usurp the throne are glaring examples of corruption at its worst. Robert Clive, Governor and Warren Hastings, Governor- General of the East India Company had to face impeachment on corruption charges for their tenures in India (Rao P. Mohan et al, 2011, pp. 728).

Generally speaking the theories of corruption control have revolved around three symptomatic actions as could be ascertained from the authors of the IIPA journal quoted above and also elsewhere-

A) Corruption Opportunities available in the given area at any point of time- the more opportunities available the corruption level would be more.

This may consist of aggregate of the following items-

1. Monopoly of rules and regulations
2. Plethora of laws.
3. Discretion
4. Lack of Transparency
5. Weak monitoring mechanism- internal as well as external
6. Accountability

B) Corruption Incentives are ancillary to the Corruption opportunities so it consist of corruption opportunities + ...

This may consist of aggregate of following items-

1. Corruption Opportunities
2. Low risk due to less chances of being caught.
3. High gain (win win situation)
4. Closed system between different departments.
5. Politico- administrative nexus

C) Deterrence Factor depends upon the availability of other two ingredients and the lesser the corruption opportunities+ corruption incentives, there shall be more deterrence factor acting upon the bureaucratic system. It depends upon the three following factors-

1. Minimum availability of corruption opportunities
2. Minimum availability of corruption incentives
3. Penalty and punishment - this may include the monetary as well as non- monetary form.

Un Manual has focussed the irony of the corruption emanating from the corrupt behaviour of the agencies involved in corruption that makes the detection of the phenomenon much difficult in following words-

"Corruption can be initiated from either side. Those offering bribes may do so either because they want something to which they are not entitled and therefore need the official to "bend the rules," or because they believe the official will not give them their entitlements without some form of inducements. Officials may solicit bribes in order to supplement their salaries or to raise their standard of living. Therefore, both the bribe "giver" and the "bribe taker" must be addressed." (UNODC, 2001, PP 04), UN Manual prepared by Centre for International Crime Prevention/ UNODC.

4. To know about corruption it is important to recognize it and differentiate it between different forms of corruption and for the better treatment of corruption one needs to differentiate between them so that customize solution can be provided.

Debroy et al has given forty ways of embezzlement in their book 'Corruption in India' pp.8 that was known to Kautilya in the ancient India when he enlists forty ways of embezzlement (321 BC) –

"what is realized earlier is entered later, what is realized later is entered earlier, what ought to be realized is not realized, what is hard to realize is shown as realized, what is collected is shown as not collected, what has been not been collected is shown as collected....." and so on and so forth.

Debroy et al deriving from the primer on Corruption produced by UNDP in 2008 differentiates between several types of corruption-

1. Bribery
2. Money Laundering
3. Fraud
4. Kickback
5. Peddling influence
6. Cronyism/clientelism
7. Nepotism
8. Patronage
9. Speed money
10. Embezzlement
11. Abuse of public property

It is rightly said by them (Debroy et al, 2012) that it is difficult to prepare a complete taxonomy on corruption and only divide the corruption between two parts-

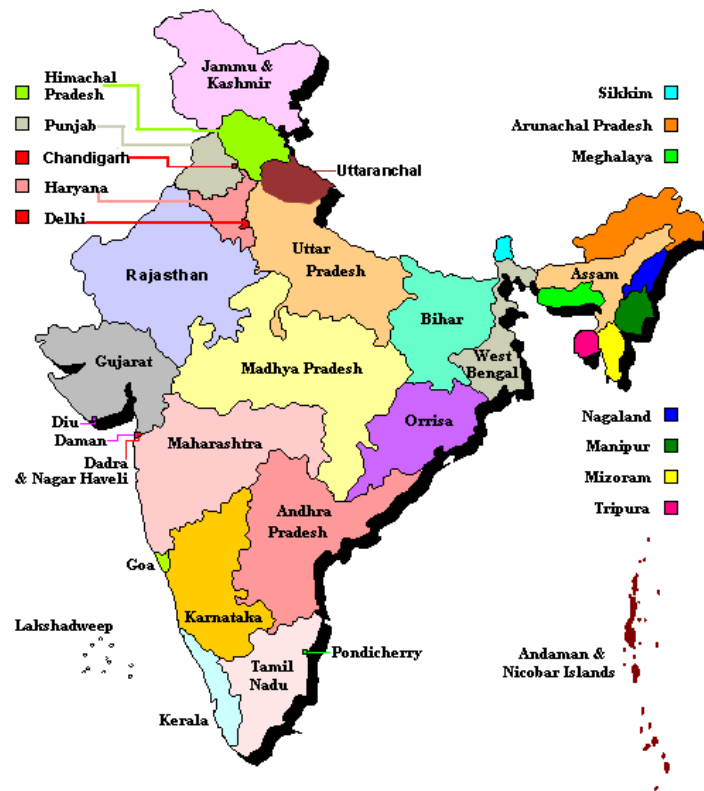
1. Big ticket corruption, grand corruption or RNA type
2. Small Ticket Corruption, petty corruption or DNA type.

The former is related with the decision making process and the latter is

associated with the delivery of public services.

5. India's ranking in corruption-

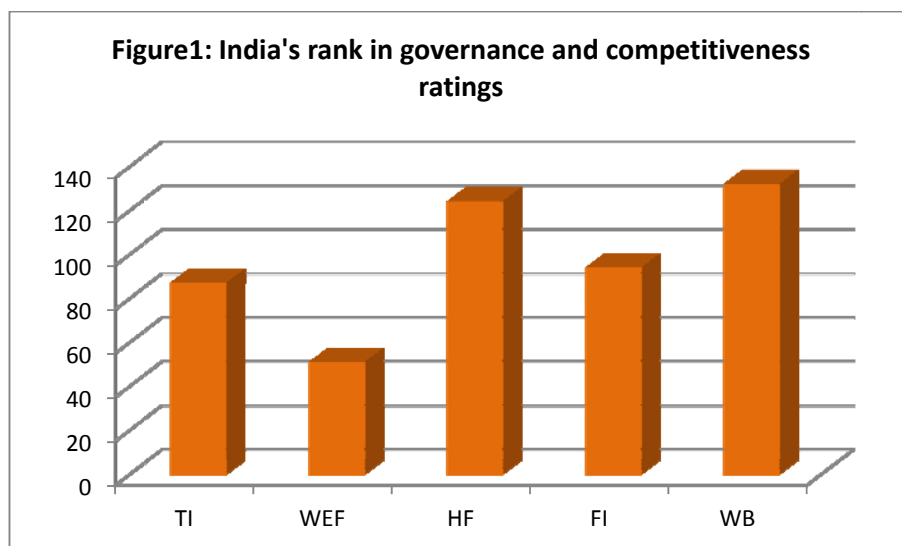
1. Map of India



Debroy et al (page no-25) gives following table which makes india's position and it's ranking in the world eyes taken from the survey data of different agencies-

Table 1: India's rank in governance and competitiveness ratings

| Name of the Index - | Developed by - | India's Rank - | countries covered |
|--|-----------------------------|----------------|-------------------|
| 1. Corruption per. Index, 2010 - | Transparency Int.- | 87- | 178 |
| 2. Global Compet. Index 2010-11- | World Eco. Forum- | 51- | 139 |
| 3. Index of Eco. Forum, 2011- | Heritage Foundation and WS- | 124 - | 183 |
| 4. Economic freedom of the world,2011- | Fraser Institute- | 94- | 141 |
| 5. Ease of doing business 2012- | World Bank- | 132- | 183 |



CMS study on corruption takes into account three features of Corruption such as Perception, experience and estimation. The 2008 study was focused on BPL families of rural India for 11 basic public services such as PDS, Hospital, school education, electricity and water supply etc. and ranked the services according to the corruption-level in following way

Table 2: Ranking of services according to the corruption level

| Sr. no. | Services. | Rank |
|---------|------------------------------------|--------|
| 1. | Police. | 1 |
| 2. | Land records. and registration. | 2 |
| 3. | Housing. | 3 |
| 4. | Water supply. | 4. |
| 5. | MGNREGS. | 5 etc. |

The table of information suggests that those services that are associated with urgent need of the citizen are associated with the highest level of corruption. This also suggests that the corruption is not only to speed up the process of getting work done but also extortionary in nature.

The CMS-Transparency India, 2010 gives the State-wise perception about the corruption level in four important services based upon the household survey and published recently-

The Table of states below based on household survey clearly indicates that there has been marked improvement in the level of corruption in Andhra

Pradesh and Bihar over the years although still there is a large gap and the average level of corruption is too high.

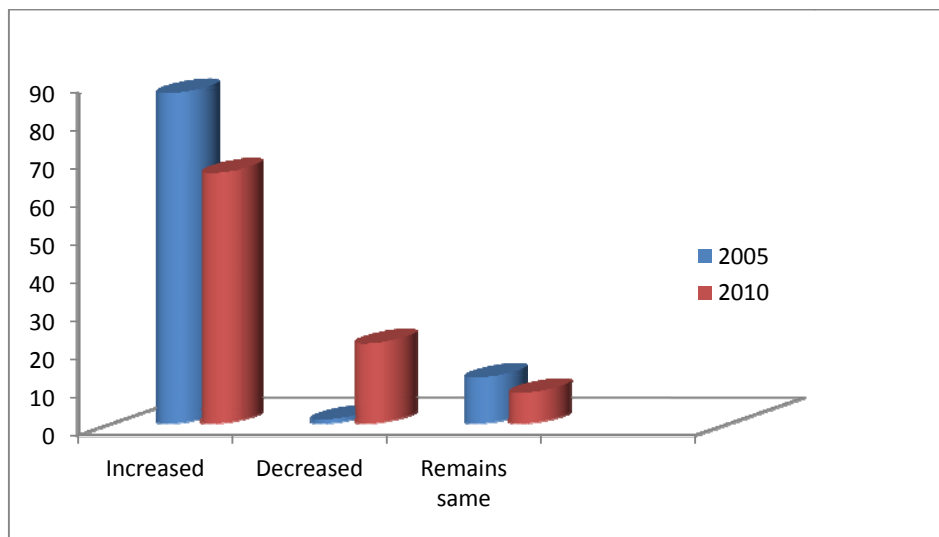
Table 3: CMS transparency Study on India Corruption Study: 2011

| Name of the State Rounds- | Increased | | Decreased | | Remained the same | |
|------------------------------|-----------|------|-----------|------|-------------------|------|
| | 2005 | 2010 | 2005 | 2010 | 2005 | 2010 |
| Andhra Pradesh | 73 | 35 | 9 | 39 | 18 | 17 |
| Bihar | 87 | 66 | 1 | 21 | 12 | 8 |
| Chhatisgarh | 68 | 66 | 6 | 12 | 25 | 11 |
| Haryana | 75 | 42 | 4 | 29 | 21 | 19 |
| Himachal Pradesh | 44 | 40 | 6 | 23 | 50 | 29 |
| Karnataka | 84 | 27 | 1 | 41 | 14 | 27 |
| Kerala | 56 | 59 | 11 | 13 | 28 | 26 |
| Maharashtra | 78 | 44 | 4 | 24 | 16 | 20 |
| Rajasthan | 65 | 54 | 7 | 21 | 26 | 18 |
| Tripura | N A | 19 | N A | 59 | N A | 15 |
| Uttar Pradesh | 63 | 49 | 6 | 29 | 28 | 16 |
| West Bengal | 72 | 33 | 8 | 34 | 17 | 19 |

Source- CMS Transparency, 2010-Website accessed on 23-08-2012 (page no- 4)

<http://www.cmsindia.org/India%20Corruption%20Study%202010.pdf>

Figure 2: Bihar in CMS transparency Study on India Corruption Study: 2011



6. Bihar at a Glance

Transparency International Survey in association with the Centre for Media Studies, 2005 declared the state the most corrupt state in India based upon the composite ranking of states on corruption in 11 public services.

The same year we see that there was a change in the Government and new steps were taken with regard to control the menace of corruption and some special Acts were enacted for speeding up the anti-corruption efforts such as the Bihar Special Court Act, 2010 under which six special courts were established in three different cities and cases of corruption or to be more specific- cases of disproportionate Assets earned through illegal means of the public officials were tried with the highest priority and the present RP topic deals to find out it's effectiveness. The PRS India data available over the website <http://www.prsindia.org/corruptioncasesindia.php> for the period 2000 to 2009 on the issues of corruption taken from National Crime Control Bureau, New Delhi, is revealing one and together with the information derived from the website of Government of Bihar's vigilance department it can be summarized in following words in terms of Bihar's performance-

1. Bihar fares 14th position (average 62/ year) in registering the cases from 2000 to 2009 and that situates the state in the middle in the list of all the states. But, in two years between 2010- 2011 with 173 registration of cases the average goes up to 87 for these two years.

Figure 3: Comparison of Average Number of Cases registered in Bihar

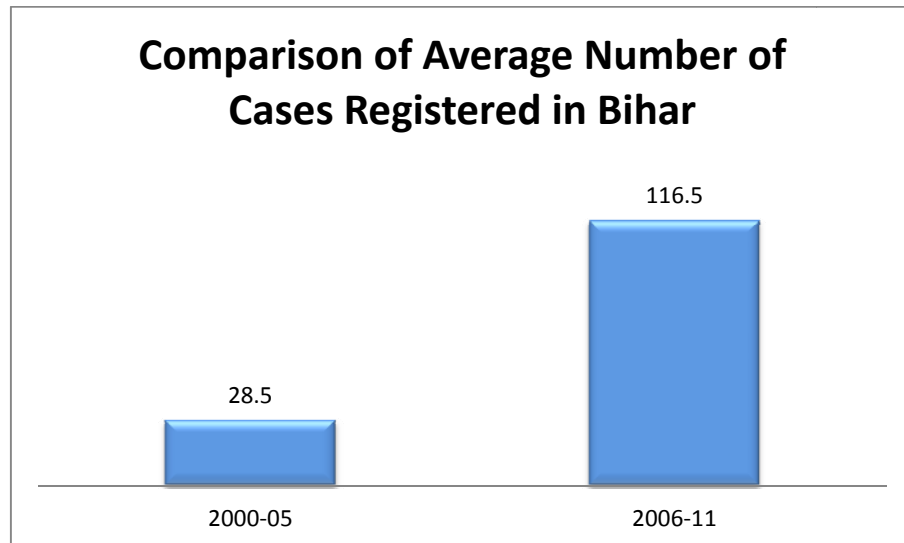


Figure 4: Comparison of the average number of trap cases in Bihar

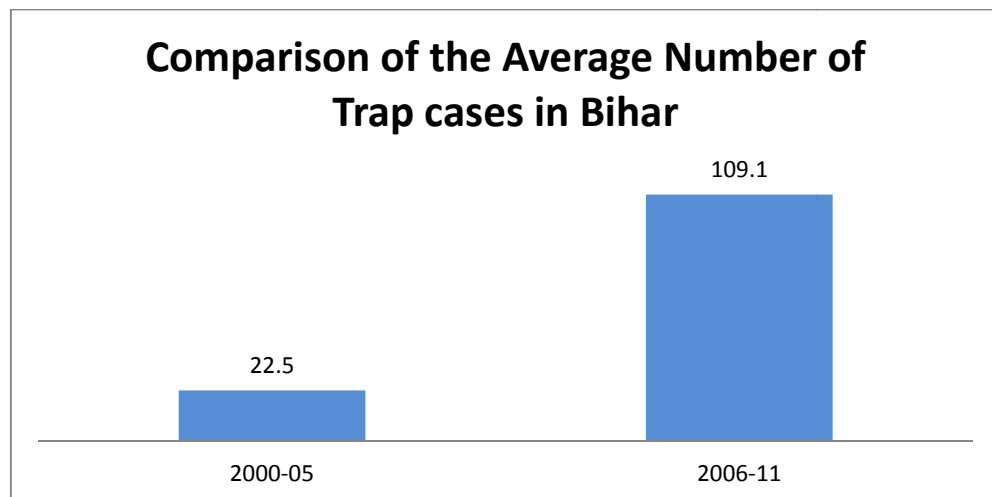
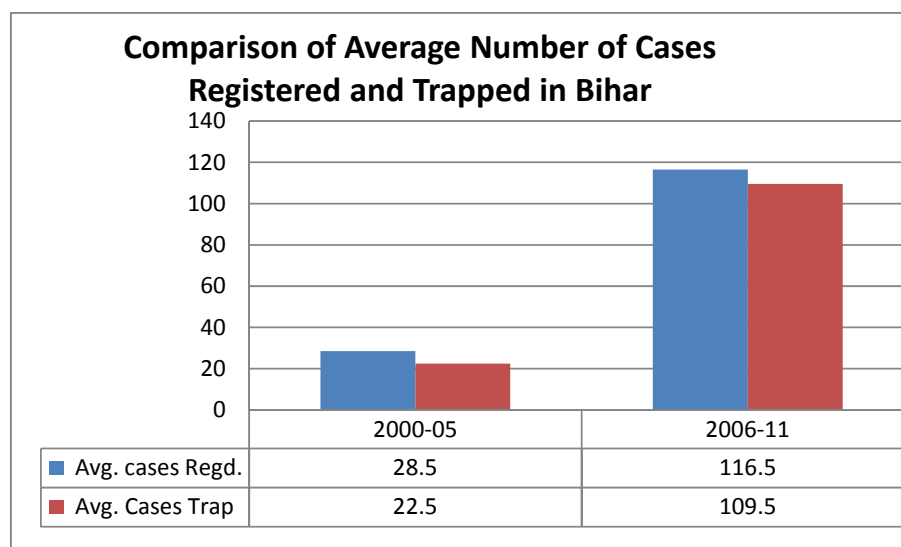


Figure 5: Comparison of average no. of cases registered and trapped in Bihar



2. In the value of property section and recovery the state of Bihar figured at the fourth position in 2000 to 2009 which is too low.

3. The data with regard to the rate of conviction to the trial completed has been shown to be the highest between 2000 and 2009 which is highest but since the no. of trials completed is itself very low it does not point out towards any impressive performance.

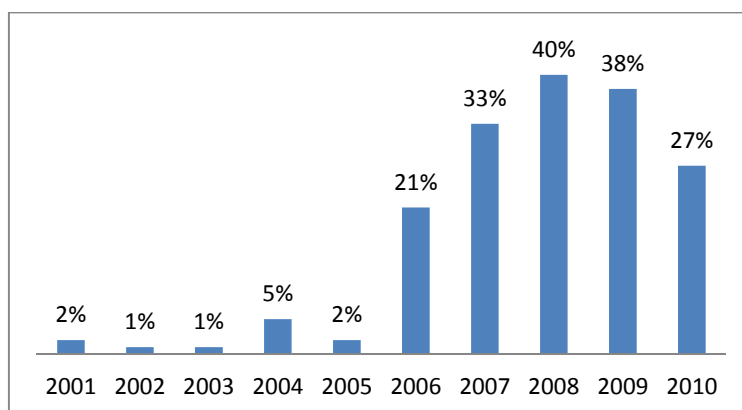
4. If we look at the cases of investigation to the cases in which charge-sheets was submitted following picture appear-

2000- 6 %
 2001- 7%
 2002- 4%
 2003- 8%
 2004- 8%
 2005- 6%
 2006- 20%
 2007- 70%
 2008- 43%
 2009- 44%
 2010- 36%

5. If we compare the cases resulted into recovery/seizure out of cases investigated –

2000-2%
 2001-2%
 2002-1%
 2003-1%
 2004-5%
 2005-2%
 2006-21%
 2007-33%
 2008-40%
 2009-38%
 2010-27%

Figure 6: Comparison of cases resulting into recovery out of investigation



This shows that the monetary aspect of recovery in form of penalty or punishment has increased making the case of high risk from the hitherto low risk phenomenon.

6. The Book " Corruption in India- The DNA and the RNA" by Debroy et al, 2012 (page no 139) the data has been studied in bunches since 1990 and have prepared the comparative chart on the basis of aggregation of annual data for each period i.e 1990-1995, 1996-2000, 2001-2005, 2006-2010 and the six following ratios were created –

- A) No. Of persons arrested out of every 1000 Govt. Employees
- B) Cases charge-sheeted as a share of total cases investigated
- C) Cases sent for trial as departmental acts as a share of those charge sheeted.
- D) Proportion of cases that resulted in recoveries out of total cases investigated,

E) Proportion of cases that resulted in conviction as a share of trials,

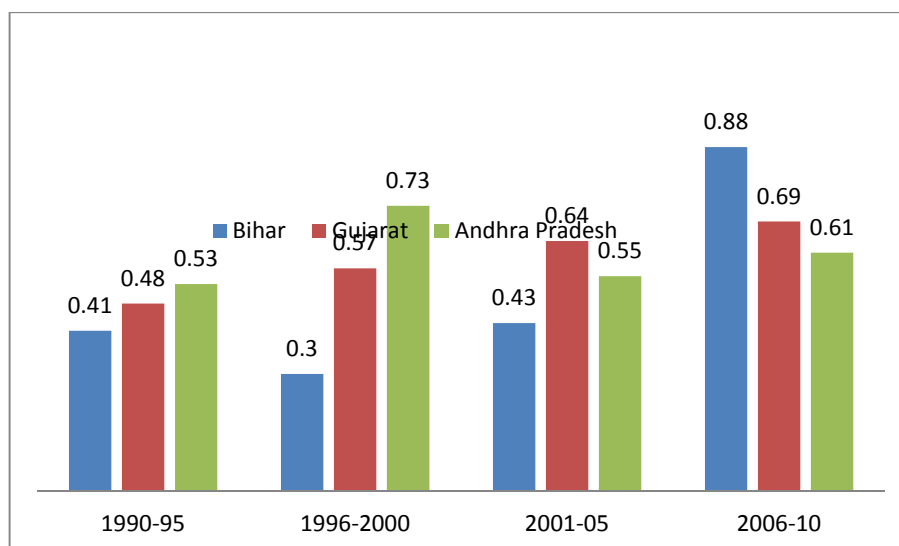
F) Proportion of persons who were finally charge sheeted as a share of those in custody or bail-

The six above ratios were normalized using the standard max. Min. Approach and then aggregated with equal weight and the result is given below in the table-

Table 4: Rating Bihar on Anti-corruption Efforts

| State. | 1990-1995, | 1996-2000, | 2001-2005, | 2006-2010 |
|-----------------|------------|------------|------------|-----------|
| Bihar- | 0.41. | 0.30. | 0.43. | 0.88 |
| Gujarat- | 0.48. | 0.57. | 0.64. | 0.69 |
| Andhra Pradesh- | 0.53. | 0.73. | 0.55. | 0.61 |

Figure 7: rating of Bihar on anti-corruption efforts



" Corruption in India- The DNA and the RNA" by Debroy et al, 2012 (page no 139)

This chart also shows that there has been marked improvement over the years in Bihar although Bihar has not been consistent in its effort earlier. Considering the fact that there are about 6 lacs government employees in Bihar and if a minimum 10% of them are supposedly corrupt (60,000) then the deterrence factor or risk factor would be calculated by-

a) Total employees viz a viz no. of being registered.

b) Total cases registered viz a viz total cases charge sheeted.

c) Total cases charge sheeted viz- a- viz total cases con convicted and we find that the risk factor has grown in the recent years the risk factor works at meagre 8% in 2000 whereas in 2010 it has grown to 160 % which is relatively very high.

Thus it becomes evident that there is a large amount of literature that is available over the subject matter of corruption and the various theories have been propounded to tackle this problem by exposing its internal as well as external characters to match the efforts against it. The detection and deterrence depends upon the true understanding of the problem to which a large amount of literature is devoted. Various literatures are devoted to measurement of correction so that one can know if the situation is improving or not. The prevalence of such vast literature point outs to the importance of the subject matter and gives insight to understand the phenomenon and its stakeholders in a correct way.

Chapter 5 Research Finding

5.1 Evolution of Vigilance Department in Bihar and enactment of the Bihar Special Court Act, 2009

The Bihar Special Court Act, 2009 is an integral part of the Department of Vigilance in the state of Bihar and so it was felt important to trace the evolution of the department of the vigilance in short to see the impact of the enactment of this Act upon the working of the vigilance department. Certain key officials of the department were consulted in this regard and the figure that were made available to us, although informally, were really found interesting.

1. Evolution of vigilance department
 - a) Vigilance department in the beginning (pre-independence era) worked as a part of the political (general) Department.
 - b) In 1946 it was constituted as Anti-Corruption Department in the state of Bihar.
 - c) Later on after independence it was named as Cabinet (Vigilance) Department and was kept under the Cabinet (Coordination Department).
 - d) Now Cabinet (Vigilance) is an independent Department.
2. The motto- The motto of the vigilance department was to make the administrative system free of corruption.
3. Establishments-
 - a) Police Station- One Police Station at Patna for the whole of Bihar.
 - b) Special Vigilance Courts for Trap cases- 2 Special Vigilance Courts at Patna and one at Muzaffarpur for the trap cases.
 - c) Newly constituted Special Courts under the Bihar Special Court Act, 2009- 2 Special Courts each to hear Disproportionate Asset Cases at Patna, Bhagalpur and Muzaffarpur. Total 6 Courts.
 - d) Investigating Agencies- Vigilance team, Electricity vigilance Team and newly constituted Special Vigilance Unit (SVU). The last one has been constituted to handle high profile cases and has been recruited from the retired expert officers of the federal agency, Central Bureau of Investigation (CBI), India.
4. Sources of the Cases and the Action taken-
 - a) Trap Cases based upon the victim's complaint who help the department in catching the person red handed. After the trapping is conducted successfully based on Pre-trap memorandum and Post-trap memorandum, the corrupt officer is forwarded to the jail and the charge-sheet becomes obligatory upon the police to be submitted within 60 days. After the charge-sheet is submit-

ted the trail of the case begins. There is no time limit set for investigation and trial of the case.

On the day of trapping the raid is also conducted at the corrupt officer's house and other related premises for want of evidences about his accumulation of money. If under investigation it is found that the person has accumulated property more than his legal sources of income than a separate DA case were filed in the vigilance police station, Patna.

- b) Complaints forwarded by CM darbar or CM secretariat to the cabinet vigilance for investigation and further action. No time limit of investigation.
- c) Complaints forwarded by the Lokayukta, Bihar for investigation and proper action- No time limit set.
- d) Complaints forwarded by Honorable courts- No time limit is set.
- e) Disproportionate Asset Case-If after the investigation it is found under any of the complaints received from the above listed sources ,that the property of the official reported to be corrupt has amassed large wealth in addition to his known sources of income than all the above complaints are registered as a DA Case in the Vigilance police station at Patna .
- f) Penal sections under which cases are registered-
 - i) Trap Case- 7/13(2) read with 13 (1)(d) Prevention of Corruption Act, 1988
 - ii) Disproportionate Asset Case- 13(2) read with 13(1)(e) Prevention of Corruption Act, 1988
 - iii) While Section 7 invokes minimum sentences for 6 months of jail extending to 5 years of jail including fine the invoking of Section 13 brings the person suffer for a minimum of a one year jail extending up to seven years with fine.

Box.1 Important Provisions of the PC Act, 1988

Important Sections of P C Act, 1988 for trap cases-

7. Public servant taking gratification other than legal remuneration in respect of an official act-

13(1) A public servant is said to commit the offence of criminal misconduct,-

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;

Important Sections of the PC Act, 1988 for DA Cases-

13(1)-A public servant is said to commit the offence of criminal misconduct,-

(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.

Explanation.-For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

Source-Prevention of Corruption Act, 1988

5. Stages of disposal of the complaints-

- a) Complaints received from all the sources.
- b) Verification of the complaint and investigation.
- c) Entrapment and institution of the trap case and the subsequent DA case if necessary after evaluation of his property and investigation.
- d) Charge-sheet submission in 60 days if person is forwarded for imprisonment but in case there is no imprisonment than there is no time-limit.
- e) Trial begins after submission of the charge-sheet- No time limit set for conclusion of the trial.

The Bihar Special court Act, 2009-

- a) It has set a time limit of six months for the confiscation trial and one year for actual trial.
- b) It deals only with the confiscation of property under DA Cases in which property is attached after the conclusion of the summary trial and not at the end of the trial which was done earlier.

6. The State Government can also recommend any case to the federal agency for investigation and necessary action. Case of Lalu Prasad Yadav, ex-CM Bihar was one of them.
7. Case against public representative- Sadanand Singh, ex-Speaker, Bihar legislative Council- the vigilance started the investigation of irregularity done in the recruitment process in 2006 (registration case-18/2006) but the FIR registered in 2011 (FIR case 28/2011).

Thus at the level of the working of the department we find that at the level of sources of information there has been no change, even at the level of the verification or inquiry there has been no change after the enactment of this Special Act but the actual difference has been brought in the level of stages for the finalization of the cases of disproportionate asset of the corrupt official under which earlier there were just two stages, now one more stage has been added. While earlier two cases were filed against the corrupt officials (One trap case when caught red-handed by the vigilance team and the other when during the course of investigation it was found that the corrupt official had been in possession of assets disproportionate to his known sources of legal income then a DA (Disproportionate case was filed against him. If at the end of the judicial trial the person was found guilty then the confiscation was done by the order of the court under the prevalent code of criminal procedure, 1973 Section 452). But after the enactment of the Bihar Special Court Act, 2009 the vigilance department has to follow the third stage in special circumstances and now three cases can be filed against the corrupt person. The third stage is the stage of confiscation which followed earlier at the end of the trial now became a separate and independent stage under which the corrupt official charged with such charges cannot be allowed to be in enjoyment of that property during the pendency of the judicial trial. So, as soon as the investigation pointed out towards the accumulation of wealth by the corrupt officer a declaration was made to this effect and the confiscation was done after a summary trial in which the person concerned was given a chance to defend before the law. Thus the confiscation of property which was done by the court's order after the conclusion of the DA trial now in itself became a part of judicial trial. So now the corrupt person, trapped by the vigilance team may have to face trap case, DA Case and also the confiscation case under the Bihar Special Court Act, 2009 independently, separately but may be simultaneously. In effect it can be said that the Bihar Special Court Act, 2009 is an act for confiscation through trial which without complementing or supplementing replaces the code of criminal procedure, 1973 for special cases of corruption only. The code of Criminal Procedure provides for the disposal of the property through confiscation and the important provision or the section can be seen in the box below-

Box.2 Important provisions of Code of Criminal Procedure, 1973 for confiscation of property

Code of Criminal Procedure, 1973

Section 452- Order for disposal of property at conclusion of trial-

- (1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to be possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.
- (2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

Source-The Code of Criminal Procedure, 1973

Thus one can see that the Bihar Special Court prevailed upon the above mentioned provisions of the central act and that is why it needed to be assented by the President of India in the federal structure of the country.

During the course of our interface with the Department of Vigilance we were also provided with the data which clearly states the impact of the Bihar Special Court Act, 2009 upon the disposal of the confiscation. Let's see the data in the table below-

Table.5 the details of the vigilance cases since year 2000

| Year | Total cases | Trap cases | Investigation based cases | DA Cases | Confiscation | Charge-sheet |
|---------------------------|-------------|------------|---------------------------|----------|--------------|--------------|
| 2000 | 23 | 6 | 6 | 5 | 0 | 10 |
| 2001 | 18 | 4 | 5 | 1 | 0 | 18 |
| 2002 | 12 | 1 | 2 | 0 | 0 | 1 |
| 2003 | 23 | 2 | 8 | 6 | 0 | 12 |
| 2004 | 32 | 10 | 19 | 1 | 0 | 14 |
| 2005 | 19 | 7 | 11 | 1 | 0 | 27 |
| 2006 | 105 | 60 | 35 | 10 | 0 | 93 |
| 2007 | 133 | 108 | 15 | 10 | 0 | 277 |
| 2008 | 110 | 80 | 28 | 2 | 0 | 99 |
| 2009 | 129 | 80 | 28 | 17 | 0 | 116 |
| 2010 | 99 | 65 | 12 | 9 | 14 | 102 |
| 2011 | 83 | 74 | 7 | 2 | 22 | 109 |
| 2012 (till 10-10-2012) | 68 | 39 | 20 | 8 | 5 | 82 |

Source-Department of vigilance, Government of Bihar (informally gathered)

The above table clearly points out that the even though the confiscation procedure was laid down in the Central Act, the confiscation of the property could not materialize in the pre-special Court Act era. But with the enactment of the Bihar Special Court Act, 2009 clearly there has been improvement in this regard. The many other aspects of the operation and bringing of the Act will further provide the requisite information especially over the contentious issues that automatically arise in one's mind when one goes through the working of the Act and its impact.

5.2 The Bihar Special Court Act, 2009

It is a special act to deal with the confiscation of property of the corrupt officials earned through illegal means.

With this Act into being, Bihar became second state to implement Act of this kind after Orissa and now followed by other states such as Madhya Pradesh.

The Act came into being after extraordinary gazette notification by Govt. of Bihar on 8th February 2010 after it got the assent of the President.

The Act doesn't seek to exist in derogation of any existent act in disposal of punishment or trail of cases but seeks to try special cases that deal with the disproportionate property of the corrupt official that had remained a neglected feature till now and for which provisions were already there in the Prevention of Corruption Act, 1988 in the stipulated period of time.

Let us see the three provisions of the Act that will make clear the aims and objectives of the Act very clear-

Box-3: Some provisions of the Bihar Special Court Act, 2009

5. Declaration of cases to Be dealt with under This Act- (1) If the State Government is of the opinion that there is prima-facie evidence of **the commission of an offence*** alleged to have been committed by a person, who has held or is holding public and is or has been public servant within the meaning of section 2(c) of the Prevention of Corruption Act, 1988 in the State of Bihar, the State Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion.

(2) Such declaration shall not be called in question in any Court.

6. Effect of declaration.—(1) On such declaration being made, notwithstanding anything in the Code or any other law for the time being in force, any prosecution in respect of the offence shall be instituted only in a Special Court.

(2) Where any declaration made under section-5 relates to an offence in respect of which a prosecution has already been instituted and the proceedings in relation thereto are pending in a Court other than Special Court under this Act, such proceedings shall, notwithstanding anything contained in any other law for the time being in force, stand transferred to Special Court for trial of the offence in accordance with this Act.

13. Confiscation of property.—(1) Where the State Government, on the basis of prima-facie evidence, have reasons to believe that any person, who has held or is holding public office and is or has been a public servant. has committed the offence, the State Government may, whether or not the Special Court has taken cognizance of the offence, authorise the Public Prosecutor for making an application to the authorised officer for confiscation under this Act of the money and other property, which the State Government believe the said person to have procured by means of the offence.

*"offence" - means an offence of criminal misconduct which attracts application of Section-13(1)(e) of the Act either independently or in combination with any other provision of the Act or any of the provision of Indian Penal code.

5.3 Why Bihar Special Court Act, 2009?

Under the Prevention of Corruption Act, 1988 a legal provision existed for the whole country to constitute Special courts for trial of cases of corruption. This act fulfilled this provision.

Under the normal procedure (section 5) of the PC Act, 1988, the corrupt person could be tried by the Special Judge and once the guilt was established after the conclusion of the trial then the process of confiscation of his ill-gotten property was initiated under section 452 of Code of Criminal Procedure. But now with this Act coming into being in the State of Bihar, the two processes of trial of the person and the confiscation of his property were made independent of each other and the two courts functioned

independently without affecting each other. This made the confiscation of property easier and the corrupt official's property were confiscated even before his guilt was proved under the court procedures. The corrupt person cannot now be allowed to possess and enjoy his ill-gotten property during the long pendency of the hearing and his guilt being established in the second court or elsewhere.

In Bihar the cases resulted into recovery/seizure out of cases investigated went on high which demanded attention towards its trial and confiscation-

2000-2%
2001-2%
2002-1%
2003-1%
2004-5%
2005-2%
2006-21%
2007-33%
2008-40%
2009-38%
2010-27%

It took many years to complete the trial procedures of the guilty person and till then the corrupt officials kept on enjoying his property which he had earned through illegal means. Let us see even the court's observation in this regard- ".....there can hardly be any justification to allow the delinquent to continue in enjoyment of such ill-gotten property only because the trial is still pending." (HC, 2011CWJC case no. 10455/2010). Now with the time limit set the trial was to be concluded in a stipulated period of time.

Since the confiscation of the ill-gotten property was hardly done or done at such a later date that the spirit of the case lost its significance because the guilty person enjoyed the same property till the disposal of the case for long. This hardly could act as a deterrent factor for the corrupt officials of the state. Even during the proceedings of legislative assembly at the time of introduction of the bill it was passed without much objections or opposition as there was uniformity in the assembly over the issue of making stringent law which could act as deterrent factor for the officials of the state. The idea to take away the ill-gotten property could garner support of the majority.

It was also seen as discussed by the legislatures that the property earned through illegal means was transferred in the name of near and dear to save it under the law which under this law was possible and we can see under the operation of the Act in the next sub-heading (5.4 list of cases especially listed at serial no. 40) that even the officials close relatives were tried under the Act and the case was registered against them.

The need for this Act was felt also due to the fact that the phenomenon of corruption would rise with the increase of the state. Mr. Nitish Kumar, Honourable Chief Minister, Bihar especially mentioned this fact during his special speech delivered at the time of passing of the Act in the legislative assembly. He mentioned that the state budget has increased from 2000-2500

crore to about 13,500 crore at the time of passing of the bill which he expected to rise dramatically every year.

During the proceedings of the assembly it was also mentioned in the CM's speech that the corrupt person taking advantage of the law kept himself in enjoyment of the ill-gotten property during the long pendency of the case in the Court and had lived luxurious life. Even the ill-gotten property was used in winning the case through influence by dint of this money that did not belong to him. Even if the corrupt person was sent to jail under the previous provisions, he used to get bail and then started enjoying the ill-gotten property side by side facing the trial in the elegant manner. But now once the time limit was set for the trial as well as confiscation he would not be able to do so and this would turn the whole situation making corruption a risky game to be indulged in.

During the passing of the bill in the assembly the minister in charge of the vigilance department, Mr. Bijendra Prasad Yadav who also happened to be the introducer of the bill, in his speech narrated the urgency for the passing of the bill by giving the details that out of total 124 cases of disproportionate property in 103 cases charge-sheets have been submitted which involved 23 crore Rupees of property that could be attached under this Act which will ultimately be the state property which is being enjoyed by the corrupt officers.

5.4 The Act in Operation—

6 Special Courts have been set up to try such cases at three places- Patna, Bhagalpur and Muzaffarpur -2 at each place.

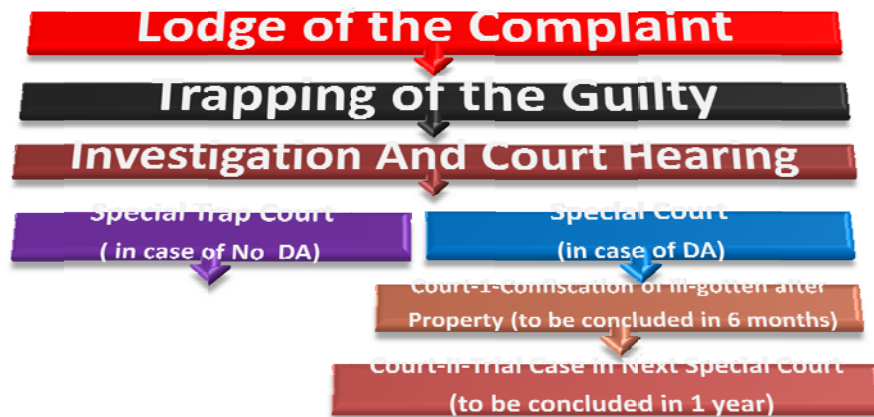
The total no of 43 cases (Annexure II) are reported to have been sent to these special courts involving 35,61,70,533 Rs which involved from top officials to the lower one- from DGP, Secretary rank to the rank of clerk etc.

Out of these 6 courts one court of Patna was taken as a case study and found that till the July 2012, 20 cases have come to the trial in this court out of which 10 are pre-matured and out of the remaining 10 matured cases registered between 2010 and 2011, 5 have been completed with order of confiscation. Thus one can say that it has worked with 50% efficiency rate. Considering the long trial processes that earlier it used to take, it could be regarded as quick disposal.

The cases have been taken from various departments of the state Government as is evident from the list.

The cases have been instituted not only against the lower officials but also the highest one as is evident by the name of the officers belonging to the Indian Administrative Services as well as Indian Police services.

Under the normal procedures of the Act, the procedure followed following procedure as shown in the **figure- 8--**



Before the Special Court to start the proceedings there is a provision under Section 5 of the Act that the State Government shall make Declaration to this effect that the case satisfies the condition for trial under by the Special Court by dint of the nature of the offence. Thus here the classification of the offence comes into being so that only the cases that fall into the category of DA shall qualify to be heard by this Court. This provision also saves the Act from being misused. As a further safeguard there is also a provision that the Special public Prosecutor shall file an affidavit with regard to the special nature of the case and only then the case could be instituted. In the hearing by the High Court upon the constitutional validity this remained a hot issue and was contested by the State government to which even the High court acceded that to save its misuse the decision making should be located in the highest body—

The Apex Court (The Supreme Court of India) extracted and relied upon the following passage from the judgment in the case of V.C. Shukla Vs. State of Delhi through CBI, AIR 1980 SC 1962:-

" In fact, this Court has held in a number of cases that where a power is vested in a very high authority, the abuse of the power is reduced to the minimum" (CWJC case no. 10455/2010 Sanajy Kumar Versus State of Bihar, page 8)

The Act was challenged by most of the petitioners who against whom declaration were made in the High Court against the constitutional validity of the Act which could not be accepted by the Court. This has been dealt with under the sub-heading of contentious issues later on in this chapter only. But the remarkable thing was that they felt aggrieved by the confiscation proceedings being made ahead of the actual trial. This shows that the Act was too heavy upon the interests of the corrupt officers who did not want to lose the illegal property.

The State Government has opened the Government school in one of the property attached to the State. In the grand bungalow of the Indian Adminis-

trative officer earned through illegal means opening a Government School was an idea that excited the intelligentsia of the state and the country acting as a deterrent factor to those who like corruption as a method of living.

5.5 Scenario before and after the Act-----

In a very few cases confiscation was done and the officer remained under the enjoyment of his ill-gotten property till the pendency of his long drawn trial. But now the cases of his confiscation were decided in a short period of time and the officers cannot be allowed to enjoy the ill-gotten property during the pendency of his court.

The general trap cases were conducted earlier also but now with the coming of this Act the cases which involved disproportionate assets were transferred to the Special court by a special declaration of the State Government together with filing an affidavit in the court about the special nature of the case by public prosecutor.

The Special Court is headed by the serving judge and should be member of the Bihar superior Judicial service. Earlier no such court existed although there was provision to set up such courts under the provisions of the PC Act, 1988.

The Special Court that tries the DA cases shall be officiated by the Authorized Officer whereas the Special Court that tries the corrupt person shall be known as Special Judge. Hitherto no such distinction remained and in absence of any special court the cases lingered on for a long time without any confiscation.

The trial of the person was based upon the oral evidences and thus it could not be decided due to subjective issues involved but now with the Special Court constituted for the trial of property was based upon the material evidences which made the things easy to prove and conclude the case and pass the judgment in a stipulated period of time.

Chapter 6 Issues in Research-

The overview of the Bihar Special Court Act, 2009 raises many eyebrows over the effectiveness of the Act and the intentions behind its enactment that we have also mentioned as our Research sub-question. Such questions were also asked during the research process and several interactions- was the special court supposed to send a political signal rather than really catch the entire corrupt public official's. Was it supposed to change the probabilities of getting caught? Was it supposed to raise revenue? Or merely raise awareness?

To the first question whether or not the Act was enacted to send a political signal rather than catching the corrupt officials of the state? There are few facts that point out towards this statement such as the enactment of the Act by the present Government in its second term and not in the first five year term when it really came to power over the issues of widespread corruption and law and order issues. It would be apt to quote Mr. Arun Sinha who has written the book on the present Chief Minister Mr. Nitish kumar named 'Nitish Kumar and the rise of Bihar' (Penguin India Publication, pp 362, 2011 New Delhi)-

"One of the most important steps to curb corruption Nitish had planned to take during his first tenure but was unable to was the confiscation of properties disproportionate to the income of the officers against whom a prima facie case of corruption had been established. The Bihar Special Court Act that was passed specifically for that purpose took time to receive Presidential assent. To thunderous applause, Nitish had assured people in virtually all his election meetings that he would open new schools in the seized properties. The underlying idea was that confiscation of buildings and land would act as the ultimate deterrent to the corrupt officers, because that is where they "invested" their illegal income. "

It seems logical to raise this question that when the present government came to power in 2005 why was the bill passed in 2010? Such political gimmick cannot be overruled given the background of the ex-Chief minister Mr. Lalu Prasad Yadav who also had come to power in the backdrop of Bofors kind of big scam at the federal level but later on himself got indulged in the famous fodder scam which happened to be the biggest scam of that time. The present CM had campaigned in his election 2010 and thus to satisfy he needed to take some action in this regard and the Act came handy to fulfil his commitment partially if not fully. Even going by the data of the vigilance cases one can see that there has been marked fall in the vigilance trap cases in the later year of his second term starting from 2010. From 108 trap cases conducted successfully the figure came down to 74 in the year 2011 although the confiscation of the property had improved a lot after the enactment of the special Act.(see table 5) There had been complete absence of confiscation of property in the preceding period to this Act. But unless the spirit of the action was continued in the latter period it would

always look a political agenda of the government and less a part strategy of good governance in letter and spirit. Since the trap cases went down in the following period after a swift rise in 2007 it cannot be said that the probabilities of being caught went up in the following period. Even the amount involved under confiscation is so low that it cannot be said to any extent that it could have raised the revenue of the state. Thus overall it seems that it was nothing more than the political agenda which was not intended to bring any wholesome change in the corruption scenario of the state of Bihar.

Another issue that has been raised earlier but not sufficiently dealt is the issue of being innocent until proven guilty in the impact analysis of the Act. It is raised that if property is being confiscated without adequately proving guilt, and then later being compensated at ridiculously low rates, what does that say about the fairness of the law? To answer this question I would refer to the proceedings of the Patna High court in (CWJC case 10455 of 2010 Sanjay Kumar and the State of Bihar) in which the petitioners have challenged the constitutionality of the Act of 2010 over the ground that the Act of 2010 violated the provisions of the Article 20 of the constitution which provides that for certain protection in respect of conviction for offence. It prohibits conviction for any offence which was not violation of any law at the time of commission of the act charged as offence and also prohibits infliction of a penalty greater than what could have been inflicted under the law in force at the time of the commission of the offence. Since many of the petitioners were already charged with the offence in the pre- enactment of the Special Act they questioned that how can they be inflicted with a greater penalty then provided at the time of the commission of the offence. The Honourable High Court interpreted this question in detail and first tried to explain the expressions used in the central acts that were prevalent earlier. The words used in this regard are punishment and penalty- the former is used in the Acts like PC Act, 1988 and the latter is used in the Article 20 of the Constitution that says that nobody can be inflicted to the greater penalty then provided at the time of the commission of the offence. The Court explained the two terms as analogous to each other and had following observation upon the legality of the provisions of the Special Act under which the confiscation was made-

“The word penalty or punishment in context of a criminal offence is a well understood concept. Once an accused is found to be guilty, he is punished either by depriving him of his personal liberty by way of imprisonment which puts restriction upon his freedom to move around freely or else he is put to monetary loss by imposition of fine. Monetary loss by way of punishment would happen only in a case where money legally belonging to the accused or his estate is to be paid to the State. The concept of confiscation proceeds on an entirely different footing. In confiscation as contemplated under the Act the deprivation of money or property is on the hypothesis that it does not legally belong to the accused because it is ill-gotten property procured by means of the offence which in the case of a public servant amounts to breach of trust by him qua his employer, the State. Once this hypothesis is carried to its logical corollary by proving the necessary ingredients so as to show that the property or

money in question was procured by means of offence then confiscation of such property or money cannot amount to depriving the accused or the concerned public servant either of his personal liberty or of any property lawfully belonging to him. Hence, confiscation of money or property as provided under the Act cannot be held to be a punishment to the delinquent.” (Indian Kanoon - <http://indiankanoon.org/doc/1078909/>)

Thus although the constitutionality of the Act is still challenged and is pending in the Supreme Court of India, the observation made by the High Court in the above case makes the confiscation of the property of the corrupt officials earned through illegal means legal but if the corrupt person at the end has not been found guilty after the conclusion of the trial then the High Court also directed in the above case that 5% is not sufficient and the interest payable must be at the usual bank rate prevailing during the relevant period for a loan to purchase or acquire similar property because with such low rate of interest the person cannot buy similar property at a later date.

Even the retrospective effect of the Act was also brought to the notice of the High Court and was discussed with all details in the same case. The Special Act did not have separate provisions relating to punishment of offence but only meant to deal with cases of disproportionate property. Earlier after the conclusion of the trial under the Prevention of Corruption, 1988, the Code of Criminal Procedure was followed for the compensation or the confiscation of such property under section 357 and 452 respectively which now has been taken care of by this Special Court with a motto to expedite the confiscation and for this matter needs independent and separate attention as has been done by this court. The overriding effect in this matter was especially taken care of by the Act by taking assent of the President. The petitioners were definitely exposed to the confiscation proceedings but there was no valid ground because it did not disturb the punishment proceedings which went on separately and independently in different court. The PC Act, 1988 also had the provision for the compensation and confiscation and thus there should not be any objection to the provisions which accelerated this process.

If we look to the political side of the Bihar Special Court Act, 2009 we need to know the political bickering and the political procedure that took place during the passing of the Act in the legislative assembly

The bill was initiated by the vigilance department, Govt. of Bihar and was sent to the law department for giving it a legal shape. The department of law sent the act to the Bihar Vidhan Sabha (legislative Assembly) on 3-3-2009 for introducing as a bill before the legislatures.

The Legislative Assembly after the discussion over the issue and an address by the Chief Minister of Bihar was passed same day. Five legislatures had moved their proposals but only three were present in the Assembly- Mr. Kishore Kumar , Mr. Pradeep Kumar and Mr. Lal Babu Roy. The proposals were with regard to making the trial time-bound and also the confiscation process should be initiated not only against the corrupt person but also his family members as the ill-gotten property was divided between near and dear of the corrupt person for the person of concealment. It was also proposed that even the corrupt public representatives must also be tried under the Act and not only the corrupt officials.

They also proposed that the serving judge to be appointed to the fast track court instead of the retired one. It was also brought into the notice of the government not to take any decision in haste and all the issues must be properly considered before enactment.

The proposal to send the bill for study into the Joint select committee could not get through and the bill was passed with majority of the house on 3rd March 2009.

The Act was then sent same day to the Bihar Vidhan Parishad (Bihar Legislative Council) for approval and there also after discussion it was passed on 3rd March 2009 and returned to the Bihar Vidhan Parishad.

Under the procedure on 9th March 2009 (Date of Transmission under Article 200) the bill was sent to the Governor for getting the assent of the President of India because of its overriding effect upon the existing PC Act, 1988 which required the fulfilment of Article 254 of the constitution of India.

The Bill got the assent of the President on 21 January 2010 after about a lapse of almost a year. Then it took a shape of an Act –Act5, 2010. The gazette notification was done on 8th February 2010 by the State Government.

The bill was although passed by the majority of the legislative assembly members but the main opposition party went out of the assembly showing their opposition to the bill and even they did not hear the speech of the Hon'ble CM in the assembly. Secondly, after the bill was transmitted to the Governor by the Legislative assembly Speaker Mr. Uday Narain Choudhary it took almost a year to be returned for want of assent of the President of India as we can see that the bill was signed on 21st January 2010 although it was sent to the Governor on 9th March 2009 for getting the assent. This period cannot be considered a short period because it did not have to follow many procedures at the Central Government and just needed approval of the Home Ministry of the Government of India. This also indicates towards the problems of the parliamentary democracy and the partisan politics pointing out towards the stakeholder analysis of the subject.

Thus we see that the main opposition parties did not support the bill and makes the bill highly political in nature with ruling party trying to gain the mileage out of its election commitment while the opposition trying to deny it. Some of the legislatures did propose to have a proper thinking over the issue and the Act but the bill was not even considered to be sent to the legislative committees for the review. The haste with which the bill was passed is clear when we see that both the legislative houses passed the bill on the same day. The willingness to fulfil the promise of opening the school in the confiscated property of the corrupt officials ruled over the willingness to approach the issue of corruption through wholesome effort. This makes the legislation a political victory than an administrative one.

Chapter 7 Concluding Remarks

Progressing through the background information of the research project along with the lanes of theoretical connectivity amidst the vast literary records available over the subject taking a dip into the ocean of case study in a bid to find out the answers that were framed as the key research question as well as the supplementary questions attached to it which provides the backbone of the research project we have looked through the entire research process that could only be completed after the concluding remarks are provided addressing the research questions in the light of the whole scenario.

Let us have a look at the main research question-what were the values, meanings, importance and impact of the Bihar Special Courts Act, 2009 and the Bihar Special Court Rules Act, 2009 in the control of corruption in the State of Bihar? There are several components in this question which needs separate attention for the clarity of the answer.

To begin with let me clarify that the two Acts-The Bihar Special Court Act, 2009 and The Bihar Special court Rules Act, 2009 are complementary to each other as every Act or framing of laws needs a specified rule to be followed for the achievement of the Act. So, one is the theoretical part while the other is the operational part of the legal system. Thus the two acts should not be confused with each other and that is why the latter has rarely been quoted in the whole research process described earlier. We have mainly concentrated upon the Bihar Special Court Act, 2009.

Looking at the meanings attached to the Bihar Special Court Act, 2009 we can say that while the enactment filled the missing void in the implementation of the PC Act, it also provided a hit formula to fulfil the election promise made by the government of the time. It was neither an original thought of the government of Bihar that went out for its enactment as it was already in practice in the state of Orissa in India nor it was a product of genuine thinking that could be directed towards curbing the corruption in the state of Bihar. The corruption as we have seen under the theoretical constructs over the subject needs to be ruled out by taking host of actions complementary to each other and just a stray action here and there cannot eliminate this phenomenon. Thus the true meaning lies in the fulfilment of the election promise that was clear in its content that the government wanted to confiscate the illegal property of the corrupt officials which may act as a deterrent factor. But in absence of other efforts that are equally important could not be addressed, this small piece of legislation could not be regarded as panacea to this evil. In the literature it could not be found that the Government wanted to get rid of corruption rather the agenda of the political meetings were directed towards confiscation of the illegally earned property and snatching it away from them through the process of confiscation for which speedy trial has been provided.

Looking at the values attached to the Bihar Special Court Act, 2009 we can say that the values largely revolve around the process of confiscation. The Act as we have seen has only made the confiscation process independent part of the ongoing judicial proceeding which was earlier a part of the same judicial

proceeding that used to take place at the end. The confiscation, no doubt, is required to be undertaken, if the guilt of corruption is proved. It not only has the economic value but also social as well as psychological one. The illegally earned property creates the economic distribution disequilibrium for the state in the society and so if it is taken back from them it has some corrective value. The Government school that has been opened in such property adds infrastructural advantage to the state. But in the legal sense as it has been described in earlier chapter, it has been a contentious issue because the confiscation process is initiated as well as concluded even before the actual guilt of corruption is proved. Although the Honourable High Court of Patna has maintained the law it has still been challenged in the Supreme Court of India at Delhi which is the federal court and the much awaited decision can throw new light over the issue. One of the basic principles of natural justice that is based on the simple logic that nobody can be punished without proving his guilt raises the eyebrows of the intelligentsia in the legal world. But the true value lies in sending a message to the highest officials of the state that if earned through the illegal means there property can be taken away by the state and no more the state will tolerate such amassing of wealth. The confiscation in the pre-Bihar Act phase was done at the end of the trial when the guilt was established but since the judicial trial marred by the inconsistency and overburden of cases could not be completed or were completed at such a long time that the confiscation could not be materialized. We have seen prior to this Act since year 2000 no confiscation could be carried out. This shows the lacuna of the judicial dispensation of justice which needs to be taken care of instead of adding new structure to the already overburdened judicial system. In the case of Singapore we have seen that the punishment plays an important role in providing the clean and incorruptible governance and it would be illusionary to think that the confiscation would serve that purpose and goal. It can only play a part role in the whole system.

To assess the impact of the Bihar Special Court Act, 2009, we need to look at both sides-within and without the Department of Vigilance. Since the department of vigilance had been the initiator of this piece of legislation it is important to know what impact it made upon the working of the department in curbing of corruption for which it stood for. We have seen during the course of our research that it has only added stages in the dispensation of corruption cases. Earlier the corrupt person had to face one or two legal cases simultaneously independent of each other but after this Act coming into being a new legal case had to be instituted against the person who had be prima facie been found to have amassed large wealth through illegal means for the confiscation of the property. This has overburdened the department being more engaged in confiscation than concentrating on main issues of detection and deterrence through punishment. We have seen that in the post-Bihar Special Act phase even the trap case had been highest in 2007 have been dwindling down. Trapping a person red handed is an important activity and proves the guilt fast through the already constituted special Court but in after this act coming into being the figure has slowed down although it is still very high compare to the pre-2005 phase when this government was not in power. We have not seen that any new infrastructure has been created in the department or the new recruitment has been done for handling such confiscation cases in the department apart from creating a new agency Special Vigilance Unit (SVU) for investigating the special cases of corruption found

amongst the highest officials of the state. Even the legal cases are being instituted against the ongoing judicial trials with retrospective effect which has further burdened the organisation leading to diversion of ways. Even outside the department it cannot be said with any clarity that it has been able to create any special effect upon the phenomenon of corruption to act as a deterrence factor. The sum of money involved in the total 38 cases is still meagre compare to the money involved in corruption that we have discussed earlier. But it did have impact upon the polity of the time under which the citizens could be convinced that the government has been serious on this front and can cite some examples in which the property of the well known senior officials could be confiscated.

Coming to the last part of the main question that is importance of this legislation we can say that it has some importance because since the state government has little say in the framing of actual law on corruption which is in the territory of the federal government, only such small initiatives could justify their entity for the state voters and its citizenry towards this issue of corruption. The importance also lies in taking back the illegally owned property by the state which cannot be used against the state during the pendency of their judicial trial. The judicial trials are clumsy, costly and time taking. Such illegally earned property could give the corrupt official the much needed advantage in the India judicial scenario which the state government wanted to control. Its importance lies in adding wealth to the state treasury and also in preventing giving advantage to the corrupt officials in their judicial trial. The pleaders had regarded this as a case of double jeopardy to the petitioners of the case in the already discussed high court case although not maintainable by the Court. It is still pending in the federal court of India. The significance also lies in showcasing the government's new adventure towards the curbing of corruption.

Thus in the nutshell it can be said that the legislation was a piecemeal approach directed towards the fulfilment of its specific agenda announced during the election campaign and can be only regarded as a piecemeal approach which cannot serve the main purpose of prevention of corruption. The dragon face of corruption has been defaced by many of the countries like Singapore with their strong political will that let them bring host of related actions in all fields like enactment of proper laws, creation of independent and powerful agency, fast adjudication as well as enunciating efficient governance principles. The adjudication to which belong this Act is not able to bring any change in the overall punishment system and even in the High Court proceedings it has not been regarded as a punishment, it goes without saying that the political will and the deterrence factor has been in the heart of this enactment.

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Appendices- I

Interview of Mr. Rajesh Kumar, Special P.P

Mr. Rajesh Kumar, Special Public Prosecutor, Special Court of Vigilance, No. II, Patna, Bihar (India) is the Key Informant in respect to my research topic because he is situated between the court proceedings and the administrative actions and is better placed for information about both the sides apart from his having correct information for cases under trail and the persons involved in it, in the light of my research topic "effectiveness of the Special Court Act, 2009" over control of corruption in Bihar.

The interview appointment has been taken from Mr. Rajesh Kumar for 19th August 2012 (Sunday) between 10 am to 11 am over telephone on his telephone no- +91943149447. The interview has been agreed upon by him over the telephone on the request made by the researcher (me) as there has been continental difference in distance (thousands of kilometers) between the interviewer and the interviewee.

The consent for the recording of the interview was also taken from the interviewee by the interviewer and the facts of the matter could be legally used by the interviewer for his research work subject to further approvals required in this regard.

The interview being highly technical in nature and the issue being a burning one, it was decided to go for the structured interview type under which some important questions shall be formulated before the interview for keeping the interview on track and also due to the researcher being a new person handling interview of any sort subject to the formal approval of my Supervisor.

Questions:---

1. How long you have been serving in the court and what are your experiences in exact terms in handling the criminal proceedings and to be more specific with regard to handling the cases of corruption?

Answer-

2. What differences do you find in the handling of cases of corruption and the general criminal cases in terms of tools of effectiveness such as deficiency or clarity of law, etc.

Answer-

3. How important do you regard the law enacted by the Government of Bihar (Bihar Special Court Act, 2009) in terms of controlling corruption? Do you think that such enactment filled the void that was existent in the Prevention of Corruption Act, 1988 which is the base law for the whole country in this respect? Does this also point out towards the deficiency of legal system of India in general as well?

Answer-

4. How many cases have come to your court (Special Court No. II, Vigilance, Bihar, Patna) and out of that how many have been disposed off and what have been the special features of these

cases?

Answer-

5. What has been the most important aspect of the Act- Time limit or the confiscation of property before the actual trial of the case i.e the combined monetary as well as non- monetary punishment that has made the corruption a high risk phenomenon?

Answer-

6. The trap cases followed by the vigilance raids followed by the proceedings were the hall mark of vigilance department since beginning. What change do you think has come after coming of this Act in the general behavior of the department?

Answer-

7. I have figures to show that there were about 16855 Complaints cases that were registered by the vigilance ([www.money control.com/news/](http://www.moneycontrol.com/news/) wire news on 27 February 2012) in last ten years and out of this total trap cases are just 496 about and out of this cases converted to Disproportionate Assets Case has been 43 which is being tried by the Special Court? How do you regard this phenomenon? How objectively cases are studied and neutrally selected, trap carried out and then converted into the DA case? In respect to the proceedings of the special court do you think that such conversion do not arise out of any discretion but are rather based upon the objective and transparent criteria?

Answer-

8. What have the important observation of the higher courts of India with regard to the provisions of this Act and also upon general control of corruption in the state of Bihar or India as a whole?

Answer-

9. Does the effectiveness of the Special Court under 2009 or other tools of vigilance like SVU reflect the weak institutional strength and also the weak monitoring mechanism of the departments or even the lacuna in the dispensation of justice?

Answer-

10. Although this is a new Act but since you already have handled lot of cases successfully do you think there is still any lacuna in this law on corruption or do you have some suggestion that could affect the dispositions of the cases more successfully than earlier?

Answer-

Thank you so much for your valuable time and reach information and highly technical suggestions. We will provide you the copy of the research work as and when completed.

Appendices II Vigilance Cases under trial in the Bihar Special Court, 2009

1. Narayan Mishra, IPS
 2. S S verma, IAS
 3. D N Choudhary, BAS, Director, Rajbhasha, Cabinet Department
 4. Yogendra Kumar jaiswal, drug Controller, Patna
 5. Awadhesh Prasad Singh, Chief Engineer, Minor Irrigation Department
 6. Srikant Prasad, Executive Engineer, Rural Works Department
 7. Suresh Prasad, Assistant Registrar, Cooperative Department,
 8. Kalka Prasad, IAS
 9. Naga Ram, Regional Deputy Director, Education
 10. Sanjay Kumar, Excise Superintendent, Excise Department
 11. Anil Kumar, assistant Commissioner, Commercial Taxes Department
 12. Wakil Prasad Yadav, Commercial Taxes Officer
 13. Madan Prasad Srivastava, Executive Engineer, National Highway
 14. Bhola Prasad, Regional Forest Officer
 15. Devendra Sharma, District manager, Bihar State Food Corporation
 16. Gopikant mishra, Excise Superintendent, Excise Department
 17. Ram Naresh singh, Superintendent Engineer, Bihar State Electricity Board, Patna
 18. Bhola Ram, Education Superintendent
 19. Bal Roop Das, Joint Secretary, Commercial Taxes Department
 20. Dr. Md. Jamaluddin, Civil Surgeon, Saharsa
 21. Dr. Ambuj Kumar, Assistant Director, Municipality
 22. D N Roy, Superintendent Engineer, PHED, Bhagalpur
 23. Manoj Mankar, Examination Controller, ITI
 24. Ajay Kumar Prasad, GM cum Chief Engineer, Bihar State Electricity Department
 25. Akhilesh Kumar Sharma, Executive Engineer, Building Construction Department
 26. Hirakant Jha, Superintendent Engineer, Building Construction Department
 27. Dineshwar Paswan, Secretary, Bihar Intermediate Council, Patna
 28. Birendra Narain Sharma, Executive Engineer, Building Construction
 29. Nand Kishore Verma, Circle Officer, BAS, Begusarai
 30. Sonelal Hembram, Deputy Commissioner, Excise Department
 31. Om Prakash Singh, Weight & Measures Inspector
 32. Kapil Muni Roy, Mobile Inspector, Transport
 33. Raghuvansh Kunwar, Motor Vehicle Inspector, Transport
 34. Yogendra Kumar Singh, Revenue Officer, Municipality
 35. Girish Kumar, Assistant, Treasury, Patna
 36. Shyam Narain Singh, Mining Inspector, Department of Mines
 37. Ravindra Prasad Singh, weights and Measures
 38. Satish Kumar Singh, Junior Engineer, National Highway Division, Nalanda
 39. Tribhuvan Roy, Enforcement Sub-Inspector, Transport
 40. Amitabh Arun (Son and Computer Programme, DRDA, Patna) and Srimati Ratna Ganguly (Mother and Singer in Inf
 41. Ramashray Prasad, Weights and Measures Inspector, Banka
 42. Rana Parikshshank Gupta, Police Sub-Inspector, Muzaffarpur
 43. Ramashish Singh Yadav, Steno, State Science and Technology Department
 44. Surendra Prasad, Head Clerk, Civil Surgeon Office, Motihari
 45. Laxman Prasad, Head Clerk, Industrial Training institute, Digha, Patna
- Total Amount involved- 35,61,70,533/00**

