

# INSTITUTIONAL ARRANGEMENTS TO COMBATING CORRUPTION: A COMPARATIVE STUDY INDIA'S (C.B.I) AND HONG KONG'S INDEPENDENT COMMISSION AGAINST CORRUPTION (I.C.A.C)

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## 1. Introduction

Corruption is a global phenomenon and has serious implications and consequences for the growth of democracy, promotion and protection of fundamental rights. There is a wide spread perception that the level and pervasiveness of corruption gains significance<sup>1</sup>.

Corruption in any form treated as an incurable disease is caused by many social and economic evils in the society. It damages the moral and ethical fibers of the civilization. Undisputedly, corruption breeds many evils in the society. Once the seed of corruption starts growing it takes roots slowly and gradually and cancerously. It passes through the whole Nation and becomes a perilous disease<sup>2</sup>. Corruption has been considered one of greatest challenges impeding the growth of contemporary India. Though India's economy stands tall and firm, it has not realized its true potential as corruption has, in the present scenario, inhibits and undermines not only the economic growth, but also the effective functioning of democracy. Corruption, a social menace, has made our country susceptible to and defenseless against the oncoming forces of anti-social elements. Corruption in India is a consequence of the nexus between bureaucracy, politics and criminals. India is now no longer considered a soft State. It has now become consideration State where everything can be had for a consideration. Corruption has a corrosive impact on economy. It worsens our image in the international market and leads to loss of overseas opportunities.

There are several social evils in the society which ruin people, particularly the younger generation. The evils are, terrorism, smoking,

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1 Harriss-White, B. and G. White, Editorial Introduction: Corruption, Liberalization and Democracy, in B. Hasrris-White (eds), Liberalization and the new Corruption, Vol.27,No.2, 1996,p.1.

2 Nye, Joseph S., "Corruption and political development: A cost-benefits analysis" American political Science Review, Vol.61.No.2, June 1967, p.417.

drinking, drug addiction, immoral trafficking, cheating, fraudulent activities, obscene and vulgar scenes in cinemas and TV channels, dowry, corruption, bribery, adulteration of foods and lifesaving medicines, pollution of the atmosphere, air, soil and water by the industrial effluents and poisonous gasses. If it is reflected on this deeply one could come to the conclusion that the fundamental reason for these evils is the pollution of the mind of human beings, which is a consequent result of man's selfishness and egoism.

More importantly, corruption in India flows from the political class. It manifests latently in party activities and election funds. Further, political patronage gives an aura of invincibility and respectability to corruption and deprives it of all moral and legal fears. David Bayley observes that "The presence of corruption is an important hindrance to economic growth and progressive social change"<sup>3</sup>.

It is now commonly agreed that corruption has vitiated India's public life like a cancer spreading over a human body. All sectors, be they administrative or political or economic, have come under the ever-increasing onslaught of corruption. There are many reasons as to why this has happened. Political actors of all shades including Ministers, Legislators, office-bearers of political parties, and other political office-holders are involved in corruption<sup>4</sup>.

The Nation's progress is seriously hampered by all pervasive corruption. Weeding out corruption today is a major challenge before Indian society. To eradicate the evil of corruption, the Central Government has enacted Anti-Corruption Laws<sup>5</sup> to deal with the prevention of corruption and constituted commissions such as Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI) and Anti-Corruption Bureau (ACB) to enforce the Anti-Corruption Laws effectively

The Santhanamm Committee on the prevention of corruption in India defines the corruption as "any improper or selfish exercise of

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3 Bayley David. H "The Effects of Corruption in a Developing Nations", Western Political Quarterly, Vol. XIX, No. 4, (1996) p. 719-732

4 Padhay K.S. "Corruption in Politics: A Case Study". New Delhi: B.R. Publishing Corporation. 1986.

5 The Prevention of Corruption Act, 1947, Sections 161 to 165A of the Indian Penal Code, The Criminal Law Amendment Act, 1944, The Prevention of Corruption Act, 1988, Prevention of Money Laundering Act, 2002, and Right to Information Act, 2005.

power and influences attached to a public office or to the special position one occupies in a public life<sup>6</sup> Corruption is the use of public office for private gain: “It is the effective implementation of the rule of law that confers legitimacy on the State. If the rule of law is compromised by corruption, the State loses its legitimacy<sup>7</sup>”.

## **2. Legal frame work for combating corruption**

To combat this devastating corruption Indian penal code (IPC) was the main tool during the pre-independence period. The code had a chapter on “offences by public servants”. Section 161 to 165 provides the legal framework to prosecute corrupt public servants. At that time the need for a special law to deal with corruption was not felt. But the Second World War created menaces (shortages). Taking advantage of that situation the unscrupulous elements exploited the situation which led to large scale corruption in public life. Then the law makers sincerely felt that drastic legislative measures needed to be taken immediately. Hence the Prevention of Corruption Act, 1947 was enacted to fight the evils of bribery and corruption.

This Act did not redefine nor expand the definition of offences resulted to corruption, already existing in the IPC. However, the law defined a new offence ‘criminal misconduct in discharge of official duty’ for which enhanced punishments was stipulated. Later in 1988, the Prevention of Corruption Act was enacted. It consolidates the provisions of the Prevention of Corruption Act 1947, the Criminal Law Amendment Act, 1952 and some provisions of IPC. It has also certain provisions intended to combat corruption effectively among public servants. In this Act the term ‘Public Servants’ is broadly defined and a new concept ‘Public Duty’ is introduced. Besides, trail on cases by Special Judges.

Recently, in the way of combating corruption, the prevention of Money Laundering Act 2002 was enacted empowering the Directorate of Enforcement, India, and Financial Intelligence Unit, India to investigate and prosecute such public servants who hold ill-gotten wealth in foreign countries and transfer to their homeland through money laundering. Further, since secrecy in public administration breeds corruption. The

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6 Kashyep, Subhash C., *The Ministers and Legislators*, Metropolitan, New Delhi, 1982, p.16.

7 Vittal. N, Former Central Vigilance Commissioner, paper presented at the Rotary District Conference, New Delhi, 2002

Right Information Act, 2005 has been enacted aiming at ensuring efficiency, transparency and accountability in public life. This is a revolutionary step towards the eradication of corruption from public life.

In pursuance of the recommendations made by the Committee on Prevention of Corruption, popularly known as the Santhanam Committee, the Central Vigilance Commission was set up by the Government of India by a Resolution dated 11.2.1964. At the federal level, key institutions are include the Central Vigilance Commission (CVC), The Central Bureau of Investigation (CBI), The Office of the Comptroller and Auditor General (C&AG) and the State Level Anti-Corruption Bureaus (ACB) of each State are created to combating the corruption in India. This article asses the roles and functions of CBI to eradicate corruption in India and compare the one of the successful anti-corruption agency in Hong Kong's Independent Commission Against Corruption (ICAC).

### **3. Institutional frame work to combat corruption in India**

#### **3.1 Central Bureau of Investigation (CBI)**

During the World War II, the Government of India issued an ordinance in 1943 constituting a Special Police Force for the investigating of certain offences committed in connection with the affairs of the Central Government. The said ordinance lapsed with the end of the war. In the year 1946, the Parliament enacted the Delhi Special Police Establishment Act, 1946. The Act was intended to create a Special Police Establishment, a specialized agency, for making enquiries and investigations into certain specified offences. Section 5 of the Act provides that the Central Government can, with the concurrence of the State Governments, extend the jurisdiction of the SPE to all States.

Special Police Act is envisaged as supplementary to the State police forces, enjoying great powers of investigation in cases notified under section 5 in respect of offences notified under section 3 of the DSPED Act, 1946 which can of course be exercised in a State only with the consent of the Government of that State. The Central Bureau of Investigation in its present form came into being in 1963 through the resolution adopted by the Government of India pursuant to the recommendations of the Committee on Prevention of Corruption

(Santhanam Committee). The Resolution also specified the types of cases which would be investigated by the CBI, which of course continues to derive its legal powers for investigation from the aforesaid Act<sup>8</sup>.

The Central Bureau of Investigation (CBI) was the successor police organization to the Delhi Special Police Establishment (DSPE). The DSPE Act granted the DSPE the jurisdiction to work alongside State Governments and to investigate categories of crimes allegedly committed by Central Government employees or offenses connected to the departments of the government. As India's economy continued to grow, there was concern that the number of investigations needed would overwhelm the DSPE. In response, the government passed Resolution No. 4/31/61-T in 1963, creating the CBI and merging it with the DSPE<sup>9</sup>.

The legal powers of investigation of CBI are derived from the DSPE Act 1946. This Act confers concurrent and coextensive powers, duties, privileges and liabilities on the members of Delhi Special Police Establishment (DSPE) with Police Officers of the Union Territories. The Central Government may extend to any area, besides Union Territories, the powers and jurisdiction of members of the CBI for investigation subject to the consent of the Government of the concerned State. While exercising such powers, members of the CBI of or above the rank of Sub Inspector shall be deemed to be officer's in charge of Police Stations of respective jurisdictions. The CBI can investigate only such of the offences as are notified by the Central Government under the Delhi Special Police Establishment Act, 1946.

The CBI became responsible for the "investigation of crimes then handled by the D.S.P.E., for collection of intelligence relating to certain types of crime, participation in the work connected with Interpol, maintenance of crime statistics, study of specialized crimes and coordination of laws relating to crime." The CBI retains the investigative powers of the DSPE<sup>10</sup>. Initially, the CBI only had the power to investigate offenses in the Union Territories<sup>11</sup>.

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8 Law Commission of India, One hundred sixty first report on Central Vigilance Commission and Allied Bodies, 1998.

9 CBI manual, 182, Para. 1.6 ("in fact, with the establishment of CBI on 1<sup>st</sup> April, 1963, the Delhi Special Police Establishment was made one of its divisions, viz. 'investigation and Anti-Corruption division.'").

10 CBI manual, 182, Para. 1.7. the CBI's manual states:

The CBI's jurisdiction extends to other States who agreed to this augmentation of control. In comparison to state and local police, the CBI is arguably superior. As a first step in that direction the Government of India have decided to set up with effect from 1<sup>st</sup> April, 1963 a Central Bureau of Investigation<sup>12</sup> at Delhi. Over the years the character of the CBI has undergone a significant change. Its role is no longer restricted to anti-corruption activities. It is being increasingly called upon to investigate the conventional crimes and banking and other economic offences. Of course, the main thrust of its functions continues to be on the detection and investigation of offences of bribery and corruption committed by public servants under the control of the Central Government and its undertakings.

**Motto of CBI:**

- Industry, Impartiality and Integrity

**Mission of CBI:**

- To uphold the Constitution of India and law of the land through in-depth investigation and successful prosecution of offences; to provide leadership and direction to police forces and to act as the Nodal Agency for enhancing inter-state and international cooperation in law enforcement.

**Vision of CBI:**

Based on motto, mission and the need to develop professionalism, transparency, adaptability to change and use of science and technology in our working, the CBI will focus on.

1. Combating corruption in public life, curb economic and violent crimes through meticulous investigation and prosecution.
2. Evolve effective systems and procedures for successful investigation and prosecution of cases in various law courts.

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[this] act confers concurrent and co-extensive powers, duties, privileges and liabilities on the members of Delhi Special Police Establishment (CBI) with Police Officers of the Union Territories in relation to the investigation of offences notified by the Central Government under Section 3 of the act and arrest of persons concerned in such offences.

11 Delhi Special Police Establishment Act, No. 25 of 1946, § 2 (India).

12 Rama Krishna P.V "A treatise on Anti-Corruption Laws in India" Hyderabad, S.Gogia & Company, 2009.p.1907

3. Help fight cyber and high technology crime.
4. Create a healthy work environment that encourages team-building, free communication and mutual trust.
5. Support state police organizations and law enforcement agencies in national and international cooperation particularly relating to enquiries and investigation of cases.
6. Play a lead role in the war against national and transnational organized crime.
7. Uphold Human Rights, protect the environment, arts, antiques and heritage of our civilization.
8. Develop a scientific temper, humanism and the spirit of inquiry and reform.
9. Strive for excellence and professionalism in all spheres of functioning so that the organization rises to high levels of endeavor and achievement.

### **3.2 Functions of CBI**

The CBI is the premier investigating police agency in India. It is an elite force playing a major role in preservation of values in public life and in ensuring the health of the national economy. It is also the nodal police agency in India which coordinates investigation on behalf of Interpol Member countries. The services of its investigating officers are sought for all major investigations in the country. It was constituted under the following six heads:

- i) Investigation and Anti-Corruption (Delhi Special Police Establishment).
- ii) Technical Division
- iii) Crime Records and Statistics Division
- iv) Research Division
- v) Legal and General Division
- vi) Administrative Division.

### **3.3 Investigation and Anti-Corruption Division (Delhi Special Police Establishment)**

- 1) Cases in which public servants under the control of the Central Government are involved either by themselves or along with State Government servants and or other persons.
- 2) Cases in which the interests of the Central Government or of any public sector project or undertaking, or any statutory

corporation or body set up and financed by the Government of India are involved.

- 3) Cases relating to breaches of Central Laws with the enforcement of which the Government of India is particularly concerned, *e.g.*
  - a) Breaches of Import and Export Control orders.
  - b) Serious breaches of Foreign Exchange Regulation Act.
  - c) Pass port frauds.
  - d) Cases under the Official Secrets Act pertaining to the affairs of the Central Government.
  - e) Cases of certain specified categories under the Defense of India Act or Rules with which the Central Government is particularly concerned.
- 4) Serious cases of cheating or fraud relating to the Railways, or Posts and Telegraphs Department, particularly those involving professional criminals operating in several States.
- 5) Crime on the High Seas
- 6) Crime on the Airlines
- 7) Important and serious cases in Union Territories particularly those by professional criminals.
- 8) Serious cases of fraud, cheating and embezzlement relating to Public Joint Stock Companies.
- 9) Other cases of serious nature, when committed by organized gangs or professional criminals, or cases having ramifications in several States including Union Territories, serious cases of spurious drugs, important cases of kidnapping of children by professional inter-state gangs, etc. These cases will be taken up only at the request of or with the concurrence of the State Government /Union Territories Administrations concerned.
- 10) Collection of intelligence about corruption in the public service and projects and undertakings in the public sector.
- 11) Prosecution of cases investigated by this Division.
- 12) Presentation of cases before Enquiry officers in which departmental proceedings are instituted on the recommendation of this Division.

### **3.4 Functions of the Technical Division**

Following are the functions of the Technical Division



- 1) Technical assistance in investigation of cases involving accounts.
- 2) Specialized assistance incases involving Railway and Postal accounts.
- 3) Assistance in cases involving assessment of Income-Tax, Excise Duty etc.
- 4) Examination of accounts and assets etc., in cases relating to allegations of disproportionate assets.
- 5) Examination of cases investigated by the Bureau which have an Income-Tax aspect, and communication of information with a view to enabling the Income-Tax Department to recover the evaded tax.

### **3.5 Crime Records and Statistics Division**

- 1) Maintenance of All-India Statistics of crime.
- 2) Study of All-India trends in thefts and losses, and recoveries of fire-arms and ammunition, and note forgery and counterfeit coining.
- 3) Collection and dissemination of information about important Inter-State criminals.
- 4) Preparation and circulation of reports and reviews relating to crime in India

### **3.5 Functions of Research Division**

- 1) Analysis and study of specialized crimes and of problems of a general nature affecting the Police, *e.g.*
  - i) trends and causes of serious crimes in different areas.
  - ii) Preventive measures, their effectiveness and relationship with crime.
  - iii) Improvement in methods of investigation, utility and results of introducing scientific aids and equipment.
  - iv) Inadequacy of laws; co-ordination of laws relating to crime in various States.
  - v) Criminal gangs operating in more than one State wandering gangs-Ex-criminal Tribes-habitual offenders.
  - vi) Crime amongst the Tribal people
  - vii) Inter-state note-forgery and counterfeiting.
  - viii) Social factors in crime.
  - ix) Industrialization and crime.

- x) Juvenile delinquency.
- xi) Kidnapping of women and children.
- 2) Participation in the work of Central Forensic Science Advisory committee and the Central Medico Legal Advisory Committee.

### **3.7 Functions of Legal and General Division**

#### **3.7.1 Legal Division**

- 1) Legal advice in cases investigated by the investigation and Anti- Corruption Division.
- 2) Conducting prosecution in important cases.
- 3) Review of judicial decisions relating to criminal law and procedure for publication in the Central Bureau of Investigation Gazette.
- 4) Compilation and circulation of Law Digest.
- 5) Inadequacy of and amendments to laws.
- 6) Co-ordination of laws relating to crime in various States.

#### **3.7.2 General Division**

- 1) Matters relating to organization, policy and procedure.
- 2) Inter-State conference relating to crime and anti-corruption work.
- 3) Appreciation reports regarding modes of corruption in various Government Departments and Public Undertakings.
- 4) Correspondence with Ministers and States on general questions relating to Policy, procedure, etc.
- 5) Training Courses in Anti-corruption work.
- 6) C.B.I. Gazette.
- 7) Photographic section.

#### **3.7.3 Administration Division**

All establishment and accounts matters.

CBI investigations have a major impact on the political and economic life of the Nation. The following broad categories of criminal cases are handled by the CBI:

- i. **Anti Corruption Division:** Cases of corruption and fraud committed by public servants of all Central Govt.

Departments, Central Public Sector Undertakings and Central Financial Institutions.

- ii. **Economic Crimes Division:** Deals with cases including bank frauds, financial frauds, Import Export & Foreign Exchange violations, large-scale smuggling of narcotics, antiques, cultural property and smuggling of other contraband items etc.
- iii. **Special Crimes Division:** Deals with cases such as cases of terrorism, bomb blasts, sensational homicides, kidnapping for ransom and crimes committed by the mafia/the underworld.

Table 1 CBI Convictions

<u>Year</u>	<u>Conviction Rate</u>
<u>2008</u>	<u>66.2%</u>
<u>2007</u>	<u>67.7%</u>

Source: CBI manual 2009

The Central Bureau of Investigation is the Principal investigative agency of the Union Government in anti-corruption matters. It is observed that the conviction rate of CBI is nominal because it is the highest anti-corruption agency to prevent corruption in India. Even though this institutions conviction rate is not up to the mark. It shows that so many lacunas in investigation division and prosecution division. The prosecution has failed to prove the guilty of the accused person.

This makes one doubt the sincerity of CBI. This data clearly suggests that the CBI has to be strengthened more legally and more powers should be entrusted so that it could function effectively and afford for the benefit of many and for the nation's development.

#### **4. Hong Kong's Independent Commission Against Corruption (ICAC)**

Although it may seem unimaginable today, corruption was widespread in Hong Kong during the 1960s and early 1970s. Bribery was regarded as a necessary evil and a way to get things done. The police department was in charge of investigating corruption offences. The effectiveness of the Police, however, was limited as corruption

syndicates within the force were particularly prevalent and bribe-taking was institutionalized in most city administrations. A turning point was reached first due to a corruption scandal involving a senior police officer. Peter Godber's flight from prosecution. Shortly thereafter, Governor Sir Murray MacLehose empanelled a commission under the chairmanship of Justice Alastair Blair-Kerr<sup>13</sup>. The Blair-Kerr Commission concluded that corruption was systemic in Hong Kong; high level officials as well as police officers on the street were accepting bribes. In response, the Blair-Kerr Commission recommended the establishment of a special agency to investigate allegations of corruption, prevent bribery in business and government, and educate citizens about corruption through outreach programs.

It was against this background that the Independent Commission Against Corruption (ICAC) was established in February 1974 in order to respond to the public's call for action against widespread corruption by the Crown Colony. The ICAC was given the two main tasks of rooting out corruption and restoring public confidence in Government. In order to win the confidence of the public, the ICAC was separated from the rest of the civil service and made directly accountable to the Governor of Hong Kong. In order to enable the Commission to tackle the problem at the source, the ICAC was given the task of carrying out an integrated three-pronged attack on corruption—*investigation, prevention and public education*. Political authorities recognized that “an essential part of the strategy was to ensure that the legal framework within which [the ICAC] was contained was as strong, clear and effective as it could be made<sup>14</sup>.”

To achieve the objectives set out for it, the Commission was provided with the necessary legal powers as well as sufficient resources. Tough and high-profile law enforcement action quickly convinced the public that the government and the ICAC were serious about curbing corruption, with the ICAC making every effort to plug corruption loopholes in both the public and private sectors. In order to foster a culture of integrity, the Commission also launched public education campaigns aimed at impressing upon the people that corruption was an evil as well as to enlist their support in reporting on corrupt individuals.

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13 Bertrand De Speville, “Hong Kong: Policy Initiatives Against Corruption” (Paris: OECD Development Centre Studies, 1997).

14 *ibid.*

ICAC is often cited as an example of a successful anti-corruption agency, and has been used as a model for the establishment of agencies in both developed and developing countries. ICAC's strategy has proven effective because of a combination of factors including its legal framework, budget and staffing capacity, and the work of the commission in both prevention and prosecution<sup>15</sup>.

#### **4.1 Legal framework**

Essential to the work of ICAC is the legal framework within which it operates: The Prevention of Bribery Ordinance (POBO) enacted in 1971, and amendments made to the Prevention of Corruption Ordinance (POCO), and Corrupt and Illegal Practices Ordinance (CIPO) to make these legal instruments stronger, clearer and more effective.

#### **4.2 Scope of action**

At its creation ICAC was given a three-pronged strategy: to investigate allegations of corruption, to prevent corruption by the improvement of public sector procedures and systems, and to educate the public about corruption and secure their support in the fight against it. Additionally, Isaac's operational arms were given the backing and support of the highest governmental authorities in order to, not only investigate all public officials without regards to their position, but also to pursue corruption in the private sector. ICAC however, cannot prosecute suspects. This is the responsibility of the country's Secretary for Justice, a prosecutorial restriction that is maintained as a safeguard against the possible misuse of power by the commission. It is the Commissioner's responsibility to present the evidence to the Secretary for Justice so he/she can decide whether or not to proceed with a criminal prosecution

#### **4.3 Independence and accountability**

ICAC was specifically designed as an independent agency, separate from the police force and other crime prosecution units, with the head of the organization, the Commissioner, responsible directly to the country's Governor (Chief Executive after 1997). The commission was

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15 Pope J. "Confronting Corruption: The elements of a National Integrity System" in Transparency International Source Book, 2000. Berlin: T.I.

given the resources and manpower necessary to fund and perform its operations, and provided with independence of action as reflected by:

Commissioner's responsibilities are

- i. freedom from the direction or control of any organization or person,
- ii. accountability directly to the Chief Executive, Executive Council, Legislative
- iii. Council and to five citizen committees
- iv. freedom in the management of staff and resources,
- v. total access to vital information,

The ability to investigate the highest levels of public authority, the powers of search, seizure of assets and arrest of suspects conferred to the officers of the commission<sup>16</sup>.

#### **4.4 Staffing and budget**

Isaac's success is also derived from the ability of the Commission to employ professional, qualified and unquestionably honest staff. Appointments are made for a fixed 2-3 year period, and the officer's background, including potential conflicts of interest is scrutinized carefully. Officers are restricted from political activity and the highest standards of conduct and discipline are expected. Dismissal need not be justified on the grounds of conduct, as a loss of confidence in the integrity of the officer is enough to remove him/her from the post<sup>17</sup>.

#### **4.5 Community participation**

From the onset, ICAC sought the public's involvement and support to conduct its activities. It carried out educative and awareness campaigns with the support of community educators, convincing citizens of the need to report and denounce corrupt activities, monitoring public perceptions on corruption, and using the media to publicize the achievements of the organization. In addition, citizens play a vital role in monitoring the commission's actions, as four committees comprised of

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16 Quah J. "Accountability and Anticorruption Agencies in the Asia Pacific Region in Combating Corruption in Asia Pacific Economies" Paper presented at the joint ADB-OECD Workshop. Manila, ADB.

17 Independent Commission Against Corruption, ICAC: [www.icac.org.hk/](http://www.icac.org.hk/)

prominent community members scrutinize the activities of the each of the Commission's departments and provide advice to the Commissioner, while the ICAC Complaints Committee handles all public complaints made against the Commission and its officers.

It is Isaac's three-pronged strategy that has merited the attention of other countries, which have tried to copy it and apply it to their own circumstances, specifically, the recognition that prosecution of corruption cannot work separately from a campaign to educate the public and change public perceptions on the dangers of corruption. The successful work of ICAC in controlling a deeply rooted, systemic corruption problem is recognized to stem from its independence of action and strong legal powers. Apart from its effectiveness in curbing corruption, Isaac's special success lies in the change of public attitudes that has occurred in the Hong Kong community, from a widespread tolerance of corrupt activities to the public's outright rejection of corruption<sup>18</sup>.

The ICAC controls corruption through three functional departments: investigation, prevention, and community relations. Largest among the departments is the Operations Department that investigates alleged violations of laws and regulations. Almost three-fourths of the ICAC's budget is allocated to the Operations Department and many talented officials gravitate to that department. The Corruption Prevention Department funds studies of corruption, conducts seminars for business leaders, and helps public and private organizations identify strategies to reduce corruption. The Prevention Department has funded several thousand studies for public sector agencies and businesses in Hong Kong. These studies inform an interested public about how corrupt officials adjust to changes in laws and regulations. The Prevention Department therefore regularly reviews laws and suggests revisions on the basis of conclusions from its studies. The Community Relations Department informs the general public of revisions of laws and regulations. Its role is to build awareness of the dangers of corruption by poster campaigning, television commercials, and even films dramatizing the investigation and apprehension of corrupt officials by ICAC officers.

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18    *ibid.*

#### **4.6 Mandate and institutional links of the key anti-corruption agency**

The Independent Commission against Corruption (ICAC) was established on 15 February 1974, by virtue of Section 3 of the ICAC Ordinance as the primary body for combating corruption applying the three-pronged approach of prevention, investigation and public education. The ICAC consists of the Commissioner as the head, together with the Deputy Commissioner – both of whom are appointed by the Chief Executive (Subsection 5[3] and Section 6, ICAC Ordinance)–and officers as appointed. The ICAC Ordinance also provides the charter of the Commission and, together with the POBO, also provides for the ICACs mandate. Section 6 of the ICAC Ordinance provides that the Commissioner is responsible for direction and administration of the ICAC, subject to the orders and control of the Chief Executive. Furthermore, the ICAC Ordinance provides that the Commissioner shall not be subject to the direction or control of any person other than the Chief Executive. The Commissioner has the power to appoint officers to the ICAC (Section 8, ICAC Ordinance). Under Section 17 of the ICAC Ordinance, the Commissioner shall submit, on an annual basis, a report on the activities of the ICAC to the Chief Executive. In accordance with Section 4 of the ICAC Ordinance, the expenses of the Commission are charged to the general revenue, i.e. the ICAC receives its resources from the government. The ICAC is independent in terms of structure, personnel, finance and power. Organizationally the ICAC comprises the office of the Commissioner and three functional departments–Operations; Corruption Prevention; and Community Relations–served by the administration branch. The division of labor between these departments mirrors the three-pronged approach of the ICAC in the fight against corruption: investigation, prevention and public education.

#### **4.7 Operations Department**

The Operations Department is the investigative arm of the ICAC and is its largest department. Operations include investigations into the law-enforcement services, the public service, banking, the private sector and elections. Fraud is a police responsibility, but the receiving of illegal commissions is handled by the ICAC. In that respect, by virtue of Section 10 (a to g) of the ICAC Ordinance, the Director of the Operations Department is enabled to authorize his or her officers to



restrict the movement of a suspect, to investigate bank accounts and safe deposit boxes, to restrict disposal of a suspect's property and to require a suspect to provide full details of his financial situation. The ICAC may arrest and detain persons (without a warrant) in its own centre for up to 48 hours (for the offences indicated in the ICAC Ordinance and the POBO). The Department can also collect and detain any evidence for such offences. From time to time, ICAC officers engage in undercover activities. While initially, the ICAC was allowed to issue search warrants, this has now become the sole responsibility of the courts.

#### **4.8 Corruption Prevention Department**

The Corruption Prevention Department is the smallest unit within the ICAC. The role of the Department is to examine practices and procedures of government departments and public bodies, identify corruption loopholes and make recommendations to reform work methods for reducing the potential for graft. Prevention is claimed to be more cost-effective than prosecution. Prevention includes making recommendations on good business practice to minimize temptation and risks. Recommendations are mandatory for the public sector and advisory for private businesses. Focus is given to changing systems rather than people. To this end, corruption prevention specialists are dispatched to various government departments to examine their procedures and practices with a view to removing all loopholes for corruption. Assistance is also rendered when necessary to help departments produce codes and guidelines on staff conduct. The Department is also involved in the early stages of policy formulation and in the preparation of new legislation to close down opportunities for corruption.

#### **4.9 Community Relations Department**

The Community Relations Department consists of two divisions dealing respectively with the mass media and the public. The Department is responsible for educating the public about the evils of corruption and for harnessing popular support for the ICAC. It conducts an intensive education programmed in the community. Every year, staff of the Department meets managers of the business sector, head teachers, teaching staff and students of schools and tertiary institutes, anti-bribery legislation, especially relevant past cases, penalties and consequences of

corruption. Community relations and education are concerned with helping people to develop attitudes against corruption. The success of these efforts depends in part on successful court cases and their publicity, thus providing a credible threat of prosecution. Workshops, seminars, training programmers and various formats are adapted to reach the targets and so-called prevention packages are handed out. The Department has brought about a revolution in the public's attitude towards corruption. An important tool for the ICAC in combating corruption is Section 10 of the POBO—possession of unexplained property—which provides that individuals who maintain a standard of living or have financial resources which are beyond his or her levels of income and cannot provide a satisfactory explanation for how he/she can maintain such a standard of living or how the financial resources were gained is considered guilty of an offence. The ICAC uses the media for deterrence and educational purposes. A series of announcements in the public interest have been produced for television and radio explaining the efforts of the ICAC with three main themes: appeals to the public to report corruption; warnings that corrupt practices are likely to be discovered and that dire consequences will follow; and pleas for honest dealings for the benefit of society. Education packages are also provided for schools.

The ICAC is the primary body responsible for fighting corruption and as such, extensive powers have been vested in it in order to enable the Commission to effectively fulfill its mandate. In view of the extensive investigative powers enjoyed by the ICAC, a system of checks and balances has been put in place in order to prevent these powers from being abused.

The ICAC functions only according to law, and there are numerous structures that provide at least some scrutiny of its operations. "The ICAC is often likened to the watching of society," ICAC literature says. "But who watches the watchdog?"<sup>19</sup> There is a compliant committee; an Advisory Committee on Corruption, which looks into ICAC actions; and a separate committee to oversee the activities of each of the three divisions. These are the Operations Review Committee, the Corruption Prevention Advisory Committee on Community Relations.

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19 Max J. Skidmore, "Promise and Peril in Combating Corruption: Hong Kong's ICAC: Annals of the American Academy of Political and Social Sciences, 547, September 1996, pp 118-30.

The Governor appoints the members of all these groups. Additionally, there is “an internal monitoring system” that is “so secretive that few in the Commission know how it works”<sup>20</sup>.

To thus ensure the Commission’s integrity, its activities are scrutinized by four independent committees made up of citizens from different sectors of the community appointed by the Chief Executive. These committees receive reports and complaints and monitor the work of the ICAC in order to ensure that the Commission itself does not abuse its powers or become corrupt. The committees are:

- i. The Advisory Committee on Corruption, which oversees the general direction of the ICAC and advises on policy matters;
- ii. The Operations Review Committee, which oversees the work of the ICAC's investigative arm;
- iii. The Corruption Prevention Advisory Committee, which advises on the priority of the corruption prevention studies and examines all the study reports; and
- iv. The Citizens Advisory Committee on Community Relations, which advises the ICAC on the strategy to educate the public and enlist their support<sup>21</sup>.

#### **4.10 ICAC complaints committee**

A further accountability mechanism is the independent ICAC Complaints Committee—chaired by an Executive Council member—which receives monitors and reviews all complaints against the ICAC. The ICAC does not have the mandate to prosecute corruption cases. The power to prosecute after the completion of investigations is vested in the Secretary for Justice, thus ensuring that no cases are brought to the courts solely on the judgment of the ICAC. The Secretary for Justice heads the Department of Justice, which is responsible for the conduct of criminal proceedings. In the discharge of this function, the independence of the Department is constitutionally guaranteed by virtue of Article 63 of the Basic Law, which stipulates that the Department “shall control criminal prosecutions, free from any interference”. Within the Department the Prosecution Division – headed by the Director of Public Prosecutions – has the role of prosecuting trials and appeals on behalf of

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20 On advisory committees, ICAC’s Annual Reports.

21 Institutions Arrangement to Combat Corruption: A Comparative Study, United Nations Development Programme, Bangkok, Keen Publishing (Thailand) Company, Ltd. 2005.

the State, to provide legal advice to law enforcement agencies upon their Investigations, and generally to exercise on behalf of the Secretary for Justice the discretion of whether or not to bring criminal proceedings.

#### **4.11 Office of the Ombudsman**

The Office of the Ombudsman—headed by the Ombudsman, who is appointed by the Chief Executive (Subsection 3 [3]), serves to ensure that the public is served by a fair and efficient public administration that is committed to accountability, openness and quality of service. This is achieved through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector and bring about improvement in the quality and standard of and promote fairness in the public administration. The functions of the Office of the Ombudsman are thus to ensure that:

- i. Bureaucratic constraints do not interfere with administrative fairness;
- ii. Public authorities are readily accessible to the public;
- iii. Abuse of power is prevented;
- iv. Wrongs are righted;
- v. Facts are pointed out when public officers are unjustly accused;
- vi. Human rights are protected; and
- vii. The public sector continues to improve quality and efficiency.

Each oversight committee responds to the competencies of the three ICAC departments. The Operations Review Committee (ORC) examines reports on current investigations.

Five months old, cases involving individuals on bail for more than six months, and searches authorized under Section 17 of the Prevention of Bribery Act. The ORC enforces a level of accountability that prevents the ICAC from evolving into a tool of repression or political favoritism. For example, the ORC maintains both a supervisory and advisory role over any investigation and a case cannot be dropped without its approval. The other two committees examine and approve outreach strategies to increase public awareness of the costs of corruption and what may be done to combat it. The Corruption Prevention Advisory Committee receives reports on strategies to demonstrate the costs of corruption to private sector actors. Activities of the Prevention Department complement those outreach programs of the

Community Relations Department. Hence, the Citizens Advisory Committee has a crucial role in the content of films, billboards, and other forms of advertising to educate the public. Again, the distinguished composition of both of these committees endows them and the ICAC with a high degree of credibility. By 1977, it was thought that all the major corruption syndicates had been broken. In particular, efforts had been made to root out corruption within the police. In light of its success, the ICAC was now able to turn its attention to addressing the problem of corruption in the private sector. The change in the character of corruption can also be seen from that of the 4,310 reports on corruption received by the ICAC in 2003—57.4 percent were on the private sector, with government departments, the police and public bodies accounting for 23.4 percent, 12.3 percent and 6.9 percent respectively (ICAC, 2003:35). In the same year, 421 persons were prosecuted in 207 cases with a case-based conviction rate of 85 percent (ICAC, 2003:12-13). In 1974, corruption within the public sector had accounted for over 80 percent of reports received by the Commission. Some recent developments in the fight against corruption have included the 1994 review of the powers and accountability of the ICAC, which was completed within the context of political changes and the Hong Kong Bill of Rights Ordinance 1993. The aim of the review was to ensure that the ICAC remained effective against corruption without itself becoming corrupted. The changes introduced as a result of the review included more outside control over some investigating powers; search warrants, for example, are now issued by the courts and not by the ICAC. In 1995, six major chambers of commerce, together with the ICAC, helped found the Hong Kong Ethics Development Centre to promote ethics and corporate governance. Nowadays, nearly one in ten reports of corruption in the private sector is made by senior business managers<sup>22</sup>.

Today the corruption in the Hong Kong under control placing 12<sup>th</sup> position out of 180 countries<sup>23</sup>. While no government can expect to eradicate corruption completely, improvements in the area of integrity are encouraging. The efficiency and honesty of the civil service has been acknowledged by the world community and syndicated corruption is something which belongs to the past. The change in public attitude, from accepting bribery as a necessary way of life to actively helping to bring

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22 <http://www.icac.org.hk/hkedc/eng/main2.asp>.

23 Transparency International (2009): Global Corruption Report 2009.  
<http://GlobalCorruptionReport.Org.gcr.2009.html>.

corrupt individuals to justice was achieved through extensive media campaigns and face-to-face contact with various members of the community. The trust in the ICAC is high, with over 98 percent of respondents expressing support for the work of the ICAC. The proportion of respondents agreeing that the ICAC was impartial in its investigation rose to an all-time high of 74.6 percent in 2000, up from 56.4 percent in 1994.

When first established, the ICAC had marginal success; domestic constituents mocked its efforts and its signals lacked credibility. However, the repatriation and successful prosecution of Peter Godber increased the ICAC's credibility and Hong Kong's citizens began to report incidents of bureaucratic corruption. Since that time, the ICAC has built an impressive record of investigations that have resulted in numerous convictions. Nowadays, Hong Kong ranks one of the least corrupt jurisdictions in East Asia, and this reputation is despite its free-wheeling market economy.

**Table 2 Summary of findings**

<b>Characteristics</b>	<b>Hong Kong ICAC</b>	<b>India CBI</b>
Legal framework	Created by statute Reports to the Chief to the Executive of HK Accountable to Exec. Council, Secretary for Justice and Review Committees, including citizens committees	Created by the resolution adopted by the Government of India pursuant to the recommendations of the Committee on Prevention of Corruption ( <u>Santhanam Committee</u> ).in 1963.
Scope of Action	Receive complaints, Investigate allegations Prevention by improving systems Educating the public Capacity to search, seize and arrest.	Registration and investigation of complaints of corruption. Enquire and recommend actions on allegations of corruption against Government and public servants. Advises and guides on internal vigilance in Government departments. Advises public on course of action on matters of corruption
Degree of Independence	Independence of structure, personnel, finance and power	Independence of structure,

Internal Structure	Commissioner, Operations, Corruption prevention, Community relations, Administrative, Eight regional offices	Director, Investigation & Anti-Corruption, Technical Division., Crime Records and Statistics Division., Research Division., Legal and General Division., Administration Division..
Community Participation	Active participation surveys of public opinion. Active use of the media.	No community participation.

## 5. Conclusion and Suggestions.

The fight against pervasive, institutionalized corruption is a daunting task, yet it is as necessary as breathing for the survival of government, a state or a civilized society. This fight needs to be systematic, incremental and collective, guided by a national anti-corruption strategy that institutes structural reforms to minimize the opportunities for corruption in institutions, establishes ethical codes of conduct and strategies that stigmatize corrupt behavior, and uses the power of punishment to effectively deter corrupt activities.

Anti-corruption agency in Hong Kong proven to be successful operational arms of this national effort to reduce corruption. The experience of this agency suggests that their efforts must not be isolated from other anti-corruption mechanisms, but that they must work simultaneously to enforce, prevent and punish illegal activities in both the public and private sectors. The success of Hong Kong is also based on a strong legal framework that provides them with the power to conduct their strategies, the cooperation and determination of other government agencies to fight corruption, the political willingness and leadership to support the agency's actions, and the involvement and support of the wider community in expanding, disseminating and practicing the anti-corruption message.

While certain countries are achieving success in combating corruption, India despite its long cherished glorious cultural heritage and customs still is facing the problems of corruption precariously. It is because, though Indian Constitution provides laws to fight-against corruption and anti-corruption agencies have been established, the obstacles created by undue interference of politicians are laming the effective implementation of those laws. Ultimately this precarious

prevalence of cancerous corruption contaminates the whole society and shows its adverse impact on the democratic system of the nation victimizing the weaker sections of the society. There is a grave need to constitute a new anti-corruption agency in India to eradicate the evil of corruption like Independent Commission Against Corruption in Hong Kong.