

The Menace Of Corruption In India: A Socio-Legal Analysis

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Abstract

Corruption poses a serious challenge. It undermines morality. It also undermines democracy, good governance, trust and tolerance. Corruption in government administration creates inefficiency in the services. Corruption in judiciary undermined the rule of law. Corruption in elections and in legislative bodies reduces accountability. It distorts representation in policy making. Corruption reduces the institutional capacity of the government. The procedures are disregarded and resources are siphoned off. The government officers are bought and sold. This present research paper analyses different aspects of the evil of corruption in India with special reference to Hoshiarpur and Gurdaspur.

Keywords: *Corruption, whistleblowers, government officials*

1.1. INTRODUCTION

Corruption poses a serious challenge. It undermines morality. It also undermines democracy, good governance, trust and tolerance. Corruption in government administration creates inefficiency in the services.¹ The prevalence of corruption is a major obstacle to development. Corruption may be social, economic or political. Consumerism, low pay of government officials, wide discretionary powers and less accountability of bureaucrats, lack of transparency in government activities, obsolete rules and regulations and dishonesty of law makers are the main causes of corruption. Corruption is not only anti development, but also the anti poor and anti national. Corruption fosters violent organizations and criminal activities. Various measures for removing the opportunities for corruption should be adopted. The watchdog institutions like Vigilance Commission, Central Bureau of Investigation etc. should be given independent status and wide powers by plugging the loopholes of existing laws and

¹ J.P, Mittal., *India's Fight Against Corruption*, (New Delhi: Atlantic Publishers and Distributors (p) Ltd., 2012)19.

procedures. Eternal vigilance and active participation of people in developmental activities, community monitoring of projects etc. service ethos of the government officials and improved code of conduct of the politicians are required to reduce the incidence of corruption. Thus, Good governance and credibility of state are essential pre conditions for economic development.”²

1.2. Political and Bureaucratic Corruption in India since independence

Corruption is widely prevalent in India. It has been spread in every sector. It affects everyone. It is a web which has covered all sections of the society from top to bottom. The desire in order to get their work speedily forces people to offer and accept bribe. Even in private sectors it has spread its roots. Corruption in various sectors which includes Revenue, Corporate Frauds, Judiciary, Education, Hospitals, Land Frauds, Municipal Services, Rural areas, Electricity, water supply etc. In India, every state is suffered by this disease. Every sector of government and private departments is indulged in corrupt activities. In Punjab, drug trade has been flourishing which is one of the source of the state revenue. In most of drug cases police officials themselves engaged. Sometimes, drug peddlers pay bribe to authorities and escape themselves from punishment.³

2. Legislative efforts for the Prevention of Corruption In India

The various committees and commissions have submitted their reports on the prevention of corruption in India. Though these committees and commissions recommending the setting up of various mechanisms in order to eradicating corruption in India. The earlier efforts in this regards can be traced are as follows:-

2.1. Santhanam Committee: Report on the Methods of Eradicating Corruption, 1964

In the year 1962 the Indian government established Santhanam Committee in order to curb the menace of corruption in India. Santhanam Committee recommended establishment of a Central Vigilance Commission in order to curb corruption in public organization. The government accepted the recommendations “for the establishment of Central Vigilance Commission” on February 11, 1964.

² Raj Kumar Sen Gupta, *Crime and Corruption in Indian Economy*, (New Delhi: Deep & Deep Publications Pvt. 2012. 49, 50.

³ Ibid

The Central Government has enacted various Anti-Corruption Laws and established various anti-corruption agencies in order to eradicate corruption such as “Central Vigilance Commission”, “Central Bureau of Investigation” and “Anti-Corruption Bureau”, “the Comptroller and Auditor General” , and the “State Level Anti- Corruption Bureaus”. “The Prevention of Corruption Act, 1947” was passed in order to eradicate corruption. Thereafter, “The Prevention of Corruption Act, 1988” replaced “The Prevention of Corruption Act, 1947”

2.1.1.Establishment of the Central Vigilance Commission

“Central Vigilance Commission holds its statutory status upon the judgment of the Hon’ble Supreme Court in *Vineet Narain v. Union of India*”⁴popularly known as *Jain Dairies case*.⁵ In this case, the Supreme Court issued directions about the constitution of the Central Vigilance Commission and its functioning, effective, and efficient functioning of the Central Bureau of Investigation, appointment to the post of Director, enforcement Directorate, for the constitution of an able and impartial agency to perform functions similar to those of the Director of Prosecution in United Kingdom”. “The Supreme Court gave the following directions with respect to Central Bureau of Investigation, Central Vigilance Commission, and Enforcement Directorate”:-

“The Central Vigilance Commission shall be given statutory status. Further Court recommends that a committee comprising the Prime Minister, Home Minister, leader of opposition and form a panel of outstanding civil servants and others with unimpeachable integrity to be furnished by the Cabinet Secretary. The President based on the recommendations made by the committee shall make the appointment. The Central Vigilance Commission shall be responsible for the efficient functioning of the Central Bureau of Investigation while the Government shall remain answerable for the CBI’s working. The CVC shall be entrusted with the responsibility of superintendence over the CBI’s functioning. A Committee headed by the Central Vigilance Commissioner with the home Secretary as members shall make the appointment of the director of CBI. The Committee shall draw up a panel of IPS officers based on their seniority, integrity, experience, in

⁴ (1998) 1 SCC 226.

⁵ Retrieved from <http://arc.gov.in/4threport.pdf> , visited on July 4, 2016.

investigation and anti corruption work. Appointments Committee of the Cabinet shall make the final selection from the panel recommended by the Selection Committee. If none among the panel is found suitable, the reasons thereof shall be recorded and the Committee asked to draw up a fresh panel. The CBI shall report to the CVC about cases taken up by it for investigation. The director CBI shall have a minimum tenure of two years, regardless of the date of superannuating. Selection or extension of tenure of officers up to the level of Joint Director shall be decided by a Board comprising the Central Vigilance Commissioner, Home Secretary and Secretary Personnel with the Director, CBI providing the necessary inputs.”

Based on the above mentioned directions given by the Supreme Court, the Central Government issued on August 25, 1998, an ordinance, which conferred legal status on Central Vigilance Commission. Supreme Court in *Vineet Narain's* case gives certain guidelines that the chairman was to be appointed but it was kept pending till the Act was passed. Thereafter, the Law Commission headed by Justice Jeevan Reddy had prepared the draft of Central Vigilance Act. Based on this draft the President issued the Ordinance. According to the provisions of the Ordinance in addition to the Chief Commissioner, “the Central Vigilance Commission” shall be appointed by a selection Committee headed by the Prime Minister of India. The term of service of each Commissioner shall be four years. However, the maximum age for continuing in the office of commissioner shall be 65 years.⁶ The Commission in addition to keeping watch on the working of investigating agencies shall give advice to public undertakings, Banks, Central State Governments. For appointing heads of investigating agencies, a committee shall be constituted in charge of “Central Vigilance Commission”.⁷

Thereafter, the “Central Vigilance Act, 2003” was passed with a view to eradicate corruption. It contains the provisions regarding the constitution, jurisdiction, power, and function of the commission.

3. Legislative framework regarding the Prevention of Corruption in India

⁶ J.J.R Upadhyaya. *Administrative Law* (Allahabad: Central Law Agency, 2012) 438.

⁷ Ibid.

The “Indian Penal Code, 1860” had a separate chapter which deals with particularly those offences which is being committed by public servants.⁸ “The Indian Penal Code, 1860” defines a Public Servant under “Section 21 of The Indian Penal Code, 1860” in a comprehensive manner. The Sections 161 to 165A of The Indian Penal Code, 1860 deal with public servants taking gratification other than legal remuneration or obtaining valuable things without consideration. The Sections 217 to 223 of “The Indian Penal Code, 1860” deal with public servants disobeying direction of law to save a person from punishment or his property from forfeiture among other things. The Section 409 of the Indian Penal Code, 1860 deals with criminal breach of trust by public servant etc. However, this list of provisions mentioned in “The Indian Penal Code, 1860” dealing with corrupt activities of public servants is only illustrative and not exhaustive in nature.⁹

The Constitution of India is the largest constitution of world equipped with all sorts of legal provisions. “The Constitution of India” not merely prescribes the fundamental rights but also prescribes the legal remedies to the citizens of India in case infringement of their rights. Therefore, it gives protection to fundamental rights of the citizens. It gives powers to the judiciary to protect the fundamental rights of people.

“Article 14 of the Constitution of India provides that everyone is equal before law and equal protection is given by law. This equality does not debar people to make discrimination on the basis of caste, religion, colour, sex etc. The trend of public servants to demand illegal money in lieu of giving services to people is very old. But now this trend has reached at its peak. However, officials sitting on higher ranks or employed under department of central or state governments, demand illegal gratification from people to get their work done. This is also one of the examples of inequality.”

“The public servants are entitled to get monthly remuneration of their services given by the government. The public servants face legal consequences in case they illegally demand anything in lieu of services given by them. Similar malpractices are being committed by public servants in state of Punjab. People get disappointed due to delay, laches and illegal demands of

⁸ Singh, Subodh K., “Corruption: A Menace in India,” *The Criminal Law Journal*, (April-June, 2012), Vol. 2, p. 107.

⁹ Reddy, G.B., “Corruption in High Places- Judicial Response in India,” *Andhra Law Times*, (March & April, 2001), Vol. CIX, p. 22.

these officials. Article 21 of the Constitution of India guarantees the liberty of life to the citizens of India. In actual practice, people do not enjoy their freedom. It is the liberty of the people to get their work done from public servants without facing any hardship. It is the duty of the public servant to give services to the people without extracting illegal money. People routinely interact with such kind of corrupt officials who infringe their rights. Despite, many complaints have been filed against corrupt public servants still corruption is increasing in different departments. The Constitution of India also recognizes the class action in the form of Public Interest Litigation.”

“The Law Commission of India”¹⁰ in 2001 had recommended that in order to eliminate corruption, there is need to enact a law to protect the whistleblowers. It had also drafted a Bill in its report. Thereafter, Public Interest Litigation was filed in the Supreme Court in 2004 after the murder of Satyendra Dubey for the protection of whistleblowers. In this regard, the Supreme Court gives directions to the Central Government to set up a suitable mechanism in order to deal with complaints from whistleblowers until such time a suitable legislation was enacted to that effect”¹¹.

The Central Government formulated the ‘*Public Interest Disclosure and Protection of Informer’s Resolution*’ (herein after referred as “PIDPI, 2004”) on April 21, 2004 popularly known as the ‘*Whistleblowers Resolution*’. It gives powers to the Central Vigilance Commission to keep the identity of the person secret that makes the complaint and to take action against the person making vexatious grievances.¹² “The Government of India” established “Central Vigilance Commission” as the “designated agency” in order to “receive complaints of whistleblowers” under the provisions of PIDPI, Resolution 2004. It is the CVCs’ responsibility to keep the identity of the individual filing the complaint and the allegations secret.”¹³

“The Right to Information Act, 2005” is a source to extract information against all the public servants. “The right to information” is a cherished right. Transparency and rule of law is

¹⁰ Law Commission of India, 179th Report on the Public Interest Disclosure and Protection of Informers (December 2001).

¹¹ Writ Petition (Civil) 539/2003.

¹² Retrieved from <http://lawyerslaw.org/the-central-vigilance-commission-act-2003/>, visited on January 17, 2016.

¹³ Retrieved from <http://lawyerslaw.org/the-central-vigilance-commission-act-2003/>, visited on January 17, 2016.

the touchstone of administration. Article 19(1)(a) of the Constitution of India also affirms the Right to Information in the sense of freedom of speech and expression.¹⁴

As the public information officer is responsible to give information to the information seekers against the tainted public officials similarly, institution of Lokpal is created to expose the corrupt officials working in the states. Administrative Reforms Commission in 1966 has suggested two tier machinery i.e. one is Lokpal at centre and another is Lokayukta at the state.¹⁵ The Lokpal and Lokayukta bill was passed by the Parliament on December 27, 2011. After making certain amendments The bill was passed in the Rajya Sabha on December 17, 2013.¹⁶

The Janlokal bill popularly known as ombudsman or citizens bill is a draft anti corruption bill drawn up by eminent civil society activists such as Anna Hazare after initiated Anti- Corruption Movement.¹⁷ Thereafter Parliament enacted The Lokpal and Lokayukta Act, 2013 in order to corruption.¹⁸

On July 24, 2018 Parliament passed “the Prevention of Corruption (Amendment) Bill, 2018” in order “to promote transparency and accountability of the Government.” As per the new Amendment, giving a bribe is an offence which is punishable with imprisonment of 7 years if the commission of offence is reported within 7 days. However, this provision is not applicable when anyone is forced to give a bribe. The amendment further limits the offence of criminal misconduct which includes misappropriating of property entrusted to “the banker and amassing assets disproportionate to known sources of income. In this present amendment, before starting investigation under the Prevention of Corruption Act, 1988” a police officer will take prior approval of relevant authority or government. In order to prosecute former officials for offences which were done by them while in office a sanction is required and the decision on such sanction request is to be made under three months which may be extended by a month. The centre

¹⁴ Durga Shankar Mishra, “Does Liberalisation Mitigate Corruption? Challenges for Scholars and Practitioners from the Indian Experience,” *The Indian Journal of Public Administration*, (April-June, 2012), Vol. LVIII, No. 2, p. 18, 19.

¹⁵ Alope Kumar Chakraborty and Rathin Bandyopadhyay, *Legal Control of Corruption in India*, (2012), Paragon International Publishers, New Delhi, p. 84, 85.

¹⁶ Nayan Joshi, *The Lokpal and Lokayuktas Act, 2013 along with Prevention of Corruption Act, 1988* (New Delhi: Kamal Publishers 2014) 02.

¹⁷ Alope Kumar Chakraborty and Rathin Bandyopadhyay, *Legal Control of Corruption in India*, (2012), Paragon International Publishers, New Delhi, p. 84, 85.

¹⁸ P.C Sharma, “Criminal Justice System & the Fight against Corruption-Challenges Ahead,” *Central Bureau of Investigation Bulletin*, (December, 2003), Vol. XI, No. 1, p. 21.

government may notify regarding the guidelines. This amendment also empowers the Special Court in order to attach and confiscate property.¹⁹

4. OBJECTIVES OF STUDY

- To study about the menace of corruption in India with special reference to Hoshiarpur and Gurdaspur.
- To analyze and deliberate upon the statutory provisions as well as the judicial decisions pertaining to the prevention of corruption in India.

5. HYPOTHESIS

- That Existing statutory provisions for the prevention of corruption in India are sufficient to tackle corruption in the Government organisation .
- That Existing statutory provisions for the prevention of corruption in India are neither sufficient nor efficient in order to curb the menace of corruption in the Government organisation

6. RESEARCH METHODOLOGY

The present study is analytical as well as empirical in nature. The researcher has use of both primary as well as secondary sources. The primary data is collected on the selected 50 respondents of two districts of Punjab i.e. Gurdaspur and Hoshiarpur. In this study, the primary data collected from the respondents has also been used to prove/ disprove the research hypothesis.

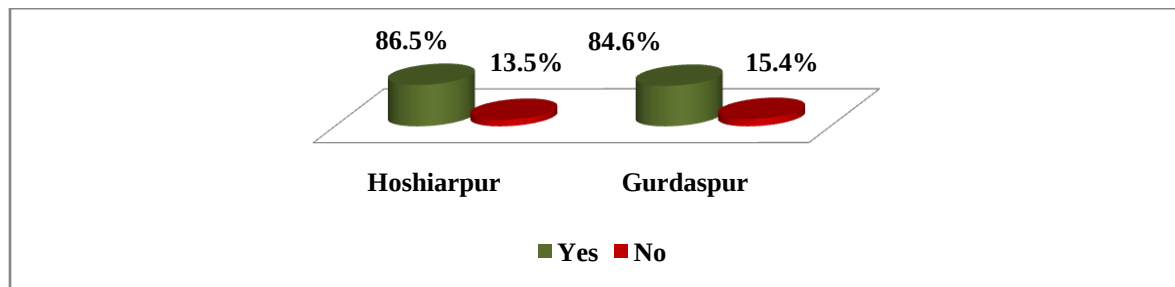
7. METHOD OF DATA COLLECTION

In this study, Questionnaire Method“ has been used for getting the results. An attempt has been made to analyze the views of general public through empirical study on the subject in hand.

Q.1. Do you think that corruption has spread its roots in all government organizations ?

Figure 1.

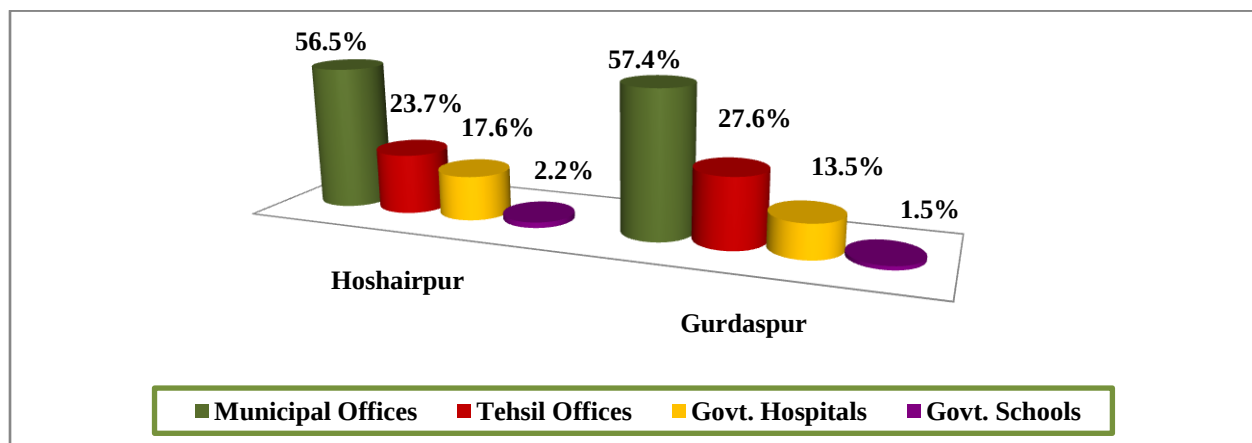
¹⁹ Retrieved from <https://www.indiatoday.in/education-today/gk-current-affairs/story/preventionof-corruption-act-anti-corruption-bill-diluted-bribery-investigation-1297993-2018-07-27>



The results of this present study shows that all government organisations have been in the top list of corruption. The researcher has received almost similar responses to option one i.e., 'Yes'. The respondents from category I i.e., Hoshiarpur have favoured option one with 86.5% and option two i.e., 'No' is favoured by 13.5% respondents. 84.6% respondents from category II favour option one and 15.4% respondents negatively favour option two.

2. In your opinion which government organisation is more effective with the serious disease of corruption?

Figure: 2

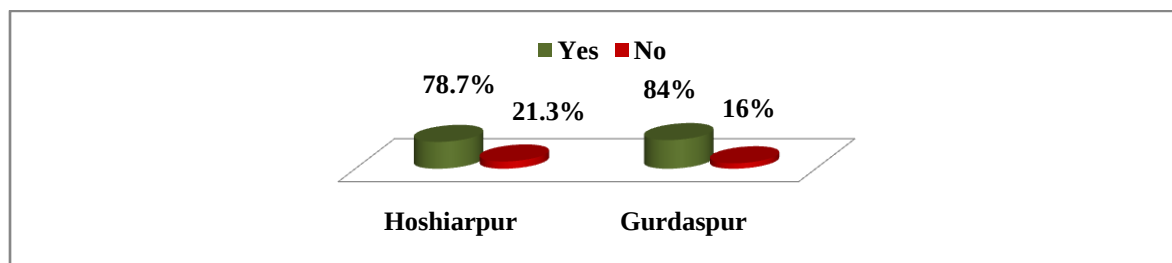


The respondents from above two categories have given almost similar answers to aforementioned question. The respondents from both the categories asserted that 'Municipal Offices' are more corrupt. The above figure 2 shows that 56.5% respondents from Hoshiarpur

and 57.4% respondents from Gurdaspur asserted that Municipal Offices' are more corrupt. This figure further indicates that, 23.7% respondents from Hoshiarpur and 27.6% respondents from Gurdaspur considers Tehsil offices are very corrupt. , 17.6% respondents from Hoshiarpur and 13.5% respondents from Gurdaspur consider that Government Hospitals are also involved in corrupt practices, 2.2% respondents from Hoshiarpur and 1.5% respondents from Gurdaspur depicts that Government Schools are also involved in corrupt practice.

3. Do you think that corruption prevails in judiciary?

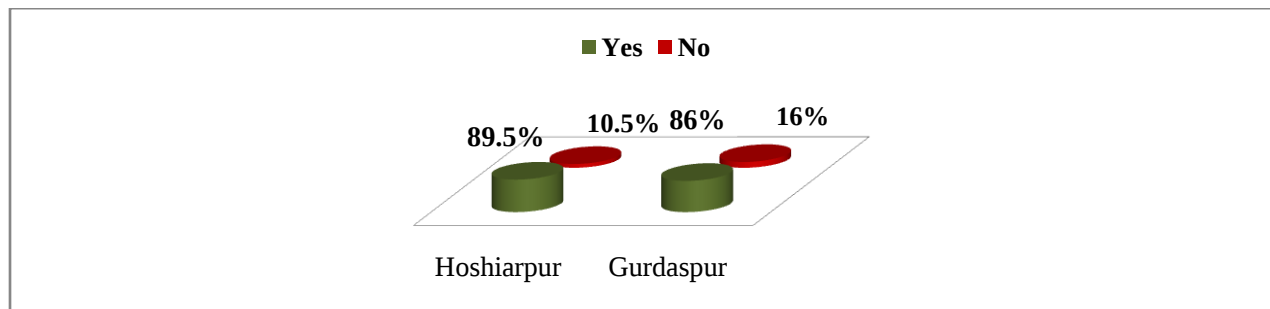
Figure: 3



As people have faith in judiciary. Judiciary is considered most potent weapon in the hands of the people. In case of infringement of their rights, judiciary is last resort to redress their grievances. People consider that judiciary is impartial and imparts fair justice. In reality, people are losing faith in judiciary due to partial attitude of judges. People got fed up with long pendency of cases in the courts, dilatory procedures and too much fees is being taken from clients. The respondents from above two categories have given almost similar answers to aforementioned question. The percentage of affirmative answers is 78.7%, 84%, from categories I to II. The percentage of negative answers is 21.3%, 16%, from categories I to II. It is concluded from the responses of the both categories that majority of the respondents are of the view that corruption prevails in Indian judiciary. Very few respondents negatively answer the question that there is no corruption in Indian judiciary. Despite corruption, litigants come to the courts just because they do not want to take law in their hands.

4. Whether any government official demands bribe (directly or indirectly) from you?

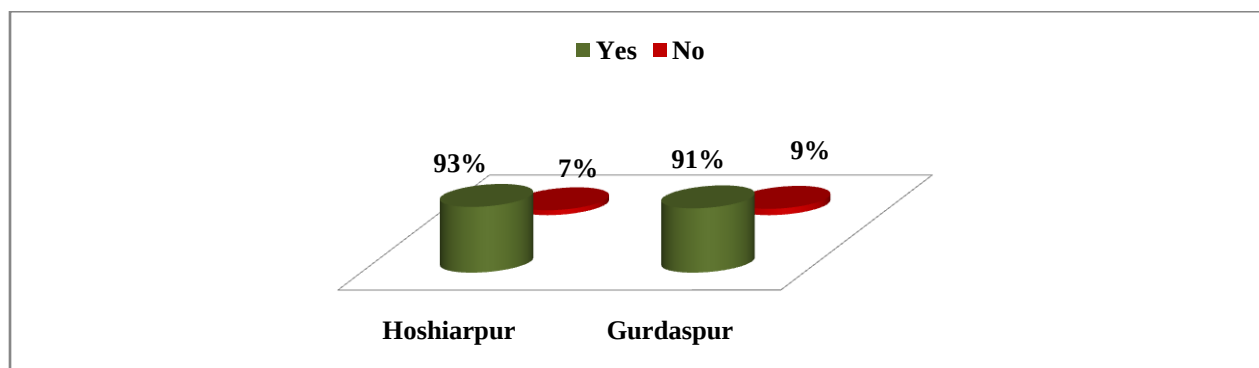
Figure: 4



Majority of the respondents give expected response to aforementioned question as majority of respondents asserted that Government officials demand bribe or any other thing directly as well as indirectly. The respondents from categories I to II have given positive answers to option one with 89.5%, 86%. Rest of the respondents from same categories have negatively answered option two with 10.5%, 16% percentage respectively.

5. Do you think that Government employees demand money from people for services to which they are not legally entitled?

Figure No. 5

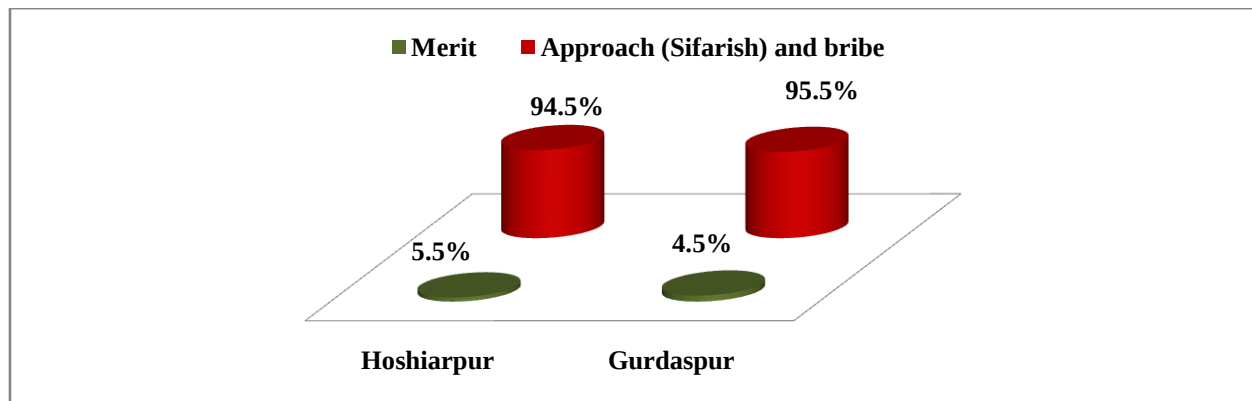


The respondents from categories I to II have given answers with 93%, 91% percentage in respect of option one. Option two has received 7% and 9% answers from above categories respectively. The respondents from categories I and II have almost similar views in respect of option one. After analyzing the views of respondents it is clear that government employees

demand money from people for those services to which they are not legally entitled. Majority of Government official are indulged in illegal and corrupt practices.

6. Do you think that selection in government service depends upon merit, approach (sifarish) or bribe?

Figure No. 06



The Figure no. 6 shows that only 5.5% respondents from Hoshairpur and 4.5% respondents from Gurdaspur asserted that selection in government services depends upon the merit. While large majority of respondents asserted that government services can only be availed through approach 'sifarish' and bribe. It further reveals that large majority of respondents from Hoshiarpur and Gurdaspur have given maximum favour to second option (Approach ., Sifarish and Bribe) i.e. 94.5%, 95.5% respectively.

8.CONCLUSION AND SUGGESTIONS

The phenomenon of corruption has multiple facets and manifestations. Corruption prevails in the Indian state and bureaucracy right from top to bottom. When a person wants to get a contract or tender or arms licence, issuing of caste certificate or driving licence or land patta etc. he starts to approach right from the office of the peon to the higher officers. What surprises is that the way the whole thing so legitimized as if they are not paid by the state in terms of their salary and so they are fully dependent upon the money, facilities and advantages that people give to them for their survival. In fact, government officials compensate their time and labour by offering bribes besides their government salaries for providing services to people. It is in the sphere of appointment, promotion of posts that there has been much scope for corruption.

Individuals who secure high posts by means of favoritism or nepotism are more inclined to corruption than the person who rises by sheer merit and fair means.²⁰

This present study reveals that approximately 87% respondents from both the districts of Punjab are of opinion that corruption has spread its roots in all government organizations. Majority of respondents asserted that they frequently experience such type of malpractice in the government organizations. The malpractice of corruption in government organizations forces them to accept such kind of corrupt practices otherwise these government organization left no choices for them. 58% respondents from both the categories asserted that municipal offices and approximately 27 % respondents of both the districts of Punjab asserted that Tehsil offices are more effective with serious disease of corruption. Approximately 18% respondents asserted that Government Hospital and Government Doctors are more corrupt. Because Government Doctors run side by side their own (private) medical practice. Approximately 82% respondents of the both the categories considers that people are losing faith in judiciary due to partial attitude of judges. People got fed up with long pendency of cases in the courts, dilatory procedures and too much fees is being taken from clients. The respondents from above two categories have given almost similar answers to aforementioned question. 90% Respondents of the both the categories reveals that they personally experience that government officials directly or indirectly demand some kind of favor in the sense of bribe or in any other sense. This is a very disturbing reality of our times. In this type of atmosphere our India could not be converted into a developed India. A heart- wrenching reality of our system that a common man could not be selected on the basis of his/her merit in the government services but they need a approach (*sifarish*), favoritism for the selection in any government service. Large majority of respondents i.e., 96% respondents asserted that they personally experience such kind malpractice. This is a very disturbing reality of our system that meritorious peoples take their degrees in their hands and they feel helpless when their merit could not be considered by the authorities. Their career is spoiled by our so called system.

In India we have several laws in order to eradicate corruption in India. The Constitutional provisions also protect the fundamental rights of people. Under Article 32 and Article 227 of the

²⁰ Pankaj Deep, "Corruption, Transparency and Good Governance," *Social Action*, (October-December, 2009), Vol. 59, No. 1, p. 383-385.

Constitution of India peoples can file public interest litigation against the violation of their fundamental rights. Moreover, the “Indian Penal code, 1860” provides the punishment for substantive offences committed by the accused persons. Under “The Right to Information Act, 2005”, information regarding various scams can be elicited by filing an application. “The Whistleblowers Protection Act, 2011” is an effective weapon in the hands of people to give information regarding corrupt officials, but due to fear of being killed or threatened whistleblowers does not come forward. The government should give protection to whistleblowers if it intends to wipe out corruption from India. *The Lokpal and Lokayukta Act, 2013* is not being implemented adequately. There is need that institution of Ombudsman should keep watch on corrupt activities of different departments. On receiving complaint Ombudsman should take immediate action against corrupt officials after conducting reasonable investigation against them. *The Prevention of Money Laundering Act, 2012* also punishes the persons for holding illegal money.

The prevalence of corruption is a major obstacle to development. Corruption may be social, economic or political. Scarcity of goods and services, consumerism, low pay of government officials, wide discretionary powers and less accountability of bureaucrats, lack of transparency in government activities, obsolete rules and regulations and dishonesty of law makers are the main causes of corruption.²¹

²¹ Raj Kumar Sen Gupta, *Crime and Corruption in Indian Economy*, (2007) (New Delhi: Deep & Deep Publications Pvt. Ltd., 2007) 49, 50.